

# 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 \_\_\_\_\_

## Memorandum

**To:** Don Krupp, County Administrator

**From:** Scott Caufield, Code Enforcement Manager

**CC:** Nancy Newton, Deputy County Administrator  
Barbara Cartmill, DTD Director  
Dan Johnson, DTD Deputy Director

**Date:** December 18, 2015

**Re:** Clackamas County Code Enforcement Performance Review: Final Report

As you are aware, the Code Enforcement Section received a performance review in 2013. The review was conducted by FCS Group and the final report and recommendations were received in April 2013. The report provided a detailed overview of the County's current CE program including practices, procedures and administrative structure. It additionally provided a work load review, presented stakeholder comments gathered as a result of extensive interviews and, most importantly, made a number of recommendations aimed at improving the performance of the CE program.

Overall, FCS Group found many things that CE does well, but also found a number of ways in which the program can improve. Those suggested improvements were reflected in their recommendations. Four main themes were identified in the performance audit:

- Improved management oversight
- Greater accountability
- Improve efficiency
- Establish performance measures

Attached you will find a copy of the initial response to the performance review findings. [See Attachment A.](#)

Since the time the performance review was prepared, the CE section has evaluated its program extensively, met with the Board of Commissioners (BCC) on multiple occasions and implemented a number of changes based policy directives of the BCC, the recommendations of FCS Group, and input from others.

Also since the time the performance review was completed, DTD completed the **Performance Clackamas** (Managing for Results) process, which focused heavily on the development of measureable outcomes to ensure that the BCC's strategic priorities can be met. The CE Performance Review's recommendations are very much aligned with the **Performance Clackamas** model. Thus, when implemented, the CE policy recommendations will make the CE

program a more effective and accountable program that will ensure the building of public trust through good government and safe, healthy and secure communities.

Based on these and other substantive changes, we felt an update was warranted. The following report is intended to identify the ways in which the CE Section has modified its practices to satisfy the criteria established in the performance review and to provide additional important information about the CE program.

In addition to the audit findings, the BCC has also given direction on some operational changes such as the handling of confidential complaints that should be highlighted here as well.

On March 17, 2015, the Board of County Commissioners provided to the DTD Code Enforcement Section clear policy direction on the handling of confidential complaints. Specifically, the BCC established that a minimum of two, independent confidential complaints are required to begin an investigation on an alleged code enforcement case unless the issue is categorized as a health and/or life safety hazard or where there is the potential for environmental damage. To ensure this policy direction is implemented, Code Enforcement staff revised its complaint handling policy and procedures.

Attached are copies of the updated Code Enforcement Complaints Policy and a Code Enforcement-Complaint Action Flow Chart. See Attachments B and C. These documents were developed by Code Enforcement staff to ensure other internal County departments, affected persons, and in particular, those where confidentiality is a consideration in the making of a complaint can be properly informed as to the County's current practices regarding these types of complaints.

The revised policy not only clarifies when a minimum of two confidential complaints is required to take action, it also emphasizes the priority nature of the CE complaint system by clearly referencing the County's Violation Priority Matrix as the overarching guide in identifying enforceable code cases. The policy provides clear definitions of the terms commonly used within the code enforcement program and it also provides examples of Health and/or Life Safety Hazards and Environmental Damage which will be used as a guideline by staff. Furthermore, the policy mandates coordination with the Building Codes Administrator when the determination is unclear.

The Policy has been circulated throughout DTD to ensure all staff has a thorough understanding of these changes. Work has also been completed to ensure this information is available on the Code Enforcement website and the Code Enforcement on-line complaint system to ensure consistency with these criteria.

While CE staff and management have worked to implement finds of the aforementioned performance review and direction by the Board, continued focus will be placed on ensuring a continued high level of customer service the citizens of Clackamas County.

# Code Enforcement – Performance Review: Report Out

January 2016

The following is an update on operational changes outlined in the performance review of Code Enforcement (CE) performed in April of 2014 by FCS Group. For ease of reading, the performance review recommendations and our responses to them have been organized by the themes identified in the performance review document:

## **Improved management oversight & greater accountability**

**Recommendation 2.1:** “...improve supervision and management of the program...”

**Response:** structural changes have been made within the Building Codes Division in recognition of the fact that there needs to be more direct oversight and management in the administration of the CE program:

- The Building Codes Division has created a deputy position to absorb the day-to-day operation of the building codes program, enabling the Building Codes Administrator to provide more direct, daily supervision of the CE program. This position was hired in March 2015.
- The responsibilities of the Code Enforcement Coordinator have been revised to assist the Building Codes Administrator in the operation of the program and to provide a manageable case load given the other assigned duties.
- Through performance Clackamas, performance measures have been developed to ensure that established goals for compliance are being met.

**Status:**    **This recommendation is implemented and will be ongoing**

**Recommendation 2.3:** “...”assure that the technical analysis and any proposed solutions [for CE cases] have been thoroughly researched and are objective... the code enforcement supervisor should review and discuss all cases before violation letters are sent, the first citation is issued, and a case is presented before the Hearing Officer.”

