



**THE FUTURE OF CALIFORNIA CODE ENFORCEMENT - THE MOST EFFECTIVE
ENFORCEMENT REMEDIES AVAILABLE FOR PUBLIC AGENCY LEGAL
COUNSEL AND PROSECUTORS IN TOUGH BUDGET TIMES**

**By
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**LEAGUE OF CALIFORNIA CITIES
CITY ATTORNEYS DEPARTMENT
2009 ANNUAL CONFERENCE**

1. INTRODUCTION

Many cities in California are facing unprecedented budget crisis and are being forced to make difficult decisions relative to which services to cut and which to preserve. Code Enforcement and Community Preservation Departments have traditionally walked that line. However, regardless of available funding, the issues addressed and the codes enforced by these departments are certainly one of the most visible enforcement efforts in every community. City Attorneys and City Prosecutors are increasingly being called upon to find remedies to address code enforcement issues but are similarly being called upon, again increasingly, to do so in the most cost efficient and cost recovering manner possible. It has additionally been our observation that community/resident response to code enforcement efforts are mutating along with the decreasing housing values, explosion of foreclosures and general financial pinch that results in residents inability to comply with local agency enforcement efforts or flat out refusal to comply.

It is critical, given the observations noted above, to triage your agencies enforcement efforts and problem properties. The remedies that may have been standard operating procedure for your agency over the last ten years may no longer be either the most effective in terms of producing results or financially viable given available resources. The future of code enforcement, in our opinion, is truly going to be a triage model of enforcement. Cities will continue to be faced with the extreme Health & Safety threats that appear in any jurisdiction as well as the routine code issues (overgrown vegetation, trash cans in public view, inoperable vehicles) that we are all familiar with as well. However, the enforcement tool you choose must be done so with an eye towards a policy that properties and property owners should be paying for their own cleanup. Examination of remedies designed to implement that policy (specifically with a focus on Health & Safety Receiverships as a model remedy) is the focus of this examination.

In City of Santa Paula v. Narula (2003) 114 Cal. App.4th 485, the City initiated nuisance abatement proceedings, filed litigation and employed attorneys because appellants neither complied with building codes nor paid the administrative costs. Although the current action involved enforcement of a lien for costs and penalties, it stems from a nuisance abatement action. **It would frustrate code enforcement efforts and reward noncompliance if the City had to bear the fees it incurred as a result of appellant's recalcitrance.** Requiring appellant's to reimburse the City for its counsel fees "induces compliance with the City's regulatory authority..." (Emphasis added.)

A. **SCENARIOS UNDER WHICH CASES ARE TYPICALLY REFERRED TO PUBLIC AGENCY LEGAL COUNSEL FOR ENFORCEMENT REMEDY**

1. Owners and/or occupants REFUSE to comply with local enforcement agency's orders to abate substandard conditions

- Traditional Code Enforcement Frequent Flyers: these are routine or repeat violators
- Slum Lords
- Exhaustion of Enforcement Remedies

2. Owners and/or occupants are UNABLE to comply with local enforcement agency's orders to abate substandard conditions due to physical or psychological limitations

- Packrats/Hoarders
- Elderly
- Mental/Physical Disabilities
- Loss of Control of Property

3. Owners and/or occupants of substandard property who you CANNOT FIND to comply with local enforcement agency's orders to abate substandard conditions

- Absentee landowners/investors
- Bank Owned/Abandoned
- Deceased Owners
- Unmanaged Trusts

**GENERAL EVALUATION AND COMPARISON OF CODE ENFORCEMENT-
REMEDIES AVAILABLE TO PUBLIC AGENCY LEGAL COUNSEL**

Generally most public agency legal counsel assigned to code enforcement departments as well as City Prosecutors are familiar with the most common enforcement tools found in a City's arsenal:

- ✓ Violation Notices and Orders to Abate
- ✓ Use of Community Service Organization Assistance (boy/girl scouts, church groups, boys and girls clubs
- ✓ Administrative Citations
- ✓ Criminal Prosecution

These enforcement tools, when appropriate can be effective and appropriate under certain circumstances however tend to be both lengthy and costly with little assurance of abatement within a reasonable time frame. Governmental agencies and their respective legal counsel are turning towards alternative enforcement tools which both guarantee that properties are brought into, and maintained in, compliance with local ordinances in the most cost efficient manner.

1. **City/County Initiated Abatement:** Both general law and charter cities may enact ordinances declaring what constitutes a nuisance and procedures for abatement and recovery of costs pursuant to their police powers under Cal. Const. art. XI, §7. *See City of Los Angeles v. Shpegel-Dimsey, Inc.*, (1988) 198 Cal. App. 3d 1009; *Thain v. City of Palo Alto* (1962) 207 Cal. App. 2d 173. Sometimes referred to as summary or nuisance abatement provisions most jurisdictions have adopted one form or another.

a. Advantages:

- i. Immediate access and authority to act: especially under emergency circumstances
- ii. City controls abatement process and ensures that all necessary work is completed

- iii. Can (and should) be implemented with Court order and approval even though local ordinances might not require

b. Disadvantages:

- i. Local Enforcement Agency responsible for supervision of work, determination of scope of work and contracting with appropriate resources to perform work;
- ii. City fronts costs of entire abatement and then must lien the property and wait for recovery of funds;
- iii. If not emergency abatement sometimes lengthy appellate procedures involving city administrative bodies (planning commission/city council);
- iv. If properties are over-encumbered, has negative equity, is in foreclosure, or numerous recorded interests in property, City lien may be so subordinate that monies are never recovered.

