

# Tom Bean Police Department

## Administrative Directive

<b>Number: 103.059</b>	<b>Effective Date: 01/11/2021</b>
<b>Subject: Code / Ordinance Compliance</b>	<b>Revision Date: N/A</b>
<b>Affected Personnel: Sworn Personnel</b>	<b>Amends/Supersedes: N/A</b>
<b>Reference:</b>	

### I. Policy

It is the policy of this agency to achieve voluntary compliance with reported, legitimate code / ordinance violations. This agency however recognizes that not all violations have the same degree of severity. As such, this agency has established through this directive, priority ranking and procedures. The intent is to allow the level of enforcement that best fits the type and circumstances of the code / ordinance violation(s) within clear and objective criteria, consistent with the established priorities, and maximizing available resources. It is established herein that the code compliance section within this agency follows the priority ranking set forth in this directive.

### II. Definitions

Frivolous - not having any serious purpose or value.

Habitual - regularly or repeatedly doing or practicing something or acting in some manner

Injury-in-fact - suffering or imminently going to suffer an invasion of a legally protected interest that is:

(a) concrete and particularized, and

(b) actual or imminent (that is, neither conjectural nor hypothetical; not abstract).

(c) The injury can be either economic, non-economic, or both.

Passive – not actively pursued, absent a complaint.

Priority - a thing that is regarded as more important than another.

Retaliatory – aimed at or motivated by revenge, retribution, vengeance, etc.

Standing - "injury in fact" to a complainant's own legal interests.

Unfounded - lacking a sound basis. Unsubstantiated by facts or evidence.

### III. Priorities

This agency recognizes that the primary mission and function of uniformed police officers does not rest with the investigation of code / ordinance violations. With that in mind, this particular departmental section is herein formally established as a “passive” program. It is however the agency’s policy to investigate and attempt to resolve all reported code / ordinance violations as they are received. There may be times when code / ordinance violations cannot be given the same level of priority, and when some code / ordinance violations may receive no attention at all, as outlined in this directive. In such circumstances the most serious violations, as determined through application of the priorities and criteria in this section will be addressed before the less serious violations are addressed, regardless of the order in which the complaints are received. However, complaints alleging both priority and non-priority violations may be processed together to maximize efficiency.

#### A. Priority Cases.

The following priorities are hereby established.

1. Violations that present an imminent threat to public health and safety or the environment;
2. Violations affecting storm drainage, wetlands and/or adjacent areas;
3. Building code violations consisting of non-permitted construction or failure to obtain permits for construction;
4. Building, Planning, Engineering and Environmental Health permit violations including failure to obtain required permits or failure to meet conditions and requirements or permits;
5. Land Use and Zoning violations; and
6. Multiple complaints received from multiple complainants regarding the same property or issue;

B. Non-Priority Cases. Complaints alleging code / ordinance violations that do not fall within the priority rankings above will be processed in the order in which the complaints are received, and as resources allow. Complaints concerning a particular type of code / ordinance violation (e.g., occurring in a particular geographic area) may be processed together, regardless of the order in which the complaints are received.

#### C. Enforcement Levels.

1. Obtaining voluntary compliance;

2. Stop work order (when applicable);
3. Permit revocation and or withholding of additional permits;
4. Physical abatement by city employees and/or agents.
5. Citation and prosecution of infractions in Municipal Court.

D. Conditions for acceptance of complaint

1. There must be a formal complaint, received in writing.
2. There must be an identifiable complainant, reachable by telephone, U.S., or electronic mail.

E. Criteria for Establishing Priority and Choosing Level of Enforcement. Code / ordinance violation cases not normally listed as priority may be moved to priority status if they have one or more of the following aggravating circumstances:

1. The actions leading to the violation(s) were deliberate or intentional;
2. The violation causes economic harm to individuals or the City as a whole;
3. The alleged code violator is receiving significant economic benefit from the continuing code violations;
4. The physical size or extent of the violation is substantial;
5. The violation has existed uncorrected for a significant period (months / years);
6. There is a habitual history of complaints and code / ordinance enforcement on the subject property and/or with the alleged code violator;
7. There is community interest in the violation expressed by the receipt of multiple complaints from separate individuals or by a complaint by a citizen group;
8. The relative benefit of code / ordinance enforcement outweighs its cost (e.g. correction should be quick and inexpensive to accomplish);
9. After reasonable efforts have been made, there is little likelihood of obtaining voluntary compliance (contacted twice with no response or citizen refuses to acknowledge City authority), and
10. The alleged violation is flagrant and readily visible to non-residents (along main thoroughfare, state highway, etc.).

