RECOMMENDATIONS FOR SMALL TOWNS



UNDERSTANDING CODE CODE: WHAT IS IT?

Codes are the parameters a community* places on what may be done and how it may be done within its limits. Cities and counties derive their authority to write and enforce code from the state constitution, their subsequent municipal charter, and statutes established by the state legislature. The charter outlines the authority of elected officials to manage affairs within the community through its code¹.

Code establishes how development may occur, requires care of personal property, and implements the goals and plans the city made in its general plan. It is important to note that the authority of the code comes from supporting the vision and goals in the community's general plan and zoning map. If the code does not have a direct connection to these broader documents, they can be viewed as arbitrary and create legal liabilities for the community.

While residents generally comply with code, sometimes they don't. Working for community health, safety, and welfare, community leaders should ensure that all community members comply with adopted code. The mechanism for ensuring compliance is code enforcement.

*In this document "communities," refers to towns, cities, and counties. Counties also create and enforce codes. The recommendations apply to all of these communities in a similar fashion.

ON-SITE ENFORCEMENT

All codes require enforcement. Codes that regulate how people use their personal property typically require community officials to visit site violations. The following are common code violations requiring on-site enforcement.

DANGEROUS BUILDINGS

Dangerous building code addresses health and safety hazards in homes, businesses, or planned additions (e.g., asbestos, unpermitted additions).

ZONING

Zoning is included in code to allow for different uses. Businesses or residences in the wrong zone are common violations (e.g., unauthorized apartment).

ANIMAL CONTROL

Animal control ordinances address allowed types of animals, requirements for cleaning up after animals, noise, etc. (e.g., unauthorized farm animals).

SIGNS

The time, place, and manner of sign placement and use can be managed by communities through code (e.g., signs blocking walkways).

NUISANCE ORDINANCE

A nuisance can be almost anything, direct or indirect, that negatively affects other people's ability to use their property (e.g., loud music).

SOLID WASTE

Solid waste refers to garbage and debris. Having solid waste on private property is prohibited by most communities (e.g., junk cars and equipment in the yard).

WHAT'S THE BIG IDEA?

Good code enforcement starts long before community officials stand at a doorstep and ask a resident about the half-dozen broken-down cars in front of their home. Good code enforcement must be based on good code and good code must be based on a good general plan. Community plans must justify the provisions in the code which in turn justify the community in enforcing the code.

Code enforcement does not have to be complicated. Continuing to ignore enforcement will simply lead to increasing problems in the future. "

The difficulties of code enforcement can seem insurmountable, leading communities to not enforce. This results in systemic problems that develop through long periods of not enforcing the code. As a direct result, residents do not gain the benefits of good code enforcement.

JUSTIFIE

GOOD PLAN

MUNICIPAL CODE

CODE ENFORCEMENT

Code enforcement does not have to be complicated. Simple enforcement programs can overcome monetary and capacity constraints. Enforcement strategies that incorporate public engagement and participation can help residents understand and support the code and its enforcement. Continuing to ignore enforcement will simply lead to increasing problems in the future.

CODE ENFORCEMENT

SENSE OF COMMUNITY

Community pride is closely associated with the look and feel of a community.

PUBLIC HEALTH & SAFETY

Code enforcement protects residents from potential hazards and health risks.

COMMUNITY & ECONOMIC DEVELOPMENT

Well-maintained communities attract tourism, new housing, and business development that evades poorly maintained communities.

PROPERTY VALUES

Property values stay higher when code enforcement protects neighborhoods from blight and other issues.

COMMUNITY IMAGE

Maintaining a clean community establishes a positive image of the community for residents and visitors alike.

PUBLIC WELFARE

Enforcement informs leaders of potential dangers and of residents who may need assistance in maintaining their property.

IMPLEMENTATION OF COMMUNITY VISION

Enforcing code is one of the primary tools a city has in implementing the long-term vision for the community.