2. **Civil Nuisance Litigation:** Typically involving City complaint for Temporary Restraining Order along with Preliminary and Permanent Injunctions.

a. Advantages:

- i. Immediate access to order from Court via TRO
- ii. Long term enforcement order via successful injunctive relief order
- iii. Abatement process under continued court order and supervision
- iv. Owner/Occupant (Defendant/Respondent) responsible for financing work
- v. Can include request for appointment of a receiver as part of remedy

b. Disadvantages:

- i. Civil Litigation Track/Timeline
- ii. Costs/Fees of litigation not recoverable under most complaints (see exceptions below)
- iii. No easily accessible or enforceable penalty for failure to comply with injunctive orders: contempt of court only available remedy which requires additional filing and court time without compliance

3. **Foreclosure /Bank Owned Enforcement Programs:** Authorized by Cal. Civ. Code § 2929.3, fines of up to \$1,000 per day may be imposed against an owner, including a bank or lending institution, which fails to maintain vacant residential property. Some cities, including that of Chula Vista have been extraordinarily successful in implementing a comprehensive program to fight blight caused by the failure of banks to maintain properties once they foreclose upon them and the occupants vacate.

a. Advantages:

- i. Substantial monetary penalties for non compliance and ability to compound fines for each day violations not corrected
- ii. Incentivizes financial institutions to monitor property management companies hired to maintain vacant properties

b. Disadvantages:

- i. Compiling and maintaining accurate information as to which financial institution is the current legal owner
- ii. Minimum of 30day notice required (unless emergency circumstances) to owner and opportunity for appeal hearing prior to assessment of fines

- iii. Collection attempts on financial institutions
- iv. Typically no immediate abatement of substandard conditions
- v. Can be used in connection (concurrently) with other alternative enforcement remedies (receivership; civil nuisance litigation)

4. **Conservatorships:** Authorized by California Probate Code Section 1800 et seq. A Conservatorship is the process whereby an adult can obtain the legal right to make personal, financial or legal decisions for another adult. A conservator is a person or organization chosen to protect and manage the personal care and/or finances of someone who has been found by a judge to be unable to do so. That person is called the conservatee. A relative, friend **or a public official** may petition the court for the appointment of a conservator of an individual.

a. Advantages:

- i. Long Term Enforcement Remedy
- ii. Property owner: through conservator pays for abatement of substandard conditions
- iii. Local Enforcement Agency can petition the court for a conservator
- iv. Can be used in connection (concurrently) with other alternative enforcement remedies (receivership; civil nuisance litigation)

b. Disadvantages:

- i. Extremely high threshold to demonstrate prior to taking complete personal rights away from individual
- ii. No reimbursement for fees/costs should public agency determine it will be the petitioning party
- iii. Typically lengthy process with no immediate abatement of substandard conditions

5. **Public Guardianship:** Authorized by California Probate Code Section 2900 et seq. The Office of Public Guardian acts as the legally appointed guardian or conservator for persons found by the Superior Courts to be unable to properly care for themselves or their finances or who can't resist undue influence or fraud. Such persons usually suffer from severe mental illness or are older, frail and vulnerable adults. The Court can appoint a guardian of the person only, or of both person and estate. The Court provides for the appointment of the Public Guardian when no other qualified individual or entity is willing and able to act. The Public Guardian will act when he/she is assured through the conservatorship investigation process that a need for a conservatorship does in fact exist and, all other resources including financial, in-home support services, private case management and family support have been exhausted. The Public Guardian also conducts the official County investigation into conservatorship matters.

a. Advantages:

- i. Long Term Enforcement Remedy
- ii. Local Enforcement Agency can petition or make a referral to the Office of the Public Guardian
- iii. Can be used in connection (concurrently) with other alternative enforcement remedies (receivership; civil nuisance litigation)

b. Disadvantages:

- i. Extremely high threshold to demonstrate prior to taking complete personal rights away from individual
- ii. City typically can only make referral and then process is determined by Office of Public Guardian
- iii. Typically lengthy process with no immediate abatement of substandard conditions
- iv. Typically focus is on Guardianship of the person and establishing that person in a safe and secure care environment and not on remedying code violations.

6. **Health & Safety Receiverships**

WHAT IS A HEALTH & SAFETY RECEIVERSHIP

Unlike the traditional concept of financial receivership, a Health & Safety Receivership is a legal process through which title to a piece of real property is temporarily taken from the owner and placed with a court appointed officer – the Receiver. Authorized pursuant to California Health & Safety Code Sections 17980 et seq., Receiverships are used primarily for abandoned and substandard properties where the owner has a history of non-compliance with local enforcement agency orders to abate, or where emergency circumstances are discovered which pose immediate threats to health and safety. A Health & Safety Receivership is a dramatic, immediate, comprehensive and systematic process that virtually eliminates slum housing and/or habitually substandard properties at no expense to the referring agency/prevaling party. Receiverships are a dramatic mechanism which visibly communicates to neighbors and surrounding communities that the agency is taking positive steps to clean-up residential neighborhoods and to protect tenants who have been subjected to dangerous conditions by absentee or recalcitrant owners.

APPOINTMENT OF A HEALTH & SAFETY RECEIVER:

Health and Safety Code Section 17980.7 provides certain provisions that are triggered upon a property owner/occupant's failure to comply within a reasonable time with the terms of an abatement order or notice issued pursuant to Section 17980.6.

Subsection (c) states "The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was served not less than three days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists"

HEALTH & SAFETY RECEIVERSHIPS: STATUTORY AUTHORITY AND INTERPRETING CASE LAW

Health and Safety Code Section 17980.7 (c) (4) provides in pertinent part: Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:

- To take full and complete control of the substandard property.
- To manage the substandard building and pay expenses of the operation of the substandard building and real property upon which the building is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property.
- To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.
- To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation.
- To collect all rents and income from the substandard building.
- To use all rents and income from the substandard building to pay for the cost of rehabilitation and repairs determined by the court as necessary to correct the conditions cited in the notice of violation.
- To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, with court approval, secure that debt and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. The lien shall be recorded in the county recorder's office in the county within which the building is located.
- To exercise the powers granted to receivers under Section 568 of the Code of Civil Procedure.

Discretionary Authority of Receiver

In City of Santa Monica v. Gonzalez (2008) 43 Cal. 4th 905, the trial court appointed a receiver for substandard residential rental property and authorized the receiver to contract for demolition of the property over the owner's objection. The property had a long history of unsafe and unsanitary conditions in violation of local building codes. The owner failed to correct the violations and the city sought and obtained the appointment of a receiver, who determined that the property would have more value as a vacant lot. The court held the city's failure to fully comply with the notice requirements specified in Health and Safety Code Section 17980.7 although the posting requirement is mandatory, the city substantially complied by serving the owner personally. There was no violation of the owner's due process rights because he had ample notice of the violations and time to correct them. Furthermore, the court held the trial court did not abuse its discretion under Health and Safety Code Section 17980.7 by authorizing demolition.

