

Memorandum

March 4, 2014

To: Administrative Services Committee

From: Ken Gibb, Community Development Director

Re: Follow-up information related to the Corvallis Neighborhood Outreach & Education/
Property Maintenance Code program

As discussed at the conclusion of the February 25 Administrative Services Committee meeting, Staff are providing follow-up information regarding several of the questions and issues raised during that session.

Why consider adopting a new property maintenance code rather than just amending existing codes?

The International Code Council's (ICC) Model Property Maintenance Code (PMC) is part of a family of codes, and is intended to mesh with those other ICC codes. The State of Oregon and the City of Corvallis have adopted many other ICC codes (e.g., building, fire, plumbing, electrical).

The PMC is intended to establish and apply basic maintenance requirements to be met after the completion of construction and/or site development. When a property is maintained to the minimum standards of the PMC its condition does not decline to the point that it must be declared dangerous, which would typically necessitate that its occupants be vacated from the property.

Staff believe that adopting a local property maintenance code is preferable to augmenting existing codes because:

- It provides for a comprehensive approach that ties in with other building-related codes.
- Without a PMC, multiple sections of the Municipal Code and other City codes would need to be amended to address various gaps. Consolidating these standards in one place avoids a piecemeal approach, and supports a coordinated City response to these issues.
- It provides ease of access to the public by having standards in one place versus having to search through multiple sections of the municipal code to find applicable standards.

The use of a model code does not preclude making alterations to fit local needs. From the outset of the PMC discussion, it has been emphasized that changes to the model code will likely need to be made, and that conflicts and overlaps with existing codes would be addressed in this process. Additions, deletions and modifications to the model code have been recommended by staff as a result of the PMC Advisory Group process, and ASC and the City Council will have the option to determine other adjustments.

Why adopt additional regulations on rental properties and increase fees when it is just a few irresponsible landlords that create issues? Why can't fines be used to fund the program?

It is generally recognized that any regulation applies across the board by necessity, but that not everyone to whom it applies is a violator. For example, traffic law enforcement is funded by the community at large through support from the City's General Fund rather than by fine revenue, but not every driver breaks traffic laws.

Regarding the profile of parties responsible for rental housing code compliance, staff provided information to the Neighborhood Livability Work Group indicating that only 20% of the issues reported have been associated with owners who had multiple issues. Experience with the general code enforcement program also indicates that cases are not concentrated within just a few property owners. It was also noted that less than 40% of the rental units in Corvallis are managed by property management companies and based on calls received through the current rental housing program, properties managed by property management companies are not immune to compliance issues.

The existing rental housing program provides information and referral services to all landlords and tenants, not just to those who are linked to code compliance cases. The proposed program will expand this effort especially in the education and outreach area, and a substantial share of the revenues raised by rental housing fees will support these non-code related activities.

Finally, a progressive enforcement strategy will be designed to impose increasing penalties based on the severity and frequency of violations. This strategy will yield some revenue over time, but cannot be relied upon as a stand-alone source to fund an ongoing basic program.

The property maintenance conditions that are being discussed for coverage under a Property Maintenance Code are already addressed adequately under state landlord/tenant law; the PMC program proposal provides a tenant with the opportunity to file a code complaint without first contacting the landlord, but does not deal with landlord retaliation.

Staff will provide an overview of landlord/tenant law coverage during the March 5 meeting.

Why not apply the Property Maintenance Code to the interiors of non-rental properties?

The approach to PMC applicability that is being proposed is based on feedback provided to staff during discussions of the Property Maintenance Code Advisory Group. During those discussions it was suggested that while renter occupants have little control over maintenance of the interior structure and systems of the building or dwelling unit they occupy, owner occupants do have control, and should be allowed to decide what conditions they want to tolerate. For this reason only conditions that threaten health or create dangerous building situations will be addressed by the PMC in non-renter occupied properties. However, given that the exterior condition of both owner- and renter-occupied properties may directly affect the livability of neighbors and the surrounding area, the PMC is currently intended to apply equally to building exteriors regardless of those buildings' use or occupancy.

Why not apply the program fees and PMC standards only to older rental properties, and exempt newer properties?

The Neighborhood Outreach/Education and PMC program fees will support the provision of information and referral services to landlords and tenants regardless of the age of the property they manage or occupy. In addition, experience suggests that new/newer construction may also encounter maintenance issues for which other current codes do not apply, as was the case for a newly-completed multifamily rental property in which several units did not have hot water.

How many complaints that would be subject to the proposed PMC were received by staff during 2012 and 2013? How many were successfully adjudicated? What was the annual budget for 2012 and 2013?

