



MEMORANDUM

To: Trinidad Planning Commission

FROM: Trever Parker, City Planner

DATE: January 28, 2016

RE: Continued VDU Discussion and Special Meeting February 4, 2016

The Planning Commission expressed a desire to have a special meeting in order to continue discussion of the VDU ordinance amendment, with a focus on enforcement. There was no request for additional materials, but I did want to provide you with a little additional information regarding enforcement. To supplement this memo, I have provided you the Introduction chapter from a book on code enforcement in California (Code Enforcement: A Comprehensive Approach, by Joseph M. Schilling and James B. Hare, 1994, Solano Press Books, Point Arena, CA).

Code enforcement is not an easy issue. It is a process that is generally used for land use, building, environmental and health and safety regulations. These tend to be static or chronic conditions as opposed to the temporary and periodic complaints about noise and traffic that are common for VDUs. Code enforcement is also almost exclusively complaint-driven except in special circumstances. An example of that would include things like licensing or permitting programs that require periodic inspections such as the City's OWTS Management Program. Jurisdictions are almost never in the business of going around looking for violations; it is just too expensive and time consuming. Time and expense is also an issue with the code enforcement process in general, because the U.S. Constitution guarantees due process, and there are a number of legal implications and precedence to consider.

The suggestion that the City needs to hire a code enforcement officer is probably not the solution you are looking for. Most small jurisdictions do not have dedicated code enforcement officers. And even when they do, they work regular day-time hours and respond to complaints following regulatory procedures. In most jurisdictions, including Trinidad, code enforcement primarily falls under the Building Department, and/or the department or staff most closely related to the violation (e.g. the City Planner for a zoning violation). Code enforcement can be prioritized to address the issues most important to each community.

In the code enforcement process, first a violation has to be verified by a City official. In most cases, voluntary compliance is achieved after a warning notice or two, and the jurisdiction does not recover any costs in these cases. The more difficult cases generally

must go through an administrative (civil) or criminal process that involves courts. It is not a process conducive to resolving ongoing noise complaints.

As I said at the last meeting, I think the best tool that you have is the threat of revoking a VDU license. That essentially puts the responsibility for compliance on the VDU owners and managers. I think another potential option would be to establish a process by which the City can issue fines for infractions using citations. The City of Indian Wells has robust administrative fine regulations that may provide a good example (see: <http://qcode.us/codes/indianwells/> sections 8.08.040 – 8.08.100 in particular). However, this would be something that would have to be adopted outside of the VDU ordinance process. And the City would need some input from the City Attorney or other expert in code enforcement on how best to codify and implement something like that. However, even that process would require a City official to be there to respond to complaints or patrol the City in order to issue the citations. And for VDUs, this really means at night and on the weekends, since that is when most of the noise and parking type violations occur. Since public safety and law enforcement was one of the top priorities that came out of the community goal setting workshop last year, this issue should be discussed as part of that larger topic.

On another note, there has been a concern brought up that the Planning Commission is unnecessarily limiting itself based on the list of issues discussed by the Council and presented by staff. And while I don't think it is necessary to open up every section of the VDU ordinance to discussion, the Planning Commission should not feel bound to the Council's list if other issues come up. A good example is staff's inclusion of the definition of VDU and enforcement in the amendment, which were not explicitly discussed by the Council. In addition, the idea of treating owner-occupied VDUs differently was actually brought up by the Council and included in the table of my original staff report (October 21, 2015). And since the zoning ordinance (§17.68.030) requires the City Council to send any amendments that were not discussed by the Planning Commission back to you, a discussion of all potential issues could avoid future delays from that process.

Finally, I also wanted to provide you with a potential timeline so that maybe you don't have to feel as much pressure to rush this along. Not that you have unlimited time with such a complex topic, but you do have some breathing room. Working backwards:

- My understanding is that the moratorium can be extended until June 30, 2017;
- If City staff have been working closely with Coastal Commission staff, certification of the ordinance can likely be achieved within 2 months (depending on their meeting schedule) = April 1, 2017 amendment application submittal;
- It may take a month to prepare the application = March 1, 2017 for final City Council action;
- Two readings before the Council for ordinance adoption = January 1, 2017;
- 4 or 5 monthly meetings for Council hearings and discussion = August 1, 2016.

I think the schedule above is fairly conservative. For example, the Council can have a second monthly meeting to discuss amendments and / or conduct both readings of the ordinance in one month. This schedule still gives the Planning Commission 6 more months to discuss these amendments.