**Response:** The Building Codes Administrator now provides more direct oversight of cases, including discussion of issues in contentious or protracted cases and regular case review. Staff is diligent in reviewing cases and currently calls to management’s attention any issues that are likely to emerge as the County moves forward with enforcement action. Staff often rehearses enforcement hearing testimony and consistently reviews their files with co-workers, the coordinator and/or the appropriate department managers when dealing with contentious cases. This recommendation is now fully implemented.

**Update:** Since the time of the audit, the Building Codes Administrator has set up weekly meetings with each CE Specialist to review case files, discuss issues, and establish goals and

timelines for case closure and to discuss difficult or protracted CE cases. Additionally, the Building Codes Administrator reviews all complaint forms for compliance with CE policies and all alleged letters for form and content daily.

**Status: This recommendation is implemented and will be ongoing**

**Recommendation 2.5:** [In an effort to balance workloads] “...the Building Codes Administrator should consider working with those staff members to identify potential best practices that they use to resolve cases...”

**Response:** The Building Codes Administrator now works closely with staff to focus on standardizing processing times, taking into account the nature and quantity of violations under consideration, and works to reduce processing times where we are not meeting established time frames. Recently developed measures from Performance Clackamas (Managing for Results) will allow for effective monitoring of processing times.

**Status: This recommendation is implemented and will be ongoing**

**Recommendation 4.2:** [If a CE Specialist] ...” cannot verify the violation from either the complainant’s property or the public right of way, they should be following the protocol for obtaining an administrative inspection warrant.”

**Response:** The Code Enforcement program has a strict policy against trespassing on private property. Additionally, Counsel has advised that it is inappropriate to trespass where posted. The Building Codes Administrator regularly reinforces this policy for CE staff as well as Building Codes staff. Additionally, when the BCC provides for the administrative warrant process through an ordinance change, staff will follow all appropriate steps and legal channels to gain access to private properties in egregious cases.

**Update:** Recently, clarification of trespass laws was provided by County Counsel. The legal opinion made clear what type of access are permitted and when such access is appropriate for County staff in the performance of their assigned duties. This information was shared with staff and continues to be discussed on a regular basis. This policy will be reviewed regularly and staff has been instructed to discuss situations where access has been restricted with the Building Codes Administrator. See Attachment D.

**Status: This recommendation is implemented and will be ongoing**

**Recommendation 4.4:** [It was suggested that] ...”the Board of County Commissioners be a last appeal point after the Hearing Officer. Every County Commissioner believed that they should not get involved in hearing or deciding such cases. They stated that is why the County uses an impartial Hearing Officer. Such a step is not recommended to be added to the complaint enforcement process.”

**Response:** CE staff agrees with the BCC. As discussed in previous work sessions, the role of the BCC will remain as it has in the past. The BCC will not be involved in code enforcement cases.

**Status:** This recommendation has not been implemented. Current policy direction from the BCC is that all code enforcement final appeals be heard by an independent third party.

### **Establish performance measures**

**Recommendation 2.4:** ...” the Code Enforcement Supervisor should establish interim average target times for resolving the different types of cases... a monthly report should be created to identify the cases that are exceeding the target times.”

**Response:** Targets for case processing, milestones and completion have been developed through the Performance Clackamas process and other means. All targets for case completion and other milestones must be carefully developed to take into account the complexities of each code enforcement case (multiple violations vs. one; rural vs. urban, etc.) to ensure a fair comparison. The Building Codes Administrator will review targets and related efficiencies at weekly staff meetings and in individual weekly meetings with staff. Where targets are not being met, the root cause will be identified and practices modified accordingly. This weekly review will encourage each CE Specialist to properly conclude a case in the most expeditious manner possible.

**Update:** Since the time of the CE audit, the County has implemented Performance Clackamas (Managing for Results) and has trained extensively in this new method of managing. As a result, performance measures have been developed and tracking related to these data is now ongoing. Some of these measures are as follows:

- To reduce the numbers of certain code violations through outreach and education
- To resolve a percentage of CE case files within 90 days
- Track total number of CE cases opened/closed by type
- Number of days to closure (Count of Days Report)

Additionally, the CE section has established additional goals. For example, the CE section has set a goal to have no unresolved CE case file older than 5 years by January 1, 2016.

**Status:** This recommendation is implemented and will be ongoing



**Recommendation 3.1:** “The Code Enforcement Supervisor should establish target completion times for each type of violation...”

**Response:** Target completion times have been established for certain cases. Additional standards are under developed.

**Status:** This recommendation is implemented and will be ongoing

**Recommendation 3.2:** “Performance management reports should be developed from data provided by the Accela system or through other data collection systems. The following represents suggested performance measures:

Workload Indicators

- The total number of complaints filed by type and priority including the number of low priority complaints and referrals to other agencies.
- The number of cases that are in progress in total and by staff member.
- The number of ongoing and closed cases involving voluntary compliance, citations, fines, the Hearing Officer, Court case, LUBA etc.)

Efficiency Indicators

- The number of closed cases compared to the total cases opened (e.g. Percentage closure rate) in total and by staff member.

Effectiveness Indicators

- The average number of days that current cases have been open by type of violation in total and by staff member compared to interim target times.
- The average number of days that closed cases were open by type of violation in total and by staff member compared to interim target times.
- The number of cases closed by closure reason (e.g. no violation, voluntarily complied, permit obtained, compliance after citations, Hearing Officer orders)

Once staff is given the necessary permissions to create a workflow in Accela, the proposed data will be available and this recommendation can be met.”

