



Office of the City Manager

INFORMATION CALENDAR

February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Erin Steffen, Assistant to the City Manager

Subject: Audit Status Report Response: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight

INTRODUCTION

On June 26th, 2018, the City Auditor submitted a Code Enforcement Unit (CEU) audit report¹, with recommendations to improve operations efficiencies and implement a resource analysis process. The purpose of this report is to update City Council on the status of implementing the audit report's recommendations. This is the third status report regarding this audit.

CURRENT SITUATION AND ITS EFFECTS

The audit report contains twelve recommendations. During the previous update presented to Council on June 25, 2019, five of the recommendations were implemented, five were partially implemented, and two not implemented. As of the date of this writing, no additional recommendations have updates, due to a high volume of staff turnover. Please see Attachment 1 for a detailed table of audit report recommendations, corrective action plans, and implementation progress. The next status report is anticipated to be delivered to City Council on July 28, 2020.

BACKGROUND

The City of Berkeley's Code Enforcement Unit's goal is to provide a clean and safe environment for all Berkeley residents, workers, and visitors. The CEU is responsible for the enforcement of administrative violations of the Berkeley Municipal Code and some provisions of California State codes related to building, zoning, and housing. The City

¹ Audit: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight:

https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/A.2_RPT_Code%20Enforcement_Fiscal%20Year%202018.pdf

Manager's Office oversees the CEU, which now consists of three full-time employees: one Code Enforcement Supervisor and two Code Enforcement Officer IIs.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

The City Manager's Office will continue to work with the Code Enforcement Unit to complete implementation of the recommendations.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None

CONTACT PERSON

Erin Steffen, Assistant to the City Manager (510) 981-7017

Attachments:

1: Audit Findings, Recommendations, and Management Response Summary Table

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight				
Findings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
Finding 1: Code Enforcement Unit resources are insufficient to meet demand				
1.1 Implement a resource analysis process by which proposed legislation is discussed with City management to evaluate the impact on current City resources and determine the feasibility of making the intended impact. The analysis should take place before the policy is presented to Council for adoption and include considerations of: <ul style="list-style-type: none"> • Staff time and other City resource needs, including the fiscal impact of those resource needs • Opportunity cost, i.e., consideration of other activities that will be deprioritized in order to meet new demands 	City Council	Agree		<p><u>Initial Status December 2018: Partially Implemented.</u></p> <p>On June 26, 2018, City Council approved a recommendation to implement a resource analysis process as part of the Code Enforcement Unit (CEU) Audit. On December 11, 2018, City Council adopted Resolution No. 68,725-N.S., which included the framework and procedures for standing Policy Committees of the City Council as part of the City’s legislative process. During the Policy Committee review of resolutions, ordinances and referrals, staff will undertake a high-level, preliminary analysis of potential costs, timelines and staffing demands associated with the item. Reports leaving a Policy Committee must adequately identify budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.</p> <p><u>Status Update June 2019: Partially Implemented</u></p> <p>On January 22, 2019 Council adopted revised Resource No. 68755-N.S., which confirmed the establishment of six standing policy committees and the assignment of Council</p>

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<ul style="list-style-type: none"> Feasibility impact to determine how best to rollout out new legislation 				<p>members to each for a term of one year effective January 31 of each year. Each committee has since met, developed review procedures, and discussed issues within their purview.</p> <p><u>Status Update February 2020: Partially Implemented</u></p> <p>Council utilizes the standing policy committees to consider the impact of select proposed legislation on City resources; City staff regularly attend the committee meetings.</p>
1.2 Require that the Agenda Committee ensure ordinances have undergone a resource analysis as described in Recommendation 1.1 when necessary and, if not, are returned to the appropriate City Council member for further assessment before being passed into local law.	City Council	Agree	December 11, 2018	<p><u>Status: Implemented</u></p> <p>Resolution No. 68,725-N.S. states that any new policy or program, including ordinances, submitted by Councilmembers with moderate or significant resource impacts will first go to the Agenda Committee, which will refer it to the appropriate Policy Committee.</p>
1.3 Conduct a staffing analysis to determine the appropriate staffing level needed for the Code Enforcement Unit (CEU) to effectively enforce City codes. In conducting the analysis, include an	City Manager (CEU)	Agree	November 2020	<p><u>Status: Not Implemented</u></p> <p>Due to the seasonal nature of the unit's work, staff anticipates that a full year of analysis will be most effective in</p>

