

Hercules Code Compliance Initiative

As part of reductions in services in prior years, the City of Hercules has no staff dedicated to code compliance. Code compliance, or enforcement, efforts have been limited to responses to complaints or to only the most severe health and welfare types of matters which come to staff's attention. The City has recently made some forays back into the code compliance arena with initial efforts centered on using volunteers through the Police Department to try to gain voluntary compliance through the identification of code issues and contact with offending property owners.

In addition, Alternate Decision Package 17-5 – Reinstatement of Minimal Code Enforcement Program, in the amount of \$50,000, was included in the FY 2016/17 budget by the City Council. The use of this funding for contract code compliance services has not yet been implemented as staff is awaiting the Administrative Citation process to become operational. In anticipation, Staff has issued a Request for Proposals from firms which may be able to provide these services based on our planned approach to code compliance outlined in the next section.

City Council's consideration and approval of an Administrative Citation program was key to ensuring a more effective approach to code compliance. The City Council approved an Administrative Citation program with the second reading and adoption of Ordinance No. 499 on November 9, 2016, which became effective 30 days later on December 8, 2016. Ordinance No. 499 also contained amendments to streamline other code enforcement procedures. City staff is now working to implement the Administrative Citation program by securing a contract citation processor, procuring the citation forms, and establishing the appropriate hearing process with a third-party hearing officer, which may be sourced from the citation processor.

Planned Approach to Code Compliance

Tier One: Pre-Code Compliance

Most code compliance matters can be resolved with voluntary compliance following outreach and contact with the offending property owner or party. High levels of resolution usually result from these efforts. The City would like to expand its use of volunteers for this pre-code compliance tier. These volunteers would identify and address the most common code issues, would contact the property owners via mail requesting compliance in order to ensure an attractive and safe community.

The most common code compliance issues are:

- Excessive Garage Sales
- Parked vehicles on lawn areas
- Commercial and oversized vehicles parked in residential neighborhoods
- Excessive accumulations of trash and debris in visible areas
- Auto repair and unapproved business activities in the neighborhoods
- Lack of property maintenance or landscaping
- Weeds or overgrown vegetation, which are both health and fire hazards
- Unpermitted storage containers, portable toilets, and dumpsters
- Unauthorized posting of signs on street signs, utility poles, etc
- Trash cans improperly stored.

The letters sent would use plain language and would not cite punitive code provisions. A log would be kept of the contacts made, the follow-up and the results. These efforts would not be entered into the City's formal code enforcement system unless they defaulted to a Tier Two or Tier Three case.

Staff is currently working to develop a training program for Code Compliance Volunteers. In addition, the other tools needed to give life to this component will be developed including form letters and a tracking system/log. We do not anticipate using the efforts of our Code Compliance volunteers as the basis for initiating actions under Tiers Two and Three; and would in effect, restart the process if having to default to these two tiers.

Tier Two: Administrative Citation Program

The Administrative Citation program is a supplement to traditional abatement procedures. Administrative Citation Programs have proven effective in gaining compliance from code violators, while using less city staff resources. An Administrative Citation Program allows for staff or a contract code compliance officer to issue citations for minor code violations that, if not paid, can become special assessment liens against the property. As with parking tickets, an administrative citation can be appealed before a hearing officer. Multiple citations can be issued over time when a violation has not been corrected. The Hercules Ordinance provides for a first Administrative Citation amount of \$100, with the second offense being \$250, and a third or subsequent offense being \$500.

An unpaid citation is lienied against the property and if not paid within the time provided, the county can add the penalty to the tax roll as a special assessment, and the penalty will be collected by the county along with delinquent taxes. In the alternative, especially in the case where the offending party does not own the blighted property or the violation is not tied to a property blight, the city could seek recovery of unpaid citation amounts in small claims court.

There is no requirement for setting a hearing; a hearing on the issuance of a citation is provided only at the request of the citation recipient. Furthermore, unlike the current abatement processes provided in the Hercules Municipal Code, there is no appeal to council for administrative citations. An appeal of an administrative hearing officer's determination would have to go to court, and not the City Council.