QUALITY OF LIFE

A direct result of the benefits listed above, residents quality of life is directly tied to a city's decision to enforce its code.

MONETARY CONSTRAINTS

Many rural communities have small and tight budgets; this makes funding code enforcement difficult.

FEAR OF OFFENDING NEIGHBORS

Elected leaders are not far removed from their constituents in small communities. Enforcing code on family, friends, and neighbors is often personally difficult.

CONSISTENCY

Communities that have not enforced their code consistently in the past fear legal repercussions for starting to enforce now.

NO CAPACITY

Limited staffing raises the question of who has the time or know-how to enforce the code.

NOBODY CARES (MOST OF THE TIME)

In many cases, residents are ambivalent until an issue directly affects them or their property.

PUBLIC RESISTANCE

Some property owners can be adamant and defensive about any governmental intervention in their private property.

POLITICAL CONSTRAINTS

Political leaders can be hesitant to support code enforcement when it causes frustration among voters.

STEPS TO GOOD CODE ENFORCEMENT

1 START AT THE PLAN

A good general plan clearly and consistently outlines the long-term goals of community members and leaders. Consistency throughout the plan will provide solid backing for code enforcement within the community. To help ensure plans are implementable, think about how the goals and vision will be reflected in the code. Also consider how each goal would be enforced as it's written.

ACTION STEPS

- Ensure your general plan accurately represents your community's longterm goals.
- Review the current code and zoning map to check for consistency with the general plan. For help, see the worksheet at the end of this document.

2 ENSURE YOU HAVE GOOD CODE

Good code does not mean an abundance of code. For most communities, having a thick code book can be more burden than blessing. Good code establishes guidelines that assist communities in reaching their long-term vision. Similarly, good code provides succinct, clear definitions of what is and is not allowed. Local officials, especially the planning and zoning commission and city/town council, should be familiar with the code. Having complicated code can often lead to confusion rather than clarity in decision making. Simple code instead provides the public and decision making bodies with the clarity needed to understand what is—and what is not—permissible.

ACTION STEPS

- 1. Review current code for consistency with plans and zoning.
- Consider code revisions for sections that are unclear or that do not support the community's goals, vision, or plans.
- 3. If serious inconsistencies exist, consider a code re-write.

NOTE: COMMUNITY ENGAGEMENT

Engagement is legally required for amending or adopting code. Community leaders should go beyond the legal requirements for public outreach before and after adopting major shifts in their code or code enforcement strategy and process. Providing the public with information will help residents know what is expected and can provide valuable feedback on how rules could be enforced.

Informing and asking for citizen feedback does not mean citizens make all the decisions; community leaders still bear responsibility for final rules. Using resident feedback to inform the code's writing and enforcement process will help community residents feel more ownership of the code and more comfortable with its implementation.

3 ENFORCEMENT PRECEDENT & STRATEGY

Communities often neglect code enforcement until there is a controversial disturbance. This can place communities in legally precarious situations: the sudden enforcement of code can appear arbitrary, curtailing a specific instance of a use, or targeting a single resident or disturbance.

To avoid this problematic situation, communities should consistently enforce their codes. If they do not, they will have more difficulty defending the enforcement action when enforcement is most needed.

Communities should adopt an enforcement framework and strategy that outlines their intended means of enforcing the code. Enforcement methods vary significantly based on a community's size, resources, culture, and needs. Communities should take these factors into account as they select enforcement strategies. Enforcement strategies that match capacity and community culture will be most successful.

ACTION STEPS

- Evaluate current enforcement methods for gaps and opportunities to improve.
- 2. Conduct a public meeting soliciting public comment on preferred enforcement measures.
- Establish enforcement plan improvements and ensure the public is aware of the code's requirements.
- 4. Evaluate how consistently you can conduct enforcement with time and monetary constraints.
- 5. Do not commit to more enforcement (faster response, consistency of patrols, etc.) than is reasonable for your finances or employee capacity.

