



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.4.

4/18/2023

Subject:

Legislative Intent and Permission To Advertise Amendments to Section 2-173, "Enforcement Procedure," Brevard County Code of Ordinances

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

Board approval of legislative intent and permission to advertise an amendment to Sec. 2-173, Brevard County Code of Ordinances, in order to align it with Fla. Stat. § 162.06, which makes it unlawful for the County to conduct an investigation based on certain anonymous code enforcement complaints.

Summary Explanation and Background:

In July of 2021, an amendment to Fla. Stat. § 162.06(b) went into effect. This section now reads:

"A code inspector may not initiate enforcement proceedings for a potential violation of a duly enacted code or ordinance by way of an anonymous complaint. A person who reports a potential violation of a code or an ordinance must provide his or her name and address to the respective local government before an enforcement proceeding may occur. This paragraph does not apply if the code inspector has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources."

From the time this bar against investigating most anonymous complaints went into effect, code enforcement has complied and required a name and address of complainant(s) unless a specified exemption applied. However, Section 2-173(e), Brevard County Code of Ordinances, currently states that "code enforcement will accept and investigate complaints from both named and anonymous sources according to the respective policy decision of each commissioner for his or her district . . ." Because Commissioners are no longer free to make such a policy decision, it is advisable to amend this Section to align it with the statutory language. The attached draft ordinance attempts to accomplish this.

Therefore, it is requested that the Board grant legislative intent and permission to advertise an ordinance amendment to Section 2-173 in a manner substantially similar to that attached, or provide other direction as it sees fit.

Clerk to the Board Instructions:

N/A



April 19, 2023

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item F.4., Legislative Intent and Permission to Advertise Amendments to Section 2-173, "Enforcement Procedure", Brevard County Code of Ordinances

The Board of County Commissioners, in regular session on April 18, 2023, approved legislative intent and permission to advertise an amendment to Sec. 2-173, Brevard County Code of Ordinances, in order to align it with Fla. Stat. §162.06, which makes it unlawful for the County to conduct an investigation based on certain anonymous code enforcement complaints.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/tr

cc: County Manager
County Attorney

ORDINANCE NO. 2023-_____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE VI, DIVISION 2, SECTION 2-173, "ENFORCEMENT PROCEDURE," TO REMOVE PROVISIONS ALLOWING FOR EACH COMMISSIONER TO SET POLICY REGARDING ANONYMOUS CODE ENFORCEMENT COMPLAINTS AND REPLACING IT WITH A REQUIREMENT THAT A COMPLAINANT PROVIDE THEIR NAME AND ADDRESS EXCEPT IN SPECIFIED CIRCUMSTANCES; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, Florida Statute Section 162.06(b) was amended in 2021 to state that "a code inspector may not initiate an investigation of a potential violation of a duly enacted code or ordinance by way of an anonymous complaint. A person who reports a potential violation of a code or an ordinance must provide his or her name and address to the respective local government before an investigation may occur. This paragraph does not apply if the code enforcement officer has reason to believe that the violation presents an imminent threat to the public health, safety, or welfare or imminent destruction of habitat or sensitive resources"; and

WHEREAS, Florida Statute Section 162.21(3)(b) was amended with nearly identical language; and

WHEREAS, the County implemented practices to comply with this statutory preemption on anonymous complaints in July of 2021, when it took effect; and

WHEREAS, Section 2-173(e), Brevard County Code of Ordinances, appears to create a conflict with this provision and may cause confusion among the public because it currently states that "code enforcement will accept and investigate complaints from both named and anonymous sources according to the respective policy decision of each commissioner for his or her district. . ."; and

WHEREAS, it is the desire of the Brevard County Board of County Commissioners to amend this section to align Brevard County Code of Ordinances with Florida Statute and current practices.

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

Underline indicates additions.

~~Strike-through indicates deletions.~~

SECTION 1. Chapter 2, Article VI, Division 2, Section 2-173, "Enforcement Procedure," Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

- (a) The code inspectors have the primary duty of enforcing the various code 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 violator of the violation and give the violator 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, a hearing before the special magistrate shall be set and notice of the hearing will be provided to the respondent by hand delivery or mailed in accordance with F.S. § 162.12. If the violation is a recurring 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 a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall request a hearing and notice of such hearing shall be made in accordance with F.S. § 162.12. The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the special magistrate hearing, and the notice shall so state. If the repeat violation has been corrected, the special magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the special magistrate. Fines associated with a finding that a repeat violation exists shall be calculated from the date of first observation to the date of compliance.
- (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 the matter for hearing before the special magistrate.
- (e) A code inspector may not initiate an investigation of a potential violation by way of an anonymous complaint. A person who reports a potential violation of an ordinance must provide his or her name and address before an investigation may occur. This subsection does not apply if the code inspector has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources, or to those investigations initiated under the authority derived from Chapter 22, Article VI, "Contractors." ~~Code enforcement will accept and investigate complaints from both named and anonymous sources according to the respective policy decision of each commissioner for his or her district. However, i~~

- (f) If two complaints have been filed against a person and/or property within a one-year period and no violations have been identified or verified, then the county manager may require any subsequent complaint against that person and/or property be written and under oath and/or otherwise limit further investigation.
- (fg) 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) Failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. 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. 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 3. 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 4. Area Encompassed. This Ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 5. Effective Date. A certified copy of this Ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This Ordinance shall take effect upon adoption and filing as required by law.

SECTION 6. 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 Code of Ordinances of Brevard County, Florida; and that the sections of this Ordinance may be renumbered or re-lettered 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 ____, 2023.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk of Court

Rita Pritchett, Chair
(as approved by the Board on _____,
2023)

(S E A L)