The Court provided: “Health and Safety Code Sections 17980.6 and 17980.7 were enacted to provide meaningful enforcement mechanisms in situations where the substandard condition of a residential building is found to substantially endanger the health and safety of the occupants or the public. It would be an absurd application of these sections if owners could invoke the tenant-related notice requirements as the basis for invalidating agency efforts to abate the serious code violations that directly threaten tenant health and safety.” (*Id. at 926*)

“Where, as here, an enforcement agency personally serves a property owner with a notice to repair, the agency’s failure to conspicuously post the same notice provides the owner no basis for relief.” *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306

Receiver as Court Officer

It has long been recognized that a receiver is an agent and officer of the appointing court. *People v. Stark* (2005) 131 Cal. App. 4th 184. As an officer of the court, a receiver is not an agent of any particular party to the action, but represents all persons interested in the property. *Security Pacific National Bank v. Geernaert* (1988) 199 Cal. App. 3d 1425. Property in receivership remains under the court’s control and continuous supervision and the importance of such supervision cannot be understated.

REQUIRED NOTICE TO ABATE AS PREREQUISITE TO APPOINTMENT OF RECEIVER

California Health and Safety Code Section 17980.6 states “If any building is maintained in a manner that violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, any other rule or regulation adopted pursuant to the provisions of this part, or any provision in a local ordinance that is similar to a provision in this part, and the **violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered**, the enforcement agency may issue an order or notice to repair or abate pursuant to this part. Any order or notice pursuant to this subdivision shall be provided either by both posting a copy of the order or notice in a conspicuous place on the property and by first-class mail to each affected residential unit, or by posting a copy of the order or notice in a conspicuous place on the property and in a prominent place on each affected residential unit. The order or notice shall include, but is not limited to, all of the following:

- The name, address, and telephone number of the agency that issued the notice or order
- The date, time, and location of any public hearing or proceeding concerning the order or notice.
- Information that the lessor cannot retaliate against a lessee pursuant to Section 1942.5 of the Civil Code.

As a practice note: it is advised that you include a list of violations that the agency is ordering abated even though the statute does not require it. Doing so simply pre-empts an argument that the owner or occupant was not aware of what he/she was supposed to abate.

[SAMPLE NOTICE TO ABATE ATTACHED]

Priority of Receiver's Fees vs. Priority of Attorney's Fees

In Winslow v. Harold G. Ferguson Corp., (1944) 25 Cal. 2d 274, the court held it would be wholly out of line with the traditional concept of equitable practice to pay the expenses of a receiver and the fees of his counsel prior to the participation of any creditor or beneficiary and at the same time to subordinate the payment of fees to the attorney who has invoked the powers of the court of equity to appoint that same receiver. The expense incurred by a litigant for legal services in causing the appointment of a receiver is as much an expense of administration as the charge of the receiver's counsel and should have priority to the same extent.

In Hozz v. Varga (1958) 166 Cal. App. 2d 539, the court held that Plaintiffs who have succeeded in protecting, preserving or increasing a fund for the benefit of themselves and others may be awarded compensation from the fund for the services of their attorneys.

In McLane v. Placerville & S.V.R.Co. (1985) 66 Cal. 606, the court held a receiver's costs and expenses, including legal counsel, are entitled to a priority payment from the property or funds in the receiver's possession. The court further held "That the receiver should have been allowed reasonable fees for counsel employed by him to aid him in the proper discharge of his trust, we have no doubt. (*Cowdrey v. Galveston, H. & H. R. Co.*, 93 U.S. 352; S. C., 9 Am. Rail. Rep. 361.) That he should be allowed costs of litigation is equally clear. (*Jones on R. R.*, § 1547, and cases cited.) Expenses in taking care of, protecting, and repairing the property in the Receiver's charge, should also be allowed. This is so well established by decided cases, that we consider it only necessary to cite some of them"

HEALTH & SAFETY RECEIVERSHIPS **COMMONLY ASKED QUESTIONS**

Q: What are the typical candidates for Health & Safety Receiverships?

A: Packrat/Hoarders; Disabled/Elderly Owners; PD/Fire Referrals; Properties Requiring Forced Tenant/Owner Relocation; Illegal Construction/Occupation; Multi-Unit/Apartment Complex; Fire Damaged Properties; Drug/Nuisance Abatement; Bank/Owned/Abandoned; Redevelopment Agency Properties

Q: What is the Legal Authority for Appointment of a Health & Safety Receiver?

A: The California Health & Safety Code Sections 17980 through 17992. Specifically, Sections 17980.6 and 17980.7

Q: Who can ask the Superior Court to Appoint a Health & Safety Receiver over Property?

- A: (1) Local Enforcement Agency;
(2) Tenant;
(3) Tenant Association or Organization (Cal. Health & Safety Code § 17980.7(c)).

Q: What is the Legal Authority to File for the Receiver's Appointment on an Ex Parte Basis?

A: Rules 3.1175 through 3.1184 of the California Rules of Court.

Q: What is the Specific Legal Authority of the Receiver? (Cal. Health & Safety Code § 17980.7(c) (4))

A: Take Full and Complete Control of Property

- ✓ Manage and pay expenses of the operation of the substandard building
- ✓ Secure cost estimates for necessary repairs/rehabilitation
- ✓ Enter into contracts to employ contractors to perform necessary repairs
- ✓ Collect rents and income from substandard building and use such rents to pay for repairs
- ✓ Borrow funds to pay for repairs
- ✓ Relocate tenants and provide relocation compensation

Q: If a city/county's rules/regulations, or traditional code enforcement process provide (or require) a lengthy notice, hearing and appeal does the Health and Safety Code provisions relating to appointment of a receiver stand apart from those requirements/process/procedure? Or can we pursue alternate remedies at the same time (criminal prosecution, civil nuisance abatement, administrative citations, for example).

A: YES! Cal. Health & Safety Code § 17980.7 (g) states: "these remedies shall be in addition to those provided by any other law."

Q: What are the Rules Relating to Grounds for Issuance of Notice to Repair or Abate: 17980.6?

A:

- ✓ Only a "Building" is required to trigger the applicability of 17980.6. There is no restriction which would limit the applicability to residential or commercial buildings. As such a 17980.6 Notice can be issued to abandoned, occupied, residential, commercial buildings.
- ✓ Pursuant to the language of the statute any local ordinance which is "similar in nature" to either the grounds found in 17920.3 or the California Building Code can be used as grounds under the notice, virtually encompassing all of the city/county adopted codes relating to code enforcement and property maintenance.
- ✓ The conditions present must be **"so extensive and of such a nature that the health & safety of residents OR the public is substantially endangered."** The requirement that the threat be posed to EITHER residents OR the public

reinforces the conclusion that the notice can be appropriately issued to abandoned structures posing such a threat to the public.

Q: How Much Time Must the City/County Give to Repair or Abate Pursuant to a 17980.6 Notice?

