



COUNTY OF HUMBOLDT

For the meeting of: 7/14/2020

File #: 20-855

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Departmental

SUBJECT:
Code Enforcement Unit Annual Report

RECOMMENDATION(S):
That the Board of Supervisors:

1. Receive the Code Enforcement Unit's annual report.

SOURCE OF FUNDING:
General Fund.

DISCUSSION:
This report describes the activities of the Code Enforcement Unit (CEU) from August 27, 2017, the date the CEU was transferred to the Planning and Building Department, to present. The requirement of a CEU annual report to the Board of Supervisors began in August 1994 when the Board created the Community Assistance Unit in response to a growing number of citizen complaints of health and safety concerns. The increased number, severity and complexity of complaints required the creation of the Community Assistance Unit to coordinate the multi-departmental response required to resolve the issues. The Community Assistance Unit was the earliest rendition of what is today known as the CEU and was charged with a host of responsibilities, the annual reporting requirement being one of them.

When the CEU was moved to the Planning and Building Department in August 2017 the annual reporting requirement was not known by the department so this is the first report being provided in response to a community request.

With the transfer of CEU to the Planning and Building Department, there came several changes. First, the Board directed the CEU to actively pursue illegal cannabis cultivation and junk vehicles, instead of being solely complaint driven. To better enforce county regulations, the Board adopted Ordinance 2576 which simplified and expedited the process of resolving violations. The Ordinance established procedures for a Notice to Abate Nuisance and Notice of Violation and Proposed Administrative Civil Penalty (Notice of Violation) which shortened the time period to abate the public nuisance and correction of the code violation from thirty (30) days to ten (10) days.

A Notice to Abate Nuisance gives the property owner 10 days to voluntarily abate the public nuisance or request an appeal hearing before a county appointed hearing officer. Failure to do either within the 10-day period will give the CEU jurisdiction to conduct an abatement of the public nuisance after requesting a transfer of funds from the Board of Supervisors.

The Notice of Violation gives the responsible party 10 days to voluntarily correct the code violation or request an appeal hearing before a county appointed hearing officer. If the code violation is not corrected or otherwise remedied within the 10-day period, a daily penalty of one dollar (\$1.00) to ten thousand dollars (\$10,000), as determined by the CEU in accordance with the rate schedule set forth in the Ordinance 2576 (specifically, Humboldt County Code (HCC) section 352-6), will commence after the 10-day period. The daily penalty continues for a period up to ninety (90) days, unless the code violation is corrected, dismissed or suspended by the hearing officer. The Ordinance also simplified the appeal and cost recovery hearing procedures by allowing administrative civil penalty hearings to be combined with, and heard at the same time as, public nuisance abatement hearings in situations in which both a Notice to Abate Nuisance and Notice of Violation have been served. All of these changes were intended to reduce the amount of time it takes to resolve code violations.

As previously stated, when served with a Notice to Abate Nuisance or Notice of Violation an owner can request an appeal hearing. When served with both notices, the appeal hearings can be combined. The county has a professional services agreement with California Hearing Officers, LLP who assigns an impartial hearing officer without county input from a panel of hearing officers to oversee the appeal hearings.

The preparation for an appeal hearing is a significant time commitment, roughly 10 to 15 hours of staff time. Department staff prepares an exhibit packet by collecting and organizing the evidence of the case. These hearing packets tend to be between 200 - 300 pages and thoroughly layout the county's position. At the appeal hearing, the hearing officer hears testimony from staff and the property owner and reviews the county's exhibit packet and any documentary evidence provided by the property owner. To date, there has been 13 appeal hearings (2 in 2017; 4 in 2018; 5 in 2019; and 2 in 2020). The county has prevailed in every case to date.

In response to direction from the Board to actively enforce the Commercial Cannabis Land Use Ordinance (CCLUO), the CEU transitioned into two teams. The Traditional team investigates citizen complaints of public nuisance and code violations and actively targets junk vehicles for abatement. The Humboldt Environmental Impact Reduction (HEIR) team uses satellite imagery to efficiently target areas of high concentration of illegal cannabis cultivation and process the cases in batches.

CEU Investigator and Officer positions are challenging to fill because the job requires a unique set of skills, knowledge and temperament. The Traditional team has two Investigators and one Code Compliance Officer (with one Officer vacancy since 2017). The HEIR team has one Investigator, three Code Compliance Officers and one Administrative Analyst. Both teams share a Legal Office Assistant and Office Assistant. County CEU Investigators and Officers are in the process of becoming California Association of Code Enforcement Officers (CACEO) certified and have completed two of the three 40-

hour modules. Together, the HEIR team and Traditional team have opened 1,305 new cases and closed 631 cases in the last two and a half years.

