


TO: TOWN COUNCIL
FROM: TOWN MANAGER 
RE: CODE ENFORCEMENT PROCESSING

ISSUE

As a goal, Council wanted to evaluate how codes were enforced and maybe insert itself into the process beyond its role as an appeal body.

RECOMMENDATION

Discuss and direct as to what Council wishes to do.

CEQA

There are no CEQA requirements at this time.

MONEY

Money issues are unknown and depend on what Council wishes to have done.

DISCUSSION

In the course of discussing Sustainability goals Council decided to add a goal that reads:

Council adopt a clear policy and progressive steps regarding the enforcement of ordinances, regulations and conditions adopted in Use Permits regarding parks, trees and open space preservation, including warning letters, cease and desist process, fines, demand for payment, liens etc, and appeals processes to provide the backup needed to properly enforce adopted policies and conditions. Any waiver of related enforcement actions should require a decision by the full Council.

The Loomis Municipal Code has a section (see below) that sets out the process of code enforcement. The detail of fines is contained in Resolution 00-04 (see attached) passed in 2000. In 2006 Town Attorney Larsen advised that attorney fees could be recouped for code actions involving:

- Public Nuisance [Civil Code 34496]
- Abate Proceeding [Govt Code 25845(c) and 38773.5]
- Enforcement of court orders – market rate only [Code of Civil Procedure 1218(a)]

It is unknown what Council wishes to change in the process or in the fines. The process would probably work better if all code enforcement actions were equal and with nicely

defined circumstances and types of people involved. Code enforcement situations don't come in neat packages and there is a need to determine whether to wield a sledge hammer or a feather even though in either case a code of Loomis has been violated. It typically requires a balancing act of applying the letter and/or spirit of a law.

Staff suggests leaving the administrative citation procedure as is or as the Town Attorney may recommend so that if and when matters are taken to a court, the Town will be on solid footing having followed a process that conforms to the methods allowed to General Law Cities in California, a category that includes Loomis.

LOOMIS MUNICIPAL CODE ADMINISTRATIVE CITATIONS

1.20.010 Purpose.

A. The town council finds there is a need for an administrative mechanism to enforce the provisions of this code.

B. The provisions of this chapter shall be in addition to other civil and criminal remedies available to the town. (Ord. 193 § 1 (Exh. A (part)), 2000)

1.20.020 Authorization.

Any violation of this code for which the town has prescribed a civil penalty shall be grounds for issuance of an administrative citation as provided in this chapter. Administrative citations shall be issued by the enforcement officer or his/her designated representative. This chapter shall only apply to those titles and chapters of this code for which the town council has prescribed a civil penalty. (Ord. 193 § 1 (Exh. A (part)), 2000)

1.20.030 Use of administrative citation.

A. A civil penalty may be assessed for violations of this code by means of an administrative citation and shall be payable directly to the town.

B. Civil penalties assessed by means of an administrative citation shall be collected in accordance with the procedures specified in this chapter. (Ord. 193 § 1 (Exh. A (part)), 2000)

1.20.040 Procedure for administrative citation.

A. Upon verifying a code violation for which a civil penalty has been prescribed, the enforcement officer may issue an administrative citation on a form approved by the town manager.

B. A warning notice may be issued by the enforcement officer in lieu of an administrative citation for any violation which does not involve an immediate threat to health or safety, and must be issued pursuant to Government Code Section 53069.4, when the violation is continuing in nature, and pertains to building, plumbing, electrical or similar structural or zoning issues that do not create an immediate danger to health or safety. The warning notice shall specify the code provision(s) being violated, the nature of corrective action required and the deadline for corrective action. The enforcement officer shall set a deadline that is not less than two days, nor more than thirty days, from the date of the warning notice. In determining the deadline for corrective action, the enforcement officer may consider such factors as the nature of the violation and its impact on the adjacent community, the cost and difficulty of corrective action, the necessity, if any, of obtaining permits or other approvals for the corrective action, and any other factors reasonably related to securing compliance with this code.

C. A warning notice shall be served and posted in the same manner as a citation.

D. If all or any part of a violation set forth in a warning notice is not corrected by the deadline for corrective action, the enforcement officer may issue an administrative citation.

E. The enforcement officer first determines who the responsible party is. For purposes of this chapter, the legal owner, as well as the person or entity that is in possession or control of the premises, property, vehicle, business or other enterprise that is the subject of the violation, shall be considered a responsible party and may be cited as such in the discretion of the enforcement officer, in addition to the person or entity actually committing the violation.