Staff cannot provide a number for complaints received but not covered by the PMC, as those issues are not tracked or pursued. Thus there were no attempts at adjudication related to such complaints. Staff have tracked reports of issues received through the Rental Housing Code Program that are not subject to the Code but involve habitability (included in the staff report for the February 25 ASC meeting). Some of these issues would likely be subject to the PMC. The FY 2013-14 budget for the Rental Housing Program is approximately \$155,000; the budget for the general Code Enforcement Program is approximately \$130,000.

Who were the primary clients of the education and outreach program?

Landlords, tenants and other community members utilize the Rental Housing Program's information and referral services. Approximately 25% of Program contacts are received from landlords, about 60% from tenants, and about 15% from others such as neighbors, realtors and parents. The City's Code Enforcement Program provides outreach to these groups as well as home owners and business owners.

Would municipal court citations primarily be issued to landlords for improperly maintaining properties, or also issued to tenants for improperly maintaining the rental units they occupied?

The Property Maintenance Code assigns responsibility for specific aspects of property maintenance to landlords, tenants and owner occupants. A citation would be issued to the party with maintenance responsibility who, after being given notice by the City that a violation exists and having the opportunity to correct it, refuses or fails to correct the violation.

How would access to the re-instated Neighborhood Empowerment Program be determined?

When the program was operated in the past, funds were distributed through a Request for Proposals process. The City Council would review and if desired, adjust this process before program reinstatement. It should be noted that the Neighborhood Empowerment Program would be funded through a separate action of the City Council, and is not being proposed for funding from the rental housing fee.

Why did City staff believe it was property owners' responsibility to pay for the misbehavior of a few property owners who did not maintain their properties?

The current Rental Housing Program, adopted in 2002, utilizes a rental unit fee (currently \$12 per unit per year) to provide funding support. The recommendation of the Collaboration Project's Neighborhood Livability Work Group was to increase this fee and combine it with other City resources in order to equitably fund the Neighborhood Outreach/Education and Property Maintenance Code program. The response narrative at the top of page two of this memorandum provides additional background on this issue.

Would the rental fees be applicable to single family houses?

Yes, if those houses are renter-occupied.

What mechanism did City staff have to determine the number of houses actually rented and assess the rental fees against the owners?

Since beginning the Rental Housing Code Program in 2002 the City has maintained a database of rental properties. Information from the County Assessor's database, the City's Utility Billing database, owner-provided information, and other sources have been utilized over time to build and maintain the rental housing database.

Final comments relative to issues raised during the February 25 Administrative Services Committee meeting.

A few final points of clarification are offered in response to issues raised during the most recent ASC meeting. The first is that the current mix of time spent by City staff on education and outreach vs. code enforcement activity is nearly equal. With the expansion of the program to include the addition of PMC-based standards and Code Compliance staff, it is anticipated that the amount of time spent on outreach, education and information and referral will remain at least steady, and will likely increase somewhat, accounting for one-third or more of the time spent in the future by staff in the delivery of the overall Neighborhood Outreach/Education and Property Maintenance Code program.

Another point of clarification relates to testimony received February 25 from several tenants regarding the maintenance of their rental units. Many of the issues cited as examples of maintenance conditions, including air and water infiltration, a lack of ventilation, infestations of rats and cockroaches, windows that do not latch, plumbing leaks and other plumbing deficiencies, would be addressed under the PMC. Other conditions such as worn carpet and vinyl flooring, mold caused by condensation around otherwise sound windows, missing towel bars and rusty refrigerator interiors would not be subject to the PMC. There would be no blanket requirement for the owners of a rental property to replace properly functioning single pane windows with double pane windows, the potential for which was suggested during the testimony provided on February 25.

Finally, some of the questions that have been or may be asked during the ASC review process have already been raised during earlier reviews of the Neighborhood Outreach/Property Maintenance Code program concept by the Livability Work Group and PMC Advisory Group. Responses to questions raised by the Advisory Group were provided in the February 25 ASC meeting packet; responses to questions raised at the Livability Work Group's well-attended January 29, 2013 community forum on the topic of the PMC are included with this memo as Exhibit 1. One point of clarification related to these responses is that they were provided to the Work Group members while they were still contemplating a PMC program that would include licensing of all rental units, and would be based on required, periodic inspections of all rental units. As noted earlier in the ASC process, the current program approach would initiate a complaint-based approach to code compliance.

Attachment: Exhibit 1 – Responses to questions raised during the 1/29/2013 Livability Work Group forum

Response to Questions from 1/29/13 Neighborhood Livability Forum

Current Conditions and Enforcement Activity Levels

Q: Is there really a problem in one of every three rental units in the City?