**Response:** These and other performance measures have been or are being developed and, again, a number of measures were developed in the Performance Clackamas process. Some of these measures will be displayed on DTD’s dashboard in an effort to be more transparent and accountable. Staff is working with TS and the Accela Automation Project Manager to ensure that this reporting data can be extracted directly from the automation system and to develop work flows that allow for reporting. In addition to the recommended performance measures, cost management tools are also being developed such as cost per violation file by type, quarter-over quarter and year-over-year financial reporting. Some draft reports are available at this time.

**Update:** Performance Clackamas (Managing for Results) measures have been developed and tracking related to these data is now ongoing. The County recently received training

that identified Ad Hoc reports as an important tool that would aid in the tracking of these measures. Clackamas County Technology Services and others are working to implement this reporting tool. Training in its use will be provided in the future.

**Status: This recommendation is implemented and will be ongoing**

**Recommendation 3.3:** “The recommendations regarding the average number of days should separate out the cases that involve obtaining other permits, such as zoning and building type permits. The average number of days should be calculated from the date the permit application is submitted...”

**Response:** With our newly proposed workflow(s) in Accela, this recommendation can be met. Steps have been taken to ensure that these types of CE cases are tracked accordingly.

**Update:** At the time of this update, workflows have not yet been revised. However, recent training from Accela has provided us with information that will ensure that workflows can be revised in a manner that will work for Code Enforcement. Additional staff training is being planned for the future. Additionally, data tracking related to the County’s Performance Clackamas (MFR) has been developed. With the development of these data comes the recognition that there are often factors affecting performance that are outside the control of a particular work group. As the MFR data is further refined, CE will seek to better understand and track its time lines focusing on areas where the results are within its span of control. Last, CE will seek to create additional field within Accela to capture milestone dates to better facilitate the tracking of this data.

**Status: In Process**

### **Increased efficiencies**

**Recommendation 1.1:** Eliminate duplicative research and/or steps taken to open a case file. “The assigned code enforcement specialist should conduct the initial research and notify the permit specialist whether to send an alleged letter. When a complaint comes in, the permit specialist or the code enforcement specialist should complete the complaint form and then give the complaint to the coordinator to determine its priority and assignment.”

**Response:** The shift to electronic files has forced a change in the way we create and process files, which has eliminated needless steps and duplicative research. Prior to sending the alleged letter, preliminary research is done by the coordinator to determine if a violation file should be created. For example, if a complaint is filed alleging a remodel without permits, the coordinator reviews the system for permits. If permits have been issued for the project, no violation file is created because no violation exists. If there are no permits, the coordinator requests that a CE file be created.

**This recommendation has been implemented and will be ongoing**

**Recommendation 1.2:** “Instead of batching the tickled files on a weekly basis, the permit specialist should identify all the responses that are due each day to eliminate any delays in following-up on non-responsive violators.”

**Response:** Each individual code enforcement specialist now maintains paper files at his/her desk and works files daily instead of getting files weekly. Accela Automation provides a method to track files assigned to each specialist.

**Status:** **This recommendation has been implemented and will be ongoing**

**Recommendation 1.3:** “We encourage the Code Enforcement Supervisor to continue its planned system upgrade to allow its system to include electronic files so the need for manual central files will no longer be necessary. ...”

**Response:** The Accela Automation system is up and running since September 30, 2013 and all newly created files are digital.

**Status:** **This recommendation has been implemented**

**Recommendation 2.2:** “Because there is a large discrepancy in the cases each staff member has, the enforcement areas should be revised to balance the workload among the code enforcement specialists. This redistribution can also be used to reduce the caseload for the proposed supervisor position.”

**Response:** The discrepancy in assigned cases across given districts is largely based on the density of one area over another and the nature of the violations within each district. For example, District One (the urban core) has a smaller geographic area but substantially more people. The cases in this district tend to be single-source violations and small in scope due to lot size. If a CE specialist believes that his/her district caseload is excessive in comparison with the other districts, staff meets and readjusts the boundaries accordingly. For example, in one case a staff member needed more work so the boundary was adjusted to facilitate an increase in caseload.

**Update:** Recently, inspection area boundaries were revised to better distribute workloads. The Building Codes Administrator will continue to monitor caseloads as a part of ongoing tracking through Performance Clackamas (Managing for Results) and through weekly meetings with staff.

**Status:** **Partially implemented and ongoing**

**Recommendation 4.1:** “Standardize the organization of case file documents. Based on our review of a small sample of case files, there were instances where it was difficult to follow what documents pertained to the case and how they were associated with the case. Past violation data and additional violations not in the same category as the original complaint sometimes made it difficult to determine what documents were associated with which violation, CE specialist activities, and correspondence. ...”

**Response:** The auditors were correct in their assessment of some of the paper files, especially the old cases that have been in existence for several years. The digital file-keeping system will force the standardization of files including how and where information is stored, how it is to be accessed and how it is formatted. Staff has discussed this and there is agreement on what types of documents and other information must be attached to the violation file.

**Update:** Case file review is a regular part of weekly meetings between the Building Codes Administrator and Code Enforcement staff. File contents, status, latest actions, sequence of events are being reviewed regularly. Particular emphasis has been placed on CE’s oldest case files and efforts have been made to resolve and reduce the number of old case files on hand.

