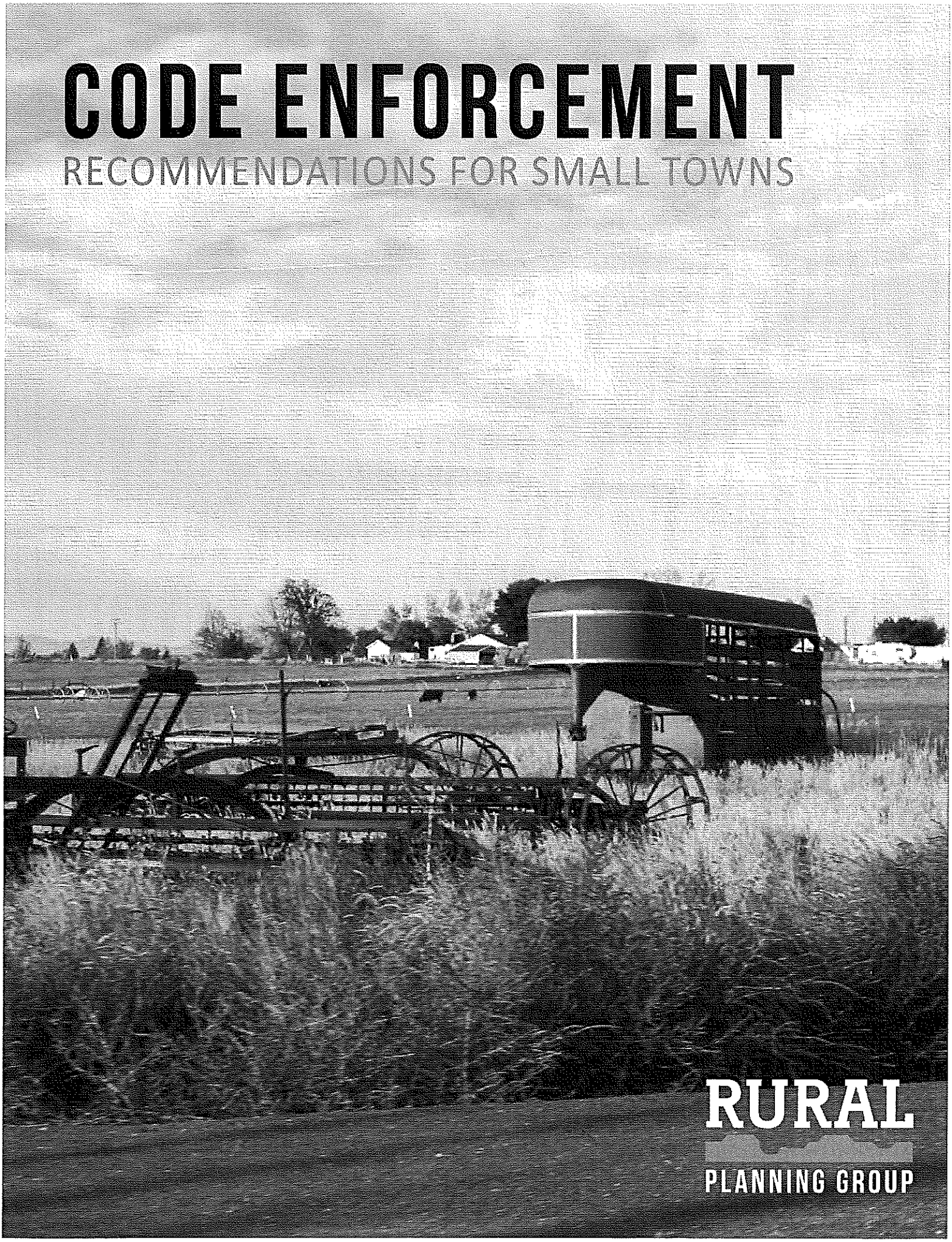
CODE ENFORCEMENT

RECOMMENDATIONS FOR SMALL TOWNS



RURAL

PLANNING GROUP

UNDERSTANDING CODE

CODE: WHAT IS IT?

Codes are the parameters a city* places on what may be done and how it may be done within city or county limits. Cities and counties derive their authority to write and enforce code from the state constitution, their subsequent municipal charter, and statutes established by the state legislature; the charter outlines the authority of elected officials to manage affairs within the community through its code.

Code establishes how development may occur, requires care of personal property, and implements the goals and plans the city made in its general plan. It is important to note that municipal codes' authority comes from supporting the vision and goals in the community general plan and zoning map. If the codes do not have a direct connection to these broader documents, they can be viewed as arbitrary and create legal liabilities for communities.

*In this document "cities," "communities", and "municipalities" refer to towns, cities, and counties. Counties also create and enforce codes. The recommendations apply to all of these communities in a similar fashion.

ON-SITE ENFORCEMENT

All codes require enforcement. Codes that regulate how people use their personal property typically require city or county officials to visit site violations. The following are common code violations requiring on-site enforcement.

NUISANCE ORDINANCE

A nuisance can be almost anything, direct or indirect, that negatively affects other people's ability to use their property (e.g. loud music).

ZONING

Zoning is included in code to allow for different uses. Businesses and/or residences in the wrong zone are common violations (e.g. unauthorized apartment).

SIGNS

The time, place, and manner of sign placement and use can be managed by communities through code (e.g. signs blocking walkways).

SOLID WASTE

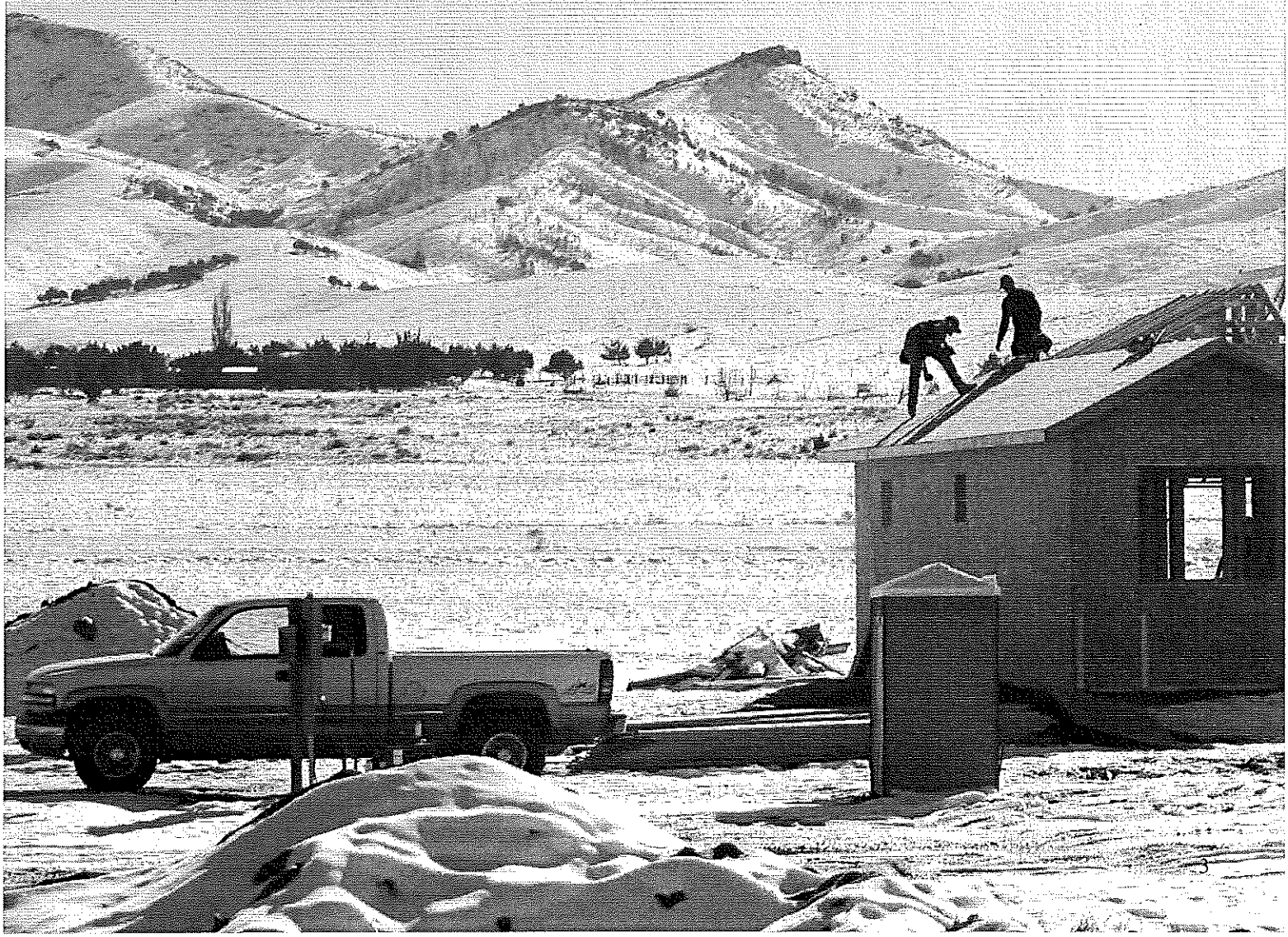
Solid waste refers to garbage and debris. Having solid waste on private property is prohibited by most communities (e.g. junk cars and equipment in the yard).