F. Once the responsible party is identified, the hearing officer may personally serve the administrative citation by hand-delivering a copy of the citation to that party and obtaining that person's acknowledgment of receipt of the citation.

G. In the event the responsible party cannot be identified or located, or if, after being located, the responsible party refuses to sign the acknowledgment of receipt, the enforcement officer may serve the citation by posting or mailing.

H. The enforcement officer may post an administrative citation by affixing it in a conspicuous location on the real property, premises or vehicle which is the subject of the violation, unless that would be impractical.

I. The enforcement officer may mail an administrative citation by addressing it to the person or entity who is the legal owner, or in possession or control of the premises, property, vehicle, business establishment or other enterprise which is the subject of the violation. The citation shall be sent by first-class mail, postage prepaid. Service shall be deemed effective as of the date of mailing. (Ord. 193 § 1 (Exh. A (part)), 2000)

1.20.050 Content of administrative citation.

A. The administrative citation shall be on a form provided by the town manager, and shall provide space for the following information:

1. The date, time and location of each violation;
2. The specific code sections violated, and a reasonably detailed description of the circumstances surrounding each violation;
3. A box to be checked if the enforcement officer intends to issue a warning notice rather than a citation;
4. A description of the corrective action that is required, if any;
5. A demand for corrective action and a deadline when a warning notice is issued;
6. The amount of civil penalty imposed and any additional penalties for late payment; and
7. The signature of the enforcement officer.

B. The administrative citation shall also include instructions for payment of the penalty; and a summary of the appeal process set forth in this chapter. (Ord. 193 § 1 (Exh. A (part)), 2000)

1.20.060 Appeal of administrative citation.

A. An administrative citation may be appealed within fourteen days of service. The notice of appeal must be in writing and shall include a deposit of the full amount of the civil penalty assessed in the administrative citation. The notice of appeal shall include the contestant's current mailing address, shall set forth the basis of the appeal and shall be filed with the town clerk.

B. As soon as practical after receiving a notice of appeal, the town clerk shall review the administrative citation, for compliance with this chapter. If the citation is found to conform to the content and service requirements, the notice of appeal shall be referred to the town manager.

C. The town manager shall set a time and date for a hearing on the appeal. The hearing shall be held at least ten days after service of the notice of hearing. Notice of the hearing shall be served upon the contestant at the address given in the notice of appeal. (Ord. 193 § 1 (Exh. A (part)), 2000)

1.20.070 Hearing procedure.

A. The town manager shall conduct an orderly hearing and consider all evidence and contentions presented by the appellant.

B. A valid administrative citation shall be prima facie evidence of the violation indicated.

C. An appellant may present evidence in support of his or her position, and the town manager may accept declarations under penalty of perjury in lieu of live testimony.

D. The town manager shall render a notice of decision as soon as practical following the hearing. The notice of decision shall be on a form prescribed by the town manager, and shall contain substantially all of the following:

1. Findings based upon the record of the hearing;
2. Citations to code sections found to be violated, if any; and
3. A statement regarding the imposition of general penalties.

E. The notice of decision shall be final and conclusive, subject to the contestant's right to file an appeal to the Loomis town council within ten days after service of the notice of decision, and subject to contestant's right pursuant to Government Code Section 53069.4, to file an action in the Placer County Municipal or Superior Court, within twenty days after service of the town council's final administrative order or decision. (Ord. 193 § 1 (Exh. A (part)), 2000)

1.20.080 Penalties.

A. The town council shall establish a schedule of civil penalties for violations subject to administrative citations under this chapter.

B. If a responsible party who has been issued a warning notice fails to take corrective action, or if a responsible party who has been issued an administrative citation commits multiple or continuing violations of the same code section, subsequent administrative citations, or one citation containing multiple counts, may be issued. The amount of the penalties shall increase at the rate(s) specified in the civil penalty schedule, except that, the amount of penalties assessed for the first violation and for multiple or continuing violations of the same code section exceed the following amounts:

1. First administrative citation: a fine not exceeding one hundred dollars;
2. Second administrative citation within one year, or second count in citation containing two or more counts alleging multiple or continuing violations within one year: a fine not exceeding two hundred dollars;
3. Third or subsequent administrative citation, or third and subsequent counts in citation containing three or more counts alleging multiple or continuing violations within one year: a fine not exceeding five hundred dollars.

C. The failure of a person to pay any penalty by the date specified in the administrative citation shall result in a late fee equal to one hundred percent of the amount of the penalty, not to exceed a total penalty and late fee of one thousand dollars.

D. Any penalty which is not paid when due constitutes a debt to the town, and may be collected in any lawful manner.

E. Where an administrative penalty has been assessed against a responsible party, the town manager may enter into an effectuating agreement with the appropriate officers of Placer County to enable unpaid penalties under this chapter to be collected by means of an assessment lien. (Ord. 193 § 1 (Exh. A (part)), 2000)

RESOLUTION NO. 00 - 04

A RESOLUTION OF THE TOWN COUNCIL OF THE
TOWN OF LOOMIS ADOPTING A CIVIL PENALTY SCHEDULE

WHEREAS, the Town Council wishes to establish a civil penalty schedule in order to specify the amount of fines for first, second and subsequent offenses of certain Municipal Code provisions; and

WHEREAS, in conjunction with establishing this civil penalty schedule the Town intends to adopt an administrative citation ordinance which will allow it to administratively cite violators of Municipal Code violations for which civil penalties have been specified; and

WHEREAS, the Town Council believes that the assessment of civil penalties for specified code violations through the administrative citation process will be a more economical and efficient way to accomplish code enforcement throughout the Town; and

WHEREAS, The general rule set forth in Cal. Admin. Code 15061 (b) (3) applies to the proposed amendment as it can be seen with certainty that there is no possibility that adoption of the proposed regulations will have a significant effect on the environment and because the proposed action is a legislative act and not a project covered by the requirements of the California Environmental Quality Act (CEQA);

NOW, THEREFORE, the Town Council of the Town of Loomis does hereby resolve as follows:

Section 1. The Town Council adopts the Civil Penalties Schedule attached as Exhibit A, and directs staff to update this schedule as necessary from time-to-time.

PASSED AND ADOPTED this 8th of February, 2000, by the following vote:

AYES: Boberg, Hollis, Ucovich
NOES: None
ABSENT: Morillas
ABSTAINED: Scherer



Mayor

ATTEST:



Town Clerk

APPROVED AS TO FORM:



Town Attorney

EXHIBIT A

CIVIL PENALTIES SCHEDULE
FOR THE TOWN OF LOOMIS

The civil penalties for violations of the titles and chapters specified below shall be as follows:

<u>Code provision(s)</u>	<u>Subject matter</u>	<u>Penalties for first, second and third violations within one year (Per LMC § 1.20.080)</u>		
<u>Title 3</u>	REVENUE AND FINANCE	\$100	200	500
<u>Title 4</u>	ANIMALS	100	200	500
		<u>except as follows:</u>		
Chapter 4.04.150	Animals causing property damage	60	120	300
Chapter 4.04.160	Nuisance dogs	60	120	300
Chapter 4.04.190	Stray animals	30	60	150
Chapter 4.04.250	Impoundment - fees	25	50	75
Chapter 4.04.290	License	25	50	75
Chapter 4.04.330	Damage to property	25	120	300
<u>Title 5</u>	BUSINESS, TAXES, LICENSES AND REGULATIONS	100	200	500
<u>Title 7</u>	HEALTH AND SAFETY	100	200	500
<u>Title 8</u>	VEHICLES AND TRAFFIC	30	60	150
<u>Title 9</u>	ROADS AND HIGHWAYS	30	60	150
<u>Title 11</u>	BUILDING & CONSTRUCTION	100	200	500

<u>Title 12</u>	DEVELOPMENT	100	200	500
<u>Title 13</u>	ZONING	100	200	500
<u>Title 14</u>	SUBDIVISIONS	100	200	500
<u>Title 15</u>	ENVIRONMENTAL	100	200	500
<u>Title 16</u>	PARK REGULATIONS	100	200	500
		<u>except as follows:</u>		
Chapter 16.04.030	Operation of vehicles	60	120	300
Chapter 16.04.040	Damaging or defacing Park property	60	120	300
Chapter 16.04.060	Removal of dog defecation	60	120	300
Chapter 16.04.070	Parks - closing time	25	50	75
Chapter 16.04.080	Golfing prohibited	25	50	75
Chapter 16.04.090	Alcohol	25	50	75
Chapter 16.04.100	Glass beverage containers prohibited	25	50	75
Chapter 16.04.110	Littering/dumping prohibited	60	120	300
Chapter 16.04.120	Animal life protected	60	120	300
Chapter 16.04.130	Trees protected	60	120	300
Chapter 16.04.140	Ejection from parks	60	120	300
Chapter 16.04.150	Mining prohibited	25	50	75
Chapter 16.04.160	Firearms and bows and arrows prohibited	60	120	300