**Status:**     **This recommendation has been implemented and will be ongoing**

**Recommendation 4.3:** “For temporary care permits, the County should authorize the zoning and septic permits for the same time period. During interviews it was found that the septic permit is for a longer time period than the zoning permit.”

**Initial Response:** Code Enforcement staff does not have control over these policies and practices; however, the recommendation to coordinate the permits has been passed along to Planning and Water Environment Services.

**Update:** At the direction of the DTD Director, The Building Codes Administrator met with the Planning Director on this topic. A process by which Planning & Zoning might once again perform site/verification inspections prior to renewing Temporary Care Permits is being discussed. Based on past experience, verification of continued need for Temporary Care permits prior to renewal was effective at reducing the number of violations related to this topic. Additionally, the Soils Section will become a part of DTD effective January 1, 2016. Revision of Soils policies to align with Planning Division policies can be considered at that time.

**Status:**     **In Process**

## EXHIBIT A:

### Response to FCS Group Performance Evaluation Recommendations

**Recommendation 1.1:** Instead of the permit specialist and the coordinator performing desk research and other preliminary research, these steps should be eliminated. The assigned code enforcement specialist should conduct the initial research and notify the permit specialist whether to send an alleged letter. This eliminates two steps in the process, reduces the potential duplication of effort and provides the code enforcement specialist with the knowledge about the case before the person calls or shows up in person after the alleged letter. When a complaint comes in the permit specialist or the code enforcement specialist should complete the complaint form and then give the complaint to the coordinator to determine its priority and assignment.

**Response:** The shift to electronic files has forced a change in the way we create and process files, which has eliminated needless steps and duplicative research. Prior to sending the alleged letter, preliminary research is done by the coordinator to determine if a violation file should be created. For example, if a complaint is filed alleging a remodel without permits, the coordinator reviews the system for permits. If permits have been issued for the project, no violation file is created because no violation exists. If there are no permits, the coordinator requests that a CE file be created.

The alleged letter continues to be an efficient and valuable tool to begin a conversation with the property owner. Staff recommends that we continue to use it as the first method of contact.

**This recommendation has been implemented.**

**Recommendation 1.2:** Instead of batching the tickled files on a weekly basis, the permit specialist should identify all the responses that are due each day to eliminate any delays in following-up on non-responsive violators.

**Response:** Each individual code enforcement specialist now maintains paper files at his/her desk and works files daily instead of getting files weekly. Accela Automation provides a method to track files assigned to each specialist.

**This recommendation has been implemented.**

**Recommendation 1.3:** We encourage the CES to continue its planned system upgrade to allow its system to include electronic files so the need for manual central files will no longer be necessary. If the upgrade to the system will take a considerable amount of time, such as more than a year to implement, the CES might want to consider setting up an electronic filing system with case folders so the central files will no longer be needed. This will require the documents to be scanned as they are received and that the case notes to be prepared using a word processing software rather than on paper.

**Response:** The Accela Automation system is up and running since September 30, 2013 and all newly created files are digital.

**This recommendation has been implemented.**

**Recommendation 2.1:** To improve supervision and management of the program, a new code enforcement supervisor position should be created, and the code enforcement coordinator

position should be eliminated. The position would include all the responsibilities that the coordinator currently performs, but will also have supervisory and management responsibility for the program. The position would also have a caseload, but it is not expected that the caseload would be as high as the current coordinator's caseload if the enforcement areas are changed to balance the workload among the CE specialists.

**Response:** Due to budgetary and other implications, the creation of a Code Enforcement Supervisor position is impractical at this time. At the heart of this recommendation, however, is the recognition that there needs to be more direct oversight in the administration of the CE program. Toward that end, we offer the following:

- The Building Codes Division has created a deputy position to absorb the day-to-day operation of the building codes program, enabling the Building Codes Administrator to provide more direct, daily supervision of the CE program. This new position is approved and budgeted. It is anticipated to be filled by February 2015.
- The responsibilities of the Code Enforcement Coordinator have been revised to assist the Building Codes Administrator in the operation of the program and provide a manageable case load given the other assigned duties.
- Performance measures have been developed to ensure that established goals for compliance are being met. Additionally, DTD recently completed working with consultants on *Performance Clackamas* (Managing for Results) to develop a number of performance measures aimed at meeting the BCC's Strategic Plan. See Recommendation 3.1.

**This recommendation is in process.**

**Recommendation 2.2:** Because there is a large discrepancy in the cases each staff member has, the enforcement areas should be revised to balance the workload among the code enforcement specialists. This redistribution can also be used to reduce the caseload for the proposed supervisor position.

**Response:** The discrepancy in assigned cases across given districts is largely based on the density of one area over another and the nature of the violations within each district. For example, District One (the urban core) has a smaller geographic area but substantially more people. The cases in this district tend to be single-source violations and small in scope due to lot size. If a CE specialist believes that his/her district caseload is excessive in comparison with the other districts, staff meets and readjusts the boundaries accordingly. For example, in one case a staff member needed more work so the boundary was adjusted to facilitate an increase in caseload. Staff recommends maintaining the current district boundaries with the understanding that future adjustments might be necessary as we evaluate performance measures and other outcomes.

