

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

This document is a summarized version of the Board of Commissioners proceedings. The minutes are paraphrased, not verbatim. Access to an electronic audio recording of the meeting is available upon request.

The Honorable Board of Franklin County Commissioners met on the above date. Present for the meeting were Brad Peck, Chairman; Rick Miller, Chair Pro Tem; and Robert E. Koch, Member; Fred Bowen, County Administrator; and Mary Withers, Clerk to the Board. Meeting convened at 9:03 am.

WASHINGTON COUNTIES RISK POOL (WCRP)

Vyrle Hill and David Goldsmith met with the Board. Present in audience: Roger Lenk, Lester Storms, Tom Larson, Ryan Verhulp, Al Yenney, Paul Whitemarsh, Randy Willis, Toni Fulton, Jerrod MacPherson and Greg Wendt.

Mr. Hill and Mr. Goldsmith gave the Washington Counties Risk Pool annual update and annual budget information.

PLANNING AND BUILDING DEPARTMENT

Planning Director Jerrod MacPherson and Assistant Director Greg Wendt met with the Board.

Public Hearing: TC 2012-01, Text Change Amendment to the Franklin County Development Regulations (Zoning Ordinance 7-2005) to clarify, change or amend the zoning text included in Chapter 2 (Violations/Penalties and Enforcement)

Public Hearing convened at 9:39 am. Present: Commissioners Peck, Miller and Koch; Planning Director Jerrod MacPherson; Assistant Director Greg Wendt; and Clerk to the Board Mary Withers. Present in audience: Roger Lenk, Lester Storms, Tom Larson, Al Yenney, Paul Whitemarsh, Guy Walters, Randy Willis and one other man.

Mr. Wendt reviewed the information on the Action Summary (Exhibit 1).

Mr. MacPherson told the Board about some of the changes and the reasons for them regarding handling of code enforcement matters, replacing the Hearing Examiner process with a District Court process. He answered questions and said we stress wholeheartedly voluntary

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

compliance. We don't feel our role here is to cite people with infractions. Mr. Peck said you've also helped people be successful.

Mr. Peck asked if anyone in the audience would like to speak.

Roger Lenk expressed appreciation for the Planning Department but also expressed concern that in the future, different staff could routinely send code enforcement matters to District Court instead of working with people to try to solve the problem first. Mr. MacPherson said the code requires that we go through a series of steps. At no point would we take that out, unless there is a repeat violator; then we could just issue a citation.

Mr. Peck asked twice more if anyone else would like to comment. There was no response. The hearing was closed to public comment.

Mr. MacPherson answered the Board's questions about procedures.

In response to Mr. Peck's request for a summary, Mr. MacPherson said the current Hearing Examiner is retiring. The cost for other hearing examiners is greater than the current cost. The current cost is around \$1000 a year because the voluntary compliance portion of the program is so successful. He also mentioned the change will be consistent with Building and Fire regulations.

Motion – Mr. Koch: I move to grant approval of the Text Change application TC 2012-01 subject to the three findings of fact. Second by Mr. Miller. 3:0 vote in favor. Ordinance 3-2012 was approved. (Exhibit 2)

PUBLIC WORKS

Interim Public Works Director Guy Walters met with the Board. Present in audience: Roger Lenk, Lester Storms, Tom Larson, Al Yenney, Toni Fulton, Paul Whitemarsh, Randy Willis, one other man and a woman, Rosie Rumsey, Yesenia Torres, Kevin Dougherty and Becky Mulkey.

Classification Review Committee Recommendation

Mr. Walters asked for approval of the Classification Review Committee's recommendation regarding an employee hiring. After discussion, the Board decided to wait to make a decision.

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

Department Update

Road 100: The Road 100 project will be done after a few more details are finished which are expected to be completed today. Mr. Peck asked Mr. Bowen to work with Mr. Walters to prepare a news release. He also asked that a simple opening ceremony be planned.

Chip Sealing: Chip sealing is complete for approximately 40 miles.

Weed spraying: Public Works staff members are meeting with Weed Board staff regarding the roadside weed spraying program.

Voucher Approval

Mr. Peck asked Mr. Walters about voucher approval. Mr. Peck asked Mr. Walters to physically look at some invoices to verify what has been received and train other staff members to do so as well.

OFFICE BUSINESS

Administrative Assistant Toni Fulton met with the Board. Present in audience: Lester Storms, Tom Larson, Al Yenney, Toni Fulton, Paul Whitemarsh, Randy Willis, one other man, Rosie Rumsey, Yesenia Torres, Kevin Dougherty, Becky Mulkey and Ed Bush.

Public Comment

Personnel Files: Yesenia Torres as a union president asked the Board to set policy so that there is one central place for personnel files rather than in two separate places (one in Human Resources and one in the office of the union member).

Mr. Peck said I agree in principle. He said we're looking to see if independent elected official status bars us from doing that. He explained some other issues involved in making a decision. He told Ms. Torres that he is in support of what you are asking. Mr. Koch is also in support.

Aquatics Center: Paul Whitemarsh told the Board about efforts to establish an indoor aquatic center in the Tri-Cities that have occurred over many years. He gave the Board a handout showing aquatic center features (Exhibit 3). He said the success of the plans for the facility now rests with the Commissioners.

Randy Willis also spoke to the Board requesting their support of an aquatics center.

Tom Larson spoke to the Board briefly.

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

Vouchers

Present in audience: Ryan Verhulp, Rosie H. Rumsey and Ed Bush.

Motion –Mr. Miller: Mr. Chairman, I move that we approve the vouchers audited and certified by the auditing officer for County Road and Motor Vehicle payroll, signed by Matt Beaton and Connie Curiel, for a total of \$96,658.54. Second by Mr. Koch. 3:0 vote in favor.

<u>Fund</u>	<u>Warrant</u>	<u>Amount</u>
County Road Payroll:		
Payroll	68363-68387	33,305.13
Direct Deposit		38,510.46
		71,815.59
Benefits	68388-68391	11,861.76
	Total	83,677.35
Motor Vehicle Payroll:		
Payroll	68392-68406	\$5,096.62
Direct Deposit		5,987.30
		\$11,083.92
Benefits	68407-68410	1,897.27
	Total	\$12,981.19
	Grand Total	\$96,658.54

(Exhibit 4)

Motion – Mr. Miller: I move that we approve the vouchers audited and certified by the auditing officer for Salary Clearing payroll, Emergency Management and Irrigation. \$628,802.55 is the grand total. They are signed by Jeff Burckhard and Connie Curiel. Second by Mr. Koch. 3:0 vote in favor.

<u>Fund</u>	<u>Warrant</u>	<u>Amount</u>
Salary Clearing Payroll:		
Payroll	56484-56582	170,427.06
Direct Deposit		355,809.00
		526,236.06
Benefits	56583-56588	81,712.20
	Total	\$607,948.26

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

Emergency Mgmt Payroll:

Payroll	68597-68603	\$2,511.16
Direct Deposit		7,108.84
		\$9,620.00
Benefits	68687-68690	1,446.61
	Total	\$11,066.61

Irrigation Payroll:

Payroll	68691-68700	\$5,799.77
Direct Deposit		2,531.34
		\$8,331.11
Benefits	68701-68704	1,456.57
	Total	\$9,787.68

**Grand Total All
Payrolls**

\$628,802.55

(Exhibit 5)

Motion – Mr. Miller: I move that we approve the vouchers audited and certified by Jeff Burckhard and Robin Stanco for fund expenditures as listed for a total of \$2,122,073.02. Second by Mr. Koch. 3:0 vote in favor.

Fund Expenditures	<u>Warrants</u>		Amount Issued
Landfill Closure Trust Fund	68290	-	\$9,004.03
Dept of Commerce Pass Through	68301	68302	\$135,882.34
Current Expense	68328	68362	\$163,738.72
Current Expense	68412	68448	\$58,787.93
Current Expense	68449	68485	\$26,625.14
TRAC Operations Fund	68522	68555	\$47,586.67
Franklin County RV Facility	68556	68559	\$17,273.76
CE Cumulative Reserve Fund	68560	68562	\$83,656.45
Auditor O & M	68563	-	\$142.46
Treasurer O & M	68564	-	\$348.60
Clerk LFO Collection Fund	68565	-	\$163.48
Trial Court Improvement Fund	68566	68567	\$2,747.12
Boating Safety Fund	68568	68574	\$1,055.03
Sheriff / Sex Offender Grant	68575	-	\$242.15
DUI Recovery Fund	68576	-	\$205.00
Current Expense	68577	-	\$50.00

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

Jail Commissary	68578	68583	\$3,462.72
Dare Fund Sheriff	68584	-	\$97.09
Enhanced 911	68585	68586	\$18,556.19
Veteran's Assistance	68587	68591	\$5,366.69
.3% Criminal Justice Const Fnd	68592	68595	\$212,366.13
Motor Vehicle/Public Works	68596	-	\$1,716.34
County Road	68604	68649	\$689,579.93
Solid Waste	68650	68654	\$19,583.39
Probation Work Crew	68655	68656	\$1,814.38
Motor Vehicle/Public Works	68657	68686	\$56,093.17
Current Expense	68705	68713	\$1,075.21
Ending Homelessness Fund	68714	68716	\$14,680.00
FC Capital Projects Fund	68717		\$250,061.20
.3% Criminal Justice Const Fnd	68718		\$300,111.70

(Exhibit 6)

Minutes

Motion - Mr. Miller: I move for approval of Commissioners Proceedings for June 20, June 13 and June 27. Second by Mr. Koch. 3:0 vote in favor.

Consent Agenda

Regarding Consent Agenda item #12, Mr. Peck said he had asked that item 12 be on the agenda but will be pulling it. Mr. Bush, County E911 director, explained on page 3 the word "study" can be changed to "study/project manager." The word change has been approved by the state and by Deputy Prosecutor Ryan Verhulp. Mr. Peck will ask the other four members of the 911 group for their concurrence with the wording change.

Motion - Mr. Koch: I move for approval of the consent agenda items 1 through 17, pulling item 12. Second by Mr. Miller. 3:0 vote in favor.

1. Approval of Resolution 2012-222, awarding Ernie Chapin a Personal Services Contract for providing classes, clinics, and/or workshops for youth in the diversion, truancy and/or Juvenile Drug Court Programs, by and for the Benton-Franklin Counties Juvenile Justice Center

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

2. Approval of Resolution 2012-223, contract between the Juvenile Justice Center and the Pasco School District to provide a probation counselor in Chiawana High School
3. Approval of Resolution 2012-224, contract between the Juvenile Justice Center and the Pasco School District to provide a probation counselor in Pasco High School
4. Approval of Resolution 2012-225, awarding The Personal Touch, Inc., a Public Works Contract for janitorial services of the Benton-Franklin Counties Juvenile Justice Center
5. Approval of Resolution 2012-226, Amendment #3 to Professional Services Agreement to Provide Legal Representation to Indigent Persons in Benton-Franklin Counties Juvenile Court Division, #BFJC1212MSP003A with Mary S. Poland
6. Approval of Resolution 2012-227, Contract Amendment BFJC1212DRC004A with Attorney Darin R. Campbell for additional indigent defense services in the Juvenile Division of Benton-Franklin Counties Superior Court representing indigent juveniles subject to dependency proceedings
7. Approval of Resolution 2012-228, terminating the Personal Services Contract with Tri-Cities Maintenance and Janitorial II for an unresolved, substantive, breach of the contract
8. Approval of Resolution 2012-229, awarding Community Health Clinics, Inc., dba Terry Reilly-Sane Solutions a Personal Services Contract to provide services and treatment to first-time adjudicated sex offenders of the Benton-Franklin Counties Juvenile Justice Center
9. Approval of Resolution 2012-230, Agreement #CHG-DVSBF-2012 between Benton and Franklin Counties Department of Human Services and Domestic Violence Services of Benton and Franklin Counties
10. Approval of Resolution 2012-231, Food Service Contract Amendment #5 between Benton-Franklin Counties Juvenile Justice Center and ARAMARK Correctional Services, LLC, amending Franklin County Resolutions 2010-085, 2011-232, 2012-014
11. Approval of Resolution 2012-232, payment of Franklin County's portion (\$3025.88) of an invoice accrued by The Landfill Group to Aspect Consulting LLC for professional services at the Pasco Sanitary Landfill

(Clerk's Note: Item 12 was withdrawn from the consent agenda.)

12. Approval of Resolution 2012-___ Memorandum of Understanding between Washington State Military Department and Benton County, Washington, and Franklin County, Washington

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

13. Approval of Resolution 2012-233, authorizing expenditures in the amount of \$1,750 utilizing funds from the Miscellaneous Trial Court Improvement Fund Number 128-000-001, as requested from the Trial Court Improvement Fund Authorization Committee
14. Approval of Resolution 2012-234, 2012 Sponsorship Agreement between Franklin County and the Benton-Franklin Fair and Rodeo
15. Approval of Resolution 2012-235, payment of Conover Insurance premium Invoice #793453 for Commercial Crime Insurance coverage
16. Approval of Resolution 2012-236, Professional Services Contract Amendment between Franklin County and Franklin County Emergency Management, amending Franklin County Resolution 2010-407
17. Approval of Resolution 2012-237, Amendment to Personnel Policy adopted by Resolution 88-32 and to Resolution 2006-223; Revision of Section XII – Authorized Leaves, Paragraph B, Personal Leave, of the existing Franklin County Personnel Policy for non-bargaining unit employees

Recessed at 11:03 am.

Reconvened at 11:06 am.

PROSECUTOR

Chief Civil Deputy Prosecutor Ryan Verhulp met with the Board. No one was present in the audience.

Executive Session at 11:08 am per RCW 42.30.110(1)(i) for potential litigation and legal risk of a proposed action regarding Franklin County's potential liable party status at the Pasco Sanitary Landfill and to extend discussion involving the county's continued discussion with other PLPs regarding the Pasco Sanitary Landfill expected to last up to 15 minutes.

Open Session at 11:25 am. Rosie Rumsey and Deputy Prosecutor Janet Taylor joined the audience.

Mr. Verhulp said in regards to the discussion regarding the Pasco Sanitary Landfill, I would submit whether it is the position of the Board of County Commissioners that Franklin County's membership in The Landfill Group remain unchanged as of today and going forward for the time being.

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

Motion – Mr. Koch: Mr. Chairman, I would move to make Ryan's recommendation into a motion. Second by Mr. Miller. 3:0 vote in favor.

Deputy Prosecutor Janet Taylor met with the Board. Present in audience: Human Resources Director Rosie H. Rumsey.

Executive Session at 11:28 am based on RCW 42.30.140(4) Contract Negotiations; to discuss a representation petition filed by the bailiffs, expected to last up to 30 minutes.

Open Session at 11:58 am.

OTHER BUSINESS

County Administrator Fred Bowen met with the Board. No one was present in the audience.

Resolution: Inter-Budget Transfer to pay for cost of Franklin County Annex Roof replacement

Motion – Mr. Koch: Mr. Chairman, I move for approval of Resolution 2012-238, creation of line item 597.00.00.0100 in the 2012 Current Expense Non-Departmental Budget #001-000-700; and Inter-Budget Transfer of \$17,622 from the 2012 Current Expense Non-Departmental Budget #001-000-700 , line item 519.90.00.0001 (Contingency) to line item 597.00.00.0100 (Transfer-Cumulative Reserve); and Inter-Fund transfer by voucher of \$17,622 from the 2012 Current Expense Non-Departmental Budget #001-000-700, line item 597.00.00.0100 (Transfer-Cumulative Reserve) to Cumulative Reserve Fund revenue line 397.00.00.0700 (Transfer-in/CE Non-Departmental). Second by Mr. Miller. The total project cost was \$91,937. There was a code issue with substrate that ended up costing approximately \$4600 to fix. The project is not complete because the seal coat has to be applied 30 days after the initial work but there will not be any further costs. The resolution authorizes the transfer but does not authorize the payment. 3:0 vote in favor.

Groundwater Management Area (GWMA)

Mr. Koch said based on requests received by the Commissioners for creation of an aquifer protection area (APA), a public hearing has been scheduled on July 25. The area affects seven voting precincts. If those constituents at that time support putting it on the ballot, a resolution will have to be approved before August 7.

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

ADJOURNMENT

Motion – Mr. Miller: I move that we adjourn. Second by Mr. Koch. 3:0 vote in favor.

Adjourned at 12:05 pm.

COMMISSIONERS RECORD 51
FRANKLIN COUNTY
Commissioners' Proceedings for July 11, 2012

There being no further business, the Franklin County Board of Commissioners meeting was adjourned until July 18, 2012.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON



Brad Peck, Chairman



Rick Miller, Chairman Pro Tem



Robert E. Koch, Member

Attest:



Mary Withers
Clerk to the Board

Approved and signed July 25, 2012.

Franklin County
Board of Commissioners
Agenda Summary Report

DATE: July 3, 2012

PRESENTED BY: Jerrod MacPherson

ITEM: (Select One) Consent Agenda.
 X To Be Brought Before the Board. Date: July 11, 2012
Time needed: 15 minutes

SUBJECT / ISSUE: TC-2012-01, a public hearing to review the Planning Commission's recommendation for an application by Franklin County regarding a text amendment to the Franklin County Development Regulations (Zoning), Ordinance 7-2005.

ACTION(S) REQUESTED:

Review the Planning Commission Recommendation in a Public Hearing; Pass a motion; and Pass an Ordinance.

BACKGROUND: This is a text change application (TC 2012-01) to review and update Chapter 2, focusing on violations/penalties and enforcement, of the Franklin County Development Regulations (Zoning Ordinance 7-2005).

What is the existing correction process?

The intent of Chapter 2, (Violations/Penalties and Enforcement) is to educate the public and encourage voluntary correction of activities which violate the County Zoning Ordinance. A typical correction process (non-emergency order) involves the following steps:

1. **Notice of Voluntary Correction** (with reasonable time and date for corrective action).
 - a. Encourage Compliance or Abatement Plan.
2. If voluntary compliance is not obtained, a **Notice and Order** is issued.
 - a. The Notice and Order allows an additional opportunity to complete a voluntary correction or complete an abatement plan along with a date to appear before the County Hearings Examiner if the voluntary measures fail.
3. **Hearing before the Hearing Examiner.**

What is the focus of this text amendment application?

With the retirement of the County Hearings Examiner and the need to closely monitor Department expenses, along with the need to bring enforcement consistency amongst some of the County's development regulations, this text amendment proposes:

1. To replace the 'Hearing before the Hearing Examiner' portion of the correction process with the issuance of a 'Notice of Infraction'. The details of a Notice of Infraction includes the Issuance, Contents, Service of Notice, etc. which are specified in the amendment along with the removal of text associated with the Hearing before the Examiner Hearing.
2. To continue the Voluntary Compliance portion of the correction process.
3. To ensure the Notice and Order will continue to attempt to obtain voluntary correction. If voluntary correction is not achieved, the amendment changes the enforcement portion of the process from 'date to appear before the Hearings Examiner' to 'date that a Notice of Infraction may be issued'.
4. To ensure that at 'Notice of Infraction' is to be served upon the person/landowner responsible for the on-going violation only after the exhaustion of the voluntary correction process.
5. To further promote enforcement consistency amongst the County's development regulations (i.e. Building Code and Fire Code), which currently utilize the notice of infraction process.

Page 2
Agenda Summary Report

PUBLIC TESTIMONY AND DISCUSSIONS:

Phone Discussions: Planning Staff did not receive any phone calls regarding the proposed text amendment.

In-Office Discussions: Planning Staff did not have conversations with the public regarding the proposed text amendment.

Open Record Hearing Testimony:

- In support of application: No public spoke in support of the application.
- In opposition of application: No public spoke against the application.
- Clarification only: None.
- Planning Commission Voting/Discussion. Positive recommendation with 6 in favor, and 0 against.

SUMMARY: At the regularly scheduled Planning Commission hearing on May 1, 2012 the Franklin County Planning Commission voted to forward a positive recommendation for this application to the Board of County Commissioners subject to the following three (3) findings of fact:

FINDINGS OF FACT:

1. This application is in compliance with the intent and spirit of the Franklin County Development Regulations (Zoning).
2. That this application is in compliance with the Franklin County Comprehensive Plan.
3. This application is consistent with RCW 36.70A, the Growth Management Act.

COORDINATION:

Upon completion of the open record public hearing with the Franklin County Planning Commission, the proposed text change was forwarded onto the Washington State Department of Commerce for their required review under RCW 36.70A (The Growth Management Act). The State requires a 60 day review and comment period, unless an expedited review is requested. Expedited review was not requested on this application for an update to the Franklin County Development Regulations (Zoning Ordinance 7-2005). The 60 review and comment period has ended, and the Department of Commerce did not comment.

Additionally, this text amendment to the Franklin County Development Regulations (Zoning Ordinance 7-2005) is currently being reviewed and prepared to be approved as to form by Ryan E. Verhulp, Franklin County Chief Civil Deputy Prosecuting Attorney prior to the July 11, 2012 public hearing date.

RECOMMENDATION:

The County Planning Commission recommends the Board approve TC-2012-01 with the following motion:

Motion:

Grant approval of text change application TC-2012-01, subject to the three (3) findings of fact.

HANDLING / ROUTING:

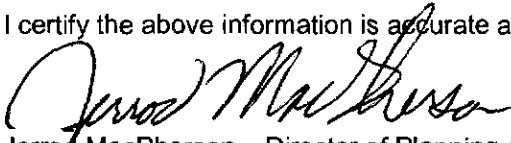
There will be two (2) originals brought for signature to the public hearing and distributed as follows – 1. To be filed with the County Auditor; and 2. To be on file in the Planning and Building Department.

Page 3
Agenda Summary Report

ATTACHMENTS:

1). A complete and full version of the amended chapter (Chapter 2 – Violations/Penalties and Enforcement); 2). The Department of Commerce's required notice of proposed amendment; and 3). The Department of Commerce's notice of 60 day review procedural requirement being met.

I certify the above information is accurate and complete.



Jerrod MacPherson – Director of Planning and Building

CHAPTER 2

VIOLATION/PENALTIES AND ENFORCEMENT

Sections:

- 2.1.0 Interpretation
- 2.2.0 Conflicting Provisions
- 2.3.0 Intent
- 2.4.0 Violations
- 2.5.0 Enforcement and Duty to Enforce
- 2.6.0 Site Investigation and Right of Entry
- 2.7.0 Notice of Voluntary Correction
- 2.8.0 Notice and Order
- 2.9.0 Stop Work Order and Emergency Order
- 2.10.0 Hearing Before the Hearing Examiner *Notice of Infraction*
- 2.11.0 Abatement by the County
- 2.12.0 Alternative Abatement Procedure
- 2.12.0 Suspension and Revocation of Permits
- 2.13.0 Storage of Abated Items
- 2.14.0 Recovery of Civil Penalty and Cost of Abatement

2.1.0 INTERPRETATION.

1. In interpreting and applying the provisions of this Ordinance, the provisions and standards contained herein shall be deemed to be the minimum standards or requirements with which compliance is essential to the permitted uses, and shall not be construed as limiting the legislative authority of Franklin County to further restrict permissive uses or to withhold or revoke permits for uses where, notwithstanding the existence of the minimum standards set forth in this Ordinance, the promotion or protection of the public health, morals, safety and welfare bears a substantial relation to such withholding, denial or revocation of permits or uses.

2.2.0 CONFLICTING PROVISIONS.

1. Where this Ordinance imposes a greater restriction upon land, buildings, or structures than is imposed or required by other rules, regulations, standards, policies, ordinances, contracts, covenants public or private, deeds, or statutes lawfully adopted by Franklin County, the provisions of this Ordinance shall govern and take precedent. In the case of conflicts between the text, maps and tables of the Ordinance, the text shall govern unless otherwise stated.

2.3.0 INTENT.

1. The primary intent of all enforcement actions described in this Chapter is to educate the public and to encourage the voluntary correction of violations to protect the public health, safety and welfare. If voluntary compliance fails or is inapplicable in a given case civil and criminal penalties will be used when necessary to ensure compliance with the provisions of this Ordinance. Criminal

Ordinance Number 7-2005

charges will be brought only when civil remedies have failed to ensure compliance and all lesser enforcement tools have proved futile.

2. **Nothing in this section shall be construed to prevent the building official, fire marshal, or local fire chief from following the enforcement process and provisions of the Uniform Building Code, the Uniform Fire Code, or any other standardized code adopted by the county.**

2.4.0 VIOLATIONS.

1. It is a violation of this Ordinance for any person to initiate or maintain, or to cause to be initiated or maintained, any use, alteration, construction, location, or demolition of any structure, land, or property within Franklin County without first obtaining permits or authorizations required by this Ordinance.
2. It is a violation of this Ordinance to remove or deface any sign, notice, complaint, or order required by or posted in accordance with this Ordinance.
3. It is a violation of this Ordinance to misrepresent any material fact in any application, plans, or other information submitted to obtain any land use authorization.
4. It is a violation for any person to fail to comply with the provisions of this Code, to fail to comply with the terms or conditions of a permit issued pursuant to this Ordinance, or to fail to comply with any or all Notices or Orders issued pursuant to this Chapter.

2.5.0 ENFORCEMENT AND DUTY TO ENFORCE.

1. Provisions of this Ordinance will be enforced for the benefit of the health, safety, and welfare of the general public and the environment and, not for the benefit of any particular person or class of persons.
2. The Planning and Building Director or authorized representative is authorized to use the provisions of this section to remove, prevent and stop violations of this Ordinance. The Planning and Building Director or authorized representative may call upon law enforcement, fire, health, or other appropriate County departments to assist in enforcement.
3. The owner of any real or personal property subject to enforcement action and/or any person responsible for a violation at a particular site or real property shall be individually and jointly liable for failure to comply with this Ordinance or to comply with any and all notices or orders issued pursuant to this Ordinance.
4. No provision or term used in this Chapter is intended to impose any duty upon the County or any of its officers or employees, which would subject them or the County to damages in a civil action.

2.6.0 SITE INVESTIGATION AND RIGHT OF ENTRY.

1. Any person submitting an application for any land use permit or any other land use activities shall also be requested to give written consent to on-site inspection of their property solely for the purpose of assessing compliance with any or all county development regulations applicable to the land use permit or proposal submitted by that applicant.

Ordinance Number 7-2005

2. The Planning and Building Director or authorized representative may, with the written consent of the owner, enter any building, structure, property or portion thereof at reasonable times to inspect the same in order to determine whether the applicant and/or owner are in compliance with any and all development regulations applicable to the land use permit or proposal submitted by that applicant.
3. If written consent of the applicant or owner to enter private property exists and if the Planning and Building Director or authorized representative should find such building, structure, property or portion thereof to be occupied, then the Planning and Building Director or authorized representative shall present identification credentials, state the reasons for the inspection, and request entry.
4. If written consent of the applicant or owner to enter private property exists and if the Planning and Building Director or authorized representative should find such building, structure, property or portion thereof to be unoccupied, then the Planning and Building Director or authorized representative shall first make a reasonable effort to locate the owner or other persons having charge or control of the building, structure, property or portion thereof and request entry. If the Planning and Building Director or authorized representative is unable to locate the owner or such other persons, and has reason to believe that conditions therein create an immediate and irreparable land use or safety hazard, the Planning and Building Director or authorized representative may enter to investigate land use violations or safety hazards.
5. Should the Planning and Building Director or authorized representative be denied written consent to access such private property in order to carry out the purpose and provision of this Chapter, then the Planning and Building Director or authorized representative shall, if entry upon private property is deemed necessary, be required to obtain a lawful search warrant executed by a neutral magistrate or judge based upon sufficient sworn proof of probable cause prior to entry upon private property.
6. At such time as the County, through its Planning and Building Director or authorized representative, concludes that the applicant has complied with all development regulations applicable to the applicant's proposal or application for one or more land use permits the written consent to enter the premises of the applicant for inspection and observation as permitted by this Chapter shall immediately expire.
7. Because there will be circumstances, a complaint or facts where an investigation of real property will be required that does NOT arise from an existing application or request for one or more land use permits, the Planning and Building Director or authorized representative is permitted to take all lawful steps to investigate those circumstances or facts, including, but not limited to, obtaining a lawful search warrant executed by a neutral magistrate or judge based upon sufficient sworn proof of probable cause prior to entry upon private property.

2.7.0 NOTICE OF VOLUNTARY CORRECTION.

1. If after investigation, the Planning and Building Director or authorized representative determines that any provision of this Ordinance has been violated,

Ordinance Number 7-2005

a notice of voluntary correction letter should be the first attempt at obtaining compliance. If voluntary compliance is not obtained, the Planning and Building Director or authorized representative shall serve a Notice and Order, as set forth in this Chapter, upon the owner and person(s) responsible for the violation. The Notice of Voluntary Correction shall state the following:

- a. the street address, when available, and/or a legal description of real property sufficient to identify where the violation occurred or is located;
 - b. description of the activity that is causing a violation;
 - c. each provision violated under county regulations;
 - d. the corrective action necessary to comply with said provisions;
 - e. a reasonable time and date by which the corrective action is to be completed, however, in no event shall the time given for voluntary correction be greater than 60 calendar days, except as provided in this Chapter; and
 - f. that continued or subsequent violations may result in civil enforcement actions, as provided in this Chapter, to include monetary civil penalties, and/or abatement proceedings enforceable as a lien against property or as a personal obligation.
2. Following a Notice of Voluntary Correction, the Planning and Building Director or authorized representative and person in violation may meet to develop a compliance plan. The compliance plan shall establish a reasonable and specific time frame for compliance. No further action will be taken if the terms of the compliance plan are met. If no compliance plan is established, a notice and order will proceed.
 3. Upon written request received prior to the correction date, the Planning and Building Director or authorized representative may, for good cause shown, grant an extension of the date set for correction for an amount of time as deemed reasonable by the Planning and Building Director or authorized representative. The Planning and Building Director or authorized representative may only consider as good cause (1) substantial completion of necessary correction; (2) unforeseeable circumstances not caused by the person so as to make completion impossible by the date established; or (3) procedural requirements for obtaining a permit to carry out the corrective action.
 4. The voluntary correction process is optional as deemed by the Planning and Building Director or authorized representative. If the Planning and Building Director or authorized representative believes that the requirements of this section are not being met, the Planning and Building Director or authorized representative shall, in addition to the Notice and Order, issue applicable Stop Work or Emergency Orders.

2.8.0 NOTICE AND ORDER.

1. Issuance.
 - a. When the Planning and Building Director or authorized representative determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, the Planning and Building Director or

Ordinance Number 7-2005

- authorized representative may issue a notice and order to the person responsible for the violation.
- b. The Planning and Building Director or authorized representative may issue a notice and order without having attempted to secure voluntary correction as provided under the following circumstances:
 - i. When an emergency exists; or
 - ii. When a repeat violation occurs; or
 - iii. When the violation creates a situation or condition which cannot be corrected; or
 - iv. When the person knows or reasonably should have known that the action is in violation of a County regulation; or
 - v. The person cannot be contacted or refuses to communicate or cooperate with the County in correcting the violation.
2. Content. The notice and order shall include the following:
- a. The name and address of the person responsible for that violation; and
 - b. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
 - c. A description of the violation and a reference to the provision(s) of the County regulation(s) which has been violated; and
 - d. The required corrective action and a date ~~and time~~ by which the correction must be completed after which the County *may issue a notice of infraction and* may abate the unlawful condition in accordance with the provisions of this Chapter; and
 - e. *The issuance of a notice of infraction will occur* The date, time and location of an appeal hearing ~~before the hearing examiner~~ which will be at least ten (10) days but no more than forty-five (45) days from the date the notice and order is issued; and
 - f. A statement indicating that the ~~hearing~~ *notice of infraction* will be canceled and no monetary penalty will be assessed if the Planning and Building Director or authorized representative approves the completed, required corrective action at least forty eight (48) hours prior to the ~~hearing prior to or on the issue date of the notice of infraction~~; and
 - g. A statement that the costs and expenses of abatement (including hauling and storage costs) incurred by the County and a monetary penalty ~~in an~~ amount per day for each violation as specified in this Chapter may be assessed against the person to whom the notice and order is directed as specified and ordered by the hearing examiner *in the notice of infraction*.
3. Service of notice. The Planning and Building Director or authorized representative shall serve the notice and order upon the person responsible for the violation, either personally or by mailing a certified copy of the notice and order to such person at their last known address. If the person responsible for the violation cannot be personally served within Franklin County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice and order conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed

Ordinance Number 7-2005

- by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by certified mail.
4. Extension. Extensions of the time specified in the notice and order for correction of the violation may be granted at the discretion of the Planning and Building Director or authorized representative or by order of the hearing examiner.
 5. Monetary penalty. The monetary penalty for each violation per day or portion thereof shall be three hundred dollars (\$300) may be up to \$500.00.
 6. Continued duty to correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice and order was issued of the duty to correct the violation.
 7. Collection of monetary penalty.
 - a. The monetary penalty constitutes a personal obligation of the person to whom the notice and order is directed. Any monetary penalty assessed must be paid to the County within thirty (30) calendar days from the date of mailing of the hearing examiner's decision or a notice from the County that penalties are due.
 - b. The County Prosecuting Attorney or his/her signee is authorized to take appropriate legal action to collect the monetary penalty.

2.9.0 STOP WORK ORDER AND EMERGENCY ORDER.

1. Stop Work Order. Whenever a continuing violation of any regulations within this Ordinance will 1) materially impair the Planning and Building Director or authorized representative's ability to secure compliance with this Ordinance, or 2) threaten the health or safety of the public, or 3) threaten or harms the environment, then the Planning and Building Director or authorized representative may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. The order may be posted on the subject property or may be served on persons engaged in any work in violation of this Ordinance and any other Ordinance of Franklin County. No further work or activity shall proceed, unless and until authorized by the Planning and Building Director or authorized representative in writing. In the event the Planning and Building Director or authorized representative issues a stop work order, the voluntary correction procedures of this Chapter and the notice and order provisions of this Chapter shall not apply. Failure to comply with a stop work order shall constitute a violation of this Ordinance.
2. Emergency Order. Whenever any use or activity in violation of this Ordinance threatens the health or safety of occupants of the premises or property, any member of the public or the environment, the Planning and Building Director or authorized representative may issue an Emergency Order directing that the use or activity be discontinued and the condition causing threat to health and safety or threat and harm to the environment be corrected. The Emergency Order shall be served on the person(s) responsible pursuant to this Chapter, which shall specify the time for compliance, and should be posted in a conspicuous place on the premises, if posting is physically possible. Failure to comply with an Emergency

Ordinance Number 7-2005

Order shall constitute a violation of this Ordinance. In the event the Planning and Building Director or authorized representative issues a emergency order, the voluntary correction procedures of this Chapter and the notice and order provisions of this Chapter shall not apply. Failure to comply with an emergency order shall constitute a violation of this Ordinance.

2.10.0 HEARING BEFORE THE HEARING EXAMINER.

1. *Notice.* A person to whom a notice and order is issued will be scheduled to appear before the hearing examiner not less than ten (10) calendar days but no more than forty five (45) days after the notice and order is issued. Extensions may be granted at the discretion of the Planning and Building Director or authorized representative.
2. *Prior correction of violation.* The hearing will be canceled and no monetary penalty will be assessed if the Planning and Building Director or authorized representative approves the completed required corrective action at least forty eight (48) hours prior to the scheduled hearing.
3. *Procedure.* The hearing examiner shall conduct a hearing on the civil violation (notice and order) pursuant to the rules of procedure of the hearing examiner. The Planning and Building Director or authorized representative and the person to whom the notice and order was directed may participate as parties in the hearing and each party may call witnesses. The County shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action will correct the violation. The determination of the Planning and Building Director or authorized representative as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.
4. *Decision of the hearing examiner.*
 - a. The hearing examiner shall determine whether the County has established by a preponderance of the evidence that a violation has occurred and that the required correction will correct the violation and shall affirm, vacate, or modify the County's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.
 - b. The hearing examiner shall issue an order to the person responsible for the violation which contains the following information:
 - i. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
 - ii. The required corrective action;
 - iii. The date and time by which the correction must be completed;
 - iv. The monetary penalties assessed based on the criteria pursuant to this Chapter;
 - v. The date and time after which the County may proceed with abatement of the unlawful condition if the required correction is not completed.
 - c. Assessment of monetary penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty in this Chapter.

Ordinance Number 7-2005

- i. The hearing examiner shall have the following options in assessing monetary penalties:
 - (1) Assess monetary penalties beginning on the date the notice and order was issued and thereafter; or
 - (2) Assess monetary penalties beginning on the correction date set by the Planning and Building Director or authorized representative or an alternate correction date set by the hearing examiner and thereafter;
 - (3) Assess less than the established monetary penalty as set forth in this Chapter.
 - (4) Assess no monetary penalties.
 - ii. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:
 - (1) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;
 - (2) Whether the person failed to appear at the hearing;
 - (3) Whether the violation was a repeat violation;
 - (4) Whether the person showed due diligence and/or substantial progress in correcting the violation;
 - (5) Whether a genuine code interpretation issue exists; and
 - (6) Any other relevant factors.
 - iii. The hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations, the hearing examiner shall consider the factors set forth in this Chapter.
 - d. *Notice of decision.* The hearing examiner shall mail a copy of the decision to the person to whom the notice and order was issued and to the Planning and Building Director or authorized representative within ten (10) working days of the hearing.
5. *Failure to appear.* If the person to whom the notice and order was issued fails to appear at the scheduled hearing, the examiner will enter an order with findings pursuant to this Chapter and assess the appropriate monetary penalty pursuant to this Chapter. The County will enforce the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.
6. *Appeal to Superior Court.* An appeal of the decision of the hearing examiner must be filed with the Superior Court within thirty (30) calendar days of the issuance of the decision.

2.10.0 NOTICE OF INFRACTION.

- 1. *Issuance.*
 - a. *When the Planning and Building Director or authorized representative determines that a violation's required corrective action, from a notice and order, has not been completed within the required timeline, the Planning and Building Director or authorized representative may issue a notice of infraction to the person responsible for the violation.*

Ordinance Number 7-2005

2. ***Contents. The notice of infraction shall include the following:***
 - a. *A statement that the notice of infraction represents a determination that the infraction has been committed by the person named in the notice of infraction and that the determination shall be final unless contested as provided in this chapter;*
 - b. *A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;*
 - c. *A statement of the specific infraction for which the notice of infraction was issued, the date and place the infraction occurred and the date the notice of infraction was issued;*
 - d. *A statement that the civil penalty shall not exceed five hundred dollars (\$500) for said violation and that the person may be ordered to pay court costs, if applicable, and restitution for any damages caused by said violation;*
 - e. *A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options, including the name, address, and phone number of the court where the notice of infraction is to be filed and that the defendant must respond within fifteen (15) days;*
 - f. *A statement that a mailed response must be mailed not later than midnight on the day the response is due;*
 - g. *A statement that at any hearing to contest the determination, the county has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction;*
 - h. *A statement, which the person who has been served with the notice of infraction shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;*
 - i. *A statement that refusal to sign the infraction as directed in subsection 5 of this section is a misdemeanor and may be punished by a fine or imprisonment in jail; and a statement that a person's failure to respond to a notice of infraction as promised, is a misdemeanor and may be punished by a fine or imprisonment in jail.*
3. ***Service of notice. The Planning and Building Director or authorized representative shall serve the notice of infraction upon the person responsible for the violation, either personally or by mailing a certified copy of the notice of infraction to such person at their last known address. If the person responsible for the violation cannot be personally served within Franklin County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of infraction conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by certified mail.***

Ordinance Number 7-2005

2. *District or Superior Court. A violation designated as an infraction under this title can be heard and determined by either a district or superior court.*
3. *Determination Infraction Committed. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction.*
4. *Response to Notice of Infraction.*
 - a. *A person who receives a notice of infraction shall respond to the notice of infraction as provided in this section within fifteen (15) days of the date the notice of infraction was served.*
 - b. *If the person named in the notice of infraction does not want to contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice of infraction. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the Planning and Building Department.*
 - c. *If the person named in the notice of infraction wants to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing. The date of the hearing shall not be sooner than fifteen (15) days from the date of the notice of hearing, except by agreement of the parties.*
 - d. *If any person issued a notice of infraction (1) Fails to respond to the notice of infraction as provided in subsection (b) of this section, or (2) Fails to appear at a hearing requested pursuant to subsection (c) of this section, the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the department of the failure of the person to respond to the notice of infraction or to appear at a requested hearing.*
 - e. *An order entered by the court under subsection (d)(2) of this section may, for good cause shown and upon such terms as the court deems just, be set aside for the same grounds a default judgment may be set aside in civil actions.*
5. *Person's Refusal to Sign- Misdemeanor. It is a misdemeanor for any person who has been appropriately served with a notice of infraction to refuse to sign a written promise to respond to the notice.*
6. *Person's Failure to Respond- Misdemeanor. It is a misdemeanor for any person who has been appropriately served with a notice of infraction to willfully violate the written promise to respond to the notice.*
7. *Representation by Attorney. A person subject to proceedings under this title may appear or be represented by counsel. Each party to an infraction case is*

Ordinance Number 7-2005

responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in an infraction case.

8. *Hearing Process.*

- a. A hearing held to contest the determination that an infraction has been committed shall be without a jury.*
- b. The court may consider the notice of infraction and any sworn statement submitted by the department's authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice of infraction may subpoena witnesses, including the authorized representative who issued and served the notice of infraction, and has the right to present evidence and examine witnesses present in court.*
- c. The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence.*
- d. After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that the infraction was committed, an appropriate order shall be entered in the court's records.*

9. *Explanation of Mitigating Circumstances.*

- a. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.*
- b. After the court has heard the explanation of the circumstances surrounding the commission of the infraction an appropriate order shall be entered in the court's records.*
- c. The person may not appeal the court's determination or order.*

10. *Civil Penalty- Infraction.* *A civil penalty imposed by the court under this title is immediately payable. If the person or contractor is unable to pay at that time, the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court shall notify the department of the failure to pay the penalty and the department shall not issue the person or contractor any future permits for any work until the penalty has been paid.*

11. *Continued Duty to Correct:* *Payment of a penalty pursuant to this chapter does not relieve the person to whom the notice of infraction was issued of the duty to correct the violation.*

12. *Violation-Penalties.*

- a. Upon a finding of a first violation of any provision of this title, any person or contractor shall be punished by a civil penalty not to exceed five hundred dollars (\$500) for said violation, shall be responsible for*

Ordinance Number 7-2005

court costs, if applicable, and shall be ordered to pay restitution for any damages caused by said violation.

- b. Upon the court's finding of a second or subsequent violation of the same provision of this title, any person or contractor shall be found guilty of a misdemeanor.*

2.11.0 ABATEMENT BY THE COUNTY.

1. The County may abate a condition which was caused by or continues to be a violation when:
 - a. The terms of voluntary ~~correction~~ *compliance* agreement pursuant to this Chapter have not been met; or
 - b. A notice and order has been issued pursuant to this Chapter and the required correction has not been completed; and a hearing has been held pursuant to this Chapter and the required correction has not been completed by the date specified in the hearing examiner's order; or
 - c. *A notice of infraction has been issued pursuant to this Chapter and the required correction has not been completed; or*
 - d. The condition is subject to summary abatement as provided for in this Chapter.
2. Summary abatement. Whenever any violation of a regulation causes a condition the continued existence of which constitutes an immediate and emergent threat to the public health, safety or welfare or to the environment, the County may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.
3. Authorized action by the County. Using any lawful means, the County may enter upon the subject property and may remove or correct the condition which is subject to abatement. The County may seek such judicial process as it deems necessary to effect the removal or correction of such condition.
4. Recovery of costs and expenses. The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the County within thirty (30) calendar days. The term "incidental expenses" includes but is not limited to personnel costs, both direct and indirect, including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the County in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing.
5. Interference. Any person who knowingly obstructs, impedes, or interferes with the County or its agents, or with the person responsible for the violation in the performance of duties imposed by this chapter, or a decision and order issued by the hearing examiner or an agreement between the County and the person responsible for the violation, is guilty of a misdemeanor.

Ordinance Number 7-2005**2.12.0 ALTERNATIVE ABATEMENT PROCEDURE.**

1. Any property on which violations of this chapter remain uncorrected after issuance of a notice and order may, in addition to the procedures outlined above, be abated in accordance with the following additional procedures:
 - a. When requested by the Planning and Building Director or authorized representative and approved by the hearing examiner, the matter of a pending violation may be submitted to the County Commissioners for consideration whenever the violation consists of debris upon property constituting a fire hazard or a menace to public health, safety or welfare. In such instance, the procedures set forth in Section 2.7.0 through 2.11.0 of this Chapter shall be complied with to the extent not in conflict heroin except that the decision of the hearing examiner pursuant to this Chapter shall be in the form of a recommendation to the County Commissioners. This alternate procedure may be requested by the Planning and Building Director or authorized representative at any time prior to the hearing before the hearing examiner. Only if the hearing examiner makes a finding that the violation constitutes a fire hazard or a menace to public health, safety or welfare requiring removal or destruction of the debris constituting the violation shall the examiner make a recommendation to the County Commissioners pursuant to this alternate abatement procedure. After consideration, the County Commissioners may, by resolution, either accept, reject or modify the hearing examiner's recommendation and require the property owner to abate the violation by removal or destruction, at his or her cost and expense, within a time specified in the resolution.
 - b. The resolution shall not be passed until the property owner is given at least five (5) days' notice of the pendency of the proposed resolution. Such notice shall be served by the Planning and Building Director or authorized representative in accordance with the Section 2.8.0 of this Chapter. The notice, either accompanied with or incorporated into the hearing examiner's recommendation, shall describe the property involved, the nature of the hazardous condition, the corrective action required, and the date of the County Commissioners meeting during which the matter will be considered.
 - c. If the nuisance is not abated by the property owner within the time fixed in the resolution, the Planning and Building Director or authorized representative may abate the same and mail a bill to the property owner covering the cost to the County of such abatement, including the Planning and Building Director or authorized representative's expense. If the property owner fails or refuses to pay the bill immediately, the Planning and Building Director or authorized representative shall file a lien there for against the property, which lien shall be in the same form, filed with the same officer and within the same time and manner and enforced and foreclosed as is provided by law for liens for labor and material.

~~2.13.0~~ 2.12.0 SUSPENSION AND REVOCATION OF PERMITS.

Ordinance Number 7-2005

1. **Suspension-Cause.** The Planning and Building Director or authorized representative may temporarily suspend any permit issued under this Ordinance for:
 - a. Failure of the holder to comply with the requirements of any development regulations, or rules promulgated thereunder; or
 - b. Failure of the holder to comply with any order issued pursuant to this Chapter; or
 - c. Interference with the Planning and Building Director or authorized representative in the performance of his/her duties; or
 - d. Discovery by the Planning and Building Director or authorized representative that a permit was issued in error or on the basis of incorrect information supplied to the county.
 - e. Failure to comply with the conditions and/or mitigation measures of any land use permit.

Whenever the Planning and Building Director or authorized representative finds just cause, permit suspension shall be carried out through the notice and order provisions of this Chapter and shall be effective upon service of the notice and order.

2. **Revocation-Cause.** The Planning and Building Director or authorized representative may permanently revoke any permit issued under this Ordinance for just cause under **Section 2.12.0 a c** of this Chapter.

~~2.14.0~~ 2.13.0 STORAGE OF ABATED ITEMS.

1. Items of personal property that are abated in accordance with this Chapter will be stored/handled and disposed of in the following manner:
 - a. Vehicles, boats, RV's, campers, mobile homes, trailers and any other items that are listed as personal and not real property according to the Franklin County Treasurer, if found to be in violation of this Ordinance or any other Ordinance of Franklin County will be abated and stored in accordance with the provisions of State approved impound/tow yards.
 - b. Any item(s) that are in violation and that meet the definition under this ordinance or any other ordinance of Franklin County as a nuisance, or as junk, litter, debris, or garbage will be disposed of immediately in a land fill or any other approved waste handling facility.

~~2.15.0~~ 2.14.0 RECOVERY OF CIVIL PENALTY AND COST OF ABATEMENT.

1. **Lien – Authorized.** Franklin County shall have an unperfected lien for any civil penalty imposed or for the cost of any abatement work done pursuant to this Chapter, or both, against the real property on which the civil penalty was imposed or any of the abatement work performed.
2. **Personal Obligation – Authorized.** The civil penalty and the cost of abatement are also joint and separate personal obligations of any person or entity in violation. The Prosecuting Attorney and/or Planning and Building Director on behalf of the County may collect the civil penalty and abatement work costs by use of all appropriate legal remedies including the use of collection agencies.

Ordinance Number 7-2005

3. **Lien – Foreclosure.** The Planning and Building Director or authorized representative shall cause a claim for lien to be filed for record in the Franklin County Auditor's Office within 90 days of the date when the lien was perfected. The claim of lien shall contain the following:
 - a. The authority for imposing a civil penalty or proceeding to abate the violation, or both;
 - b. Proof, which may come from the document itself, of the legal perfection of the lien;
 - c. A brief description of the civil penalty imposed or the abatement work done, or both, including the violations charged and the duration thereof, including the time the work is commenced and completed and the name of the persons or organizations performing the work;
 - d. A legal description of the property to be charged with the lien;
 - e. The name of the known or reputed owner, and, if not known, the fact shall be alleged; and
 - f. The amount, including lawful and reasonable costs for which the lien is claimed.
4. **Verification.** The Planning and Building Director or authorized representative shall sign and verify the claim by oath to the effect that the Planning and Building Director or authorized representative believes the claim is just.
5. **Amendment.** The claim of lien may be amended in case of action brought to foreclose same, by order of the court, insofar as the interests of third parties shall not be detrimentally affected by amendment. Nothing shall prevent the Planning and Building Director or authorized representative from removing or reducing the civil assessment or lien upon satisfactory evidence that the violation of this development code has been abated, resolved, or removed.
6. **Foreclosure.** The lien provided by this section, once perfected and recorded as a lien against any real property owned in Washington by the debtor, may be foreclosed and enforced by a civil action in a court having jurisdiction. All persons who have legally filed claims of liens against the same property prior to commencement of the action shall be joined as parties, either plaintiff or defendant.



Department of Commerce

Innovation is in our nature.

Notice of Proposed Amendment 60-Day Review Prior to Adoption

Indicate one (or both, if applicable):

- ☐ Comprehensive Plan Amendment
☒ Development Regulation Amendment

Pursuant to RCW 36.70A.106, the following jurisdiction provides notice of a proposed comprehensive plan amendment and/or development regulation amendment under the Growth Management Act.

(If needed, you may expand this form and the fields below, but please try to keep the entire form under two pages in length.)

Jurisdiction: Franklin County, Washington
Mailing Address: 1016 North 4th Avenue
Pasco, WA 99301
Date: May 3, 2012

Contact Name: Jerrod MacPherson
Title/Position: Director of Planning and Building
Phone Number: 509-545-3521
E-mail Address: jmacpherson@co.franklin.wa.us

**Brief Description of the
Proposed/Draft Amendment:**
(40 words or less)

Proposed amendment to the Franklin County Development Regulations (Zoning) Ordinance Number 7-2005 – Chapter 2, Violations/Penalties and Enforcement.

If this draft amendment is provided to supplement an existing 60-day notice already submitted, then please provide the date the original notice was submitted and the Commerce Material ID number (located in your Commerce acknowledgement letter.)

Franklin County is proposing to modify the enforcement process for zoning violations from a Hearing Examiner process to a civil infraction process.

Public Hearing Date: May 1, 2012 – Open Record Hearing with the Franklin County Planning Commission
Proposed Adoption Date: Mid July 2012 – with the Franklin County Board of Commissioners

REQUIRED: Attach or include a copy the proposed amendment text.



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

May 15, 2012

Jerrod MacPherson
Planning Director
Franklin County Planning Department
1016 North 4th Avenue
Pasco, Washington 99301

Dear Mr. MacPherson:

Thank you for sending the Washington State Department of Commerce (Commerce) the following materials as required under RCW 36.70A.106. Please keep this letter as documentation that you have met this procedural requirement.

County of Franklin - Proposed amendments to the Franklin County Development Regulations (Zoning) Ordinance Number 7-2005 - Chapter 2, Violations/Penalties and Enforcement. These materials were received on May 03, 2012 and processed with the Material ID # 18065.

We have forwarded a copy of this notice to other state agencies.

If this submitted material is an adopted amendment, then please keep this letter as documentation that you have met the procedural requirement under RCW 36.70A.106.

If you have submitted this material as a draft amendment, then final adoption may occur no earlier than sixty days following the date of receipt by Commerce. Please remember to submit the final adopted amendment to Commerce within ten days of adoption.

If you have any questions, please contact Growth Management Services at reviewteam@commerce.wa.gov, or call Dave Andersen (509) 434-4491 or Paul Johnson (360) 725-3048.

Sincerely,

Review Team
Growth Management Services

ORDINANCE NUMBER 3-2012

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF FRANKLIN COUNTY,
WASHINGTON:**

**IN THE MATTER OF COUNTY PLANNING – TEXT CHANGE TO THE FRANKLIN
COUNTY DEVELOPMENT REGULATIONS (ZONING ORDINANCE 7-2005).**

APPLICANT: Franklin County, 1016 North 4th Avenue, Pasco, WA 99301.

WHEREAS, on July 11, 2012 the Clerk of the Board did set this date for a public hearing to consider the positive recommendation of the Franklin County Planning Commission to amend the Franklin County Development Regulations (Zoning Ordinance 7-2005).

WHEREAS, at the public hearing the Board has found as follows:

1. The County Planning Commission, after public hearing and consideration on TC 2012-01 did recommend approval of said text change, and
2. This application is in consistent with the intent and spirit of the Franklin County Development Regulations (Zoning).
3. This application is consistent with the Franklin County Comprehensive Plan.
4. This application is consistent with RCW 36.70A, the Growth Management Act.

WHEREAS, approval of this text amendment application will repeal County Ordinance #22-2001 (County Code 2.08 Office of the Hearings Examiner).

WHEREAS, it appears to be in the public use and interest to approve said text change.

NOW, THEREFORE, BE IT ORDAINED that the text change be implemented in accordance with the Franklin County Development Regulations (Zoning Ordinance 7-2005) and be amended to read as follows:

**CHAPTER 2
VIOLATION/PENALTIES AND ENFORCEMENT**

Sections:

- 2.1.0 Interpretation
- 2.2.0 Conflicting Provisions
- 2.3.0 Intent
- 2.4.0 Violations
- 2.5.0 Enforcement and Duty to Enforce
- 2.6.0 Site Investigation and Right of Entry
- 2.7.0 Notice of Voluntary Correction

Ordinance Number 3-2012**TC 2012-01**

- 2.8.0 Notice and Order
- 2.9.0 Stop Work Order and Emergency Order
- 2.10.0 Hearing Before the Hearing Examiner *Notice of Infraction*
- 2.11.0 Abatement by the County
- 2.12.0 Alternative Abatement Procedure
- 2.12.0 Suspension and Revocation of Permits
- 2.13.0 Storage of Abated Items
- 2.14.0 Recovery of Civil Penalty and Cost of Abatement

2.1.0 INTERPRETATION.

1. In interpreting and applying the provisions of this Ordinance, the provisions and standards contained herein shall be deemed to be the minimum standards or requirements with which compliance is essential to the permitted uses, and shall not be construed as limiting the legislative authority of Franklin County to further restrict permissive uses or to withhold or revoke permits for uses where, notwithstanding the existence of the minimum standards set forth in this Ordinance, the promotion or protection of the public health, morals, safety and welfare bears a substantial relation to such withholding, denial or revocation of permits or uses.

2.2.0 CONFLICTING PROVISIONS.

1. Where this Ordinance imposes a greater restriction upon land, buildings, or structures than is imposed or required by other rules, regulations, standards, policies, ordinances, contracts, covenants public or private, deeds, or statutes lawfully adopted by Franklin County, the provisions of this Ordinance shall govern and take precedent. In the case of conflicts between the text, maps and tables of the Ordinance, the text shall govern unless otherwise stated.

2.3.0 INTENT.

1. The primary intent of all enforcement actions described in this Chapter is to educate the public and to encourage the voluntary correction of violations to protect the public health, safety and welfare. If voluntary compliance fails or is inapplicable in a given case civil and criminal penalties will be used when necessary to ensure compliance with the provisions of this Ordinance. Criminal charges will be brought only when civil remedies have failed to ensure compliance and all lesser enforcement tools have proved futile.
2. **Nothing in this section shall be construed to prevent the building official, fire marshal, or local fire chief from following the enforcement process and provisions of the Uniform Building Code, the Uniform Fire Code, or any other standardized code adopted by the county.**

2.4.0 VIOLATIONS.

1. It is a violation of this Ordinance for any person to initiate or maintain, or to cause to be initiated or maintained, any use, alteration, construction, location, or demolition of any structure, land, or property within Franklin County without first obtaining permits or authorizations required by this Ordinance.

Ordinance Number 3-2012
TC 2012-01

2. It is a violation of this Ordinance to remove or deface any sign, notice, complaint, or order required by or posted in accordance with this Ordinance.
3. It is a violation of this Ordinance to misrepresent any material fact in any application, plans, or other information submitted to obtain any land use authorization.
4. It is a violation for any person to fail to comply with the provisions of this Code, to fail to comply with the terms or conditions of a permit issued pursuant to this Ordinance, or to fail to comply with any or all Notices or Orders issued pursuant to this Chapter.

2.5.0 ENFORCEMENT AND DUTY TO ENFORCE.

1. Provisions of this Ordinance will be enforced for the benefit of the health, safety, and welfare of the general public and the environment and, not for the benefit of any particular person or class of persons.
2. The Planning and Building Director or authorized representative is authorized to use the provisions of this section to remove, prevent and stop violations of this Ordinance. The Planning and Building Director or authorized representative may call upon law enforcement, fire, health, or other appropriate County departments to assist in enforcement.
3. The owner of any real or personal property subject to enforcement action and/or any person responsible for a violation at a particular site or real property shall be individually and jointly liable for failure to comply with this Ordinance or to comply with any and all notices or orders issued pursuant to this Ordinance.
4. No provision or term used in this Chapter is intended to impose any duty upon the County or any of its officers or employees, which would subject them or the County to damages in a civil action.

2.6.0 SITE INVESTIGATION AND RIGHT OF ENTRY.

1. Any person submitting an application for any land use permit or any other land use activities is granting the County the ability to conduct an on-site inspection of their property solely for the purpose of assessing compliance with any or all county development regulations applicable to the land use permit or proposal submitted by that applicant.
2. The Planning and Building Director or authorized representative may, with the written consent of the owner, enter any building, structure, property or portion thereof at reasonable times to inspect the same in order to determine whether the applicant and/or owner are in compliance with any and all development regulations applicable to the land use permit or proposal submitted by that applicant.
3. If written consent of the applicant or owner to enter private property exists and if the Planning and Building Director or authorized representative should find such building, structure, property or portion thereof to be occupied, then the Planning and Building Director or authorized representative shall present identification credentials, state the reasons for the inspection, and request entry.
4. If written consent of the applicant or owner to enter private property exists and if the Planning and Building Director or authorized representative should find such building, structure, property or portion thereof to be unoccupied, then the

Ordinance Number 3-2012
TC 2012-01

Planning and Building Director or authorized representative shall first make a reasonable effort to locate the owner or other persons having charge or control of the building, structure, property or portion thereof and request entry. If the Planning and Building Director or authorized representative is unable to locate the owner or such other persons, and has reason to believe that conditions therein create an immediate and irreparable land use or safety hazard, the Planning and Building Director or authorized representative may enter to investigate land use violations or safety hazards.

5. Should the Planning and Building Director or authorized representative be denied written consent to access such private property in order to carry out the purpose and provision of this Chapter, then the Planning and Building Director or authorized representative shall, if entry upon private property is deemed necessary, be required to obtain a lawful search warrant executed by a neutral magistrate or judge based upon sufficient sworn proof of probable cause prior to entry upon private property.
6. At such time as the County, through its Planning and Building Director or authorized representative, concludes that the applicant has complied with all development regulations applicable to the applicant's proposal or application for one or more land use permits the written consent to enter the premises of the applicant for inspection and observation as permitted by this Chapter shall immediately expire.
7. Because there will be circumstances, a complaint or facts where an investigation of real property will be required that does NOT arise from an existing application or request for one or more land use permits, the Planning and Building Director or authorized representative is permitted to take all lawful steps to investigate those circumstances or facts, including, but not limited to, obtaining a lawful search warrant executed by a neutral magistrate or judge based upon sufficient sworn proof of probable cause prior to entry upon private property.

2.7.0 NOTICE OF VOLUNTARY CORRECTION.

1. If after investigation, the Planning and Building Director or authorized representative determines that any provision of this Ordinance has been violated, a notice of voluntary correction letter ~~may~~ **should** be the first attempt at obtaining compliance. If voluntary compliance is not obtained, the Planning and Building Director or authorized representative shall serve a Notice and Order, as set forth in this Chapter, upon the owner and person(s) responsible for the violation. The Notice of Voluntary Correction shall state the following:
 - a. the street address, when available, and/or a legal description of real property sufficient to identify where the violation occurred or is located;
 - b. description of the activity that is causing a violation;
 - c. each provision violated under **county regulations County Code**;
 - d. the corrective action necessary to comply with said provisions;
 - e. a reasonable time and date by which the corrective action is to be completed, however, in no event shall the time given for voluntary correction be greater than 60 calendar days, except as provided in this Chapter; and

Ordinance Number 3-2012
TC 2012-01

- f. that continued or subsequent violations may result in civil enforcement actions, such as the issuance of an infraction or criminal penalties as provided in this Chapter, to include monetary civil penalties, and/or abatement proceedings enforceable as a lien against property or as a personal obligation.
2. Following a Notice of Voluntary Correction, the Planning and Building Director or authorized representative and person in violation may meet to develop a compliance plan. The compliance plan shall establish a reasonable and specific time frame for compliance. No further action will be taken if the terms of the compliance plan are met. If no compliance plan is established, a notice and order will proceed.
3. Upon written request received prior to the correction date, the Planning and Building Director or authorized representative may, for good cause shown, grant an extension of the date set for correction for an amount of time as deemed reasonable by the Planning and Building Director or authorized representative. The Planning and Building Director or authorized representative may only consider as good cause (1) substantial completion of necessary correction; (2) unforeseeable circumstances not caused by the person so as to make completion impossible by the date established; or (3) procedural requirements for obtaining a permit to carry out the corrective action.
4. The voluntary correction process is optional as deemed by the Planning and Building Director or authorized representative. If the Planning and Building Director or authorized representative believes that the requirements of this section are not being met, the Planning and Building Director or authorized representative shall, in addition to the Notice and Order, issue applicable Stop Work or Emergency Orders.

2.8.0 NOTICE AND ORDER.

1. Issuance.
 - a. When the Planning and Building Director or authorized representative determines that a violation has occurred or is occurring, ***and is unable to secure voluntary correction has not occurred***, the Planning and Building Director or authorized representative may issue a notice and order to the person responsible for the violation.
 - b. The Planning and Building Director or authorized representative may issue a notice and order without having attempted to secure voluntary correction as provided under the following circumstances:
 - i. When an emergency exists; or
 - ii. When a repeat violation occurs; or
 - iii. When the violation creates a situation or condition which cannot be corrected; or
 - iv. When the person knows or reasonably should have known that the action is in violation of a County ~~regulation~~ Code(s); or
 - v. The person cannot be contacted or refuses to communicate or cooperate with the County in correcting the violation.
2. Content. The notice and order shall include the following:
 - a. The name and address of the person responsible for that violation; and

Ordinance Number 3-2012
TC 2012-01

- b. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
 - c. A description of the violation and a reference to the provision(s) of the County regulation(s) Code(s) which has been violated; and
 - d. The required corrective action and a date ~~and time~~ by which the correction must be completed after which the County *may issue a notice of infraction and* may abate the unlawful condition in accordance with the provisions of this Chapter; and
 - e. *The issuance of a notice of infraction will occur* The date, time and location of an appeal hearing before the hearing examiner which will be at least ten (10) days but no more than forty-five (45) days from the date the notice and order is issued; and
 - f. A statement indicating that the ~~hearing~~ *County notice of infraction will request from the court in which the infraction is filed that the infraction be dismissed without canceled and no monetary penalty penalties* or costs imposed will be assessed if the Planning and Building Director or authorized representative approves the completed, required corrective action at least forty eight (48) hours prior to the hearing *prior to or on the issue date of the notice of infraction;* and
 - g. A statement that the costs and expenses of abatement (including hauling and storage costs) incurred by the County and a monetary penalty ~~in an~~ amount per day for each violation as specified in this Chapter may be assessed against the person to whom the notice and order is directed as specified and ordered by the hearing examiner *in the notice of infraction.*
3. Service of notice. The Planning and Building Director or authorized representative shall serve the notice and order upon the person responsible for the violation, either personally or by mailing a certified copy of the notice and order to such person at their last known address. If the person responsible for the violation cannot be personally served within Franklin County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice and order conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by certified mail.
 4. Extension. Extensions of the time specified in the notice and order for correction of the violation may be granted at the discretion of the Planning and Building Director or authorized representative or by order of the hearing examiner.
 5. Monetary penalty. The monetary penalty for each violation per day or portion thereof shall be three hundred dollars (\$300) may be up to \$500.00. This penalty is assigned when a Notice of Infraction is issued.
 6. Continued duty to correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice and order was issued of the duty to correct the violation.
 7. Collection of monetary penalty.

Ordinance Number 3-2012**TC 2012-01**

- a. The monetary penalty constitutes a personal obligation of the person to whom the notice and order is directed. Any monetary penalty assessed must be paid to the County within thirty (30) calendar days from the date of mailing of the hearing examiner's decision or a notice from the County that penalties are due.
- b. The County Prosecuting Attorney or his/her signee is authorized to take appropriate legal action to collect the monetary penalty.

2.9.0 STOP WORK ORDER AND EMERGENCY ORDER.

1. Stop Work Order. Whenever a continuing violation of any regulations within this Ordinance will 1) materially impair the Planning and Building Director or authorized representative's ability to secure compliance with this Ordinance, or 2) threaten the health or safety of the public, or 3) threaten or harms the environment, then the Planning and Building Director or authorized representative may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. The order may be posted on the subject property or may be served on persons engaged in any work in violation of this Ordinance and any other Ordinance of Franklin County. No further work or activity shall proceed, unless and until authorized by the Planning and Building Director or authorized representative in writing. In the event the Planning and Building Director or authorized representative issues a stop work order, the voluntary correction procedures of this Chapter and the notice and order provisions of this Chapter shall not apply. Failure to comply with a stop work order shall constitute a violation of this Ordinance.
2. Emergency Order. Whenever any use or activity in violation of this Ordinance threatens the health or safety of occupants of the premises or property, any member of the public or the environment, the Planning and Building Director or authorized representative may issue an Emergency Order directing that the use or activity be discontinued and the condition causing threat to health and safety or threat and harm to the environment be corrected. The Emergency Order shall be served on the person(s) responsible pursuant to this Chapter, which shall specify the time for compliance, and should be posted in a conspicuous place on the premises, if posting is physically possible. Failure to comply with an Emergency Order shall constitute a violation of this Ordinance. In the event the Planning and Building Director or authorized representative issues a emergency order, the voluntary correction procedures of this Chapter and the notice and order provisions of this Chapter shall not apply. Failure to comply with an emergency order shall constitute a violation of this Ordinance.

2.10.0 HEARING BEFORE THE HEARING EXAMINER.

1. Notice. A person to whom a notice and order is issued will be scheduled to appear before the hearing examiner not less than ten (10) calendar days but no more than forty five (45) days after the notice and order is issued. Extensions may be granted at the discretion of the Planning and Building Director or authorized representative.
2. Prior correction of violation. The hearing will be canceled and no monetary penalty will be assessed if the Planning and Building Director or authorized

Ordinance Number 3-2012
TC 2012-01

representative approves the completed required corrective action at least forty eight (48) hours prior to the scheduled hearing.

3. *Procedure.* The hearing examiner shall conduct a hearing on the civil violation (notice and order) pursuant to the rules of procedure of the hearing examiner. The Planning and Building Director or authorized representative and the person to whom the notice and order was directed may participate as parties in the hearing and each party may call witnesses. The County shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action will correct the violation. The determination of the Planning and Building Director or authorized representative as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.
4. *Decision of the hearing examiner.*
 - a. The hearing examiner shall determine whether the County has established by a preponderance of the evidence that a violation has occurred and that the required correction will correct the violation and shall affirm, vacate, or modify the County's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.
 - b. The hearing examiner shall issue an order to the person responsible for the violation which contains the following information:
 - i. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
 - ii. The required corrective action;
 - iii. The date and time by which the correction must be completed;
 - iv. The monetary penalties assessed based on the criteria pursuant to this Chapter;
 - v. The date and time after which the County may proceed with abatement of the unlawful condition if the required correction is not completed.
 - c. *Assessment of monetary penalty.* Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty in this Chapter.
 - i. The hearing examiner shall have the following options in assessing monetary penalties:
 - (1) Assess monetary penalties beginning on the date the notice and order was issued and thereafter; or
 - (2) Assess monetary penalties beginning on the correction date set by the Planning and Building Director or authorized representative or an alternate correction date set by the hearing examiner and thereafter;
 - (3) Assess less than the established monetary penalty as set forth in this Chapter.
 - (4) Assess no monetary penalties.
 - ii. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:
 - (1) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;
 - (2) Whether the person failed to appear at the hearing;

Ordinance Number 3-2012**TC 2012-01**

- (3) Whether the violation was a repeat violation;
- (4) Whether the person showed due diligence and/or substantial progress in correcting the violation;
- (5) Whether a genuine code interpretation issue exists; and
- (6) Any other relevant factors.
- iii. The hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations, the hearing examiner shall consider the factors set forth in this Chapter.
- d. *Notice of decision.* The hearing examiner shall mail a copy of the decision to the person to whom the notice and order was issued and to the Planning and Building Director or authorized representative within ten (10) working days of the hearing.
- 5. *Failure to appear.* If the person to whom the notice and order was issued fails to appear at the scheduled hearing, the examiner will enter an order with findings pursuant to this Chapter and assess the appropriate monetary penalty pursuant to this Chapter. The County will enforce the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.
- 6. *Appeal to Superior Court.* An appeal of the decision of the hearing examiner must be filed with the Superior Court within thirty (30) calendar days of the issuance of the decision.

2.10.0 NOTICE OF INFRACTION.

- 1. *Issuance.*
 - a. *When the Planning and Building Director or authorized representative determines that a violation's required corrective action, from a notice and order, has not been completed within the required timeline, the Planning and Building Director or authorized representative may issue a notice of infraction to the person responsible for the violation.*
- 2. *Contents.* *The notice of infraction shall include the following:*
 - a. *The name and address of the responsible party and if known any other identifying information including date of birth, sex, physical characteristics, and phone number(s).*
 - b. *A statement that the notice of infraction represents a determination that the infraction has been committed by the person named in the notice of infraction and that the determination shall be final unless contested as provided in this chapter;*
 - c. *A statement that the first infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;*
 - d. *A statement describing of the specific activity(ies) and County Code provision(s) violated, for which the notice of infraction was issued, the date, time, and place the infraction occurred and the date the notice of infraction was issued, and the name of the citing county official or officer;*
 - e. *A statement that the civil penalty shall not exceed five hundred dollars (\$500) for said violation and that the person may be ordered to pay court*

Ordinance Number 3-2012
TC 2012-01

- costs, if applicable, and restitution for any damages caused by said violation;*
- f. A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options, including the name, address, and phone number of the court where the notice of infraction is to be filed and that the defendant must respond within fifteen (15) days;*
 - g. A statement that a mailed response must be mailed not later than midnight on the day the response is due;*
 - h. A statement that at any hearing to contest the determination, the county has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction;*
 - i. A statement, which the person who has been served with the notice of infraction shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;*
 - j. A statement that refusal to sign the infraction as directed in subsection 5 of this section is a misdemeanor and may be punished by a fine or imprisonment in jail; and a statement that a person's failure to respond to a notice of infraction as promised, is a misdemeanor and may be punished by a fine or imprisonment in jail.*
- 3. Service of notice.** *The Planning and Building Director or authorized representative shall serve the notice of infraction upon the person responsible for the violation, either personally or by mailing a certified copy of the notice of infraction to such person at their last known address. If the person responsible for the violation cannot be personally served within Franklin County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of infraction conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by certified mail.*
- 4. District or Superior Court.** *A violation designated as an infraction under this title can be heard and determined by either a district or superior court.*
- 5. Determination Infraction Committed.** *Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction.*
- 6. Response to Notice of Infraction.**
- a. A person who receives a notice of infraction shall respond to the notice of infraction as provided in this section within fifteen (15) days of the date the notice of infraction was served.*
 - b. If the person named in the notice of infraction does not want to contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice of infraction. A*

Ordinance Number 3-2012
TC 2012-01

check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the Planning and Building Department.

- c. *If the person named in the notice of infraction wants to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing. The date of the hearing shall not be sooner than fifteen (15) days from the date of the notice of hearing, except by agreement of the parties.*
- d. *If any person issued a notice of infraction (1) Fails to respond to the notice of infraction as provided in subsection (b) of this section, or (2) Fails to appear at a hearing requested pursuant to subsection (c) of this section, the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the department of the failure of the person to respond to the notice of infraction or to appear at a requested hearing.*
- e. *An order entered by the court under subsection (d)(2) of this section may, for good cause shown and upon such terms as the court deems just, be set aside for the same grounds a default judgment may be set aside in civil actions.*
- 7. **Person's Refusal to Sign- Misdemeanor.** *It is a misdemeanor for any person who has been appropriately served with a notice of infraction to refuse to sign a written promise to respond to the notice.*
- 8. **Person's Failure to Respond- Misdemeanor.** *It is a misdemeanor for any person who has been appropriately served with a notice of infraction to willfully violate the written promise to respond to the notice.*
- 9. **Representation by Attorney.** *A person subject to proceedings under this title may appear or be represented by counsel. Each party to an infraction case is responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in an infraction case.*
- 10. **Types of Court Hearings and Process.**
 - (1) **Contested Hearing**
 - a. *A court hearing held to contest the determination that an infraction has been committed shall be without a jury.*
 - b. *The court may consider the notice of infraction and any sworn statement submitted by the County's authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The County and person named in the notice of infraction may subpoena witnesses, including the authorized representative who issued and served the notice of infraction, and has the right to present evidence and examine witnesses present in court.*
 - c. *The burden of proof is on the County to establish the commission of the infraction by a preponderance of the evidence.*

Ordinance Number 3-2012
TC 2012-01

- d. *After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that the infraction was committed, an appropriate order shall be entered in the court's records.*
- (2) *Mitigation Hearing- Explanation of Mitigating Circumstances.*
 - a. *A court hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.*
 - b. *After the court has heard the explanation of the circumstances surrounding the commission of the infraction an appropriate order shall be entered in the court's records.*
 - c. *The person may not appeal the court's determination or order.*
- 11. *Civil Penalty- Infraction. A civil penalty imposed by the court under this title is immediately payable. If the person or contractor is unable to pay at that time, the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court shall notify the County of the failure to pay the penalty and the department shall not issue the person or contractor any future permits for any work until the penalty has been paid.*
- 12. *Continued Duty to Correct: Payment of a penalty pursuant to this Chapter does not relieve the person to whom the notice of infraction was issued of the duty to correct the violation.*
- 13. *Violation-Penalties.*
 - a. *Upon a finding of a first violation of any provision of this Ordinance, any person or contractor shall be punished by a civil penalty not to exceed five hundred dollars (\$500) for said violation, shall be responsible for court costs, if applicable, and shall be ordered to pay restitution for any damages caused by said violation.*
 - b. *Upon the court's finding of a second or subsequent violation of the same provision of this title, any person or contractor shall be found guilty of a misdemeanor.*

2.11.0 ABATEMENT BY THE COUNTY.

- 1. The County may abate a condition which was caused by or continues to be a violation when:
 - a. The terms of voluntary ~~correction~~ **compliance agreement** plan pursuant to this Chapter have not been met; or
 - b. A notice and order has been issued pursuant to this Chapter and the required correction has not been completed; and a hearing has been held pursuant to this Chapter and the required correction has not been completed by the date specified in the hearing examiner's order; or

Ordinance Number 3-2012
TC 2012-01

- c. *A notice of infraction has been issued pursuant to this Chapter and the required correction has not been completed; or*
 - d. The condition is subject to summary abatement as provided for in this Chapter.
2. Summary abatement. Whenever any violation of a regulation causes a condition the continued existence of which constitutes an immediate and emergent threat to the public health, safety or welfare or to the environment, the County may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.
 3. Authorized action by the County. Using any lawful means, the County may enter upon the subject property and may remove or correct the condition which is subject to abatement. The County may seek such judicial process as it deems necessary to effect the removal or correction of such condition.
 4. Recovery of costs and expenses. The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the County within thirty (30) calendar days. The term "incidental expenses" includes but is not limited to personnel costs, both direct and indirect, including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the County in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing.
 5. Interference. Any person who knowingly obstructs, impedes, or interferes with the County or its agents, or with the person responsible for the violation in the performance of duties imposed by this chapter, or a decision and order issued by the hearing examiner or an agreement between the County and the person responsible for the violation, is guilty of a misdemeanor.

2.12.0 ALTERNATIVE ABATEMENT PROCEDURE.

1. Any property on which violations of this chapter remain uncorrected after issuance of a notice and order may, in addition to the procedures outlined above, be abated in accordance with the following additional procedures:
 - a. When requested by the Planning and Building Director or authorized representative and approved by the hearing examiner, the matter of a pending violation may be submitted to the County Commissioners for consideration whenever the violation consists of debris upon property constituting a fire hazard or a menace to public health, safety or welfare. In such instance, the procedures set forth in Section 2.7.0 through 2.11.0 of this Chapter shall be complied with to the extent not in conflict herein except that the decision of the hearing examiner pursuant to this Chapter shall be in the form of a recommendation to the County Commissioners. This alternate procedure may be requested by the Planning and Building Director or authorized representative at any time prior to the hearing before the hearing examiner. Only if the hearing examiner makes a finding that the violation constitutes a fire hazard or a menace to public health,

Ordinance Number 3-2012
TC 2012-01

safety or welfare requiring removal or destruction of the debris constituting the violation shall the examiner make a recommendation to the County Commissioners pursuant to this alternate abatement procedure. After consideration, the County Commissioners may, by resolution, either accept, reject or modify the hearing examiner's recommendation and require the property owner to abate the violation by removal or destruction, at his or her cost and expense, within a time specified in the resolution.

- b. *The resolution shall not be passed until the property owner is given at least five (5) days' notice of the pendency of the proposed resolution. Such notice shall be served by the Planning and Building Director or authorized representative in accordance with the Section 2.8.0 of this Chapter. The notice, either accompanied with or incorporated into the hearing examiner's recommendation, shall describe the property involved, the nature of the hazardous condition, the corrective action required, and the date of the County Commissioners meeting during which the matter will be considered.*
- c. *If the nuisance is not abated by the property owner within the time fixed in the resolution, the Planning and Building Director or authorized representative may abate the same and mail a bill to the property owner covering the cost to the County of such abatement, including the Planning and Building Director or authorized representative's expense. If the property owner fails or refuses to pay the bill immediately, the Planning and Building Director or authorized representative shall file a lien there for against the property, which lien shall be in the same form, filed with the same officer and within the same time and manner and enforced and foreclosed as is provided by law for liens for labor and material.*

~~2-13.0~~ 2.12.0 SUSPENSION AND REVOCATION OF PERMITS.

- 1. **Suspension-Cause.** The Planning and Building Director or authorized representative may temporarily suspend any permit issued under this Ordinance for:
 - a. Failure of the holder to comply with the requirements of any development regulations, or rules promulgated thereunder; or
 - b. Failure of the holder to comply with any order issued pursuant to this Chapter; or
 - c. Interference with the Planning and Building Director or authorized representative in the performance of his/her duties; or
 - d. Discovery by the Planning and Building Director or authorized representative that a permit was issued in error or on the basis of incorrect information supplied to the county.
 - e. Failure to comply with the conditions and/or mitigation measures of any land use permit.

Whenever the Planning and Building Director or authorized representative finds just cause, permit suspension shall be carried out through the notice and order provisions of this Chapter and shall be effective upon service of the notice and order.

Ordinance Number 3-2012
TC 2012-01

2. **Revocation-Cause.** The Planning and Building Director or authorized representative may permanently revoke any permit issued under this Ordinance for just cause under **Section 2.12.0 a c** of this Chapter.

~~2.14.0~~ 2.13.0 STORAGE OF ABATED ITEMS.

1. Items of personal property that are abated in accordance with this Chapter will be stored/handled and disposed of in the following manner:
 - a. Vehicles, boats, RV's, campers, mobile homes, trailers and any other items that are listed as personal and not real property according to the Franklin County Treasurer, if found to be in violation of *this Ordinance* or any other Ordinance of Franklin County will be abated and stored in accordance with the provisions of State approved impound/tow yards.
 - b. Any item(s) that are in violation and that meet the definition under this ordinance or any other ordinance of Franklin County as a nuisance, or as junk, litter, debris, or garbage will be disposed of immediately in a land fill or any other approved waste handling facility.

~~2.15.0~~ 2.14.0 RECOVERY OF CIVIL PENALTY AND COST OF ABATEMENT.

1. Lien – Authorized. Franklin County shall have an unperfected lien for any civil penalty imposed or for the cost of any abatement work done pursuant to this Chapter, or both, against the real property on which the civil penalty was imposed or any of the abatement work performed.
2. Personal Obligation – Authorized. The civil penalty and the cost of abatement are also joint and separate personal obligations of any person or entity in violation. The Prosecuting Attorney and/or Planning and Building Director *and/or authorized representatives* on behalf of the County may collect the civil penalty and abatement work costs by use of all appropriate legal remedies including the use of collection agencies.
3. Lien – Foreclosure. The Planning and Building Director or authorized representative shall cause a claim for lien to be filed for record in the Franklin County Auditor's Office within 90 days of the date when the lien was perfected. The claim of lien shall contain the following:
 - a. The authority for imposing a civil penalty or proceeding to abate the violation, or both;
 - b. Proof, which may come from the document itself, of the legal perfection of the lien;
 - c. A brief description of the civil penalty imposed or the abatement work done, or both, including the violations charged and the duration thereof, including the time the work is commenced and completed and the name of the persons or organizations performing the work;
 - d. A legal description of the property to be charged with the lien;
 - e. The name of the known or reputed owner, and, if not known, the fact shall be alleged; and
 - f. The amount, including lawful and reasonable costs for which the lien is claimed.

Ordinance Number 3-2012
TC 2012-01

4. Verification. The Planning and Building Director or authorized representative shall sign and verify the *claim of lien* by oath to the effect that the Planning and Building Director or authorized representative believes the claim is just.
5. Amendment. The claim of lien may be amended in case of action brought to foreclose same, by order of the court, insofar as the interests of third parties shall not be detrimentally affected by amendment. Nothing shall prevent the Planning and Building Director or authorized representative from removing or reducing the civil assessment or lien upon satisfactory evidence that the violation of this **development code County Code** has been abated, resolved, or removed.
6. Foreclosure. The lien provided by this section, once perfected and recorded as a lien against any real property owned in Washington by the debtor, may be foreclosed and enforced by a civil action in a court having jurisdiction. All persons who have legally filed claims of liens against the same property prior to commencement of the action shall be joined as parties, either plaintiff or defendant.

SIGNED AND DATED THIS 11th DAY OF JULY 2012.

**BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON**


CHAIRMAN


CHAIR PRO TEM


MEMBER

ATTEST:


CLERK OF THE BOARD

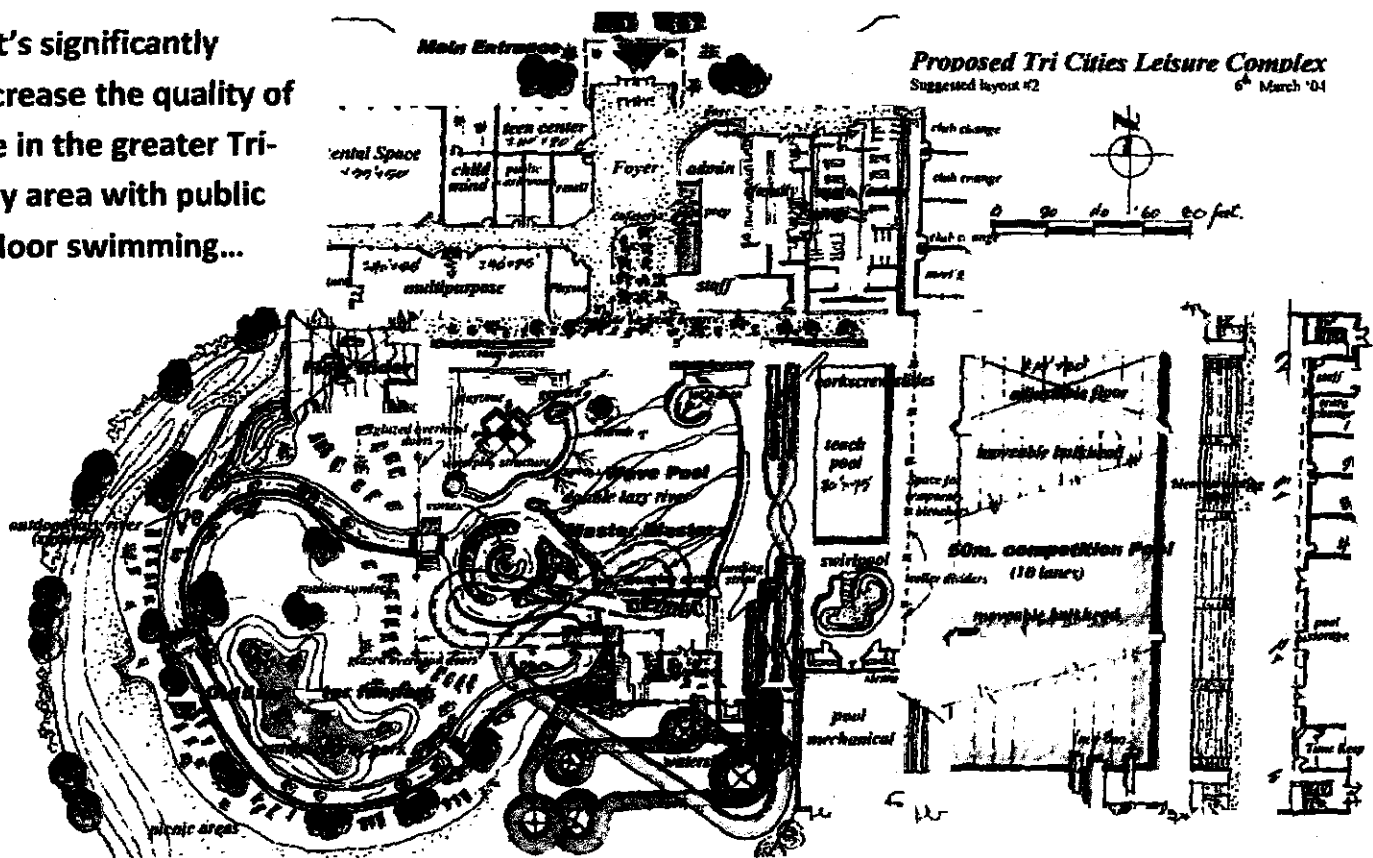
APPROVED AS TO FORM:


**RYAN VERHULP, CHIEF CIVIL
DEPUTY PROSECUTING ATTORNEY**

AQUATIC CENTER FEATURES:

- 50 Meter Competition Pool
- Zero-Depth Leisure Pool
8,300 sq. ft.
- 2 Water Slides
- Tots Pool
- Swirl Pool (Spa) 400 sq. ft.
- Outdoor Lazy River Feature
4,000 sq. ft.
- Indoor Lazy River Feature
1,600 sq. ft.
- Warm Water Therapeutic
- Teaching Pool — 30 x 75 foot
- Interactive Play Unit
- Multipurpose Space
- Administrative Area
- Concession Area
- Sun Deck
- Child Care Area
- Teen Center
- Outdoor Spray Park
3,200 sq. ft.
- First-Aid Rooms

Let's significantly
increase the quality of
life in the greater Tri-
City area with public
indoor swimming...



For more information: **Randy Willis** - 943-8416 (rwillis@my-cbrc.com) **Don Hart** - 585-8130
(duckhart@clearwire.net) **Paul Whitemarsh** - 547-6715 (paulwhitemarsh@gmail.com)



FRANKLIN COUNTY AUDITOR

Matt Beaton, Auditor

July 2, 2012

Franklin County Commissioners:

Vouchers audited and certified by the auditing officer by RCW 42.24.080, expense reimbursement claims certified by RCW 42.24.090, have been recorded on a listing, which has been sent to the board members.

Action: As of this date, July 2, 2012
move that the following warrants be approved for payment.

<u>FUND</u>	<u>WARRANT</u>	<u>AMOUNT</u>
County Road		
Payroll	68363-68387	33,305.13
Direct Deposit		38,510.46
		71,815.59
Benefits	68388-68391	11,861.76
	Total	\$83,677.35
 Motor Vehicle		
Payroll	68392-68406	\$5,096.62
Direct Deposit		5,987.30
		\$11,083.92
Benefits	68407-68410	1,897.27
	Total	\$12,981.19

Grand Total All Payrolls

\$96,658.54

In the total amount of **\$96,658.54**

(\$83,677.35+\$12,981.19)

The motion was seconded by

and passed by a vote of

3

to

The attached payroll has been approved by Auditor or Deputy

Payroll Prepared By



FRANKLIN COUNTY AUDITOR

Matt Beaton, Auditor

July 10, 2012

Franklin County Commissioners:

Vouchers audited and certified by the auditing officer by RCW 42.24.080, expense reimbursement claims certified by RCW 42.24.090, have been recorded on a listing, which has been sent to the board members.

Action: As of this date, July 10, 2012 *[Signature]*
move that the following warrants be approved for payment.

<u>FUND</u>	<u>WARRANT</u>	<u>AMOUNT</u>
Salary Clearing Payroll:		
Payroll	56484-56582	170,427.06
Direct Deposit		355,809.00
		526,236.06
Benefits	56583-56588	81,712.20
	Total	\$607,948.26
Emergency Mgmt Payroll:		
Payroll	68597-68603	\$2,511.16
Direct Deposit		7,108.84
		\$9,620.00
Benefits	68687-68690	1,446.61
	Total	\$11,066.61
Irrigation Payroll:		
Payroll	68691-68700	\$5,799.77
Direct Deposit		2,531.34
		\$8,331.11
Benefits	68701-68704	1,456.57
	Total	\$9,787.68
Grand Total All Payrolls		\$628,802.55

In the total amount of **\$628,802.55**

(\$607,948.26+\$11,066.61+\$9,787.68)

The motion was seconded by *[Signature]*

and passed by a vote of 3 to 0

The attached payroll has been approved by Auditor or Deputy *[Signature]*

Payroll Prepared By *[Signature]*



FRANKLIN COUNTY AUDITOR

Matt Beaton, Auditor

7/11/2012

Franklin County Commissioners:

Vouchers audited and certified by the auditing officer by RCW 42.24.080, expense reimbursement claims.

Action: As of this date, 7/11/2012

Move that the following warrants be approved for payment:

certified by RCW 42.24.090, have been recorded on a listing, which has been sent to the board members.

FUND Expenditures	WARRANTS		AMOUNT ISSUED
Landfill Closure Trust Fund	68290	-	\$9,004.03
Dept of Commerce Pass Through	68301	68302	\$135,882.34
Current Expense	68328	68362	\$163,738.72
Current Expense	68412	68448	\$58,787.93
Current Expense	68449	68485	\$26,625.14
TRAC Operations Fund	68522	68555	\$47,586.67
Franklin County RV Facility	68556	68559	\$17,273.76
CE Cumulative Reserve Fund	68560	68562	\$83,656.45
Auditor O & M	68563	-	\$142.46
Treasurer O & M	68564	-	\$348.60
Clerk LFO Collection Fund	68565	-	\$163.48
Trial Court Improvement Fund	68566	68567	\$2,747.12
Boating Safety Fund	68568	68574	\$1,055.03
Sheriff / Sex Offender Grant	68575	-	\$242.15
DUI Recovery Fund	68576	-	\$205.00
Current Expense	68577	-	\$50.00
Jail Commissary	68578	68583	\$3,462.72
Dare Fund Sheriff	68584	-	\$97.09
Enhanced 911	68585	68586	\$18,556.19
Veteran's Assistance	68587	68591	\$5,366.69
.3% Criminal Justice Const Fnd	68592	68595	\$212,366.13
Motor Vehicle/Public Works	68596	-	\$1,716.34
County Road	68604	68649	\$689,579.93
Solid Waste	68650	68654	\$19,583.39
Probation Work Crew	68655	68656	\$1,814.38
Motor Vehicle/Public Works	68657	68686	\$56,093.17
Current Expense	68705	68713	\$1,075.21
Ending Homelessness Fund	68714	68716	\$14,680.00
FC Capital Projects Fund	68717		\$250,061.20
.3% Criminal Justice Const Fnd	68718		\$300,111.70

In the amount of

\$2,122,073.02

The motion was seconded by

And passed by a vote of 3 to

J. R. Turcher
The attached vouchers have been approved by Auditor or Deputy

RA Stancio
Vouchers Audited By