

City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: OCTOBER 5, 2021

FROM: COMMUNITY & ECONOMIC DEVELOPMENT WARDS: ALL
DEPARTMENT

SUBJECT: ADOPTION OF A RESOLUTION TO APPROVE THE NEGOTIATION AND
REDUCTION OF CODE ENFORCEMENT FINES AND EXECUTION OF
REHABILITATION AGREEMENTS TO FACILITATE CORRECTIVE ACTION

ISSUE:

Adopt a Resolution to approve the negotiation and reduction of code enforcement fines and execution of rehabilitation agreements to facilitate corrective action.

RECOMMENDATIONS:

That the City Council:

1. Adopt the Resolution (Attachment 1) to approve the negotiation and reduction of code enforcement fines and execution of rehabilitation agreements;
2. Authorize the Community & Economic Development Director to negotiate and reduce up to \$25,000 of the outstanding Code Enforcement fines per parcel;
3. Authorize the City Manager to negotiate and reduce up to a maximum amount of \$50,000 of the outstanding Code Enforcement fines per parcel;
4. Direct staff to seek City Council approval for any reduction of the outstanding Code Enforcement fines per parcel over \$50,000; and
5. Authorize the City Manager, or his designee, to execute Rehabilitation Agreements in accordance with authority as provided in the Resolution, along with making minor and non-substantive changes.

COMMITTEE RECOMMENDATION:

The Inclusiveness, Community Engagement and Governmental Processes Committee (Committee) met on July 7, 2021 with Chair Melendrez, Vice Chair Fierro and Member Conder present, to consider two options: 1) discontinue negotiation of Code Enforcement fines and execution of rehabilitation agreements; or 2) to direct staff to provide a policy to reduce Code Enforcement fines and execute rehabilitation agreements to facilitate corrective action. After discussion, the Committee unanimously directed staff to prepare a policy allowing staff to reduce Code Enforcement fines and return to City Council for consideration.

BACKGROUND:

The Administrative Code Enforcement Program, as authorized in Title 1.17 of the Riverside Municipal Code (RMC), empowers Code Enforcement staff to assess administrative fines for violations of the RMC. The RMC also sets a limit for those fines at \$100,000 per parcel. Typically, fines only reach this level after repeated attempts to gain compliance have failed and the City pursues Administrative Civil Penalties. Fines can accrue to this level if the responsible party continues to be unresponsive and does not act to resolve the violation(s). In some cases, property owners or prospective buyers face a challenge in paying outstanding Code Enforcement fine amounts and contact the Code Enforcement Division to inquire about negotiating these penalties.

Rehabilitation Agreements

During the foreclosure crisis, which began in approximately 2007/08, many foreclosed, vacant, and neglected properties began accumulating significant fine amounts. It was also during this time that the City recognized the need to create a mechanism where fine amounts could be negotiated to expedite the sale of these foreclosed properties with the goal being to quickly reduce the inventory of vacant foreclosed homes in the City, many of which were bank-owned. It was in the City's best interest to facilitate the sale and rehabilitation of these homes since vacant properties often pose a significant public nuisance. The sale of a home with up to \$100,000 in fines proved difficult. To this end, the City Attorney's Office created a rehabilitation agreement program in which owners or buyers could negotiate fine amounts in exchange for signing a settlement agreement (rehabilitation agreement) that required the home to be rehabilitated, cured of code violations, and occupied by an agreed-upon date. The agreements also included cost recovery for the City Attorney Office's services. This agreement was recorded on the property owner's title and ran with the land. The City Attorney's Office was authorized by the City Council to negotiate up to 50% of the fine amount at the staff level. Any reductions greater than 50% required authorization by City Council. Failure of the property owner to comply with the terms of the rehabilitation agreement resulted in the City's ability to seek full payment of the original fine amount.

Owner Occupancy Covenants

The City also had an interest in encouraging home-ownership at that time, so as an exception to the 50% fine reduction limit at the staff level, the City Attorney's Office was also authorized by the City Council to negotiate further if the owner agreed to enter into an Owner Occupancy Covenant. An Owner Occupancy Covenant obligated the property owner to maintain the property as owner-occupied and not rent or lease the property for the term length of the agreement. The additional fine reduction was commensurate with the number of years the owner was willing to commit to the owner occupancy. This agreement also ran with the land. It was not uncommon for the City to execute a 25-year Owner Occupancy Covenant in exchange for a reduction of much of the penalty amount owed. However, some Owner Occupancy Covenants have proven to be problematic over time. Properties encumbered with these covenants become difficult, and in some instances, virtually impossible to sell for market value. This can have the effect of depressing immediate adjacent home values. Several property owners have found themselves in situations that required them to sell their homes prior to the 25-year period expiring. Sometimes this was for unforeseen health reasons, and it resulted in difficult negotiations as the City sought a pro-rata reimbursement of the fine reduction to release the owner from the Owner Occupancy Covenant. Furthermore, the entire concept of the Owner Occupancy Covenant assumes that an owner will take better care of a property than a renter. There is no empirical data to support this assumption.