**Not implemented.**

**Recommendation 2.3:** To assure that the technical analysis and any proposed solutions have been thoroughly researched and are objective, especially for the more lengthy and contentious cases, the code enforcement supervisor should review and discuss all cases before violation letters are sent, the first citation is issued, and a case is presented before the Hearing Officer.

**Response:** See recommendation 2.1. The Building Codes Administrator will provide more direct oversight of cases, including discussion of issues in contentious or protracted cases and regular case review. Staff is diligent in reviewing cases and currently calls to management's attention any issues that are likely to emerge as the County moves forward with enforcement action. Staff often rehearses enforcement hearing testimony and consistently reviews their files with co-workers, the coordinator and/or the appropriate department managers when dealing with contentious cases. This recommendation will be fully implemented when the deputy is hired in February 2015.

**In process.**

**Recommendation 2.4:** To improve the monitoring of the Section's caseload and timeliness, the CES should establish interim average target times for resolving the different types of cases (e.g. the number of days allowed to resolve a case before a citation is issued or a hearing is scheduled). A monthly report should be created to identify the cases that are exceeding the target times. This will allow the supervisor and the code enforcement specialists to discuss what actions need to be taken to resolve cases in a timely manner.

**Response:** Targets for case processing, milestones and completion have been developed through the Performance Clackamas process. Updated workflows within Accela Automation and the implementation and monitoring of FCS's recommended performance measures will allow further development of target time frames, but are not yet fully developed. Targets for case completion and other milestones must be carefully developed to take into account the complexities of each code enforcement case (multiple violations vs. one; rural vs. urban, etc.) to ensure a fair comparison. Once paper files have been completely eliminated and the full benefit of a paperless tracking system can be realized, these reports can be more easily generated. Staff will review targets and related efficiencies at weekly staff meetings. Where targets are not being met, staff will evaluate the root cause and modify practices accordingly. This weekly review will encourage each CE Specialist to properly conclude a case in the most expeditious manner possible.

**In process.**

**Recommendation 2.5:** Because different staff members have significantly lower average processing times for different types of cases, the Building Codes Administrator should consider working with those staff members to identify potential best practices that they use to resolve cases. This effort can involve the Building Codes Administrator or an outside facilitator that interviews the staff members separately and discusses these practices as a group.

**Response:** The Building Codes Administrator will work closely with staff to focus on standardizing processing times, taking into account the nature and quantity of violations under consideration, and will work to reduce processing times where we are not meeting established time frames. The Performance Audit did not take into account the geography of each area and its impact on various caseloads. For instance, a solid waste case in the urban area might only involve a few bags of garbage, but in the rural area it might include acres of solid waste. Those types of cases in the urban area will often have a significantly lower average processing time than cases in the rural area. See also Recommendation 2.4

as far as accountability in meeting targets. Recently developed measures from Performance Clackamas will allow for effective monitoring of processing times.

**In process.**

**Recommendation 3.1:** The CES should first establish target completion times for each type of violation to establish a level of service that can be expected by a complainant as well as the CE specialists. Measuring performance is meaningful only if the CES program has standards or benchmarks that it is using to determine how well it is performing.

**Response:** Target completion times will be established at the time a case file is created based on the standards currently under development.

**In process.**

**Recommendation 3.2:** Performance management reports should be developed from data provided by the Accela system or through other data collection systems. The following represents suggested performance measures:

- ◆ Workload Indicators
  - The total number of complaints filed by type and priority including the number of low priority complaints and referrals to other agencies.
  - The number of cases that are in progress in total and by staff member.
  - The number of ongoing and closed cases involving voluntary compliance, citations, fines, the Hearing Officer, Court case, LUBA etc.)
- ◆ Efficiency Indicators
  - The number of closed cases compared to the total cases opened (e.g. Percentage closure rate) in total and by staff member.
- ◆ Effectiveness Indicators
  - The average number of days that current cases have been open by type of violation in total and by staff member compared to interim target times.
  - The average number of days that closed cases were open by type of violation in total and by staff member compared to interim target times.
  - The number of cases closed by closure reason (e.g. no violation, voluntarily complied, permit obtained, compliance after citations, Hearing Officer orders)

Once staff is given the necessary permissions to create a workflow in Accela, the proposed data will be available and this recommendation can be met.

**Response:** These and other performance measures have been or are being developed and, again, a number of measures were developed in the Performance Clackamas process. Some of these measures will be displayed on DTD's dashboard in an effort to be more transparent and accountable. Staff is working with TS and the Accela Automation Project Manager to ensure that this reporting data can be extracted directly from the automation system and to develop work flows that allow for reporting. In addition to the recommended performance measures, cost management tools are also being developed such as cost per violation file by type, quarter-over quarter and year-over-year financial reporting. Some draft reports are available at this time.

**In process.**



**Recommendation 3.3:** The recommendations regarding the average number of days should separate out the cases that involve obtaining other permits, such as zoning and building type permits. The average number of days should be calculated from the date the permit application is submitted. Once a permit is submitted, the CES has little ability to control the permit processing or construction times.

**Response:** With our newly proposed workflow in Accela, this recommendation can be met. Steps have been taken to ensure that these types of CE cases are tracked accordingly.

