



## City Council Agenda Item

**City Council Meeting Date:** July 2, 2019

**TO:** Honorable Mayor and City Council Members

**FROM:** Jeff Malawy, City Attorney  
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**SUBJECT:** City Council Consideration of and Possible Action on Current Complaint-Based Code Enforcement Policy

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### **Recommendation:**

Staff recommends the City Council:

- 1) Consider the material presented in the staff report;
- 2) Direct staff to continue with the current complaint-based Code Enforcement Policy; or
- 3) Provide alternate direction.

### **Background:**

At the March 5, 2019, City Council meeting, the City Council requested staff bring back an agenda item to review the current complaint-based Code Enforcement Policy.

Through this staff report, staff will summarize the current code enforcement procedure. The City Council may direct staff regarding any desired changes to the procedure.

### **Discussion:**

#### **Summary of Current Complaint-Based Code Enforcement Policy:**

The Lompoc Municipal Code (LMC) is enforced by many departments and divisions within the City. Police, Fire, Solid Waste, Planning, Utilities, and Parks each have separate methods of taking information from citizens to enforce the LMC sections within their jurisdiction. Complaints concerning public nuisances and violations of the Building Code are directed to the Planning Division and are the subject of this report.

Per past City Council direction, last confirmed by the City Council on August 1, 2017, citizens wishing to submit a code enforcement complaint must sign a complaint form with

the complaining party's contact information, in case further information is needed by the City for its investigation.

Staff also accepts complaints without a complaint form in emergency circumstances, when the violation concerns an immediate threat to the public health, safety, or welfare.

Upon receiving a citizen's signed complaint, the Senior Code Enforcement Officer investigates to confirm whether a violation of the LMC is occurring.

Upon confirming a violation is occurring, the City's Code Enforcement will either post a Notice of Violation (violations involving Health and Safety issues) or send a letter identifying the violation. The Notice of Violation or letter notifies the responsible party of the alleged violation and gives a deadline for achieving compliance. The Notice of Violation provides notice of an appeal process. Following the expiration of the deadline, if the City has not been contacted by the responsible party, then the Code Enforcement Officer may perform additional site visits and send additional letters, or may turn over the case to the City Attorney's Office for further action. Depending on the severity and type of violation, either a civil complaint or criminal complaint may be filed to gain compliance with the LMC. However, a majority of violations are resolved voluntarily.

Until compliance is achieved, each case is an open investigation, and while portions of the file may be given to the property owner, conclusions and notes from staff remain confidential until the conclusion of the case. Most violations are potential infractions or misdemeanor charges; therefore, staff's work product remains confidential, just as an open investigation with the Police Department would remain confidential.

#### Identification of the Complaining Party

As stated above, the current policy is to require a signed complaint form with the complaining party's contact information. Although a signed complaint form is required, City staff does not confirm the identity of the complainant upon accepting the complaint. Therefore, a citizen could, in theory, submit a complaint under a false name, effectively an anonymous complaint, and the complaint would still be investigated.

Some complaints result from ill will between neighbors. In such cases, the alleged code violator may ask the City to provide the name of the complainant. To prevent retaliation against complainants and to avoid making the public fearful of reporting potential violations, most agencies, including Lompoc, have a policy to keep the names of complainants confidential, as permitted by the Public Records Act. The City does, however, provide a copy of the complaint with the complainant's name and contact information redacted.

In *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, the Court of Appeal upheld San Jose's practice of not disclosing identifying information of citizens who made complaints about airport noise. The court held the public interest in protecting the privacy

of complainants clearly outweighs the public interest in disclosure of their names, addresses and telephone numbers:

“[O]n the basis of human experience, ... it is likely that public disclosure of ... complainants’ names, addresses and telephone numbers will have a chilling effect on the number of complaints made. Public disclosure will subject the complainants to the loss of confidentiality of their complaints, and also to direct contact by the media and by persons who wish to discourage complaints. It also may be presumed that a reduction in ... complaints will impede the City in its ability to comply with its [code compliance] duties.” (*Id. at 1024.*)

However, the City is not legally required to keep confidential the names and contact information of complaining parties.

Where code enforcement cases cannot be resolved informally, some will result in criminal or civil enforcement in court. In such cases the defendant has the right to all the evidence in the prosecution’s possession regarding the case. Thus, the complaint and the identity of the complaining party will be produced if the case gets to court.

**Fiscal Impact:**

If the City Council directs staff to continue the current confidentiality of the complaint-based policy, then there should be no additional fiscal impact on existing staff time. If the Council directs staff to disclose the names of complainants, then the code enforcement costs may decrease as there may be less complaints to investigate. A decrease in code enforcement costs, may result in increases in other budgets for the Fire Department and Police Department who may have increased calls concerning accidents and other unsafe conditions.

**Conclusion:**

The current policy, based on City Council direction, is to require signed complaint forms. However, effectively anonymous complaints can be accepted, as staff does not confirm the identity of the complainant. Complaints are investigated to confirm whether violations exist. Staff currently does not disclose the name of the complaining party, because the City does not want to discourage complaints and does want to avoid instances of retaliation among neighbors.

Respectfully submitted,

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Jeff Malawy, City Attorney