This practice of negotiating rehabilitation and owner-occupancy covenants has been an informal practice of the City Attorney's Office. Since its implementation in 2008, the City Attorney's Office

has executed approximately 211 rehabilitation agreements and 31 owner-occupancy covenants.

DISCUSSION:

Staff proposed two options for Committee consideration:

(1) Cease Rehabilitation Agreements:

If the Committee elects to cease negotiating rehabilitation and owner-occupancy code enforcement fines, staff will seek full payment of the original fine amount. Fines are only imposed by the Code Enforcement Division after staff has determined a violation exists and has notified the responsible party in writing of the violation, the corrective action required, and a reasonable timeframe to complete the work. If compliance is not achieved, staff issues administrative citations to motivate the responsible party to comply. If that were to fail, staff would then pursue administrative civil penalties/daily fines. In order for this to occur, staff would cause an administrative hearing to be held with the responsible party wherein a third-party administrative hearing officer would adjudicate the case and determine what, if any, daily fines the responsible party would be assessed until the property is brought into compliance. The responsible party is able to seek judicial review of the ruling of the hearing officer to the Riverside County Superior Court. Fines are assessed for each day the violation exists until such a time that it is either resolved or the City reached the maximum fine amount of \$100,000 as set by the Riverside Municipal Code. The collection of fines can vary greatly. Some property owners pay the amount in full upon receipt of a bill, while others may delay payment and/or not pay. If a property owner does not pay, the City may pursue collection through a variety of means including placing an unsecured tax lien on the property, recording a Notice of Pendency on the property title, and/or pursuing traditional debt collection methods.

(2) Continue Rehabilitation Agreements and Approve a Policy

If the Committee elects to continue negotiating code enforcement fines, staff recommends that a formal policy be approved to bring greater transparency to the process. Code Enforcement fine reductions in exchange for a rehabilitation agreement is often the one motivating factor that compels property owners to comply. Rehabilitation agreements are useful in cases where rapid compliance outweighs the collection of fines due to the nature of the violations or the negative effect the subject property is having on the surrounding community. The ability to reduce fine amounts in exchange for a commitment to comply with prospective buyers of properties to facilitate a quick sale and rehabilitation of a property is equally important and again, many times outweighs the need to collect fine amounts.

Each request by a property owner to explore the viability of a rehabilitation agreement should be reviewed by the Code Enforcement Division and City Attorney's Office on a case-by-case basis. The property owner would need to establish a mitigating circumstance necessitating a fine reduction. The totality of the circumstances should be considered. Factors to be taken into consideration include but are not limited to:

- 1) The responsible party has not been party to a previous rehabilitation agreement with the City of Riverside;
- 2) The responsible party has a demonstrable financial hardship preventing full payment of the fine owed;
- 3) The responsible party has a gross annual income that does not exceed 80% of the area median income, adjusted by family size;
- 4) The responsible party has a disability preventing or disrupting compliance with the

- Municipal Code or payment of the fine;
- 5) The responsible party was deployed on active military duty during the time period the violation and code enforcement case was taking place and unable to comply;
 - 6) The responsible party does not have a history of more than three substantiated violations of the Riverside Municipal Code within the year prior to the code enforcement case giving rise to the fines being negotiated;
 - 7) The rehabilitation agreement would specifically preserve the community interests in preserving the City's housing stock; to arrest and prevent the development of blighted areas; and/or arrest the decline of deteriorating/deteriorated areas;
 - 8) The properties are located in primarily residential areas where a minimum of 51 percent of the residents in those areas are low and moderate-income;
 - 9) The subject property is inherited by a family member who inherits the property and seeks to enter into an agreement within twelve months;
 - 10) The City's actual cost of investigation, enforcement, administration, and City Attorney's costs does not exceed the amount being negotiated/reduced; and
 - 11) The City determines that a rehabilitation agreement is in the best interest of the City and the most effective means to quickly gain compliance and that the health/safety of the community is severely impacted by the violations in question.

Staff recommends that the Community & Economic Development Director have the authority to negotiate and reduce up to \$25,000 of the outstanding Code Enforcement fine amount per parcel and that the City Manager be authorized to reduce up to a maximum amount of \$50,000. These amounts are consistent with purchasing limits per the current City Council resolution. The maximum fine amount the Code Enforcement Division is authorized to assess by the municipal code is \$100,000 per parcel. Allowing the City Manager or his or her designee to negotiate up to \$50,000 per parcel would match the existing informal practice but give staff more flexibility in negotiating lower fine amounts. Any reduction over the \$50,000 threshold amount would need to be approved by the City Council. This would result in better efficiency with fewer cases needing City Council review and approval.

