



Code Enforcement Division
City Attorney's Office
600 6th Street
Lincoln, California 95648

**CODE ENFORCEMENT
POLICIES AND PROCEDURES**

I. OBJECTIVES OF POLICIES AND PROCEDURES

- ❖ Increase the effectiveness of code enforcement efforts to ensure and to maintain the high quality of living standards and beauty of the City of Lincoln.

- ❖ Define clear guidelines for enforcement of City codes including the Building and Zoning Codes from receipt of an initial complaint through resolution of a case.

- ❖ Define the roles and responsibilities of staff, residents, the City Council, the Planning Commission and other stakeholders.

- ❖ Prevent unnecessary duplication of effort among staff, elected officials, appointed officials and community groups.

- ❖ Eliminate confusion about City code enforcement policies, ensure due process rights of residents and to clearly define the appeals process.

- ❖ Provide resolution of most cases at the lowest possible administrative staff level to maximize efficiency and minimize conflict among residents, property and business owners, and the City.

- ❖ Ensure each case is handled as fairly and carefully as possible with standards applied equitably and consistently.

- ❖ Facilitate timely response to complaints and clearly articulate actions that can be taken by the City to pursue compliance.

- ❖ Create incentives for rapid compliance.

- ❖ Permit the City to recover costs of abatement if the City is forced to become directly involved in the abatement of a code violation.

- ❖ Pursue proper compliance with City codes while protecting the constitutional rights of the citizens of Lincoln regarding illegal search and seizure.

II. CASE ORIENTATION

There are three ways for a code enforcement case to be originated: (1) complaints received, (2) proactive enforcement, and (3) directive enforcement. The following guidelines establish procedures for code enforcement case origination and creation.

A. Complaints Received

Staff receives complaints from residents, City staff, business owners, City Council members and other City officials. Complaints can come via telephone, letter, online, email, or in-person, and can be received by any staff member and referred to the appropriate party for investigation.

Code Enforcement shall provide an automatic follow up call to the reporting party to ascertain further information. The reporting party may call staff to check on the status of a complaint or request in advance that an update of progress be provided.

To the greatest extent possible, all complaints should be in writing, and include a first name, last name and contact phone number and/or email address for the reporting party. The reporting party should clearly identify the location of the property that is the subject of the complaint, preferably by street address. Staff shall maintain the confidentiality of all reporting parties' names. Reporting parties' names will be released only to the courts if a case is being prepared for legal action and will not be released to the City Council or other members of the public unless authorized by the City Attorney.

The case should be entered into the City's Code Enforcement tracking software (i.e., Comcate or its successor software) and scheduled for an inspection to determine next steps.

B. Proactive Enforcement

City staff may identify code violations from the public right-of-way while driving through or working in the City. Violations that are more egregious (e.g., impacting public health and safety) should be acted upon as soon as practicable. Otherwise, proactive cases should be entered into the City's Code Enforcement tracking software and scheduled for an inspection on a case-by-case basis with the officer using his/her best judgment as to the timing.

C. Directive Enforcement

Supervisory staff may provide directive enforcement of a particular type of violation based upon internal customer complaints or senior staff observations. The case should be entered into the City's Code Enforcement tracking software and scheduled for an inspection to determine next steps.

III. IDENTIFYING VIOLATIONS

There are two ways to specifically identify code violations: those violations that can be inspected from the public right-of-way, and those that require access onto private property for inspection.

A. Violations in Public View

In response to the origination of any type of case, staff may be able to identify and document photographically code violations from the street, sidewalk, other public right-of-way such as an alley, or adjacent property. If possible, staff will make contact with the property owner and/or the responsible party, educate them regarding the alleged violation and the remedial actions that are required for

compliance. Photographs should clearly depict the violation(s), as well as the address of the property at which the violation was observed.

B. Violations Not in Public View

1. As a matter of policy, City staff shall exhaust all efforts to gain consent by the owner or tenant for a voluntary inspection prior to obtaining a warrant.

2. City staff shall work closely with the City Attorney's Office to ensure compliance with code enforcement policies and that appropriate and necessary steps are taken if it is determined to pursue an inspection and/or abatement warrant, and thus, court involvement.

