



**AGENDA REPORT**  
**May 7, 2019**

**Legislative Intent and Permission to Advertise, Re: Code Enforcement Fine  
Reduction Requests & Process Review.**

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**SUBJECT:**

Legislative Intent and Permission to Advertise, Re: Code Enforcement Fine Reduction  
Requests & Process Review.

**FISCAL IMPACT:**

FY18/19: \$3,433.00 savings

FY19/20: \$8,240.00 savings

**DEPT/OFFICE:**

Planning and Development

**REQUESTED ACTION:**

Staff is seeking legislative intent and permission to advertise amendments to Chapter 2, Article VI, Division 2 entitled Code Enforcement Special Magistrate, and Board direction regarding establishing code provisions to authorize the Special Magistrate to make final determinations concerning fine reduction requests. Additionally, staff seeks permission to streamline other areas of code related to the codification of Special Magistrate Rules, posting procedure clarification and resolution revision/establishment for fining, hearing and administrative costs.

**SUMMARY EXPLANATION and BACKGROUND:**

On February 26, 2019, the Board of County Commissioners (BOCC) unanimously voted to have staff explore options to streamline the Special Magistrate fine reduction process for code enforcement cases by authorizing the Special Magistrate to make the final determination for reduction requests.

The attached staff report provides data regarding fine reduction requests, compliance and code enforcement process summary. While the Special Magistrate currently has the ability to reduce fines and costs prior to lien imposition, only the BOCC can reduce fines once a lien has been imposed. The proposed code change, allowing the Special Magistrate to consider reduction requests with and without lien imposition, has the potential to save \$8,240 annually in staff time, streamline BOCC agendas, and increase service level for Respondents.

While examining the process under the February 26, 2019 BOCC direction, staff discovered a number of other code enforcement process areas that could possibly be streamlined to increase the already high voluntary compliance rate of 92%. These include a) codification of Special Magistrate Rules, b) potential replacement of courthouse postings in with Viera Government Center postings, c) expansion of the courtesy letter pilot program, and d) examination of fine assessment, hearing and administrative costs to include aggravating and mitigating circumstance consideration by the Special Magistrate.

The Board may wish to consider legislative intent allowing staff to examine the other code enforcement areas of efficiency. The following options have been offered to aid the Board in providing staff direction of code amendments.

Option 1: Provide legislative intent and permission to advertise for modifications to the current enforcement code, authorizing the Special Magistrate to make the final determination for all reduction requests.

Option 2: Provide legislative intent and permission to advertise for examination of other process areas where efficiencies could be realized for Respondents and staff such as:

- a) Codification of Special Magistrate Rules
- b) Replacement of courthouse postings with Viera Government Center postings.
- c) Expansion of the courtesy letter pilot program to include all appropriate types of complaints (to exclude health-safety and recurring issues).
- d) Examination of fine assessment, hearing and administrative costs to include aggravating and mitigating circumstance consideration by the Special Magistrate.

Option 3: Options 1 & 2.

Option 4: Provide other direction.

#### **ATTACHMENTS:**

##### **Description**

- ☐ **Staff Report**
- ☐ **Exhibit 1: Compliance Steps**



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

May 8, 2019

**M E M O R A N D U M**

**TO:** Tad Calkins, Planning and Development Director

**RE:** Item I.1., Legislative Intent and Permission to Advertise for Code Enforcement Fine Reduction Requests and Process Review

The Board of County Commissioners, in regular session on May 7, 2019, approved legislative intent and granted permission to advertise Option 3, for modifications to the current enforcement code, authorizing the Special Magistrate to make the final determination for all reduction requests; and for examination of other process areas where efficiencies could be realized for Respondents and staff, such as: a) codification of Special Magistrate Rules; b) replacement of Courthouse postings with Viera Government Center postings; c) expansion of the courtesy letter pilot program to include all appropriate types of complaints (to exclude health-safety and recurring issues); and d) examination of fine assessment, hearing and administrative costs to include aggravating and mitigating circumstance consideration by the Special Magistrate.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/cmw