F. Complaints not accepted.

1. When the complainant does not have and / or is unable to demonstrate "standing" (as defined herein) in a reported violation.

2. When the complaint is “frivolous” or appears to be “retaliatory” in nature.
3. When the complainant has a history of, or is otherwise known for registering complaints that are either:
  - a) “Frivolous”;
  - b) Unfounded; or
  - c) “Retaliatory” in nature

#### IV. Applicability

A. General Applicability. This directive applies to all code / ordinance compliance activities carried out by agency personnel. Except as otherwise provided, the policies and procedures in this directive apply to all alleged code / ordinance violations.

B. New Policies and Procedures Applicable on Effective Date of Directive. On and after the effective date of this directive and within available code / ordinance compliance resources, officers will undertake a number of procedures for effective code enforcement. These procedures include:

1. Timely and regular follow-up by agency personnel for compliance with conditions and requirements for permits and approvals;
2. Stop Work Orders for work on property without permits or approvals;
3. Revocation of permits and approvals for failure to comply with requirements or conditions;
4. Restriction on issuance of permits on property with uncorrected code / ordinance violations; and
5. Cooperation with other agencies to terminate service, to the extent authorized by law, to non-permitted uses on property.

#### V. Initiation

Code / Ordinance Enforcement will be initiated by the following methods:

A. Citizen Complaints. Any person can make a complaint alleging one or more code violations.

1. Complaint Form. A citizen must file a complaint on a City complaint form. The form is available at City Hall, or the complaint may be completed and submitted online through the city's website.
2. Anonymous Complaints. Anonymous complaints generally are not accepted, but may be accepted and / or investigated at the discretion of the Chief of Police or designee depending on the following factors:
  - a. The reliability of the complaint;
  - b. Whether the complaint alleges an imminent threat to public health and safety or to the environment;
  - c. The ease or difficulty with which the complaint may be verified by agency personnel.
3. Confidentiality. Agency policy is to maintain the confidentiality of code / ordinance compliance files and computer records, including the identity of the complainant, to the extent legally possible. In addition, this agency recognizes that some complainants do not wish to have their names disclosed to the alleged code violator for fear of retaliation. However, in some cases it may be necessary for successful prosecution and enforcement for the complainant to be identified and to testify in court. Additionally, the agency's code / ordinance compliance files are subject to state statutes governing public records and disclosure.

B. Observations by agency personnel. Agency personnel shall document, in the code / ordinance compliance records, any potential code violations observed on property that is the subject of their assigned investigation. They may also document code violations observed on any property in the same vicinity as the subject property, which violations are observable from the subject property. Such violations then shall be prioritized for investigation according to this directive.

C. Permit/Approval/Conditions Monitoring by Agency Personnel. The City issues land use, environmental, engineering, and building permits with a variety of requirements, conditions, and timelines. For example, a land use approval may require landscaping the site by a certain date, or building permits expire if construction progress and inspections are not made within certain periods. Code violations occur when these permits, approvals, or conditions are not met in a timely manner. Officers shall monitor conditions of approval and similar permits requirements for permits and approvals for which the decision is issued, as time and resources allow.

D. Report by City Personnel. In many cases, city personnel may be in a unique position to observe potential code / ordinance violations. Any City employee may report to agency personnel possible code / ordinance violations they observe while conducting City business. Reports by City personnel under this subsection shall be made on a complaint form and shall be processed by priority ranking.

## VI. Recording Complaints, Opening Files & Timelines

A. Recording Complaints. To the extent possible, all complaints received shall be recorded in the city code / ordinance compliance records. Recording the complaint shall consist of assigning the complaint a unique, identifying case number and entering into the record the following information:

1. Case number;
2. Complainant's name and contact information;
3. The subject property address; and
4. Type of complaint.

B. Opening a File. After a complaint is assigned a number and recorded, a file shall be opened. The file is the official record of complaint and its investigation and resolution. The file shall contain the following:

1. The complaint form;
2. A map;
3. An investigation worksheet;
4. Assessor's information on the subject property;
5. The name of the officer assigned to the case; and
6. Photographs or other exhibits that support the complaints.