CODE ENFORCEMENT BRAINSTORM Enforcement in the real world can be extremely difficult. Questions

Enforcement in the real world can be extremely difficult. Questions surrounding who, what, and when generally sum up the key concerns leaders have about enforcement. The following are ideas that address these issues. This list is not comprehensive. Leaders should use creativity and adapt, combine, or restructure these strategies to fit local needs and culture.

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STRATEGY

We encourage community leaders to strongly consider prioritizing incentive and assistance programs. Incentives provide more flexibility than purely punitive enforcement strategies (fines and legal proceedings) and tend to better match the culture of small towns. Incorporating multiple strategies into a comprehensive compliance plan is the best way to maintain the community's culture while ensuring code enforcement occurs.

WHAT OPTIONS OR PROGRAMS EXIST?

| STRATEGY Community incentive programs | + Incentivizes all community members Reward instead of punishment Low public resistance | Costs money Takes time to set up program Potentially complicated Creates expectations | EXPLANATION Incentive programs provide benefits to the community when specific goals are reached. For instance, Duchesne County, Utah provides raffled prizes to community members when the community has collectively removed a set number of broken down vehicles from private property. Everyone who donates a car is a potential winner. |
|---|---|--|---|
| Individual incentive programs | Incentive can match cost of compliance Directly assists those in most need Reward instead of punishment | Potential abuse Community resistance | Individual incentive programs provide rewards to the property owner who has come into compliance. We recommend caution with individual incentives as they can encourage community members to be in violation in order to qualify for the incentive. These incentives (such as reduced property taxes for a period or free dump passes) can more safely be used with new property owners who come into compliance within a specific timeframe after purchasing the property. |
| Education programs | Reduces ignorance Increases peer pressure to comply Community-wide | Takes time Outreach and materials cost money Less direct impact | Community leaders should engage with to gain ideas and understanding into enforcement, then educate community members on how they hope to enforce and why. Taking time for public outreach to explain code requirements and why they exist reduces the threat of backlash when codes are enforced. |
| Community clean-up days | Reminds residents of need to clean-up Allows leadership/ staff and residents to work together Reduces barriers for compliance | Staff or volunteer time Cost of supporting services (dumpster, lost revenue for landfill access, etc.) | Community clean-up days provide free dump access and community outreach supporting clean-up in specific timeframes. Communities can provide and optimize use of the equipment and physical capacity required to clean up property that some community members may not have. These programs can help residents come into compliance when the primary barriers to compliance are physical or equipment related. |
| Assistance programs | Directly assists those in most need Creates "no excuses" for violators | Significant burden for limited staff or volunteers Expectations from residents for services Potential abuse | Similar to community clean-up days, assistance programs can help community members who are incapable of complying with code requirements on their own. Some communities provide one-time financial support to bring a property into compliance. Options may include using public works employees and equipment, organizing volunteers, or having the city council organize service crews ² . These programs require a clear definition of who qualifies for the services. |
| Short-term loans | Reduces barriers Directly assists those in most need Generates some revenue | Requires capital Complexity of loaning Issues with non- repayment | For minor to moderate violations, communities can provide small, low- interest loans for residents to bring their property into compliance ³ . |
| Vacant property tax increases | Incentivizes vacant properties to be inhabited Generates revenue | Citizen resistance Community culture Punishment instead of reward | Louisville, Kentucky increases tax rates for abandoned properties by as much as three times that of well kept properties. Other communities increase tax rates for perpetually non-compliant properties, increasing the rate annually until it reaches compliance ⁴ . |
| Vacant property fines | Incentivizes vacant properties to be inhabited Generates revenue | Citizen resistance Community culture Punishment instead of reward | Cincinnati, Ohio charges fees for vacant properties and increases fees year-over-year until the property is inhabited or sold ⁵ . |
| Fine structures | Flexibility Recouping costs | Too steep of a fine structure can create citizen resistance Punishment instead of reward | Communities can use multiple sets of fine structures that are informed by the severity and frequency of an infraction. The cost of enforcement should be a primary consideration when setting fine schedules, however it is unlikely fines will cover the entire cost of enforcement. These can be assessed after a hearing (inferring criminal violation) or as an administrative citation where the enforcement authority can cite the violator according to administrative rule without first having a trial. |
| Criminal classification | Flexibility Motivate exceptionally resistant non- compliers | Citizen resistance Community culture Punishment instead of reward | Communities can classify most violations as a Class B Misdemeanor. In Utah, this allows for a maximum fine of \$1,000 and up to six months in prison. Some municipalities in the country even classify severe violations as felonies ⁶ . Communities must bring suit for the violator to be found guilty of criminal offense. We suggest that taking violators to court is a last resort when public health and safety are clearly endangered and the violator has received multiple warnings without bringing their property into compliance. |