A: A “Reasonable Time.” (Cal. Health & Safety Code § 17980.7). The Health & Safety Code provisions under 17980.6 provide for a notice and remedy that stands alone from certain limitations or procedural rights that may be afforded to violators under a city/county’s code enforcement/nuisance abatement type provisions.

Q: What is a “Reasonable Time?”

A: What constitutes a reasonable time will depend on the facts and circumstances presented by each individual property. The preliminary grounds for the existence of a threat which so extensive and of such a nature that the health & safety of residents or the public is substantially endangered will have already been established thus justifying a shorter amount of time to correct violations.

Q: What happens when a property fails to comply with the 17980.6 Notice and correct the violations?

A: “The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision.” Once the “reasonable time” to repair/abate has expired the only remaining Notice requirement to owner/recorded interests, prior to filing of the ex parte emergency application/petition, is the [at least] three day notice that the City/County intends to file the petition.

Q: Can immediate family members, friends and other relatives assist in the process of obtaining a Receiver?

A: Yes. Frequently family members and friends have exhausted most remedies known to them and welcome assistance. Family and friends could potentially be asked to sign declarations in support of the City’s petition.

Q: What happens if a property has negative or minimal equity, can a receiver still be appointed and how can the Receiver borrow money?

A: A property’s title profile, ownership or equity status have no effect upon whether a property meets the qualifications for appointment of a receiver. If the building/conditions are posing imminent threats to health & safety then a receiver can be appointed. Title profile and equity are relevant considerations for nominated receivers in assessing how to obtain the funds to accomplish the scope of work under the receivership. The short answer is to seek (at the outset of the proceedings) an order granting super-priority status to the receivership certificate.

Title Ins. & Trust Co. v. CA Develop Co. (1915) 171 Cal. 227, is the leading California case on issuing receiver's certificate with priority over existing liens. This case allows receiver's certificates to take precedence over prior lien holders "whenever the court finds them necessary to carry out the primary object of the appointment which is the care and preservation of the property." Title Insurance also states that "whether receiver's certificates should be issued and whether those certificates when issued should be given priority over the other indebtedness of the defendant rests largely in the discretion of the trial court below."

Q: Does the City need to adopt an enabling ordinance to authorize the use of Receiverships?

A: No. Recall Cal. Health & Safety Code §17980.7 (g) states: "these remedies shall be in addition to those provided by any other law." A city does not need to adopt any type of enabling ordinance to access the enforcement remedies provided either specifically in the Health & Safety Code statutes relating to receiverships or any other enforcement mechanism provided by the Code generally.

ATTORNEY FEES AND COST RECOVERY IN CODE ENFORCEMENT CASES:

Generally speaking, the rule is that Cities may not recover litigation and enforcement costs in exercising its police powers as they relate to code enforcement or nuisance abatement. However, there are a number of exceptions to that general rule including, but not limited to, the following:

1. **Health & Safety Receivership Litigation:** Health and Safety Code Section 17980.7 (c)(11) provides in pertinent part "The prevailing party in an action pursuant to this section **shall** be entitled to reasonable attorney's fees and court costs as may be fixed by the court" (Emphasis added.)
2. **Civil Actions Generally:** The City may also be entitled to attorney fees pursuant to Code of Civil Procedure Section 1033.5(a) (10) "when authorized by any of the following: (A) Contract; (B) Statute; (C) Law.
3. **Criminal Prosecutions:** Generally attorney's fees and costs are not recoverable by the local enforcement agencies or city prosecutor fees in criminal prosecutions. However costs and fees can be collected/awarded under certain narrow exceptions such as:
 - a. **Civil Compromise** of criminal charges pursuant to Cal. Penal Code §1377 and 1378 permitting recovery of costs incurred (for example by staff or city) not attorney fees.
 - b. **Direct Victim:** An argument can be made that California Penal Code Section 1202.4 explicitly permits recovery of restitution by a city. Specifically, Section 1202.4 provides that "in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court." For purposes of this provision, the term "victim" explicitly includes "[a]ny corporation, business trust, estate, trust, partnership, association, joint venture, **government, governmental subdivision, agency, or instrumentality**, or any other legal or

commercial entity when that entity is a direct victim of a crime.” Cal. Penal Code §1202.4 (k)(2) (emphasis added).

As the Court of Appeal has clearly recognized in People v. Fulton, 109 Cal. App. 4th 876 (2003), a victim, or in the case of a municipality a *direct* victim, may recovery for attorneys’ fees relating to *collecting* the restitution required to be paid to a victim pursuant to Section 1202.4. The Fulton Court specifically emphasized that “Section 1202.4, subdivision (a)(1) states: ‘[i]t is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.’” Id. at 882 (modification in original).

In citing the provisions of Section 1202.4 (f) (3) (H), the Court concluded that attorneys’ fees are specifically recoverable. **The only limitation is that the attorneys’ fees recoverable as part of the restitution order under Section 1202.4 (f) (3) (H) has to have been actually and reasonably related to “the collection of restitution permitted under the statute.”** Id. at 884 (italics in original). The Fulton Court unequivocally *held*, therefore, “that under the plain meaning and express purpose of section 1202.4, subdivision (f)(3)(H), actual and reasonable attorney fees incurred by a victim as a result of the defendant’s criminal conduct are recoverable as restitution, but they are limited to reasonable attorney fees incurred to collect restitution otherwise permitted under the statute.” Id. at 884-85.

The Court of Appeal in In re Johnny M., 100 Cal. App. 4th 1128, 1133 (2002), found that a “restitution award may also properly include the reasonable value of *employee work product lost* as a result of the criminal conduct of another. Id. at 1134 (emphasis added). Section 1202.4 explicitly permits this type of recovery, which is precisely what your agency would argue for purposes of a restitution order. Cal. Penal Code § 1202.4 (f)(3)(D) & (E).

In addition, the In re Johnny M. Court made one other important distinction as to public entity employees. The Court found as follows:

The evidence established that various salaried employees were required to spend time making classrooms operational after the break-ins. This caused the district an economic loss to the extent it deprived the district of the work product these salaried employees would have generated if they had not been obliged to clean up the mess made by minor. Thus, minor’s assertion that the school district “did not incur any loss related to these salaried employees” is inaccurate. The juvenile court reasonably valued the lost work product at the salary rate of the district employees, including benefits, for the lost time.