ANIMAL CONTROL

Animal control ordinances address allowed types of animals, requirements for cleaning up after animals, noise, etc. (e.g. unauthorized farm animals).

DANGEROUS BUILDINGS

Dangerous building code addresses health and safety hazards in homes, businesses, or planned additions (e.g. asbestos, unpermitted additions).



ORCEMENT

BENEFITS

SENSE OF COMMUNITY
Community cohesiveness is closely associated with the look and feel of a community.

PUBLIC HEALTH & SAFETY
Code enforcement protects residents from potential hazards and health risks.

COMMUNITY & ECONOMIC DEVELOPMENT
Well-maintained communities attract tourism, new housing, and business development that evades poorly maintained communities.

PROPERTY VALUES
Property values stay higher when code enforcement protects neighborhoods from blight and other issues.

COMMUNITY IMAGE
Maintaining a clean community establishes a positive image of the community for residents and tourists alike.

PUBLIC WELFARE
Enforcement informs leaders of potential dangers and of residents who may need assistance in maintaining their property.

IMPLEMENTATION OF COMMUNITY VISION
Enforcing code is one of the primary tools a city has in implementing the long-term vision for the community.

QUALITY OF LIFE
A direct result of the benefits listed above, residents quality of life is directly tied to a city's decision to enforce its code.

DIFFICULTIES

MONETARY CONSTRAINTS
Most small towns and counties receive little revenue; this makes funding code enforcement difficult.

FEAR OF OFFENDING NEIGHBORS
Mayors and County Commissioners are not far removed from their constituents in small communities. Enforcing code on neighbors and friends is often personally difficult.

CONSISTENCY
Communities that have not enforced their code consistently in the past fear legal repercussions for starting to enforce now.

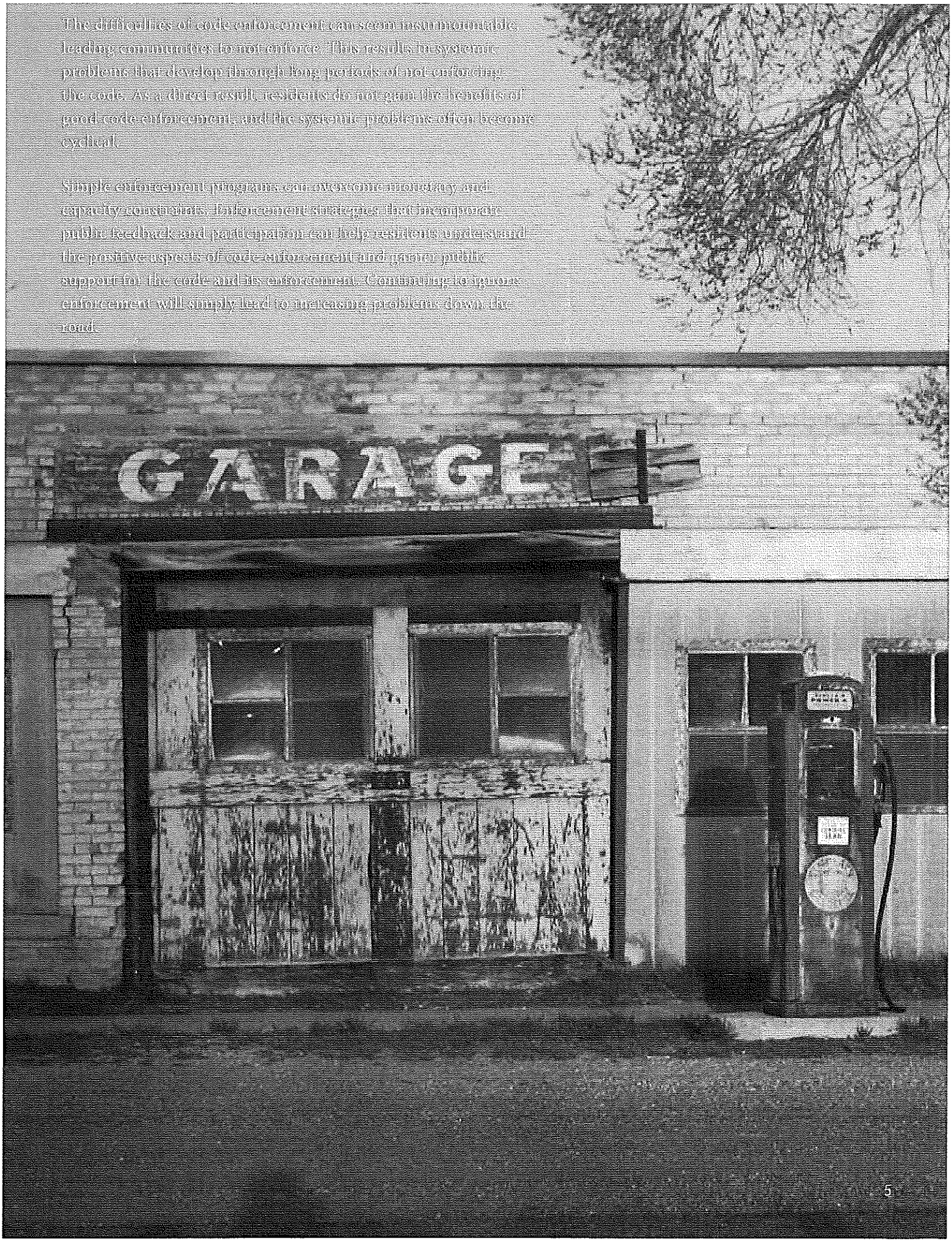
NO CAPACITY
Limited staffing raises the question of "what official or elected official has the time or know-how to enforce our code?"

NOBODY CARES (MOST OF THE TIME)
In many cases residents don't support enforcement until an issue directly affects them or their property.

POLITICAL CONSTRAINTS
Political leaders can be hesitant to support code enforcement when it causes frustration among voters.

The difficulties of code enforcement can seem insurmountable, leading communities to not enforce. This results in systemic problems that develop through long periods of not enforcing the code. As a direct result, residents do not gain the benefits of good code enforcement, and the systemic problems often become cyclical.

Simple enforcement programs can overcome monetary and capacity constraints. Enforcement strategies that incorporate public feedback and participation can help residents understand the positive aspects of code enforcement and garner public support for the code and its enforcement. Continuing to ignore enforcement will simply lead to increasing problems down the road.



STEPS TO GOOD CODE ENFORCEMENT

STEP #1: START AT THE PLAN

Good code enforcement starts long before city officials stand at a doorstep and ask a resident to clean up the half-dozen broken down cars in front of their home. *Good* code enforcement must be based on *good* code and good code must be based on a *good* general plan. Community plans must justify the provisions in the code which in turn justify the community in enforcing the code.

ACTION STEPS

1. Ensure your general plan accurately represents your community's long-term goals.*
2. Review the current code and zoning map to check for consistency with the general plan.*