A: It is City staff's professional estimate that approximately 30% of the community's residential rental units have one or more physical conditions that would not meet the standards of the International Code Council's model International Property Maintenance Code (ICC IPMC). This estimate is based in part on staff's knowledge that roughly 42% of the dwellings in Corvallis were built before 1960, and the conclusion that given the age of these dwellings, many can be anticipated to have conditions that do not align with ICC IPMC. City code enforcement and inspection experience also suggests that both older and newer units will also have conditions that would not meet the ICC IPMC, particularly in situations where illegal alterations have been performed.

There are existing conditions in the rental housing inventory that do not comply with the ICC IPMC standards and which constitute significant and in some cases, dangerous or unhealthy living situations. Other non-compliant conditions such as degraded exterior paint, accumulation of solid waste, spaces not meeting minimum room sizes, or a lack of adequate floor coverings may be somewhat less significant from a health or safety standpoint, but are still important for the well-being of tenants. And where the ICC IPMC's exterior building and property standards are applied, the well being of those who live in the community that surround non-compliant units also merits consideration.

Q: Why were only five complaints acted on last year?

A: The information in the question above is incorrect. Many more than five complaints were acted on last year. Through September of 2012, 473 Code Enforcement Program cases had been received and 266 of those cases had been closed (which means they were determined not to be actual violations or the case was brought to resolution). Preliminary year-end data indicates there were a total of 595 cases in 2012. These numbers represent significant increases relative to 2011, when 355 cases were received and 263 were closed.

The City's Rental Housing Program and its companion Rental Housing Code received contacts reporting a total of 288 habitability issues during 2012. Of those, 170 reported issues were covered by the Code. Three of those issues were addressed through the formal Code compliance process. Although there is no way to determine the exact number of the remaining Code issues that were resolved, it is safe to assume that many were successfully resolved following City staff guidance to complainants through which they were instructed to write a formal letter of complaint/request for repairs to their landlord with notice that the City had been contacted on the matter.

Q: Why are fines being waived under the current code enforcement program?

Q: Why does the City issue so few fines to code violators?

A: No fines have been waived under the City's code enforcement programs. The current programs operate (1) on a complaint basis, and (2) with an educational focus and voluntary compliance emphasis. Under this approach most cases are resolved cooperatively, without the need for fines or criminal citations. Since the inception of the current Code Enforcement Program in late 2007, five criminal citations for solid waste violations have been issued and three civil penalties have been levied. On one occasion the City's Rental Housing Code enforcement process has resulted in a property owner being cited into Municipal Court and fined for refusal to comply.

The City's long standing policy has been to achieve code compliance on a cooperative basis rather than taking a punitive approach. As a practical matter, this is much more timely and cost effective especially in light of limited staffing. For example, taking a single case through a criminal process can consume dozens to hundreds of hours of staff and city attorney's office time depending on the complexity and number of appeals.

There have been suggestions that the property maintenance code/rental inspection and licensing program be primarily funded through penalties, fines etc. Concerns about this strategy include:

- Stability of program funding – the goal of code enforcement is to achieve compliance, which doesn't necessarily result in fine revenue to support an ongoing program.
- The perception about a "quota" system i.e., inspection results being based on the need to generate revenue to support the program.

Current vs. Proposed Code Coverage

Q: What would not be covered if the City's current code enforcement efforts were fully funded?

A: Some of the gaps that cannot be addressed under current City codes include:

- Conducting unit condition/maintenance inspections
- Enforcing minimum living space areas for occupants and a standard for occupancy levels
- Ensuring compliance with fire safety standards for one- and two-family dwelling units
- Requiring solid waste service/facilities by owners of rental properties
- Requiring electrical system upgrades for rental units to 3-wire systems
- Requiring minimum levels of exterior property maintenance

Q: Under the new program, why would the City only be looking for work without permits in rental units and not also in owner-occupied units?

A: Rental properties make up nearly 60% of Corvallis' housing stock. Experience indicates that more than 75% of the contacts related to the existing codes involve rental properties. Owner-occupied properties would also be covered by the Property Maintenance Code and problems with those properties, such as work without permits or failing exterior conditions, would be addressed on a complaint basis. However, based on the predominance of issues occurring in rental units, it would not be cost effective to inspect owner units on a routine basis.

Q: How will this program affect historic properties?**Q: How would older homes be treated under the property maintenance code in order to maintain their historic integrity?**

A: The model Property Maintenance Code provides exemptions for identified historic resources. In addition, the code and program could provide flexibility in dealing with alterations to older properties that are not currently listed as historic resources. Under ICC IPMC Section 102.6, the provisions of the code are not mandatory for existing buildings or structures designated as historic or when designated by the code official to be safe and in the public interest.