4. **City/County Initiated Abatements:** Both general law and charter cities may, pursuant to their police powers, enact ordinances providing for the collection of costs associated with government agency summary abatement of nuisance conditions or code violations. Typically such ordinances authorize, following an appellate process, the agency to establish and record liens (with or by a nuisance abatement lien or special assessment) on the property for such costs incurred. (Cal. Gov’t Code §§38773-38773.5)

5. **Cal . Civil Code § 3496:** Awarding fees to the prevailing party under the following cases:
 - a. Cases where governmental agency seeks to enjoin sale, distribution or public exhibition of obscene matter as defined by Cal Penal Code § 311;
 - b. Cases where governmental agency seeks to enjoin the use of building or place for purpose of illegal gambling, lewdness, assignation or prostitution;
 - c. Cases where governmental agency seeks to enjoin the use of building or place, or seeks to enjoin in or upon any building or place the unlawful sale, manufacture, service, storage, or keeping or giving away of any controlled substance
 - d. Cases where governmental agency seeks to enjoin the unlawful sale, service, storage, or keeping or giving away or alcoholic liquor
6. **Unfair Competition Act: Or Unfair Business Practices (Cal. Business & Professions Code § 17206 (c):** Providing for award of civil penalties as well as injunctive relief. Typically brought by District Attorney or City Attorney with permission from District Attorney.
7. **Illegal Signs:** abatement cost recovery (Cal. Bus & Prof. Code § 5499.1).
8. **Weed Abatement :** cost recovery (Cal. Gov't. Code §§ 39560 et seq.)
9. **Graffiti Abatement:** cost recovery (Cal. Gov't. Code § 38773.6)

CONCLUSION

As enforcement budgets are cut and resources grow increasingly limited unfortunately that does not mean cities code enforcement issues resolve themselves. To the contrary as we see housing markets decline, property values plummet we see a corresponding increase in both code violations and general recalcitrant attitude on behalf of property owners and occupants. To respond, public agency legal counsel will need to employ more aggressive, innovative and effective enforcement tools designed to place the burden and cost for abatements where it belongs: on the property, owners and occupants creating the blight and dangerous conditions in the first instance.

NOTICE TO ABATE

[California Health & Safety Code §17980.6]

Notice to Abate Property Located at 1234 Maple Drive, Townsville, CA

Assessor's Parcel Number: XXX-XXX-XX

The conditions currently existing on this property constitute a public nuisance that pose an immediate threat to the public health, safety and general welfare to the occupants and surrounding community. Said conditions violate multiple adopted provisions of law including, but not limited to Sections 1-2.01, 1-2.03, 9-1.601(b) of the Townsville Municipal Code; Section 1208.4 of the California Building Code, Section 8.04.185 of the Citrus County Code and Section 17920.3 of the California Health and Safety Code. Specifically the following violations are noted:

Townsville Municipal Codes

1-2.01: It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code... In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this Code or any regulations adopted pursuant to this Code shall be deemed a public nuisance and may be abated as provided for in this Code...

1-2.03: any act which is declared to be a nuisance by the provisions of the Part 3 of Division Fourth of the Civil Code of the State, or by any ordinance or Code provision of the Town. In addition, a nuisance is hereby declared to include any thing, building, structure, act, or condition on property lying within or adjacent to the Town which renders any property within the Town dangerous or harmful to persons who may occupy or go upon such property within the Town.

9-1.601(b): A building in a state of partial construction for an unreasonable period of time is a nuisance.

California Building Code

Section 1208.4 of the California Building Code provides the minimum requirements for an efficiency dwelling unit as follows:

- (1) The unit shall have a living room of not less than 220 square feet of floor area. An additional 100 square feet of floor area shall be provided for each occupant of such unit in excess of two;
- (2) The unit shall be provided with a separate closet.
- (3) The unit shall be provided with a kitchen sink, cooking appliance and refrigeration

facilities, each having a clear working space of not less than 30 inches in front. Light and ventilation conforming to this code shall be provided.

(4) The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower. (Section 9-1.101 of the Town code adopts by reference the 2007 edition of the California Building Code, and section 1-2.01 of the municipal code states that any violation of the municipal code is a public nuisance that may be abated.)

Citrus County Code

Section 8.04.185 of the Citrus County Code states in part that it is unlawful for any person to keep or harbor more than three dogs which are over the age of four months on any lot, premises, dwelling, building, structure, boat or living accommodation. (Townsville Code section 5-1.01 adopts the applicable Citrus County code section.)

California Health and Safety Code

Section 17920.3 of the California Health and Safety Code declares a public nuisance to be a substandard building and states in pertinent parts:

Any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building:

- (a) Inadequate sanitation shall include, but not be limited to the following: (1) lack of, or improper water closet, lavatory, or bathtub or shower in a dwelling unit;
- (2) Lack of, or improper water closets, lavatories, and bathtubs or showers per

number of guests in a hotel; (3) lack of or improper kitchen sink; (4) lack of hot and cold running water to plumbing fixtures in a hotel; (5) Lack of hot and cold running water to plumbing fixtures in a dwelling unit; (6) Lack of adequate heating; (7) Lack of, or improper operation of required ventilating equipment; (8) Lack of minimum amounts of natural light and ventilation required by this code; (9) Room and space dimensions less than required by this code; (10) lack of required electrical lighting; (11) Dampness of habitable rooms; (12) Infestation of insects, vermin, or rodents as determined by the health officer; (13) General dilapidation or improper maintenance; (14) Lack of connection to required sewer disposal system; (15) Lack of adequate garbage and rubbish storage and removal facilities as determined by the health officer.

- (b) Structural hazards such as members of walls, or vertical supports that split, lean, list or buckle or members of ceilings, roofs, or other horizontal member which sag, split or buckle or which are of insufficient size to carry imposed loads with safety;
- (d) All wiring, except that which conformed with all applicable laws in effect at the time of installation if it is currently in good and safe condition and working properly;
- (e) All plumbing, except plumbing that conformed with all applicable laws in effect at the time of installation and has been maintained in good condition;
- (f) All mechanical equipment, including vents, except equipment that conformed with all applicable laws in effect at the time of installation and that has been maintained in good and safe condition;
- (g) Faulty weather protection, which shall include, but not be limited to

deteriorated or ineffective waterproofing of exterior walls, roof, foundations, or floors, including broken windows or doors and defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering;

- (h) Any building or portion thereof, device, apparatus, equipment that in the opinion of the chief of the fire department or his deputy, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause;
- (k) Any building or portion thereof that is determined to be an unsafe building due to inadequate maintenance, in accordance with the latest edition of the Uniform Building Code;
- (l) All buildings or portion thereof not provided with adequate exit facilities as required by this code....
- (m) All buildings or portions thereof that are not provided with the fire resistive construction or fire extinguishing systems or equipment required by this code, except those buildings or portions thereof that conformed with all applicable laws at the time of their construction and whose fire resistive integrity and fire extinguishing systems or equipment have been adequately maintained and improved in relation to any increase in occupant load, alteration or addition , or any change in occupancy;
- (n) All buildings or portions thereof occupied for living, sleeping, cooking, or dining purposes that were not designed or intended to be used for those occupancies;

(o) Inadequate structural resistance to horizontal forces

Pursuant to Section 17980(a) et. seq. of the Health and Safety Code, the conditions on your property constitute a nuisance and substandard building. Moreover, it has been determined the circumstances present at the property constitute an immediate threat to health and safety. As such, pursuant to Health & Safety Code Section 17980.6 you are hereby ordered to abate all of the violations cited herein within **72 HOURS** (from the date of this posting).

