

Memorandum



June 9, 2015

To: Land Use Subcommittee

CC: Project Team

From: Rithy Khut, Assistant Land Use Planner

Re: Multnomah County's Code Compliance Program

SUMMARY

The purpose of this memo is to provide information regarding Multnomah County's code compliance program. This analysis will provide background information on the county's code compliance program and development code regulations to help in determining whether changes are needed. Furthermore, a comparison of the county's regulations to other Oregon counties will assist in formulating possible policy or regulatory changes to Multnomah County's code compliance program.

BACKGROUND

Multnomah County's present code compliance program began in 2004. As part of the 2004 Planning Commission work program, an ordinance was adopted amending the code compliance regulations and procedures by establishing a new code compliance program that sought to clarify at what point the county was to seek an enforcement action on a code violation or compliance issue. Before 2004, code enforcement was done at the time of a complaint or when an application was received for a development permit. To achieve compliance to receive a development permit for a land use decision or building permit, properties were required to be in "full compliance" with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County. Although "full compliance" was still required by the new program, it established a clear process that emphasized voluntary compliance followed by increasingly vigorous enforcement mechanisms. The enforcement hierarchy consisted of:

- (A) Voluntary compliance
- (B) Correction notice
- (C) Notice of violation and fine
- (D) Petition for injunction and other remedies in state court

The new code compliance provisions detailed the parameters of each enforcement method and gave the county the ability to evoke emergency enforcement in the case where there is an immediate danger to public health, safety, welfare or substantial environmental harm. The county also created an appeal and hearing process and outlined the fine structure for violations.

The code compliance program was modified in 2007 altering the emergency enforcement code provisions and giving the county the ability to issue stop work orders for violations outside of emergency enforcement.

The last update of the program was in 2008 when it was modified to remove the hierarchy of enforcement to focus on, “seek[ing] voluntary compliance in addressing violations and to use an enforcement approach when voluntary compliance fails or is not practicable.” The staff report to the Planning Commission argued that the removal of the hierarchy was needed because:

“Under our program, enforcement may commence in a variety of ways. Any number of actions could come first: request for voluntary compliance, stop work order, emergency abatement, etc. Accordingly, the enforcement levels listed in 37.0930 are interchangeable to some degree and misleading in terms of presenting discrete “levels.” These listings serve no purpose and could be used to challenge our actions that do not follow the “order” listed here (i.e. we failed to follow our code).”

The 2008 program amendments also created a definition of “violation” and gave the Planning Director greater discretion to settle fine amounts.

CODE COMPLIANCE IN MULTNOMAH COUNTY

The code compliance program in Multnomah County is designed to first seek voluntary compliance in addressing violations and to use an enforcement approach only when voluntary compliance fails or is not practicable. Additionally, due to limited resources available to the code compliance program, the most serious complaints are addressed before less serious complaints, regardless of the order in which the complaints are received. The three types of priority cases are:

- Complaints/violations affecting the environment or creating irreparable environmental damage;
- Complaints/violations that present an imminent threat to public health and safety including Right-of-Way related complaints/violations;
- Property owner request to resolve a complaint case or existing violation case

Typically, a code compliance issue occurs when:

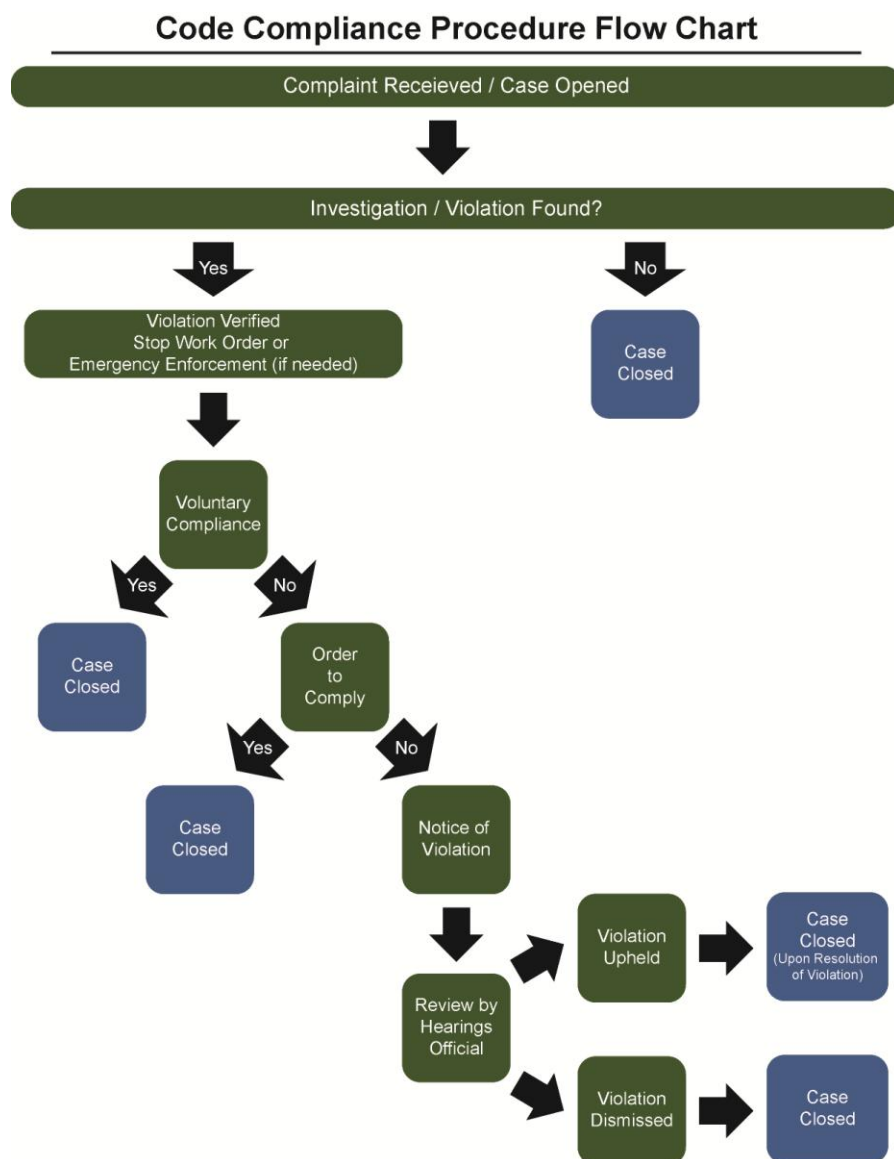
Any use of land, land division, adjustment to property boundaries, work within a County right-of-way, or other activity by a person in violation of any provision of:

- (A) MCC Chapters 11.15, 11.45, 33, 34, 35, 36 and 38; §§ 29.001 through 29.365 and 29.500 through 29.611; Multnomah County Road Rules or the terms and conditions of any permit issued under those code provisions; or
- (B) Any statute adopted by the Oregon Legislature and those land use planning goals and rules of the Land Conservation and Development Commission (LCDC) that apply directly to the County through ORS

197.646 may be subject to enforcement and fines as provided in this subchapter.

Once a violation has been determined, the Code Compliance Specialist (CCS) can request voluntary compliance to correct the violation. Depending on the type of violation, the CCS can also issue an emergency enforcement or stop work order. If the respondent does not achieve voluntary compliance, the CCS can issue a Notice of Violation. The notice requires that the respondent abate the violation. Alternatively, depending on the type of violation(s), the respondent or property owner can enter into a voluntary compliance agreement. Use of a voluntary compliance agreement is typically found when there is a need to sequence permits to achieve compliance.

