

MEMORANDUM

Clallam County Department
of Community Development

Date: January 5, 2007
To: Clallam County Planning Commission
From: Selinda Barkhuis, Senior Planner
Subject: January 17, 2007 Planning Commission Meeting

Enclosed in your packet are the following items:

- 1) Agenda for the January 17, 2007 meeting.
- 2) Draft December 6, 2006, Meeting Minutes.
- 3) Draft proposed Ordinances creating Code Compliance Title and Junk Vehicle Public Nuisance Chapter, which reflect changes made as outlined below.

The upcoming meeting will include a public hearing on the proposed ordinances a) creating Code Compliance Title, b) amending existing Clallam County Code in conjunction with proposed Code Compliance Title, and c) replacing Junk Vehicle Public Nuisance Chapter.

The Planning Commission received hardcopies of all the proposed ordinances for the December 6, 2006 meeting. The proposed ordinances amending existing Clallam County Code in conjunction with proposed Code Compliance Title were not changed and no additional copies are being submitted herewith. Changes as explained below were made to the proposed ordinances creating Code Compliance Title, and replacing Junk Vehicle Public Nuisance Chapter and copies of the changed proposed ordinances are enclosed herewith.

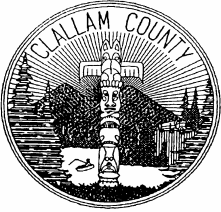
Changes made to proposed Code Compliance Title.

Based on comments received to the previous draft of the proposed ordinance creating Code Compliance Title, a number of minor corrections and the following more substantive changes were made:

1. Section 3.010(1). The definition for "abate" was clarified.
2. Section 3.010(3)(a). The words "or" before environment and "the" before use and development were removed, so that the sentence read better.
3. Section 3.080(1)(d). A provision was added to post a notice at the property.
4. Section 3.090(3)(e). An explanation of the term "a copy of the return" was added.
5. Section 3.100. A provision was added that a certificate of correction will state that any daily-accruing penalties will cease to accrue as of the date the request for a certificate of correction was received by the department.
6. Section 4.010(3). An explanation of the word "toll" was added.
7. Section 8.020(5). The words "and/or" were included to clarify that economic benefit may be calculated as the total of any or all of the alternatives set forth in (i) through (iii).
8. Section 8.030(1)(b). An explanation was added that acquisition by new owners includes by inheritance.

Changes made to proposed Junk Vehicle Public Nuisance Chapter.

Based on comments received to the previous draft of the proposed ordinance replacing Junk Vehicle Public Nuisance Chapter, a number of minor corrections as well as the following more substantive changes were made:



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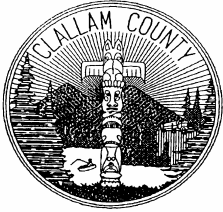
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1. Section 4.040 was changed to read that the storing or keeping of one or more junk vehicles on private property constitutes a public nuisance, rather than the storing or keeping of three or more junk vehicles, as a result of the Planning Commission's unanimous vote to that effect.
2. Section 10.100. A subsection (5) was added indicating that the Notice of Violation and Citation may be recorded against the subject property subsequent to serving the same on the landowner.
3. Section 12.120(1)(b). An explanation was added that acquisition by new owners includes by inheritance.

Staff recommendations regarding additional previously received comments.

The following are Staff's responses to additional questions and comments received to the proposed Ordinances creating Code Compliance Title and Junk Vehicle Public Nuisance Chapter:

1. The Administrative Procedure Act (RCW 34.05) applies to the rule-making processes of state agencies and does not apply to the legislative actions of local governments, and therefore does not apply to these ordinances.
2. The language contained in Section 3.070(3) regarding situations where warnings need not be issued came directly from the King County Code Compliance Title. The proposed Clallam County Code Compliance Title mirrors many of the provisions of the King County Compliance Title, as a result of the strong recommendation to that effect from the Clallam County Prosecutor's Office. Also, staff believes that this provision is appropriate for Clallam County, for the following reasons:
 - o In a "situation or condition that is not likely to be corrected within a short period of time," it would be impossible to know whether a warning was being heeded. It is already the county's practice, under currently existing enforcement provisions, to serve an appealable Notice and Order in situations like that, which does not generally include a penalty at that point, but which does specify what needs to be accomplished by when (i.e. DCD may order the submission of a mitigation report by a certain date). If no report is submitted (and no request for an extension received), then penalties would accrue.
 - o A person who "knows or reasonably should have known that the action was a civil code violation" might be a person with whom DCD has dealt with before on a similar issue, or somebody who is hiring themselves out as a professional to landowners.
3. Placing a cap on penalties imposed under the Code Compliance Title would nullify the economic-benefit penalties that may be imposed for violations involving sensitive areas, and, as a result, likely raise strong objections by WRIA 20. There is a perception among WRIA 20 members that with a cap on penalties, certain landowners will simply calculate the expense of a possible penalty into their cost-benefit analysis, and proceed with code violations that result in considerable economic benefit. As a result, staff strongly recommends against placing a cap on penalties that may be imposed under the Code Compliance Title.
4. Placing a cap on penalties imposed under the Junk Vehicle Public Nuisance Chapter would make some sense, as there is no economic benefit to a landowner to maintain a junk vehicle public nuisance. Placing a cap on penalties would ensure that at least some equity would remain in the property, making it possible for owners to sell these properties, presumably to buyers who will clean them up. If the Planning Commission wishes to make such a recommendation, it should include a recommendation of what such a cap should be. To ensure the effectiveness of a daily accruing penalty and lien collection efforts, such a cap should not be insignificant. Staff recommends a cap of \$15,000.
5. The Planning Commission may also wish to consider formulating specific recommendations regarding the exact percentage of penalty waivers to be granted under the various circumstances. See Code Compliance Title at Section 8.030 and Junk Vehicle Public Nuisance at Section 12, but keeping in mind the following: The reason for providing an additional incentive upon change of ownership is to interest investors in purchasing these properties and then cleaning them up. The reason why a complete waiver of penalties for new owners may not be



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appropriate is because their negotiated purchase price would already have reflected the fact that they were purchasing the property a) subject to a situation to be dealt with and b) subject to a lien. There is evidence that many landowners who harbor junk vehicle public nuisances operate on reduced capacities. Staff believes that too significant a disparity in incentives based on a simple change in ownership may result in abusive practices, and therefore strongly recommends against a complete waiver upon a change of ownership.

6. Both the County Administrator and the Board of County Commissioners have expressed an interest in the Department of Community Development billing for its cost of code compliance. Ever-tightening county budgets have been a significant reason for limited code compliance efforts over the last few years. DCD regularly bills individuals who are in compliance for certain services, and it makes little sense for DCD to provide similar services for free to individuals who are not in compliance.

If the Planning Commission does want to limit DCD's ability to bill for its cost of code compliance, staff suggests that the Planning Commission make the recommendation that the Code Compliance Title include a provision that DCD can only bill for costs of code compliance after serving a violator with a Notice and Order. The Notice and Order would include notification that the violator may be billed for cost of code compliance, which the landowner could then object to in an appeal to the Hearing Examiner. It would be important for DCD to be able to bill for cost of code compliance upon serving a Notice and Order, because DCD will likely have to expend significant time and effort reviewing and monitoring mitigation and remediation reports submitted by the violator as a result of the Notice and Order.

Making this change would mean that DCD could not bill for cost of code compliance incurred in issuing warnings, stop work orders, or citations, unless they occur after a Notice and Order has already been served (and is apparently being ignored if subsequent actions are necessary).

7. RCW 46.55 is the state statute that authorizes local governments to utilize the process that is included in the proposed Junk Vehicle Public Nuisance Chapter. This statute does not distinguish between types of owners (i.e. banks that repossess cars but don't want them) and neither should our ordinance.

Staff recommendations to Planning Commission.

1. To receive public testimony and comments at the January 17, 2007 public hearing.
2. To consider staff's recommendations to previously received comments as contained in this memorandum, as well as any additional staff recommendations to public comments and testimony to be received at the January 17, 2007 public hearing.
3. To develop Planning Commission recommendations at the February 7, 2007 meeting, for forwarding to the Board of County Commissioners.

Cc Project file
John Miller, Director