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assessment of the workload impact created by the codes for which the CEU is solely responsible as well as those created by the codes for which CEU shares responsibility with other enforcement units.				<p>capturing the unit’s workload. Staff plan to conduct the staffing analysis in 2019.</p> <p><u>Status Update February 2020: Not Implemented</u></p> <p>Due to significant staff turnover in the division, there were insufficient resources to dedicate to this project. When the vacated positions have been filled in 2020, staff will resume work on a staffing analysis.</p>
<p>1.4 Use the staffing analysis performed in response to Recommendation 1.3 to:</p> <ul style="list-style-type: none"> Quantify the full-burden cost of additional staff Determine if sufficient budgetary funding is available for additional staff Request additional staffing from Council during the annual appropriations process 	City Manager (CEU)	Agree	June 2021	<p><u>Status: Not Implemented</u></p> <p>Following the completion of Recommendation 1.3, the next annual appropriations process is tentatively scheduled to take place in May 2020.</p> <p><u>Status Update February 2020: Not Implemented</u></p> <p>Due to the delay in completion of Recommendation 1.3, the projected implementation date is also delayed.</p>

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1.5 If budgetary constraints prevent additional staffing or if Council does not approve the budget needed to fund additional staffing, report to Council the restrictions placed on the Code Enforcement Unit's ability to effectively enforce City codes. Include information explaining the hindrance this will cause for any new ordinances the City Council may want to pass in the future. Provide this information regularly, for example, annually as part of the budget process, to keep Council informed of the CEU's capacity restrictions. See also Recommendation 1.7.	City Manager (CEU)	Agree	July 2021	<p><u>Initial Status June 2018: Not Implemented</u></p> <p>At this time, it has not been determined how best to provide this information. CEU is currently recording various monthly statistics meant to capture performance metrics, trends, and other measures which can be made available to Council on a regular basis to be determined by management.</p> <p><u>Status Update January 2019 : Partially Implemented</u></p> <p>To date, CEU staff have had both formal and informal conversations and input during several new code considerations and existing amendments. .5 FTE has been approved in the 2019 City budget specifically for short term rental enforcement and CEU has been involved in determining enforcement limitations for the TNC Object, Cannabis and GLA ordinance modifications, and during vetting considerations for the BPA Free ordinance suggested by the Health Commission.</p> <p>At this time, it has not been determined how best to provide this information. CEU is currently recording various monthly statistics meant to capture performance metrics, trends, and</p>

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				<p>other measures which can be made available to Council on a regular basis, to be determined by management.</p> <p><u>Status Update February 2020: Partially Implemented</u></p> <p>In January 2019, the vacant Assistant Planner position, formerly located in Code Enforcement and funded by Permit Service Center funds, was transferred to the Planning Department. Enforcement of the Short-term rental guidelines was transferred to Planning at the same time.</p> <p>In October 2019, CEU staff assumed an additional responsibility requiring conducting twice-weekly Temporary NonCommercial Objects (sidewalk ordinance) operations, which represent an addition of approximately 16 hours of work per week. Sidewalk ordinance (BMC 14.48.120 and 14.48.020) operations investigate and enforce against accumulated possessions which are out of compliance with the ordinance, either by their location, type of possession, overall size, or the time of day. The City Manager also directed staff to incorporate occasional weekend work into the schedule, to further improve the effectiveness of the program. To reconcile this addition to staff workload, staff</p>

