




MEETING DATE: 09/04/12
STUDY SESSION
ITEM NO: 2

COUNCIL AGENDA REPORT


DATE: August 29, 2012
TO: MAYOR AND TOWN COUNCIL
FROM: GREG LARSON, TOWN MANAGER 
SUBJECT: REVIEW OF CODE ENFORCEMENT POLICIES AND PRACTICES

BACKGROUND:

Code enforcement, often called neighborhood preservation, is an integral function of a municipal government. Originating from the need to enforce public health and safety regulations, such as building, adequate housing, and fire codes, in contemporary times municipal code enforcement programs have expanded to include zoning enforcement, which typically involves property-related nuisance violations, illegal signs, storage of hazardous waste, development without permits, accumulation of garbage, overgrown vegetation, dilapidated or abandoned buildings, the storage of unlicensed vehicles, etc. Some municipalities use code enforcement to also monitor requirements on land use permits, such as Conditional Use Permits (CUPs), Architecture and Site (A&S) conditions, etc.

Municipal code enforcement is based on civil or municipal codes, and the offenses are infractions or misdemeanors. Many municipalities avoid lengthy and expensive court procedures to remedy the infractions or misdemeanors through the use of Administrative Hearing processes that are administered by the local government and expedite the enforcement of the local ordinances and laws. The Town's Administrative Hearing Process is outlined in Attachment 1.

Municipalities use various techniques to gain compliance with adopted regulations, such as land use and zoning ordinances, health and housing codes, sign standards, and uniform building and fire codes. While every municipality and its governing body has its own procedures to remedy violation of local regulations, it is common to first work towards compliance by issuing notices of violation to the property or business owners. If there is no cooperation within a given time frame, either abatement processes commence or fines are imposed. However, given that the overall purpose of a code enforcement program is to improve the safety and health of all citizens living within the community, municipalities often will work towards compliance rather than punitive measures that could end up in lengthy legal actions.

PREPARED BY:  Wendie R. Rooney, Director of Community Development

Reviewed by: PSJ Assistant Town Manager MMW Town Attorney _____ Finance

A Code Enforcement Officer can be a sworn or non-sworn inspector, officer, or investigator, employed by the municipality, who possesses specialized training in, and whose primary duties are, the prevention, detection, investigation, and enforcement of violations of laws regulating public nuisance, public health and safety, public works, business activities and consumer protection, building standards, land-use, or municipal affairs. Sworn Code Enforcement Officers have limited Peace Officer status, including the powers of arrest. Generally in medium to smaller municipalities, Code Enforcement Officers are non-sworn positions and accordingly work closely with the local police department in the more severe cases.

Finally, code enforcement programs generally operate under one of two models. The most common model, particularly in medium to smaller jurisdictions with limited resources, is a Reactive or Complaint-based Model. In a Reactive Model the following steps typically occur in the enforcement process:

- Residents or interested parties call to complain about a potential violation.
- The Code Enforcement Officer visits the property where the alleged violation is occurring and documents any compliance issues.
- The Officer sends out a violation notice asking the offender to fix the problem.
- The Officer re-inspects the property; and if it is not resolved, legal action occurs generally in the form of an administrative citation being issued.

A Reactive Model is commonly used when addressing issues associated with personal property or businesses. It is based on the more customer-conscious premise of working with the violators to rectify the problem as long as they respond and work towards compliance at a reasonable pace.

The less common approach is the Proactive Code Enforcement Model. In this model, code enforcement has an increased and deliberate presence in the community on an ongoing basis. Proactive enforcement also occurs in situations where staff is responding to a complaint and other violations in the area are observed. This type of model requires more staffing, is more costly, and can be negatively portrayed by the community since it elevates code compliance to a comparative level of law enforcement.

Finally, some communities use a hybrid approach whereby the life safety violations, such as dangerous buildings, working without a permit, substandard housing, etc., are addressed in a proactive manner; more minor violations such as signs, aesthetic conditions, etc., are responded to on a complaint basis.

While the majority of violations are subject to infraction or misdemeanor citations and an administrative or court hearing, CUP compliance follows a different process. Municipal Code Section 29.20.310 outlines the procedures for revocation or modification of zoning approvals, such as a CUP. CUPs are required to conform to the terms of the approval. The Municipal Code sets procedures for the "Planning Commission on its own motion or on the recommendation of the Planning Director may, and if requested by the Council," hold a public hearing to consider

modifying or revoking a CUP that has been granted pursuant to this chapter or any prior ordinance. After the hearing the Planning Commission may modify or revoke a CUP if it finds that one or more of the following grounds exist:

- (1) That the zoning approval was obtained by fraud;
- (2) That any person making use of, or relying upon, the zoning approval is violating or has violated any conditions of such zoning approval or of section 29.10.095, or the use for which the zoning approval was granted is being, or has been, exercised contrary to the terms or conditions of such approval; or
- (3) That the use for which the approval was granted is so exercised as to be detrimental to the public health or safety, or to be a nuisance.