*See worksheet at the end of this document

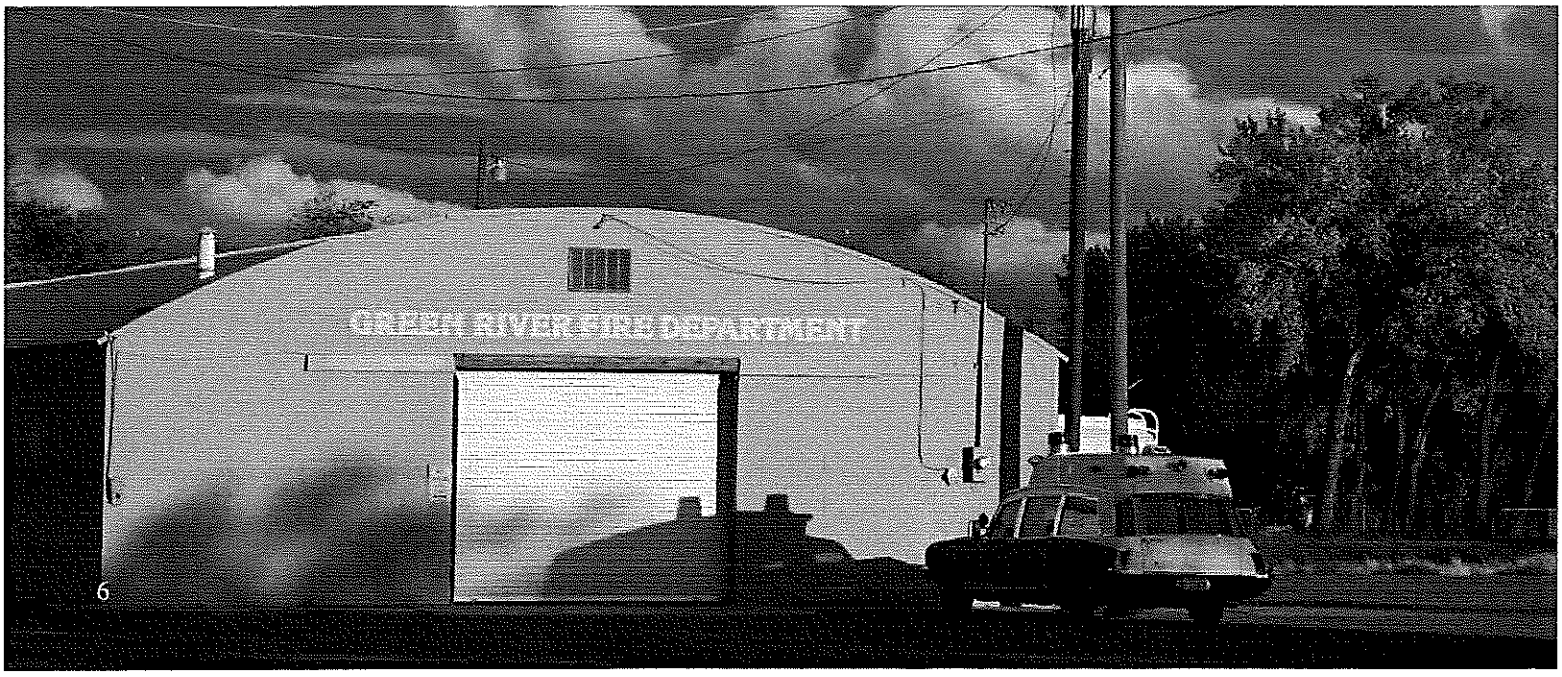
STEP #2: ENSURE YOU HAVE GOOD CODE

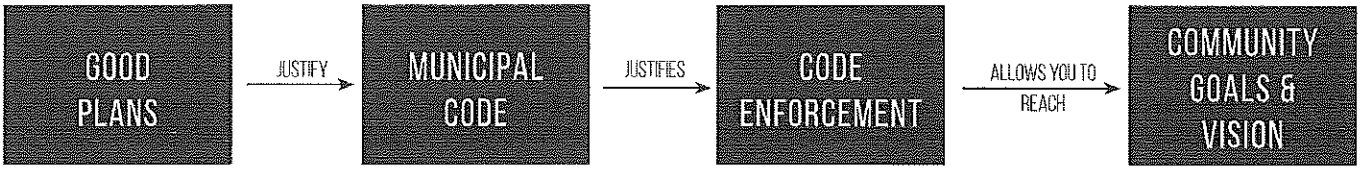
Good code does not mean *lots* of code. For most communities, having a thick code book can be more burden than blessing. Good code establishes guidelines that assist cities in reaching their long-term vision. Similarly, good code provides succinct, clear definitions of what is and is not allowed. City officials, especially the planning and zoning commission and city council, should be familiar with the code. Having complicated code can often lead to confusion rather than clarity in decision making. Simplifying code instead provides the public and decision making bodies with the clarity needed to understand what is and is not permissible.

ACTION STEPS

1. Review current code for consistency with plans and zoning.
2. Consider code revisions for sections that are unclear, or that do not support the community's goals, vision, or plans.
3. If serious inconsistencies exist, consider a code re-write.

A good general plan clearly and consistently outlines the long-term goals of community members and leaders. Consistency throughout the plan will provide solid backing for code enforcement within the community. To help ensure plans are implementable, think about how the goals and vision will be reflected in the code and how they could be enforced as the goals are being written.



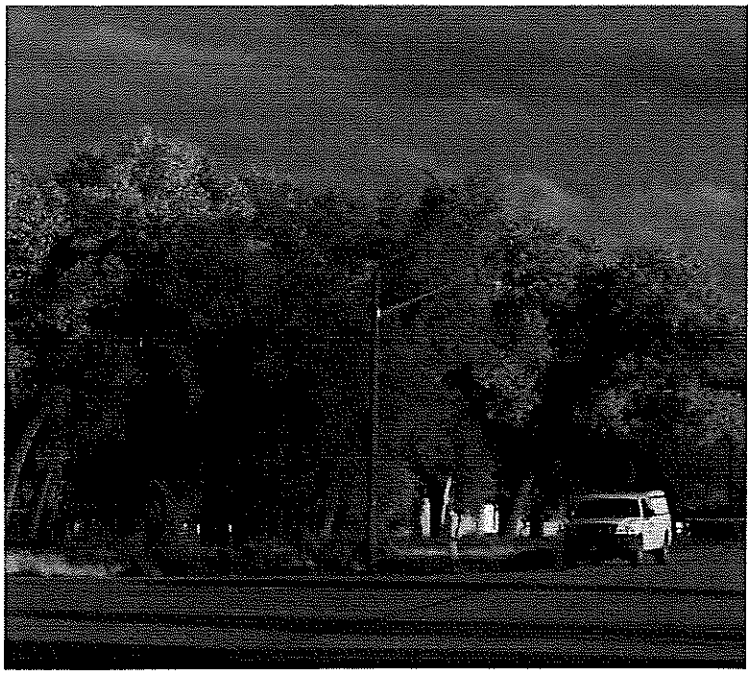


STEP #3: ENFORCEMENT PRECEDENT & STRATEGY

Cities often neglect code enforcement until there is a controversial disturbance. This can place communities in legally difficult situations because the sudden enforcement of code can appear arbitrary, curtailing a specific instance of a use, or targeting a single resident or disturbance.

To avoid this potentially dangerous situation, communities should consistently enforce their codes. If they do not, they will have more difficulty defending the code's enforcement when enforcement is most needed.

Communities should adopt an enforcement framework and strategy that outlines their intended means of enforcing the code. Enforcement methods vary significantly based on a community's size, resources, culture, and needs. Communities should take these factors into account as they select enforcement strategies. Enforcement strategies that match capacity and community culture will be most successful.



Community engagement is legally required for amending or adopting code. Community leaders should go above and beyond the legal requirements for public outreach before and after adopting major shifts in their code or code enforcement strategy and process.

Providing the public with information will help ensure residents know what is expected of them and can provide valuable feedback on how rules should be enforced.

Informing and asking for citizen feedback does not mean allowing citizens to make all the decisions. Community leaders still bear responsibility for final rules. Using resident feedback to inform the code's writing and enforcement process will help community residents feel more ownership of the code and more comfortable with its implementation.

ACTION STEPS

1. Evaluate current enforcement methods for gaps and opportunities to improve.
2. Conduct a public meeting soliciting public comment on preferred enforcement measures.
3. Establish enforcement plan improvements and ensure the public is aware of the code's requirements.
4. Evaluate how consistently you can conduct enforcement with time and monetary constraints.
5. Do not commit to more enforcement (faster response, consistency of patrols, etc.) than is reasonable for your finances or employee capacity.

CODE ENFORCEMENT BRAINSTORM

Enforcement in the real-world can be extremely difficult. Typically, questions surrounding who, what, and when sum up the key concerns leaders have about enforcement. The following are ideas that address these issues. Many of these strategies can be used at the same time, and the list is not comprehensive. Leaders should tailor these ideas to fit their communities needs and culture.

STRATEGY WHAT OPTIONS OR PROGRAMS EXIST?

