



## **City Auditor's Office**

# **Department of Community Development Code Compliance Division**

**Report Issued: November 19, 2019**

Audit Report No. 19-05

Auditor: Pamela Swinney, CPA



TO: Mayor and Council Members

FROM: Andrea R. Russell, City Auditor *ark*

DATE: November 19, 2019

SUBJECT: Department of Community Development Code Compliance Division

The City Auditor's Office has completed the audit of the Department of Community Development Code Compliance Division. The audit was conducted in conformance with Generally Accepted Government Auditing Standards by the authority granted through City Ordinances 28-02 and 79-10.

We would like to express our sincere appreciation to DCD management and staff for the courtesy, cooperation and proactive attitude extended to the team members during the audit. If you have any questions or comments regarding this audit, please contact Andrea Russell at 242-3380 or Pam Swinney at 242-3381.

C: John Szerlag, City Manager  
Connie Barron, Assistant City Manager  
Vincent Cautero, Community Development Director  
Dolores Menendez, City Attorney  
Kimberly Bruns, City Clerk  
Richard Carr, Code Compliance Manager  
Audit Committee

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## EXECUTIVE SUMMARY

The City Auditor's Office conducted an audit of the Department of Community Development Code Compliance Division. This audit is included in the City Auditor's 2019 approved Audit Plan.

Based on test work performed and the audit recommendations noted below, we conclude that controls are in place and operating effectively to meet the stated audit objectives; however, we noted opportunity for improvements are needed for policies and procedures to ensure consistent enforcement, compliance with City ordinances, and accurate collection of fines and fees imposed by Special Magistrate.

For details on the findings and recommendations, see Findings and Recommendations. No material control deficiencies were noted.

## BACKGROUND

The Department of Community Development (DCD) Code Compliance Division (Division) is responsible for enforcing codes for residential and commercial property, as well as occupational license ordinance violations. Effective March 2019, there are 915 codes (previously 734 codes) found in sections of the Land Development Code (LDC), the Florida Building Code, the International Property Maintenance Code and City's Code of Ordinances. Most of the increase in the number of codes relates to the recently completed, extensive two-year review and update of the LDC (Ordinance 17-19).

The Division's overarching objective is to educate the public about the City's codes and ordinances and obtain voluntary compliance while striving to perform its duties in a fair, professional and courteous manner. To meet its objective and ensure adequate coverage of the city, the Division has 21 Code Compliance Officers distributed between 18 response zones. In addition, there are four officers with specialized assignments; two assigned to investigate illegal watering violations and two assigned to address unlicensed contractor/ builder issues. There are also nine support personnel including; one manager, three Code Compliance Supervisors, two Recording Secretaries, one Customer Service Supervisor and two Customer Service Representatives.

The Division's revenues originate from local ordinance violation fines, abatements, and foreclosure registration fees. Annual expenditures, consisting primarily of salaries, wages and benefits, remained relatively flat over the past three years.

**Exhibit 1: Revenues and Expenses by Fiscal Year**

	2016	2017	2018
Charges for Services			
Foreclosure Registration Fees	\$ 65,350	\$ 47,850	\$ 44,825
Lot Mowing/Nuisance Abatement	41,129	30,195	31,131
Local Ordinance Violation Fines	215,046	269,484	206,079
Total Charges for Services	\$ 321,525	\$ 347,529	\$ 282,035
Expenditures	\$ 2,128,272	\$ 2,101,552	\$ 2,285,266

Source: City Financial Records

## AUDIT OBJECTIVES

The audit objectives were as follows:

- Are fines and fees imposed and paid accurately, and properly recorded in Trakit?
- Does the Code Compliance Division conduct enforcement operations in accordance with policies and procedures?
- Are liens properly and timely recorded with County Clerk?

## STATEMENT OF AUDITING STANDARDS

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## FINDINGS AND RECOMMENDATIONS

### FINDING 2019-01: Fines and Fees Assessed

#### Rank: (Medium)

Fines and fees imposed during evidentiary and compliance hearings were not always assessed and collected as ordered by the Special Magistrate. We reviewed 12 compliance hearing cases and found the following discrepancies:

- One case where compliance didn't occur by corrective date, but the daily fines imposed by Special Magistrate were not collected.
- Three cases in which the imposed prosecutorial fee was waived without a Special Magistrate order.

City Code Section 2-87 (e) gives the Special Magistrate the power to “issue orders having the force of law commanding whatever steps are necessary to bring the violation into compliance.” Section 2-88 (a) provides the Special Magistrate the ability to order the violator to pay a daily fine of an amount specified for each day the violation continues past a corrective date. In addition, a prosecutorial fee is typically assessed along with the daily fines to cover the costs associated with the Special Magistrate process.

### ***Evidentiary Hearing***

Although the Special Magistrate may impose fines and fees during the evidentiary hearing, the amounts are not recorded in the case management system until after a compliance hearing is held. If the property owner corrects the violation(s) prior to the compliance hearing, the current practice is not to collect the prosecutorial fee. Review of the compliance hearing meeting minutes found no indication the Special Magistrate waived the prosecutorial fee imposed at the evidentiary hearing.

### ***Compliance Hearing***

If the violation remains at the time of the compliance hearing, the Special Magistrate orders the recording of the lien. Because the total daily fines owed are unknown until the compliance date, the maximum fines allowed under the Lien Cap policy are recorded in Trakit. Once the owner complies, the fines are adjusted to the actual daily fines.

The current process lacks appropriate segregation of duties. The Recording Secretary handles all aspects of recording fines and fees, billing and collecting payments with no review process in place. The user permissions for the Recording Secretary allow them to add, edit, and delete fees in the case management system. In addition, the Divisions’ policies and procedures<sup>1</sup> lack detailed guidance related to fines and fees imposed at hearings.

The Government Accountability Office’s (GAO) Standards for Internal Control in the Federal Government<sup>2</sup> state management should implement control activities through policies and document policies in the appropriate level of detail to allow management to effectively monitor the control activity. In addition, management should divide key duties among different people to reduce the risk of error, misuse or fraud.

Updating policies and enhancing the internal controls ensures fines and fees are accurate, comply with the Special Magistrate’s orders, and are consistently applied to all code violation cases.

## **RECOMMENDATIONS:**

- 2019-01 a. Collect daily fines and prosecutorial fees in accordance with the Special Magistrate’s orders.
- 2019-01 b. Revise policies and procedures to include:
  - Fines/fees are added to Trakit case files when assessed.

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<sup>1</sup> *Procedure for Code Compliance Officers, Revision Date 3/17/2009*

<sup>2</sup> Principle 10 – Design Control Activities; Principle 12 – Implement Control Activities

- Documentation to support adjustments to fees or rescinded violations are maintained in the case management system.
- Documentation to evidence fines/fees imposed and/or waived by Special Magistrate at hearings are maintained in the case management system.
- Cap on liens policy.

2019-01 c. Implement a review process to ensure fines are accurately recorded in Trakit.

**Management Response and Corrective Action Plan:**

**2019-01 a.** A procedure will be developed to verify that the fines and fees were properly added and assessed in accordance with the Special Magistrate's orders after each hearing.

**2019-01 a. Responsible Person:** Rich Carr, Code Compliance Manager

**2019-01 a. Anticipated Completion Date:** February 28, 2020

**2019-01 b.** The Policy and procedures for the Recording Secretaries will be updated to reflect current processes and include changes from the audit. Copies will be provided to staff on the server and hard copy for review. A written procedure will be developed that provides instruction for a process to verify that the fines and fees were properly added to Trakit when assessed. The finding of facts will be updated to reflect the Special Magistrate's orders. The documentation will be uploaded and added to the case file. The finding of facts will be updated to reflect the Special Magistrate's orders. The documentation will be added to the case file. The lien capping process will be documented in a new written policy and added to the Division's policies and procedures manual.

**2019-01 b. Responsible People:** Rich Carr, Code Compliance Manager

**2019-01 b. Anticipated Completion Date:** April 1, 2020

**2019-01 c.** A written procedure will be developed that provides processes to verify fines and fees are accurately added into Trakit. The new process will include a two-step review by staff.

**2019-01 c. Responsible People:** Rich Carr, Code Compliance Manager

**2019-01 c. Anticipated Completion Date:** April 1, 2020

**FINDING 2019-02: Lien Reduction Program**

**Rank: (Medium)**

The Divisions' policies and procedures lack guidance related to the lien reduction program. Since Trakit has no audit reports to identify cases with fee edits, management lacks the necessary monitoring tools.

Applications for the program are received by the Customer Service Supervisor who reviews the case(s) to determine if qualified for the program, and to calculate the reduction amount. After review and approval by City Manager and City Attorney, the Customer Service Supervisor

will edit the fines due in Trakit and mail the requestor an approval or denial letter. Any payments received are processed by the Cashier's Office.

We reviewed five cases with liens reduced, included in the Lien Reduction Program. We noted:

- Two cases had inaccurate payments made under the program. One was a small overpayment and one included the abatement cost, which appears to violate the maximum amount due under the resolution.
- Three case files did not include a copy of the signed application.
- None of the case files included evidence of City Manager and City Attorney review.

The City Council adopted Resolution 9-09 to assist owners of properties that are being sold or have been purchased through foreclosure with lien reductions. Sections (C) (1) and (2) outlines the reduced amounts to be charged. Section 2(c) of the resolution provides the procedures and states the City Manager and City Attorney (or designees) shall review the facts, the reason for request and whether the property is currently in compliance. After considering, the City Manager is authorized to reduce the Code Enforcement lien and record a release of lien.

The Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* state management should implement control activities through policies and document policies in the appropriate level of detail to allow management to effectively monitor the control activity. In addition, management should divide key duties among different people to reduce the risk of error, misuse or fraud.

Updating policies to define the lien reduction process and criterion for applying the reduction ensures applications are properly supported and approved and fine reductions comply with City Ordinances.

## RECOMMENDATIONS:

- 2019-02 a. Obtain documentation (e.g. lien reduction memo) to evidence review by the City Manager (or designee) and City Attorney (or designee) to support the lien reduction. All pertinent documentation should be maintained in the case file.
- 2019-02 b. Revise policies and procedures to include:
- Guidance related to the calculation of lien reductions.
  - Required documentation to evidence the review of the lien reduction.
  - Proper segregation of duties for the process.

### Management Response and Corrective Action Plan:

**2019-02 a.** A written procedure will be developed that provides instruction for the lien reduction process. All supporting documents (Application, Approval Letter, Memo's and Checklist) will be uploaded and maintained in the electronic case file. A second approver will be added to the case review check list as part of the lien reduction process.

**2019-02 a. Responsible Person:** Rich Carr, Code Compliance Manager

**2019-02 a. Anticipated Completion Date:** April 1, 2020



**2019-02 b.** The calculations in resolution 9-09 will be added to the policy and procedure for guidance. The policy and procedures will be updated for the lien reduction process. The policy will include that copies of all related documentation required are included to evidence proper review occurs for the lien reduction. A two-step verification and case review will be implemented to ensure proper segregation of duties.

**2019-02 b. Responsible People:** Rich Carr, Code Compliance Manager

**2019-02 b. Anticipated Completion Date:** April 1, 2020

## **FINDING 2019-03: Revise Policies and Procedures**

### **Rank: (Medium)**

Case files documenting code violations are managed using the CodeTrak module in Trakit. The case files include case notes, actions and documents to support the City's code violation case. We sampled case files to determine if stated policies and procedures were followed. In 22% of cases, the files lacked consistent application and/or adherence to policies and procedures. Exceptions greater than 5% include:

- Case not timely closed after payment and compliance achieved
- Photo of posted watering violation not maintained in Trakit
- Lack of evidence to support violations (e.g. photo or detail description)
- Follow ups not performed as indicated in case file
- Watering citations not maintained in Trakit
- Copies of liens recorded not maintained in Trakit

Some current policies and procedures are not included in the Division's standard operating procedures. We also found Policy 33.10, related to declared emergency watering violations, is not enforced and contradicts City Code Ordinance 21-7.

Written policies and procedures provide guidance and ensure consistency and continuity in operations.

### **RECOMMENDATIONS:**

2019-03 a. Revise the Division's *Procedure for Code Compliance Officers* to include:

- Standard policies (e.g. the watering 365-day rule)
- Definition or list of "required" documentation that should be included in Trakit
- Procedures, such as weekly review of payments made on cases, to identify and close paid cases within a defined time period
- Updated standard templates that reflect current policies and practices

2019-03 b. Provide training on updated policies and procedures

### **Management Response and Corrective Action Plan:**

**2019-03 a.** The Policy and procedure manual for the Code Compliance Division will be updated to reflect current processes and include recommended changes from the audit. Copies will be provided to all staff electronically on the server and hard copy available for staff to review. A checklist will be created for Code Officers to follow for cases that have a Notice of Violation, Notice of Hearing, Abatement and Watering Violations. A written procedure will be developed that provides instruction for a process to check weekly in Trakit for fines/fees paid to the cashier's office, review the case, update and close it as soon as possible if all criteria are met. The templates currently in use in the policy and procedure manual will be reviewed and updated as needed. We will also work to create fillable electronic forms where capable.

**2019-03 a. Responsible Person:** Rich Carr, Code Compliance Manager

**2019-03 a. Anticipated Completion Date:** February 28, 2020

**2019-03 b.** When new policies are created or there are changes made to current ones, documented distribution and review with the Code Officers will occur. All new Code Officers have a standard field training process and that training will include a documented review of policies and procedures at that time.

**2019-03 b. Responsible People:** Rich Carr, Code Compliance Manager

**2019-03 b. Anticipated Completion Date:** May 1, 2020

### **FINDING 2019-04: Code Compliance Process Updates**

#### **Rank: (High)**

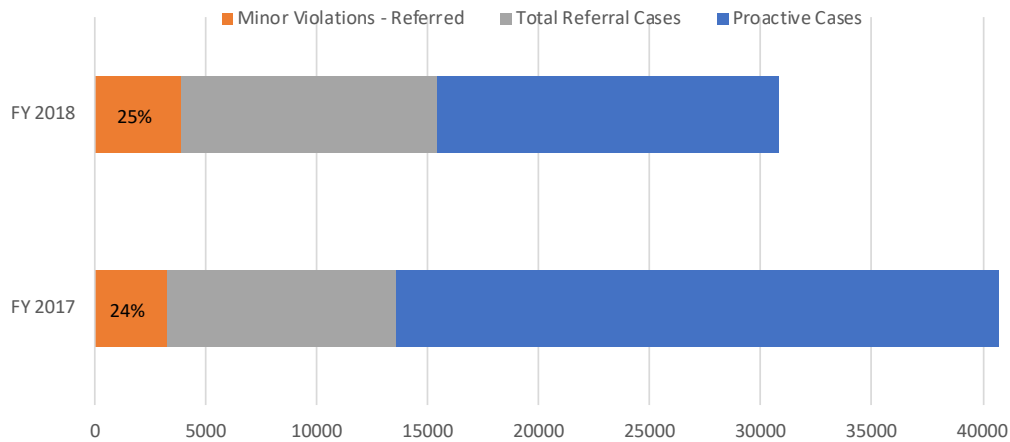
The Code Compliance Division expended approximately \$2.2 million<sup>3</sup> in operating expenditures during fiscal year 2018. With an estimated population of 175,063, the City's costs for Division operations total \$13,054 per 1,000 population. Since most expenditures are related to payroll, finding techniques to effectively allocate man hours available is paramount to managing costs to the City. To identify potential areas for improvement, we researched best practices and found other cities that use a self-certifying technique to reduce site inspections.

As shown in Exhibit 2, the Division opened 40,706 and 30,610 cases during fiscal years 2017 and 2018 respectively. The case management system includes 734 codes that are enforced by Code Compliance. Of the total cases opened in fiscal year 2018, the Division cited 17,465 violations relating to 388 or 53% of the available codes in the system. Approximately half of the cases in 2018 were referred by citizen complaints. Further analysis of citizen complaints found 25% related to minor violations not considered life-threatening (e.g. litter, graffiti, overgrowth, boat parking, etc.).

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<sup>3</sup> See Exhibit 1

## Exhibit 2: Code Compliance Cases during Fiscal Years 2017 and 2018



The Division's current practice includes assigning all citizen referrals to a Code Officer to conduct a site inspection. If the officer determines the complaint is unfounded, the case is closed. If the officer determines the complaint is founded, the officer notifies the owner of the violation and schedules a recheck to verify compliance.

If every referral case includes an initial site inspection and then a re-inspection to verify compliance, the Code Officer could potentially make 7,672 site visits for minor violation referrals. Implementing strategies to reduce site visits for minor violations provides Code Officers more time to concentrate on proactive cases and code violations that effect public health and safety.

### RECOMMENDATIONS:

- 2019-04 a. Assess the practicability of using complaint thresholds and self-certifying techniques for minor violations not considered life-threatening.
- 2019-04 b. If implemented, define the process in the policies and procedures and develop performance measures to determine if the new approach is effective.
- 2019-04 c. Implement a plan to review the codes enforced by Community Development to reduce, eliminate or combine codes that are antiquated or not utilized. The plan should include a methodology and timeline to ensure all codes are reviewed.

### Management Response and Corrective Action Plan:

**2019-04 a.** We will assess the feasibility of whether "self-certifying techniques" could be useful and reduce the number of complaints responded to by the Code Officer. We will review the statistical top 10 complaints received by the Code Division for consideration and decide for each of them. This process will also consider "complaint thresholds" as part of the assessment of this practice.

**2019-04 a. Responsible Person:** Rich Carr, Code Compliance Manager

**2019-04 a. Anticipated Completion Date:** July 1, 2020

**2019-04 b.** If implemented, we will create a report measure that looks at how many cases are handled with a “self-certifying technique” but do not comply and still required a Code Officer to respond. We will also create specific policy guidelines that define when “self-certifying techniques” may or shall be used.

**2019-04 b. Responsible People:** Rich Carr, Code Compliance Manager

**2019-04 b. Anticipated Completion Date:** July 31, 2020

**2019-04 c.** A major project was undertaken in 2015 to review and overhaul the Land Use Development Regulations. That review resulted in the adoption of a new Land Development Code on August 5, 2019. This review and re-write of the Land Development Code includes over half of the violations enforced by the Code Division. The Code Division had input during this review process as well. Although many of the codes have infrequent use, they are needed in case of an identified violation. Further review of the LDC’s will be done as needed to better serve the community needs. We have already identified at least 13 items that we are drafting for proposed amendment and we have made a request to the City Manager to schedule a workshop with the City Council to discuss these issues prior to the end of 2019.

The remaining enforceable codes in the Code of Ordinances are usually changed based on direction from the governing body (City Council), the City Manager or the City Attorney at which time the Code Division provides input for potential change in alignment with direction provided. As part of our evaluation for the potential use of alternative methods to gain compliance, we will be reviewing the top 10 codes used most by the Division during that process. The frequency of use of particular codes is not based on what the Division deems a priority but rather what the community standards dictate.

As part of our process to convert to the new software in EnerGov we have evaluated what codes are used by the Division to ensure we have the tools necessary to perform our function. We have also incorporated the new LDC language in place of the old LUDR’s. The new EnerGov software also requires that each code and LDC the Division enforces, has its own unique designation in the system so it may be available for use by the Code Officer when needed.

**2019-04 c. Responsible People:** Rich Carr, Code Compliance Manager

**2019-04 c. Anticipated Completion Date:** October 1, 2020

## SCOPE AND METHODOLOGY

Based on the work performed during the planning and the assessment of risk, the audit covers Code Compliance from October 1, 2016 to September 30, 2018. When appropriate, the scope was expanded to meet the audit objectives. Source documentation was obtained from the case management system (Trakit) and the Community Development Department. Original records as well as copies were used as evidence and verified through physical examination. Sample size and selection were based on the CAO Sample Methodology.

To determine whether internal controls were in place, we reviewed the Division's written policies/procedures and interviewed staff to gain an understanding of the Code Compliance process. We reviewed a random sample of case files to verify policies were followed; fines and fees were accurately assessed and paid; and, liens and release of liens were accurate and timely recorded with the County Clerk. Statistical sampling was used to infer the conclusions of test work performed on a sample to the population and to obtain estimates of sampling error. When appropriate, judgmental sampling was used to improve the overall efficiency of the audit.

To achieve the audit's objectives, we relied on the Division's case management system, Trakit, which was previously determined to be reliable and no additional testing was necessary.

## APPENDIX A

### Finding Classification

Findings are grouped into one of three classifications: High, Medium or Low. Those findings that are categorized as low are not included in the report but rather are communicated separately to management. Classifications prioritize the findings for management to address and also indicate the level of testing required to determine if a finding's Corrective Action Plan is fully implemented in accordance with recommendations and Management's Response.

**High:** A finding that is ranked as "High" will have a significant impact on the organization. It is one that *prevents* the achievement of a substantial part of significant goals or objectives, or noncompliance with federal, state or local laws, regulations, statutes or ordinances. Any exposure to loss or financial impact for a High finding is considered *material*. Examples include direct violation of City or Department policy, blatant deviation from established policy and procedure, such as actions taken to circumvent controls in place, material non-compliance with federal, state or local laws, regulations, statutes or ordinances, or an area where significant cost savings could be realized by the Department or the City through more efficient operations.

High findings require immediate management attention and should take management's priority when considering implementation for corrective action.

**Medium:** A "Medium" finding is one that *hinders* the accomplishment of a significant goal or objective or non-compliance with federal, state or local laws, regulations, statutes or ordinances, but can't be considered as preventing the accomplishment of the goal or objective or compliance with federal, state or local laws, regulations, statutes or ordinances. Exposure to loss or potential or actual financial impact is *significant but not material* to the Department or City. Examples include lack of monitoring of certain reports, insufficient policies and procedures, procedure in place or lack of procedure that can result in *potential* noncompliance with laws and or regulations.

Medium findings require management attention within a time frame that is agreed upon by the Department and the City Auditor. Priority for implementation of management's corrective action should be considered in light of other High or Low findings.

**Low:** A "Low" finding is one that warrants communication to management but is one that isn't considered as hindering the accomplishment of a significant goal or objective and isn't causing noncompliance with federal, state or local laws, regulations, statutes or ordinances. Financial impact or risk of loss is minimal to none; however, low findings can *hinder the effectiveness or quality of department operations and thus are communicated to management separately. Low ranked findings are not included in the final audit report.*

The City Auditor's Office will not follow up on the status of Low findings communicated to Management.