## VII. Investigation

A. Establishing the Elements of a Violation. Before a notice of violation is sent, it must be determined whether the complaint, if valid, established a code violation. If it does not, the case will be closed. Officers, with the assistance of the other city staff and/or legal counsel, and after any necessary field investigation, shall determine if the following elements have been established:

1. Jurisdiction. The property upon which the alleged code violation has occurred must be land over which the County has jurisdiction.

2. Zoning. Zoning of the subject property shall be determined.
3. Permit Status. The status of any land use, environmental health, engineering and/or construction permits on the subject property shall be determined.
4. Property Ownership. All persons with a recorded legal interest in the subject property should be identified from the Assessor's records and they may include the owners, contract purchasers, lessees, and lien holders or other security interest holders.
5. Other Responsible Persons. In addition to the persons listed in #4 of this section, any other persons potentially responsible for the alleged code violation(s) shall be identified. These persons could include tenants, land developers, and contractors.
6. Identification of Applicable Code Provisions. Officers, with the assistance of other city staff and legal counsel as necessary, shall identify the pertinent provisions of the city codes that may have been violated according to the complaint.
7. Alleged Violation Occurred or is Occurring. A complainant may allege a code violation that occurred in the past (e.g. construction without permit); that occurs intermittently (e.g. basketball hoops placed in public right-of-way); or is ongoing (e.g. non-permitted commercial activity in a residential zone). Officers shall determine whether there are reasonable grounds to believe that the alleged violation did occur or is occurring. If a violation cannot be verified in a reasonable period, the case may be closed.

B. Assignment of Investigation and Enforcement Responsibility. Responsibility for field investigation and code / ordinance enforcement will be assigned to officers as needed by the Chief of Police.

C. Field Investigation. The purpose of field investigation is to:

1. Verify the existence and severity of a code / ordinance violation.
2. Document code / ordinance violations by means of written notes, photographs, witness interviews, etc. If a violation is visible, any investigation that establishes such violation, or confirms there is no violation, shall include pictures. The report shall include any measurements made and where they were made.
3. Obtain supporting evidence, such as name and statements of potential witnesses.

4. If possible, contact and discuss with the property owner, occupant or other responsible person:
  - a. the nature of the violation(s);
  - b. Methods for complying;
  - c. Timelines for compliance;
  - d. Enforcement procedures; and
  - e. Potential consequences for failure to comply.

D. Preparations and Precautions. Officers shall take whatever actions are reasonable and necessary to minimize any potential risk of violent confrontation or injury to themselves or others when conducting their field investigation:

1. Announced/Unannounced Field Visits. At the discretion of the individual officer, a field visit to the vicinity of the subject property may be conducted with or without prior notice to the property owner, occupant, or alleged code / ordinance violator. The determination of whether or not to give prior notice shall be made on the basis of the following criteria:
  - a. The nature of the alleged violation;
  - b. Whether or not prior notice will make detection and documentation of the alleged violation more difficult; and
  - c. Whether or not prior notice will unnecessarily increase the risk or violent confrontation or injury to staff.
2. Entering Upon Property or Premises. Officers shall not enter upon private property or premises to conduct a field investigation without the appropriate legal authority. Unless consent is given by the responsible party, the investigation should be conducted from public roads, common areas of the property accessible to the public such as a driveway, sidewalk or porch, or adjacent property where consent to enter has been obtained. If officers do not have permission or other authority to enter upon the property or premises, and entry is necessary to conduct the investigation, officers shall consult with City Municipal Court Judge, or Justice of the Peace about obtaining an administrative search warrant.
3. Report of Field Investigation. Upon completion of the field investigation, officers will generate a report of such investigation. The report shall include the following information;
  - a. Name of Investigator;
  - b. Date, time and place of field visit;
  - c. Code / ordinance violation(s) observed;
  - d. If no code / ordinance violation(s) is observed, an explanation of conditions observed;
  - e. Witnesses, if any, interviewed;
  - f. Evidence obtained, if any, (photographs, measurements, etc.);
  - g. Documented discussions;
  - h. Action necessary to correct violation;
  - i. Recommended enforcement action and timeline; and

- j. Referrals, if any, to other agencies such as social services, state agencies, etc.