cc: County Attorney  
Code Enforcement Manager



# Staff Report

BOARD OF COUNTY COMMISSIONERS

**SUBJECT:** Code Enforcement Fine Reduction Request & Process Review

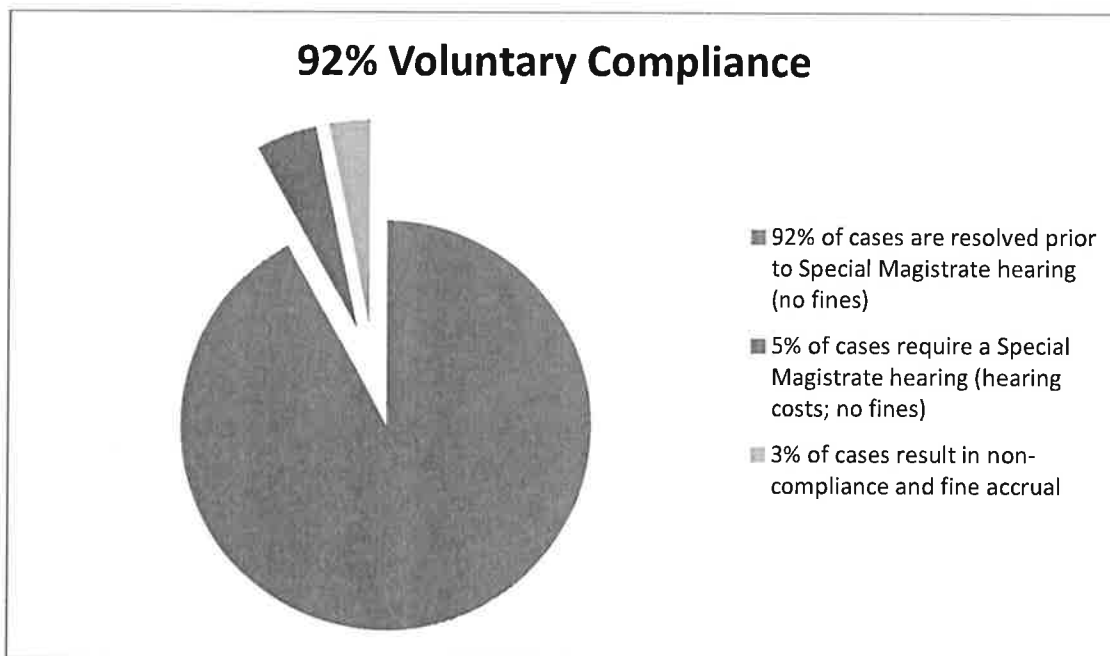
**DATE:** April 25, 2019

**AUTHORS:** Planning and Development Department

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**Introduction:** On February 26, 2019, the Board of County Commissioners (BOCC) unanimously voted to have staff explore options to streamline the Special Magistrate fine reduction process for code enforcement cases by authorizing the Special Magistrate to make the final determination for reduction requests. The BOCC discussed staff having already represented the County's interests during the Special Magistrate's hearing, expending significant time preparing and reviewing the case, and taking testimony under oath. The BOCC also indicated a desire to avoid having to potentially render decisions without all the information, with cases being reheard at the commission level.

**Process Background:** It has been more than 14 years since the code enforcement process and fine structure have been substantially reviewed and updated. Code Enforcement is not proactive; Code Enforcement only responds to actual complaints that are received, the primary goal being voluntary compliance. Of the average 2,400 cases per year, Code Enforcement's current success rate is 92% in attaining voluntary compliance.





# Staff Report

## BOARD OF COUNTY COMMISSIONERS

Code Enforcement affords Respondents every opportunity to resolve the violation with as little inconvenience and cost as possible. Much of the Code Enforcement Officer's role is compliance through education, while providing an understanding of options for resolution. Three or four opportunities are currently offered to the Respondent to comply cases without County-imposed costs: 1) through verbal agreement (for non-health/safety violations) at initial investigation and prior to Notice of Violation (NOV) issuance, 2) through courtesy letter (pilot program currently only for overgrowth cases) 3) after NOV issuance but before follow-up inspections, and 4) after Notice of Hearing issuance but prior to hearing date. Before hearing, the case is reviewed by at least four code enforcement staff members and an Assistant County Attorney to ensure proper notice and supporting evidence. Further, after Hearing, the Respondent can cure the violation prior to fine accrual, paying hearing costs of \$350 for uncontested cases or \$550 for contested cases and actual staff costs, which have not been raised since at least 2000. Fining does not begin until after the Special Magistrate ordered compliance period. By this time, the Respondent has had an average of 112 days and multiple opportunities to cure the violation. Fines start at \$25/day, which is low-average compared to surrounding municipalities.

### Fine Reduction Improvement:

The Special Magistrate currently has the ability to reduce fines and costs prior to lien imposition. The BOCC only hears fine reduction requests with a recorded lien. Staff projects 40 such cases per year without policy and code modification. Each request for reduction requires approximately five hours of staff time between hearing and BOCC agenda, at an average cost of \$206/BOCC fine reduction request. Providing the Special Magistrate final determination for both imposed and non-imposed cases would streamline the process for the Respondent, as the Magistrate is already familiar with the case and circumstances, and eliminate unnecessary staff cost of roughly \$8,240 per year.