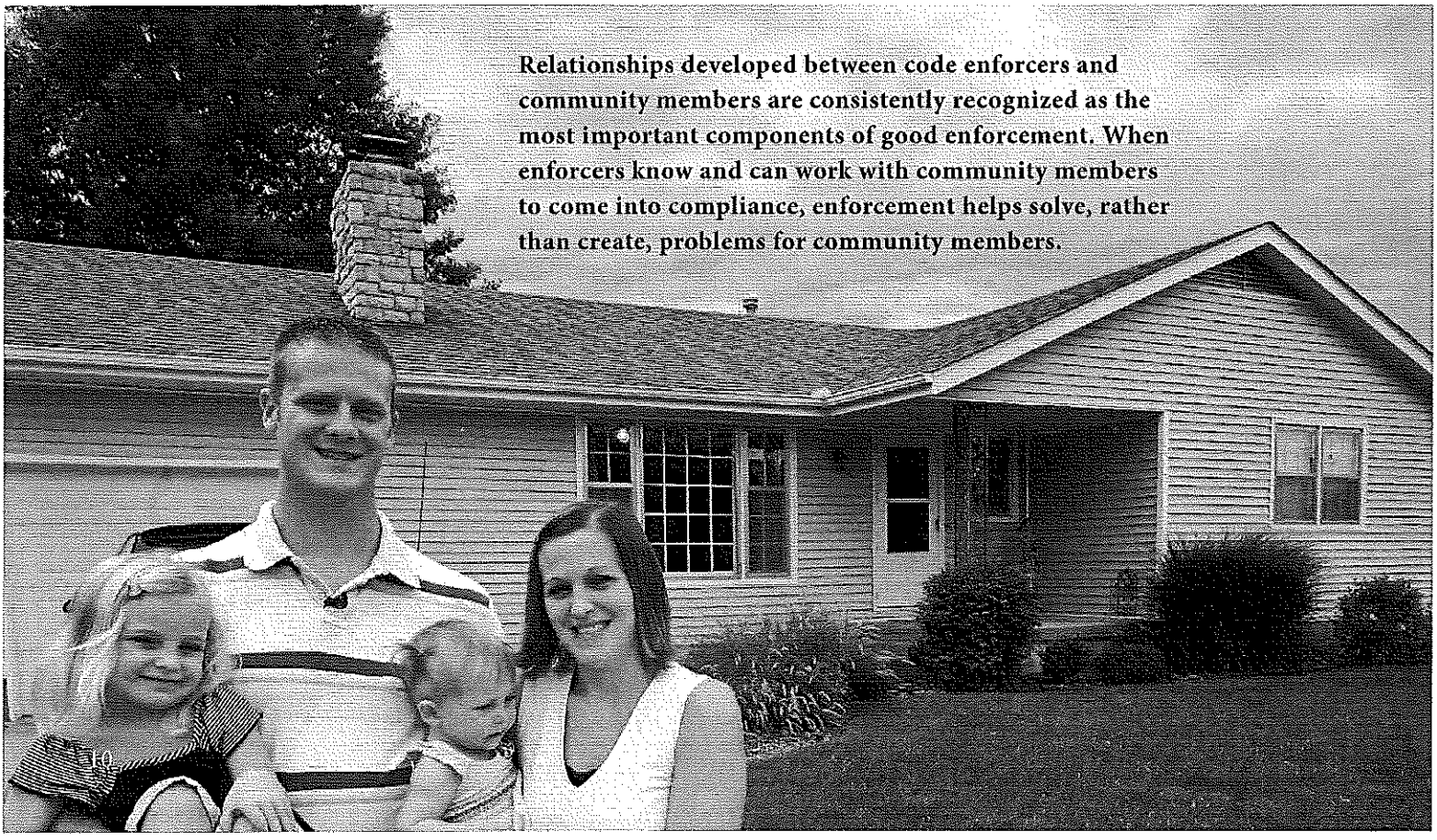
The following list of strategies are in use or provide flexibility for communities in their enforcement strategies. Community leaders should recognize that incentive and assistance programs provide more flexibility than purely punitive enforcement strategies (fines and legal proceedings). Incentives and assistance tend to better match the culture of small towns. Incorporating multiple strategies into a comprehensive compliance plan is the best way to maintain the community's culture while ensuring code enforcement occurs.

STRATEGY	PROS	CONS	EXPLANATION
Community Incentive Programs	• Incentivizes all community members • Reward instead of punishment • Low public resistance	• Costs money • Takes time to set up program • Potentially complicated • Creates expectations	Incentive programs provide benefits to the community when specific goals are reached. For instance, Duchesne County, Utah provides raffled prizes to community members when the community has collectively removed a set number of broken down vehicles from private property. Everyone who donates a car is a potential winner.
Individual Incentive Programs	• Incentive can match cost of compliance • Directly assists those in most need • Reward instead of punishment	• Potential abuse • Community resistance	Individual incentive programs provide rewards to the property owner who has come into compliance. RPG recommends caution in forming individual incentives as they can encourage community members to be in violation in order to qualify for the incentive. These incentives (such as reduced taxes for a period or free dump passes) can be safely used for new property owners who come into compliance within a specific timeframe after purchasing the property.
Education Programs	• Reduces ignorance • Increases peer pressure to comply • Community-wide	• Takes time • Outreach and materials cost money • Less direct impact	Community leaders should engage with and educate community members on the reasons for the codes they hope to enforce. Taking time for public outreach to teach explain code requirements and why they exist reduces the threat of backlash when codes are enforced.
Community Clean-Up Days	• Reminds residents of need to clean-up • Allows town and residents to work together • Reduces barriers for compliance	• Staff and/or volunteer time • Cost of supporting services (dumpster, lost revenue for landfill access, etc.)	Community clean-up days provide free dump access and community outreach supporting clean-up in specific timeframes. Cities can provide and optimize use of the equipment and physical capacity required to clean up property that some community members may not have. These programs can help residents come into compliance when the primary barriers to compliance are physical or equipment related.
Assistance Programs	• Directly assists those in most need • Creates "no excuses" for violators	• Significant burden for limited staff • Expectations from residents for services • Potential abuse	Similar to community clean-up days, assistance programs are a great way to help community members who are incapable of complying with code requirements on their own. Some communities provide one time financial support to bring property in compliance. Ideas include using public works employees and equipment or having the city council organize service crews[2]. These programs require a clear definition of who qualifies for the services.
Short-Term Loans	• Reduces barriers • Directly assists those in most need • Generates some revenue	• Requires capital • Complexity of loaning • Issues with non-repayment	For minor to moderate violations, communities can provide small, low interest loans to residents to bring their property into compliance[3].
Vacant Property Tax Increases	• Incentivizes vacant properties to be inhabited • Generates revenue	• Citizen resistance • Community culture • Punishment instead of reward	Louisville, Kentucky increases tax rates for abandoned properties by as much as three times that of well kept properties. Other communities increase tax rates for perpetually non-compliant properties, increasing the rate annually until it reaches compliance[4].
Vacant Property Fines	• Incentivizes vacant properties to be inhabited • Generates revenue	• Citizen resistance • Community culture • Punishment instead of reward	Cincinnati, Ohio charges fees for vacant property and increases fees year-over-year until the property is inhabited or sold[5].
Fine Structures	• Flexibility • Recouping costs	• Too steep of a fine structure can create citizen resistance • Punishment instead of reward	Communities can use multiple sets of fine structures that are informed by the severity and frequency of an infraction. The cost of enforcement should be a primary consideration when setting fine schedules, however it is unlikely fines will cover the entire cost of enforcement. These can be assessed after a hearing (inferring criminal violation) or as an administrative citation where the enforcement authority can cite the violator according to administrative rule without first having a trial.
Criminal Classification	• Flexibility • Motivate exceptionally resistant non-compliers	• Citizen resistance • Community culture • Punishment instead of reward	Communities can classify most violations as a Class B Misdemeanor. In Utah, this allows for a maximum fine of $1,000 and up to six months in prison. Some municipalities in the country even classify severe violations as felonies[6]. Communities must bring suit for the violator to be found guilty of criminal offense. RPG recommends taking violators to court as a last resort, when public health and safety are clearly endangered as a result of the violation and the violator has received multiple warnings without bringing their property into compliance.

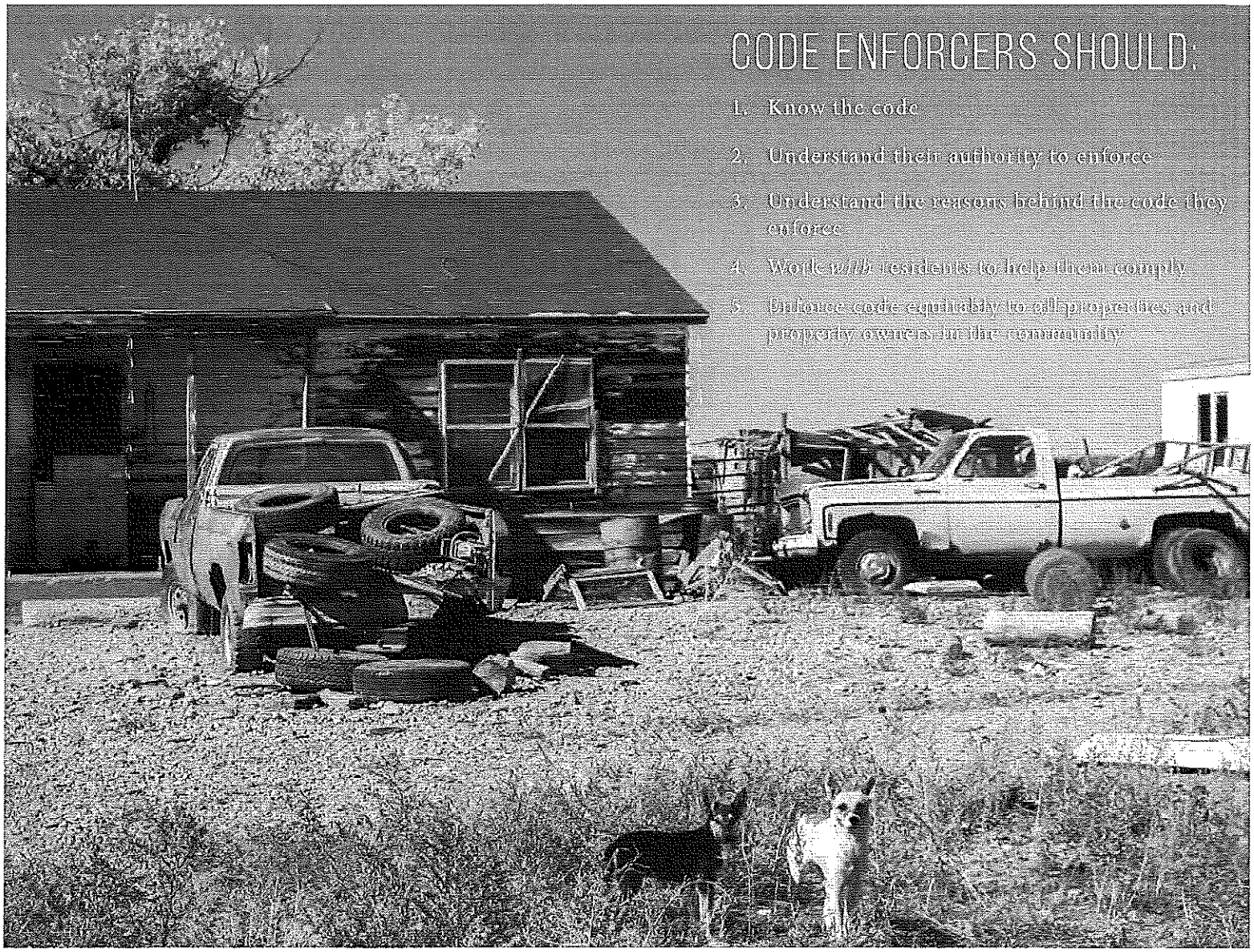
CAPACITY WHO CAN HELP?

Various groups are able to enforce code, including contractors, volunteers, and employees. The following is a list of people and groups that can be considered as small towns set up their compliance and enforcement plan structure. Generally, the community's executive authority is expected to ensure code enforcement occurs.

PERSON / ORG.	WHO & HOW
Enforcement Resource Sharing	Several communities in northern Utah currently share the cost of enforcement by having multiple jurisdictions pay a contractor (in many cases the local sheriff's office) to cite violations in their jurisdictions. Other communities also pay local law enforcement to issue fines and clean up violations.
Community Institutions (Churches, Clubs, etc.)	Local scout troops, churches, and service organizations are great resources for helping residents with trash, cars, or other blight problems. These local institutions can increase the number of residents aware of clean-up days and code requirements. They also reduce barriers for citizens resistant to city interference with their property. Public works vehicles and volunteers vehicles can be used in partnership with these institutions to maximize participation.
Citizens	Citizen complaints can be the primary information source for violations in the city. Online submission forms tied into community websites provide a low-cost means of collecting citizen complainants addresses, contact information, dates, and concise descriptions of violations before the complaint is submitted. These systems require a community to make someone available to follow up on complaints.
Planning & Zoning Commission	Planning and zoning commission members should know the code and the general plan; this knowledge makes them ideal candidates for an enforcement team. This can be done with compensation for commission members or pro bono. Flexibility should be provided to these groups to institute legal, yet creative, enforcement programs.
Neighboring Communities	For communities with no capacity to pay, trading services with neighboring communities can reduce costs and ensure enforcement. In this scenario, two neighboring cities would provide code violation warnings and fine violators for each other. This allows a third party to cite violations which may reduce interpersonal tensions in small towns. It also makes high-school sports games more interesting.
Private Company on Retainer	Similar to enforcement sharing, communities can put their code enforcement on retainer to a private entity. This provides arms-length, unbiased enforcement and helps ensure consistency across the community.
Citizen Inspectors	Cities can educate specific residents on the municipal code and train them on the cities enforcement procedures. The city can then allows these citizen inspectors to patrol their neighborhood, document violations, and begin the code enforcement process. Belligerent or repeatedly incompliant cases should be referred to city officials[7].



Relationships developed between code enforcers and community members are consistently recognized as the most important components of good enforcement. When enforcers know and can work with community members to come into compliance, enforcement helps solve, rather than create, problems for community members.



FREQUENCY

WHEN SHOULD I ENFORCE? HOW OFTEN SHOULD I PATROL?

Enforcement should be conducted when there are violations (whether identified by citizens or community officials). Citizens don't always know what constitutes a violation or don't want to report their neighbors violations. City officials also rarely know everything occurring in their community. For these reasons, community inspections help inform enforcement needs.

Consistency is the most important consideration for enforcement over time. Available personnel and capital and the severity of code enforcement problems within a community are key considerations for developing an enforcement timeline. Based on these considerations, communities can create a compliance plan that incorporates specific enforcement strategies, who will carry out these strategies, and how frequently enforcement patrols or surveys will take place. Ensure your city has the manpower and budget to enact their compliance plans timeline.

Several communities along the Wasatch Front elect to only respond to resident complaints and blatant violations recognized by city officials; others have full-time enforcement specialists who patrol the city as their full-time job. In most small towns, a patrol that occurs once a year or every six months is sufficient to recognize new violations and begin enforcement procedures. The violations cited in these patrols require immediate follow-up to support and enforce compliance.

A community clean-up day is a great precursor to code violation patrols. Having the patrol after a clean-up day ensures residents have been provided a reminder and, in some cases, assistance to come into compliance. When a property is incompliant after a well executed clean-up day, additional efforts will be necessary to ensure compliance.

BUT WHAT IF . . . WE HAVEN'T BEEN ENFORCING OUR CODE?

Communities that have not consistently enforced their code have placed themselves in a difficult situation, but continuing to not enforce code will only make things worse. Communities who find themselves in this situation should consider the following steps:

1. Conduct a general plan review, ensuring the plan accurately represents the residents' long-term desires for your community. If it does not, a general plan revision is needed.

2. Review the current code and evaluate how well it implements the vision laid out in the general plan. If the code does not support the plan, consider revising or hiring consultants to re-write the code to align with the general plan.

If the plan is acceptable, and the code supports the plan, communities should:

1. Develop a code enforcement plan.
2. Present the enforcement plan in a public meeting.
3. State that the city intends to enforce consistently moving forward.
4. Accurately enforce the code in perpetuity.

These steps cannot completely protect communities, however they do provide the basis for justifying a fresh start in enforcement and will ensure community members are aware of, and have the opportunity to comment on, expectations established in the code. It is not possible to enforce with 100 percent accuracy. Rather than waiting to have the perfect process or perfect code, leaders should ensure the code is viable and start enforcing at a pace that is feasible for the community in the long-run.

SAMPLE: ENFORCEMENT PROGRAM

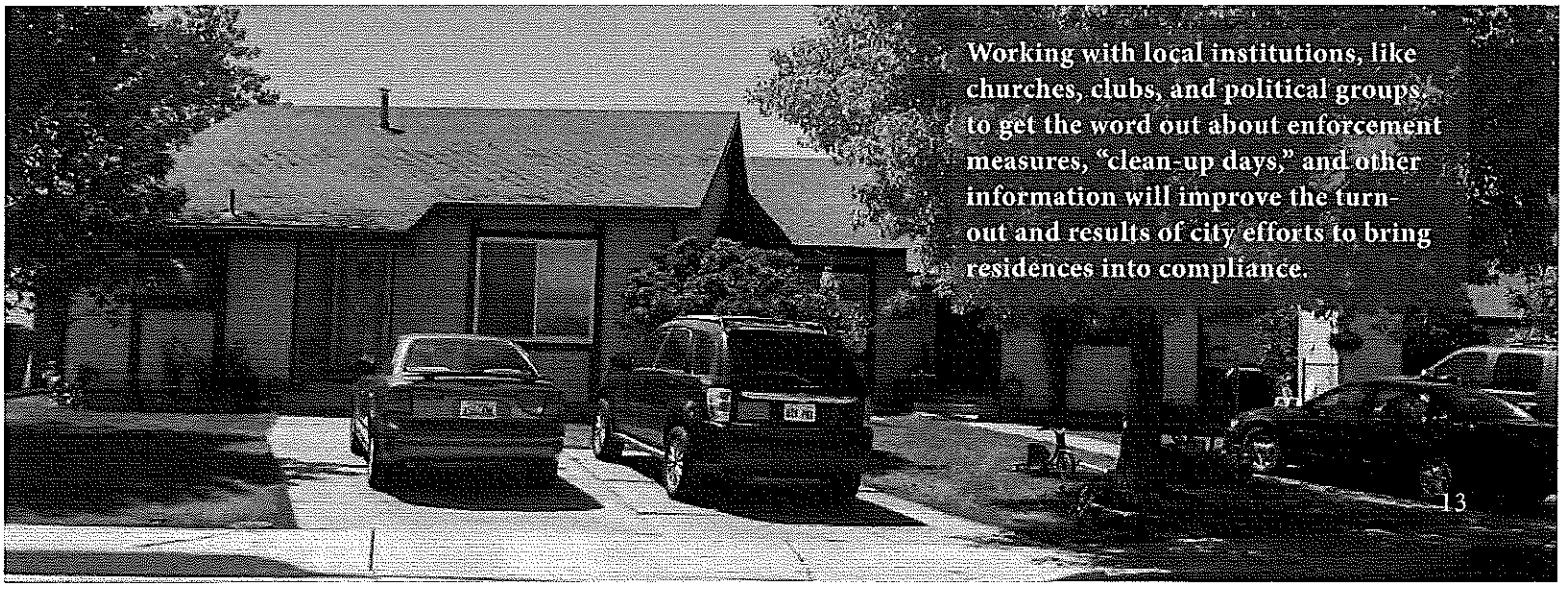
ACTION	RESPONSIBLE	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Plan audit*	Planning Commission												
Code audit*	Planning Commission												
Public meeting	Mayor												
Code compliance officer training	Planning Commission												
Community clean-up day	City Council												
Town-wide violation patrol	Code Enforcement												
Complaint response	Code Enforcement												

*Every five years. This is simply a generic recommendation. Cities should consider their rate of change in determining how often to review.

This sample enforcement plan is intentionally simple. It focuses on two community clean-up days, where clean-up occurs community wide, with assistance from public works. Most enforcement programs in very small towns should stay simple, and ensure they do not over-extend the town's capacity to enforce. In this example, any empowered group could implement the enforcement program. This model would be carried out as follows:

- **Plan & Code Audit.** Every five years, the planning commission will audit the general plan and code, ensuring the plan still matches community goals and that the code serves to accomplish the goals in the general plan.
- **Public Meeting.** Each March the Mayor and City Council will host a public meeting, in which they will briefly explain the code's requirements, the reasons for the code, and a brief explanation of how code is enforced within the city, including advertising the upcoming community clean-up. Treats should be provided.
- **Compliance Training.** Following the public meeting, the code enforcers (consisting of one council member, public works employee, and the city recorder) will be retrained on city code and proper code enforcement procedures.
- **Community Clean-Up Day.** A semi-annual Community Clean-Up Day will occur in the first two weeks of April and November. One free pass to the local landfill will be provided to each residence (large trailers could be used when landfills are not available).
- **Community Compliance Patrol.** During the two weeks following the clean-up day, city officials will patrol the community, providing notice to property owners of violations.[†]
- **Complaint Response.** During the rest of the year, the city will respond to citizen complaints via the city website's code violation referral page.

[†] All notice of violations will follow the city's enforcement model, with the maximum penalty being a class b misdemeanor for gross neglect and an unwillingness to work with city officials to remedy violations (see next page for example).



Working with local institutions, like churches, clubs, and political groups, to get the word out about enforcement measures, "clean-up days," and other information will improve the turn-out and results of city efforts to bring residences into compliance.

SAMPLE: ENFORCEMENT PROCESS

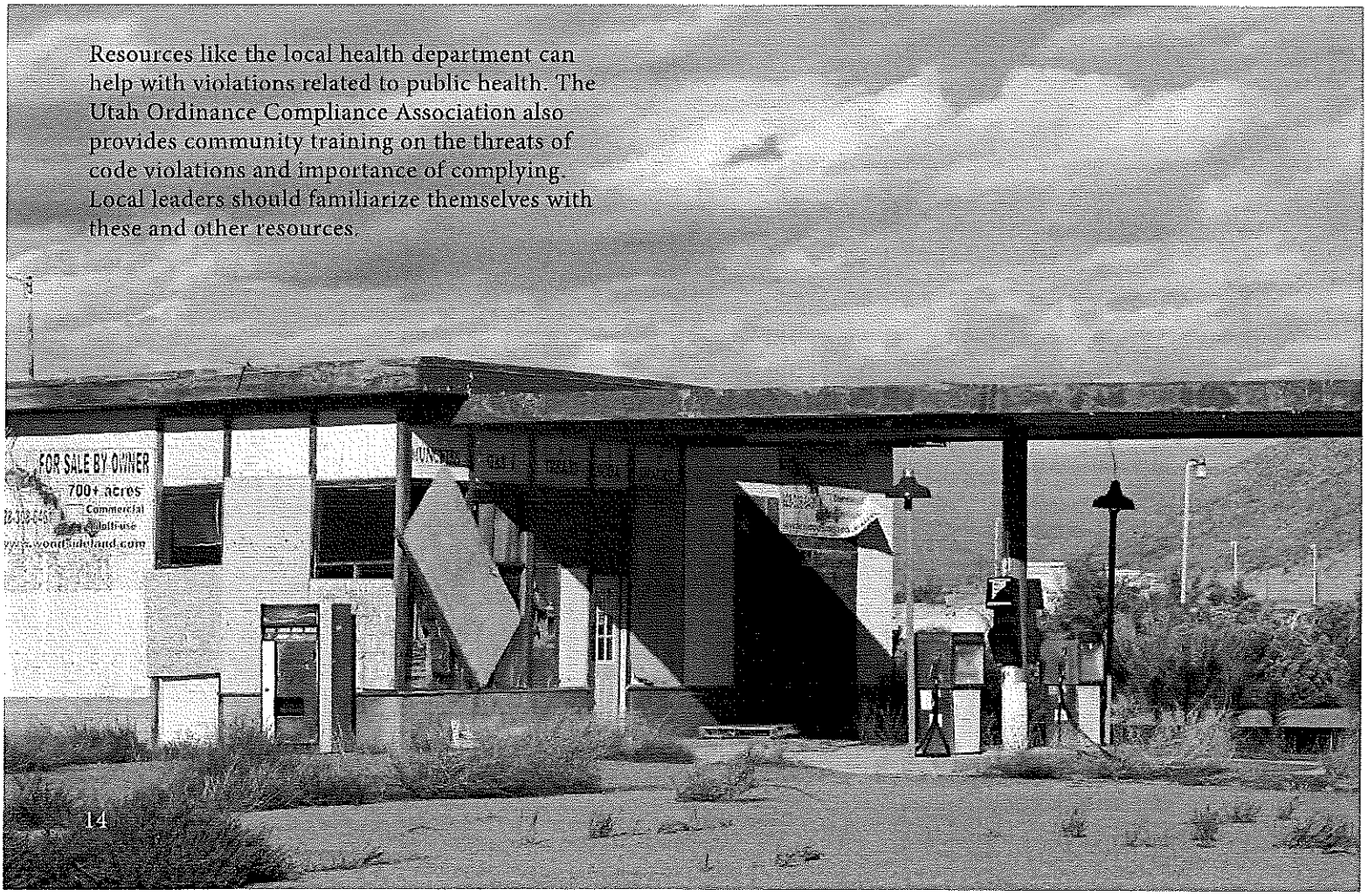
There are two primary methods of code enforcement: offering incentives or issuing penalties. This sample methodology incorporates an incentive/assistance program into a more traditional, penalty based system. Incorporated communities can adopt any process they deem valuable, provided it does not violate residents constitutional rights.