## VIII. Enforcement Procedures

### A. Warning Notice

1. A Warning Notice is usually the first, informal step in the abatement process. A Warning Notice should be presented in-person by the investigating officer at the location of the violation or legal residence of the owner responsible for the alleged violation.
2. When issuing a Warning Notice, the officer shall:
  - a. State the violation in common language and cite the city code / ordinance reference;
  - b. Provide the issuing officer's name and badge number.
  - c. Hang the warning notice on the front door knob of the structure (where possible) at the location in question whenever the owner is not present or cannot be located for in person notification.

### B. Notice of Violation (NOV)

1. A Notice of Violation (NOV) is the first formal step in the abatement process. A Notice of Violation may be presented in-person by the officer at the location of the violation or legal residence of the owner or tenant responsible for the alleged violation, or it may be sent certified via U.S. Mail, addressed to the owner or tenant responsible for the alleged violation.
2. When issuing an NOV, the officer shall:
  - a. Retain a copy of the NOV for the case file, accompanied by the U.S. Mail return receipt (where applicable);
  - b. State the violation in common language with cite the city code / ordinance reference;
  - c. Provide a copy of the applicable code / ordinance;
  - d. Provide a photograph(s) of the violation in question;
  - e. Provide the owner or tenant with a compliance deadline;
  - f. Provide the owner or tenant the issuing officer's name and badge number.

C. Limited Time Frames. Listed below are some of the timelines established for resolution of complaints monitored by this agency:

Type of Violation

Compliance Deadline

Nuisances not involving a structure:	10 days
Nuisances involving a structure (other than Dangerous building)	30 days
Abandoned / Unauthorized Vehicles (city or private property)	24 hours
Large Vehicle or RV Parking without a permit	72 hours
Creation of hazard in public road or right of way	Immediate
Noise disturbances (including off road vehicles)	Immediate
Working in right of way without permit	Stop Work Order

Other, as established by individual Tom Bean codes / ordinances

Building Code Violations: (including by not limited to)

1. Working without permit	Stop Work Order
2. House Accessory structure	30 days
3. Existing structure built without permit	30 days

Land Use/Zoning Violations: (including but not limited to)

1. Violations affecting Public Health	Immediate
2. Violations not involving a structure	10 days
3. Violations involving a structure	30 days
4. No permit	Stop Work Order

C. Voluntary Compliance Without Penalty. It is this agency's policy to encourage voluntary code / ordinance compliance by providing responsible persons the opportunity to correct the violation with little or no penalty. Voluntary compliance generally is less expensive for all parties and of a more satisfactory and lasting nature than involuntary compliance. Violators may be required to enter into a written agreement that establishes a timeline for correcting an identified violation. Notwithstanding this policy, allowing code violators the opportunity to voluntarily comply outside reasonable time limits may actually result in delaying compliance. Therefore, it is this agency's policy to limit the time frame during which code violators may come into voluntary compliance with little or no penalty.

1. Limited Opportunities. Voluntary compliance without penalty or cost recovery will not be allowed where the alleged violation is a repeat offense either on the subject property or by the code violator, or where the original violation was not corrected following prior code enforcement action.
2. Time Extended by Voluntary Compliance Agreement. Following issuance of a notice of violation, the deadline set by ordinance may be extended for a limited duration if the alleged violator admits the violation(s) and enters into a "Voluntary Compliance Agreement". The extended deadline shall be determined on a case-by-case basis. The Applicant must appear before the Chief of Police and make their request for an extension.

D. Citation and Complaint.

1. Voluntary Compliance. Where voluntary compliance cannot be obtained with a simple warning notice, a Notice of Violation should be issued with a compliance date given.

2. Follow Up Required. When the compliance date has expired, the investigating officer should conduct an in-person follow up with the owner or tenant (whenever possible) to determine whether or not there is any intention or progress on the owner or tenant's part of achieving compliance.
3. Citation Issuance. When the investigating officer has determined that the owner or tenant is either unresponsive, or is simply refusing to comply, a citation should be issued. Citations should be considered a last resort in the abatement process.

#### E. Physical Abatement by City

1. Abatement Procedure. Where voluntary compliance cannot be obtained within the timelines established by ordinance, the city may elect to physically abate the violation.
2. Assessment of Costs. When the city finds it necessary to physically abate a violation, costs shall be assessed following established city procedure.
3. Physical Abatement not Exclusive. In addition to physical abatement by the city, other levels of enforcement may be initiated to achieve full compliance.