Failure to rectify these conditions on your property by Monday May 18, 2009 at 8:00 a.m. will result in the initiation of further legal proceedings up to an including an emergency application to appoint a receiver to prevent, restrain, correct, or abate the violations with costs of abatement including attorneys fees payable by you. (Cal. Health & Safety Code §§ 17980.6 & 17980.7).

This notice is being generated by the City of Townsville located at 123 San South Street, Townsville, CA 90000. Telephone: (123) 456-7890. If you have any questions, please contact: John Doe, Townsville Building Official at (123) 456-7890.

JONES & MAYER
Dean J. Pucci, Esq., (SBN: 221807)
3777 N. Harbor Blvd.
Fullerton, CA 92835
Telephone: (714) 446-1400
Fax: (714) 446-1448
E-mail: djp@jones-mayer.com

Attorneys for City of Westmoreland

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF WESTMORELAND**

IN RE PROPERTY LOCATED AT 12345
WESTMORELAND DR. WESTMORELAND
CALIFORNIA (APN 0000-000-000)

**APPLICATION FOR INSPECTION
WARRANT UNDER C.C.P. SECTION
1822.50 ET SEQ.; DECLARATION OF
CODE ENFORCEMENT OFFICER JANE
DO; EXHIBITS A-C; AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION**

THE CITY OF WESTMORELAND, CALIFORNIA, DOES HEREBY make application for an
Inspection Warrant as provided for by C.C.P. Sections 1822.50, et seq. to inspect the following:

1. The property located at 12345 WESTMORELAND DR. WESTMORELAND
CALIFORNIA (APN 0000-000-000) the interior of all residential and/or commercial
structures and any garages and/or accessory structures, containers located thereon, as
well as any rooms or areas located therein, and any other improvements in order to
determine the presence and extent of violations of the City of Westmoreland
Municipal Code, including without limitation, the Uniform Housing Code, Uniform
Fire Code; California Health and Safety Code and Uniform Building Code.

This application is based upon the Declaration of Code Enforcement Officer Jane Do;
Exhibits attached hereto; the Memorandum of Points and Authorities in support of said

///

1 Application; and upon any oral and documentary evidence which may be presented to the
2 Court.

3
4 Dated: _____, 2009

Respectfully submitted,
CITY OF WESTMORELAND

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8 _____
Dean J. Pucci, Esq.
Deputy City Attorney
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF APPLICATION FOR AN**
3 **INSPECTION WARRANT**

4 City of Westmoreland, California (hereinafter “City”) submits the following Memorandum of
5 Points and Authorities in support of its Application for an Inspection Warrant to inspect the
6 property located at 12345 WESTMORELAND DR. WESTMORELAND CALIFORNIA (APN
7 0000-000-000) (hereinafter “ Subject Property”).

8 **I.**

9 **This Court Is Authorized By C.C.P. Sections**
10 **1822.50. Et Seq. To Issue An Inspection**
11 **Warrant To The City Of Westmoreland**

12 C.C.P. Section 1822.50 provides that:

13 “An Inspection Warrant is an Order, in writing, in the name of the People, signed
14 by the Judge of a Court of record, directed to a state of local law, or regulation
15 relating to building, fire, safety, plumbing, electrical, health, labor or zoning.”
16

17 C.C.P. Section 1822.51 provides that:

18 “An Inspection Warrant shall be issued upon cause, unless some other provision
19 of state or federal law makes another standard applicable. An Inspection Warrant
20 shall be supported by an affidavit, particularly describing the place, dwelling,
21 structure, premises, or vehicle to be inspected and the purpose for which the
22 inspection is to be made. In addition, the affidavit shall contain either a statement
23 that the consent to inspect has been sought and refused or facts or circumstances
24 reasonably justifying the failure to seek such consent.”
25

26 The Inspection Warrant shall issue under C.C.P. Section 1822.54:
27

1 “If the Judge is satisfied that the proper standard for issuance of the Warrant has
2 been met, he or she shall issue the Warrant particularly describing each place,
3 dwelling, structure, premises or vehicle to be inspected and designating on the
4 Warrant the purpose and limitations of the inspection, including the limitations
5 required by this title.”

6 As will be demonstrated in these Points and Authorities and supported by the declaration
7 of Jane Do, all prerequisites to the issuing of an Inspection Warrant have been satisfied in
8 connection with the Subject Property.

9 II.

10 **Standards for Issuing an Inspection Warrant Have** 11 **Been Met by the Facts in this Case as Presented in the** 12 **Declaration of Jane Do**

13 The guarantee against unreasonable search and seizure provided for in the Fourth
14 Amendment to the United States Constitution is made applicable to the States in Mapp v. Ohio,
15 367U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed. 2d 1801 (1961).

16 The Fourth Amendment requires that the City of Westmoreland obtain an Inspection
17 Warrant for the non-consensual inspection of private property. Camara v. Municipal Court, 387
18 U.S. 523, 528-529, 87 S.Ct. 1727, 18 L.Ed. 2d 930 (1967).

19 An Inspection Warrant may be issued by a Court only upon a showing of sufficient cause.
20 C.C.P. Section 1822.52 provides that:

21 “Whenever it is necessary to make an inspection to enforce any of the provisions
22 of or perform any duty imposed by this Code or other applicable law, or whenever
23 the Building Official or his authorized representative has reasonable cause to
24 believe that there exists in any building or upon any premises any condition which
25 makes such building or premises hazardous, unsafe or dangerous for any reasons
26 specified in this Code or other similar law, the Building Official or his authorized
27 representative hereby is authorized to enter such property at any reasonable time
28

1 and to inspect the same and to perform any duty imposed upon the Building

2 If authorized representatives shall have recourse to every remedy provided by law
3 to secure lawful entry and inspect the property.”

