

Webinars for Cities

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LEAGUE OF
**CALIFORNIA
CITIES**

Strengthening California Cities
through Advocacy and Education

Essential Hour: Code Enforcement 101

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Housekeeping Notes

- This session is being recorded. The recording will stop at the time of Q&A.
- Attendees are muted.
- Question and Answer is available throughout the webinar.
- To write in a question, select the Q&A button on your tool bar.
- Following the presentation, the recording and slides will be shared with registrants.



SAVE THE DATE

CITY ATTORNEYS SPRING CONFERENCE

BURLINGAME, CA

May 7-9, 2025

Attorney Development & Succession Committee

- **Develop and enhance**

- the legal, technical, practical, & interpersonal skills necessary to succeed as a city attorney or senior member of a City Attorney's Office

- **Provide opportunities**

- for members to build & expand their knowledge of both substantive & essential skills integral to municipal law practice

- **Engage and connect**

- experienced municipal practitioners with newer attorneys to encourage mentoring, effective knowledge transfer, & succession planning

- **Encourage**

- municipal law practice in our law schools through panel discussions, internships, and mentorship

Attorney Development & Succession Committee

- **Subcommittees**

- Substantive Law
- Essential Skills
- Law School Outreach

- **Upcoming Events**

- 02/21/25 Municipal Law Institute at Berkeley Law

Code Enforcement 101

- It is helpful to think of Code Enforcement as a “toolbox”
- The primary goal: substantial compliance
- Three ways to obtain compliance:
 - 1) Administrative
 - 2) Civil
 - 3) Criminal



Collecting Evidence

- There are primarily three sources of evidence of a violation:
 - 1) Complaints
 - 2) Observations by city staff
 - 1) Including inspections, photos taken by staff
 - 3) Public records and other documents
 - 1) Including city records
- Important to start out on the right foot
 - Accurately ID all violations
 - Accurately ID the responsible party, etc.



4th Amendment

- **4th Amendment**

- Protects an individual's reasonable expectation to privacy
- Protects against unreasonable searches and/or seizures conducted on persons, houses, papers, and effects without a warrant
- Requires a warrant for any government search or seizure, unless there is an exception

4th Amendment - Exceptions

- Anywhere there is no reasonable expectation to privacy (e.g. businesses open to the public / highly regulated businesses, vacant/abandoned buildings)
- Consent
- Plain view (e.g. streets, sidewalks, public alleys, open fields)
- Exigent circumstances (emergency)



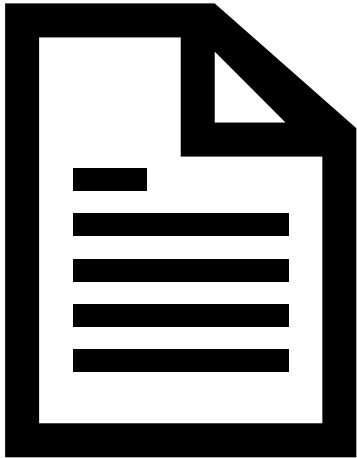
Administrative Approach

- Warnings/Notices
- Office conferences
- Administrative citations
- Administrative hearings
- Abatements
- Permit/license revocations
- Miscellaneous Tools

Advantages of Administrative Approach

- More informal than criminal and civil alternatives
- Generally, the formal rules of evidence do not apply
- Can be handled entirely by staff
- Initial enforcement tool

Warning/Courtesy Notice/Notice of Violation



First step in enforcement process

Puts party on notice of a violation

Generally, not appealable
(unless issued under a code that
says otherwise)

Office Conferences

- Informal discussion between city and property/business owner
- Goal: establish agreement to achieve compliance and set compliance dates
- Can be useful investigatory tool as well
- Can be attended by city prosecutor/code attorney



Administrative Citations

- Non-criminal fine to coerce party to cure violations
- Can rely on hearsay evidence (e.g., complaints, Internet)
- Must give a “reasonable” time to cure certain kinds of violations before imposing an administrative fine (Gov. Code § 53069.4)
- Appealable under the process in municipal code
- Decision appealable to the Superior Court (Gov. Code § 53069.4 and CCP § 1094.6)

Administrative Hearings

- City's "In-house" court system
 - Provides due process
 - Fair hearing before an impartial decision maker
- Governed by city's municipal code
 - Hearing officer: Judge
 - City staff: Prosecutor
 - Informal in nature
- Caution: Due Process Issues

