

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Staff Presentation Worksheet

Presentation Date: March 30, 2010 Time: 10:45 am Length: 15 minutes

Presentation Title: Ordinance amending civil penalty amounts

Department: DTD & County Counsel

Presenters: Cam Gilmour – DTD; Scott Caufield – DTD;
 Scott Ciecko – Office of County Counsel

POLICY QUESTION

In response to SB 915, should the Board of Commissioners amend the current civil penalty amounts for all code violations, or should the Board create a separate schedule of civil penalties solely for building code violations.

ISSUE & BACKGROUND

In 2009, the Oregon Legislature passed SB 915 providing (amongst other things) that local governments administering building inspection programs shall not assess civil penalties for building code violations in amounts that exceed the limits set forth in ORS 455.895. Clackamas County administers a building inspection program and therefore is now subject to the limitations on civil penalty amounts set forth in State statute.

The current schedule of civil penalties in Clackamas County is set forth in Section 2.07.120 of the County Code and is applicable to all code violations. That section provides maximum civil penalty amounts as follows: \$3,500 for a Priority 1 violation; \$2,500 for a Priority 2 violation; \$1,500 for a Priority 3 violation; and \$1,000 for a Priority 4 violation. Additionally, Section 9.02.330 of the County Code provides that each day that a building code violation exists is a separate offense.

ORS 455.895, however, indicates that the maximum penalty for a building code violation is \$1,000 for each day of a continuing offense. As the current County Code allows for penalties greater than \$1,000 per day for Priority 1, 2, and 3 violations, it appears that the code is now in conflict with State law.

At a study session on February 9th of this year, this issue was presented to the Board of County Commissioners and a recommendation was made by staff. However, after further consideration and ongoing discussions within the department, staff has decided to change its previous recommendation to this Board as is outlined below.

QUESTION PRESENTED FOR CONSIDERATION

Will the Board of County Commissioners amend the schedule of civil penalties for code violations in order to comply with the requirements of SB 915?

OPTIONS AVAILABLE

1. The County could reduce the maximum civil penalty amounts for *all code violations* so that the amounts will not exceed \$1,000 per day for any continuing violation;
2. The County could create a separate schedule of civil penalties applicable only to *building code violations* in which maximum amounts would not exceed \$1,000 per day for continuing violations.

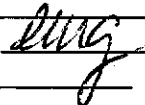
RECOMMENDATIONS

DTD respectfully recommends that the Board adopt option number two above. This option will retain the maximum penalty amounts that can be imposed by the County hearings officer for all code violations except building codes. Non-building code violations largely involve zoning and solid waste issues. Retaining larger civil penalty amounts that can be imposed by the Compliance Hearings Officer for non-building code violations will ensure the deterrent effect of the penalties is not diminished. Our experience tells us that the maximum civil penalty of \$3,500 is rarely imposed and has been an effective tool in achieving compliance with most individuals.

Furthermore, in the rare case that the monetary penalty is not effective in gaining compliance, there remains the option of filing an action in Circuit Court where the County can seek an injunctive or other remedy. Keeping the non-building codes penalties at current level we believe will reduce the need to go to Circuit Court to gain compliance. The County's ability to utilize the Circuit Court to correct code violations is not affected by SB 915.

As a house-keeping matter, County Counsel additionally recommends that the schedule of civil penalties be removed from the County Code and maintained in Appendix B to the Code as well as the Operational Policies of DTD. This change will be consistent with other chapters of the County Code, see e.g. Chapter 6 – Public Safety. The change will also allow penalty amounts to be changed with a simple board order rather than an ordinance so that the code will not need to be amended every time the penalty amounts are altered.

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval 
County Administrator Approval _____

For information on this issue or copies of attachments, please contact Anja Mundy at 503-655-8362.