

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: April 16, 2013 **Approx Start Time:** 2:00 **Approx Length:** 1 hour

Presentation Title: Code Enforcement – Fees, fines and collection

Department: DTD – Code Enforcement Section

Presenters: Scott Caufield – Building Codes Administrator

Other Invitees: Rhett Tatum – Assistant County Counsel

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

At the January 23rd, 2013 Code Enforcement Planning Session the Board indicated that it would like a follow-up session on issues related to fees, fines and their collection. Staff has proposed changes to those aspects of the program and would like further direction from the Board.

EXECUTIVE SUMMARY:

The following is a description of the current county policies and practices related to fees, fines and their collection as well as proposed changes and a staff recommendation:

Fees – Currently the county imposes a \$75 per month administrative fee from the date that the county decides to go to hearing, staff had been authorized to begin collecting the fee from the date the violation is established, typically the first inspection. At the planning session, the Board indicated support for this change.

Fines – The hearings officer is authorized to levy fines in the following amounts per each day the violation is established:

- Priority 1: \$750 - \$3,500
- Priority 2: \$500 - \$2,500
- Priority 3: \$250 - \$1,500
- Priority 4: \$100 - \$1,000
- Building code violation fines are capped at \$1,000 by state law

Staff does not recommend adjusting the amounts but does recommend amending the county code to reflect the current practice which is to assess the fine for each day the county inspects the property and finds it to be in violation, typically twice. The current language has resulted in anxiety and contributed to a perception that the code enforcement program is draconian. The county would still be able to impose daily fines of the greater of \$500 or one percent of a respondent's income as part of contempt proceedings in circuit court.

Collection – Other than recording a lien, the county takes no action to collect fines imposed by the hearings officer. The liens are valid for 20 years. Liens are paid off if property is sold or refinance, or paid off at a discount as part of a bankruptcy or foreclosure proceeding.

Currently there are just over \$880,000 in liens and interest outstanding. With interest the mean lien amount is \$7,357 and the median amount is \$3,193. The following table shows amount and number of new liens recorded and satisfied or released for each year since 2004.

Year	No. Recorded	Amt. Recorded	No. Satisfied	Amt. Satisfied
2004	5	\$10,050	2	\$11,000
2005	5	\$10,949	3	\$2,600
2006	12	\$80,609	9	\$16,850
2007	19	\$41,597	6	\$7,825
2008	16	\$150,108	3	\$5,225
2009	24	\$173,325	5	\$14,750
2010	8	\$73,700	4	\$22,750
2011	13	\$48,862	2	\$13,400
2012	16	\$59,033	5	\$7,050

Please note that a number of large fines resulted from the older practice of making many inspections of the property before taking the violation to hearing. Fines in these amounts would not be levied today.

Alternatives to current policy include:

- Sending annual reminder letters;
- Authorizing staff to negotiate discounted payments;
- Utilize a collections agency;
- Garnishment (see below).

Previous boards have been unwilling to turn code enforcement fines over to collections agencies to avoid associating the county with aggressive collections processes. However, Forest Management in partnership with the state and other agencies as part of the Dump Stoppers program did refer cases to a collections agency used by the state. The agency was unsuccessful in collecting the fines but that may have been because Forest Management only referred the most difficult cases.

Staff recommends sending reminder letters on the anniversary date of the lien for a one year trial period. Additionally, staff recommends reviewing all liens over \$10,000 and normalizing them to current amounts.

Garnishment – Staff is requesting an amendment to the county code to allow wage garnishment. Garnishment requires a circuit court action, is labor intensive, and only

effective against respondents with a sufficient assets or income. Accordingly, staff recommends its use as another tool to obtain compliance rather than as a general collections tool.

FINANCIAL IMPLICATIONS (current year and ongoing):

Fees – Allowing the county to begin collecting the administrative fee upon confirming the violation is expected to bring result in an additional \$125,000 per year in fees. It is also expected to shorten the time to compliance, reducing the long-term workload.

Fines – Amending the code would have no impact on revenue because the amendment would only be to harmonize the language with current practice.

Collection – Any of the recommended collection options are likely to increase revenue. Because staff cannot anticipate how the lien debtors would respond to the program any projections would be highly speculative.

Beyond the small cost to establish the programs neither the annual reminder letters nor utilizing a collection agency are anticipated to increase staff workload significantly.

Garnishment – Pursuing garnishment as a general collection tool for all liens will require a significant increase in the workload for both county counsel and code enforcement staff. However, as an enforcement tool, garnishment would not increase staff resources significantly because counsel already files civil actions in those matters.

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.

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval *Sam Gilman*
County Administrator Approval _____

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

Last updated: January 2012

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: April 16, 2013 **Approx Start Time:** 2:00 PM **Approx Length:** 15 Min.

Presentation Title: Follow-up on proposed changes to code enforcement complaint policy

Department: DTD – Code Enforcement Section

Presenters: Scott Caufield, Building Codes Administrator

Other Invitees: Rhett Tatum, Assistant County Counsel

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Following the March 12 Study Session on the county's policy on code enforcement complaints, the Board requested staff return with a policy reflecting the Board's direction.

EXECUTIVE SUMMARY:

Currently Code Enforcement accepts and investigates all confidential complaints alleging a violation with the current enforcement priorities. Staff may report violations that are discovered in the normal course of business. This policy would be amended in the following ways:

- The county will retain the current priority scheme;
- Staff may report the violations they observe during an investigation on a property that is the *subject of the investigation*;
- When taking a telephone complaint from the public, Code Enforcement staff will no longer ask if the complainant would like to remain confidential, the complainant must request *confidentiality on their own*;
- Staff will continue to investigate all named complaints (non-confidential);
- Upon receiving a confidential complaint staff will open a file but not investigate the alleged violation unless any of the following conditions are met:
 - Staff receives a second complaint from a complainant having a different address than the original complainant;
 - The Building Codes Administrator determines that the alleged violation poses an *imminent threat* to the health, life, or safety of a person or irreparable environmental damage;
 - The Building Codes Administrator determines that the complainant is the only person who can observe the alleged violation or is the only person affected by the alleged violation, and determines that there is a specific and concrete reason warranting confidentiality, *e.g.* the respondent has threatened the complainant, violator is believed to be involved in criminal activity, or the complainant is an employee;
- Otherwise the file will be closed after one year.

Staff was uncertain following the last study session whether the Board generally supports requiring that the complainants live near or work on the property where the violation is alleged to have occurred. However, staff believes such a policy or any other policies targeted at the complainant's reason for filing the complaint are administratively infeasible and may undermine confidentiality protections.

FINANCIAL IMPLICATIONS (current year and ongoing):

There are no fiscal implications for the current year. It is yet to be determined how these changes will affect workload so the long term fiscal implications are unknown.

LEGAL/POLICY REQUIREMENTS:

The proposed changes are consistent with the applicable law. They require a change to the Code Enforcement Section's Operational Policies.

PUBLIC/GOVERNMENTAL PARTICIPATION:

Staff have not sought public input on these particular changes.

OPTIONS:

- (1) Direct staff to change the Operational Policies for formal approval as part of a larger package of changes to the Code Enforcement program;
- (2) Retain the current policy;
- (3) Direct staff to make different changes from the options discussed at the March 12 Study Session.

RECOMMENDATION:

Option 1, with a request that after the changes are made, staff collect data on how the quantity and quality of the complaints has changed and that the Board and staff reevaluate the changes after six months.

ATTACHMENTS:

None.

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval *Ken Palmer*
County Administrator Approval _____

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