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				have extended the anticipated response time to any code enforcement request, from 3-5 business days to 5-7 business days.
1.6 Assess Berkeley municipal codes to identify the codes for which the CEU is solely responsible and those for which the CEU has a shared role with other work units. Use the results of the assessment to: <ul style="list-style-type: none"> • Create process workflows showing shared work unit responsibilities • Create written guidance describing work unit responsibilities 	City Manager (CEU)	Agree	January 1, 2018	<p><u>Status: Implemented</u></p> <p>In January 2018, CEU Supervisor drafted and implemented a complaint matrix that identifies the most common complaint types, the subject matter department or division experts, the process workflow, and enforcement authority.</p> <p>The matrix is updated quarterly or as needed, and disseminated to all departments via the senior executive team.</p>
1.7 Implement code enforcement software that:	City Manager (CEU)	Agree	January 1, 2018: Temporary	<p><u>Status: Partially Implemented</u></p> <p>Effective January 1, 2018, all cases or customer complaints received by CEU have been entered into Lagan, which is serving as single point of entry into the code enforcement</p>

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<ul style="list-style-type: none"> Identifies case assignment to CEU officers and other work units Prioritizes cases, in particular high-risk cases posing health and safety risks Captures pertinent case dates, e.g., opened, notice of violation, citation issuance, and closed Tracks enforcement actions taken within the CEU and other work units Quantifies citations issued and collected Allows for readily identifying repeat offenders Includes performance measurement tools, e.g., turnaround times within defined 			<p>alternative implemented</p> <p>Full implementation: To be determined based on funding availability and assessment of code enforcement software options</p>	<p>queue. Lagan provides the ability to allocate cases to individual CEU staff, and re-allocate cases already in the code enforcement queue. It allows cases to be assigned one of the three priorities (high, medium=moderate, low=standard) based on the complaint type.</p> <p>Lagan captures the date a case is created, and when it is closed. Additional inspection dates and results, as well as photos, notices, citations, and other documentation, are captured in the software as "case notes". Because Lagan assigns a specific case number, cross referenced with a property address, CEU staff can readily determine repeat offenders by searching for an address.</p> <p>Although Lagan is not a traditional code enforcement software, it does provides the ability to extrapolate data which is used for performance metrics and workload trends. It does not provide reporting templates or quantified citations (issued or collected), nor does it allow for staff use on mobile devices in the field.</p> <p>CEU has explored two separate options for enforcement software. Envision Connect, the program currently used by</p>

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<p>specifications (see Recommendation 2.2)</p> <ul style="list-style-type: none"> Allows for uploading information from mobile technologies (see Recommendation 1.8) Includes reporting tool to showcase workload trends and capacity restrictions (i.e., backlogs) 				<p>Environmental Health and Toxics, was purchased as a company by Accela, which no longer offers the software to new users. Accela, the software used by Building & Safety, Planning, Public Works, and others, has a code module which has yet to be built out. That option is currently on hold according to I.T.</p> <p>CEU will continue to explore enforcement software options which include the aforementioned additional capabilities.</p> <p><u>Status Update February 2020: Partially Implemented</u></p> <p>In July 2019, CEU was informed that the Planning Department was initiating a request for proposals (RFP) to replace its permitting system, which would include a module to support code enforcement throughout the City. Code Enforcement staff have been included in the vendor selection process, which is still underway.</p>