Although a very important municipal function, code enforcement programs are generally not cost recovery through the fines raised and, therefore, may be one of the first programs to be reduced or eliminated during economic recessionary times, particularly in smaller, suburban communities that do not have the typical enforcement issues of the larger, metropolitan areas.

Within Los Gatos, the Code Enforcement Program is administered primarily through the Community Development Department, with some limited assistance from the Police Department and Parks and Public Works. The Town had one full-time Code Enforcement Officer until 2008, when the position was eliminated due to budget constraints, and the duties were distributed to a variety of staff, including building inspectors, planners, Attorney's Office, and the Building Official. Given the limited resources, the Code Enforcement Program operates on reactive basis to complaints from the community, the elected and appointed officials, and the Town Manager's Office.

Based on the Department's customer-service philosophy, the staff expends significant resources working with the violators as long as they respond and work towards compliance at a reasonable pace rather than using administrative remedies, since that often does not resolve the issue on a permanent basis. This strong commitment to work towards a solution rather than a punitive approach often results in the Town temporarily suspending enforcement action if the property or business owner is working towards a reasonable solution. For example, in the case of violations of zoning approvals, such as CUPs, the Town has temporarily suspended the formal revocation processes as long as the offender is working towards a solution with a revised CUP application. Most customer-driven municipalities use a similar approach to non-health and safety violations. While this approach can be successful, it often takes longer than a revocation or citation approach.

Attachment 2 contains the Town's current Administrative Citation Policy that was adopted in 2005. Attachment 3 is the Neighborhood Preservation Ordinance that was adopted in 2010 and intended to provide stronger guidance in enforcement of residential and business nuisance issues.

Three primary issues have been identified with the Town's current code enforcement procedures, which are as follows:

- No dedicated staff.
- Mixed community reaction to the current reactive service delivery model. The Town has received complaints that zoning violators are allowed too much time to remedy their violations through revised CUP applications.
- Inability for complaining parties to publicly express their concern with the enforcement process and results.

Each of these issues is further discussed in the following section, and recommendations to improve the code enforcement process are included in the final section of the report.

DISCUSSION:

No Dedicated Staff:

In 2008, the Town's prior Code Enforcement Officer resigned, and as a budget reduction measure during the economic recession, the Town froze the position, along with most vacant positions at that time. The position was ultimately eliminated in 2009. Since then the code enforcement duties have been distributed to a number of staff members, including the Building Inspectors, Planners, and the Chief Building Official. The Police Department, Town Attorney's office, and Parks and Public Works staff have also assisted in certain enforcement cases.

One of the primary disadvantages to this approach has been the lack of accountability and standardization in enforcement cases, particularly with the continued follow-up or monitoring of compliance that is often necessary. Moreover, the staff members that are currently involved in code enforcement activities have neither the necessary training nor thorough understanding of the various Town codes and relevant county, state and federal codes to effectively perform this function. The staff members do their best to respond to the complaints; but due to lack of sufficient time (due to their primary duties) and training as well as the customer service orientation of the Department, there is a lack of consistency with the enforcement, and the follow-through or continued monitoring is not as thorough as it would be with a dedicated enforcement staff.

With the recovering economy, the Department's revenues have increased and staff is now pursuing a temporary Code Enforcement Officer through staff augmentation, reassigning Town staff, or on a contractual basis. If revenues maintain, the Department will submit a proposal to reinstate a permanent position with the FY12/13 Mid-Year budget adjustments. The cost of a single Code Enforcement Officer is approximately \$115,000 a year. This does not include associated costs for legal assistance, administrative support, and materials and supplies.

However, even with the filling of the position, the code enforcement workload may still prevent the Town from adopting a more proactive approach. Based on discussions with other

jurisdictions, most agencies use the reactive model due to lack of sufficient financial resources and community concerns, particularly the business community, of stronger regulatory approaches. Attachment 4 is a summary of the code enforcement case workload for the past two years. As noted in Attachment 4, of the 311 cases in FY10/11 and 295 in FY11/12 (approximately six new complaints per week each year), the majority are related to property nuisance, noise, abandoned vehicles, building code, and illegal signs. It is important to recognize that each complaint involves multiple steps, and often compliance is not achieved until considerable time and effort is expended.

Although it appears that the level of activity warrants a full time Code Enforcement Officer, it is probably not sufficient to necessitate two positions. However, staff believes that with the permanent filling of the code enforcement position some changes to the service delivery model can be achieved. For example, one of the problems staff typically encounters when responding to property nuisance issues is that the offender will point to other related property maintenance issues in the surrounding neighborhood and claim that he/she is unfairly targeted. While one officer cannot proactively maintain a continuing and deliberate presence in all neighborhoods where violations occur, the officer can address the larger neighborhood when a violation is reported to reduce the potential for comparative allegations.

Mixed Community Reaction to the Current Reactive Service Delivery Model (The Town has received complaints that offenders are allowed too much time to remedy their violations):

As noted in the Background Section of this report, most small to medium sized municipalities operate on a Reactive Service Delivery Model due to limited financial resources as well as the orientation towards securing compliance rather than using punitive measures. Accordingly, municipalities will work with property and business owners to remedy their violations rather than issue citations or hold revocation hearings. For example, in the past 20 years, the Town has only held approximately two hearings for revocation of CUPs, and probably less than five property nuisance cases have been referred to the court system.

In the past few years, the Town has received complaints from a number of neighborhoods that it is not expeditiously or proactively abating violations, such as illegal uses, lack of compliance with CUP conditions, and property maintenance issues. In some cases this was due to the very lengthy time involved in the abatement process through the legal court system. In other cases, based on the Town's philosophy of trying to mediate or resolve issues rather than use punitive measures, the Town has suspended action on abating the illegal use to allow the business owner time to relocate the business. Finally, in other cases, the Town has suspended enforcement while trying to facilitate a resolution by working with the business owner to process a modification to their CUP. In each of these examples the process has taken considerable time and resulted in increased surrounding neighborhood complaints.

Considering that the Town receives an average of 300 complaints per year and only approximately 1 to 2 percent has resulted in continuing neighborhood complaints, it appears the

current code compliance procedures are generally effective. However, as noted, there are unusual circumstances when the process does not mitigate neighborhood concerns within a timely manner.

Although these unusual cases are infrequent, they are nevertheless legitimate concerns to affected parties, which are generally portions of neighborhoods. While staff will continue to recommend using the approach of securing compliance rather than penalizing offenders, in cases where the process is taking an extraordinary amount of time or is affecting a larger group of people such as a neighborhood, staff recommends taking a more proactive role and not allowing a temporary suspension of the abatement process. While this approach is uncharacteristic of the Town's service philosophy, in these more extreme cases it may be warranted. It is further recommended that the temporary suspension should only be used for a very limited period of time, such as three months, and that it be based on a verifiable unique situation, such as a binding lease or agreement.

Finally, through the evaluation of the current practices and procedures, it appears that the cases that have resulted in greater neighborhood concerns are often associated with businesses that have CUPs and are either operating outside of the conditions imposed on the use, or the CUPs are older and do not have well defined conditions to mitigate all concerns. While the Town is limited in correcting the latter example, there are some recommendations to address the former example. In order to provide more thorough monitoring, staff is recommending separating CUP violations from the other code enforcement cases.

The Town could monitor CUPs within certain categories that tend to be more problematic for the community, such as restaurants that serve late night alcohol, bars, entertainment venues, late night uses in close proximity to residential neighborhoods, etc. The CUP monitoring would be assigned to a planning staff member who would be responsible for conducting reviews of the establishments and, if violations were identified, working with the operator to secure compliance. These CUPs would be reviewed on a biannual basis and all inquiries regarding the businesses would be maintained to ensure a comprehensive review of them and any subsequent complaints. Staff would recommend continuing with the current philosophy of securing compliance over penalizing the business, but this process would allow for a faster and focused response to concerns raised by the community as well as establish a record of the business's overall compliance history.

Inability for Complaining Parties to Publicly Voice their Concern with the Enforcement Process/ Results:

The final issue identified with the current code enforcement process is the inability for the complaining parties to have a public voice in the resolution of the issue. As noted in this report, most of the code enforcement issues are remedied through staff working with the offenders to resolve the issue. In limited cases, citations or fines are issued to gain compliance. In these cases, the offender has the option to appeal the citation through the Administrative Hearing

Process. However, the Administrative Hearing Process is at the offender's discretion and does not provide a forum for other parties to participate.

Complaining parties are able to voice their opinions and concerns to the staff; however, the existing process does not accommodate the ability for these parties to participate in or influence the resolution of the case such as through a public hearing. Often the only other recourse for these parties is to express their concerns to the Council, which has limited jurisdiction over individual cases. While this is a forum for general comments and concerns, it does not usually help resolve the ongoing code or CUP compliance issue.

There are not any known code enforcement models that provide hearing processes for community input unless the case is so significant that it results in a revocation hearing. However, there are contractors that provide neighborhood mediation services which would allow community input. The Town presently contracts with Project Sentinel, who provides tenant/landlord dispute resolution services. Project Sentinel also provides community mediation programs. The communities of Los Altos, Los Altos Hills, Mountain View and Palo Alto use Project Sentinel for a variety of community mediation efforts. For example, Project Sentinel contracts with the City of Los Altos for:

...a mediation program that provides free conciliation and mediation services to residents, property owners and businesses in Los Altos and Los Altos Hills. Typical cases include disputes over property lines, fences and trees, as well as other neighbor issues such as control of pets. The program also addresses issues between consumers and businesses and between tenants and landlords.

Staff believes that this service can be a viable option for the Town since most code enforcement issues involve either residents within a neighborhood setting or conflicts between adjacent residents and businesses.

In addition, improved community outreach and education regarding code enforcement, including limitations on the Town's ability to access or control private property, may assist residents in better understanding the steps required for enforcement, as well as their own rights to pursue private public nuisance actions.

Recommendations to Augment Town's Existing Code Enforcement Response Procedures:

As noted in this report, the Town's existing approach to code enforcement is generally effective in the vast majority of cases. With an average of 300 cases per year, less than 2 percent result in the concern that the process is taking too long or complaining parties are unsatisfied with the results. However, due to concerns expressed regarding some recent code enforcement issues, staff recommends a number of changes to the existing policy and or procedures:

- Retain a permanent full-time Code Enforcement Officer (to be considered at Mid-Year).
- Modify the code enforcement procedures to require the officer to proactively review and address all code violations within neighborhoods where an original violation is reported. This will reduce the potential for comparative allegations.
- Develop a monitoring system for CUPs, including restaurants that serve late night alcohol, bars, entertainment venues and late night uses in close proximity to residential neighborhoods.
- Assign CUP condition monitoring to a planning staff member who will be responsible for monitoring and all related inquiries. The CUP monitoring would involve conducting reviews of the establishments and, if violations were identified, working with the operator to secure compliance or schedule for possible revocation. The CUP review would be conducted on a biannual basis.
- Establish a community mediation contract similar to the City of Los Altos that would address neighborhood disputes, issues between consumers and businesses in addition to the Town's existing tenants and landlord's mediation services.
- Update all code enforcement Web and print public information materials.

CONCLUSION:

This report identifies problems associated with the current code enforcement procedures as well as recommendation to improve the program. While these recommendations may not address all cases, they will provide greater accountability, more prompt and focused enforcement, and provide the Town with additional tools to address the more unique neighborhood disputes or issues that can arise.

FISCAL IMPACT:

The addition of the Code Enforcement Officer and augmentation of the Project Sentinel contract would increase annual expenditures by approximately \$175,000 per year.

Attachments:

1. Town of Los Gatos Administrative Hearing Process
2. Administration Citation Policy
3. Neighborhood Preservation Ordinance
4. Summary of Code Enforcement Activity (FY 10/11 and 11/12)

WRR:ah

Los Gatos, California, Code of Ordinances >> - CODE >> Chapter 1 - GENERAL PROVISIONS >>
ARTICLE III. - ADMINISTRATIVE CITATIONS >>

ARTICLE III. - ADMINISTRATIVE CITATIONS ¹¹¹

Sec. 1.30.010. - Applicability.

Sec. 1.30.015. - Definitions.

Sec. 1.30.020. - Administrative citation.

Sec. 1.30.025. - Amount of penalties.

Sec. 1.30.030. - Payment of penalty.

Sec. 1.30.035. - Hearing request.

Sec. 1.30.040. - Hearing procedure.

Sec. 1.30.045. - Hearing Officer's decision.

Sec. 1.30.050. - Late payment charges.

Sec. 1.30.055. - Recovery of administrative citation penalties and collection costs.

Sec. 1.30.060. - Right to judicial review.

Sec. 1.30.065. - Notices.

Sec. 1.30.070. - Advance deposit hardship waiver.

Sec. 1.30.010. - Applicability.

Sections 1.30.010 through 1.30.070 herein provide for administrative citations which are in addition to all other civil legal remedies and which are an alternative to any criminal legal remedies, which may be pursued by the Town to address any violation of this Code except for violations of Chapter 15 (Motor Vehicles and Traffic).

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.015. - Definitions.

For purpose of this article, the following definitions shall apply:

Enforcement officer shall mean any Town employee or agent of the Town with the authority to enforce any provision of this Code, including, but not limited to, the Town Manager, Town Attorney, Director of Community Development, Director of Parks and Public Works and any police officer and code enforcement officer.