CAPACITY

Various groups are able to enforce code, including contractors, volunteers, and employees. The following is a list of people and groups that can be considered as small towns set up their compliance and enforcement plan structure. Generally, the community's executive authority (i.e., mayor) is expected to ensure code enforcement occurs.

Relationships developed between code enforcers and community members are consistently recognized as the most important components of good enforcement. When enforcers know and can work with community members to come into compliance, enforcement helps solve rather than create—problems for community members.

WHO CAN HELP?

 Enforcement Resource Sharing
 Several communities in northern Utah currently share the cost of enforcement by having multiple jurisdictions pay a contractor (in many cases the local sheriff's office) to cite violations in their jurisdictions. Other communities also pay local law enforcement to issue fines and clean up violations.

 Community Institutions (Churches, Clubs, etc.)
 Local scout troops, churches, and service organizations can be great resources for helping residents with trash, cars, or other blight problems. These local institutions can increase the number of residents aware of clean-up days and code requirements. They also reduce barriers for citizens resistant to government interference with their property. Public works and volunteer vehicles can be used in partnership with these institutions to maximize participation.

 Citizens
 Citizen complaints can be the primary information source for violations in the community. Online submission forms tied into community websites provide a low-cost means of collecting citizen complainants addresses, contact information, dates, and concise descriptions of violations before the complaint is submitted. These systems require a community to make someone available to follow up on complainants.

 Planning & Zoning Commission
 Planning and zoning commission members should know the code and the general plan; this knowledge makes them ideal candidates for an enforcement team. This can be done with compensation for commission members or pro bono. Flexibility should be provided to these groups to institute legal, yet creative, enforcement programs.

 Neighboring
 For communities with no capacity to pay, trading services with painbhoring communities or produce costs and ensure enforcement

ities neighboring communities can reduce costs and ensure enforcement. For example, two neighboring cities would provide code violation warnings and fine violators for each other. This allows a third party to cite violations which may reduce interpersonal tensions in small towns.

Private Company on Retainer

on Similar to enforcement sharing, communities can put a private
 company on retainer for their code enforcement. This provides armslength, unbiased enforcement and helps ensure consistency across the community.

rs Communities can educate specific residents on the code and train ther on the community's enforcement procedures. The community then allows these citizen inspectors to patrol their neighborhood, document violations, and begin the code enforcement process. Belligerent or repeatedly incompliant cases should be referred to city officials⁷

NOTE: CODE ENFORCER'S CHECKLIST

- 1. Know the code
- 2. Understand your authority to enforce
- Understand the reasons behind the code you enforce
- Work with residents to help them comply
- Enforce code equitably to all properties and property owners in the community

FREQUENCY WHEN SHOULD I ENFORCE? HOW OFTEN SHOULD I PATROL?

Enforcement should be conducted when there are violations (whether identified by citizens or community officials). Citizens don't always know what constitutes a violation and may resist reporting their neighbors' violations. Community officials also rarely know everything occurring in their community. For these reasons, community inspections help inform enforcement needs.