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1.8 Implement mobile computers and printers to allow Code Enforcement Officers to complete more work in the field, thus improving their time spent in the community and reducing time in the office. Mobile computers should have the capacity to interface with the code enforcement case management software implemented in response to Recommendation 1.7.	City Manager (CEU)	Agree	September 1, 2017: Partially implemented Full implementation: To be determined based on funding availability and assessment of code enforcement software option selected in response to Recommendation 1.7	<p><u>Status: Partially Implemented</u></p> <p>CEU staff are issued Apple smartphones, which provide the ability to take photos, capture notes, and mark GPS locations which can be uploaded to City e-mail. Most code enforcement software available on the market provide IOS function and support which would make mobile application integration fairly seamless.</p> <p>At this time, CEU’s software does not support printing documentation in the field. Manual notices will continue to serve this function until such time as the enforcement software described in Recommendation 1.7 is implemented, and can support printing documents in the field.</p> <p><u>Status Update February 2020: Partially Implemented</u></p> <p>The delayed implementation of a field-accessible code enforcement software in Recommendation 1.7, currently tied to a larger permitting system replacement project, has subsequently delayed the purchase of this equipment.</p>
Finding 2: Process modifications and increased oversight needed to ensure equity, efficiency, and effectiveness				

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2.1	<p>Develop and issue written procedures for code enforcement operations that:</p> <ul style="list-style-type: none"> • Reflect current practices and management expectations. • Describe the tiered prioritization system giving attention to cases based on risk levels of high, moderate, and standard. • Require adherence to a uniform technology policy, which includes: <ul style="list-style-type: none"> ○ Assigning unique numbers to cases. ○ Recording all pertinent case data timely, e.g., within two business days of receipt. ○ Using a single, centralized system to record, manage, 	City Manager (CEU)	Agree	April 1, 2018 / Ongoing	<p><u>Status: Implemented</u></p> <p>The CEU supervisor issued new procedures which included the recommended. Meetings were held with CEU staff to review the new procedures, solicit input, and to ensure their understanding of the new guidance.</p>

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<p>and monitor case information.</p> <ul style="list-style-type: none"> ○ Using case file management standards so that pertinent data are captured uniformly. ● Inform staff that preferential treatment should not be given to complaints made or referred by City Council members, Council staff, and City management. Those complaints should be prioritized based on established objectives and channeled through the appropriate supervisor. ● Describe processes for issuing citations in a consistent and equitable manner. 				

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<ul style="list-style-type: none"> • Include beat assignments once feasible to do so, i.e., after the CEU addresses the backlog and receives adequate software tools. 				
<p>2.2 Implement performance metrics and goals to:</p> <ul style="list-style-type: none"> • Assess the effectiveness of code enforcement operations and goal achievement • Identify constraints preventing goal attainability. • Submit regular reports, e.g., biannually, to City management on performance. <p>Include a metric to provide at least some proactive code enforcement activities. Develop this metric after implementing the process and system</p>	City Manager (CEU)	Agree	February 1, 2018 / Ongoing	<p><u>Status: Partially Implemented</u></p> <p>Data extrapolated from Lagan provides metrics on code enforcement operations, including the number of cases opened and closed by month, the average amount of time to close cases, the number of citations issued and the total amount of fines assessed, and additional information regarding non-enforcement related time such as taxi inspections, sidewalk vendor permitting, homeless encampment contacts and resolution, and public record request activities.</p> <p>Effective February 2018, CEU provides a monthly report to City management on the unit’s performance, which notes constraints to goal attainability and includes a breakdown of</p>

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improvement recommendations made in this report.				<p>proactive code enforcement activities conducted in the preceding month.</p> <p>Future metrics to be determined based the reporting capabilities of the code enforcement software from Recommendation 1.7.</p> <p><u>Status Update February 2020: Partially Implemented</u></p> <p>The metrics previously developed from Lagan on general code enforcement operations are on hiatus, due to the transition of the Code Enforcement Supervisor who reviews the Lagan data and develops the metrics. This practice will resume when the Code Enforcement Supervisor position is filled.</p> <p>With the transition of Temporary NonCommercial objects operations into Code Enforcement, Neighborhood Services has continued to track and report on outcomes from the program, providing a regular update to City leadership. This practice will be transitioned to the Code Enforcement Supervisor when the position is filled.</p>