This streamlined alternative process to address blighted conditions without requiring a formal public hearing and/or appeal before the Council is expected to be more cost effective and less burdensome on staff, and will result in a greater level of compliance. Also, administrative citation programs fully comply with due process requirements by allowing a hearing upon request, giving the recipient the opportunity to be heard before a neutral examiner.

Tier Three: Abatement and Court Proceedings Appropriate for More Serious Cases

Although recently streamlined, this is a more time consuming and costly approach to code compliance than administrative citations, in many cases requiring city attorney involvement, and should be reserved for the most egregious cases, or where we have been unsuccessful in securing compliance through the first two tiers. Hercules code enforcement procedures for abating blighted conditions were determined to be overly burdensome and outdated, and an impediment to resolving code violations. Staff and the city attorney made recommendations to the Council in 2016 to amend certain of these outdated provisions,

which were adopted with passage of Ordinance No. 499 in 2016. To summarize, our current municipal code options after passage of Ordinance No. 499 include:

Prior Option 1: Abatement by Enforcement Officer. (HMC 4-10.06, amended in 2016)

Prior to its amendment in 2016, this provision required that the responding party be scheduled to appear before the City Council at a public hearing to determine whether the property should be declared a public nuisance subject to abatement. There were multiple procedural steps involved including:

- Proper service;
- noticing of the public hearing;
- a resolution confirming a public nuisance and ordering abatement;
- service of the resolution ordering abatement;
- report to Council regarding cost of abatement;
- hearing by council on the report of the cost of abatement;
- passage of a resolution confirming the cost of abatement;
- placement of special assessment liens on the subject property to recover costs of abatement.

This was a procedurally cumbersome process that required considerable time and expense for both the City and the responding party.

In 2016, the Council approved changes allowing for a more streamlined abatement procedure that eliminates the appeal to Council, as well as the onerous procedural, noticing, and legislative steps previously required. However, adequate due process is of course still required; the new procedure provides for sufficient notice and reasonable time allowed to abate the nuisance. Under the revised provisions, there is no appeal to Council or to the City Manager. The responsible party does have the right to take the city to court via a writ of mandate, pursuant to state law. However, in a writ proceeding the petitioner would have the burden to prove that the hearing officer committed an error or abused his discretion, in order to prevail. Unpaid abatement costs are recoverable via a special assessment lien.

Current Option 2: An injunction in court. (HMC 4-10.14(b), adopted in 1987, amended in 2000 and 2016)

This option bypasses the administrative process to seek a court order. This is a costly approach that should be reserved for complex cases requiring immediate resolution, but that do not meet the “imminent hazard” threshold discussed in Option 3 below.

Current Option 3: An emergency abatement based on imminent hazard. (HMC 4-10.14(c), adopted in 1987, amended in 2005 and 2016)

This process is applicable only when there is an imminent hazard to public health and welfare. It would allow entry onto private property without a warrant to abate an imminent hazard even without notice to the property owner, such as when there is a gas or sewer leak. This option would only be appropriate in cases of extreme emergency.

Fire District Role

The City involves the Fire District as appropriate in code compliance efforts. The Fire District takes the lead in the inspection of commercial property from a health and safety perspective. In addition, the Fire

District is responsible for weed abatement on private property with the City taking the lead on weed abatement on public property.

Contract Code Compliance Services Update

As noted earlier in this report, an RFP for these services is out and responses are due October 12, 2017. It is anticipated that the Contract Code Compliance firm would support our tiered approach as follows:

- May be utilized to training and support of volunteers;
- Will be able to issue Administrative Citations;
- Will be used for more egregious code violations and for non-compliance after Tiers One and Tier Two efforts including seeking inspection warrants and managing the traditional abatement process up to and including working with the City Attorney's Office to initiate appropriate court proceedings.

The proposed scope of services will allow for a level of flexibility for the contract service provider to work independently and to allow serve as an extension of staff.