

City of St. Petersburg  
**Public Services & Infrastructure Committee**  
July 11, 2024 – 9:25 AM  
City Hall, Room 100

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Members: Committee Chair Lisset Hanewicz, Committee Vice-Chair Copley Gerdes,  
Council Member Ed Montanari, and Council Member Richie Floyd

Alternate: Council Chair Deborah Figgs-Sanders

Support Staff: Tricia Terry – City Council Legislative Aide

**1) Call to Order**

**2) Approval of Agenda**

**3) Approval of May 30, 2024 Minutes**

**4) New Business – July 11, 2024**

- a) Discussion on Exploring the City’s Ability to Issue Super Fines and Establishing a Short-Term Rental Registry – *Amy Foster, Housing and Neighborhood Services Administrator & Joe Waugh, Codes Compliance Assistance Director*

**Attachments:**

- 1) Florida Statutes Chapter 162 – County or Municipal Code Enforcement
- 2) St. Petersburg Code of Ordinances Chapter 9 Article II – Municipal Code Enforcement Board
- 3) Case Summary – City of Miami Beach v. Nichols
- 4) PowerPoint Presentation

**Upcoming Meeting Dates & Tentative Agenda Items**

**August 8, 2024**

- a) A Presentation on the City of St. Petersburg’s 2024 Community Survey – *Amy Foster, Housing and Neighborhood Services Administrator*

**September 12, 2024**

- a) Residential Parking Permit Program for Areas Outside the Current Downtown Boundaries Outlined in the City Code Section 26-168 – *Evan Mory, Transportation and Parking Management Director, & Heather Judd, Assistant City Attorney*

**General Attachments:**

Minutes of the May 30, 2024 PS&I Committee Meeting  
Pending and Continuing Referral List  
Agenda Support Material

City of St. Petersburg  
**Public Services & Infrastructure Committee**  
**May 30, 2024 Meeting Minutes**  
*City Hall, Room 100*

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**Present:** Committee Lisset Hanewicz, Committee Vice-Chair Copley Gerdes, Council Member Ed Montanari, Council Member Richie Floyd, and Council Chair Deborah Figgs-Sanders (Alternate)

**Absent:** None

**Also Present:** Council Member Brandi Gabbard, Housing and Neighborhood Assistance Administrator Amy Foster, Assistant City Attorney Heather Judd, Codes Compliance Assistance Director Joe Waugh, and Deputy City Clerk Jordan Wilson.

**Support Staff:** Tricia Terry – Legislative Aide

**1. Call to Order – 2:30 PM**

**2. Approval of Agenda** – Vice-Chair Gerdes motioned for approval. All voted in favor.

**3. Approval of April 11, 2024 Minutes** – CM Montanari motioned for approval. All voted in favor.

**4. New Business – May 30, 2024**

**Discussion on Updating the City Code Related to Domestic Equipment** – *Heather Judd, Assistant City Attorney*

Heather Judd began with an overview of previous Committee and Council discussions on the domestic equipment code and recommendations currently under review. Additionally, she showed several examples related to the previous proposal along with revised proposed changes to the code.<sup>1</sup>

Joe Waugh indicated that each year, since 2021, the City sees an average of 1,800 annual cases related to domestic equipment. He referenced the Good Neighbor Guide that outlines the correct location for parking domestic equipment. Chair Hanewicz inquired about the percentage of cases that result in the owner having to sell their domestic equipment or pay to have it stored properly. Mr. Waugh estimated it to be about 15% of cases. Mr. Waugh expanded on various conditions of the property that may contribute to this in addition to the size of their yards. Chair Hanewicz inquired about what type of domestic equipment makes up the bulk of the complaints. Mr. Waugh answered in order: boats, RVs, and utility trailers.

Council Chair (CC) Figgs-Sanders voiced concern about limiting the length and heights of boats. She inquired if there was research done on properties located on a corner lot, but without alley access. Ms. Judd indicated that there is not enough notation in the data set that

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<sup>1</sup> Recommended changes would allow one piece of domestic equipment which is 9 feet or less in height and 20 feet or less in length to be parked on a legally recognized parking area to the front of the principal structure or outside of any required shielding on private property.

would provide if a property was a corner lot or not. CC Figgs-Sanders asked if the number of domestic equipment cases would increase with the decrease in allowable length and height. Mr. Waugh indicated that it would be hard to tell, explaining that the 9 feet in height and 20 feet in length came from feedback at a previous committee meeting. He expanded that the lots with larger front and side yards could be directed to Zoning to apply for a variance with specific conditions. Mr. Waugh indicated that Codes Compliance will often direct them to zoning when applicable.