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2.3	Assess the feasibility of using complaint thresholds and self-certifying techniques for standard-priority violations. For example, wait to receive at least two complaints about a standard-level violation before performing an investigation, and allow a code violator to self-report on a standard-level violation to remove the need for reinspection. If feasible, implement the techniques to give code enforcement officers more time on field inspections of high-risk cases.	City Manager (CEU)	Agree	January 1, 2018	<p><u>Status: Implemented</u></p> <p>We assessed the feasibility of using complaint thresholds and opted not to use them at this time due, in part, to the following considerations.</p> <p>Pursuant to BMC Chapter 1.22.010, the City of Berkeley shall “promote higher standards of living, full employment, and conditions of economic and social progress and development.” Complaint thresholds, which include requiring multiple complaints, not accepting anonymous complaints, and others, restrict CEUs ability to meet those requirements.</p> <p>Furthermore, The American Association of Code Enforcement states in their Importance of Code Enforcement hand-out, “The professionalism and approach of the Code Enforcement Officer has the potential to shape community notion of local government and municipal experience. Building relationships and knowledge of the community is so integral to a proactive and professional code enforcement approach,” which could</p>

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				<p>also be adversely effected by implementing complaint thresholds.</p> <p>Berkeley’s CEU regularly receives anonymous complaints from reporting parties who fear retribution. By conducting site inspections on all reports, CEU staff promote a higher standard of living, a better customer service experience, and provide more equitable, effective enforcement of City codes, while spending more time in the field on all levels of enforcement. Occasionally, low-level inspections become higher level priorities based on what the officer has documented during the initial site inspection.</p> <p>Self-certifying techniques, although common in proactive rental housing inspection programs, are not known to be used in other aspects of code enforcement since officer compliance verification is typically required for case closures or escalation of enforcement. An exception considered could be when a complainant or reporting party certifies a violation has been abated, the closure of which would be at the discretion of the enforcing officer.</p>

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<p>2.4 Develop procedures for monitoring staffs' work and addressing weaknesses that may prevent goal achievement, such as conflicts of interest. For example:</p> <ul style="list-style-type: none"> • Review Form 700s to identify property owned by CEU personnel before assigning cases to officers. • Randomly select case records to look for: <ul style="list-style-type: none"> ○ Indicators that case action did not progress as required or expected suggesting favoritism or kickbacks. ○ Properties with closed cases that continue to receive complaints for the same issue. This could indicate a repeat offender as well as a 	City Manager (CEU)	Agree	May 1, 2018	<p><u>Status: Implemented</u></p> <p>The CEU procedures manual includes procedures for identifying and addressing conflicts of interest. The CEU supervisor randomly spot checks complex code enforcement cases, to determine how investigations are proceeding with consistency and equity, and that investigators are handling cases fairly and ethically. Additionally, the Code Enforcement Supervisor regularly reviews open Lagan cases to ensure any applicable case history on an identified property address is applied to the current enforcement action. This is done to assess the need to escalate enforcement as appropriate without duplicating efforts.</p> <p>Effective October 2017, the Assistant to the City Manager for Neighborhood Services and the CEU supervisor meet twice monthly to review unit performance and to discuss outstanding issues related to ongoing investigations, which include potential or perceived conflicts of interest.</p> <p>At the May 2018 City Council Aide / City Staff Roundtable Discussion, the Assistant to the City Manager reiterated Code</p>

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<p>failure to take appropriate actions against a code violator.</p> <p>The Assistant to the City Manager for Neighborhood Services should perform this oversight of the Code Enforcement Unit Supervisor, and the Code Enforcement Supervisor should perform this oversight of Code Enforcement Officers and the Assistant Planner.</p>				<p>Enforcement’s commitment to equitably investigate complaints received, regardless of their source.</p> <p>Effective May 2018, the Assistant to the City Manager and the Code Enforcement Supervisor annually review the Form 700s submitted by their respective direct reporting parties, and discuss potential conflicts of interest.</p>

