



City Council Staff Report

REPORT DATE: October 4, 2020

MEETING DATE: October 14, 2020

SUBJECT	DRAFT Code Enforcement Policy
ITEM TYPE	<input type="checkbox"/> Public Hearing <input checked="" type="checkbox"/> Work Session <input checked="" type="checkbox"/> Action Item
PRESENTER	Olivia Goodale, City Administrator & Kim Kolner, Planning and Zoning Director

APPLICABLE VICTOR VALUES

- | | | |
|--|--|---|
| <input type="checkbox"/> Culturally Historic | <input type="checkbox"/> Sustainable | <input type="checkbox"/> Connected to Nature |
| <input type="checkbox"/> Small Town Feel | <input type="checkbox"/> Family Friendly | <input checked="" type="checkbox"/> Administrative Need |

PURPOSE & PROCESS

Now that the fiscal year budget has been approved, staff wanted to get a jump on some of the action items outlined in the FY21 work plan and at the Council retreat, most notably code enforcement. The purpose of this work session is to gather high level Council feedback on a draft code enforcement policy including how Council would like to address existing conditions and scope of enforcement, and how the policy relates to consistency within the code including identifying future code amendments.

With direction of Council, staff will prepare future work sessions with the Planning and Zoning Commission and City Council further refining the policy and regarding identified code amendments.

BACKGROUND/ALTERNATIVES

For many years, the City of Victor has used a compliant based policy to enforce all sections of the code. This policy reflects the lack of available staff time to dedicate to a more proactive approach to code enforcement. Staff estimates that there are currently three to five complaints received per month, some of which are determined not to be in violation of the code. This complaint based approach to code enforcement leaves much to be desired because there is the potential that many violations are left unenforced which can lead to conflicting sets of expectations, inconsistency of enforcement from one issue or property to the next, and unpredictability for our citizens. Enforcement is primarily limited to the LDC and Building Code. The remaining sections of the Municipal Code have little in the way of enforcement. Over the last several years, expectations for code enforcement have been increasing.

Accordingly, the approved FY21 budget allocated funds for a part time Code Enforcement Officer to begin in the second half of the year. To prepare for the creation of that role, a policy must be finalized to create the position's job description and outline Council's code enforcement expectations clearly. In addition to the policy, staff has identified a handful of items in the code that are not consistent with how staff recommends enforcement to be carried out moving forward and items that are a burden to the process. Additionally, staff is bringing this item forward now because there are pending code

enforcement matters that require overall policy direction from Council to move forward in an effective manner.

The attached draft policy outlines enforcement process, priority of enforcement, authority, and general expectations for compliance first/enforcement second. The reason this is a policy as opposed to being codified is to allow staff the flexibility to work with property owners to work towards compliance in a reasonable manner, which is the ultimate goal, rather than having a heavy hand on penalties. Also, as a policy it can be updated and changed much faster when needed and does not require a public hearing process. This gives the newly hired code enforcement officer the ability to update the policy once they are onboarded based on their prior knowledge and experience with the code and its practice.

Staff requests Council feedback on the entire draft policy in addition to the following:

Scope:

- 1) Under the current compliant based policy, if a complaint is received about one violation and staff is aware of another similar violation, staff only enforces the violation associated with the complaint. As you can imagine this process causes many inconsistencies in enforcement and follow through. Under the new draft policy, staff recommends that when a complaint is received about a matter, staff follow the same initial procedure as it relates to the property receiving the complaint and any known similar violations. Thereafter, the pace of follow-up listed in the table in the policy is followed. This removes concerns about workflow and priorities being shifted as the result of one complaint.
- 2) Staff is requesting feedback on if and how the code enforcement officer should patrol for violations. If Council would like the code enforcement officer to patrol for violations, should the code enforcement officer patrol within identified areas such as downtown vs. the entire city limits? Should the patrolling be limited to a time interval such as once per week or once per month?

Consistency within Code/Potential Code Amendments:

The second part of this discussion is regarding the Land Development Code, Section 1.5 Enforcement which outlines the authority, procedures, and penalties due to code enforcement.

<https://www.victorcityidaho.com/globalimage/Municipal%20Code/Zoning/2020Update/Art%201%20amd%200558%20pg%203.pdf>

It is important to make sure that the policy set by Council and the adopted code align because staff will enforce the code as adopted by Council and under the policy approved by Council. Because the decision to take legal action and the appeal process falls to Council (depending on the exact code being violated) for final determination, all components of the process (from staff level enforcement, to code, to policy, to appeal) must align and be consistent with one another. It is prudent to make sure that the code is written to the level of enforcement Council feels is necessary and is ready to reinforce.