Introduction

Code enforcement is a function local governments* perform that citizens consider important for accomplishing community goals, such as protecting property values and the environment. Others view code enforcement as an annoying intrusion into the free use of private property. Traditionally, it has been a process whereby local governments use various techniques to gain compliance with duly-adopted regulations such as land use and zoning ordinances, health and housing codes, sign standards, and uniform building and fire codes. In recent years, federal and state regulations governing air and water quality and the transport and storage of hazardous wastes, and requirements for implementing the Americans with Disabilities Act have come into play. Local governments are now obliged to include enforcement of these rules and regulations in the array of responsibilities they assume for protecting the public health and welfare.

Contemporary code enforcement involves local enforcement officials in the job of ensuring compliance with policies, codes, rules, regulations, and permits in a proper, timely fashion within the limits of the law. Consequently, enforcement officials must be fully acquainted with the adoption process and the thinking behind the regulations they enforce as well as the legal limits placed on them. Conversely, those who write the laws must understand the problems particular to enforcement and administration as the codes and regulations are implemented.

In this context the code enforcement official is a unique public servant whose responsibility lies squarely between policy making and the realms of law enforcement and litigation. The U.S.

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* Cities, counties, municipalities, local agencies—these are the terms referring to local governments used interchangeably throughout this book. Many of the practices discussed also apply to federal and state enforcement agencies.

Congress, state legislatures, and city councils and county boards of supervisors adopt policies, codes, rules and regulations to solve problems or respond to federal, state, or community mandates. Enforcement applies these laws to specific properties, either by using warnings and notices to persuade voluntary compliance or by filing court actions, all under the rubric of 'police powers'. Local enforcement officials and those who write the policies, codes, rules, and regulations are obligated to understand the management of the code enforcement function and the entire complex process that is the subject of the following chapters.

Code enforcement is defined as the process by which public agencies gain compliance with those laws, regulations, and permits over which they have authority.

A. Defining Comprehensive Code Enforcement

By itself, code enforcement is defined as the process by which public agencies gain compliance with those laws, regulations, and permits over which they have authority. Comprehensive code enforcement goes beyond this basic definition to encompass an awareness of the public policy basis for codes and the case resolution alternatives to achieve compliance. Both aspects add perspective to and improve the results of local enforcement efforts.

Most local agencies start the enforcement process after a citizen files a complaint with the local building inspection or planning department. An enforcement agent visits the property to determine if a code violation exists; and, if a violation is discovered, a notice is issued to the property owner or tenant. Since most violations exist through simple, unintentional ignorance of a regulation, the majority of cases are resolved soon after this initial notice. Compliance is accomplished when the owner or tenant obtains proper permits, makes necessary repairs, or abates the conditions which constitute the violations. Where the owner fails to comply voluntarily, the municipality can pursue a variety of administrative enforcement actions or take the owner to court.

If every case was limited to these simple events, the job of an enforcement official would be easy; but, for code enforcement to support community goals, officials must go beyond inspecting private property, issuing a notice, and filing an enforcement action in court. Code enforcement issues start earlier, when the planner or municipal attorney drafts an ordinance and permit. Intertwined in the development and management of land use policies and programs, enforcement considerations also arise when municipalities issue use permits and when the enforcement agency monitors compliance with underlying permit conditions.

A comprehensive approach to enforcement means that anyone who works in the code enforcement environment—city and

The Tough Ten Percent

An enforcement agency eventually gains voluntary compliance in approximately ninety percent of its code enforcement cases by issuing the initial notice of violation. However, for the remaining ten percent, an agency may use nearly all of its resources to bring these properties into compliance. This rule of the Tough Ten Percent and the techniques enforcement agencies can use to gain compliance is the primary focus of Chapters Six through Nine.

county planners and district attorneys, code enforcement personnel, managers and administrators, private practitioners and consultants—is increasingly obligated to understand the connections between traditional code enforcement activities and such topics as constitutional law, property rights, economics, policy and plan implementation, and decision-making processes.

