

Administrative and Civil Approaches to Code Enforcement

League of California Cities
City Attorneys Conference

Speaker:

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Overview

- **Administrative**
 - Administrative citations
 - Civil penalties
 - Administrative hearings
 - Permit revocations
- **Civil**
 - Injunctive relief
 - Drug/Red Light Abatement
 - STEP (Gangs)
 - Receiverships
 - Graffiti
- **Cost Recovery**



Administrative Approach

- The administrative process best suited to non-serious, non-emergency violations.
- Administrative enforcement may include:
 - citations and fines
 - administrative enforcement hearings
 - permit revocation/modification hearings.

Advantages of the Administrative Approach

- More informal than criminal and civil processes.
- Rules of evidence generally do not apply.
- APA does not apply unless adopted.
- Good first enforcement tool.
- Administrative citations can be efficient and cost-effective.

Disadvantages

- An administrative order alone does not:
 - give legal authority for a city to enter property or abate nuisances
 - have legal weight to force compliance
 - insulate the city from liability for damage or injury caused during an inspection or abatement as does a warrant.
- The matter may end up in court regardless of the administrative order.

Administrative Citations

- Gov. Code § 53069.4(a)(1) authorizes a city to levy administrative fines for code violations:

The legislative body of a local agency. . . may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties.

Citations continued...

- Procedure for the issuance and enforcement of citations is developed by the city with some guidance from State law.
- Administration citations are issued by the city, and if not paid (subject to ordinance):
 - Send to collection agency
 - Lien
 - special assessment on the subject property

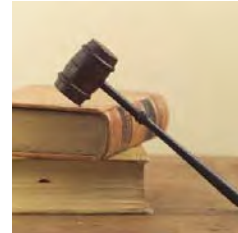


Civil Penalties

- Cities may also provide, by ordinance, that violations of local ordinances are subject to a civil penalty up to \$1,000.
- Additional State statutes authorize a city to assess civil penalties specifically for distressed properties.
- Civil penalties - subject to constitutional limitations on excessive fines.

Enforcement Hearings

- “Quasi-judicial” hearing in which a neutral, disinterested hearing officer or board hears testimony, takes evidence, and renders a ruling regarding violations of the municipal code.
- Administrative hearing process must comply with Due Process:
 - proper notice + fair hearing



Enforcement Hearing Process

- The process begins:
 - by appeal of an administrative citation,
 - upon discovery of a public nuisance, as defined in its municipal code, or
 - upon appeal of initial enforcement action taken by the city, such as issuance of a notice of violation (if ordinance provides for an appeal of NOV).

Permit Revocations or Modifications



- Administrative hearings can be utilized to satisfy due process requirements when a city seeks to modify or revoke a permit, such as a conditional use permit.
- Once a permittee has incurred substantial expense and acted in reliance on a permit, the permittee may acquire a fundamental vested right- a constitutionally protected property right.
- Due process requirements must be met before a permit can be revoked or modified.

Special Consideration for City Attorneys

- City may seek legal counsel to represent code enforcement/planning staff in a prosecutorial role
- Or the neutral decision maker, such as the city council, may seek legal counsel in an advisory role.
- Due process, prohibits the same attorney from performing both functions.

Due Process Wall

- *Morongo Band of Mission Indians v. State WRCB*: Due Process not violated when same attorney provided advisory services to the hearing board and served as prosecutor in an *unrelated matter*.
- Proper Due Process wall: advisory attorney has no involvement or preparation in the prosecution, and vice versa.



Civil Approach to Code Enforcement

- A civil lawsuit may be filed to abate violations of a municipal code or certain State laws.
- Civil remedies are most appropriate for cases with more substantial violations, sympathetic or sensitive violators, and where other approaches are likely to be ineffective.

Advantages of a Civil Approach



- Lower burden of proof than is required in criminal enforcement,
- Civil penalties paid directly to the city,
- Lack of a right to a jury trial in most nuisance abatement cases,
- Interlocutory remedial orders, and
- Strong legal authority to recover attorney's fees and costs

Disadvantages

- Typically a slower process than criminal and administrative code enforcement.
- Civil litigation can be more costly than other methods.
 - NOTE: cost recovery

Injunctive Relief

- Enforcement
 - Any person or entity bound by an injunction may be charged with contempt for disobeying it.
 - If the violator disobeys a permanent injunction (court judgment), the city may petition the court to appoint a receiver to enforce the judgment/injunction. CCP § 564(b)(3).