CM Floyd asked for clarification of the exemption. Ms. Judd explained that the equipment could be stored in the front yard on a legal parking space, or in the street-side yard without the requirement of a privacy fence. CM Floyd asked if this would apply to properties with alley access. Ms. Judd confirmed this would apply to corner lots with alley access.

CM Gabbard indicated that most of her residents have voiced that they would not want additional allowances for domestic equipment parking, and therefore she would not be supporting these recommendations if heard at full Council.

CM Montanari inquired about the hardship that this could provide with the limited length and height of the equipment. Mr. Waugh expanded that this would now allow an additional opportunity to store the specified equipment in the front yard. Ms. Judd indicated that the dimensions were created from feedback and intended to capture some of the current cases that Codes Compliance sees.

Vice-Chair (VC) Gerdes stated that he would not like any trailers be allowed in the front yards. Mr. Waugh indicated that to potentially allow domestic equipment for recreation but not for work-related equipment would not seem equitable. VC Gerdes indicated that he does not agree with recreational equipment being allowed either and expanded that he has heard a lot of feedback from residents in his district who are against expanding this domestic equipment parking allowances.

Chair Hanewicz asked about jet skis. Ms. Judd indicated that the current code allows tandem equipment on a single trailer, and that the equipment is counted per trailer. Chair Hanewicz indicated her support of accommodating residents with this allowance.

Heather Judd explained that today's feedback could become part of a larger LDR (Land Development Regulations) package that is currently in the works. Liz Abernethy confirmed that her department is working on a residential LDR Package and can include this in the presentation at stakeholder meetings for additional feedback. She provided input of this potentially increasing vehicles parking in the street, causing navigational issues on the roadway for neighborhoods without sidewalks.

CM Floyd discussed the recent reclassification of certain equipment as domestic equipment, prohibiting owners from parking this equipment on the street. He expanded that he agrees with granting this allowance instead of forcing residents to sell their domestic equipment.

Liz Abernethy stated her desire to have the LDR package complete by the end of the year, with the next stakeholder meeting occurring in a few weeks. The package would need to go CONA (Council of Neighborhood Associations), DRC (Development Review Commission) and then to a committee before the final vote.

***CM Montanari motioned to send the revised dimensions of domestic equipment and trailers (9 feet or less in height and 20 feet or less in length), to the upcoming community conversations on the residential LDR Package. All voted in favor.***

***Chair Hanewicz adjourned the meeting at 3:16 PM.***

DRAFT

	<b>Public Services &amp; Infrastructure Committee</b> Pending & Continuing Referral List					<b>July 11, 2024</b>	
	<b>Topic</b>	<b>Return Date</b>	<b>Referral Date</b>	<b>Prior Meeting</b>	<b>Referred by</b>	<b>Staff</b>	<b>Notes</b>
<b>1</b>	<b>A discussion on exploring the City’s ability to issue super fines and establishing a short-term rental registry.</b>	<b>7/11/2024</b>	<b>4/18/2024</b>		<b>Hanewicz, Floyd</b>	<b>Amy Foster, Joe Waugh</b>	
<b>2</b>	City of St. Petersburg 2024 Community Survey	8/8/2024	6/6/2024	_____	Hanewicz (staff request)	Amy Foster	
<b>3</b>	Residential Parking Permit Program for areas outside the current downtown boundaries outlined in City Code Section 26-168	9/12/2024	7/20/2023	_____	Hanewicz	Evan Mory	
<b>4</b>	<b>Capital Improvement Assessment (Maintenance &amp; Hurricane/Tropical Storm Preparedness)</b> (1) Bridges (2)Reclaimed Water (3)Sidewalks (4)Seawalls (5)Stormwater (6)Potable Water (7) <b>Wastewater</b> (8)Buildings (9) <b>Roads</b>	TBD Wastewater & Roads (Tankersley)	2/2/2017	a) 9/24/2020 b) 8/24/2017 c) 9/24/2020 d) 9/24/2020 e) 7/12/2018 f) 7/26/2018 (COW) h) 9/24/2020	Montanari	a) Tankersley b) Palenchar c) Tankersley d) Tankersley e) M.Hampton f) Palenchar g) Tankersley h) Tankersley	<b>9/24/2020</b> – C. Tankersley provided update on sidewalks, seawalls, bridges & their respective investment gaps. As well as introduced “CAMP” Committee asked staff to return with more info on funding for sidewalks & seawalls, as well as further guidance on the conflict between Sec. 25-191 & Resolution 96-55 related to property owner responsibilities <b>9/6/2022</b> – Item was deferred by Committee Chair Montanari
<b>5</b>	A discussion on potential requirements for the undergrounding of power lines in certain circumstances and providing for exceptions.	TBD	10/20/2022	_____	Driscoll	Liz Abernethy Brejesh Prayman Heather Judd	
<b>6</b>	A discussion on alternative locations for the City’s brush site, located at 2500 26th Avenue South.	TBD	9/7/2023		Montanari	Aaron Fisch	
<b>7</b>	A discussion on the enforcement of driving without a license and potential diversion options.	TBD	5/18/2023	_____	Floyd	Jeannine Williams Chief Holloway	
<b>8</b>	A presentation on the findings of the Private Laterals Pilot Study. Discussion to include consideration of potential financing programs for residents to be administered by SELF (Solar Loan Energy Fund)	TBD	3/23/2023	10/12/2023	Gabbard	Claude Tankersley John Palenchar Kira Barrera	<b>10/12/2023</b> - Item returning for further discussion <b>5/7/2024</b> - Per John P - should be ready to come back soon (when Jacobs report is final)

