

2009 Non-Mandated Expenditures Department Response

DEPARTMENT: Hamilton County Rural Zoning Commission
DEPARTMENT HEAD / ELECTED OFFICIAL: C. Russell Sparks
OCA TITLE: Revision/Administration

Hamilton County departments and agencies have the opportunity to respond and provide insight to the Office of Budget and Strategic Initiatives (BSI) initial assessment as to non-mandated services. This response form should be used for each specific BSI assessment; not a general response for entire department. Take as much space as necessary for each question.

1. Are there elements of the BSI non-mandated services that you believe are mandated? If so, provide the specific Ohio Revised Code (ORC) citation, Code of Federal Regulation (CFR) and/or relevant case law information. Please be especially diligent if there is a specific service or staffing level prescribed by law.

In 1948, the BCC passed a resolution declaring its intension to regulate land use and buildings in the unincorporated territory of Hamilton County and placed on the ballot of all precincts within the unincorporated territories of Hamilton County the issue of adopting a County Zoning Resolution. At that time, a number of Townships and Precincts voted to adopt the zoning map and Resolution. Therefore, the may turned to shall and the Board then had to follow numerous mandated procedures to adopt a zoning resolution.

Section 303.17 Zoning Certificate Required: states that no person shall locate, erect, construct...any building or structure...without obtaining a zoning certificated... This mandated order requires a process to review, approve and issue all applications made for a zoning certificate.

Section 303.99 Penalty, states that whoever violates sections 303.01 to 303.25 of the Revised Code shall be fined not more than five hundred dollars for each offence. Again, this mandated law requires that a process be developed and personnel be hired to perform the duties to enforce the regulations (laws) of the zoning resolution.

The true interpretation of what is and what is not mandated is being overlooked. The BSI is only looking at the ORC in a one-dimensional view. The BSI states if the ORC stipulates the word shall, then it is mandated, if the word is may, it is non-mandated. As stated above, due to a mandated action many non-mandated requirements become mandated even though the Sections of the ORC continue to use the word may.

The ORC is only one level that mandates the daily routine functions of the Rural Zoning Commission. After the BCC adopted a County Zoning Resolution, additional rules, regulations and processes, where mandated. A third level of mandated duties come from the development process the county adopted for the purpose of processing building permits and zoning certificates. In addition, the BCC has entered into a number of contractual services that mandates duties to be performed by the staff of the RZC. Within the adopted documents (zoning

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*resolution, development procedure, and contractual services, the word **shall** appears over 200 times.*

*The BCC was required (**shall**) to appoint a Zoning Commission, Section 303.04. After which, the Zoning Commission was mandated to perform certain duties and procedures, Section 303.05. The ZC was also permitted (**may**) to employ or contract a consultant to carry out the duties of the ZC and provisions of Sections 303.01 to 303.99 of the ORC. As a result, the ZC did hire a number of employees to ensure the duties of the ZC; the provisions of the ORC and the regulations of the adopted Zoning Resolution were performed in the proper manner.*

*If the BCC wishes to use the interpretation of the BSI, then the **ONLY** mandated action that the BCC has to do is to create or appoint a Zoning Commission composed of five members who reside in the unincorporated territory of the county to be zoned.*

2. Who are the recipients of the service or activity for the non-mandated service? How many recipients? Please note any internal customers, other county departments, jurisdictions, businesses, etc. If the service is geographic specific (i.e., a satellite probation office), please identify the neighborhood, township or municipality.

Those recipients of services from the RZC that are non-mandatory range from every property owner within the unincorporated territory of Hamilton County that is under the Hamilton County zoning jurisdiction, every property owner that owns property in a township or municipality that has entered into a contract with the BCC to assist with its zoning activities, every developer, contractor or builder that does business within the unincorporated territories of Hamilton County under county zoning jurisdiction, every elected and appointed official in the unincorporated territories of Hamilton County that has adopted county zoning, and every department within Hamilton County and the State of Ohio that is involved with the development process.

3. Are there county revenues associated with the non-mandated services? If so, please provide the methodology for any lost revenues. Please consider state or federal reimbursements, grants, fees, etc. Please note if the service or activity is included in the county's indirect cost plan.

The RZC's services include processing zoning amendments, issuing zoning certificates, enforcing zoning regulations and zoning contracts with townships and municipalities. All these services generate revenue. Processing Zoning Amendments is the only mandated service required by the ORC and the revenue generated is projected for 2009 to be approximately \$20,000.00. Out of the total projected revenue for 2009, this only counts for 10.5%.

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If there is a reduction of staff, there will be a reduction of revenues. Revenues received for Zoning Certification, processed by Zoning Plans Examiners and support staff, would be reduced by approximately \$97,000.00. The elimination of Zoning Field Inspectors would eliminate all contract services, eliminate all revenue received from zoning violation fines and eliminate all revenues received from Final Inspections. The total revenue loss for 2009, would be approximately \$73,000.00.

4. If the county did not provide the non-mandated service, is there the potential for increased expenditures in another jurisdiction within Hamilton County? If so, please list the specific municipality and/or township.

No, no other jurisdiction under the BCC has the authority to provide the services of the Hamilton County Zoning Commission. However, the BCC may appoint the Building Commissioner as the Zoning Inspector (Section 303.16 ORC) and then all the duties of the zoning commission may transfer to the Building Commissioner.

5. Does the non-mandated service include Board of County Commissioner policy via resolution or motion?

Yes, the zoning resolution and any modification to its regulations requires a resolution by the BCC. The appointment of a Zoning Inspector was done via a BCC resolution. The development and adoption of a zoning fee schedule was done via a BCC resolution. All zoning contracts with a municipality or township shall be signed by the County Administrator. The appointment (hiring) of all field inspectors are done via a BCC resolution. Therefore, all of the non-mandatory services performed by the staff of the RZC have been approved by the BCC via a resolution.

6. Are there contracts or agreements that preclude the elimination of a non-mandated service? If so, please provide the specific language as to termination and/or amendment terms.

The Zoning Commission has entered in and signed 6 contracts to assist one municipality and 5 townships with either zoning administration, zoning enforcement, or nuisance enforcement. These contracts are actually with the Regional Planning Commission and approved and signed by the County Administrator, but the services are performed by the staff of the Rural Zoning Commission. The revenues received from these contracts are placed in the RZC budget.

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The contract reads as follows:

This contract is made and executed on _____ day of _____ 200_ by and between the _____ TOWNSHIP BOARD OF TRUSTEES, HAMILTON COUNTY, OHIO (herein referred to as the "Township") and the HAMILTON COUNTY REGIONAL PLANNING COMMISSION (herein referred to as the "Contractor")

Each contract is annually renewed and has a clause to define the term of the contract. The clause reads as follows:

TERMS: *The services of the contractor shall commence on January 1, 200_ and be completed January 1, 200_. All terms of this contract shall remain in full force and effect unless and until either party hereto gives thirty (30) days' written notice to the other party of its intent to terminate this agreement, in which event this agreement will terminate, after the said thirty (30) day period, or unless and until either party desires to change the terms of the contract and such changes are agreed upon by a properly executed revision, as per Section 8 of this contract.*

8. AUTHORITY: *The Township and the Contractor warrant that they have taken all necessary steps, in accordance with the Ohio Revised Code to lawfully empower their representatives signed below, to execute this contract and any revisions thereto.*

The amount of revenue that is generated by these contracts is approximately \$73,000.00.

7. What are the equipment/non-personnel expenditure considerations with discontinuing a non-mandated service? (i.e., surplus equipment).

By eliminating 5.6 FTEs, there is no need for 6 work stations including PCs, monitors, stationary material, phones, etc. By the elimination of 5.6 FTEs the entire workload or operations of the Rural Zoning Commission would also be eliminated therefore all workstations and support supplies could be eliminated. All funding for office supplies, photo supplies, travel reimbursement, printing and publishing, subscriptions, training, misc. payments, and office equipment could be eliminated. This would represent a reduction to the budget of approximately of \$4,550.00. The only mandated functions of the RZC is to pay the members of the RZC, pay for postage to send notice of public hearing and pay for advertising notice of public hearings.

8. Do any of the non-mandated services include employees represented by a bargaining unit? If so, please note the union and provide information as to reduction-in-force and job abolishment considerations.

There are no bargaining units involved in the staffing of the RZC.

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9. For positions within non-mandated services, are there are special circumstances that preclude a traditional job abolishment process? Separation costs will be addressed centrally including leave balance payouts, unemployment compensation and severance (based on current Commission policy).

All 5.6 FTEs which are identified as non-mandated positions are subject to the traditional job abolishment process. The only FTE, Zoning Inspector, identified in the BSI assessment process could not be abolished. However this position could be combined with the Building Commissioner's position as indicated in Section 303.16, ORC. All 6.6 FTEs would be subject to separation costs as indicated by current Commission policy.

10. In addition to positions associated with non-mandated services, the Budget Office included a review of management layers, support staff, and currently vacant positions. Please comment on the impact of eliminating these positions.

The analysis and assessment of the Budget Office proposes that the management position is the only FTE that is mandated and the remaining support staff (5.6 FTEs) is non-mandated. The BSI has indicated that the mandated position is the Zoning Inspector. The Zoning Inspector also hold the title of Zoning Administrator for the Rural Zoning Commission. Although the Zoning Inspector must possess the knowledge of all procedures, rules, regulation, and enforcement actions of the zoning program, this position, alone, cannot provide the man hours to serve the Zoning Commissions mandated services.

The Rural Zoning Commission staff is responsible for performing the following duties for the RZC Department:

- *Administration – Supervision of staff, supervises the processing of all zone map or text amendments, writes staff reports, maintains all zoning records, oversees all zoning procedures, acts as Secretary to the RZC.*
- *Zoning Certification (Plans Examiners/Zoning Specialists) – Process and certifies all zoning certificate applications, maintains zoning files and records, issues all house numbers, responds to zoning enquiries, and processes all public hearing notifications.*
- *Enforcement – Conduct field inspections, issuance of zoning violation notices, certification of Final Zoning Certificates, and the inspection and certification of approved Planned Districts.*
- *Contractual – All three sections (Administration, Certification and Enforcement) provide much of the same zoning services for the 5 townships and 1 municipality that are under contract with the RZC.*

As noted above, if the non-mandated staff is eliminated, there would be no need for staff supervision, the administrator would have to perform all the zoning duties including processing zoning amendments, certifying zoning compliance, issuing all house numbers and enforcing

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zoning rules and regulations. In addition, all contracts would have to be terminated due to the lack of staffing.

The non-mandated positions include (2.6) Plans Examiners, (1) Zoning Field Inspector and (2) Zoning Specialists. Each position maintains a daily routine of activities (see attachments). See assessment No. 11 to review the performance impact that will occur due to the elimination of the non-mandated positions.

11. What is the performance impact of not providing the non-mandated service? For example, wait times, waiting lists, case loads, operating hours and other consequences of not providing the service.

If all non-mandated positions are eliminated and all services are to be provided by the one mandated position (Zoning Administrator/Inspector), the performance impact on the workload would be astronomic. At the present time, a standard zoning certificate takes approximately 1 hour to review. Using 2007 information (numbers), the total hours spent on reviewing zoning certificates applications was 824 hours and 323 hours to complete the zoning certificate application process. The total number of hours spent on investigating zoning violations, writing violation notices, certifying final zoning certificates and making follow-up field inspections was approximately 1,971 hours. These total hours do not include telephone communication, meetings, court time, travel time, house numbering, nuisance inspection and enforcement, time spent on a zoning amendment process, administrative duties, contractual services, and vacation, sick and holiday time.

The processing time for a zoning certificate application would be increased from 1 to 5 days, field inspections would be limited to only one day a week in only one township per week, there may be a limit to the number of zoning amendments processed each month, all telephone questions would be sent to voice mail and answered during a once a day designated time, contracts with townships and municipalities would be terminated, builders wanting to apply for a building permit would have to wait additional days to first receive a zoning certificate, and the zoning counter would have to be closed 3 of the 5 days of the week.

Every performance indicator that the RZC has worked to achieve and maintain in the past 15 years would be revised or eliminated. Objectives such as investigating zoning complaints within 2 days, processing zoning certificate applications within 2 days, issuing final zoning certificates within 5 days, maintaining compliance with the ORC for zone amendment procedures, maintaining and updating zoning resolution text, and providing zoning information as you wait would be eliminated from the RZC performance indicators.

In addition, the high level of public satisfaction that the RZC has achieved through its prompt, friendly and accurate service would be highly impacted. The building industry and general public would feel the affect of reduced, limited or eliminated services.

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12. Are there any alternatives that result in savings to the general fund?

One alternative that would result in a savings to the general fund other than increased fees (see assessment No.15) would be to encourage residents residing in the four townships that are under the BCC zoning authority to petition and adopt township zoning. This would eliminate the mandated requirement of having a Zoning Commission and a Board of Zoning Appeals. All services associated with these two departments would be eliminated.

A second alternative that would result in a savings to the general fund is to provide an incentive retirement or leave program. Some refer to this as “double dipping”. If it is properly formatted and the general public educated, this process would not be perceived as a retiree double dipping.

This incentive retirement program would work as follows:

- An employee that is eligible for retirement, i.e. employee with 30 years of service, employee that is 55 years of age and have at least 25 years of service, or employee that is 60 years of age or older with minimum number of years to qualify for retirement, would be eligible for this program.*
- The eligible employee would be given the opportunity to voluntarily retire from the position that he/she held and then be rehired at the same position, but at the entry-level salary level.*
- The eligible employee that voluntarily participates in this program would start all compensation programs at the entry level, i.e. sick time, vacation time, etc. No vacation time or sick time would be advanced or pro-rated.*
- The participating employee would be guaranteed his/her job/position for a minimum of X-years.*

This program would reduce the expenditure for each department by a significant amount and each year as each employee becomes eligible to apply for this program, there is a saving to the general fund.

What are the incentives to the employee:

- He/she can retire and receive monthly benefits from the retirement system.*
- He/she will resume working and earning a salary.*
- He/she, most likely, will increase his/her annual income.*

What is the negative impact to the employee:

- The employee’s retirement program is terminated at the point of years earned at the time they voluntarily choose to participate in this program.*

What are the incentives to Hamilton County:

- Savings to the General Fund.*
- Retaining employees with expertise and experience.*
- No need to fill a position and have to train the new employee.*

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What are the negatives to Hamilton County:

- *Upfront cost of pay-outs of sick and vacation leave.*
- *Negative perception of “double dipping”.*
- *Possible loss of experienced employees.*

There are most likely additional pros and cons not noted in this proposal, however, some sort of employment incentive must be created to retain the experienced employee without adding additional workloads or the cost of personnel reduction.

Out of the 6.6 FTEs, 5 FTEs are eligible to volunteer for this incentive retirement program. The savings for this department alone would be approximately \$27,500.00.

13. Are there more efficient ways to deliver a mandated service that may allow for the savings to offset the cost of a non-mandated service?

The ORC only mandates that the BCC appoint a Zoning Commission consisting of a minimum of 5 members. The ORC permits an additional 2 member to be appointed as alternates. The Hamilton County Board of County Commissioners have chosen to only appoint one alternate. The elimination of the alternate member would have little or no effect on the general fund. There is only \$3,000.00 allocated to reimburse the members of the zoning commission for their participation at their monthly meetings. The only savings to the general fund would occur if a monthly meeting was cancelled or the meeting did not have a full 5 member panel present for the monthly meeting.

The entire budget for the RZC, other than the above noted reimbursement to the Zoning Commission members, is allocated for non-mandated services.

14. Is there an opportunity to transfer any non-mandated expenditures to another funding source (i.e., restricted fund or grant)?

The Rural Zoning Commission does not have the opportunity to fund its budget through grants or restricted funds. Presently, 43% of the RZC’s budget is appropriated through revenues received from zoning certificates, map amendments, zoning violation citations pay-outs, and zoning contractual services.

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15. Does your department have any fees that could be raised to offset the cost of a mandated service?

Zoning fees are received from applications submitted for zoning certificates, zoning map amendments, zoning violation citation pay-outs, and contractual services. These fees are increased annually and the percentage of increase is based on the Consumer Price Index rating for the upcoming year. For the past few years, the increase has averaged approximately 3% each year but in 2008, the county increased the zoning certificate fees by 8% and added two new additional fees.

The projected increase of revenues for 2008, based on the two new fees, was approximately \$45,000.00, however, the majority of these revenues are based on the building industry or property renovation and so far, in 2008, building activity in Hamilton County has decreased. The fees for Contractual Services have also increased by the percentage of the Consumer Price Index and the zoning citation pay-outs are regulated by the ORC and the Hamilton County Clerk of Courts.

For the RZC's budget to be totally appropriated by revenues, the zoning fees would have to be increased by 57%.

Other Considerations and Comments:

The workforce of the Rural Zoning Commission has been reduced from 9.1 FTEs to 6.6 FTEs in the past 4 years. The department lost one full-time Zoning Specialist II position, one full-time Zoning Field Inspector position, and one part-time Zoning Specialist I position. This is a 74% reduction of the manpower of the RZC. The workload and Contractual Services have not declined, however the efficiency of the output has been affected.

The ultimate sacrifice that would result in a savings to the general fund (as noted in No. 12) would be to eliminate county zoning authority altogether. The result would be a savings to the general fund of approximately \$500,000.00. However, each Township would need to provide the mandated and non-mandated services that the county now provides. Is it too costly for the township to adopt its own zoning authority? Does the Township want the liability of making its own land use decisions? Could the existing staff of the RZC become a contractual service to man these Townships that adopt zoning authority? These are questions that need to be discussed and weighed to support the Township's adoption of zoning and to assist in relocation the personnel that the county would furlough.