Hearing Officer shall mean any person designated by the Town Manager to hear appeals of administrative citations and to hear administrative compliance hearings. The Hearing Officer shall not be the citing Enforcement Officer. The employment, performance evaluation, compensation and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of administrative citation penalties upheld by the Hearing Officer.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.020. - Administrative citation.

- (a) Whenever an Enforcement Officer charged with the enforcement of this Code determines that a violation of that provision has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any person responsible for the violation.
- (b) Each administrative citation shall contain the following information:
 - (1) The date of the violation;
 - (2) The address or a definite description of the location where the violation occurred;
 - (3) The section of this Code violated and a description of the violation;
 - (4) The amount of the penalty for the code violation;
 - (5) A description of the penalty payment process, including a description of the time within which and the place to which the penalty shall be paid;
 - (6) An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation;
 - (7) A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and,
 - (8) The name and signature of the citing Enforcement Officer.
- (c) Prior to the issuance of an administrative citation for a violation which pertains to building, plumbing, electrical, or similar structural or zoning matters that do not create an immediate danger to health or safety, the Enforcement Officer shall provide a reasonable period of time not less than five (5) business days to correct or otherwise remedy the violation.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.025. - Amount of penalties.

- (a) The amounts of the penalties for code violations imposed pursuant to this article shall be set forth in the schedule of penalties established by resolution by the Town Council.
- (b) The schedule of penalties shall specify any increased penalties for repeat violations of the same code provision within thirty-six (36) months from the date of an administrative citation.
- (c) The schedule of penalties shall specify the amount of any late payment charges imposed for the payment of a penalty after its due date.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.030. - Payment of penalty.

- (a) The penalty shall be paid to the Town within thirty (30) days from the date of the administrative citation.
- (b) Payment of a penalty shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.035. - Hearing request.

- (a) Any recipient of an administrative citation may contest the citation by completing a request for hearing form and returning it to the Town within thirty (30) days from the date of the administrative citation, together with an advance deposit of the total penalty amount or an advance deposit hardship waiver application form as described in section 1.30.075.
- (b) A request for hearing form may be obtained from the department specified on the administrative citation.

- (c) The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing.
- (d) If the Enforcement Officer submits an additional written report concerning the administrative citation to the Hearing Officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.040. - Hearing procedure.

- (a) No hearing to contest an administrative citation before a Hearing Officer shall be held unless the penalty has been deposited in advance in accordance with section 1.30.035(a) or an advance deposit hardship waiver has been filed with and accepted by the Town pursuant to section 1.30.070
- (b) A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this article.
- (c) At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.
- (d) The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the penalty and a failure to exhaust his or her administrative remedies.
- (e) The administrative citation and any additional report submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- (f) The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the citation prior to issuing a written decision.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.045. - Hearing Officer's decision.

- (a) After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold or cancel the administrative citation and shall list the reasons for that decision. The decision of the Hearing Officer shall be final.
- (b) If the Hearing Officer determines that the administrative citation should be upheld, he or she shall impose a penalty not to exceed the maximum provided in the schedule of administrative penalties adopted by the Town Council resolution in effect on the date when the violation occurred. The Town shall retain the penalty amount on deposit with the Town. If the Hearing Officer determines that the administrative citation should be upheld and the penalty was not deposited pursuant to a waiver under section 1.30.075, the Hearing Officer shall set forth in the decision an order for payment of the penalty and a payment schedule for the penalty.
- (c) The Hearing Officer may assess administrative costs against the violator when the Hearing Officer determines that a violation has occurred and that compliance was not achieved. Administrative costs may include any and all costs incurred by the Town (both direct and indirect costs) in investigating and commencing administrative proceedings for the violation as well as any and all costs incurred by the Town in connection with the hearing before the Hearing Officer, including but not limited to costs the Enforcement Officer incurred in preparation for the hearing and for participating in the hearing itself, and costs of the Town to conduct the hearing.
- (d)

Failure to pay administrative penalties and administrative costs in the amounts specified in the administrative Hearing Officer's decision on or before the date specified in that decision shall constitute a violation of this Code punishable as a misdemeanor and shall further be subject to collection and late charges as otherwise provided for administrative penalties herein.

- (e) If the Hearing Officer determines that the administrative citation should be cancelled, the Town shall promptly refund the amount of the deposited penalty.
- (f) The recipient of the administrative citation shall be served with a copy of the Hearing Officer's written decision.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.050. - Late payment charges.

Any person who fails to pay to the Town any penalty imposed pursuant to the provisions of this article on or before the date that penalty is due also shall be liable for the payment of any applicable late payment charges set forth in the schedule of penalties.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.055. - Recovery of administrative citation penalties and collection costs.

