



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Development and Environmental Services Group

J.1.

8/4/2020

Subject:

Direction from the Board of County Commissioners regarding the enforcement of Brevard County Code Section 110-68 as it relates to leaking sanitary laterals and the responsibility of private property owners to complete the repair of the same.

Fiscal Impact:

None

Dept/Office:

Utility Services

Requested Action:

It is requested that the Board of County Commissioners provide direction to staff as to which means of enforcement should be used to require private property owners to make repairs to leaking sanitary laterals pursuant to Brevard County Code Section 110-68.

Summary Explanation and Background:

In response to the recent sanitary sewer discharge events due to Hurricane Irma and the recommendations of the Save Our Indian River Lagoon Citizen Oversight Committee, the Utility Services Department has reviewed the various means to reduce sanitary discharges. One proposal is to focus on the reduction of Inflow and Infiltration flow ("I & I") into Brevard County's sanitary gravity collection system.

In 2017, Brevard County Utilities Services conducted a smoke testing program that included approximately 12,700 parcels in the Satellite Beach/Indian Harbour Beach service area. Utility Services collaborated with Natural Resources Save Our Indian River Lagoon Program (SOIRL) to incentivize voluntary repair of sewer leaks on private properties. SOIRL mailed grant eligibility notices to all the owners of identified deficiencies. The table below quantifies the deficiencies found by category and the number of owners who completed repairs and were reimbursed with SOIRL funds:

Types of Deficiency	Number of deficiencies	Number of repairs	Number SOIRL Reimbursed
Leaking Laterals	31	4	0
Broken Caps	190	23	7
Total	221	27	7
Percent of Total	100%	12%	3%

323

There are two components of a sanitary gravity collection system: (1) mainline sewer and (2) sanitary lateral. The mainline sewer is located in the road right-of-way or easements dedicated to the County, and, thus, the County is responsible for the maintenance and costs of any repair to the mainline sewer. In contrast, the sanitary lateral is located predominately on private property (from the right-of-way line to the home/building). Thus, it is the responsibility of the private property owner to maintain and make any repairs to the private portion of the sanitary lateral.

The Department has conducted smoke testing and has identified properties with leaks in sanitary laterals in violation of County Code Section 110-68.

Specifically, Section 110-68 (h) requires that all "connections [with the system] shall be made gastight and watertight." Section 110-37 provides for the enforcement of Section 110-68 and states that any "person violating this article shall be punished as provided in section 1-7. In addition to any other remedy herein set forth or otherwise provided by law, the County may restrain any violation of this article by suit in a court or administrative body of competent jurisdiction." Section 1-7 of the County Code provides for the enforcement of County Code via Brevard County Code Enforcement.

Thus, the County has the following options to require private property owners to repair leaking sanitary laterals:

1. Code Enforcement Process - Under this method, Brevard County Code Enforcement would cite properties in violation of Section 110-68 and provide the private property owner(s) time within which to comply. If a private property owner fails to achieve compliance within this timeframe, the case will be brought before the Code Enforcement Special Magistrate. If the Code Enforcement Special Magistrate finds that a violation of the Brevard County Code exists, then an order is entered giving the property owner reasonable time to comply the violation and establishing a daily fine to accrue for noncompliance, which will be recorded as a lien against the property. A daily fine amount of up to \$1000.00 per day may be assessed. In addition to the assessed fine amount, there are also costs in the amount of \$350 for uncontested cases and \$550 for contested cases. Staff seeks direction as to what the Board of County Commissioners would recommend as a daily fine for a continuing violation of Section 110-68. Per Section 162.10, Florida Statutes, a code enforcement lien once recorded will be valid for twenty years.
2. Abatement Code Enforcement Process - Under this method, Brevard County Code Enforcement would cite properties in violation of Section 110-68 and would seek, pursuant to Section 162.06(4) and Section 162.09(1), Florida Statutes, an order from the Special Magistrate finding that the violation presents a serious threat to the public health, safety, and welfare and permitting the County to enter onto the property in order to perform the required repairs. Under this option, the County's costs of making the repairs would be assessed against the property and would be recorded as a lien. Per Section 162.10, Florida Statutes, a code enforcement lien once recorded will be valid for twenty years.
3. Injunction Process - Under this method, the County would seek an order from the Court granting an injunction to require the private property owner to comply with the Special Magistrate's Order and Section 110-68 and any other relief deemed appropriate by the Court.

Under Options 1 and 3, the Department would require proof of repair in the form of a receipt and/or affidavit from a licensed plumber showing both the cost and scope of work performed.

