

# CLIENT NEWS BRIEF

## When the Code Enforcement Process Goes Wrong! California Court of Appeals Scolds City for Overzealous Enforcement of the City's Municipal Code

A recent decision out of the 5th District Court of Appeals chronicles the City of Visalia's code enforcement actions against property owner Delbert Beames over a zoning dispute that ultimately resulted in legal action against the City. The appellate court upheld the trial court's decision in ruling that the City's hearing officer abused his discretion, and ordered the City to pay Beames' attorneys' fees, finding that his 14th Amendment due process claims against the City were substantial. The court took care to note that there was no articulable reason for the City to pursue enforcement in this action, and that the City only made matters worse by failing to settle the action with Beames. Although the City was "right" that the property was in violation of the code (at the time), was the cost of fighting over who was "right" worth it?

### Background

In 2016, Beames leased to a towing company property he owned uniquely located along a stretch of road that included other automotive related businesses. This area was zoned for Shopping Office Commercial, and neither the tow company, nor the other businesses were a conforming use for that zoning. For many years prior, no code enforcement actions were taken against these other non-conforming businesses; but in February 2016, the City served Beames with a notice of a zoning violation, ordering the towing business to be removed. Meanwhile, the City was in the process of overhauling its zoning code. In part because of this ongoing process, Beames asked the City to pause its enforcement actions against him for six months while he attempted to apply for a zoning change. However, the City declined.

After the City assessed \$2,800 in administrative penalties against him, Beames requested an administrative hearing. At the hearing, the City indicated Beames' property would not be redesignated under the ongoing zoning code overhaul, so Beames requested a continuance of the hearing so that he could come up with a plan. The continuance was rejected and penalties against Beames were upheld.

Prior to Beames filing his action, Beames attended the City's planning commission meeting, recommending that the City add "auto repair" to the list of allowed conditional uses on the road where Beames' property was located. The planning staff employee in attendance who actually spoke against Beames at the administrative hearing stated, "If the [planning commission] desires to increase the number of possible uses for older buildings on the Ben Maddox Way corridor, then Staff would recommend that 'Auto Repairs, Major' be added to the list of uses allowed with a conditional use permit (CUP) in the C-MU zone.

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Following the meeting, Beames found counsel willing to help him file his writ petition against the City, alleging an abuse of discretion and a violation of his procedural due process rights under the 14th Amendment. He also requested attorney's fees.

## Issues

The Court of Appeals took issue with several different aspects of the City's enforcement action against Beames. During Beames' administrative hearing, the hearing officer stated that his job was to make sure the City followed its procedures and that he did not have authority to remove fees or fines, only justify them. The court found that the hearing officer was ignorant of his discretion to consider other information and to consider whether or not a continuance would be helpful. The court also noted that, pursuant to the City Municipal Code, the hearing officer has broad discretion over the outcome of the matters before him.

The court also took notice of how the City failed to disclose to the hearing officer the information concerning the zoning update, and the possibility that the update could make Beames' use of the property legal. The City should have made the hearing officer aware that the zoning update was still under consideration, and could have a direct outcome on the pending zoning action. In the alternative, the hearing officer should have weighed the benefits of continuing the hearing until the zoning update was complete.

Finally, the court did not take kindly to the City's outside litigation counsel's tactics in defending this action. The court characterized the City's defense as needless litigiousness in defense of an unlawful administrative order. During the action, the City's counsel acknowledged that a provision being offered by the planning commission would make Beames' use lawful. Despite this fact, the City continued to zealously defend the action, resulting in additional attorney's fees.

## Takeaways

There are several things a public entity can take away from this case in regards to code enforcement, administrative hearings, and potential litigation. First, the court took issue with the City's uneven enforcement of its zoning code, as several other properties were also in a state of non-compliance but were not cited. This uneven prosecution weakened the City's position at both the trial and appellate court levels. Also, for administrative hearings, the City should: (1) verify that the hearing officer is knowledgeable of all the options available for resolution when making an order in an administrative hearing; and (2) make the hearing officer aware of pending ordinance revisions and related developments that could affect the decision. Ultimately, the City's failure to take these steps was enough for the appellate court to award Beames' his attorney's fees.

This case provides an example of why reasonableness should be considered in code enforcement situations. While a city has the discretion to enforce compliance of the municipal code, a city must also consider the facts of each situation separately to determine the best course of action to attain that compliance. The court in this case determined that the City's actions before and during litigation turned an unnecessary code enforcement action into a large bill from both the City's retained counsel, and counsel for the property owner.

If you have any questions about this case, code enforcement, or administrative hearings, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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