**CE workflow modifications are being programmed currently and should be completed in the near future.**

**Recommendation 4.1:** Standardize the organization of case file documents. Based on our review of a small sample of case files, there were instances where it was difficult to follow what documents pertained to the case and how they were associated with the case. Past violation data and additional violations not in the same category as the original complaint sometimes made it difficult to determine what documents were associated with which violation, CE specialist activities, and correspondence. This is true primarily for the more lengthy and complicated cases.

**Response:** The auditors were correct in their assessment of some of the paper files, especially the old cases that have been in existence for several years. The digital file-keeping system will force the standardization of files including how and where information is stored, how it is to be accessed and how it is formatted. Staff has discussed this and there is agreement on what types of documents and other information must be attached to the violation file.

**This recommendation has been met.**

**Recommendation 4.2:** If code enforcement specialists do not receive permission to be on a property and cannot verify the violation from either the complainant's property or the public right of way, they should be following the protocol for obtaining an administrative inspection warrant. There were a few comments about trespassing on private property.

**Response:** The Code Enforcement program has a strict policy against trespassing on private property. Additionally, Counsel has advised that it is inappropriate to trespass where posted. CE staff maintains that they do not trespass and, instead, often gather information from adjacent properties where they have been given permission to access, and also from realtor and business web sites. The Building Codes Administrator will reinforce this policy. Additionally, when the BCC provides for the administrative warrant process through an ordinance change, staff will follow all appropriate steps and legal channels to gain access to private properties in egregious cases.

**This recommendation has been met.**

**Recommendation 4.3:** For temporary care permits, the County should authorize the zoning and septic permits for the same time period. During interviews it was found that the septic permit is for a longer time period than the zoning permit.

**Response:** Code Enforcement staff does have control over these policies and practices; however, the recommendation to coordinate the permits has been passed along to Planning and Water Environment Services.

**Recommendation 4.4:** One citizen suggestion was to have the Board of County Commissioners be a last appeal point after the Hearing Officer. Every County Commissioner believed that they should not get involved in hearing or deciding such cases. They stated that is why the County uses an impartial Hearing Officer. Such a step is not recommended to be added to the complaint enforcement process.

**Response:** CE staff agrees with the BCC. As discussed in previous work sessions, the role of the BCC will remain as it has in the past. The BCC will not be involved in code enforcement cases.

**This recommendation has been met.**



Department of Transportation & Development  
**Code Enforcement Division**

**POLICY: Code Enforcement Complaints Policy**

Adopted: December 16, 2016

Revised:

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**1. DEFINITIONS:**

**Anonymous Complaints** – Complaints for which a complainant does not or will not provide his or her name, address or other contact information. [Alleged violations from anonymous complainants will not be investigated.]

**Clackamas County Violation Priority Matrix** -- A representative but not exclusive listing of violations authorized by the Clackamas County Board of Commissioners for investigation upon receipt of a valid complaint as outlined in this policy. The listing is organized by Clackamas County Division and presents typical violations in a ranked, priority order.

**Confidential Complaints** – Complaints for which a complainant provides his or her name, address and telephone number, but requests confidentiality from the disclosure of that information pursuant to ORS 192.502 (4).

**Enforceable** – An alleged code enforcement case that is authorized to be investigated per the Clackamas County Violation Priority Matrix.

**Environmental Damage** – A situation in which there may be, if left unattended, a significant or irreversible environmental impact or where the environmental condition creates a life, health and/or safety issue. A human-made change to the environment and/or an ecosystem that, if left unmanaged or unmitigated, will take an unreasonable amount of time to regenerate or repair itself, or that causes or potentially causes additional degradation of the environment and/or ecosystem, or that creates a life, health and/or safety hazard. (See examples in Section 3, below.)

**Life, Health and/or Safety Hazard** – A situation in which there may be an element of danger or risk that, if left unattended, might impact the health and/or life safety of a person or persons. A substance, condition or combination of the same, which because of its nature, quantity, physical, chemical or infectious characteristics, causes or potentially causes a hazard to human life, health or safety. (See examples in Section 3, below.)

**High Priority Code Enforcement Issue** -- Situations, actions or uses that meet the definition of a life, health and/or safety hazard or environmental damage.



## 2. POLICY

As directed by the Clackamas County Board of Commissioners, code enforcement complaints are handled as described below. (The County does not investigate anonymous complaints regardless of type.)

When a complaint is received on an enforceable code enforcement issue, the handling of the complaint shall be as follows:

- If the complainant provides his or her name and contact information, and does not request confidentiality, all alleged violations, regardless of type, will be investigated with one complaint.
- If the complaint addresses a situation in which there is a potential life, health and/or safety or environmental damage issue, and the complainant requests confidentiality, the alleged violation will be investigated with one confidential complaint.
- If the complaint addresses a situation in which there is **not** a potential life, health and/or safety or environmental damage issue and the complainant requests confidentiality, a minimum of two distinctly separate confidential complaints must be received before the alleged violation will be investigated.
- If the complaint addresses a situation in which there is **not** a potential life, health and/or safety or environmental damage issue on a property where there is criminal activity confirmed by the Clackamas County Sheriff's Office, and the complainant requests confidentiality, the alleged violation will be investigated with one confidential complaint.

## 3. DETERMINATION OF LIFE, HEALTH AND/OR SAFETY HAZARDS AND ENVIRONMENTAL DAMAGE

The determination of whether a situation, action or use poses a threat to human life, health and/or safety or may cause environmental damage shall be considered within the scope of the codes, rules and ordinances enforced by the various County Divisions.

If it is unclear whether a situation, action or use meets the definition of life, health and/or safety hazard or environmental damage, the Building Codes Administrator, consulting with the appropriate Division Manager, shall make the determination.

The following examples shall serve as a guideline to determine what constitutes a life, health and/or safety or environmental issue.



### **Life Hazards**

Examples of situations, actions or uses that pose an immediate or potential threat to human life:

- The following situations or actions, without permits:
  - New commercial/industrial construction
  - Structural remodels of and additions to commercial/industrial structures
  - Electrical/plumbing installations in commercial/industrial uses
  - Mechanical installations in commercial/industrial structures
  - Additions/remodels to single family residences or accessory structures
- Life-threatening electrical installations in apartments and single family residences
- Mechanical installations in residential structures involving fuel oil, natural gas or propane
- Installation of or modifications to wood burning appliances, including exhaust systems

### **Health Hazards**

Examples of situations, actions or uses that pose an immediate or potential threat to human health:

- Failing sewage disposal system discharging sewage to the ground surface
- Plumbing cross connections
- Accumulation of putrescible (i.e. household) waste
- Accumulation of animal feces in the urban area
- Dead animals, human remains or body parts
- Hoarding, where building systems become inoperable, where exits are obstructed or where an unsanitary condition is created as a result

### **Safety Hazards**

Examples of situations, actions or uses that pose an immediate or potential threat to human safety:

- Conversion of residential structures to commercial structures that are open to the public
- Conversion of residential structures to commercial structures where an increased potential for fire or explosion exists, regardless of whether or not the structure is open to the public
- New decks greater than one story in height where no permits have been issued
- Newly constructed swimming pools without adequate pool barriers that were constructed without a permit
- Dangerous buildings that are open, accessible, vandalized and/or dilapidated and/or have become a harbor for vagrants or where illicit activity occurs
- Excavation and/or fill near property lines where a potential collapse and/or slide would impact the adjacent property or obstruct a protected waterway



- Sight obstructions created by vegetation growing or structures placed on or adjacent to the traveled portion of County maintained roads
- Structures or vegetation blocking or restricting visibility of STOP or YIELD signs on all roads
- Illegal signs that look like a STOP sign or other traffic control device
- Obstructions including rock, mud or debris in traveled portions of the County road right-of-way which cause a hazard
- Steep driveway entrances causing or creating the potential for mud, rock or water to reach the traveled portion of County-maintained roads or sidewalks or where potential collapse and/or slide would impact the adjacent property or obstruct a protected waterway
- Drainage onto the traveled portion of County-maintained roads, especially during the winter when ice can form and create a hazard