The Town may collect any past due administrative citation penalty, late payment charge and costs of collection by use of any and all available legal means.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.060. - Right to judicial review.

Any person aggrieved by an administrative decision of the Hearing Officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the Superior Court in Santa Clara County in accordance with the time lines and provisions set forth in California Government Code section 53069.4.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.065. - Notices.

Whenever a notice is required to be given under this article, unless different provisions are otherwise specifically made, such notice may be given either by personal delivery to the person to be notified or by deposit in the United States mail, in a sealed envelope, postage prepaid, addressed to such person to be notified at the last-known business or residence address as the same appears in the last equalized county assessment roll or to the records pertaining to the matter to which such notice is directed. Service by mail shall be deemed completed at the time of deposit in the United States mail receptacle is made. Failure to receive any notice specified herein does not affect the validity of proceedings conducted hereunder.

(Ord. No. 2127, § II, 3-1-04)

Sec. 1.30.070. - Advance deposit hardship waiver.

- (a) Any person who intends to request a hearing to contest an administrative citation, and who is financially unable to make the advance deposit of the penalty as required in section 1.30.035 (a), may file a request for an advance deposit hardship waiver which shall include a sworn affidavit as described in subsection (c) below.
- (b) The request shall be filed, along with the request for hearing form, with the Town Attorney's Office on an advance deposit hardship waiver application form, available from the Town Clerk's office, within thirty (30) days of the date of the administrative citation.
- (c) The Town may waive the requirement of an advance deposit and issue the advance deposit hardship waiver only if the cited party submits to the Town a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the Town Manager the person's actual financial inability to deposit with the Town the full amount of the penalty in advance of the hearing. In determining the cited party's financial ability or inability to deposit the full amount of the penalty in advance, the Town Manager shall consider the amount of the penalty imposed, the income of the cited party, the expenses of the cited party, and any other factors that are reasonably related to the cited party's ability to deposit the full amount.
- (d) The requirement of depositing the full amount of the penalty as described in section 1.30.035 (a) shall be stayed unless or until the Town makes a full determination not to issue the advance deposit hardship waiver.
- (e) If the Town makes a determination to deny the advance deposit hardship waiver application, a written determination listing the reasons for said denial shall be issued. The written determination to deny the waiver shall be final.
- (f) The written determination of the Town's denial of the advance deposit hardship waiver shall be served by mail upon the person who applied for the waiver.

(Ord. No. 2127, § II, 3-1-04)

FOOTNOTE(S):

⁽¹⁾ *Editor's note— Ord. No.2127, § II, supplied provisions to be added to the Code as Article II, Administrative Citations. In order to preserve the style of the Code, and at the editor's discretion, these provisions have been set out as Article III, Administrative Citations, to read as herein set out. ([Back](#))*

***This Page
Intentionally
Left Blank***

COMMUNITY DEVELOPMENT DEPARTMENT POLICY
TOWN OF LOS GATOS

Subject: Administrative Citation Policy - Protocol

Approved: 
Bud N. Lortz, Director of Community Development

Effective Date:

August 4, 2005

PURPOSE

This policy is intended to provide Town staff with a standard procedure for handling staff observed code violations or complaints received from the public about code violations pursuant to the Administrative Citation Ordinance. The goal of the Administrative Citation Program is to abate the violation(s) and obtain compliance with Town Code. In most cases, this can be accomplished by contacting the violator and informing them of the violation. The following protocol will provide for a process that will achieve compliance in the shortest time possible while allowing a reasonable period of time for the violator to abate the violation.

PROTOCOL

Upon receipt of a complaint, or upon observation of a violation by Town staff, the Code Compliance Officer (CCO) will determine if there is a violation of the Town Code. Town staff will make such a determination by conducting a field inspection of the property in question and identify the relevant section of the Town Code. Once the CCO has established that a violation of the Town Code exists, it shall be the CCO's duty to identify and notify the responsible party of the violation. The CCO will identify the responsible party through interviews with business owners, members of the public, staff, and by researching Town records and databases.

The CCO will first attempt to contact the responsible party in person. If the CCO is, for any reason, unable to discuss the violation with the violator in person, it shall be the CCO's duty to inform the responsible party of the violation in writing. The CCO will inform the responsible party of the violation by issuing an administrative citation "WARNING" and it shall include a specific date by which the violation must be abated. After the established time has lapsed and the violation has not been abated, an "ADMINISTRATIVE CITATION" or an "ADMINISTRATIVE ORDER (CORRECTION NOTICE)" may be issued to the responsible party and it too shall include a date by which the violation must be abated.

When the CCO is unable to identify a violation, no action will be taken and the reporting party will be notified that no violation exists. This notification will be made in-person, over the phone or via correspondence. No anonymous complaints will be accepted unless it concerns a life, health or safety issue.