THIS MODEL*

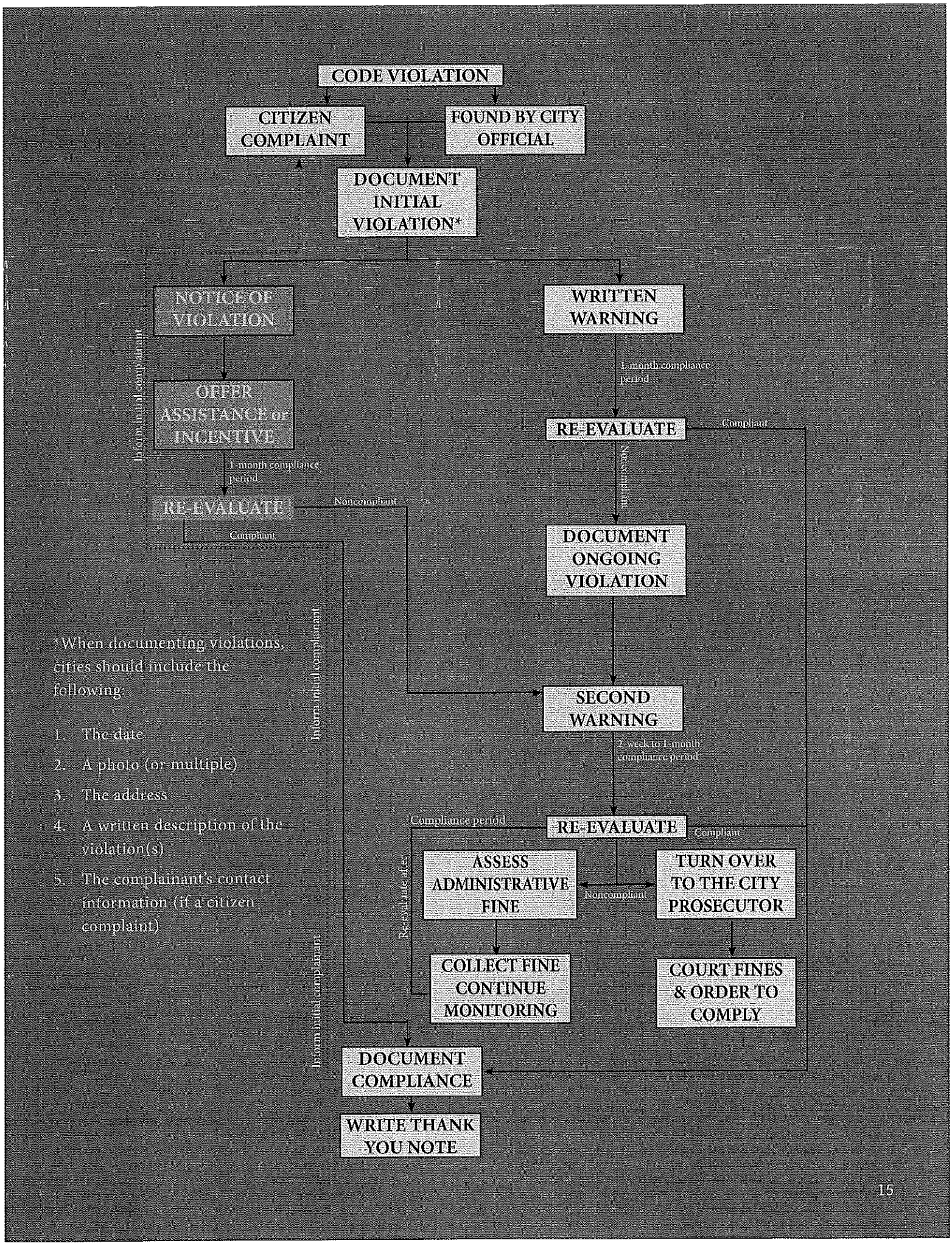
In this model, a violation is observed and documented. Based on the nature of the violation, the resident is informed of their noncompliance with a written warning or notice of violation (with reference to the violated code). The city can then offer assistance or an incentive to come into compliance, or provide a warning of pending legal action and potential fines. If the resident does not take advantage of the assistance or incentive, or respond to an initial warning after a one-month compliance period, the ongoing violation will be documented. Then, a second warning will be issued, illustrating the city's intent to fine or seek a court ordered injunction to comply. After a two-week to one-month additional compliance period, the property will be re-evaluated, and an administrative fine will be assessed or the case will be turned over to the city (or county) prosecutor.

When compliant, the city will document compliance, issue a notice to the resident who made the initial complaint, and write a thank you note to the resident who brought their property into compliance.

*See Works Cited reference 8 for the sample enforcement procedure that informed this model.

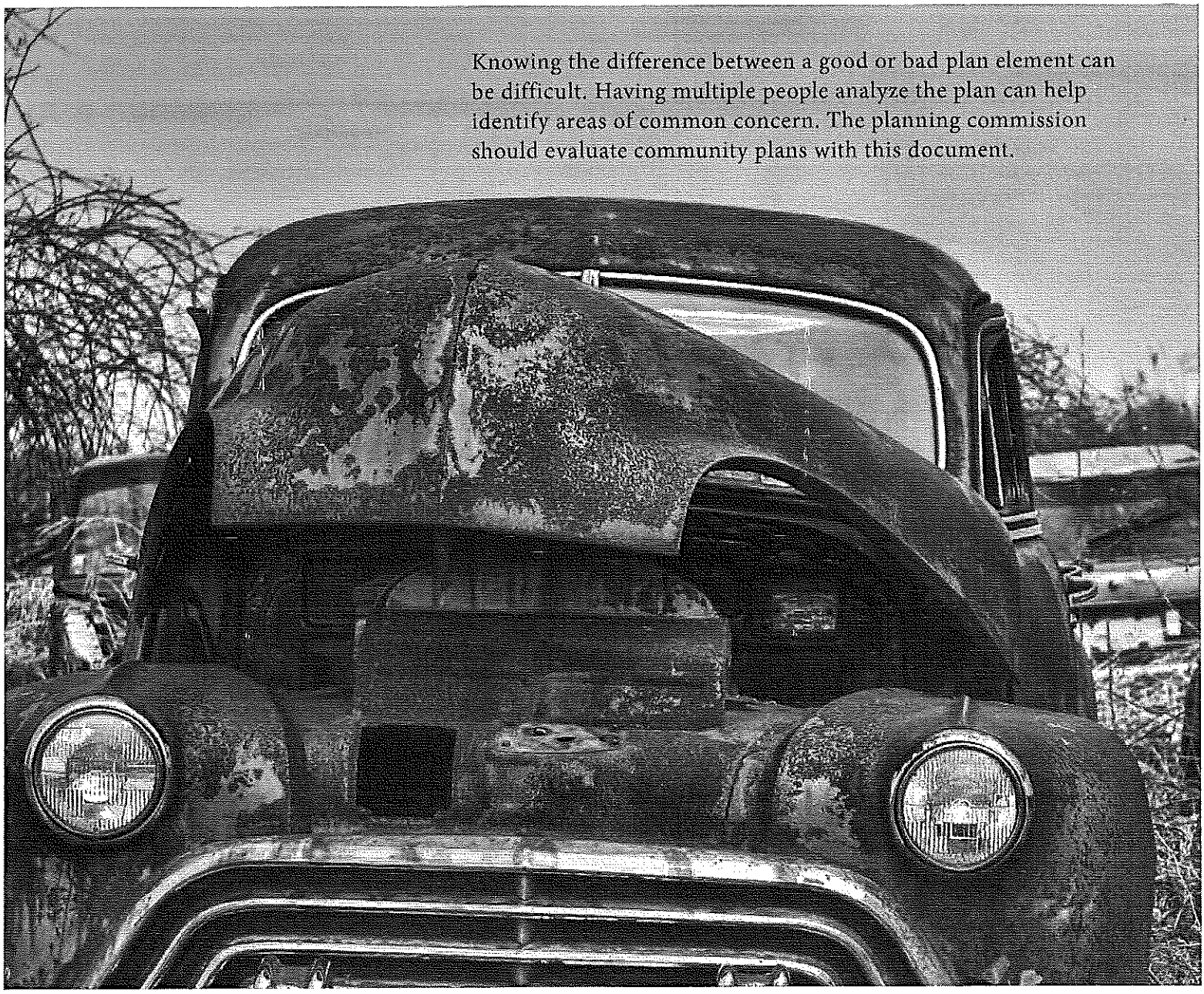


Resources like the local health department can help with violations related to public health. The Utah Ordinance Compliance Association also provides community training on the threats of code violations and importance of complying. Local leaders should familiarize themselves with these and other resources.



*When documenting violations, cities should include the following:

1. The date
2. A photo (or multiple)
3. The address
4. A written description of the violation(s)
5. The complainant's contact information (if a citizen complaint)



Knowing the difference between a good or bad plan element can be difficult. Having multiple people analyze the plan can help identify areas of common concern. The planning commission should evaluate community plans with this document.

SAMPLE: PLAN & CODE AUDIT

The Rural Planning Group (RPG) uses this code and zoning audit to evaluate communities' codes, plans, and zoning maps. This audit considers many of the legal requirements (as per state laws) for municipalities' general plans, zoning, and code. This audit also assesses a community's plan and code cinsistency. Each area is scored based on a "red," "yellow," or "green" scale. Red indicates a community does not have the provision, yellow indicates the provision exists but is lacking, and green indicates that the provision is present and adequate. Additional criteria that address issues specific to individual municipalities are recommended as add-ins to the audit. Planning commissions or other city officials should be capable of completing this audit.

As community leaders complete this assessment, they often ask, "Well what do I do now?" The findings of this audit need to be shared with the elected officials who have the authority to create or authorize changes to the plan, map, and code. If things are in serious disarray, RPG recommends taking a hard look at updating or re-writing the community's general plan and orienting the code to the goals set forth in the general plan. This will ensure the community's code and zoning have a bearing towards the community's long-term ambitions.

PLANNING & ZONING **ORDINANCE AUDIT**

ITEM Required by State code... *(State code reference)*	CONDITION	NOTES
Do we have a General Plan? *(10-9a-401)*		
Do we have an official map? *(10-9a-401, -407, 10-9a-103(34))*		
Do we have a zoning ordinance? *(10-9a-502)*		
Do we have a zoning map? *(10-9a-502, 505)*		
Are our plans and ordinances publicly available?		
PLAN ELEMENTS Does it cover...		
Transportation *(10-9a-403)*		
Affordable housing *(10-9a-408)* *(Towns are exempt from this requirement)*		
Land use *(10-9a-403)*		
Implementation strategy *(best practice)*		
Capital improvements plan *(aligned to GP 10-9a-406)*		
ORDINANCE REQUIREMENTS		
Creates a Planning Commission *(10-9a-301(1)(a))*		
Establishes an appeal authority *(10-9a-701)*		
Residential facilities for elderly/persons w/disabilities *(10-9a-516)*		
Allows for compliant manufactured homes *(10-9a-514)*		
Addresses cell towers (can't prohibit)		
Reestablish nonconforming structure after calamity *(10-9a-511)*		
Allows for charter schools *(10-9a-305)*		
Allow for adult-oriented businesses		
PROCEDURES for...		
Planning Commission *(10-9a-302)*		
Land use authority *(10-9a-103(24))*		
Appeal authority *(10-9a-701)*		
PUBLIC NOTICE		
Have they been posting to the Utah Public Notice website?		