9	Update regarding the funding of a large item pickup software system.	TBD	3/2/2023	_____	Figgs-Sanders	Amy Foster Willie Joseph	
10	Review of the conceptual future metered reclaimed water fee structure	TBD	3/2/2023 (PSI) 4/8/2021(HERS)	7/29/2021 (HERS) 4/13/2023 (PSI)	Driscoll	Angela Miller John Palenchar	3/2/2023 - Moved from HERS Per NBI 4/13/2023 - Remaining on PSI Referral Sheet for follow up discussion
11	Public Funding for Elections	TBD	12/1/2022	_____	Floyd	Brett Pettigrew	
12	A discussion regarding the renovation and future use of the Sunshine Center	TBD	5/6/2021	_____	Montanari	Mike Jefferis	
13	Update on the Citywide Capital Asset Management Program (“CAMP”) (Previously the “City’s Facility Maintenance Plan”)	TBD	6/7/2018	5/9/2019, 11/4/2021 12/8/2022	Montanari, Administration	Claude Tankerlsey	9/12/2019 – T. Greene indicated staff would like return to PS&I for a check-in once the plan became fully staffed 9/24/2020 – Brief update from C. Tankersley on the name change (“CAMP”) & plan overview 11/4/2021 – Comprehensive update of CAMP, including the new asset management administrative policy and status of cloud-based software for city-wide asset management. 12/8/2022 – Brief update from C. Tankersley and Brief update from A. Miller on Strategic Asset Management
14	Update on Albert Whitted Airport Master Plan	TBD	5/17/2018	8/9/2018 2/13/2020 7/15/2021 1/27/2022	Staff Request Montanari	Chris Ballestra R. Lesniak, D. DiCarlo- (Environmental Services Associates (ESA)	7/15/2021 – Update on master plan progress, review of working papers submitted to the FAA 1/27/2022 – Update on master plan progress, overview of most recent submittals to the FAA and next steps
2024 PS&I Dates: 1/11, 2/08, 3/21, 4/11, 5/30, 7/11, 8/08, 9/12, 10/10, 11/7							Updated: 6/6/2024

Select Year: 2023 ▼ Go

## The 2023 Florida Statutes (including Special Session C)

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[Title XI](#)  
COUNTY ORGANIZATION AND  
INTERGOVERNMENTAL RELATIONS

[Chapter 162](#)  
COUNTY OR MUNICIPAL CODE  
ENFORCEMENT

[View Entire  
Chapter](#)

### CHAPTER 162 COUNTY OR MUNICIPAL CODE ENFORCEMENT

#### PART I LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS (ss. 162.01-162.13)

#### PART II SUPPLEMENTAL COUNTY OR MUNICIPAL CODE OR ORDINANCE ENFORCEMENT PROCEDURES (ss. 162.21-162.30)

#### PART I LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS

- 162.01 Short title.
- 162.02 Intent.
- 162.03 Applicability.
- 162.04 Definitions.
- 162.05 Local government code enforcement boards; organization.
- 162.06 Enforcement procedure.
- 162.07 Conduct of hearing.
- 162.08 Powers of enforcement boards.
- 162.09 Administrative fines; costs of repair; liens.
- 162.10 Duration of lien.
- 162.11 Appeals.
- 162.12 Notices.
- 162.125 Actions for money judgments under this chapter; limitation.
- 162.13 Provisions of act supplemental.