3. City Council or Commissioners shall not be involved in the inspection warrant process.

C. Inspections Requiring Access to Private Property

Staff shall not enter private property to inspect without owner or tenant consent or a court-ordered inspection warrant to conduct an inspection if the violation is not visible from a public right-of-way.

1. Owner or Tenant Consent to Inspection

a. Staff may request (in person or by letter) the opportunity to inspect the property. If the owner or tenant consents, staff may proceed and verify whether a code violation exists. A written record of the grant of consent must be documented in the case file.

b. If either the owner or tenant consents to the inspection but the other party does not consent, then no inspection should proceed without an inspection warrant.

2. Inspection Warrants

a. When staff is unable to obtain verbal or written permission to enter private property to inspect, then staff may obtain an inspection warrant with the assistance of the City Attorney's Office. The only exception is when an emergency situation exists where a clear and present danger to the health, safety or welfare of the occupants or the public requires that appropriate staff enter private property without an entry warrant. In such a circumstance, the Lincoln Police Department should be contacted immediately.

b. An inspection warrant is an order signed by a judge, permitting entry by a specific city department or representative, specifying the scope of a permissible inspection. An inspection warrant requires a signed declaration of the official requesting the warrant which:

i. Describes the details of the property, the owners, responsible parties, and/or the perpetrators of the alleged violation, and the purpose for the search,

ii. Includes a statement of efforts to obtain consent to inspect that was refused,

iii. Includes a detailed explanation of the reason to believe an illegal condition exists, and the specific nature of the possible violations, or describes the legal authority for the City's regular inspection and inability to obtain consent to perform the inspection,

iv. Provides a detailed code enforcement history of the property

including all inspection dates, findings based on those inspections, notices provided to the property owner(s) and responsible parties, efforts to obtain voluntary compliance (including law enforcement participation, if applicable), and any other correspondence with the property owner, such as emails or other letters, and

v. Specifies whether any additional officials, such as police officers, fire inspectors, health officers, etc., should be present during the inspection, and why.

c. The inspection warrant will specify a limited time (typically 14-30 days) within which to conduct the inspection; however, extensions can be given by the judge.

d. Upon the issuance of an inspection and/or abatement warrant, the code enforcement officer shall secure all of the necessary personnel and schedule the inspection in a timely manner.

e. Notice that a warrant has been issued must be given to the owner or occupant at least twenty-four (24) hours before the warrant is executed, either by contacting the owner directly or by posting the notice at the property in a conspicuous location.

f. **Once the warrant is served and an inspection carried out, it must be returned to the judge with a summary of the results of the inspection.** The inspection must be conducted in the presence of the owner or occupant, unless specifically authorized by the judge. Rarely is forcible entry authorized, and to do so requires separate authorization.

D. Staff members authorized to request warrants

1. The City Attorney or his/her designee shall review, and either approve or deny, all requests for inspection warrants.

2. For violations of the Building, Zoning and Health & Safety Codes, the Chief Building Official or designee are authorized to request inspection warrants.

3. For violations of Zoning Codes, inoperable vehicles or boats and RV's on private property, junk, trash and debris, hoarding, illicit discharges, nuisance properties, and illegal marijuana grows, a Code Enforcement Officer is authorized to request inspection warrants.

4. For violations of the Fire Code, weed abatement and portions of the Lincoln Municipal Code related to health and safety, the Fire Chief, Fire Marshal or designee are authorized to request inspection warrants.

IV. NOTIFICATION OF COMPLAINTS/VIOLATIONS

Except as otherwise authorized by the Lincoln Municipal Code or by California state law, or in circumstances warranting a more rapid abatement procedure, staff shall adhere to the following procedures when proceeding with action on a code enforcement violation.

A. First Contact – Courtesy Notice

Upon initial identification of a code violation, staff will issue a Courtesy Notice either through personal contact, posting and/or by 1st class mail to the responsible parties. This notice will explain any substantiated violation(s) and corrective action(s) required within a designated period of time. For complaints not readily visible from public-right-of-way, a written request may go out to responsible parties requesting a site inspection.