### Other Potential Improvements:

While examining the process under the February 26, 2019 BOCC direction, staff discovered a number of other code enforcement process areas that could possibly be streamlined to increase the already high voluntary compliance rate of 92%. These include:

- Codification of Special Magistrate Rules with minor modifications. Currently, the Special Magistrate rules exist independent of the code, leading to occasional process confusion.



# Staff Report

## BOARD OF COUNTY COMMISSIONERS

- Expansion of the courtesy letter pilot program. Courtesy letters have resulted in a 45% case reduction for overgrowth cases. Staff would like to expand this program to include other common case types.
- Examination of fining, hearing and administrative costs. The Board could consider codifying guidelines for aggravating and mitigation circumstances to assist the Special Magistrate in determining fines and reductions. Refining these process areas could result in efficiencies and cost reduction for both the County and Respondents. Examples of mitigating factors may include whether the Respondent was a first-time offender, low impact of the violation to the surrounding community and no intent to violate the code. Sample aggravating factors to be considered are multiple violations of code, repeat offenders, and high community impact of violation.
- Align current code with Florida Statutes. Certified mail is currently statutorily required for Notices of Hearing and would continue to be provided. Courthouse postings are inefficient and not statutorily required. Viera Government Center postings could fulfill statutory requirements.

### Options for Board Consideration:

1. Provide legislative intent and permission to advertise for staff to draft and advertise changes to the current enforcement code to authorize the Special Magistrate to make the final determination for reduction requests.
2. Provide legislative intent and permission to advertise for staff to examine other process areas where efficiencies could be realized for Respondents and staff such as:
  - a) Codification of Special Magistrate Rules with minor modifications.
  - b) Clarification regarding posting procedures at the Viera Government Center.
  - c) Expansion of the courtesy letter pilot program to other common case types.
  - d) Examination of fining, hearing and administrative costs to include aggravating and mitigating circumstance consideration by the Special Magistrate.
3. Options 1 & 2.
4. Provide other direction.

Attachment: Enforcement/Compliance Steps

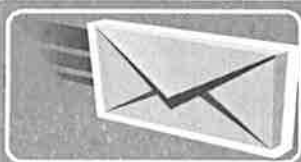
## EXHIBIT 1: ENFORCEMENT/COMPLIANCE STEPS

-92% of cases resolved w/out County-imposed costs.-



### Reactive Investigation - NO COST COMPLIANCE OPPORTUNITY

- Code Enforcement Officer only responds to complaints reported to the County, no proactive enforcement.
- Officer seeks compliance through education and verbal agreement, when possible.
- Courtesy letter pilot program has resulted in 45% case reduction for overgrowth complaints.



### Notice of Violation (NOV) - NO COST COMPLIANCE OPPORTUNITY

- If still non-compliant, NOV is mailed. When undelivered, property is posted.
- Reasonable time frame given for compliance. If follow-up inspection results in compliance, case is closed without cost to owner.



### Pre-Hearing - NO COST COMPLIANCE OPPORTUNITY

- If upon follow-up inspection violation still exists, a Notice of Hearing is mailed & posted at property and courthouse.
- If property is in compliance prior to hearing date (inspection #3), the case is closed at no cost to the owner.
- The case is reviewed by at least four code enforcement staff members and an Assistant County Attorney to ensure proper notice and supporting evidence.



### Special Magistrate Hearing - LOW COST COMPLIANCE OPPORTUNITY

- Before Hearing, the owner has been afforded at least three opportunities, sometimes more through justified administrative extensions, to comply without cost.
- If the Special Magistrate finds that a violation does exist, the owner is again given an opportunity for compliance without fines within a reasonable time frame. Only administrative & hearing costs are due.
- Special Magistrate rulings can be appealed to circuit court.



### Fines/Enforcement Costs - EXTENSION & REDUCTION OPPORTUNITY

- If after Special Magistrate ordered time period, the violation still exists, fines begin to accrue, typically at \$25/day.
- Once compliance is achieved & hearing costs are paid, the owner can request a Special Magistrate reduction recommendation. Magistrate holds a public hearing, reviews case again & provides a reduction recommendation of accrued fines and release of lien to BOCC. The Magistrate usually recommends an 80% reduction.
- The actual costs (of inspections & staff time) are considered by the BOCC, who render a final decision.

-5% cases - Hearing-

-3% cases - Fines-