

Memorandum

To: Honorable Mayor and Yakima City Council

From: Joan Davenport, Community Development Director
Glenn Denman, Code Administration Manager
Sara Watkins, City Attorney

Date: City Council meeting of February 16, 2021

Subject: Follow-up from February 5, 2021 Council Meeting on IPMC Questions

The following topics were either items discussed at the February 5, 2021 City Council meeting presentation of the International Property Maintenance Code (IPMC) or submitted subsequently in writing to staff.

1. Landlord Protection: Are landlords treated differently, or does the IPMC make a distinction between landlords and tenants? Does the IPMC provide protections for landlords from tenants who may destroy the owner's property?

Answer:

- (a) Code Enforcement is responsive to a site specific complaint, related to the standards of the Yakima Municipal Code (YMC). At this time, based on the existing YMC, Code Enforcement staff do not have a title report prepared to determine who has legal interest in the property. If a portion of the YMC were to make such a distinction, a title report would certainly be necessary (\$400 and a week of delay). Current practice is for a notice to be sent to the property owner listed in the County Assessor office records and to the "occupant" of the property. If compliance is not obtained with the YMC, a title report is ordered prior to issuance of a Notice of Illegal Conditions which is the final notice received, provides notification of deadlines and specifics as to compliance, and gives all parties interested in the property an opportunity to comply or appear before final or ordered enforcement actions related to fines and penalties are taken against the property.
- (b) The International Property Maintenance Code (IPMC) code does distinguish responsibility for maintenance of the property between typical multi-family properties. Tenants are responsible for areas they control, and landlords are responsible for common areas, such as in a multifamily setting, parking, landscaping, hallways, stairways, structural components and the like. Both the owner and "occupant" receive the same notices from the start of a case. The code official does not mediate their civil matters. Since the code makes a distinction between owners and tenants, there may be protections afforded to either party if a civil matter between them ensues.
- (c) The Landlord/Tenant Act (RCW 59.18.*et seq.*) provides for the legal rights between parties in a landlord/tenant relationship. This statute is applicable for resolving conflict between parties, as well as any applicable language in the rental agreement. The City does not provide mediation services.
- (d) The Washington State Constitution, Article 1, Section 12 prohibits special privileges and immunities. It provides:
No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

In evaluating a potential ordinance that could treat people similarly situated differently, a court will evaluate the language of the ordinance and conduct a rational basis review of that ordinance language in the event the class is not a protected class requiring heightened review. Rational basis review evaluates, generally, whether there is a reasonable basis for treating similarly situated properties, people, uses of property, or property owners (for example) differently.

2. Can the City use court imposed “community service” instead of fines to ameliorate the cash costs of enforcement?

Answer:

(a) Currently, people concerned about clean-up costs and time constraints may enter into a payment plan with the City in order to prevent a lien from being encumbered onto their property. This practice is intended to remain. It is one of the reasons we get such high compliance with Code Enforcement. Also, it is another factor in the length of time it may take to get compliance. The IPMC dictates that the enforcement process be reasonable and equitable, and in cases where there are practical difficulties in carrying out its requirements, special provisions may be made depending on extenuating circumstances, if any.

(b) Codes cases do not go through the Yakima Municipal Court process, so owners/occupants would not be able to use the court imposed community service process. Therefore, a new community service process would need to be created in a city department to create this opportunity.

3. Can the City use Community Development Block Grant (CDBG) funds to pay for supplies for clean-up?

Answer:

Purchase of cleanup supplies would not be permitted using CDBG funds. Normal maintenance costs are not allowed using this federal funding source.

4. Can the city provide more detailed data on resolution of Code Enforcement cases?

Answer:

Staff may provide more detailed statistics to the City Council on Code enforcement. Please provide a list of items requested for reporting to the City Manager.

5. Based on IPMC Section 107.6, does the IPMC have a provision that would keep from holding up the sale of a property during a pending enforcement case? Do we have a provision where costs may be held in escrow?

Answer:

Staff works with closing agents in order to see that title transfers are not unnecessarily delayed. We have worked directly with buyers to stay actions with agreement that nuisances be abated following the sale. In cases where a lien has already been imposed, the City may waive fines (reduce the lien amount), but reimbursements of actual costs would still need to be satisfied. Payments of the lien amounts are coordinated through the closing process and do not hold up the sale of properties.

