

6a - Staff Report - Abatement Development Code Amendment

Planning Commission Meeting Date: June 1, 2017

Agenda Item 6a.

PLANNING COMMISSION AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Development Code Amendment to Expand Use of Civil Penalties and Other Fees Collected

DEPARTMENT: Planning & Community Development

PRESENTED BY: Paul Cohen, Planning Manager
Steven Szafran, AICP, Senior Planner

☐

Public Hearing

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Study Session

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Recommendation Only

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Discussion

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Update

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Other

BACKGROUND

Currently, the Development Code SMC 20.30.777 (A) states that civil penalties and abatement funds must be used for abatement of code violations. Staff recommends that the code be amended to expand potential uses of this fund to include other code enforcement activities in support of Shoreline's code enforcement program. The City's abatement fund contains more money than is required to address abatement needs annually and could be used in support of these other code enforcement activities.

The code defines "Abate" as:

To repair, replace, remove, destroy or otherwise remedy a condition which constitutes a Code Violation by such means, in such a manner, and to such an extent as the Director determines is necessary in the interest of the general health, safety and welfare of the community and the environment. (Ord. 406 § 1, 2006).

DISCUSSION

The City typically budgets \$100,000 a year for the abatement fund. The City may expend these funds to resolve public nuisances on private or public property. These funds expended by the City to address public nuisances on private property are billed to the property owner. Typical abatement projects include: boarding up of vacant nuisance structures; removal of accumulated refuse in extreme cases; payment of relocation assistance funds to tenants displaced by code violations; and removal of junk vehicles from private property. In some cases, the property owner pays the abatement bill from the City upon receipt. If the property owner does not pay the bill for the abatement, the City instructs the County Assessor to recoup the abatement costs by an

Approved By:

Project Manager



Planning Director



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assessment against the real property to be collected as taxes by the King County Treasury. Eventually, the cost of abatement is repaid to the City and deposited back into the abatement fund.

Civil penalties are separate from abatement costs. The City collects civil penalties as described in SMC 20.30.770:

D. Civil Penalties.

1. *A civil penalty for violation of the terms and conditions of a notice and order shall be imposed in the amount of \$500.00. The total initial penalties assessed for notice and orders and stop work orders pursuant to this section shall apply for the first 14-day period following the violation of the order, if no appeal is filed. The penalties for the next 14-day period shall be 150 percent of the initial penalties, and the penalties for the next 14-day period and each such period or portion thereafter shall be double the amount of the initial penalties.*

2. *Any responsible party who has committed a violation of the provisions of Chapter [20.50](#) SMC, General Development Standards (tree conservation, land clearing and site grading standards), or Chapter [20.80](#) SMC, Critical Areas, will not only be required to restore unlawfully removed trees or damaged critical areas, insofar as that is possible and beneficial, as determined by the Director, but will also be required to pay civil penalties in addition to penalties under subsection (D)(1) of this section, for the redress of ecological, recreation, and economic values lost or damaged due to the violation. Civil penalties will be assessed according to the following factors:*

a. For violations within critical areas and required buffers, an amount determined pursuant to SMC [20.80.130](#)(E); or

b. For violations not located within critical areas and required buffers, an amount determined to be equivalent to the economic benefit that the responsible party derives from the violation measured as the total of:

i. The resulting increase in market value of the property; and

ii. The value received by the responsible party; and

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- iii. The savings of construction costs realized by the responsible party as a result of performing any act in violation of the chapter; and*
 - c. A penalty of \$2,000 if the violation has severe ecological impacts, including temporary or permanent loss of resource values or functions.*
 - 3. An additional penalty of \$2,000 if the violation was deliberate, the result of knowingly false information submitted by the property owner, agent, or contractor, or the result of reckless disregard on the part of the property owner, agent, or their contractor. The property owner shall assume the burden of proof for demonstrating that the violation was not deliberate.*
 - 4. A repeat violation means a violation of the same regulation in any location within the City by the same responsible party, for which voluntary compliance previously has been sought or any enforcement action taken, within the immediate preceding 24-consecutive-month period, and will incur double the civil penalties set forth above.*
 - 5. Under RCW [59.18.085](#), if, after 60 days from the date that the City first advanced relocation assistance funds to displaced tenants, the landlord does not repay the amount of relocation assistance advanced by the City, the City shall assess civil penalties in the amount of \$50.00 per day for each tenant to whom the City has advanced a relocation assistance payment.*
 - 6. The responsible parties have a duty to notify the Director of any actions taken to achieve compliance with the notice and order. For purposes of assessing civil penalties, a violation shall be considered ongoing until the responsible party has come into compliance with the notice and order and has notified the Director of this compliance, and an official inspection has verified compliance and all assessed penalties and costs have been paid to the City.*
 - 7. a. Civil penalties will be waived by the Director or will be reimbursed to the payer by the Director, with the concurrence of the Administrative Services Director, under the following documented circumstances:*
 - i. The notice and order were issued in error; or*
 - ii. The civil penalties were assessed in error; or*

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iii. Notice failed to reach the property owner due to unusual circumstances.

b. Civil penalties accrued under subsection (D)(1) of this section will be reduced by the Director to 20 percent of accrued penalties if voluntary compliance is achieved and the City is reimbursed its reasonable staff and professional costs incurred in enforcing the notice and order.