4
5 The standard for determining whether cause exists was stated in People v. Wheeler, 30
6 Cal. App.2d 282,298 (1973) (approving an area wide search of an alternative lifestyle commune
7 for building and safety violations), to be:

8
9 “Where considerations of health and safety are involved, the facts that would
10 justify an inference of ‘probable cause to make an inspection are clearly different
11 from those that would justify such an inference where criminal investigation has
12 been undertaken.” (Citing Camara v. Municipal Court, supra, 387 U.S. at 538.)

13
14 In City and County of San Francisco v. Municipal Court, 167 Cal. App.3d 712, 719
15 (1985), the Court said that the warrant must be justified by reasonable governmental interest.
16 Where the governmental interest at stake is to enforce building standards and thereby prevent
17 conditions that are hazardous to the public health and safety, the test for determining
18 reasonableness may vary with the particular Municipal program being enforced. Id.

19 “Enforcement, obviously, cannot be accomplished without inspection and Camara permits and
20 inspection with a warrant to enforce building codes.” Id. at 720. The Court then issued an
21 inspection warrant to allow redevelopment officers to enter private property to determine
22 whether it complied with redevelopment standards.

23
24 Here, the threat of harm to the public’s health and safety is self-evident. The Property,
25 and its current owner, have a long documented history of maintaining the Property in a condition
26 that poses a significant threat to the life, health and safety of the occupants as well as
27 surrounding neighbors and community. Multiple enforcement attempts over the past years have

1 revealed that owner suffers from a pack-rat type syndrome. Recent cursory inspections of the
2 Property revealed an accumulation of discarded materials, dilapidated structural conditions and
3 lack of water service to the inhabited residential structure. Based upon the City's experience
4 with pack-rat type property owners the accumulation of discarded materials in the front, back
5 and side yards is typically evidence that foreshadows a far worse condition on the interior of the
6 structures.

7 The condition of the property is an infringement upon the quiet use and enjoyment on
8 adjoining residences and requires action and mandates the issuance of an inspection warrant.
9 The City wishes to inspect the property in order to determine the extent of violations of the
10 Westmoreland Municipal Code and various codes adopted therein, are present and moreover to
11 determine the degree of threat the unlawful conditions on the subject properties currently pose.
12

13 The facts as specified in the Declaration of Jane Do satisfies the requirement that cause
14 be shown in order to support the issuance of an Inspection Warrant. In particular, on or about
15 Month XX, 20XX, City officials conducted an inspection of the Subject Property and
16 discovered/documented multiple longstanding violations of the Westmoreland Municipal Code
17 and its adopted ordinances including, but not limited, the following: Westmoreland Municipal
18 Code Sections [INSERT]; and Uniform Housing Code Sections [INSERT] and inadequate exits.
19

20 The Judge may, if it is so desired, examine on oath the Applicant and any other witness to satisfy
21 himself or herself of the existence of grounds for granting such Application under C.C.P. Section
22 1822.53.

23 III.

24 All Prerequisites for the Issuance of an 25 Inspection Warrant are Met and Satisfied

26 This Application satisfied all prerequisites for the issuance of an Inspection Warrant.
27 C.C.P. Section 1822.54 requires that the Warrant describe with particularity each dwelling,
28

1 place, structure, premises or vehicle to be inspected and designate on the Warrant the purpose
2 and limitations of the inspection. As provided in C.C.P. Section 1822.55, The Inspection Warrant
3 is effective for not more than fourteen (14) days. Lastly, the Warrant must provide that the
4 inspection shall be made within prescribed hours and in the manner required by C.C.P. Section
5 1822.56 unless the same are excused in whole or in part. All of these requirements appear on the
6 face of the Warrant and, in conjunction with the standards and requirements described above,
7 meet and satisfy all prerequisites for the issuance of the Inspection Warrant.
8

9 IV.

10 **The 24-Hour Notice Required by Section 1822.56 Can, and Should Be Waived by this**
11 **Honorable Court as Immediate Execution Is Warranted under the Facts Supporting this**
12 **Application.**

13 Cal. Code. Civ. Pro. § 1822.56 provides, in relevant part: Where prior consent has
14 been sought and refused, notice that a warrant has been issued must be given at least 24
15 hours before the warrant is executed, unless the judge finds that immediate execution is
16 reasonably necessary in the circumstances shown. (Emphasis added). Here, as established by the
17 declaration of Jane Do, consent has not been sought given the City's desire to immediately
18 document the conditions present in an unaltered state to adequately assess the threat level posed
19 by the conditions therein. The City believes that Property owners/occupants will alter the nature
20 of the conditions being maintained in violation of the law in anticipation of execution of this
21 warrant should advance notice of its execution be given. As such, pursuant to § 1822.51, the
22 City respectfully requests that this Court find good cause to waive any notice requirement
23 finding that immediate execution is justified and necessary.

24 ///

25 ///

26 ///

27 ///

1 City of Westmoreland respectfully requests, based on the foregoing, that the Court grant
2 an Inspection Warrant in connection with the above described property.
3

4 Dated: _____, 2009

Respectfully submitted,
CITY OF WESTMORELAND

8

Dean J. Pucci
Deputy City Attorney

DECLARATION OF JANE DO

I, Jane Do, being duly sworn, personally appeared before the Court on this day, and under oath, declared the following:

1. I am, and at all times material to this affidavit, have been employed as a Code Enforcement Officer of the City of Westmoreland (the "City").

2. One of my official duties is to inspect private premises to determine whether violations of the City Municipal Code exist on such premises. Violations of the City's Municipal Code are unlawful to create or maintain and are deemed public nuisances.

3. The property that is the subject of this proceeding is located at 12345 WESTMORELAND DR. WESTMORELAND, CALIFORNIA (APN 0000-000-000)

4. The Subject Property contains a residential structure with an outdoor car garage.

5. The owner of record of the Subject Property based on the tax assessor's roll is John Smith ("Owner"). (Attached hereto as Exhibit A is a true and correct copy of the official Property Information printout from the County of Westmoreland County Assessor).