6. Are our notification procedures as efficient as they could be, or are there too many bureaucratic hurdles or steps involved in enforcement?

Answer:

Adoption of the IPMC simplifies the administrative procedures, since there is only one portion of the YMC that governs the entire case. Under the current system, there may be multiple YMC provisions, with various administrative procedures and fee schedule in place. Multiple procedures can also result in multiple notices that need to be sent to a property owner and/or occupant.

In an enforcement action, Code officers are directed to approach cases in a reasonable manner. They start with compiling information in response to the complaint: a phone call, a knock on the door or in the case of an absent tenant or owner, they send a letter informing them that we have been made aware of a violation. Opportunity is given to voluntarily abate within a reasonable timeframe depending on the level of nuisance. Owners/occupants who need additional time have an option of entering into a voluntary correction agreement which is a contract with the City that outlines the steps that will be taken by the owner/occupant to abate the violation and the timeline during which the abatement will take place. Difficult cases may require the code official to defer the process to the Legal Department in order to obtain warrants and court orders to cause abatement. The hurdles involved are within the parameters of case law, workload, scheduling court appearances, etc.

7. Impact of Mental Health Disability: Does the City offer any strategies for mental health interventions in Code Enforcement?

Answer; the Clean City Program funds an Outreach worker and the YPD works with Crisis Responder staff. Both these resources are available to the Codes Division, if appropriate.

From: Funk, Kay

Sent: Friday, February 05, 2021 1:07 PM

To: All City Council <ccouncil2@YAKIMAWA.GOV>; Davenport, Joan <Joan.Davenport@yakimawa.gov>; Denman, Glenn <Glenn.Denman@yakimawa.gov>

Subject: International Property Management Code

International Property Management Code

It's great that we finally had a discussion and are moving along with the International Property Management Code. There is no question that this is a good direction. Mr. Denman's presentation is much appreciated.

The discussion raised some questions which I would like to get sorted before we vote for approval. We have been flailing around with this for the last three years, and I hope that we use this opportunity to create a firm foundation moving forward.

Protections for landlords - This is something that may need to be formally addressed with amendments in the ordinance.

We need landlords who will keep low cost housing habitable and available for rent. It is certainly true that there are predatory landlords in town, and tenants are vulnerable. I have even heard multiple stories, from multiple sources, of sexual exploitation by landlords. I am not familiar with the Landlord-Tenant Act, but I assume that abuse of landlords' power is covered, and is unlawful.

That said, we also have landlords who try really hard, putting money and great personal effort into providing decent housing. That is good for the city, and we need to support their efforts. We should try to help protect these landlords from the consequences of code violations caused by irresponsible tenants.

It was said that landlords and resident property owners need to be treated exactly the same. I have difficulty believing that; these are not 14th Amendment protected classes. Perhaps that is covered in the Landlord-Tenant Act. I would like to see the exact citation. Otherwise, I would like to know what we can do to help landlords who incur costs from code violations caused by irresponsible tenants.

Recognizing Income And Wealth Inequality - This possibly ought to be addressed in the ordinance, or maybe just by rules and procedures.

That Yakima has 3000 code violation cases per year, but only 15 fines is an astonishing statistic. Clearly, most of these cases are being eventually resolved by owner compliance. So it may not be necessary to talk about the impact of collecting cash fines.

Can we use court imposed "community service" instead of fines to ameliorate the cash costs? Could Mr. Matthews' housing support program contribute supplies? It is difficult to change behavior or enforce codes in a population that has nothing to fine and nothing to lose except the roof over their heads.

An enforcement system with these statistics must be incredibly burdensome for the code enforcement staff. I would like to see more data collection on how the codes department is getting these cases resolved and the work impact on the staff..

Impact of Mental Health Disability

We know that YPD struggles with the difficulty of policing mental health problems. The codes enforcement department must face the same difficulty. It is time consuming, traumatizing, and probably dangerous for the staff. Have we considered strategies in which mental health interventions, possibly Crisis Response Mental Health Workers, or Adult Protective Services might be of help? I assume that codes enforcement staff are also mandated to report to Child Protective Services in some cases. This is a difficult problem.