Traditional Team

The Traditional CEU team consists of two Investigators and one Code Compliance Officer. A second Officer position has been vacant since 2017. The Traditional team responds to complaints of public nuisance and code violations and receives hundreds of complaints every year. Each complaint is logged, vetted and prioritized based on the severity of the impact on the health, safety and/or general welfare of the public. The violations with the highest priority are investigated first. Most cases are related to public nuisance and code violations having to do with improper storage of solid waste, junk vehicles and grading and construction without permits. There have been 333 new cases opened and 107 cases closed since August 2017. These numbers do not include the 326 legacy cases brought over when the CEU transferred to the Planning and Building Department. Since then, 62 of the legacy cases have been closed leaving 264 currently open legacy cases.

When a public nuisance and code violation has been found to exist and the property is served a Notice to Abate Nuisance and/or Notice of Violation. A traditional case can take several paths forward. Code Enforcement staff will usually reach out and educate property owners on the actions necessary to abate the public nuisance and correct the code violation. The CEU staff will provide support and resources for property owners who have difficulty navigating the process for achieving compliance. For example, if a property owner with a solid waste violation is able to show a good faith effort and remove some of the solid waste from a property, but is struggling to get it all removed, the CEU might arrange for a dumpster to be brought to the property to complete the abatement. Although time consuming, this approach is very effective because property owners who participate in the clean-up effort are less likely to be repeat violators, whereas if the CEU abates a violation without property owner participation, the likelihood of that property owner continuing the same behavior, and the public nuisance and/or code violation reoccurring, is significantly higher.

A compliance agreement is a tool used to achieve compliance from a property owner when full abatement and/or correction of the code violation cannot be achieved within the 10-day timeframe. The team attempts to enter into a compliance agreement with the property owner, which outlines the public nuisance and code violations that exist and the corrective action including abatement required with timelines. It provides clear expectations about what corrective actions are required and by when it must be completed. Imposing penalties is usually not an effective tool for traditional code violations. This is because most of the people the traditional CEU team works with barely have the resources necessary to abate the public nuisance and correct the code violation (dump fees, vehicle towing, etc.) without imposing additional penalties. Experience has proven it is more effective to gain compliance through education, providing guidance and regular progress checks. Traditional cases are arduous and can take several months, and often years, to completely abate the public nuisance and gain full compliance.

The photos in Attachment A document three traditional cases that are typical in regards to the abundant violations that exist on some real properties and the lengthy process staff oversees to complete abatement and correction of code violation. The first is a case involving a squatter who was living in a Carlotta residence in very poor condition with excessive solid waste and junk vehicles littering the

property. Despite some difficulty tracking down the property owners, the property owners entered into a compliance agreement to clean up the solid waste and junk vehicles, disconnect electrical service and board up the residence, prohibiting further occupation of the uninhabitable structure. It took nearly two years to close this case because of the initial difficulty in contacting the property owners and extensive amount of work required to abate the public nuisance.

The second case involves a property on Golf Course Road in Bayside. The department received numerous complaints regarding junk vehicles, solid waste, burning of household garbage and toxic materials, vicious dogs, drug activity, unpermitted secondary dwelling unit, a shop and travel trailer being used for habitation, unpermitted septic system, numerous subjects living on the property and traffic in and out at all times of the day and night. The Sheriff's Office had responded to this property on several occasions involving assaults, firearms, stolen vehicles and drug sales. In order to address these violations, staff has worked with the property owner over the last two years. There have been over 20 inspections conducted with 31 junk vehicles and tons of solid waste, including a 30-yard dump truck filled with waste, removed. This case is still open but nearing full abatement.