6. I have reviewed all records and files maintained by the City of Westmoreland relative to the subject property and based upon that review allege on information and believe that on or about Month XX, 20XX Code Enforcement received a complaint about the subject property. On or about Month XX, 20XX, pictures were taken and two notices of violations were issued. On or about Month XX, 20XX pictures were taken again of the subject property and two administrative citations were issued. On or about Month XX, 20XX, an inspection and photographs revealed that the following violations existed: peeling paint, stored items, junk, trash and household furniture were located on the porch which was in public view, additionally a truck camper was parked in the driveway in front of the garage and there were tarps all over the roof. A notice of violation was mailed on or about Month XX, 20XX. A re-inspection was set for Month XX, 20XX. On Month XX, 20XX, an inspection and photograph revealed that all the violations from last inspection still existed and another notice of violation was mailed which

1 indicated that another re-inspection was set on Month XX, 20XX. On or about Month XX,
2 20XX an inspection and photos revealed that trees were overgrown, cardboard boxes were
3 stacked up to the ceiling and the front door was not accessible due to boxes on the porch;
4 recyclables were stored in the front yard; on the side of the house there were more boxes and
5 trash cans; there was peeling paint and the facial boards were deteriorated. Additionally, a trailer
6 was stored in the driveway that has a blue tarp covering half; the roof appears to have water
7 damage because a blue tarp is on top of the roof that is being held down by bricks. Moreover,
8 there is no gate securing the backyard, there are leaves that have accumulated on the ground
9 throughout the property. Lastly, there are several dead trees throughout the property. A notice
10 of violation was mailed on or about Month XX, 20XX. On or about Month XX, 20XX I verified
11 with Mary Smith from Public Works that there was no water service at the property.
12

13 On Month XX, 20XX, Month XX, 20XX Month XX, 20XX, Month XX, 20XX and
14 Month XX, 20XX violations were observed on the exterior of the Property and Correction
15 Notices were issued to the Property Owner. (Attached hereto as Exhibit C are true and correct
16 copies of said notices).

17 On or about Month XX, 20XX a cursory inspection, of the Property, was conducted from
18 the public right of way which revealed a number of code violations. (Attached hereto as Exhibit
19 B are true and correct photographs of the conditions as I witnessed them on the property).

20 7. The City is informed and believes that since the last inspection, of approximately
21 Month XX, 20XX, that further violations have surfaced that have increased the threat level to the
22 health and safety of the occupants and surrounding neighbors/community.

23 8. Based on the above-referenced conditions on the Subject Property, I have reason,
24 based upon my substantial training and experience, to believe that the Subject Properties may
25 contain other conditions of non-conformity with the City of Westmoreland Municipal Code,
26 including the Uniform Housing Code, the Uniform Fire Code, Uniform Building Code and the
27 California Health and Safety Code.
28

9. The purpose of the inspection warrant is to authorize a more thorough inspection of the Subject Property, including the interior of the residential structures and any garages located thereon, as well as any rooms or areas located therein, and any other improvements in order to determine the presence and extent of violations of the City of Westmoreland Municipal Code, including, without limitation, the Uniform Housing Code, Uniform Fire Code and Uniform Building Code. Said inspection would include an inspection by your Declarant, Code Enforcement Officer Jane Do and/or her designee(s), the Building Official or his designee(s), the Fire Marshall or her designee(s), Westmoreland Police Department and Animal Control.

10. The inspection is expected to take no more than one (1) day to complete; however, the actual time may be more or less than one (1) day. The inspection will only be between the hours of 8:00 a.m. and 6:00 p.m.

11. Your Declarant requests that the inspection warrant authorized by this Court permit the presence of one or more peace officers in order to keep the peace authorized by the warrant.

12. Your Declarant requests that reasonable force be authorized to enter the Property;
or any part thereof, should any request for entry pursuant to this Warrant be refused..

I have personal knowledge of the foregoing facts and am competent to testify to the truth of the fact, if called upon as a witness.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this _____ day of _____, 2009 at _____, California.

Jane Do

1 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

2 **COUNTY OF WESTMORELAND**

3
4
5 **CITY OF WESTMORELAND**

)

6)

7) **ss. INSPECTION WARRANT**

8)

9)

10
11 THE PEOPLE OF THE STATE OF CALIFORNIA, TO ANY POLICE OFFICER,
12 AUTHORIZED CODE ENFORCEMENT OFFICER, AUTHORIZED ANIMAL CONTROL
13 OFFICER, BUILDING OFFICIAL; PLANNING OFFICIAL, FIRE OFFICIAL; LOS
14 ANGELES COUNTY HEALTH DEPARTMENT OFFICIAL:

15 Proof by Affidavit having been made this day before me by JANE DO, and it appearing
16 there from that there is cause for believing that there is now located on the property at 12345
17 WESTMORELAND DR. WESTMORELAND CALIFORNIA(APN 0000-000-000) certain
18 conditions to real property consisting of:

19
20 Unlawful maintenance of trash and debris; unlawful maintenance of conditions which
21 pose a fire hazard; and further maintaining hazardous conditions to the occupants and adjacent
22 residences in violation of the Westmoreland Municipal Code and its adopted ordinances.

23
24 YOU ARE THEREFORE COMMANDED to make an inspection of the following:

25 1. The property located at 12345 WESTMORELAND DR. WESTMORELAND
26 CALIFORNIA(APN 0000-000-000) the interior of both of all residential and/or commercial
27 structures and any garages and/or accessory structures, containers located thereon, as well as any
28

1 rooms or areas located therein, and any other improvements in order to determine the presence
2 and extent of violations of the City of Westmoreland Municipal Code, including, without
3 limitation, the Uniform Housing Code, Uniform Fire Code; California Health and Safety Code
4 and Uniform Building Code.

5 YOU ARE FURTHER COMMANDED to execute the search authorized herein within
6 fourteen (14) days from the date of this Warrant, for the violations described above, and after
7 making the inspection search, you are directed to make a return to this court according to Section
8 1822.55 of the Code of Civil Procedure. Service of this Warrant may not be made between the
9 hours of 6:00 p.m. and 8:00 a.m. of the succeeding day nor in the absence of an owner or
10 occupant of the place described above. **Reasonable force may be used to enter the Property;**
11 **or any part thereof, should any request for entry pursuant to this Warrant be refused.**
12

13 THIS COURT finds, based upon arguments presented by applicants, that the refusal to
14 seek and consent and issuance of 24-hour notice, as required by Cal. Code. Civ. Proc. §§ 1822.51
15 and 1822.56, is waived based upon a finding that immediate execution is reasonably necessary
16 given the factual circumstances presented by the application for inspection warrant.
17
18

19
20 GIVEN UNDER MY HAND and dated _____, 2009.
21
22
23

24 _____
25 Judge of the Superior Court
26
27
28