Clerk to the Board Instructions:

Mail original Clerk Memo to the Utility Services Department, Attention: Rose Lyons



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

August 5, 2020

M E M O R A N D U M

TO: Edward Fontanin, Utility Services Director

RE: Item J.1., Direction for the Enforcement of Brevard County Code Section 110-68 as it relates to the Leaking Sanitary Laterals and the Responsibility of Private Property Owners to Complete the Repair of the Same

The Board of County Commissioners, in regular session on August 4, 2020, approved directing the Special Magistrate to give \$75 a day fine, if the subject property is connected to a portion of Brevard County utility that could spill directly or indirectly into the Indian River Lagoon or into any body of groundwater; authorized expanding the pilot area for the Save Our Indian River Lagoon (SOIRL) fund available to fix leaking laterals to the entire County, or to any portion where a Brevard County utility is located for potential spilling; authorized for the amount of funding to remain for the individuals that have previously been extended to have SOIRL; authorized for the SOIRL mailed grant eligibility notices extended are effective immediately by the amount available to be cut in half, but will have 90 days from the mailing date to make use of those funds; and authorized staff to provide a direct payment to the plumber once the work is repaired and inspected for reimbursement for private property owners to make repairs to leaking sanitary laterals pursuant to Brevard County Code Section 110-68.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell, Clerk to the Board

/ds

cc: Each Commissioner
County Manager
County Attorney

EB – The way this is set up it would be very simple to give them the notice of violation and where appropriate give them information about the SOIRL Program again, so it would be one two, here is your stick and here is your carrot.

CS – 90 days that gives them plenty of time to secure their financing and get the work done

BL – as far as the portion that have already had the offer extended to them where we are going to make half available, I know Tobia was talking about a 45-day tied to that. Do you want to maintain that for the 88 percent that have not done anything despite having had the opportunity

CS – I'm with Commissioner Isnardi, I think the purpose is to get it done. I would give them 90 days as well

BL – For clarity sake – So, Commissioner Smith, your motion would then be to make recommendations to the Special Magistrate of a \$75 a day fine if the subject property is connected to a portion of the utility which could spill directly or indirectly into the Lagoon or alternatively into any body of groundwater otherwise \$10 a day. You also contemplate your motion expanding the pilot are for the SOIRL funds that have been made available to fix leaking laterals to the entire County, any portion where we have our utility where they are entitled to apply based on it potentially going into the Lagoon. As mentioned by Mr. Abbate the amount of funding for that program would remain unchanged at \$830,000 to \$840,000 for the folks that have previously been extended, the offer to have SOIRL pick up the entirety of their cost for the fix of a leaking lateral the 88 percent that declined to do anything over multiple years. Let me leave the multi year's portion out. For the folks that have previously been extended the opportunity to have SOIRL pick up the cost of fixing their leaking lateral, we are effective immediately cutting the amount available in half, they will have 90 days to make use of that at which point the half is then off the table for any new areas that are offered the cost to fix the leaking laterals, they'll have 90 days from the date that they are offered that to make use of it, and should we say from date of mailing. Will that work for you Commissioner Smith? When we are talking about three months, I think that is reasonable.

CS – IDK what does the rest of the Commission think?

EF – Date of the letter?

CS – Give who the full amount?

RP – We have never done this before. I would send out the notices and say everybody right now has got 90 days. Even if you have been the bad ones, you have 90 days to get your favor back with the Commission. And let them go ahead and consider part of the SOIRL funds too, if you do that and you don not cut it in half you will have my vote if you are going to do it the other way, she

KI – work it out with the County to have some kind of direct payment to their plumber once the work is finished and we have inspected it, whatever

BL – include with that motion that staff will make reasonable efforts to guarantee payment up to specified limits with licensed plumbers, if that is necessary for certain individuals so that we would directly pay their licensed plumber as opposed to us reimbursing them up to that cap

KI – Somebody should Call the Question here any second. Commissioner Smith are you set.

CS – yes

BL – to ask staff as well to the extent that they reasonably can to look at guaranteeing or make attempts to guarantee payment up to the specified limits for licensed plumbers and then everything that I previously stated

EF – when the program got started it was already taken into account of it was already taken into account of basically tracking and hopefully if we do this and expend this program we are going to be using excel as a module to actually help streamlining a lot of that, so we are comfortable with it

BL – recommend to the Special Magistrate a \$75 daily fine if the subject property itself is connected to a portion of your utility, or our utility for that matter which could spill directly or indirectly into the Indian River Lagoon or into any body of groundwater; \$75 a day is enough to get any ones attention; and it is really a property that is hurting the environment, that is what we ought to focus on, otherwise the minimum if its \$10 a day or \$25 a day which is the recommendation. **Look at expanding the pilot area where the SOIRL funds are available to fix leaking laterals from where it is to a limited portion of beachside of the entire County. The amount of funding would remain totally unchanged, he believes it is \$840,000 that they have available to fix leaking laterals, so we would not change any allocation we would simply broaden the area to include the entire County, obviously where we would have the utility system. That is essentially what he would suggest.**

