

ADD ON

AGENDA	
Section	New Business
Item No.	VI A 4

Meeting Date
November 15, 2016



AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	STAFF DIRECTION: AMEND ORDINANCE CHAPTER 2, ARTICLE VI, DIVISION 2, SECTION 173 PERTAINING TO CODE ENFORCEMENT PROCEDURE AND CHAPTER 2, ARTICLE VI, DIVISION 2, SECTION 179 PERTAINING TO NOTICES
DEPT/OFFICE:	PLANNING & DEVELOPMENT

Requested Action:

It is requested that the Board of County Commissioners provide direction regarding the proposed amendment of the current ordinances which regulate the code enforcement process and notice of violation requirements so that the ordinances mirror the State Statutes that govern code enforcement procedure and notices.

Summary Explanation & Background:

It is recommended that the current ordinances which govern code enforcement procedure and notice of violation requirements be amended so that the Brevard County Ordinances mirror the requirements set-forth in Florida Statutes as well as to provide clarity regarding our enforcement procedures. The primary changes are:

- The current ordinance states that code enforcement will accept complaints from both named and anonymous sources; whereas the current practice/policy is that each Commissioner determines if anonymous complaints are accepted for his/her district; it would be appropriate to amend the ordinance to more accurately reflect the current policy.
- The proposed amendments will provide more clarity regarding the notice requirements.
- The recommended amendments add "repeat violation" which the current ordinance is silent on.
- The proposal to amend the notice requirements "as amended" by the Florida legislature, the Brevard County Ordinance would not require amending accordingly in the future.

The options are:

Option 1- Amend Ordinance 2 Chapter 179 pertaining to notice requirements and Ordinance Chapter 2, Section 173 pertaining to enforcement procedure as recommended by staff.

Option 2- Make no changes to the Ordinances regulating code enforcement notice and enforcement procedures.

draft

Clerk to the Board instruction:

Exhibits Attached:

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager

Stockton Whitten

Assistant County Manager

Department Director / Extension

Robin M. DiFabio, AICP
5-2069



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

November 16, 2016

MEMORANDUM

TO: Robin DiFabio, Planning and Development Director

RE: Item VI.A.4., Staff Direction Regarding Amending Ordinance, Chapter 2, Article VI, Division 2, Section 173, Pertaining to Code Enforcement Procedure, and Chapter 2, Article VI, Division 2, Section 179, Pertaining to Notices

The Board of County Commissioners, in regular session on November 15, 2016, approved Option 1, to amend Ordinance Chapter 2, Article VI, Division 2, Section 173, pertaining to Code Enforcement Procedure, and Chapter 2, Article VI, Division 2, Section 179, pertaining to notices, as recommended by staff, and to coincide with Florida Statutes.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

ORDINANCE NO. 2016-

AN ORDINANCE AMENDING CHAPTER 2, "ADMINISTRATION", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VI, DIVISION 2 SECTIONS 173 AND 179, RELATING TO THE PROCEDURES FOR ENFORCEMENT AND PROVIDING NOTICES FOR CODE ENFORCEMENT; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE.

WHEREAS, the Board of County Commission desires to remain consistent with Florida Statues regarding the notice and procedures for code enforcement; and

WHEREAS, the Board of County Commissioners desires that the County Manager have flexibility in establishing any need supplemental enforcemnt procedures; and

WHEREAS, the Board of County Commissioners, on *, 2000, directed preparation of an amendment to the Zoning Regulations as it relates to *; and

WHEREAS, the Local Planning Agency, on *, 2000, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and has considered the comments of interested citizens in public hearing.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Chapter 2, Article VI, Division 2, Section 173, Code of Brevard County, Florida, is hereby amended to read as follows:

Sec. 2-173. - Enforcement procedure.

The code inspectors shall utilize the enforcement procedures in the manner prescribed by F.S. § 162.06, as amended. The County Manager, or his designee, may establish supplemental policies to ensure fair and efficient enforcement of the county code of ordinances. (a)

The code inspectors have the primary duty of enforcing the various codes and ordinances and initiating enforcement proceedings before the special magistrate. No special magistrate shall have the power to initiate such enforcement proceedings.