Consistency is important for enforcement over time. Available personnel, funding, and the severity of code enforcement problems within a community are key considerations for developing an enforcement timeline. Based on these considerations, communities can create a compliance plan that incorporates specific strategies, who will carry out these strategies, and how frequently enforcement will occur. Ensure your community has the manpower and budget to enact this timeline. Several communities along the Wasatch Front elect to only respond to resident complaints and blatant violations recognized by city officials; others have full-time enforcement specialists who patrol the city as their full-time job. In most small towns, a patrol that occurs once a year or every six months is sufficient to recognize new violations and begin enforcement procedures. The violations cited in these patrols require immediate followup to support and enforce compliance.

A community clean-up day is a great precursor to code violation patrols. Having the patrol after a clean-up day ensures residents have been provided a reminder and, in some cases, assistance to come into compliance. When a property is non-compliant after a well-executed clean-up day, additional efforts will be necessary to ensure compliance.

BUT WHAT IF . . . WE HAVEN'T BEEN ENFORCING OUR CODE?

Communities that have not consistently enforced their code have placed themselves in a difficult situation; continuing to not enforce code will only make things worse. Communities who find themselves in this situation should consider the following steps before diving into enforcement:

1. Conduct a general plan review, ensuring the plan accurately represents the residents' long-term desires for your community. If it does not, a general plan revision is needed first.

2. Review the current code and evaluate how well it implements the vision laid out in the general plan. If the code does not support the plan, consider revising or hiring consultants to re-write the code to align with the general plan.

NOTE: PARTNER REACH-OUT

Working with local institutions, like churches, clubs, and political groups to get the word out about enforcement measures, "clean-up days," and other information will improve the turn-out and results of community efforts to bring residences into compliance. If the plan is acceptable and the code supports the plan, communities should consider the following:

- 1. Develop a code enforcement plan.
- Present the enforcement plan in a public meeting.
- State that the community intends to enforce consistently moving forward.
- 4. Accurately enforce the code in perpetuity.

These steps cannot completely protect communities. However, they do provide the basis for justifying a fresh start in enforcement and will ensure community members are aware of, and have the opportunity to comment on, expectations established in the code. It is not possible to enforce perfectly. Rather than waiting to have the perfect process or perfect code, leaders should ensure the code is viable and start enforcing at a pace that is feasible for the community in the long-run.



SAMPLE ENFORCEMENT PROGRAM



*Every five years. This is simply a generic recommendation. Communities should consider their rate of change in determining how often to review.

This sample enforcement plan is intentionally simple. It focuses on two community clean-up days, where clean-up occurs community wide with assistance from public works. Most enforcement programs in very small towns should stay simple, and ensure they do not overextend the town's capacity to enforce. In this example, any empowered group could implement the enforcement program. This model would be carried out as follows:

Plan & Code Audit. Every five years, the planning commission will audit the general plan and code, ensuring the plan still matches community goals and that the code serves to accomplish the goals in the general plan.

Public Meeting. Each March, the Mayor and City Council will host a public meeting in which they will briefly explain the code's requirements, the reasons for the code, and a brief explanation of how code is enforced within the city. The upcoming community clean-up will be advertised. Treats should be provided. **Compliance Training.** Following the public meeting, the code enforcers (consisting of one council member, public works employee, and the city recorder) will be retrained on city code and proper code enforcement procedures.

Community Clean-Up Day. A semiannual Community Clean-Up Day will occur in the first two weeks of April and November. One free pass to the local landfill will be provided to each residence (large trailers could be used when landfills are not available).

Community Compliance Patrol. During the two weeks following the clean-up day, city officials will patrol the community, providing notice to property owners of violations.[†]

Complaint Response. During the rest of the year, the city will respond to citizen complaints via the city website's code violation referral page.

[†] All notice of violations will follow the city's enforcement model, with the maximum penalty being a class b misdemeanor for gross neglect and an unwillingness to work with city officials to remedy violations (see next page for example).

SAMPLE: PLAN & CODE AUDIT

Utah's Community **Development Office** uses this code and zoning audit to evaluate a community's codes, plans, and zoning maps. This audit considers many of the legal requirements (as per state laws) for municipalities' general plans, zoning, and code. This audit also assesses a community's plan and code consistency. Each area reviewed for compliance. Additional criteria that address issues specific to individual municipalities are recommended as add-ins to the audit. Planning commissions or other city officials should be capable of completing this audit.

As community

leaders complete this assessment, they often ask what are the next steps. The findings of this audit need to be shared with the elected officials who have the authority to create or authorize changes to the plan, map, and code. If things are in serious disarray, the **Community Development** Office recommends taking a hard look at updating or re-writing the community's general plan

and orienting the code to the goals set forth in the general plan. This will ensure the community's code and zoning have a bearing towards the community's long-term ambitions.

NOTE: WHAT'S A GOOD PLAN?

Knowing the difference between a good or bad plan element can be difficult. Having multiple people analyze the plan can help identify areas of common concern. The planning commission should evaluate community plans with this document.

MUNICIPAL PLAN & ZONING ORDINANCE CHECKLIST

✓ FULFILLED **?** QUESTIONABLE **X** NOT FULFILLED STATUS **ITEM** REQUIRED BY STATE CODE... (STATE CODE REFERENCE) NOTES / CODE Do we have a General Plan? 10-9a-401(1) Have you updated General Plan in the past 10 years? Best practice Do we have an official map? 10-9a-401(2)(j), -407, 10-9a-103(34) Do we have a zoning ordinance? 10-9a-502 Do we have a zoning map? 10-9a-502, 505 Are our plans and ordinances publicly available? PLAN ELEMENTS DOES IT COVER... Land use 10-9a-403(2)(i) Affordable housing 10-9a-408(2(iii) (*Towns, defined in 10-2-301 as municipalities with a population less than 1,000, are exempt) Transportation 10-9a-403(2)(ii) Implementation strategy 10-9a-403(3)(e), best practice Capital improvements plan aligned to general plan 10-9a-406 ORDINANCE REQUIREMENTS Creates a Planning Commission 10-9a-301(1)(a) Establishes an appeal authority 10-9a-701(1) Proper allocation of authority Nonconforming uses match State code 10-9a-511 Residential facilities for elderly 10-9a-516, 57-21-5 Residential facilities for disabled 10-9a-516, 57-21-5 Allows for compliant manufactured homes 10-9a-514 Addresses cell towers can't prohibit Reestablish nonconforming structure after calamity 10-9a-511(3)(a) Allows for charter schools in all zones 10-9a-305 (7)(a) Allows for adult-oriented businesses must permit somewhere Conditional use ordinance has objective standards/approved when conditions met 10-9a-507 **PROCEDURES FOR...** Planning Commission 10-9a-301(1)(b) Land use authority 10-9a-306, 10-9a-103(26) Appeal authority 10-9a-701

- Understandable notice provisions
- Meetings posted to the Utah Public Notice website? Multiple

COMMUNITY VISION

Overall, how well are county goals and vision reflected in the code?

* This review does not constitute an official stance nor comprehensive review by the State of Utah of any county's general plan, zoning map, or zoning ordinance. It is intended for discussion purposes only for local leadership.

SAMPLE ENFORCEMENT PROCESS

There are two primary methods of code enforcement: offering incentives or issuing penalties. This sample methodology incorporates an incentive/assistance program into a more traditional, penalty based system. Incorporated communities can adopt any process they deem valuable, provided it does not violate the constitutional rights of residents.

THIS MODEL*

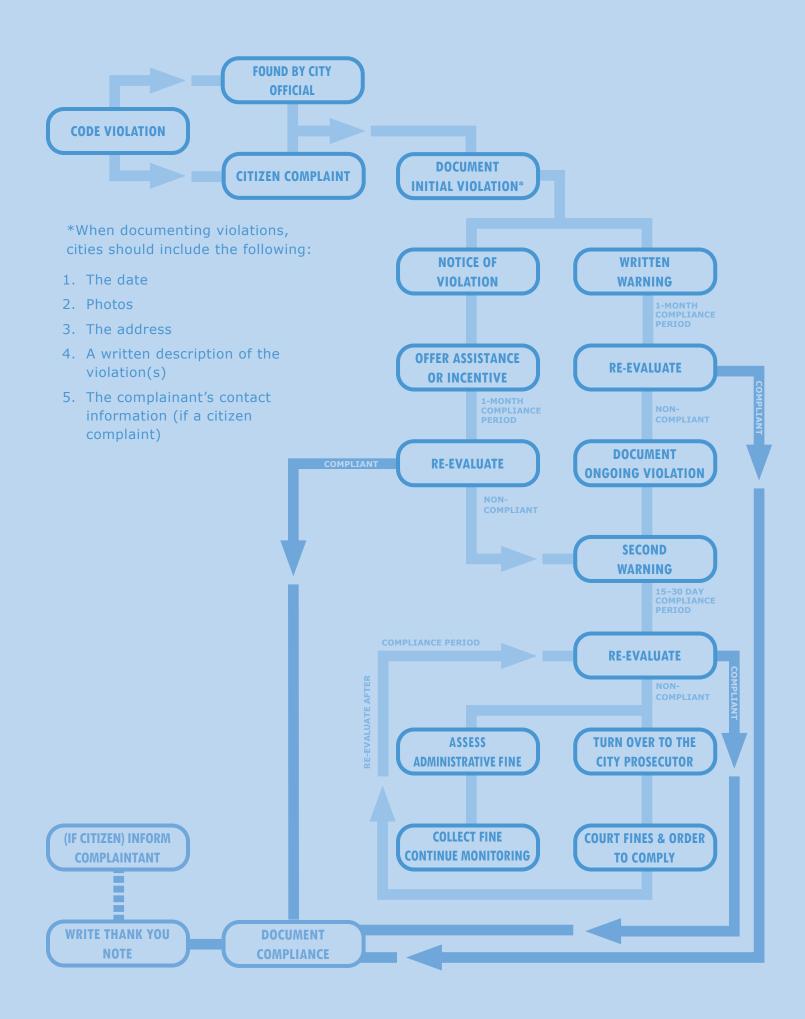
In this model, a violation is observed and documented. Based on the nature of the violation, the resident is informed of their noncompliance with a written warning or notice of violation (with reference to the violated code). The city can then offer assistance or an incentive to come into compliance, or provide a warning of pending legal action and potential fines. If the resident does not take advantage of the assistance or incentive, or respond to an initial warning after a one-month compliance period, the ongoing violation will be documented. Then, a second warning will be issued, illustrating the city's intent to fine or seek a court-ordered injunction to comply. After a two-week to one-month additional compliance period, the property will be reevaluated, and an administrative fine will be assessed or the case will be turned over to the city (or county) prosecutor.

When compliant, the city will document compliance, issue a notice to the resident who made the initial complaint, and write a thank you note to the resident who brought their property into compliance.

*See Works Cited reference 8 for the sample enforcement procedure that informed this model.

NOTE: HEALTH VIOLATIONS

Resources like the local health department can help with violations related to public health. The Utah Ordinance Compliance Association also provides community training on the threats of code violations and the importance of complying. Local leaders should familiarize themselves with these and other resources.



Code enforcement is how a community realizes its vision. Enforcement does not need to be complicated; it does need to be consistent. "

Adal Nate



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For more resources, visit <u>ruralplanning.org/toolbox</u>

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