B. Principles of Comprehensive Code Enforcement

Although compliance is the primary objective, the road to compliance may be complex. Taking a comprehensive route is recommended. The case for a comprehensive approach to code enforcement begins with becoming familiar with its principles—

- **Establish measurable goals based on identified community needs.** Identifying needs and translating them into measurable goals to be attained through enforcement is primary. While a mandate to protect basic health and safety drives the enforcement of building and fire codes, local agencies also have the discretion to respond to the priorities of neighborhoods and the community. Impressive case closure statistics are far less valuable if they do not represent a concerted attack on violations the community most abhors.
- **Evaluate enforcement issues before drafting ordinances and designing programs.** Code enforcement starts before a particular parcel is found in violation of a land use regulation. Elected and appointed officials, including planning commissioners and city council members, should consider the possible impact of code enforcement before adopting regulations that others will be assigned to enforce. A comprehensive view can help identify enforcement issues early in the process.
- **Integrate implementation with enforcement.** Municipalities often assign one part of an organization to implement regulations and another to conduct enforcement. Implementation is how municipalities put a regulation into action: zones are established, planners and building inspectors review proposals, process permits, and inspect final development. Enforcement comes into play when a specific property, previously the subject of implementation, is found to violate a regulation. Enforcement is therefore the method by which an agency assures that the use of land continues to comply with local regulations after permits are issued. Thus, interaction between those assigned to implement and those assigned to enforce is critical to long-term success.
- **Monitor land use plans, permits, and zoning ordinances for their effectiveness after formal adoption.** The enforcement agency

The Regulatory Cycle

Many local agencies separate the processes of enacting, implementing, and enforcing regulations. The person who drafts the ordinance may not be the one who issues subsequent permits, who may in turn be someone other than the person who investigates cases or files enforcement actions.

Whether or not they are understood or managed by the agency, the interrelationships among these functions tend to act upon each other in a cycle composed of the elements shown in the adjacent figure.

Community Needs. Most new regulations start with a community concern which is either brought to the organization by its constituency or identified and experienced by its own staff.

Goals. Having identified an issue or community need, agencies then try to identify the objectives that will be met when the matter is resolved.

Budgeting and Organization. Either in response to particular issues or as a part of ongoing operations, agencies devote staff and resources to preparing, im-

plementing, and enforcing regulations.

Regulations. An agency must sometimes enact a new law, ordinance, or policy to resolve a matter.

Implementation. Once a regulation is adopted, the agency implements the law by reviewing applications and issuing permits.

tact during investigation does not persuade the violator to correct a violation, the agency must evaluate a number of enforcement remedies and select one that is most appropriate to the facts of the case. To achieve compliance the agency can either employ dispute resolution to reach a medi-

ated settlement, use its own administrative procedures of abatement and permit revocation, or pursue litigation through criminal prosecution and civil injunction.

Assessment of Results. This last step completes the cycle. Assessment of results links the enactment of regulations with enforcement. Most agencies do not routinely measure for effectiveness by determining whether a particular regulation was clearly understandable, readily enforceable, and

provided an acceptable level of compliance. If constituents do not complain, decision makers are left to assume that the law is meeting community needs. But if the regulation does not work or has unintended results, the agency should start the regulatory cycle anew.

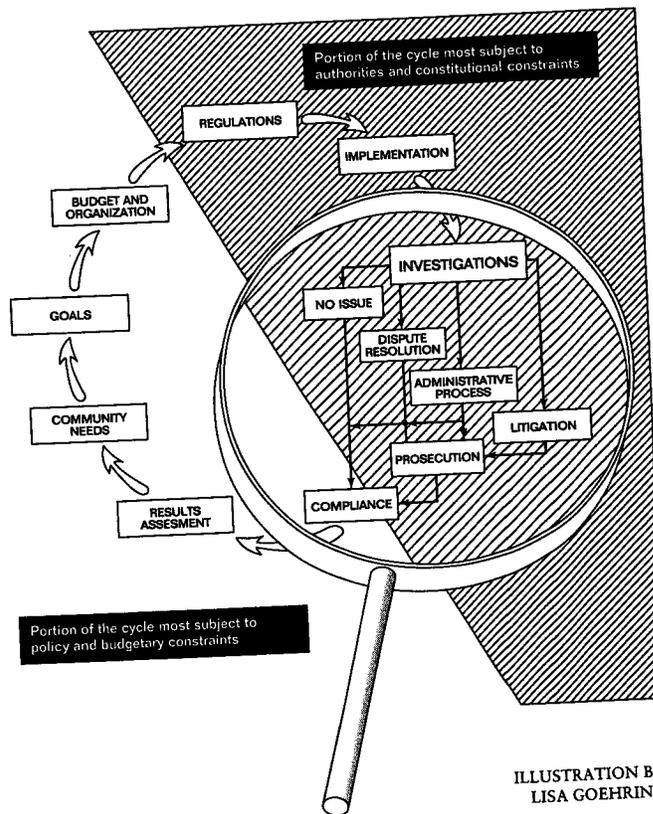


ILLUSTRATION BY
LISA GOEHRING

Investigation. The bridge between implementation and enforcement starts with the investigation of alleged code violations to determine whether or not a violation exists.