(b)

Except as provided in subsections (c) and (d), if a violation of the codes or ordinances is found, the code inspector shall notify the respondent of the violation and give the respondent a reasonable time, in light of the nature of the violation, to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall set a hearing before the special magistrate and notify the respondent of the hearing pursuant to F.S. § 162.12. If the violation is a recurring or repeat violation or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the code enforcement special magistrate even if the violation has been corrected prior to the special magistrate hearing, and the notice shall so state.

(c)

If the code enforcement officer has reasonable belief that a repeat violation has been committed, the code inspector shall set a hearing before the special magistrate and notify the respondent of the hearing pursuant F.S. § 162.12. and is not required to give the person a reasonable time to correct the violation prior to setting the hearing.

(d)

If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately set a hearing before the special magistrate.

(e)

~~Code enforcement will accept and investigate complaints from both named and anonymous sources.~~ Each Brevard County Commissioner shall determine if code enforcement complaints can be anonymous or require a named complainant for his/her district; however, if after two complaints have been filed against a person and/or property and no violations have been identified within a one year period, the county manager may require that any subsequent complaint against that person and/or property be written and under oath and/or otherwise limit further investigation.

(f)

If the owner of property that is subject to an enforcement proceeding before the special magistrate, or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(1)

Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2)

Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3)

Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4)

File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

(5)

If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held. Nothing herein shall prevent the county from continuing to prosecute the pending code enforcement proceeding to its conclusion against either the previous owner and/or the new owner.

SECTION 2. Chapter 2, Article VI, Division 2, Section 179, Code of Brevard County, Florida, is hereby amended to read as follows:

Sec. 2-179. - Notices.

~~All notices shall be provided in the manner prescribed by F.S. § 162.12, as amended. (a) All notices required by this division shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the board of county commissioners; or by leaving the notice at the violator's usual place of residence with some person residing therein who is above 15 years of age and informing such person of the contents of the notice.~~

~~(b)~~

~~In addition to providing notice as set forth in subsection (a), at the option of the special magistrate, notice may also be served by publication or posting, as follows:~~

~~(1)~~

~~Such notice shall be published once each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.~~

~~(2)~~

~~In lieu of publication as described in subsection (b)(1), such notice may be posted for at least ten days in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the front door of the courthouse in the county. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.~~

~~(3)~~

~~Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a).~~

~~(c)~~

~~Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection~~

~~(b), shall be sufficient to show that the notice requirements of this division have been met, without regard to whether or not the alleged violator actually received notice.~~

SECTION * Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulation, the more restrictive shall apply.

SECTION * Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION * Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION * Effective Date. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

SECTION * Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Brevard County Code, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in regular session, this * day of *, 2016.

Attest:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Scott Ellis, Clerk

Jim Barfield, Chairman
As approved by the Board on *.

(S E A L)

ORDINANCE NO. 2016-

AN ORDINANCE AMENDING CHAPTER 2, "ADMINISTRATION", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VI, DIVISION 2 SECTIONS 173 AND 179, RELATING TO THE PROCEDURES FOR ENFORCEMENT AND PROVIDING NOTICES FOR CODE ENFORCEMENT; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE.

WHEREAS, the Board of County Commission desires to remain consistent with Florida Statues regarding the notice and procedures for code enforcement; and

WHEREAS, the Board of County Commissioners desires that the County Manager have flexibility in establishing any need supplemental enforcemnt procedures; and

WHEREAS, the Board of County Commissioners, on *, 2000, directed preparation of an amendment to the Zoning Regulations as it relates to *; and

WHEREAS, the Local Planning Agency, on *, 2000, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and has considered the comments of interested citizens in public hearing.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Chapter 2, Article VI, Division 2, Section 173, Code of Brevard County, Florida, is hereby amended to read as follows:

Sec. 2-173. - Enforcement procedure.

The code inspectors shall utilize the enforcement procedures in the manner prescribed by F.S. § 162.06, as amended. The County Manager, or his designee, may establish supplemental policies to ensure fair and efficient enforcement of the county code of ordinances. (a)

The code inspectors have the primary duty of enforcing the various codes and ordinances and initiating enforcement proceedings before the special magistrate. No special magistrate shall have the power to initiate such enforcement proceedings.

