

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Policy Session Worksheet

**Presentation Date:** May 24, 2016 **Approx. Start Time:** 1:30 pm **Approx. Length:** 1 hour

**Presentation Title:** Code Enforcement (CE) Marijuana Enforcement Policy Recommendations

**Department:** Transportation & Development

**Presenters:** Scott Caufield and Dan Johnson

**Other Invitees:** Scott Ciecko and Nate Boderman (County Counsel); Barbara Cartmill (DTD Director)

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

The CE Section is seeking commentary and policy direction on the proposed recommendations related to the enforcement of marijuana-related CE cases.

### **EXECUTIVE SUMMARY:**

On March 8, 2015, the CE Section met with the BCC, seeking policy direction and guidance as it relates to the prioritization of marijuana-related cases and in the enforcement of the new zoning rules which became effective on January 1, 2016.

At that session, the BCC established clearly that marijuana-related violations should be treated with the same urgency as other high priority violations such as those impacting life safety and health, and in cases of extreme environmental damage. Thus, since that time, staff has been treating marijuana-related violations as Priority 1.

Additionally, the BCC indicated that CE staff should create separate practices and procedures for the handling of marijuana code violations that would ensure timely responses to marijuana complaints and a strong enforcement program for verified marijuana violations. After discussion and direction, the BCC asked CE to return with recommendations for enforcement that would fulfill those directives. Recommendations provided herein are consistent with that direction.

The following staff report and attachments identify issues and policy recommendations for BCC consideration.

### **Issues and Background:**

The CE section is currently charged with the responsibility for enforcement of the County's Zoning and Development Ordinance (ZDO). CE staff is currently trained and equipped to act in that capacity. However, some of the complaints received by CE staff are related to potential violations of state law regarding licensing and registration for grow operations and allegations of criminal activity. As such, the CE program as it is currently configured has neither the authority nor the resources to pursue such allegations.

It is important to note that where complaints of licensing or registration violations are received and especially in cases where there are allegations of criminal activity, such cases may also simultaneously contain violations of the County's ZDO. The overarching concern however, is that CE staff are not authorized nor equipped to address these concerns effectively.

At this time, it is staff's opinion that when these events occur they should be referred to the regulating state agency or law enforcement. Attachment A provides recommendations for those marijuana related cases that are violations of the ZDO but that do not contain a violation of state law or an element of criminal activity.

To inform the process, CE staff – working through the Oregon Code Enforcement Association – polled other jurisdictions within Oregon and in the states of Colorado and Washington to ascertain what, if any, CE process changes were made due to the legalization of marijuana and to determine if they established more severe penalties for violations. Of the 16 jurisdictions that responded to the survey, only Umatilla County prioritizes the handling of marijuana cases over others but its penalty matrix is the same as in other CE cases. All other respondents handle marijuana cases in the same way as any other CE case. Uniquely, the City of Seattle, Washington has a dedicated person to handle marijuana cases. See Attachment B for more information.

Current policy and practice establish due process timelines for the resolution of CE cases. Attachment C outlines both the steps involved in processing a CE case as well as the expected timelines for notification and citizen response. At its best, the current process takes 91 days or longer to bring a CE case to hearing. If it is the BCC's desire to expedite that process, modifications to the County's current practices would be required. Several recommendations identified in Attachment A address this issue.

Attachment D is a revised Code Enforcement Complaint Flow Chart which illustrates the handling of a marijuana-related CE case in graphic form.

As of May 4, 2016, the CE Section is currently dealing with 20 marijuana-related cases. 12 are pending cases that are actively being worked, 5 are unconfirmed, 2 are nearing resolution and 1 is fully resolved.

**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. If the current number of CE hearings is doubled based on Policy Recommendation #6, it would increase annual costs from approximately \$6,500 to \$13,000 in the coming fiscal year.