Jt – I thought we were going in a different direction. I actually put down \$10 was far to kind and he would do \$50 or \$100; however these are certain folks who have ignored and ignored and ignored; and we should not treat anyone who has ignored it, whether their proximity to the Lagoon; but they have disregarded the letters send. He has no problem with \$75 but he certainly would want everyone to be subject to that \$75 fine if we were to go that way.

BL – the money has been available to those folks that would disproportionately, if not exclusively fall in the \$75 fine criteria that he set out, not the \$10. Does Mr. Fontanin's understanding match that?

FA – after the Board had the discussion last time the Natural Resources Management department has not tried to expend any of those monies so they did not go back because the Board had discussion about whether or not how to do it and they were not very comfortable with what the Board wanted, so, you know, we still have that \$840,000. The staff has not gone back out to those people and ask them if they got the initial letter and follow-up contact that happened early on; then the Board had the discussion; but Natural Resources has not pursued it so all those funds are still available

JT – I think we have given these folks ample time, sent them letter after letter. 12 percent of people have taken it and he does not know if giving them extra time is going to be something. We have done the carrot and it is now time to bring in the stick, in fact he would even go a step further, there is option three which is the injunction. I would say that after a certain period of time, whether that be 60 days if they had not paid the fine we go the injunction route. Obviously that would not be the first choice because there would be filing fees associated with that. Option two scared him a little bit, just jumping on people's property, and he does not want to put staff or anyone in that position. He asked Chair Lober his thought with that hybrid approach.

BL – It is a way to go about it, he thinks \$75 a day certainly at least at a minimum for the group he is talking about potentially for an expanded group if that is what the Commission wants to do. You are talking about a four-digit sum over the span of a month. He thinks that is going to get almost anyone's attention. So he agrees with Commissioner Tobia, the folks that have had the money available, he has far less empathy for. He does not mind if it makes you more comfortable to have perfect overlap, presuming staff has for those folks that were offered money SOIRL funds to accomplish this, we will fine you at a higher rate than we will fine other folks. We can do that and he does not think there is anything that prohibits it.

EB – You can do that.

BL – Worried that we may end up penalizing folks that were not given the opportunity and were not told again and again that this something they need to fix, the same way we would have had the carrot offered to them

JT – the folks that had received a letter at this point 100 percent of those would; the 88 of those that had not yet complied, and we still have to decide whether or not that money is still available to those folks. He would make an argument that we should use that money elsewhere, if they have not expended it at this point; but those folks would be at a \$75 a day rate and then as we expand this program, those folks that are further away from the Lagoon that did not have the ability to draw a 100 percent match, those folks would be \$10 a day.

BL – Or 25 if that turns out to be the minimum \$10 or \$25, correct?

JT – Okay. I misunderstood you're that is I would fully support that

BL I appreciate that.

EF – I just want to make sure we understand the dynamics so as part of SOIRL plan there were there's smoke testing program that we intend on advertising in December or January. In this Program it will encompass the Barefoot Bay area, the Beaches of the remaining portion that we have not done yet as part of the smoke testing in Melbourne Beach, Indialantic, the remainder of Satellite Beach, and he believes also we are doing large areas of Merritt Island under SOIRL. The intent of this is that when we go and institute this program.

Part 2 7:40

EF – A daily fine if you are in a SOIRL eligible are

BL – recommendation to the Special Magistrate \$75 a day fine if the subject property is connected to any portion of the utility which could spill directly or indirectly into either the Lagoon or alternatively into any body of groundwater, otherwise \$10 a day fine. I did like Smith's **cutting the amount available 50 percent kind of a middle ground to those folks that have already had it extended to them**, frankly it is 50 percent more than they are entitled to so we will give them half of the carrot or that we make available to a larger pool. And also I would ask to include in the motion an expansion of the pilot area without touching the \$830,000 to \$840,000 that has been allocated to accomplish the leaking lateral fixes to the entire County that is on our utility here; and the funding itself would remain the same so it would not cost us anymore and the half that were removing from the table from the folks that were previously advised that that was something available two years ago. That will enable us to offer that to more residents

FA – That funding would have to be only for properties that is spilling into the Indian River Lagoon.

BL – That would be the requested motion Commissioner Smith

JT – half is extremely genius can we put a cap on that and give them 30 days

BL – 30 or 45 days