

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Study Session Worksheet

**Presentation Date:** June 4, 2013   **Approx Start Time:** 2:30   **Approx Length:** 1 hour

**Presentation Title:** Code Enforcement – Miscellaneous Remaining Matters

**Department:** DTD – Code Enforcement Section

**Presenters:** Scott Caufield – Building Codes Administrator  
Rhett Tatum – Assistant County Counsel

**Other Invitees:** Barbara Cartmill, Acting Director, DTD  
Andrea Hall – Code Enforcement Coordinator

### WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

This is the third scheduled study session related to the county's code enforcement program. This study session will address assorted issues not discussed at the previous sessions on complaints and fees, fines and collection.

### EXECUTIVE SUMMARY:

The following are descriptions of current code enforcement policies not addressed at previous code enforcement study sessions:

**Administrative Inspection Warrants** – An administrative inspection warrant is issued by a judge to an agency allowing it to enter property for the purpose of investigating a violation of an administrative code. They are like criminal search warrants. The county must demonstrate to a judge that it has reasonable cause to believe a violation has occurred on the property. This will likely require a sworn affidavit from the complainant who would have to waive any confidentiality. Counsel would work closely with staff to obtain the warrant.

Currently staff and counsel are not authorized to seek administrative warrants. However, there are a few matters where the county has been unable to investigate relatively serious violations because the landowner has denied the county entry to the property. Staff recommends amending Chapter 2.07 to allow the county to seek administrative warrants.

**Ten-year policy** – The “ten year policy” was a policy in place from 2000 to 2009. Under the policy, the county would not take enforcement action against a violation if it was not a threat to health, life or safety, and had existed for at least ten years. Violations covered by the policy were not legalized or “grandfathered in;” rather, the county simply elected not to enforce against the property owner as long as the policy was in place. The policy was formally applied only 13 times.

Staff does not recommend readopting the ten-year policy. To address the Board's concern that the county is putting property owners in a position of defending old violations for which there are few records, staff recommends a formal change to its internal procedures. Following citizen concerns, staff reevaluated its policy for handling older violations. Before further pursuing violations that are alleged to have occurred more than ten years in the past, the code enforcement program manager meets with staff to discuss the evidence and ensure that it is satisfactory for the county to meet its burden. The program manager also takes into account the threat to health life and safety. Staff recommends formally adding this practice to the program's procedures.

**Voluntary Compliance Agreements** – Currently, Clackamas County Code § 2.07.030(B) provides a formal process by which the county enters into formal agreements with respondents outlining the steps and timeframe under which the respondent must remedy the violation. Although the program still emphasizes and seeks to pursue voluntary compliance, staff does not utilize this formal process.

Staff recommends repealing this obsolete provision from the code because the process is neither required nor utilized. Staff would continue to emphasize and seek voluntary compliance before issuing a citation and requesting a hearing.

**Nonenforcement Agreements** – Currently the county does not have a formal process for deciding to suspend enforcement against confirmed violations that fall under an enforceable priority. However, the Board has expressed interest in allowing nonenforcement agreements under certain, unusual situations.

Staff has significant concerns about formalizing a nonenforcement process as nonenforcement increases the potential for litigation. If the Board would like to formally adopt such a policy, staff recommends vesting the decision whether to enter into a nonenforcement agreement with the Director of DTD after consultation with the code enforcement program manager, the head of the division whose code is at issues, and following an opinion from counsel on the specific legal risk posed by electing not to enforce. In making his or her decision, the director should take into account all relevant factors, including: any unusual procedural or legal history surrounding the violation, the cost of the enforcement action, the community's concerns, the impact of the violation, the risk the violation poses to health, life or safety, the availability of a legislative or other remedy, and other mitigating or aggravating factors. The Board would be briefed on high profile decisions.