The amount of time given to abate any violation and the type of citation that is issued will be determined based on the type, frequency and seriousness of each violation at the discretion of the Code Compliance Officer. For example, a life, health or safety issue will take precedence and will require the need for abatement in an expedient manner. Violations that do not include a life, health or safety issue will be considered less serious violations. Therefore, the violator of such an offense will be given a minimum of five (5) days to abate the violation. Less serious types of violations include, but are not limited to, inoperative vehicles, overgrown weeds, rubbish, signs and other non-life and safety building and zoning violations.

If the CCO contacts the violator and finds that compliance will be obtained in a reasonable period of time, then the CCO has the discretion to allow the violation to be abated and postpone or withhold issuance of a citation. All correspondence, photos and notices shall be placed in the file.

ORDINANCE 2191

ORDINANCE ADDING A NEW CHAPTER 30 TO THE LOS GATOS TOWN CODE
ENTITLED "NEIGHBORHOOD PRESERVATION"

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS
FOLLOWS:

Section 1. Chapter 30, entitled "Neighborhood Preservation" is hereby added to the Los Gatos Town Code, and shall read as follows:

Sec. 30.10.010 Purpose. This chapter is adopted to promote the health, safety, and welfare of the residents of the Town of Los Gatos. This Chapter will further implement the goals of the General Plan, the Zoning Chapter, and the extensive protections included within the Town Code aimed at enhancing and preserving the quality of life and property values in the Town. These regulations are necessary to stabilize and protect the aesthetic appearances and the quality and character of the Town's residential neighborhoods, as well as its commercial districts, and industrial properties, and to prevent the impairment of property values.

Sec. 30.10.020 Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

- A. *Fire Marshal.* The Santa Clara County Fire Marshal or his or her designee.
- B. *Town Engineer.* The Los Gatos Town Engineer or his or her designee.
- C. *Highway.* A way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. "Highway" includes "street," "right-of-way," "thoroughfare" and "sidewalk."
- D. *Owner.* Any person owning, occupying, leasing, or otherwise having control of real property or uses thereon;
- E. *Owner of the vehicle.* The registered owner and legal owner of record of the subject vehicle.

F. *Person*. Any natural person, firm, association, organization, partnership, trust, or association of persons, joint venture, corporation or company, and any officer or agent thereof.

G. *Vehicle*. A device by which any person or property may be propelled, moved, or drawn upon a highway, street or thoroughfare, except a device moved by human power or used exclusively upon stationary rails or tracks.

Sec. 30.10.030 Conditions of Property. An owner of real property shall not allow or maintain any of the following on his or her property:

- a. Overgrown, diseased, dead or decayed trees, weeds or other vegetation, which:
 - (i) in the opinion of the Fire Marshal constitutes a fire hazard; or
 - (ii) in the opinion of the Town Engineer constitutes a danger to those using the property or adjacent public or private property.
- b. The storage of equipment, materials, standing water, and/or vegetation overgrowth which are likely to harbor or provide habitat for rats, vermin, mosquitoes, and other pests;
- c. Garbage, refuse, trash, debris or waste, except as stored in accordance with the provisions of Chapter 11 of the Town of Los Gatos Municipal Code;
- d. Garbage receptacles in view from a public right of way, except within twenty four (24) hours of the designated day and time the garbage is scheduled to be collected;
- e. Graffiti which remains for a period longer than ten (10) days;
- f. Conditions which, due to their accessibility to the public, may prove hazardous or dangerous, including, but not limited to:
 - (1) Unused and/or broken equipment;
 - (2) Abandoned wells, shafts or basements;
 - (3) Hazardous or unprotected pools, ponds or excavations;
 - (4) Structurally unsound fences or other structures;
 - (5) Machinery which is inadequately secured or protected;
 - (6) Lumber, trash, or debris;
 - (7) Storing or keeping of chemicals or motor oil.
 - (8) Refrigerators or appliances with the door(s) still attached.
- g. Any airplane or other aircraft, or any parts thereof on residentially zoned property;