(b)

Except as provided in subsections (c) and (d), if a violation of the codes or ordinances is found, the code inspector shall notify the respondent of the violation and give the respondent a reasonable time, in light of the nature of the violation, to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall set a hearing before the special magistrate and notify the respondent of the hearing pursuant to F.S. § 162.12. If the violation is a recurring or repeat violation or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the code enforcement special magistrate even if the violation has been corrected prior to the special magistrate hearing, and the notice shall so state.

(c)

If the code enforcement officer has reasonable belief that a repeat violation has been committed, the code inspector shall set a hearing before the special magistrate and notify the respondent of the hearing pursuant F.S. § 162.12. and is not required to give the person a reasonable time to correct the violation prior to setting the hearing.

(d)

If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately set a hearing before the special magistrate.

(e)

~~Code enforcement will accept and investigate complaints from both named and anonymous sources.~~ Each Brevard County Commissioner shall determine if code enforcement complaints can be anonymous or require a named complainant for his/her district; however, if after two complaints have been filed against a person and/or property and no violations have been identified within a one year period, the county manager may require that any subsequent complaint against that person and/or property be written and under oath and/or otherwise limit further investigation.

(f)

If the owner of property that is subject to an enforcement proceeding before the special magistrate, or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(1)

Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2)

Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3)

Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4)

File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

(5)

If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held. Nothing herein shall prevent the county from continuing to prosecute the pending code enforcement proceeding to its conclusion against either the previous owner and/or the new owner.

SECTION 2. Chapter 2, Article VI, Division 2, Section 179, Code of Brevard County, Florida, is hereby amended to read as follows:

Sec. 2-179. - Notices.

~~All notices shall be provided in the manner prescribed by F.S. § 162.12, as amended. (a) All notices required by this division shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the board of county commissioners; or by leaving the notice at the violator's usual place of residence with some person residing therein who is above 15 years of age and informing such person of the contents of the notice.~~

~~(b)~~

~~In addition to providing notice as set forth in subsection (a), at the option of the special magistrate, notice may also be served by publication or posting, as follows:~~

~~(1)~~

~~Such notice shall be published once each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.~~

~~(2)~~

~~In lieu of publication as described in subsection (b)(1), such notice may be posted for at least ten days in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the front door of the courthouse in the county. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.~~

~~(3)~~

~~Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a).~~

~~(c)~~

~~Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection~~

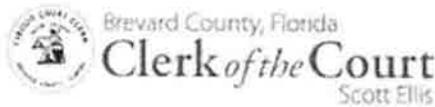
Donna Scott

From: Donna Scott
Sent: Wednesday, November 16, 2016 11:03 AM
To: 'Jones, Jennifer'
Cc: Deborah Thomas; Tammy Rowe; Kimberly Powell
Subject: RE: 11-15 question Item VI.A.4.

Motion by CS/AA - to amend this to coincide with Florida Statues.

Thank you, ma'am.

Donna Scott
Assistant Clerk to the Board
(321) 637-2001 / Ext. 49120



From: Jones, Jennifer [<mailto:jennifer.jones@brevardfl.gov>]
Sent: Wednesday, November 16, 2016 10:59 AM
To: Donna Scott
Subject: RE: 11-15 question Item VI.A.4.

Donna,

Robin told me they approved Option 1, so the ordinance will come back at a later date, first as legislative intent, and then in a public hearing.

Jen

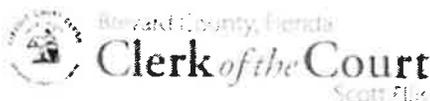
From: Donna Scott [<mailto:donna.scott@brevardclerk.us>]
Sent: Wednesday, November 16, 2016 10:44 AM
To: Jones, Jennifer
Subject: 11-15 question Item VI.A.4.

Hi Jenn,

Item VI.A.4. was staff direction to amend Ordinance Chapter 2... Code.

This will come back for its first reading in a public hearing, correct?

Donna Scott
Assistant Clerk to the Board
(321) 637-2001 / Ext. 49120



Under Florida law, all correspondence sent to the Clerk's Office, which is not exempt or confidential pursuant to Chapter 119 of the Florida Statutes, is public record. If you do not want the public record contents of your e-mail address to be provided to the public in response to a public records request, please do not send electronic mail to this entity. Instead, contact this office by phone or in writing.