Remedies, Responses, and Enforcement Actions. If initial con-

should monitor compliance with the conditions imposed by development and use permits on a specific parcel, building or use. By using a comprehensive approach from the beginning, combining the theory of land use planning with everyday implementation and enforcement techniques, city planners will be able to draft permits and ordinances that will be more enforceable.

- **Coordinate implementation and enforcement of state and local land use regulations.** Enforcement responsibilities are often spread among different municipal departments as well as various state agencies. Comprehensive code enforcement evaluates all applicable land use regulations (under California law this includes predominately among others the Uniform Building and Fire Codes, State Housing Law, Subdivision Map Act, California Coastal Act, and California Environmental Quality Act), and coordinates the independent enforcement agencies empowered to administer and investigate these regulations.
- **Evaluate all available enforcement options and remedies to resolve enforcement cases effectively.** In the practical realm of code enforcement, the agency must evaluate all options to gain compliance, including informal notices, office hearings, mediation, administrative hearings, criminal prosecution, and civil injunctions. Comprehensive code enforcement can assist officials in the field and municipal attorneys and prosecutors in the courts. Enforcement must contain a certain degree of flexibility to address unique enforcement situations.
- **Compliance is the primary objective of comprehensive code enforcement; penalties and punishment are secondary.** Public policy goals, implementation of adopted regulations, and resolution of enforcement cases are accomplished through compliance. While the imposition of penalties, punishment, and incarceration may be justified as a deterrent to crimes involving personal behavior, a code enforcement official is usually more interested in correcting a physical deficiency in a place or structure. Comprehensive code enforcement never loses sight of compliance as the means to achieve community goals and the agency's mission.

C. The Complexities of Code Enforcement

The responsibility of an agency and its enforcement personnel is often more complex than simply issuing a stop work order to a property owner who fails to obtain proper permits. In many respects, code enforcement is a specialized form of law enforcement, subject to all of the legal standards and constitutional limitations that law enforcement entails. In this sense, code enforce-

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Code Enforcement and Community Attitudes about Neighborhood Deterioration: The 'Broken Window Theory'

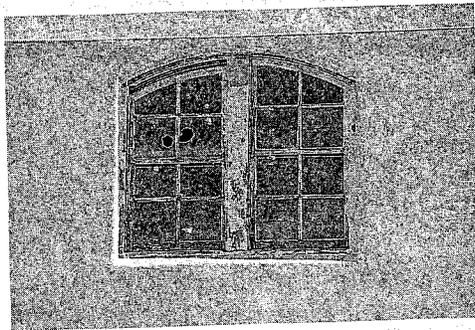
Developing a sense of order which results from effective and timely code enforcement can help to curb the physical deterioration of our cities. If we strive for an orderly urban environment through such measures as repairing dilapidated buildings, removing trash and junk from vacant lots, and replacing broken windows, we might improve our opportunities as a community to manage the more complex social and economic problems of homelessness, crime, and poverty.

How individuals respond to property maintenance has been cleverly demonstrated in an experiment by social scientists to test the hypothesis of the 'Broken Window Theory'.* They left an inoperable car parked on a public street in a high crime neighborhood in New York City. During the next few hours they observed a number of people vandalize and steal parts from the car; and within forty-eight hours the car was nothing more than a shell.

They repeated the experiment in a more affluent neighborhood in Palo Alto, California, near Stanford University. Although more time elapsed, the social scientists observed the same behavior: people

destroying property perceived to be neglected and abandoned. Because it was an easy target, abandoned property attracted criminal behavior, and the socioeconomic level of the neighborhood seemed to have no appreciable impact.

Describing the theory in the *Atlantic Monthly* in 1982, James Q. Wilson and George L. Kelling wrote that "social psychologists and police officers tend to agree that if a window in a building is



broken and is left unrepaired, all the rest of the windows will soon be broken." Neglected property allowed to remain in such a condition is a signal to the community that no one cares. Wilson and Kelling go on to suggest that disorder and crime are inextricably linked with the physical environment at the community level. As they explained in a more recent article in 1989—

"[A] lot of serious crime is

adventitious, not the result of inexorable social forces or personal failing. A rash of burglaries may occur because drug users have found a back alley or an abandoned building in which to hang out. In their spare time, and in order to get money to buy drugs, they steal from their neighbors. If the back alleys are cleaned up and the abandoned buildings torn down, the drug users will go away. They may even use fewer drugs, because they will have difficulty finding convenient dealers and soft burglary targets."