Q: Would hotels and vacation homes also be inspected and licensed?

A: The definition of a “rental dwelling unit” under a Property Maintenance Code/Rental Licensing Program has not yet been determined, but as hotels are commercial uses they would not be subject to rental licensing and inspection requirements. Vacation home rentals typically represent very short-term, transient habitation; it is unlikely that they would be included in the licensing and inspection requirements although that could depend on the length of occupancy.

Q: How will an owner’s costs for repairs be covered?

A: The program could provide some flexibility relative to the timing necessary to complete improvements necessary to meet the minimum standards of the Property Maintenance Code. The most serious health and safety related repairs would need to be completed immediately while less serious items could be accomplished within a defined timetable. Regardless, the repair costs would be the owner’s responsibly and the owner would then decide whether to pass those costs (and/or how much) on to tenants.

New Program Fees**Q: Why is a 500% increase in per unit fees needed to address problems in 1% of the units in the City? How will that improve living conditions for the community?**

A: The statement that problems exist in only 1% of units in the City is incorrect; both the known and the anticipated extent of problems have been described in responses to questions above.

In order to put a proactive and comprehensive program in place, additional staff and other resources would be required. A preliminary budget projection based on a straight-forward implementation model suggests there would be an estimated increase from next year’s \$1 per month per rental unit charge to a charge of approximately \$5 per month per unit in order to implement a Property Maintenance Code/Rental Licensing Program. The projected staffing level is consistent with other communities that have instituted similar programs.

As a program is implemented over time, there would be opportunities to provide more focus on the rental units where problems are more significant. For example, inspections could be less frequent for properties with a history of compliance and fees could be adjusted accordingly. It is suggested that

these types of strategies are most appropriate for consideration in the future, at the program design stage. Should the program concept move forward, it will be recommended that a stakeholder's group to include property managers, rental owners, tenants, and other interested parties be formed to assist with program design.

The ICC IPMC would improve living conditions in the areas around campus and throughout the City by providing for a more efficient, effective and comprehensive approach to responding to neighborhood livability concerns. In doing so and especially where exterior property conditions will be addressed, it should result in the mitigation of nuisance conditions and as a result, the protection of property values throughout the community.

Q: Would the fees collected by the inspection and licensing program go to the City's General Fund?

A: No, such a fee would be tied to a program budget that directly relates to applicable staffing, equipment, supplies and overhead costs. This would not be a "profit center" for the general fund or any other city fund or program.

Q: How much funding would OSU contribute toward the cost of the program?

A: It is not anticipated that OSU would contribute direct funding to this particular potential recommendation from the Collaboration project. However, there are other Collaboration Project recommendations that would be solely funded by OSU. It should be noted that this program would be city-wide rather than exclusively targeting the Collaboration project area, or just addressing OSU student/student housing interests.

Q: Why not charge the fee directly to tenants?

A: The fee would be charged to rental property owners rather than to renters because that structure is both equitable and practical. Owners have the responsibility of maintaining their properties in part by affect of existing statute and in part due to their retained possession of the real property. Although tenants obtain temporary, limited possession of the premises for use under the terms of a lease or rental agreement they do not accrue direct or long term rights or obligations to alter or maintain the systems of the buildings and premises. Property ownership records are comparatively easy to compile and track, and changes in property ownership occur much less frequently than tenant turnover. In practice it is likely that fees charged to the owners of rental properties would, at least in some cases, be added to the rents they charge their tenants.

Other Questions

Q: Why are City inspectors doing inspections in the county?

A: The City has an agreement with Benton County related to building inspections. The agreement is reciprocal in that each entity can request assistance from the other on an "as needed and available" basis with full reimbursement of costs. The most frequent service provided to Benton County by the City is for electrical inspections.

It is important to note that the city's inspection staff is funded through fees for building and development projects. Therefore, any inspection services provided by existing city staff to a future property maintenance code and rental licensing program would need to be charged to that program and not paid for by building fees. Finally, to be clear, this program would only apply within the Corvallis city limits.

Q: What protections would there be for tenants who complain to keep them from being evicted?

A: This question touches on a key and challenging issue in that City staff continue to hear from tenants and community advocates that fear of eviction is preventing more renters from coming forward with complaints under the current code enforcement system. Oregon landlord tenant law and a tenant's lease stipulate the circumstances under which evictions may occur. The City currently offers and participates in education efforts focused on tenant rights, and would foresee increasing these efforts if a Property Maintenance Code/Rental Licensing Program is implemented. In addition, the landlord/tenant information and referral services currently offered by the City's Housing Division would continue to connect tenants who feel they are at risk of being wrongly evicted with resources that may be able to help them.