When the City begins to enforce its code more robustly, it will naturally raise questions asking if specific parts of the code are doing what we intend, and whether we should proceed with enforcement vs. a code amendment. Of course, it will be important to look at specific instances holistically and city-wide as opposed to through a narrow lens associated with the specific code enforcement item. Nonconformities and outdoor storage screening are two issues that staff anticipates will come to the forefront upon implementation of the policy. Staff is looking for direction from Council to bring these code amendments forward for further consideration at a future meeting:

Nonconformities. There appears to be many instances throughout town where according to the code as written violations exist (and have openly existed for many years) and therefore must be enforced in accordance with the code enforcement policy. When staff is going through the code enforcement process today, staff must look through previous versions of codes, and records (should they exist) from many years ago. Accordingly, it is challenging for staff to determine if an approval was granted by the City or what the interpretation of the code by staff at the time may have been. In turn, determining if a violation exists or does not exist due to a prior approval under an older version of the code becomes clouded.

Staff is seeking Council feedback on bringing forward a code amendment for further consideration that allows nonconformities through a certain date with clear requirements of when the nonconformity would need to be brought into compliance. The date would be chosen based on an aerial photo the City has continued access to, such as GIS photos. Due to the number of code changes and staff changes in the past, that date will be relatively recent, within the past 5-10 years, based on the code and the quality of the photo. The photo would be able to be used as a point of reference for enforcement of nonconformities. This would be very easy for staff, Council, and the property owners to see what was present at the time of the photo and what was not.

Outdoor storage screening. Screening, in many cases, is in reaction to outdoor storage as a new use on an existing site where no new development is proposed. Staff would like Council direction to bring forward the item for more discussion because it may be overly burdensome to ask for a large landscaped buffer zone to be accommodated immediately adjacent to a similar use or zoning district. Staff is proposing to reduce the screening in cases where outdoor storage takes place next to similar uses or zoning districts. Upon direction from Council to explore the issue further, staff will bring back more specific information and recommendations. Please see Section 10.9.11: <https://www.victorcityidaho.com/globalimage/Municipal%20Code/Zoning/2020Update/Article%2010%20Amended%20Batch%202-clean%201-2020%20no%20comments.pdf>

Development Review Meeting. Lastly, more as a matter of housekeeping and efficiency, staff proposes removing the Development Review Meeting requirement under LDC 14.3.3 in place of a formal notice to all the same agencies with a comment period. This meeting is rarely attended by anyone other than planning staff and causes unnecessary delay within the zoning application process. 14.3.3 states *“All applications shall be scheduled for the next appropriate Development Review Committee meeting. This meeting is to ensure the reviewing agencies have an opportunity to sit down with the applicant and review the application, criteria for approval, and any other outstanding issues.”*

There are several options for Council to consider in proceeding:

- Provide direction on the policy and potential code amendments and continue the policy for final approval at an upcoming meeting as an action item.
- Continue to another work session for further discussion.
- Direct staff to prepare a work session regarding discussed text amendments to the Land Development Code.
- Other

ATTACHMENTS

- Draft Code Enforcement Policy Draft

FISCAL IMPACT

The fiscal impacts are minimal while reviewing the Policy and preparing the code amendments. The funding needed for the future creation of a part-time code enforcement officer has already been allocated and approved as a part of the annual budget.

STAFF IMPACT

At the moment staff impact would be minimal. This policy would help streamline our enforcement actions and make them more consistent and complete moving forward. Later in the year this policy will help guide the job creation and hiring process for a part-time code enforcement officer. Lastly this policy will aid in the training and evaluation of said code enforcement officer as they participate in onboarding and annual staff appraisals.

LEGAL REVIEW

Ongoing

RECOMMENDATION

Staff recommends Council provide feedback on the draft policy and direction on how to proceed with regard to next steps and future code amendments.

SUGGESTED MOTION

I move to direct staff to amend the policy in the following ways: [x, y, z] and direct staff to bring back the policy as amended for final action [or as a work session for further consideration] and to begin work on the future code amendments listed in the staff report.

[General vote]



City of Victor Code Enforcement Policy

Adopted, DATE

Code Enforcement

The City of Victor's Code Enforcement Officer is empowered by the City of Victor to enforce local, County and State statutes adopted by the City. The City responds to anonymous complaints, neighborhood complaints, complaints via email and telephone complaints, in addition to performing routine patrol to locate violations and enforcement initiatives (such as public education or enforcement of a widespread issue) as assigned.

This policy may be amended by City Council from time to time.