- h. On residentially zoned properties: any construction, commercial, or other equipment, machinery, or materials except that construction equipment, machinery or material which is temporarily kept within or upon the property for and during the time such equipment, machinery or material is required for the construction or installation of improvements or facilities on that property. However, in no event shall the construction equipment, machinery or materials be in the front or side yard areas visible from a public street for any period of time in excess of twelve (12) consecutive months or twelve (12) nonconsecutive months in any eighteen (18) month period.
- i. Any of the following when located in the front or side yard and visible from public right-of-way: refrigerator, washing machine, sink, stove, heater, boiler, tank or any other household appliances, equipment, machinery, furniture (other than furniture designed and used for outdoor activities), firewood, lumber, salvage materials, building materials, unmounted campers, unmounted camper tops, unmounted camper shells, vessels not on trailers, boats, trailers, or any part of any of the listed items for a period of time in excess of seventy-two (72) consecutive hours, except as specifically provided herein;
- j. Any of the following when located in the front or side yard and visible from public right-of-way: boxes, cargo containers, storage containers, containers, or dumpsters, in excess of seventy-two (72) consecutive hours, or for more than two (2) occasions in a calendar year, except as otherwise permitted by this code, or when engaged in ongoing construction activity, pursuant to an active building permit;
- k. Any storage unit or shed in the front yard or in the side yard and visible from a public right-of-way;
- l. On residentially zoned property, any business or activity which dismantles, disassembles, builds, remodels, assembles, crushes, repairs, paints, washes, cleans or services motor vehicles, aircraft, motorcycles, recreational vehicles, boats or trailers owned by a person other than the property owner;
- m. Any tent, temporary shelter, car canopy, or collapsible structure in the front or side yard and visible from a public right-of-way for a period in excess of seventy-two (72) hours or for more than two (2) occasions in a calendar year;
- n. Any use of a parking lot, driveway, carport, or parking structure for other than vehicular parking, ingress and egress, except as expressly authorized by permit;

- c. Any fence, or other structure installed on or upon any public property, including structures within the public right-of-way, except as authorized by permit;
- p. The use of outdoor barbecues or other methods of cooking food outdoors to be sold is prohibited, except as expressly authorized by a festival permit or a permit issued pursuant to Town of Los Gatos Municipal Code.
- q. The parking or storage of vehicles on landscaped surfaces or unpaved surfaces.
- r. The parking or storage of inoperable vehicles on residentially-zoned properties when visible from a public sidewalk, street, or thoroughfare.
- s. Any construction, demolition or remodeling activity to the exterior of a structure which is not completed within eighteen (18) months of commencement.

Section 30.10.040 Sign Enforcement. No person or owner shall erect or permit a sign to be located outside of a building or business, unless authorized by a Town-issued permit. The term "sign" shall include "A-frame" signs, sandwich boards, banners, or any other type of off-premise sign located anywhere outside the building. The area "outside" a business includes doorways, walkways, sidewalks, and driveways leading toward the entrance of a business.

Section 30.10.050 Merchandise. No business establishment shall maintain or allow any display of merchandise outside their building without a Town-issued permit. A "display" includes but is not limited to a clothes rack, table with merchandise, or any other physical structure that may block the public right-of-way.

Sec. 30.10.060 Penalty for Violations. Violation of this Chapter shall be a misdemeanor unless charged as an infraction. Each day a violation occurs or continues may be charged as and punishable as a separate offense.

Sec. 30.10.070 Severability. In the event that any part of this ordinance is held to be invalid, the invalid part or parts shall be severed from the remaining portions which shall remain in full force and effect.

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on May 17, 2010 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on June 7, 2010. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

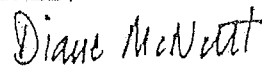
AYES: Joe Pirzynski, Steve Rice, Barbara Spector, Mike Wasserman, Mayor Diane McNutt

NAYS:

ABSENT:

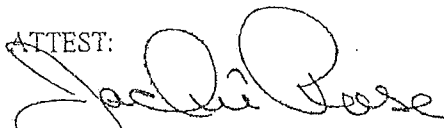
ABSTAIN:

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:



CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

*This Page
Intentionally
Left Blank*

Code Enforcement Activity FY 10/11 and FY 11/12

VIOLATION STATUS	Total YTD FY-10/11	Total YTD FY-11/12
Complaints reported	311	295
Violations abated	235	236
Violations pending normal processing	27	25
Complaints determined not to be a violation	48	34
Citations issued	4	3
Violations resulting in litigation	1	1
Referred to Town Attorney	4	4
Unlawful businesses	2	0
Unlawful accessory structures	5	8
Animal complaints	9	8
Noise complaints	35	33
Garbage and rubbish	24	21
Building code violations	41	42
Unlawful dwelling units	1	3
Overgrown weed, bushes, etc...	14	14
Lighting complaints	3	2
Encroachment/Obstruction of right-of-way	27	19
Inoperative vehicles (boats, trailers, motor homes, etc...)	28	22
Sign violation (A-frames, banners, no permits, etc...)	50	72
Home Occupation Permit - Violation	1	1
Conditional Use Permit - Violation	6	5
Miscellaneous (refer to log sheet)	64	52
Total number of phone calls	1173	972

*This Page
Intentionally
Left Blank*