8. Deep Green Incentive Program.

a. Failure to submit the supplemental reports required by SMC [20.50.630](#)(F) by the date required – within six months and two years of issuance of the certificate of occupancy – is subject to civil penalties as specified in subsections (D)(1) and (D)(4) of this section.

b. If the project does not meet the requirements after two years of occupancy as detailed under SMC [20.50.630](#)(F)(6)(a) through (c), the applicant or owner will be required to pay the following:

i. Failure to demonstrate compliance with the provisions contained in SMC [20.50.630](#)(F)(6)(a) through (c) is subject to a maximum penalty of five percent of the construction value set forth in the building permit for the structure. This fee may be reduced at the discretion of the Director based on the extent of noncompliance.

ii. In addition, the applicant or owner shall pay any permit or other fees that were waived by the City.

Civil penalties are a tool used by the City to provide incentive to property owners and other responsible parties (ex. tenants) to voluntarily correct code violations in a timely fashion. Civil penalties are also used to penalize certain actions that are particularly egregious such as illegal tree removal; damage to critical areas or critical area buffers (See SMC 20.80.130.E); deliberate violations; repeat violations.

Conclusion

In the past five years, the most the City spent annually on abatement was \$27,246. Because each year the City passes the remaining fund into the next year, the annual fund has increased. At the end of 2016, the abatement fund contained \$167,938. It would be beneficial to the code enforcement program to broaden the ability to use these

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funds to include more than just abatement. Staff recommends broadening the use of the civil penalties collected and abatement funds to include other activities to support the code enforcement program. These activities could include education, additional inspection, hiring of specialized resources (ex. hiring of noise expert), training (ex. how to use a sound level meter) and outside legal assistance in addition to abatement activities.

TIMING AND SCHEDULE

Planning Commission Public Hearing – July 6

City Council Study Session – July 31

City Council Decision – August 14

ATTACHMENT

Attachment A – Proposed Amendment to SMC 20.30.775 Collection of penalties and costs.

Attachment A - Proposed Amendment to SMC 20.30.775

20.30.775 Collection of penalties and costs.

A. All monies collected from the assessment of civil penalties, costs, and for abatement reimbursements recovered from violators resulting from code enforcement actions and work shall be allocated to support expenditures for abatement, and shall be accounted for through either creation of a fund or other appropriate accounting mechanism in the Department issuing the notice and order under which the abatement occurred shall be deposited in a code enforcement/abatement fund and utilized for future code enforcement action expenses. Eligible expenses shall include, but not be limited to, all costs for abatement whether or not the responsible party is identified, education and outreach, and one-time expenses associated with a specific case necessary for obtaining code compliance.

B. The amount of cost of repairs, alterations or improvements; or vacating and closing; or removal or demolition by the Director shall be assessed against the real property upon which such cost was incurred unless such amount is previously paid. For the purposes of this section, the cost of vacating and closing shall include (1) the amount of relocation assistance payments advanced to the tenants under RCW [59.18.085](#) that a property owner has not repaid to the City, and (2) all penalties and interest that accrue as a result of the failure of the property owner to timely repay the amount of these relocation assistance payments under RCW [59.18.085](#).

Upon certification by the City Finance Director of the assessment amount being due and owing, the County Treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW [84.56.020](#), as now or hereafter amended, for delinquent taxes, and when collected to be deposited to the credit of the general fund of the City.

If the dwelling, building, structure, or premises is removed or demolished by the Director, the Director shall, if possible, sell the materials from such dwelling, building, structure, or premises and shall credit the proceeds of such sale against the cost of the removal or demolition and if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the Director, after deducting the costs incident thereto.

The assessment shall constitute a lien against the property, which shall be of equal rank with State, county and municipal taxes.

C. In addition to, or in lieu of, the provisions set forth in this subchapter, the City may commence a civil action in any court of competent jurisdiction to collect for any such charges incurred by the City to obtain

Attachment A - Proposed Amendment to SMC 20.30.775

compliance pursuant to this chapter and/or to collect any penalties that have been assessed. (Ord. 466 § 4, 2007; Ord. 391 § 4, 2005; Ord. 238 Ch. III § 10(f), 2000).