Figure 1 – Code Compliance Procedures Flow Chart



After a Notice of Violation has been issued, if the respondent does not file an appeal, a Hearings Officer reviews the Notice of Violation. If the respondent does file an appeal, a public hearing will be held before a Hearings Officer. In both cases, the Hearings Officer will either affirm or dismiss the violation. If the violation is confirmed the respondent may be required to do any of the following:

- (a) Obtain any and all necessary permits, inspections and approvals;
- (b) Install any equipment necessary to achieve compliance;
- (c) Make any and all necessary repairs, modifications, and/or improvements to the structure, real property, or equipment involved;
- (d) Reimburse the County for actual costs of remediation, its reasonable administrative costs, as well as its attorney fees and costs for its enforcement actions, including appeals;
- (e) Pay a civil fine for the violation and any fees and costs to the County;
- (f) Pay a reduced fine;
- (g) Undertake any other action reasonably necessary to remedy the violation.

Additionally, the County may file a lien on the property and record the Hearings Officer's final order in the County Clerk Lien Record if the respondent does not pay the fines, fee and cost associated with the violation.

COMPARISON WITH COUNTIES IN OREGON

Multnomah County's code compliance program is similar to other counties in Oregon. Clackamas, Deschutes and Washington counties each have a code compliance program and code provisions that are similar to Multnomah County. These counties emphasize and encourage voluntary compliance. After a complaint is filed, the counties have similar procedures including evaluation of the complaint for validity, voluntary compliance, notice of violation, emergency enforcement and Hearings Officer review. Washington County also has the ability to request warrants to enter properties where the owner refuses access.

Deschutes County also developed additional guidance for their code compliance program. In addition to having code provisions within the Deschutes County Code, they also created a Policy and Procedures Manual. In 1994, the Deschutes County Board of County Commissioners established a Code Enforcement Taskforce to study and provide recommendations. The key recommendation was for the county to initiate enforcement actions by being more proactive in its enforcement program. The proactive efforts include:

- Timely monitoring and enforcement by County staff of permit and approval conditions;
- Revocation of permits for non-compliance;
- Abatement of nuisances and dangerous buildings;
- Assisting in related code enforcement by other agencies; and
- Civil procedures to obtain compliance and to recover the County's code enforcement costs.

Additionally, the Deschutes code compliance program also limits the period during which code violators may come into voluntary compliance with little or no penalty. The report argued that allowing code violators the opportunity to voluntarily comply at any time during code enforcement, or outside reasonable time limits for such compliance, might actually result in abuse of this opportunity in order to delay compliance.

CONCLUSION

Multnomah County's code compliance program is similar to other Oregon counties, including Washington and Clackamas County. Each of the counties has similar procedures to investigate and seek compliance with possible violators. Deschutes County has additional proactive enforcement policies that go beyond what is done in Multnomah County.

The Comprehensive Framework Plan and Rural Area Plans have few policies that address code compliance or enforcement. Within the Comprehensive Plan, Strategy B in Policy 13, Air, Water and Noise Quality states that air, water and noise quality enforcement should be provided by the appropriate federal and state agencies. Policy 32-K concerning public facilities states that the county should seek additional methods and devices of achieving desired types and levels of public facilities through enforcement of local health and safety codes.

Based on feedback from the Community Advisory Committee and the public so far in the comprehensive plan update process, there appears to be a desire for a more proactive enforcement program in Multnomah County. As a result, staff proposes the following policies be added to the Comprehensive Plan to guide amendments to the County's program.

New Policy: Enforce compliance in a manner that is fair and consistent with the County Zoning Code in all cases of reported and verifiable code violations.

New Policy: Coordinate and work with appropriate local, state and federal agencies to ensure compliance with the County's Zoning Code and policies.

New Policy: To ensure compliance, the County should be flexible enough to allow the level of enforcement that best fits the type and circumstances of the code violation(s).

New Policy: Seek voluntary code compliance by providing code violators with information about the County's Zoning Code and an opportunity to comply with the County's Zoning Code within reasonable timeframes with little or no penalty. Reasonable timeframes which code violators are given to come into compliance should be closely monitored and enforced to ensure that violators are not unnecessarily delaying compliance.

New Policy: Fines should be set at a level that will serve as a disincentive to violate the code and as an incentive for voluntary code compliance.