Legal Theories for Injunctive Relief

- Nuisance *Per Se*
 - Nuisance *per se* exists whenever “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.
 - Must have two elements to establish a nuisance *per se*:
 - a valid ordinance identifying a nuisance; and
 - a violation of that ordinance.

Legal Theories Cont'd. . .

- Public Nuisance in Equity
 - A public nuisance is “one which affects at the same time, an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage may be unequal.” Civil Code § 3479
 - A nuisance is anything which is injurious to health, 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.

Legal Theories Cont'd. . .

- Violations of the State Housing Law
 - Authorizes injunctive relief and receivership.
 - Requirements: City declares a building to be substandard and the property owner fails to obey city's order to abate conditions
 - Available remedies include:
 - Receiver
 - Injunctive relief
 - Restrictions on property owner's right to claim mortgage interest deductions
 - Fines
 - Relocation of tenants at owner's expense
 - Attorneys' fees and staff costs for city

Legal Theories Cont'd. . .

- Drug Abatement Act
 - Any building or place where any illegal drug activity occurs = nuisance subject to abatement. Health & Saf. Code §§ 11570–11587.
 - Remedies:
 - TRO/injunctive relief
 - Eviction of occupants
 - Board up
 - Payment to city/drug fund of fines
 - Payment of rent
 - Attorneys' fees

Legal Theories Cont'd. . .



MORE THAN JUST A
MASSAGE

- Red Light Abatement Act
 - Any building or place used for prostitution, lewd behavior, or any other criminal sexual behavior that could lead to transmission of AIDS = nuisance subject to abatement
 - i.e. “massage parlor”
 - Same remedies as Drug Abatement Act

Legal Theories Cont'd. . .

- California Street Terrorism Enforcement and Prevention (“STEP”) Act
 - Authorizes a city to file a lawsuit against gang members.
 - Every building or place in which gang members commit certain offenses, including robbery, murder, unlawful drug sales, rape, intimidation, theft or burglary, as well as offenses involving dangerous or deadly weapons, can be declared a public nuisance under this law. Pen. Code §§ 186.20–186.33.

STEP Cont'd...

- Remedies:
 - TRO/injunctive relief
 - Fines
 - Damages on behalf of community affected
 - Gang members and property owner both liable

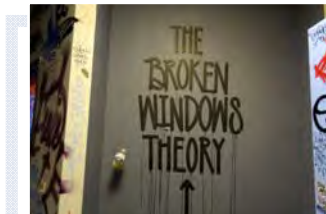
Receiverships

- Court agent to bring property into compliance
- Acts in shoes of property owner
- Finances repairs or demolition from lien against property
- Lien can be first-priority
- Property equity does not matter
- For substandard buildings
- Attorneys' fees and staff costs

*Covered in more detail later in panel discussion

Graffiti Abatement

- City may declare, by ordinance, graffiti as a public nuisance and provide for its summary abatement.
- Costs for abating the graffiti can be collected from the tagger, or if a minor, from the tagger's parent or guardian
- Recovered through a lien against the property of either the tagger or the tagger's parent or guardian. Gov. Code § 38772.



Cost Recovery

- City has right to recover all costs involved in any code enforcement action
 - Attorneys' fees
 - Staff costs/investigative costs
 - Costs of physical abatement
 - Incidental costs
- MUST adopt proper ordinances
- Certain State laws also allow for cost recovery when enforcement taken per those statutes



Cost Recovery Cont'd. . .

- Due Process must be followed
 - “cost confirmation hearing”
 - Purpose: provide due process regarding *amount* of costs
 - Not to rehash existence of violations
 - Notice to persons affected
 - Lien vs. special assessment
 - Opportunity to be heard
 - Upon request or affirmative hearing

Cost Recovery Cont'd...

- City ordinance may provide for recovery of any code enforcement costs via lien or special assessment. Gov. Code §§ 38773, 38773.1, 38773.5(a).
- Foreclosure (limitations apply)
- Costs involved are recoverable

Cost Recovery Cont'd. . .

- Lien or special assessment
 - Lien - “first in time, first in right”
 - Special assessment – super priority
- Special assessment is added to the property in the same manner as property taxes. Gov. Code § 38773.5.

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