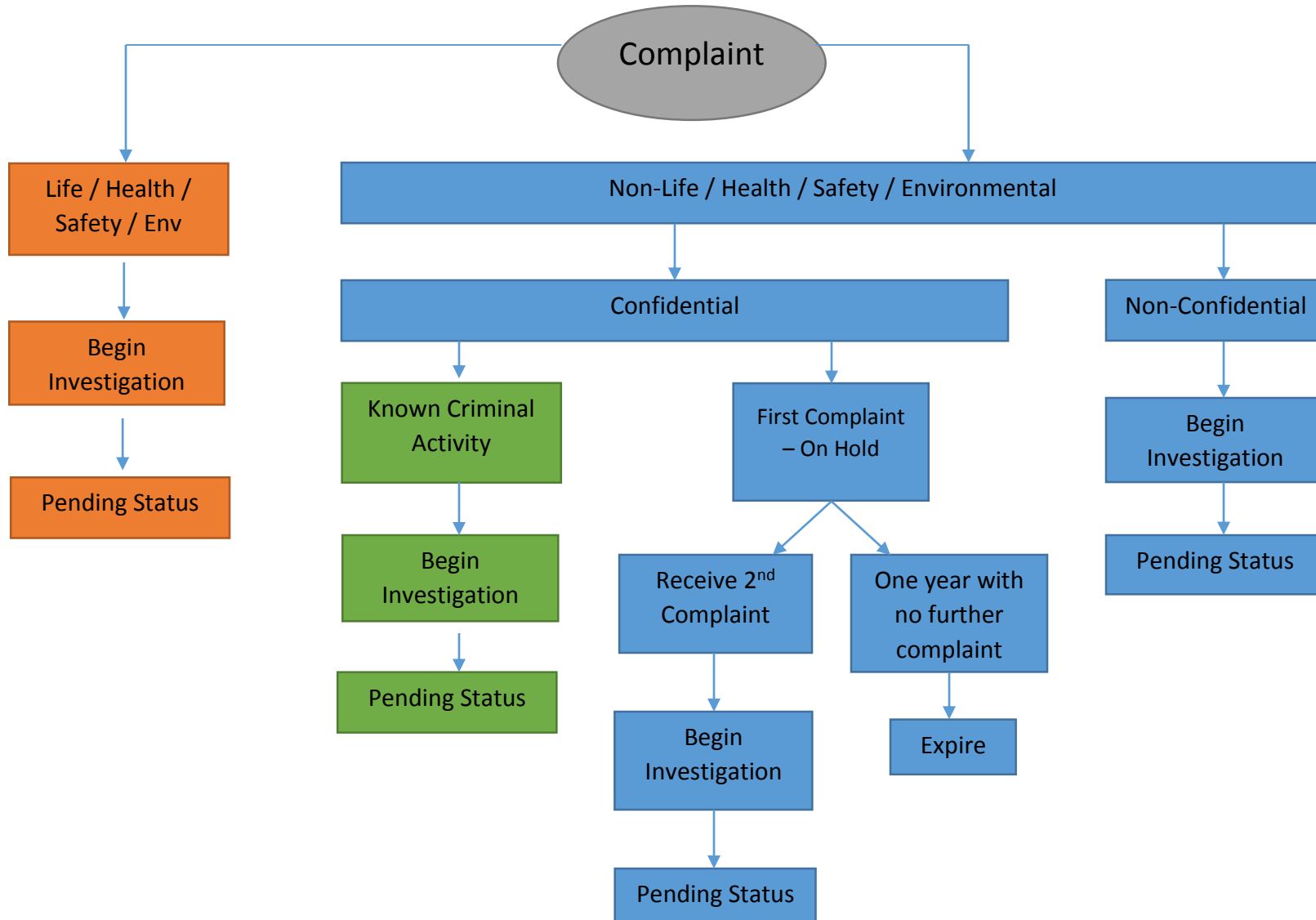
#### **Environmental Damage Hazards**

Examples of situations, actions or uses that cause or may cause damage to the environment:

- Fill placed within a river, stream or wetland or other protected waterway
- Cutting trees within a Principle River Conservation Area (PRCA) or River and Stream Conservation Area (RSCA)
- Surface mining without proper permits and authorizations
- Dumping of chemicals or other substances into a waterway
- Unsafe conditions caused by excavation and/or grading

**For more information about Code Enforcement complaints and related issues, contact Diane Bautista at [dianebau@clackamas.us](mailto:dianebau@clackamas.us) or (503) 742-4452 or log onto [www.clackamas.us/codeenforcement](http://www.clackamas.us/codeenforcement)**

# Code Enforcement – Complaint Action Flow Chart



## What is (and is not) trespassing?

Trespassing occurs when someone enters real property without consent of the owner or person in control of the property.

Members of the public or people performing their regular job duties (including government employees and law enforcement officers) are presumed to have consent to approach a home to perform “**acts reasonably undertaken to contact the residents of the home.**”<sup>1</sup>

Thus, it is generally **not** a trespass to:

- Visit a house to contact a resident by approaching the front door and knocking or ringing the doorbell;<sup>2</sup> or,
- To walk through the driveway, front yard, or other “curtilage” that must be traversed in order to reach the front door.<sup>3</sup>

The consent to approach a home, however, is **revoked** when there are clear indications that members of the public are not welcome on the property.<sup>4</sup> If the intent to exclude people from the property is apparent or known, then even approaching the front door is considered a trespass.<sup>5</sup>

Examples of ways that a person can demonstrate this intention include:

- “Keep out” or “No trespassing” signs;
- Fences, gates, or other physical barriers intended to block the public’s access to the property; and
- Any combination of these or other indications of the resident’s intent.<sup>6</sup>

Even when consent for public entry has not been revoked, the following entries onto real property **are** still considered trespassing:

- Entry onto the property for purposes other than contacting residents at the front door;
- Approaching the back door of the house,<sup>7</sup> the sides of the house, or other areas of the property that are not en route between the driveway and the front door;<sup>8</sup> or
- Walking “randomly” or “meandering” around the property.<sup>9</sup>

If you have questions about whether a specific entry onto real property is a trespass, you should contact the Office of County Counsel **prior to entering**.

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<sup>1</sup> State v. Olinger, 246 P.3d 20, 23 (Or. Ct. App. 2010) (Quoting State v. Cardell, 41 P.3d 1111 (Or. Ct. App. 2002)).

<sup>2</sup> Olinger, 246 P.3d at 23.

<sup>3</sup> Olinger, 246 P.3d at 23 (“Likewise, police enjoy a limited presumption of implied consent to enter an area of a residence’s curtilage that they must traverse in order to approach the front door, typically a driveway, a front yard, or other pathway ordinarily used by visitors to contact the resident.”).

<sup>4</sup> State v. Poulos, 942 P.2d 901, 903–04 (Or. Ct. App. 1997); State v. Ohling, 688 P.2d 1384, 1386–87 (Or. Ct. App. 1984).

<sup>5</sup> Poulos, 942 P.2d at 903–04; Ohling, 688 P.2d at 1386–87.

<sup>6</sup> Poulos, 942 P.2d at 903–04; Ohling, 688 P.2d at 1386–87; State v. McIntyre, 123 Or. App. 436, 440, 860 P.2d 299, 301 (1993).

<sup>7</sup> Ohling, 688 P.2d at 1386; State v. Hayes, 61 P.3d 960, 962 (Or. Ct. App. 2003).

<sup>8</sup> Olinger, 246 P.3d at 24; Ohling, 70 688 P.2d at 1386 (1984).

<sup>9</sup> State v. Malvern, 215 P.3d 114, 116 (Or. Ct. App. 2009).