GENERAL PLAN & CODE CONSISTENCY Do our plan and code work together to the community's ultimate goals?

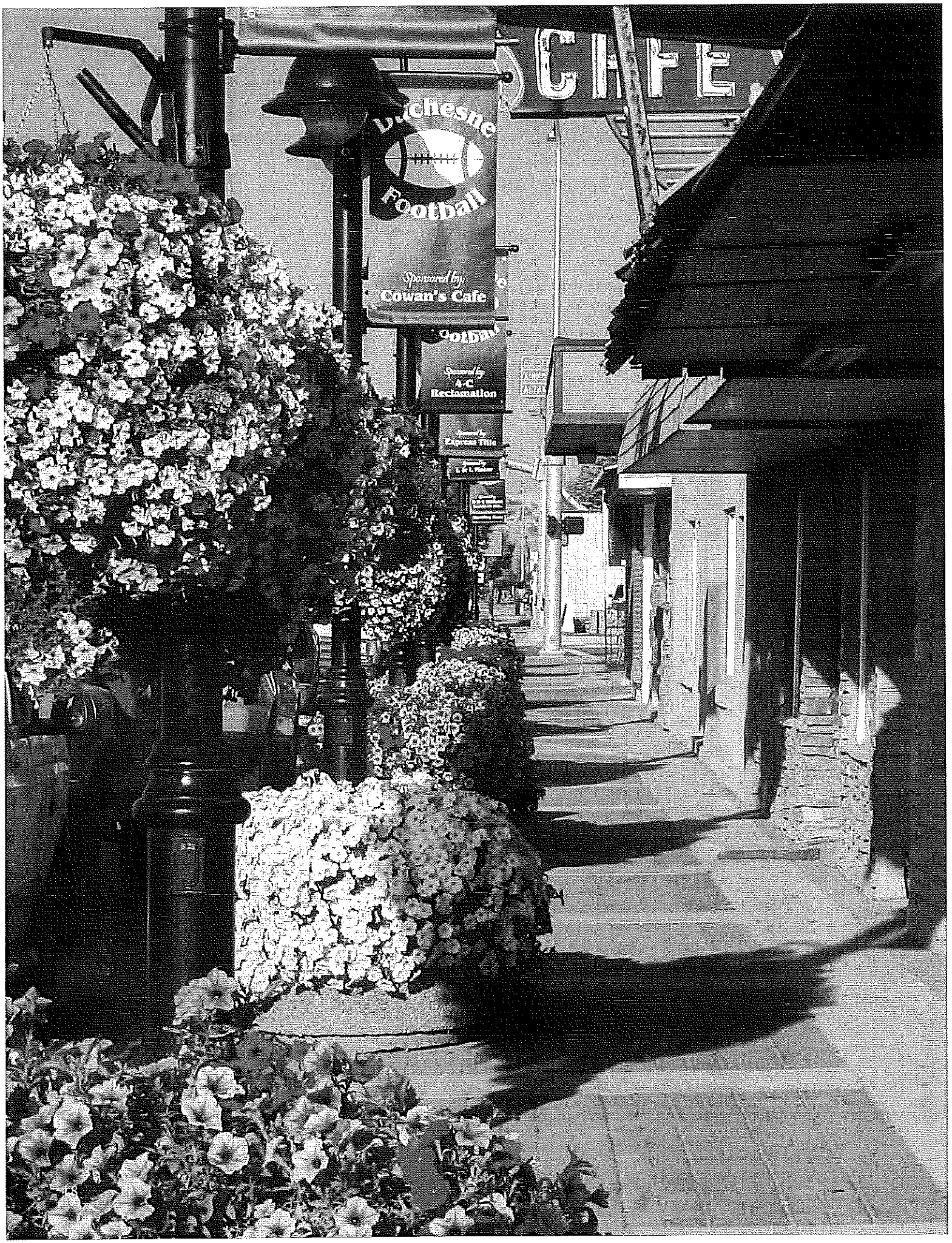
Overall, how well are city goals and vision reflected in the code?

List community goals from each section of your general plan and review city code with each goal in mind. Using green, yellow, and red, describe if and how well current codes establish each goal.

The requirement is fulfilled and in good condition

The requirement is fulfilled but is in questionable condition

The requirement is not fulfilled


CIFE
Duchesne
Football
Sponsored by
Cowan's Cafe
Sponsored by
4-C
Reclamation

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1 Change Lab Solutions. "General Plans and Zoning." <http://www.changelabsolutions.org/sites/default/files/documents/finalbook.pdf. 2007>.

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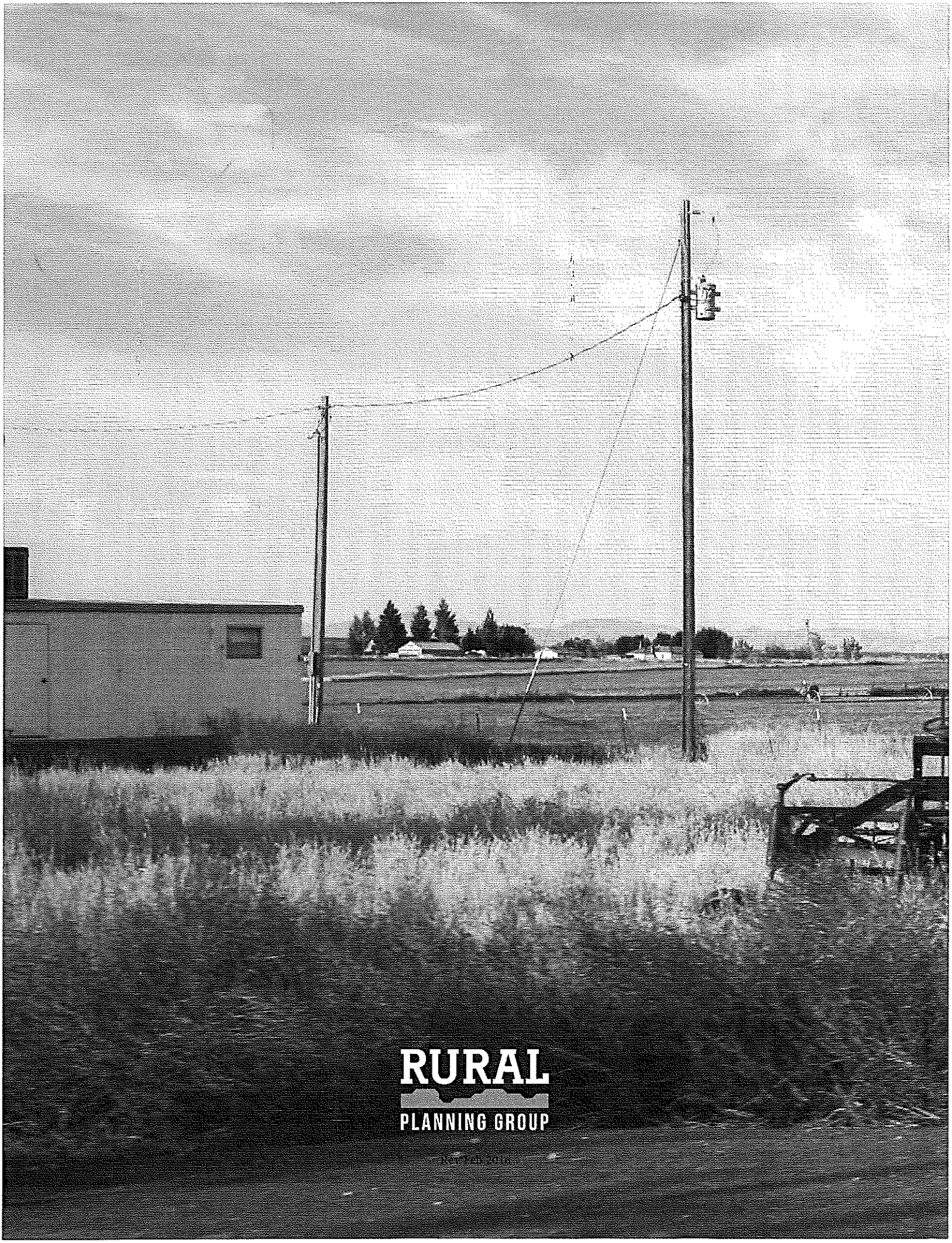

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