The third case involves a junkyard in Dinsmore. The CEU intends on performing the abatement of the public nuisance at this property. The county has jurisdiction to abate a nuisance once the 10-day Notice to Abate Nuisance is served and the property owner neither abates the nuisance nor requests an appeal hearing. *See* HCC section 351-13. This case began in early 2019 where, upon inspection, the 6.25 acre property was found to be an illegal junk yard adjacent to the Van Duzen River that posed a danger to the public and to the environment due to the presence of over 200 junk vehicles, many vehicle parts including tires, over 200 appliances (including refrigerators, washers and dryers), scrap metal, and many containers of oil and other hazardous waste. While the property owner attempted to work toward cleaning up the property, the accumulation of 30 years of debris proved to be too difficult. The county recently released an RFP and received a qualifying bid to clean up this site which is scheduled to be completed by the end of summer 2020. A second phase of the cleanup is required and will be undertaken at a later date to remediate contaminated soils. After the abatement is completed, the department will follow the steps required by Humboldt County Code sections 351-16 et seq in order to recover all abatement costs incurred including a recording of a lien on the subject property if necessary. Photos of the Dinsmore property are included in Attachment A.

Homeless camps are another type of public nuisance that presents the department with unique challenges and are extremely time intensive. Homeless camps are often populated with individuals who choose the lifestyle and do not want to accept any of the assistance offered by the county. There are often substance abuse and mental health issues which require a multi-agency response to adequately address the situation. In some cases, the property owners live out of town and the camp has been allowed to remain for several years. Removing these individuals from these camps often requires formal eviction from the property owner. Most often the individuals of the homeless camp will relocate to another property and the process begins again. The property owners are held liable for the clean-up although gaining cooperation from property owners is difficult because most property owners feel it is not their fault and the county should be responsible for the abatement. The County Codes do not have specific provisions regarding homeless camps for the department to apply toward these situations so the main avenue for enforcement is through solid waste issues, attractive public nuisances and health

and safety hazards to the public. To date, the county has addressed 5 separate homeless encampments.

In cases where there is an immediate threat to public health and safety, the county can perform a summary abatement, which is when the county performs the abatement without delay and passes the costs to the property owner. *See* HCC section 351-5. The CEU has performed three summary abatements for a total cost of \$42,429 since August 2017. An example of a summary abatement is a residence irreparably damaged by fire. The burned structure becomes a public health and safety hazard and must be demolished immediately. Attachment B shows historical examples of county performed summary abatements.

In some cases, when the violations are especially egregious and/or the property owners are willfully reluctant to complete the corrective work necessary, a Notice of Violation and Administrative Civil Penalty is served. This is a tool allowing the CEU to assess penalties for lack of compliance. With both the Notice to Abate Nuisance and Notice of Violation and Administrative Civil Penalty, property owners have the option to request an administrative appeal hearing for one or both Notices. Since August 2017, six of our traditional cases have had an appeal hearing with the county prevailing in each one to date. The hearing officer has imposed a total of \$182,850 in administrative civil penalties to these cases with lower penalties possible if abatement is completed within deadlines. The table below shows the various violations cited for the six cases and the respective penalties.

Code	Violation	Administrative Civil Penalty
HCC Section 331-28 & 351-3	Construction of a building/ structure in violation of building, plumbing and/or electrical codes and building conditions endanger life, health, safety or welfare of the public	\$50,350
HCC Sections 521-4 & 371-2	Improper storage and removal of solid waste, maintaining a salvage/junk yard	\$47,250
HCC Section 354-1	Junk and/or inoperable vehicles	\$12,250
HCC Section 331-14	Grading without permits	\$27,250
HCC Section 314-61.1	Development in a Streamside Management Area without a permit	\$8,750
HCC Section 314-55.4	Commercial Medical Marijuana Ordinance	\$37,000

Humboldt Environmental Impact Reduction Team

The HEIR team consists of one Investigator and three Code Compliance Officers who actively enforce the CCLUO to reduce environmental impacts associated with illegal cannabis cultivation. Examples of environmental harm include improper storage of hazardous materials, solid waste, grading and construction without permits and unapproved sewage disposal systems as shown in Attachment C. The

team uses satellite imagery to efficiently target areas of high concentration of illegal cannabis cultivation and process the cases in batches. The HEIR team acts as a supporting agency to the Sheriff's Marijuana Eradication Team (MET) and to California Department of Fish and Wildlife (CDFW) during search warrants and other law enforcement activity related to illegal cannabis activity.

Since August 2017 the team has served notice on 972 violations of the CCLUO. Of these noticed cases, 136 were in collaboration with law enforcement agencies. The HEIR team has referred 83 properties to law enforcement, 27 of those within the last month. Law enforcement has, so far, acted on 21 of the referrals resulting in search warrants and site inspections. The HEIR team has worked with property owners to correct the code violation or abate the public nuisance on 54% of the cases. Twenty-three percent (23%) of the remaining cases have entered into compliance agreements. Together, 77% of the cases are either completely abated or nearing abatement.