Limitations of Code Enforcement

The City's Code Enforcement Officer will assist the public in any way possible in accordance with their authority and this policy. However, some enforcement issues may require referral to a different agency. City Code Enforcement *cannot* help citizens rectify the following problems:

- Emergency situations that threaten human life or property and demand immediate attention - **Call 911**
- Covenants, Conditions & Restrictions (CC&R) violations
- Private disputes between neighbors
- Situations which are not specifically addressed in the Victor Municipal Code

Why is Code Enforcement important?

- Code Enforcement is for the common good. These rules and regulations have been enacted by the City to help ensure attractive neighborhoods, and a peaceful and enjoyable community for everyone. Code enforcement also, Protects the safety and welfare of Victor residents
- Maintains and increase property values
- Reduces vandalism
- Bolsters maintenance and continued development in the City

Overall Policies

The City respects the desire of all residents and business owners to enjoy their property. The City also believes that responsible use of private property includes respect for community values, as contained in the Victor Municipal Code and Land Development Code. In order to assure that these values are upheld, the Municipal Code and Land Development Code will be enforced according to the following principles.

1. The City will enforce its ordinances based on the violation, not the violator. The focus of the City's code enforcement is on the nuisance activity or structure, without regard to the source of the complaint or the nature or character of the violator.
2. The City will enforce confirmed violations based on the idea that they are violations against the City, not against a neighbor or other individual parties.
3. The City will accept anonymous reports of violations when the violation can be observed from the public right-of-way. Reports concerning violations inside a

building or not visible from the public right-of-way will require a written complaint with the reporting party's name and phone number included.

4. The City seeks compliance first and foremost. Enforcement efforts are first directed at education, providing opportunities for solving problems and eliminating violations, not punishing people.
5. When sufficient opportunity for eliminating the nuisance has been provided, but no significant results obtained, the City will aggressively pursue relief in the courts, including civil and criminal remedies in accordance with the City of Victor Municipal Code.
6. The City is aware that old age, infirmity, or temporary financial hardship may hamper the violator's ability to affect corrections according to a rigid schedule. A flexible approach to obtaining compliance will be considered when these conditions are present such as an approved payment plan in writing or extension of deadlines.
7. Health & Safety violations are given the highest priority so that human life and property are protected without delay. Violations of 'general welfare' rules such as zoning will be addressed at a second level of attention, allowing reasonable solutions to be implemented in reasonable time. The attached chart will be used as a guide.

Type of Enforcement	Priority	Tone	Pace of Follow-up
1. Health & Safety*			
Unsafe Buildings or Structures	First	Very Aggressive	Fast
Grading violation, egregious	First	Very Aggressive	Fast
Illegal wiring	First	Very Aggressive	Fast
Sewer spills	First	Very Aggressive	Fast
Unauthorized discharge into storm drain	First	Very Aggressive	Fast
Trash/Debris on property creating life safety issues	First	Aggressive	Fast
Fire protection / Fire Hazard	First	Very Aggressive	Fast
Hazardous Vegetation	First	Very Aggressive	Fast
2. On-going Enforcement			
Weed abatement	Second	Procedural	Slow
Graffiti	Second	Procedural	Moderate
Hazardous Windows	Second	Procedural	Moderate
3. General Welfare			
Illegal use of structure	Third	Mediative	Slow to Moderate
Structure (temporary) in setback	Third	Mediative	Slow to Moderate
Construction without permits	Third	Mediative	Slow to Moderate
Abandoned vehicle	Third	Mediative	Slow to Moderate
Trash cans in front yard/street	Third	Mediative	Slow to Moderate
Commercial Storage not screened	Third	Mediative	Slow to Moderate
Illegal Signs Trash/Debris on prop. not creating safety issues	Third	Mediative	Slow to Moderate
Abandoned Buildings	Third	Mediative	Slow to Moderate

*Listed as examples to help guide the Code Enforcement Officer in discretionary decision making for types of enforcement not listed in the chart.

Guidelines for Exercising Enforcement Authority

1. Enforcement of the provisions of the Victor Municipal Code and other applicable laws shall be limited to cases where:
 - a. a specific bona fide citizen complaint;
 - b. where the violation occurs within the context of the City's oversight and approval of a project; or
 - c. where the enforcement action is part of a "plan for the uniform enforcement of a provision of the Victor Municipal Code or other applicable laws within the City."

For Council feedback, other ways to pace the transitional process:

Enforcement of similar known issues as a received complaint (Pending Council Direction)

Patrolling - looking for violations (Pending Council Direction - Identified areas for patrolling vs. city limits? limited to a time period such as once per month, one per week?)