Abatements



Nuisance Abatement under a warrant



Summary Abatement



Consent Abatement

Use appropriate consent form



Cost Recovery

Follow muni code

Abatement Warrant



Procedure is often provided in city's municipal code

Issuance of a notice describing the code violations

May provide for right to a hearing to challenge the notice

Obtain abatement warrant from court



Considerations: types of violations, cost recovery goals, comparison against other tools

Abatement Warrant Drafting Requirements

- Application – ex parte process (CCP § 1822.50)
- Affidavit/Declaration
 - Describes the violations and the abatement work which will be performed
 - Describes compliance with the agency's administrative process
 - Evidence – notices, photos
- Memorandum of Points and Authorities
- Proposed Warrant/Warrant Return

Inspection Warrant

- CCP § 1822.50 et seq.
- Tool for gathering evidence in support of a code enforcement action
- Same requirements as an abatement warrant
- May need to precede abatement
- First confirm violations with IW, then abate with an AW
- Can draft as single request/combined warrant

Summary Abatement

- Conditions are so severe that immediate action is required without time to seek a court or administrative order
- Executed when there is an imminent risk of harm
- 4th Amendment exception (Exigent Circumstances)
- Code may require post-abatement hearing
- Municipal code may provide a roadmap
- Recommend obtaining abatement warrant if possible

Permit Revocation

- What can the city revoke?
 - Business license
 - Conditional Use Permit (“CUP”) or other zoning approval
 - Local regulatory permits (e.g., cannabis, massage, STR, etc.)
 - Certificate of Occupancy
- Must provide licensee with Due Process - Notice & Hearing

Other Miscellaneous Enforcement Tools

- “Red-tagging” under CBC or UCADB
- Stop work orders under CBC 115
- Disconnection of utilities under CBC 112
- Recordation of notices against property
 - Caution: due process concerns
- Leverage other agencies (State, local)

Civil Enforcement



Nuisance *Per se*



Public Nuisance



Red Light Abatement



Drug abatement Act



Unfair Competition Law



Health and Safety Code Receivership Petition

Civil Actions

- Lower evidence standard than criminal court
- Lack of a right to a jury trial in most nuisance abatement cases
- Can obtain injunction orders before trial
- Strong legal authority to recover attorneys' fees and costs



Civil Action Process

- Already started with your administrative enforcement
- Demand letter
- Civil Complaint
 - Causes of action
 - Nuisance Per Se
 - Public Nuisance (Civil Code sec. 3479 *et seq.*)
 - Drug Abatement Act (Health and Safety Code sec. 11570 *et seq.*)
 - Red Light Abatement Act (Penal Code sec. 11225 *et seq.*)
 - State Housing Laws (Health and Safety Code sec. 17920.3)
 - Unfair Competition Law?

Nuisance Abatement Complaint

- Injunctive relief
 - TRO
 - Preliminary Injunction
 - Permanent Injunction
- Enforcing compliance with injunction
 - Contempt
 - Receivership (Code of Civ. Procedure sec. 564(b)(3))

Civil Action – Proving your case

- Need adequate evidence
 - Code Enforcement Officer inspections, reports, and photos
 - Building/Planning Letters
 - Police reports
 - Fire Department reports
 - Witnesses
 - Reputation in the community may be admissible
 - Citizen logs

Civil Action: Nuisance *per se*

- Nuisance *Per Se* – an action/condition that is prohibited by an existing law.
 - When a legislative body with appropriate jurisdiction, in the exercise of the police power, expressly declares a particular object or substance, activity or circumstance, to be a nuisance.
 - (*City of Claremont v. Kruse*, 177 Cal.App.4th 1153, 1163-64)
- Proof of a Nuisance *per se*
 - A valid ordinance/statute defining some act or conditions as a nuisance
 - Proof of the violation of the ordinance/statute

Civil Action: Civil Code Public Nuisance

Civil Code 3479 – Nuisance

- Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

Public Nuisance v. Private Nuisance

- A public nuisance is one which affects at the same time an entire community or neighborhood(CCC sec. 3480)

Civil Action: Nuisance actions

- Drug Abatement Act (Cal. Health and Safety Code § § 11570 et seq.)
 - Building or place used for selling, serving, storing, keeping, distributing, giving away, or manufacturing a controlled substance.
- Red Light Abatement Act (Cal. Penal Code § § 11225 et seq.)
 - Building or place used for illegal gambling, lewdness, assignation, or prostitution.
- Remedies
 - Closing of building, \$25,000 civil penalty (each Defendant).
 - Owner of property can be held liable for tenant's actions.

Unfair Competition Law

- Business and professions code sec. 17200
 - Any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.
- Prosecuted by Attorney General or District Attorney
 - Generally, City Attorney and County Counsel may prosecute **only** upon authorization from District Attorney
 - In some cases, may be authorized by Bus. Prof. Code 17204

Health and Safety Code Receivership

- Appointment of receiver (HSC sec. 17980.7)
 - Building that is “dangerous” to the occupants or public.
 - (1) structural hazards, (2) health hazards, and (3) fire hazards
- Through a receivership, a judge appoints a responsible person (a receiver) to repair substandard building conditions.
 - Receiver develops plan for abatement (e.g., Rehabilitation, Demolition, Sale of property)
- Repairs are financed with the property's value.

Receivership process

- Collect evidence (See: administrative tools)
- Obtain litigation guaranty/Preliminary title report
- Issue Notice and Order under HSC section 17980.6
- Once Notice and Order compliance deadline expires (typically 30 days), serve 3-day notice on interested parties (HSC 17980.7(c))
- File petition for appointment of a receiver with court; File noticed motion / ex parte application to appoint receiver
- Hearing to appoint receiver
- Cost recovery/Sale of property
- ***vet receivership feasibility with proposed receiver
- ***obtain city council approval

Criminal Enforcement

- Goals:
 - Get compliance
 - Punishment
- Violator takes it more seriously
- Be prepared for the judge and defense attorney to give you a hard time
 - Counter: Talk about what the reporting party is going through

Criminal Enforcement

Complaint to police officers or code enforcement officers

Investigation

Report

Prosecutor reviews and files

- Probable cause to allege a violation
- Sufficient evidence a crime was committed
- Likelihood a jury would convict
- Diversion
- Compliance letters/office conference/mediation

Criminal

Municipal Code violations

- Misdemeanor - 6 months county jail and/or \$1000 plus penalty assessment; can be placed on summary probation
- Infraction - fine

State Misdemeanors

- Up to 1 year of county jail and/or \$1000 plus penalty assessment
- General law cities need district attorney authorization to prosecute
- Charter cities may designate city attorney or deputy as the City Prosecutor

Wobblets

- Municipal Code can designate a violation as either an infraction, a misdemeanor or both
- Sliding scale – certain number of violations within a year turns an infraction into a misdemeanor



Who to name as the defendant

- Property owner
- Co-owners
- Vehicle owner
- Tenant
- Management company
- Trustee to deed
- Business owner
- Employee

Criminal Process

Criminal Complaint

- Declaration in support of arrest warrant

Misdemeanor Citation – promise to appear

Complaint for Arrest Warrant

Summons for Corporate Defendants or other business entities

- Must serve the agent or officer of the entity
 - California State Secretary corporation search web site
- Penal Code 1390 to 1397

Criminal Enforcement

- Each and every day that a violation occurs or exists constitutes a new and separate violation
- One (1) year statute of limitations
- Right to trial within 30 or 45 days of court date

Criminal Procedure



Arraignment – advised of charges and enter a plea

Guilty, not guilty, no contest
Demurrers – motion to dismiss because complaint is deficient
Bail or own recognizance (OR)



Pretrial hearings

Discovery
Negotiations
Motions



Trial

Court or Jury
Sentencing

Beyond a Reasonable Doubt

CALCRIM 220

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt

- Clear and convincing evidence
 - take away your children
- Preponderance
 - Civil cases, more likely than not
- Probable cause
 - Arrest
- Reasonable suspicion
 - Detention or traffic stop
- Guilty beyond a reasonable doubt
- Guilty highly likely
- Guilt likely
- Probably guilty
- Possibly guilty
- Suspected
- Perhaps
- May not be
- Possibly not
- Unlikely
- Probably not
- Less than likely
- Highly unlikely
- Proven not guilty
- Absolute Certainty
- All possible doubt
- Some possible doubt
- Imaginary doubt
- Reasonable doubt

Prosecution

Diversion

- Informal or formal
- AB 3234 – Judicial Diversion

Plea or conviction

- Infraction plus fine
- Summary probation, community labor, community service
- Jail or fine

Failure to comply can lead to additional punishment

- Violation of probation
- Violation of a court order
- Termination or amendment or diversion

Criminal

- Get criminal judge to sign an abatement warrant
- If found mentally incompetent, defendant gets treatment
- Can file criminal prosecution in conjunction with administrative process and/or civil enforcement

THANK YOU

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