B. Compliance Timeline

The exact number of days for remedial action will depend upon the required action for compliance, the severity of the violation and/or potential immediate hazard to the community. It may also vary on a case-by-case basis at the discretion of the enforcement officer.

C. Nature/Tone of Notices

The nature of all notices will be straightforward, identifying the specific code violation and the abatement action required. Notices generated through the City's Code Enforcement tracking software shall be deemed to meet this requirement.

D. Continuing Attempts to Gain Voluntary Compliance – Notice of Violation

If the Courtesy Notice does not succeed in securing compliance, a Notice of Violation will be delivered either through personal contact, posting and/or by 1st class mail to the responsible parties. This notice will explain the substantiated violation(s) and corrective action(s) required within a briefer designated period of time.

E. Ongoing Compliance Efforts

When two notices have been issued and voluntary compliance is not achieved, staff will continue to work for voluntary compliance even while taking necessary steps to legally abate any violation(s). Residents shall receive all due process and notices, as well as copies of documentation as required by ordinance and upon receipt of written request.

V. GAINING COMPLIANCE

After inspection and determination that a code violation exists, if voluntary compliance cannot be achieved, the following enforcement policies shall be implemented.

A. Administrative Citations

Section 1.20 of the Lincoln Municipal Code allows for the issuance of Administrative Citations. Citations may be issued for violations of the Lincoln Municipal Code. A Citation Notice will be mailed via the Code Enforcement division along with a copy of the issued citation(s). The citation shall state that failure to cure the violations with the time specified may result in the immediate issuance of additional citation(s) with additional penalty of fine(s). Per the Lincoln Municipal Code, unless otherwise provided, violations accrue each day the violation exists, and each violation may justify a separate penalty. The penalties are \$100 for the first violation, \$200 for the second, and \$500 for the third offense.

B. Nuisance Abatement

When a code violation has been identified, it may qualify as a "substandard building" under the State of California Housing Code, or a dangerous building under the Uniform Code for the Abatement of Dangerous Buildings, or as a nuisance under other applicable state law and be pursued as such. If it is determined that a nuisance exists, the City may abate the nuisance through its own forces with an abatement warrant if compliance cannot be voluntarily gained and then recover any costs by placing a lien or special assessment on the subject property. (See Section VI. Below.)

C. Reasonable Compliance

In a municipal environment with limited staffing and resources, the intent of the governing

ordinance may be considered over its literal wording.

VI. ABATEMENT PROCEDURES

Any City abatement of nuisances on private property requires court ordered judicial authorization in the form of an abatement warrant, or the consent of the property owners and/or occupant. The courts have viewed abatement as a type of seizure, and the fourth amendment of the U.S. Constitution requires a warrant for search or seizure. While it may seem invasive to allow the City to enter private property to abate a nuisance, a judge will permit this action when there is evidence of a health and safety hazard which violates state or local law.

VII. NUISANCE ABATEMENT ORDINANCE

The purpose of a Nuisance Abatement Ordinance (Lincoln Municipal Code section 8.08.050) is to maintain the appearance and condition of real property, to enhance property values in the City and to avoid deterioration of neighborhoods and commercial centers. This ordinance defines public nuisances which create visual blight and hazardous conditions which may be detrimental to the public's health and safety.

A. Nuisance Abatement Ordinance

Current City policy authorizes staff to abate any nuisance which poses a health and safety hazard to the community. City of Lincoln Municipal Code 8.08.010 establishes specific procedures and standards for abatement of nuisances.

B. Authorization to Abate Nuisances

Staff shall precede with judicially imposed abatement actions only as a last resort, when all other attempts to have the nuisance abated and all administrative remedies have been exhausted. The City Attorney is authorized to file requests for abatement actions with the appropriate court. Staff and the City Attorney shall notify the violator of the City's intention to file a court action to give the violator a final opportunity to comply. The City Council may be informed, in closed session or by confidential memorandum, of any requests the City Attorney makes for abatement warrants from the court.