**Role of the Board** – Currently, the Board oversees the Code Enforcement Program by setting and reviewing its policies and procedures. Interested commissioners can and do request the staff brief them on individual enforcement actions and have also played a role in organizing and moderating discussions between respondents and pertinent county staff. The Board has no direct role in the day-to-day implementation of the program.

Staff recommends continuing with the current policy. Counsel is concerned that direct involvement from the Board exposes the county and individual Board members to

claims that the county is selectively enforcing its code in violation of the constitution. Additionally, code enforcement process about 800, fact specific cases a year.

**FINANCIAL IMPLICATIONS (current year and ongoing):**

**Administrative Inspection Warrants** – Counsel estimates the cost, including staff time, to obtain an administrative inspection warrant to be roughly \$500. However, this is not anticipated to increase the program's costs significantly because the need for an administrative inspection warrant is rare. Currently there are only two open files waiting for warrant authorization.

**Ten-year policy** – It is difficult to estimate the cost or cost reductions of this policy. Although the current practice requires additional staff time to decide whether the county should proceed with enforcement, the savings from deciding not to enforce against difficult to prove violations could result in a net savings to the program.

**Voluntary Compliance Agreements** – Removing the language would result in no fiscal impact because the procedure is not currently utilized.

**Noncompliance Agreements** – It is difficult to estimate the cost or cost reductions of this policy. Although upfront cost of deciding not to enforce involve collaboration between senior staff and counsel, this collaboration already occurs to some extent on higher-profile matters and would be offset by the staff time saved not pursuing enforcement.

**Role of the BCC** – No change if the current policy is maintained. If the Board were to take a more direct role in the program, there would likely be staff time associated with briefing the Board in addition to the Board's time.

**LEGAL/POLICY REQUIREMENTS:**

As identified above, the proposed changes require amendments to both code enforcement policy and the county code.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

The county has not sought public input on these specific issues.

**OPTIONS:**

The policy options are described in the Executive Summary.

**RECOMMENDATION:**

Staff's recommendations are described in the Executive Summary.

**ATTACHMENTS:**

Sample Administrative Warrant.

**SUBMITTED BY:**

Division Director/Head Approval

Scott D Campbell 5/29/13

Department Director/Head Approval

M. D. Campbell 5-29-13

County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact Rhett Tatum @ 503-655-8364

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

CLACKAMAS COUNTY, *ex rel.*  
Code Enforcement Specialist

**ADMINISTRATIVE INSPECTION  
WARRANT**

In the Matter of the Application  
for an Inspection Warrant.

TO: The County Code Enforcement Specialist and any of designated representatives.

RE: A property located at 1234 E. Violation Lane, Clackamas County, Oregon, Tax Lot  
1000 ("the property"). The property owner is listed in county tax records as T5S R7E  
Sec. 09 02600.

IN THE NAME OF THE STATE OF OREGON:

WHEREAS, the Code Enforcement Officer for Clackamas County is authorized by  
Clackamas County Code Chapter 2.07 to enter the above-described property to conduct an  
inspection of the place, buildings, interiors of all trailers and structures, curtilage and  
appurtenant land to ascertain if zoning or building code violations exist therein, based on the  
accompanying affidavit, it appears that Cornelius Q. Respondent, the occupant of the place,  
building, or premises located at 1234 E. Violation Lane, Clackamas County, Oregon (Tax  
Lot 1000) have refused to consent to the Code Enforcement Officer to enter onto the  
property for that purpose, thereby frustrating the purpose of the inspection and necessitating  
the issuance of an inspection warrant:

1            THEREFORE, YOU ARE HEREBY AUTHORIZED to enter the above-described  
2 place, building, curtilage and appurtenant land to conduct an inspection, to determine if  
3 zoning or building code violations exist therein. This warrant authorizes you to enter the  
4 property on August 15, 2013 between the hours of 8:00 a.m. and 8:00 p.m. You are  
5 authorized to obtain the assistance of the Oregon State Police, Clackamas County Sheriff's  
6 Office, and/or other peace officers to gain access to and maintain order while on the  
7 property, and you are to return this warrant to the Circuit Court of Clackamas County,  
8 Oregon, when said inspection has been completed. This warrant shall be executed not later  
9 than 8:00 p.m. on August 16, 2013.