When aerial evidence suggests a commercial cannabis operation is in violation of the CCLUO, the HEIR team will serve a Notice to Abate Nuisance and Notice of Violation on the property which comes with penalties of \$10,000 per violation per day (per HCC section 352-3(h)). Violation of the CCLUO are often accompanied by violations of the grading ordinance and the building code. The property owner has 10 days to abate the public nuisance and/or correct the code violation in order to avoid the imposition of administrative civil penalties. Attachment D depicts the abatement of illegal cannabis cultivation sites.

For property owners who need additional time to abate the public nuisance and/or correct the code violations, the CEU offers compliance agreements in exchange for more time. There are usually administrative civil penalties associated with the compliance agreement offer. The CEU has entered into a total of 227 compliance agreements. There were 56 compliance agreements where no penalty was collected. These no-penalty agreements are offered to property owners who have abated the public nuisance and/or correct the code violations to their greatest ability but require additional time for reasons beyond their control. Ninety (90) of the compliance agreements involved an administrative civil penalty ranging from \$10,000 to \$30,000 while 74 agreements involved an administrative civil penalty ranging from \$30,000 to \$50,000. In total, the HEIR team has collected \$3.8 million from compliance agreements which are monies that go directly to the county General Fund.

Upon request of the property owner, the HEIR team has taken seven cases to an administrative appeal hearing and, in all cases, the hearing officer has decided in favor of the county. The hearing officer imposed administrative civil penalties totaling \$2.1 million across the seven cases. Five of these decisions are in the process of being appealed to the Superior Court.

The CEU has served 32 Notices of Administrative Civil Penalty Assessment to property owners totaling \$35.1 million. The Notice of Administrative Civil Penalty Assessment is the first step towards enforcement of the administrative civil penalty and may result in a lien recorded on the property. Sixteen (16) of these assessments, totaling \$16.2 million, have been approved by the Board of Supervisors and 12 have become recorded liens against the property. The administrative costs associated with enforcing the HEIR cases totals \$726,958 which is an average of \$746 per case.

The influence of the HEIR program cannot be overstated. Attachment E and Attachment F show the region of Rancho Sequoia and Myers Flat before and after enforcement actions were taken. The HEIR team has received the recognition of many including the California State Association Counties Challenge award for the innovative use of satellite imagery to reduce unpermitted cannabis cultivation impacts. Humboldt County's landscape looks completely different than it did three years ago. Areas of prevalent illegal cannabis activity have been cleared and the environmental impacts of the illegal activity reduced.

FINANCIAL IMPACT:

The CEU operations are paid by the general fund, and all fines and penalties are returned to the General Fund consistent with case law. There is an established budget unit (1100269) to track CEU's annual expenditures and administrative costs. Investigations and their resolutions often take more than one year, and regularly cross fiscal years, so it is helpful to evaluate financial impacts over extended periods. Over the period of this report, CEU collected \$3.8 million in compliance agreement penalties which deposit into the General Fund. There are assessments in the amount of \$35.1 million, which follow a variety of prescribed resolution paths and any resultant funds collected would also deposit into the General Fund.

During 2019-2020 the CEU also recovered approximately \$145,000 in administrative costs through billing for completed case work.

The approved budget for fiscal year 2020-21 is \$1,508,926.00 and there is no impact to any budget unit or the General Fund in the preparation or presentation of this report.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

Code Enforcement staff remotely monitor permitted cannabis operations to ensure they are operating in compliance with the parameters of their permit. This enables violations to be identified, corrected, and where appropriate, fines and penalties to be assessed and collected. Additionally, this process is vital to the proper assessment and identification of appropriate cultivation tax amounts being submitted and collected by the Treasurer Tax Collector.

Code Enforcement staff also regularly work with Humboldt County Sheriff's Office, California Department of Fish and Wildlife, The State and Regional Water Boards, and California Department of Food and Agriculture on interagency search warrants for unpermitted cannabis operations and other violations of state or local statutes.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board of Supervisors could choose to not receive the Code Enforcement Unit annual report

ATTACHMENTS:

- A. Traditional code enforcement case
- B. Traditional summary abatement
- C. HEIR environmental impacts
- D. HEIR cannabis abatement
- E. HEIR satellite imagery of Myers Flat region
- F. HEIR satellite imagery of Rancho Sequoia region

PREVIOUS ACTION/REFERRAL:

None