Others?

2. No notice to correct shall be issued pursuant to a citizen complaint until the City staff has conducted an independent investigation and determined that there is good cause to believe that a violation of the Victor Municipal Code or other applicable law has occurred. The City shall keep record of all citizen complaints.

Informal Attempts to Encourage Compliance

Nothing in this policy shall be interpreted to preclude the City from informally encouraging citizens to comply with the Victor Municipal Code or other applicable laws. Informal, oral or written requests to encourage compliance are encouraged as are attempts to informally negotiate or mediate issues relating to compliance.

Enforcement Process

The following steps shall be taken after the City receives the complaint:

- A case file is started to document the complaint and its follow-through as soon as a complaint is received. Case files shall follow the number sequence of CEYEAR-## i.e. CE2020-01. A file will be opened regardless of if it is later determined to be a violation or not.
- An onsite inspection will be made to determine if a violation of the City Code exists within one (1) week of receipt.
- If it is determined to be a violation a Notice to Correct will be sent right away.

- An onsite inspection shall take place after two (2) weeks have elapsed since the Notice to Correct was mailed. (Subject to minor changes due to staffing availability).
- In the case of sporadic violations, such as parking on a lawn or unpermitted auto repair, several re-inspections may be necessary before it can be determined no violations exist. For these type cases, letters shall not be sent before an onsite inspection takes place and a determination is made.
- The case shall be closed once it is determined that no violations exist or that the violations have been abated.

If a violation is observed after the onsite inspection, a Notice to Correct is sent to the resident and/or property owner or hung on the door. The letter explains the following points:

- Purpose and reasoning for properly maintaining the property.
- Specific violations observed and Code section number.
- Voluntary Code compliance is the goal on such violations.
- Possibility of criminal or civil action if correction(s) are not made by a specified date (known as the "abatement date").
- Additionally, potential and obvious methods for correcting the violations may be included should they exist. Please note that staff is not responsible for researching, identifying, or otherwise exhausting all methods for correcting the violations or coordinating the correction of the violation.
- In extenuating circumstances, or if the responsible party is actively moving forward in abating the violation(s), an extension to the abatement date may be granted.

Officers shall re-inspect the property within five (5) business days after the expiration of the abatement date.

- If the violations are corrected, then the case is closed.
- If violations remain, next steps to take legal action will be pursued and forwarded to the applicable responsible party including but not limited to City Council, contracted law enforcement, city attorney, or prosecutor.

Enforcement and Appeal Procedures set forth in LDC Section 1.5 and other applicable sections of the Municipal Code shall supersede this policy and shall be followed first and foremost.

Notice to Correct and Stop Order

- Whenever a violation is discovered which can be corrected and the responsible person has not been issued a Notice to Correct for the same violation within the past 12 months, the City shall issue a Notice to Correct in order to notify the responsible person of the violation and to order that violation be corrected within a reasonable time. Unless otherwise stated in the Victor Municipal Code or in reference to the above table, thirty (30) calendar days shall be considered a reasonable time to correct any violation.

- The notice to correct shall be in writing and shall set forth the facts that constitute the violation, the specific provisions of the law which have been violated, the specific acts required to correct the violation, the time allowed to correct the violation and the rights to appeal the notice to correct.
- If the violation is related to a permit, license or other city approval of a project, the notice to correct may be accompanied by a stop work order which orders the responsible person to immediately stop any and all work on the project that is subject to the permit, license or approval until the violation is corrected.

Service of Notices

Any notices required under this policy shall be served by mailing first class to the last known address of the responsible party or notices may be posted on the affected property in the event of a stop work order or if the responsible party cannot be reached.

Unresponsive Parties

For situations involving parties that are unresponsive to verbal notices, written notices and/or citations, or when no action has been taken during the time to abate staff shall contact the City Administrator for assistance in proceeding with the case. Only the City Administrator shall contact the City Attorney for prosecution assistance.

Responsible Party

Responsible Party is described as follows:

- a. An individual causing a Code violation.
- b. An individual, by his or her action or failure to act, maintains or allows a Code violation to continue.
- c. An individual whose agent, employee, or independent contractor causes a Code violation by his or her action or failure to act.
- d. An owner of or a lessee or sub-lessee with the current right of possession of real property on which a Code violation occurs.
- e. A natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity.

City staff is happy to meet with responsible parties regarding the creation of a plan towards compliance. Outside of receiving complaints, City staff will not meet with third parties regarding enforcement on any property.

Fines

Fines shall be issued in accordance with the Fine Schedule adopted by City Council via resolution which may be amended from time to time.