#### IX. Fines

A. The City Municipal Court shall administer / manage / collect all fines and fees as set forth in approved schedules.

#### X. Restricting Issuance of Permits for Property with Unresolved Code Violations

In addition to citations and physical abatement by the city, the following actions may be taken for unresolved code violations:

A. Stop Work Orders. It is agency policy to increase code compliance by using stop work orders to the maximum extent allowed by law.

1. Issuance of Stop Work Order. Officers shall promptly issue a stop work order in the following cases:
  - a. Whenever follow-up of city issued permits and approvals reveals construction, installation and/or land use activity not permitted under the permit or approval; and
  - b. Whenever officers or other designated staff discover or receive a verified complaint of non-permitted construction, installation, or land use. If the stop work order involves a building or structure the Building Inspector shall also be notified. The information will then be documented by the officer using the appropriate report.

2. Violation of Stop Work Order. If construction, installation, or land use activity continues after the issuance of a stop work order, such activity should be reported to the police department for further action.

B. Permit Revocation. Certain city ordinances may authorize the revocation of permits or approvals for failure to comply with their requirements or conditions. It is this agency's policy to maximize code compliance by revoking permits or approvals to the extent authorized by law in appropriate cases. In particular, it is this agency's policy to use permit revocation in cases in which corrective action may not be effective in bringing the subject property into compliance due to the nature of the violation and deliberateness of the code violator's actions to avoid compliance.

1. Report to Police Department. If permit or approval follow-up reveals that the conditions or requirements of a permit or approval have not been met, public works, or other city staff shall inform the police department of such violation and the information shall be documented.

2. Revocation Procedure. Prior to revocation of a permit, officers shall determine the following:

- a. Whether the criteria for permit revocation set forth in the applicable code provisions exist;
- b. The severity and deliberateness of the deviation from the permit or approval requirements or conditions; and
- c. Whether compliance can be achieved more effectively through other code enforcement methods.

#### XI. Assisting Enforcement by Other Regulatory or Licensing Agencies

In some cases, city code violations also may constitute violations of federal and/or state statutes or administrative rule. For example, surface mining or working within a flood plain or wetlands without a land use approval may also violate federal laws or state statutes and administrative rules. Performing building construction without necessary permits may constitute violations of state statutes and administrative rules governing the conduct of licensed contractors. Police Department staff shall notify other agencies of known violations.

#### XIII. Resolution of Code / Ordinance Complaints

It is agency policy to attempt to reach final, satisfactory resolutions of all code / ordinance violation complaints. However, the agency recognizes that not all complaints may be resolved successfully, due to factors outside the agency's control. These factors can include the indigence of the code violator, the lack of city or other resources to assist the violators, statutory limitations on potential fines or other penalties for code / ordinance violations, and the large number of complaints to be resolved. Where officers determine that a code violation may not be successfully resolved within the established

reasonable timelines, the file will either be closed, or alternative methods of enforcement may be explored.

A. Outstanding Cases. Officers shall refer cases to the City Attorney to seek additional legal remedies when:

1. Code violation(s) presents an imminent threat to public health and safety or to the environment; or
2. Code violations have not been corrected within the required time period after a defendant's third citation for the same infraction(s) into Municipal Court.

B. File Closure. A code violation complaint will be resolved by file closure in the following cases:

1. When no code violation is found after investigation;
2. When there is voluntary compliance;
3. When the property owner and/or other responsible person has been convicted of an infraction and has corrected the violation(s).
4. When investigation and prosecution of the violation(s) have been completed by a federal or state agency to which the city deferred code enforcement.

C. Notice of Resolution. Officers will note the reason for file closure and also send written notice to the complainant when the complaint is resolved, describing the resolution.

D. Follow-up. For cases with extenuating circumstances, officers will conduct a follow-up site inspection six months after file closure to ensure the offense has not re-occurred.

E. Alternate Methods of Resolution. The City may explore alternate methods to resolve code violations, fines, and liens.

#### XIV. File Maintenance

1. Code compliance files are official governmental records of the agency. As such, the files and records shall be maintained pursuant to the rules of official records.

#### XV. Saving Clause

1. Should any portion of this directive be rendered ineffective by a court of competent jurisdiction, the remaining parts shall remain in full force and effect.