

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: October 6, 2009 Time: 10:30 a.m. Length: 30 minutes

Presentation Title: Code Compliance – 10-year policy

Department: DTD – Community Environment

Presenters: Cam Gilmour, Ken Spiegle and Andrea Hall

POLICY QUESTION

Should staff continue to implement the 10-year policy or should that policy be rescinded?

ISSUE & BACKGROUND

In 2000 the Board of County Commissioners facilitated a group of internal stakeholders to discuss the County's code compliance program. The stakeholders group included the Board of County Commissioners, County Administrator, County Counsel, Director of DTD, Division managers and code compliance staff. The existing program at that time was dissected and all elements of code compliance were discussed. This action culminated with a written code compliance philosophy, operational policies and violation priorities. Staff began implementation of the new code compliance program on June 14, 2001.

In the development of this program it was understood that this program was a "work in progress" and that there would be a need from time to time to make adjustments to the policies. Since June 14, 2001 there have been a number of adjustments made to the program; most adjustments were made under the violation priorities.

The code compliance program was eventually adopted by Resolution of the Board of County Commissioners in 2003. Each subsequent change to the program policies has also been adopted by Resolution.

The current issue before the Board is regarding the 10-year policy. The intention of this policy is to address violations that have existed for more than 10-years. The issues that led to the consideration of a 10-year policy included:

1. If an alleged violation existed for more than 10-years why did it take 10-years for someone to file a complaint? A complaint should have been filed sooner.
2. If a new neighbor moved in and now wants to file a complaint they should have known the use existed and if they didn't want to live near an unlawful use they should not have moved to the area.

3. After existing for more than 10-years without a complaint, is it fair that the alleged violator be required to bring their property into compliance with current codes?

The answer to these issues resulted in the adoption of two policy provisions that address non-conforming uses. Under this policy there are two provisions, the 10-year rule and the 10-year policy. Staff's concern is with the 10-year policy. The rule and policy are as follows:

a) 10-Year Rule: There is no role for Code Compliance staff in the verification of a non-conforming use. The law requires that we follow a land use process. When verifying the status of a non-conforming use, that decision must be based on substantial evidence. This is handled by planning staff as part of the planning process verification. A staff report is required as part of the process (*this is a Planning Directors decision that requires public notification and there is an appeals process*).

b) 10-Year Policy: Code Compliance staff is not making a land use decision. When investigating a non-conforming use status for complaint/violation purposes, if credible proof can be provided by the owner that the use (of the same intensity) has existed for at least 10 years, then the case falls into a low priority and no further action is taken by the County. This is communicated through a carefully worded letter to the owner and the complainant. If no credible proof can be provided, the ordinance requirements will be enforced.

The 10-year Policy applies to all code violations with the following exceptions:

1. Health, life & safety related.
2. Where required by law.

The 10-year policy usually applies to zoning violations and some solid waste violations. It does not apply to building violations because they are health, life and safety related.

Below are several examples of how the 10-year policy is applied.

Mobile Home Violation – A mobile home was placed on a property more than 10-years ago under a temporary land use permit to use as a residence while building a conventional home. The owner was issued septic and a mobile home installation permits satisfying health, life and safety concerns. The conventional home is constructed and occupied; however, the owner never removed the mobile home as required. Instead, the owner is now using the mobile home as a source of rental income.

Upon receipt of a complaint credible proof indicates that the mobile home has existed for more than 10-years and was installed with the required septic and mobile home installation permits at the time of placement. These permits satisfied health, life and safety concerns. In this instance the 10-year policy would apply and staff would not take any enforcement action even though the mobile home is technically in violation.

Conversely, if that same mobile home were placed without the required septic and mobile home installation permits we would take enforcement action because the health, life and safety issues had not been properly addressed at the time the mobile home was placed. If the owner now wanted to apply for septic and mobile home installation permits the County could not issue permits because the mobile home is a violation of the Zoning and Development Ordinance. If there is a land use process available to keep that mobile home the owner would have to acquire land use approval before the septic and installation permits could be issued. If land use permits are denied the mobile home would have to be removed.

Trucking Business – This office received a complaint that a neighbor is operating a trucking business consisting of 4 trucks and trailers. Staff addresses this issue with the property owner and when the owner provided credible proof we determine that the trucking business has existed for more than 10-years. Through this discovery process we also learn that the owner only had three trucks and trailers. The subsequent addition of a 4th truck and trailer increased the intensity of the use and was not part of the established trucking business 10-years ago.

Staff would inform the owner that the 10-year policy would apply provided they limit their fleet of trucks and trailers to 3 or apply for a land use permit, if available, to legalize all 4 trucks and trailers. If the owner did not reduce their fleet and the case was referred to the Compliance Hearings Officer we would address the total use as a violation. In this instance it is in the best interest of the owner to reduce their fleet to 3 trucks and trailers. In theory the only relief that the complaint realizes is a 25% reduction in impacts from the trucking activities.

Solid Waste – Junk Cars – This office receives a complaint that at property owner is maintaining 40 junk cars on their property. After reviewing the situation, the owner provided credible proof to staff who determined that 30 junk cars existed for more than 10-years. The additional 10 junk cars constitute a change in intensity and the owner is requested to remove 10 of the 40 junk cars. If the owner reduces the number of junk cars to 30 the case falls into a low priority for enforcement purposes and the case is closed. However, if the owner does not remove 10 junk cars the case is referred to the Compliance Hearings Officer with a recommendation of full compliance with the Solid Waste Code. Technically under that code only 2 junk cars can be kept in the open air but they must to be behind a sight obscuring fence or screen. The impact to the complainant resulting from a reduction of 10 junk vehicles is negligible because there are still a large number of junk cars that they have to look at.

The above are just a few examples of how the 10-year policy is applied. This policy makes code enforcement difficult and is often complicated and confusing for the violator and complainant. It's also a question of equity in that while one person is allowed to violate a code due to its longevity others are not allowed to violate the code. The equity issue gets addressed when there is a transparent review process.

Unlike the 10-year rule which is reviewed through a transparent planning process of notification and public input the 10-year policy is reviewed by the code compliance inspector based on credible proof provided by the violator. The review does not take into consideration

any credible proof provided by the complainant and there is no public notification or appeal of staffs determination. Consequently, the reporting party that is subject to the impacts of the unlawful use does not have a voice in how the use is impacting their quality of life.

In our communication with both the violator and complainant we inform them of the situation and that the application of the 10-year policy is provisional and that if the policy is repealed compliance with the code is expected. Staff has addressed approximately 15 10-year policy cases since June 14, 2001.

QUESTION(S) PRESENTED FOR CONSIDERATION

1. Should the 10-year policy be rescinded? If that policy is rescinded should it be codified by resolution?
2. If the policy is rescinded and we get future complaints on cases that have been closed under the 10-year policy should staff address those cases as code violations?
3. Should staff continue to implement the 10-year policy?

OPTIONS AVAILABLE

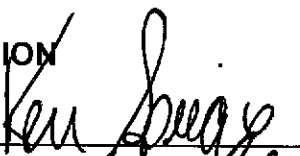
1. Rescind the 10-year policy and upon a citizen complaint proceed with enforcement action on violations closed under that policy.
2. Make no changes to the 10-year policy and continue implementation of that policy.

RECOMMENDATIONS

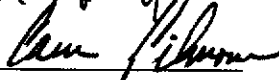
It is staff's recommendation that the 10-year policy be rescinded and codified by Resolution of the Board of County Commissioners. It is further staff's recommendations that if we get complaints on violations that have been closed under the 10-year policy, we proceed with enforcement action.

SCHEDULE FOR STUDY SESSION

Division Director/Head Approval



Department Director/Head Approval



County Administrator Approval _____

For information on this issue or copies of attachments, please contact Ken Spiegle @ 503-742-4450