

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: March 8, 2016 **Approx. Start Time:** 1:30 pm **Approx. Length:** 1 hour

Presentation Title: Code Enforcement (CE) Performance Review Updates and CE Marijuana Enforcement Policy Discussion

Department: Transportation & Development

Presenters: Scott Caufield and Dan Johnson

Other Invitees: Scott Ciecko and Nate Boderman (County Counsel)

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

The CE Section is seeking commentary on the changes implemented since we initially responded to the CE Performance Review and we are also seeking policy direction in regards to marijuana-related CE cases.

EXECUTIVE SUMMARY:

CE Performance Review Update

In January 2015, the CE Section met with the BCC to provide responses to the CE Performance Review which occurred in the prior year. At that time, the CE section summarized some of steps it had taken to address issues/questions raised in the review, and outlined its plans to address the remainder of the issues in the future. In March 2015, the BCC provided additional direction related to the prioritization of violations and the handling of complaints.

Since those Policy Sessions, the CE Section has continued to implement the recommendations from the performance review and has also considered the direction of the BCC regarding our operations. The attached *Memorandum and Final Report* to Don Krupp, County Administrator, dated December 18, 2015 provides updates on the myriad changes we have made related to the audit and also presents our complaints policy for your review.

For your reference and comparison, Attachment A in this packet presents the initial response to the BCC in January 2015; Attachment B presents the new Code Enforcement Complaints Policy; Attachment C is Code Enforcement Complaints Flow Chart; and Attachment D is a memorandum from Clackamas County Counsel which provide guidance to staff relating to trespass laws.

Marijuana-related Code Enforcement

As the BCC is aware, recent changes in state law have legalized both medical and recreational marijuana in Oregon. Effective January 1, 2016, the Clackamas County Zoning and Development Ordinance (ZDO) implemented time, place, and manner rules and restrictions as they relate to the growing, processing, and selling of marijuana within Clackamas County.

The CE Section is currently dealing with 8 cases which were opened prior to the adoption of the new ZDO rules, 2 of which have been resolved and are now closed. Additionally, we are also

starting to receive marijuana-related complaints since the new ZDO rules were implemented. We currently have 7 cases opened since January 1, 2016, some of which are not yet confirmed.

The CE Section is seeking policy direction and guidance from the BCC as it relates to the prioritization of marijuana-related cases and in the enforcement of the new zoning rules as outlined in the policy questions below.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost?

\$240,000 is the amount allocated to the Planning & Zoning Division in the current fiscal year for all zoning-related CE work. \$180,000 is the amount allocated to the Building Codes Division in the current fiscal year for all building code-related CE work. It is not known at this time what financial impacts marijuana-related enforcement will have on these budgets in the future.

What is the funding source?

Funding is currently provided to the CE program through direct billings to Building Codes, Planning & Zoning, and Resource Conservation and Solid Waste programs for services rendered and also from an \$112,558 contribution from the general fund in the current fiscal year.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?

Enforcement of marijuana rules and regulations is important to ensure a safe and livable community. Firm enforcement is needed to foster the public's trust which was identified as a goal in the BCC's strategic plan.

- How does this item align with the County's Performance Clackamas goals?

DTD's Performance Clackamas Plan identifies the timely enforcement of CE cases as a high priority and recognizes that CE is vital part of creating Livable Communities, one of DTD's lines of business. The CE Section is now tracking marijuana-related CE cases through a special report and we intend to elevate this tracking as one of our performance measures for fiscal year 2016/17.

LEGAL/POLICY REQUIREMENTS:

Effective January 1, 2016, new zoning rules were implemented in the Clackamas County Zoning and Development Ordinance. Depending on the direction provided by the BCC related to the enforcement of marijuana-related cases, it might be necessary to modify Chapter 2.07 *Code Enforcement* of the Clackamas County Code.

PUBLIC/GOVERNMENTAL PARTICIPATION:

The ZDO rules regulating time, place, and manner for marijuana growing, processing, and sales were developed with extensive public input.

OPTIONS:

Questions:

- 1. Is the Board satisfied that the issues identified during the Code Enforcement Performance Review have been adequately addressed by CE staff?
- 2. Does the BCC wish to create special rules for the handling of marijuana-related CE cases?
- 3. Shall marijuana-related CE cases be classified as the same priority as other life/health/safety cases?
- 4. Does the BCC wish to impose a different fine and civil penalty structure than in other CE cases?

Options:

- 1. Affirm that marijuana-related violations are high priority. This is the same category as life/health/safety violations and would carry the same weight as these other types of violations. Handling of cases would be similar to those that currently fall in this category. Fines and civil penalties would be the same.
- 2. Create a special category for marijuana-related violations in terms of priority, handling etc. The BCC could create special rules for the handling of these cases, fines, and civil penalties.

RECOMMENDATION:

- 1. Affirm that marijuana-related violations as High Priority (same as health/life/safety)
- 2. Handle marijuana-related CE cases in the same manner as other high-priority CE cases
- 3. Use the same fine and civil penalty matrix as other zoning violations (up to \$3,000 per day for each violation)
- 4. Be diligent in the enforcement of these violations. That is, follow current due process but hold to strict timelines, deadlines.

ATTACHMENTS:

- Memorandum to Don Krupp, County Administrator/Performance Review Final Report
- Attachment A Response to FCS Group Performance Evaluation Recommendations
- Attachment B Code Enforcement Complaints Policy
- Attachment C Code Enforcement Complaints Action Flow Chart
- Attachment D Trespass Memo “What is (and is not) trespassing”

SUBMITTED BY:

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