Regarding Owner Occupancy Covenants, staff recommends that the City only utilize the rehabilitation agreements to negotiate fine amounts. Staff's experience has shown that Owner Occupancy Covenants can be problematic for property owners, especially when they are attempting to sell a property that has a long-term Owner Occupancy Covenant attached. As these agreements run with the land, it is challenging to market such a property and find a buyer willing to assume the covenant. Property owners that execute a long-term Owner Occupancy Covenant cannot predict what circumstance may arise years in the future, and the covenants often restrict their ability to adjust to unforeseen circumstances. With staff and City Council's authority to negotiate fine amounts via a rehabilitation agreement, there does not appear to be a need for an additional instrument such as an Owner Occupancy Covenant. The City's main objective is to achieve compliance with the applicable codes, which is accomplished solely through the rehabilitation agreement.

Staff recommends that City Council adopt the Resolution (Attachment 1) to formalize a program for the negotiation and reduction of outstanding Code Enforcement fines up to a maximum amount of \$50,000 per parcel, and to execute rehabilitation agreements to effectuate corrective action by property owner(s).

STRATEGIC PLAN ALIGNMENT:

Strategic Priority 5 – High Performing Government - Provide world-class public service that is efficient, accessible and responsive to all.

Goal 5.2 - Utilize technology, data, and process improvement strategies to increase efficiencies, guide decision making, and ensure services are accessible, and distributed equitably throughout all geographic areas of the City.

The proposed recommendations align with each of the five Cross-Cutting Threads as follows:

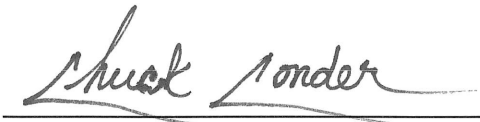
1. **Community Trust** – Adoption of the Resolution brings transparency to a process that formerly had none. Negotiations and reductions of code enforcement fines should be based on quantifiable and demonstrable factors, and City Council approval will bring consistency, thereby building community trust.
2. **Equity** – Creating formal criteria through adoption of the Resolution for negotiation and reduction of code enforcement fines removes the potential for inequitable consideration of requests to negotiate and reduce outstanding Code Enforcement fines.
3. **Fiscal Responsibility** – On the surface, it may appear that negotiating a reduction in code enforcement fines may reduce revenue. However, it can assist the City in collecting fees that would have been challenging to collect. Fines cannot be placed on secured tax rolls and collection from property owners is often difficult. Negotiating a reduction of these fines often leads to the collection of at least a portion of them that would have otherwise not been received.
4. **Innovation** – Adoption of the Resolution to negotiate and reduce code enforcement fines facilitates adaptation to the community's demand for greater transparency and a more interactive government. It also creates a new and efficient way to collect fine amounts that would have otherwise been difficult to collect without costly legal actions.
5. **Sustainability & Resiliency** – Negotiating a reduction in code enforcement fines and executing rehabilitation agreements will lead to the preservation and upkeep of the built environment in Riverside. Proper and timely maintenance facilitates sustainability and resilience in a community against physical deterioration and financial downturn.

FISCAL IMPACT:

The direct fiscal impact is unknown at this time. The fiscal impact is determined by the number of rehabilitation agreements executed and the amount of Code Enforcement fines that are reduced pursuant to rehabilitation agreements. It is unknown at this time what this may be on an annual basis. Over the last two years, the City has dismissed approximately \$75,000 per year in Code Enforcement fines pursuant to rehabilitation agreements. It should also be noted that since fines cannot be transferred to the County as a secured tax lien, the collection is a challenge, and negotiating fine amounts can often facilitate collections that otherwise were not guaranteed. Additionally, corrective action by the property owner is achieved, thereby saving the City potential funds that might have been needed in order for the City to make necessary repairs to correct the violation(s).

Prepared by: David Welch, Community & Economic Development Director
Certified as to
availability of funds: Edward Enriquez, Chief Financial Officer/Treasurer
Approved by: Rafael Guzman, Assistant City Manager
Approved as to form: Phaedra A. Norton, City Attorney

Concurs with;

A handwritten signature in cursive script that reads "Chuck Conder". The signature is written in black ink and is positioned above a horizontal line.

Chuck Conder, Member
Inclusiveness, Community and Governmental Affairs Committee

Attachments:

1. Resolution
2. Presentation