

CITY OF POINT ARENA CODE ENFORCEMENT?

SUMMARY

Point Arena, the seventh smallest city in California, provides only limited services to its approximately 470 residents. In particular, the City does not have an effective system for code enforcement. Local officials have given preferential treatment to city councilmembers, allowing one of them to reside in an unpermitted structure with no sewer hookups and another to operate a business with no business license. One of these councilmembers has been charged by the District Attorney with violations of both state law and county ordinance, and pled guilty to such offense on April 4, 2016.

BACKGROUND

The grand jury received complaints from members of the public alleging inadequate and discriminatory code enforcement by the City of Point Arena.

METHODOLOGY

The grand jury interviewed county officials, city staff and councilmembers, Coastal Commission staff members, and the complainants, one of whom has been subject to City of Point Arena code enforcement actions. State Department of Fish and Wildlife staff declined to be interviewed. The grand jury also reviewed records from the city and the county regarding certain properties in the city, as well as facts and findings from the LAFCO 2015 Municipal Services Review regarding the city. The Jury also inspected pertinent sections of the City's published municipal ordinances as of 2015, and made several site visits to the City to make first hand observations.

FACTS AND DISCUSSION

The City of Point Arena is a General Law City with a City Council-City Manager form of government.¹ According to its website, the City was incorporated in 1908 and currently has a population of only about 470 residents with boundaries encompassing an area of 1.3 square miles.² It is the seventh smallest city in California.³ If current residents sought to incorporate under today's standards, which require a minimum of 500 residents, Point Arena would not qualify as a municipality.⁴

Considering its small size, it is not surprising that the City has a budget of only \$877,224.⁵ According to LAFCO, "The City reported that current financial levels are not adequate to deliver required services..."⁶ LAFCO further notes that,⁷

The City of Point Arena has five departments: City Hall Administration, Parks and Recreation, Street Maintenance/Public Works, Harbor Operations, and Wastewater Treatment Plant. The City employs ten staff members on a full time or part time basis for a total of 5.0 full time equivalent (FTE) positions. The City operates with minimal staff. This can create administrative and functional problems when employees are on leave or positions are vacant.

¹ The City only adopted this form of government in last few years. Previously, the City operated under a Mayor-Council government. In 2010, the Grand Jury recommended a change to City Council-Manager format in its 2010 report "Who's in Charge?"—a recommendation that was rejected by the City Council at that time.

² See <http://www.cityofpointarena.net/>.

³ Mendocino Local Agency formation Commission, *Annotated Final Municipal Service Review: City of Point Arena* (February 2015), p. 9.

⁴ GC 56043.

⁵ *City of Point Arena Fiscal Year 2015-2016 Budget*.

⁶ Op cit., Mendocino Local Agency formation Commission, p. 11.

⁷ Op cit., Mendocino Local Agency formation Commission, p. 7.

The City contracts with the Mendocino Sheriff's Office to provide Law Enforcement Services. Fire protection is provided by Redwood Coast Fire Protection District and municipal water is provided by Point Arena Water Works, Inc.⁸ In addition, the City of Point Arena contracts with Mendocino County for planning and building permit processing and inspection, and has contracted with a private planner for actual City planning.⁹ The City has neither a code enforcement department nor a contract with any outside entity to provide code enforcement services. The County of Mendocino has approached the City with an offer to provide code enforcement services via contract and the City Council has passed a resolution authorizing the City Manager to pursue the matter,¹⁰ but the City has yet to actually execute such a contract.

The City Manager and/or the City Attorney conduct any code enforcement that occurs in Point Arena on an ad hoc basis. Such enforcement has not been applied evenly, but rather preferentially. For example, in 2014, the City cited the owner of a commercial building without a residential permit for having an occupant residing in that structure. County Planning and Building Department staff and the Sheriff's Department assisted in this enforcement action at the request of the City. In another case, however, the City ignored complaints that a City Councilmember was residing in an unpermitted structure in the City lacking sewer hookups and that the Councilmember residing there was disposing of human and other wastes on-site inappropriately and illegally. Specifically, human waste was being disposed of using composting and dishwashing/laundry wastes by means of a "gray water" method that does not meet the

⁸ See <http://www.cityofpointarena.net/#!government/czpx>.

⁹ City of Point Arena Ordinance 205 § 1, 2007.

¹⁰ City of Point Arena Council Resolution No. 2015-05

definition of acceptable gray water found in the State Health and Safety Code.¹¹ Furthermore, these activities were occurring in close proximity to Point Arena Creek.

