



City Council Agenda Item

City Council Meeting Date: August 20, 2019

TO: Honorable Mayor and City Council Members

FROM: Jeff Malawy, City Attorney
jmalawy@awattorneys.com

SUBJECT: City Council Consideration of Revisions to Policy Regarding Public Disclosure of the Names of Persons Making Code Enforcement Complaints

Recommendation:

Staff recommends the City Council:

- 1) Consider the material presented in this staff report;
- 2) Provide direction regarding a two-tiered system for the disclosure of the names of code violation complainants; or
- 3) Provide alternate direction.

Background:

On July 2, 2019, staff provided the City Council with an overview of the City's current complaint-based code enforcement policy. Except in emergency circumstances, someone wishing to make a code enforcement complaint to the City must submit a complaint form including the complainant's name and contact information. The City's current policy is to keep the names and contact information of all complainants confidential, as permitted by the Public Records Act, to prevent retaliation against complainants and to avoid making the public fearful of reporting code violations. However, the name of the complaining party will be disclosed if the case results in a criminal court action, as required by law.

During the discussion of this item on July 2, 2019, the City Council voted to create a two-tiered system in which the names of complainants making complaints about "lower-level" code violations would be publicly disclosed upon request, but names of complainants making complaints about serious or severe violations would not be disclosed. The City Council further directed staff to bring back suggested language describing each category of violations.

Discussion:

Based on the discussion at the July 2nd City Council meeting, the following is a proposed policy for consideration by the City Council, so that names and contact information of complainants remain confidential when the violation in question presents a ***serious and immediate threat to public health or safety***. For all other violations, the name of the complainant (but not the contact information) will be disclosed to the public upon request. The following table is intended to direct staff in their implementation of this policy, if approved by the City Council. The City Council may also decide to move items from one category to the other.

Lower-Level Violations (Complainant Name Disclosed)	Serious and Immediate Threat to Public Health or Safety (Complainant Name <i>Not</i> Disclosed)
1. Weeds and landscaping	1. Unsafe building
2. Accumulation of junk, trash, and debris	2. Fire hazard
3. Building aesthetics (e.g., chipping paint, broken window)	3. Dangerous housing conditions (e.g., no heat, no water, no plumbing, etc.)
4. Fence violations	4. Public exposure to hazardous materials
5. Inoperable vehicles/vehicles parked on grass	5. Illegal discharge into sewer or storm water system
6. Building or zoning code violations, unless the violation creates a serious and immediate threat to public health and safety	6. Attractive nuisances (e.g., open trenches, abandoned refrigerators, unfenced wells, pools, or construction sites accessible to public, etc.)
7. Noise violations	7. Obstructions of streets or highways
8. Other violations that are not a serious and immediate threat to public health or safety	8. Other violations that are a serious and immediate threat to public health or safety

Staff realizes the table above does not cover all possible complaints and some code violations could reasonably fall into either category. Consequently, staff recommends that the City Council authorize the City Manager to resolve all disputes regarding whether the name of a complainant may be disclosed to the public.

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 City Council directs staff to disclose the names of complainants as described in this staff report, then staffing costs may decrease as there may be fewer complaints to investigate.

Conclusion:

The current City policy is to keep the names of all code violation complainants confidential. However, the City Council may choose to revise the policy, as described in this staff report or in a different way, to create two categories of code violation complaints, one for which the names of complainants will be disclosed and one for which the names of complainants will not be disclosed.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeff Malawy", is written over a horizontal line.

Jeff Malawy, City Attorney