C. Procedures for Abatement of Nuisances

Specific procedures for abatement are delineated in the Nuisance Abatement Ordinance. After obtaining an abatement warrant, staff is authorized to proceed with soliciting contractor bids to complete the abatement. However, the contractor will be required to meet all City contract qualifications and will contract directly with the City for the abatement work.

D. Documentation of Cost of Abatement

After completion of the work and final inspection by staff, the cost of abatement, including administrative time, shall be billed to the property owner or perpetrator of the alleged violation, and, if not collected within 30 days, shall become a special assessment (subject to council approval) against the real property upon which the nuisance was abated.

VIII. COST RECOVERY

Substantial Staff costs can be incurred in administrative time to handle cases including work by code enforcement personnel, review by the City Attorney, City Manager's staff and Community Development Department staff such as building inspectors and engineers. In addition, City Attorney time for court preparation, court costs and abatement expenses increase the City's investment when the City must abate a nuisance by use of an outside contractor. Imposing costs on the violators in

addition to potential citation fines constitute a very powerful tool for encouraging early voluntary compliance. The City shall recover its costs of abatement under the following guidelines.

A. Administrative Costs

The administrative costs may include any and all costs incurred by the City in connection with the matter before the court including, but not limited to, costs of investigation, staffing costs incurred in preparation for the hearing and for the hearing itself, and costs for all inspections necessary to enforce the municipal code.

B. Abatement Costs

Costs required to abate a nuisance shall be billed to and collected from the property owner and the City shall place a special assessment (subject to city council approval) against the real property for any amounts not paid by the property owner or perpetrator of the alleged violation within 30 days. These costs shall include contractor costs (including demolition costs) and administrative costs incurred in abating the nuisance.

C. Collections Agency

When a fine resulting from an issued administrative citation goes unpaid beyond the initial due date, written attempt(s) for in-house collection will ensue. Unpaid fines may be turned over to a private collection agency if said fines are still not collected within 30 days thereafter.

D. Other Means

Other avenues of cost recovery that may be taken include, but are not limited to, actions in small claims court, property liens, property tax liens, and any other legal mechanism for collection.

IX. CLOSING A CASE

Cases are created to abate specific violation(s) of the Lincoln Municipal Code. Once these violations are resolved, abated or found invalid, the case shall be closed and recorded as such in the City's Code Enforcement tracking software. In some cases, charges may be brought up again for the same code violation, if the condition previously abated develops again within a 12-month period.

A. Appeal of a Nuisance Determination

The appeal of a citation or compliance order issued by staff regarding a violation of the Lincoln Municipal Code shall be made before a Hearing Officer.

B. Timeliness of Appeals

Appellants must file appeals within the applicable time limits set forth under Lincoln Municipal Code Sections 1.20.060.

X. OTHER ISSUES

A. Interdepartmental Coordination

Upon self-initiated interdepartmental coordination, the Code Enforcement Officer shall serve as the primary code enforcement investigator and maintain case tracking in the City's Code Enforcement tracking software.

Other departments may establish a procedure for notifying the Code Enforcement Officers of actions soon to be taken (excluding Police matters deemed confidential), such as weed abatement, abandoned vehicles abatement, property maintenance requirements as they relate to a specific parcel of privately held land.

B. Miscellaneous Code Revisions and Additions

Staff shall make recommendations for revisions to the City's Fee Schedule and/or other resolutions and ordinances which may need clarification or strengthening in order to be effectively enforced in conjunction with this policy and the Nuisance Abatement Ordinance. These revisions shall be drafted for City Council approval.

C. Record Keeping

All code enforcement cases shall be documented into a City Code Enforcement computer database, as a permanent record of all actions taken, of compliance achieved or of other status of the cases. Access to the code enforcement computer files shall be permitted for appropriate City staff only, as designated in a computer security access array. Status reports of the number, type and location of cases may be prepared upon request for City Council review, without releasing the names of the reporting party. All records shall be maintained in such a manner as to evidentially support the City's actions if the matter is taken up on appeal.

D. Public Education

The code enforcement page on the City's website shall be maintained for public awareness and more effective customer service. Public opportunities to increase awareness of the role of Code Enforcement in the City are encouraged, such as participation in job fairs, community events, National Night Out, etc.