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 this tracking has been established 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 and also to revise the current contract with Carl Cox, the County's CE Hearings Officer.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

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

**OPTIONS:**

1. Adopt the proposed recommendations as presented
2. Modify the proposed recommendations per BCC direction
3. Reject the recommendations and enforce marijuana-related violations as with any other land use/zoning violations consistent with other jurisdictions who responded to a survey

**RECOMMENDATIONS:**

See Attachment A entitled *Recommendations for the Enforcement of Marijuana*

**ATTACHMENTS:**

- Attachment A Recommendations for the Enforcement of Marijuana
- Attachment B Marijuana Enforcement Survey Results
- Attachment C Current and Proposed CE Due Process Timelines
- Attachment D Code Enforcement Complaint Flow Chart

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_  
Department Director/Head Approval \_\_\_\_\_  
County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact Scott Caufield @ 503-742-4747

## Recommendations for the Enforcement of Marijuana-Related CE Cases

After careful analysis, the Code Enforcement Section makes the following recommendations to ensure a swift and firm but fair process in marijuana-related code enforcement cases:

### **Policy Recommendation #1**

CE shall focus its efforts and resources on the enforcement of the Clackamas County Zoning and Development Ordinance (ZDO).

**Reason** Current CE staff is trained and equipped only to address matters related to the enforcement of the County's zoning rules. For safety and resource reasons, complaints extending beyond those rules (OHA medical marijuana licensing and OLCC recreational marijuana registration violations, complaints alleging criminal activity etc.) are best handled by the appropriate state agency and law enforcement. Instead, the CE staff shall refer those complaints to the appropriate state agency and/or the Clackamas County Sheriff's Office. Handling of marijuana complaints based on this recommendation is illustrated in Attachment D.

Pros – staff has the resources, skill, and training to enforce the ZDO; works within the County's scope of influence and authority; reduces risks associated with enforcement of license and registration infractions and/or potential criminal activity

Cons – County has no control over state agencies or the roles they take in enforcement cases; outside agencies may not prioritize such violations at the same level as the County

### **Policy Recommendation #2**

Where complainants request confidentiality in marijuana-related CE cases and there is no other life-safety issue, take enforcement action with only one complaint instead of two as is required by the current CE Complaints Policy.

**Reason** Current policy requires staff to receive two separate complaints in cases where there is no life-safety or extreme environmental hazard. Absent other enforceable criteria, marijuana enforcement cases are simply zoning violations that are subject to the County's "two complaints" rule. Given the high priority the BCC has placed on marijuana enforcement, such cases should be treated with the same level of concern as other high-priority cases to avoid undue delays.

Pros – ensures that CE can take quick action; is more responsive to the community's needs

Cons – is inconsistent with the County's current practice for other land use violations; could be perceived as unfair or punitive compared to other CE cases

### **Policy Recommendation #3**

County staff should be directed to report suspected marijuana violations when they are discovered during the course of their regular duties.

**Reason** County staff has a duty to protect the public. Where potential violations of the County's ZDO or other rules are discovered during the performance of regular field work, staff should register a complaint with the CE Section so that it can be properly investigated and resolved in accordance with the BCC's policy directives.

Pros – staff is out working in the County and in a position to notice violations before we receive complaints allowing earlier intervention; sends a message that the County has its eyes open on matters related to marijuana

Cons – deviates from the “complaint driven” model; could be perceived as aggressive

### **Policy Recommendation #4**

Revise CE procedure to allow referral to hearing after 1<sup>st</sup> citation for violations of the ZDO.

**Reason** The current CE process requires staff to issue a 2<sup>nd</sup> citation before referring a case to hearing. Allowing referral after the 1<sup>st</sup> citation saves a minimum of 17 days. See Attachment B for current and proposed timelines which will help to further expedite the process.

Pros - reduces the compliance timeline; allows for quicker referral to hearing if no compliance

Cons – Hearings Officer can only impose civil penalty for 1 day of violation instead of 2 (see Recommendation #8 for more information and clarification); creates an inconsistent practice for marijuana vs. all other CE cases which complicates program administration

### **Policy Recommendation #5**

Revise HO schedule to have hearings weekly instead of twice monthly.

**Reason** The current CE process is to schedule CE hearings twice monthly. The County has a contract with Carl Cox who provides his services as the County Hearing's Officer. Revising the contract to allow for weekly CE hearing would effectively reduce the wait time to schedule a hearing. This would better able staff to coordinate hearings and to align the hearing date with the required 15 notification period before the hearing. See Attachment B for current and proposed timelines which will help to further expedite the process.

Pros – increases number of opportunities to present cases to HO by 100%; reduces the chances of having to wait for HO date to accommodate the 15 notification period

Cons – will need to revise the contract with the current HO; HO may not be able to accommodate the additional dates; will effectively double costs related to the contract (from approximately \$6,500 to \$13,500 annually)

### **Policy Recommendation #6**

Staff recommends creating a special category for marijuana citations in the amount of \$1,000 for first confirmed violation, \$2,500 for second, and \$5,000 for third.

**Reason** The current maximum citation for a Priority 1 violation is \$500. Staff issues the citation at a particular point in a CE case for noncompliance. Increasing the amount of the citations reinforces the County's position of strong and effective code enforcement for marijuana cases.

Pros – larger amount is more of a deterrent; staff imposed, so more control over when and where issued; increased amounts for repeat offenders ensure the County can address repeated bad behavior

Cons - creates an inconsistent practice for marijuana vs. all other CE cases which complicates program administration; no other category has greater citation amounts for repeat offenses

### **Policy Recommendation #7**

Retain current practice for the application of civil penalties.

**Reason** Civil penalties are imposed by the County's Hearings Officer, not staff. Current practice is to impose a civil penalty for each day we verify that a property is not in compliance. Historically, the verification dates to which the HO assigns civil penalties coincide with the citation dates. Thus, the HO typically will assign civil penalties for separately verified violation dates. Retaining the current practice will create less confusion and ensure that penalties are assigned consistently by the HO.

Pros – consistent across entire CE program and all violation types; HO controls the process and can impose appropriate civil penalties where necessary

Cons – may not be enough in egregious cases

### **Policy Recommendation #8**

Use appropriate collection techniques to collect fines, civil penalties and other moneys owed the County where such penalties have been ordered by the Hearings Officer.

**Reason** Firm enforcement of the County's marijuana policies including the collection of fines and penalties for marijuana-related violations will reinforce the County's position on this issue. Collection of these revenues will help to defray the costs of enforcement for the affected Divisions.

Pros – will ensure the County collects money it is owed; reinforces the County’s strong position on marijuana violations

Cons – collection process is slow; collections methods increases likelihood of payment but is no guarantee

## **Marijuana Enforcement Jurisdictional Survey Results**

On March 24, 2016, a request was sent to the Oregon, Washington and Colorado Code Enforcement Associations seeking information as to how jurisdictions in those states handle code enforcement cases related to marijuana. Clackamas County, working through the Oregon Code Enforcement Association, specifically asked if such cases are handled differently than other cases, if cases involving marijuana take priority over other cases, and if such cases have timelines, fines, and fees different than other cases. Sixteen responses to the survey were received.

### **The following is a list of the responses:**

City of Boulder Colorado – Marijuana cases are treated the same as any other violation and do not take priority over other cases.

Douglas County, Washington - Marijuana cases are treated the same as any other violation and do not take priority over other cases unless there are health, life safety issues.

City of Seattle, Washington – The City handles cases involving marijuana in the same way other cases are handled with the exception that all marijuana cases are handled by one Senior Inspector. Fines and fees are the same as other violations.

City of Pasco, Washington – The City has a moratorium on all marijuana growing. They have not implemented any codes pertaining to enforcement.

Clark County, Washington - Marijuana cases are treated the same as any other violation and do not take priority over other cases.

City of Olympia, Washington – They have not had any violations related to marijuana. However, they would be treated like any other case.

King County, Washington - Marijuana cases are treated the same as any other violation and do not take priority over other cases.

City of Snohomish, Washington - Marijuana cases are treated the same as any other violation and do not take priority over other cases.

City of Issaquah, Washington – Enforcement regarding marijuana shops is handled by the police department. Code Enforcement handles other marijuana cases the same and any other case.

City of Kirkland, Washington - Marijuana cases are treated the same as any other violation and do not take priority over other cases.

Walla Walla County, Washington - Marijuana cases are treated the same as any other violation and do not take priority over other cases.

City of Talent, Oregon - Marijuana cases are treated the same as any other violation and do not take priority over other cases unless there are health, life, safety issues.



Washington County, Oregon - Marijuana cases are treated the same as any other violation and do not take priority over other cases.

Deschutes County, Oregon - Marijuana cases are treated the same as any other violation and do not take priority over other cases.

Clatsop County, Oregon - Marijuana cases are treated the same as any other violation and do not take priority over other cases.

Umatilla County, Oregon – There is a moratorium in place on all medical and recreational dispensaries. Other violations related to marijuana are a higher priority but timeframes, fines and fees are the same.

In summary, none of the jurisdictions who supplied information handle code enforcement cases any differently than any other violation with the exception of the City of Seattle which has a dedicated enforcement person and Umatilla County which does prioritize marijuana cases over other cases but in which timelines, fines, and fees are the same as other cases.

## Current Timeline to Process a Code Violation

Action	No. of Days
Complaint received by staff.	0
Alleged letter sent next day	1
Alleged letter gives property owner 10 days to respond	10
Site visit is conducted by staff, violation confirmed	1
Violation notice sent with 30 day deadline	30
Site visit is again conducted by staff, violation remains	1
1 <sup>st</sup> Citation issued with 15 days to respond	15
Site visit again conducted by staff, violation remains	1
2 <sup>nd</sup> Citation issued	15
Site visit conducted by staff, violation remains	1
Refer to Hearings Officer (mandatory notice)	15*
Hearing is held*	<u>1</u>
<b>Total days to get to hearing</b>	<b>91</b>
 <b>Additional Time at Hearings Officer Discretion:</b>	
Time to Continuing Order, deadline to abate	30
Site visit, violation remains, submit post hearing report	1
Time to Final Order	15
If still no resolution, refer to County Counsel	<u>1</u>
<b>Total days</b>	<b>138</b>

\*Scheduling a hearing often takes longer than 15 days. Since the County currently holds CE hearings only twice monthly (on the 2<sup>nd</sup> Thursday and the 4<sup>th</sup> Tuesday of a given month), trying to align the required 15 day notice with a hearing dates often means having to wait until the later date to ensure proper notice to the property owner.

## Proposed Timeline to Process Marijuana Code Violation

<u>Action</u>	<u>No. of Days</u>
Complaint received by staff.	0
Alleged letter sent next day	1
Alleged letter gives property owner 10 days to respond	10
Site visit is conducted by staff, violation confirmed	1
Violation notice sent with 30 day deadline	30
Site visit is again conducted by staff, violation remains	1
1 <sup>st</sup> Citation issued with 15 days to respond	15
Refer to Hearings Officer (mandatory notice)	15
<u>Hearing is held</u>	<u>1</u>
<b>Total days to get to hearing</b>	<b>74 days</b>
 <b>Additional Time at Hearings Officer Discretion:</b>	
Time to Continuing Order, deadline to abate	30
Site visit, violation remains, submit post hearing report	1
Time to Final Order	15
<u>If still no resolution, refer to County Counsel</u>	<u>1</u>
<b>Total days</b>	<b>121</b>

# Code Enforcement - Complaint Action Flow Chart