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DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Circuit Court Judge

RETURN OF WARRANT TO CLACKAMAS COUNTY CIRCUIT COURT

I, Jane T. Inspector, conducted the inspection of the property described in this  
warrant on the \_\_\_\_ day of \_\_\_\_\_, 2013, around \_\_\_\_\_. Citation(s) were were not  
issued (circle one).

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Jane T. Inspector, Code Enforcement Specialist

1  
2 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
3 FOR THE COUNTY OF CLACKAMAS

4 CLACKAMAS COUNTY, *ex rel.*  
5 Code Enforcement Specialist

Affidavit of Jane T. Inspector in  
Support of Request for Administrative  
Inspection Warrant

6  
7 In the Matter of the Application  
for an Inspection Warrant.  
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10 I, Jane T. Inspector, being first duly sworn, depose and say that:  
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12 1. I am employed by Clackamas County as the Code Enforcement Specialist.  
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14 2. In my capacity as the Code Enforcement Specialist for Clackamas County I am  
15 required to inspect places, buildings, or premises for the purpose of investigating violations  
16 of the County Zoning and Development Ordinance, grading ordinance, and state Building  
17 Code and to ascertain compliance with same. My authority and duty for inspecting property  
18 derives from Clackamas County Code Section 2.07.  
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20 3. The following place, building, or premises has been scheduled for inspection based  
21 on a complaint from Peter M. Neighbor: 1234 E. Violation Lane, Clackamas County,  
22 Oregon, Tax Lot 1000  
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24 4. I suspect violations of the Clackamas County Zoning and Development Ordinance,  
25 Building Code and Grading Code may exist on the property based on a citizen complaint  
26 received, my review of the county permitting database and my training and experience.

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4. For two weeks I have attempted to reach Mr. Respondent by telephone. I have left three voicemails which have not been returned.

5. On August 1, 2013 I attempted to visit the property. The gate was locked and a "No Trespassing" sign was posted.

6. Because the property is heavily forested I cannot see most of it from public roads. I cannot confirm that there is a second house on the property nor the extent of any work done to support a second house.

7. There are no permits on file allowing respondents to have a second home on the property.

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Jane T. Inspector, Code Enforcement Specialist

Notary Public for Oregon  
My commission expires:



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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

CLACKAMAS COUNTY, *ex rel.*  
Code Enforcement Specialist

Affidavit of Peter M. Neighbor in  
Support of Request for Administrative  
Inspection Warrant

In the Matter of the Application  
for an Inspection Warrant.

I, Peter M. Neighbor, being first duly sworn, depose and say that:

1. I reside at 1236 E. Violation Lane, Clackamas County, Oregon, Tax Lot 1100.

2. My property is next to 1234 E. Violation Lane, Clackamas County, Oregon, occupied by Cornelius Q. Respondent. Mr. Respondent has a large forested parcel and much of his property is not visible from mine.

3. On July 5, 2013 I observed a large truck carrying an old manufactured home pull up to Mr. Respondent's property and drive into to woods followed by a bulldozer. I did not see if the truck or bulldozer left.

4. Beginning on or about July 10, 2013 I began to observe regular traffic going to and from the place in the woods where the truck with the manufactured home had entered. I have observed at least four different vehicles coming and going from those woods.

5. On the evening of July 15, 2013 I observed more than 20 vehicles going into the woods and head music and other loud noises coming from the woods until late at night.

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6. On or about July 18, 2013 I saw Mr. Respondent working near our shared fence line. I asked if he had moved a manufactured home onto the property. He told me to mind my own business.

7. On July 19, 2013 I filed a complaint with the Clackamas County Code Enforcement Section.

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Peter M. Neighbor

Notary Public for Oregon  
My commission expires: