## STAFF REPORT

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| **Agenda Item:** | 5 | **Name:** | Erin Auzins |
| **Proposed No**.: | 2015-0328 | **Date:** | August 26, 2015 |

**SUBJECT**

Proposed Ordinance 2015-0328 would make an emergency appropriation of $400,000 to the Department of Permitting and Environmental Review (DPER) abatement subfund, to partially fund abatement of the "Mount Anderson" code enforcement violation.

**SUMMARY**

Proposed Ordinance 2015-0328 would provide $400,000 of additional appropriation to the DPER abatement subfund, in order to partially abate a long running code enforcement violation, known as Mount Anderson. This residential property is in the Skyway Area, in Council District 2, and is currently in receivership.

The emergency appropriation ordinance is proposed to provide a definitive action by the Council in support of DPER's plan to the receivership court for partial abatement of an illegal materials processing business, to process the existing concrete materials into fill (which has some marketable value). When the property is sold, the County would be repaid from the sale proceeds. DPER has proposed to the receivership court that the County be paid back first, before other liens on the property.

The proposed ordinance includes an expenditure restriction so that the appropriation may only be used for abatement work for this violation, and only if the receivership court grants the County's request to be paid back from the future sale proceeds before other parties are paid. According to the PAO, the receiver and the court have verbally approved this condition.

**BACKGROUND**

"Mount Anderson" is the name of a code enforcement violation that has operated as an illegal materials processing facility in a residential area[[1]](#footnote-1) in the Skyway area, in Council District 2, since 1974. DPER and other state and county regulatory agencies have been engaged in Superior Court litigation regarding the use and condition of the Anderson site since at least 1983. Following multiple Superior Court contempt orders for noncompliance with required abatement actions and continued operation and importing of illegal materials and a foreclosure action, the Mount Anderson parcels were placed into receivership in 2006. King County has continued its enforcement efforts through its status as a party to the receivership.

The receivership court has ruled that the business must stop importing new material for processing. However, that order will not go into effect until a plan to process the existing stockpiled material is approved by the court. DPER has proposed that the county fund this processing through the abatement fund, with the agreement that importing new materials ends and the County is repaid for the costs borne by the County out of the sale proceeds of the property, when it is sold.

**ANALYSIS**

In the 2015-16 budget, the DPER abatement subfund was appropriated $194,000, which mainly supports a single full-time equivalent position, Prosecuting Attorney’s Office services, and some smaller safety-related abatements (such as installing fences around dangerous buildings or properties). The abatement subfund receives revenue from civil penalties and liens from code enforcement and abatement cases. Other code enforcement activities are funded through the General Fund. Permitting fees may not be used for code enforcement and abatement purposes.

The additional $400,000 proposed to be appropriated to the DPER abatement subfund would initially come from a loan from the County's investment pool. This loan was approved by the County's Executive Finance Committee[[2]](#footnote-2) in June, subject to the condition that the county receives assurances from the court that its investment will be repaid out of proceeds from the sale of the property.

The ordinance includes an expenditure restriction on the requested $400,000. The money may only be spent on partial abatement at Mount Anderson, to process the concrete materials into fill. Additionally, the receivership court must approve that the costs for the County to complete this work are allowed under state law[[3]](#footnote-3), and that the County can be reimbursed from the sale of the property before other costs or expenses of the estate.

This protection is proposed because there are several other liens on the property, including from the Internal Revenue Service, utility purveyors, state Department of Labor and Industries, the Puget Sound Clean Air Agency, and the state Department of Revenue. If the County does not receive approval to be paid back before other costs or expenses of the estate, it is possible the County would not receive any money from the sale proceeds and, without the restriction, the investment pool loan would then need to be repaid by the General Fund.

This ordinance is proposed as an emergency, because DPER is scheduled to return to receivership court September 1, 2015, to advise the court regarding the viability of the DPER abatement plan. At a previous hearing, the court deferred the decision on DPER's plan for abatement until the Council had taken a definitive action to support DPER and authorize payment for the costs of the proposed abatement. Executive staff believe that this emergency appropriation ordinance will satisfy the receivership court regarding the requested definitive action.

**ATTACHMENTS**

1. Proposed Ordinance 2015-0328
2. Transmittal Letter
3. Fiscal Note

**INVITED**

1. John Starbard, Director, DPER

1. Ordinance 16263, adopted in 2008, rezoned these parcels from Industrial to Residential, 24 units per acre (R-24). [↑](#footnote-ref-1)
2. See K.C.C. 4.24 regarding Executive Finance Committee and Interfund Borrowing. [↑](#footnote-ref-2)
3. Receivership is regulated under Chapter 6.70 RCW. [↑](#footnote-ref-3)