The Mendocino County Code Enforcement and Environmental Health Divisions also received complaints regarding the alleged problem, but took no action based upon jurisdictional limits. Environmental Health did initiate an investigation in January 2015 and was poised to issue a compliance notice, but then Division management directed the Environment Health staff member conducting the investigation to suspend the action because the City of Point Arena would be pursuing the issue. The County did not become involved again until September of 2015 when the Grand Jury consulted with the Office of the District Attorney (DA) concerning the matter. At that point, Environmental Health staff, at the direction of the Office of the District Attorney (DA), renewed the investigation and issued a violation notice to the Councilmember and partner in residence on the property alleging violations of the following State statutes and County codes:

UNIFORM HOUSING CODE, Chapter 10:

Section 1001 (b): Inadequate sanitation, (plumbing, water, vermin infestation, sewage disposal, garbage storage/removal.)

CALIFORNIA PENAL CODE, Section 370 and 373:

Section 370: Public Nuisance defined: Anything injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property...

¹¹ HSC 17922.12(a). "Graywater" includes wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers.

Section 373a: PUBLIC NUISANCE; PENALTY: Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another, who maintains, permits or allows a public nuisance to exist thereon, after reasonable notice in writing from a health officer or district attorney to remove, discontinue or abate the same has been served upon such person, is guilty of a misdemeanor.

MENDOCINO COUNTY CODE, Chapter 16.08:

Section 16.08.015: It is unlawful and prohibited and a public offense for any person, firm, corporation, partnership, or co-partnership to construct or maintain any sewage system in a manner where inadequately treated effluent is likely to discharge upon the surface of the ground, become injurious or dangerous to health, violates any requirement of the North Coast Regional Water Quality Control Board's Basin plan, or will empty, flow, seep, or drain into or affect any spring, stream, river, lake, groundwater or other waters within the county of Mendocino.

Subsequently, in December of 2015, the DA filed a criminal misdemeanor complaint against the Councilmember and partner in the Mendocino County Superior Court. On April 4, 2016, the councilmember and partner entered a guilty plea to these charges, under a deferred entry of judgment for 2 years, with restitution reserved. This means that the councilmember and partner cannot violate any laws including sewage laws while inhabiting that property during that period, otherwise the charges will be reinstated. The District Attorney is additionally seeking investigative costs of \$4,352, which could be awarded at the judge's discretion. A restitution hearing has been set for mid-May, 2016.

In another example of City Councilmembers receiving preferential treatment, one Councilmember has operated a bio-diesel fueling business without having applied for or received a business license. Moreover, some members of the Point Arena City Council have put direct pressure on City staff to contravene portions of the City code and policies concerning land use. One should note that these actions or lack thereof, including the ignoring of complaints of code violations by a Councilmember described earlier, are in contradiction to the Oath of Office taken by City Councilmembers in which they swear to “bear true faith and allegiance to... the Municipal Code of the City of Point Arena...”¹²

FINDINGS

- F.1. The City of Point Arena has no effective system in place for code enforcement, thereby placing its residents at risk for their health and safety.
- F.2. The County could provide effective code enforcement services for the City via contract.
- F.3. Certain Councilmembers are currently in direct violation of the City Municipal Code regarding land use and zoning, as well as required protocols for providing direction to City staff, and thereby are in violation of their oaths of office.
- F.4. The City has been inconsistent in code enforcement, providing preferential treatment for City Councilmembers, while adhering more strictly to the code in the case of some members of the public.
- F.5. The Office of the DA is proceeding appropriately and commendably in it’s filing of criminal charges against the Councilmember and partner for allegedly violating State and County statutes and codes.

¹² City of Point Arena Oath of Office.

RECOMMENDATIONS

The Grand Jury recommends that:

- R.1. The City immediately follow through with this its efforts to contract with the County for code enforcement services. (F1, F2)
- R.2. Members of the City Council cease and desist from approaching and applying pressure to City staff in attempts to circumvent City procedures and ordinances. (F3, F4)
- R.3. The City take actions to cease code enforcement violations by City Councilmembers. (F3, F4)
- R.4. The City be consistent in its enforcement of land use and zoning codes and immediately cease favoritism toward any individual or group. (F3, F4)
- R.5. The DA monitor the nuisance case and the defendant's compliance with nuisance abatement, and proceed with subsequent criminal prosecution of the City Councilmember charged with a misdemeanor, should the situation warrant such action. (F5)

RESPONSES

Pursuant to Penal Code §933.05, responses are *required* from the following individuals:

- Point Arena City Manager (All Findings and Recommendations)

From the following governing bodies:

- Point Arena City Council (All Findings and Recommendations)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Pursuant to Penal Code §933.05, responses are *requested* from the following individual(s):

- Director, County Environmental Health (Findings 1 and 2, Recommendations 1 and 2)
- Director, County Planning and Building (Findings 1 and 2, Recommendations 1 and 2)

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.