This relationship between crime and neighborhood deterioration is one of the leading justifications for a comprehensive code enforcement program. If left unabated, abandoned buildings, substandard

apartments, and even graffiti can rapidly develop into public nuisances threatening the public's health and safety. An aggressive code enforcement program can help to reduce the likelihood that properties with minor violations will contribute to a neighborhood becoming worse. Code enforcement can also help contain the possibility that more dilapidated properties will spread throughout a neighborhood or community.

* "Broken Windows," by James Q. Wilson and George L. Kelling, *Atlantic Monthly*, March 1982.

** "Making Neighborhoods Safe," by James Q. Wilson and George L. Kelling, *Atlantic Monthly*, February 1989.

ment officials are the police officers of the land use process. Building inspectors—together with zoning investigators, fire inspectors, city planners, sanitarians, and code compliance officers—must not only understand the legal concepts of due process, rights of privacy, and unreasonable searches and seizures, but must judiciously apply these constitutional principles in the field.

Many code enforcement cases involve aspects of larger economic, social, and political issues within the community, including drugs, gangs, homelessness, graffiti, substandard housing, environmental protection, and the preservation of historic buildings. Code enforcement problems are as diverse as the communities in which they exist. An illegal sign may be the worst problem in one neighborhood while another may have to contend with dilapidated buildings infested with rats and vermin.

Code enforcement officials are often thrust into complex problems with a variety of conflicting interests. When enforcement officials issue a notice for maintaining a substandard apartment building, the interests of tenants and landlords are at stake. Neighbors may feud over barking dogs or auto repair businesses in residential zones. Disputes between a developer and environmentalists surface when the planner attempts to monitor compliance with federal, state, and local permits. Elected officials and community groups may pressure enforcement officials to punish violators swiftly, while in some cases these same groups may complain that officials are harsh, overzealous, and bureaucratic.

Enforcement officials must balance all this against their duties to enforce municipal, state, and federal regulations to protect the general public welfare. A comprehensive approach can help to resolve enforcement cases while maintaining a balance between competing interests.

D. Conclusion

Over the years many members of local government and the community have not appreciated the complexities and challenges confronting code enforcement officials. Some have viewed code violations as technicalities involving minor regulations—overheight fences, abandoned or inoperable vehicles, excessive storage—while others have complained that enforcement is an impediment to small business development or yet another example of stifling bureaucracy. As a result, many code enforcement programs have been subject to budget cuts, based on the reasoning that the enforcement of land use regulations is not as critical to the public's general health and safety as are other more visible services.

In many respects, code enforcement is a specialized form of law enforcement, subject to all of the legal standards and constitutional limitations that law enforcement entails. Supreme Court Justice William Brennan wrote, "After all, if a policeman must know the constitution, then why not a planner?" (*San Diego Gas and Electric v. City of San Diego*, 450. U.S. 621 (1981))

Code enforcement officials are often thrust into complex problems with a variety of conflicting interests.

Notwithstanding these misconceptions and setbacks, over the past fifteen years code enforcement has developed into a critical municipal service to provide for the orderly and productive growth of livable communities. The impact of floods, fire, earthquakes, landslides, and windstorms on the built environment has alerted the public to the need for a higher standard for regulating land use, both to minimize damage and destruction caused by natural disasters and to ensure that communities are well-built and sustainable. Additionally, the public's growing desire to live in diverse, attractive, and well-managed communities demands more creative strategies to enforce proper and effective land use regulations.

The public now places a high priority on the commitment and ability of local agencies to enforce regulations through permits and discretionary approvals to maintain neighborhoods, protect property and property rights, and preserve the value of public and private investments. Consequently, many municipalities recognize code enforcement as an important tool to help sustain and protect the health, safety, and welfare of their cities, towns, and neighborhoods. Partially through this broader commitment, code enforcement itself has become a recognized profession, spanning the entire organization of city and county government. Enforcement responsibilities are vested with an array of specialized code compliance officers, city planners, environmental monitoring agents, fire prevention and building inspectors, and other public employees. And professional organizations similar to the California Code Enforcement Council (CCEC) and the American Association of Code Enforcement (AACE) have organized chapters throughout the country.

A comprehensive framework—that includes the steps of assessing community needs, developing goals, adopting regulations and issuing permits, enforcing the law, and evaluating the overall effectiveness of a program from beginning to end—can help clarify how local governments implement, administer, and enforce state and local land use regulations. Practitioners, politicians, and policymakers may also benefit from using this comprehensive approach to respond to, evaluate, and resolve code enforcement issues in their communities.

**CCEC = California Code
Enforcement Council**

**AACE = American Association
of Code Enforcement**