**162.01 Short title.**—Sections 162.01-162.13 may be cited as the “Local Government Code Enforcement Boards Act.”

**History.**—s. 1, ch. 80-300; s. 72, ch. 81-259; s. 1, ch. 82-37.

**Note.**—Former s. 166.051.

**162.02 Intent.**—It is the intent of this part to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious,

effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist.

**History.**—s. 1, ch. 80-300; s. 2, ch. 82-37; s. 1, ch. 85-150; s. 1, ch. 86-201; s. 1, ch. 89-268.

**Note.**—Former s. 166.052.

### **162.03 Applicability.—**

(1) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided herein.

(2) A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter. References in this chapter to an enforcement board, except in s. 162.05, shall include a special magistrate if the context permits.

**History.**—ss. 1, 2, ch. 80-300; s. 3, ch. 82-37; s. 2, ch. 86-201; s. 1, ch. 87-129; s. 2, ch. 89-268; s. 2, ch. 99-360; s. 63, ch. 2004-11.

**Note.**—Former s. 166.053.

### **162.04 Definitions.—**As used in ss. 162.01-162.13, the term:

- (1) “Local governing body” means the governing body of the county or municipality, however designated.
- (2) “Code inspector” means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.
- (3) “Local governing body attorney” means the legal counselor for the county or municipality.
- (4) “Enforcement board” means a local government code enforcement board.
- (5) “Repeat violation” means a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations.

**History.**—s. 1, ch. 80-300; s. 4, ch. 82-37; s. 10, ch. 83-216; s. 3, ch. 86-201; s. 3, ch. 89-268; s. 3, ch. 99-360; s. 22, ch. 2001-60.

**Note.**—Former s. 166.054.

### **162.05 Local government code enforcement boards; organization.—**

(1) The local governing body may appoint one or more code enforcement boards and legal counsel for the enforcement boards. The local governing body of a county or a municipality that has a population of less than 5,000 persons may appoint five-member or seven-member code enforcement boards. The local governing body of a county or a municipality that has a population equal to or greater than 5,000 persons must appoint seven-member code enforcement boards. The local governing body may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

(2) Members of the enforcement boards shall be residents of the municipality, in the case of municipal enforcement boards, or residents of the county, in the case of county enforcement boards. Appointments shall be made in accordance with applicable law and ordinances on the basis of experience or interest in the subject matter jurisdiction of the respective code enforcement board, in the sole discretion of the local governing body. The membership of each enforcement board shall, whenever possible, include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.

(3)(a) The initial appointments to a seven-member code enforcement board shall be as follows:

1. Two members appointed for a term of 1 year each.
2. Three members appointed for a term of 2 years each.
3. Two members appointed for a term of 3 years each.

(b) The initial appointments to a five-member code enforcement board shall be as follows:

1. One member appointed for a term of 1 year.
2. Two members appointed for a term of 2 years each.
3. Two members appointed for a term of 3 years each.



Thereafter, any appointment shall be made for a term of 3 years.

(c) The local governing body of a county or a municipality that has a population of less than 5,000 persons may reduce a seven-member code enforcement board to five members upon the simultaneous expiration of the terms of office of two members of the board.

(d) A member may be reappointed upon approval of the local governing body.

(e) An appointment to fill any vacancy on an enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chair, the enforcement board shall declare the member's office vacant, and the local governing body shall promptly fill such vacancy.

(f) The members shall serve in accordance with ordinances of the local governing body and may be suspended and removed for cause as provided in such ordinances for removal of members of boards.

(4) The members of an enforcement board shall elect a chair, who shall be a voting member, from among the members of the board. The presence of four or more members shall constitute a quorum of any seven-member enforcement board, and the presence of three or more members shall constitute a quorum of any five-member enforcement board. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as are otherwise provided by law.

(5) The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board, but in no case shall the local governing body attorney serve in both capacities.

**History.**—s. 1, ch. 80-300; s. 5, ch. 82-37; s. 4, ch. 86-201; s. 2, ch. 87-129; s. 4, ch. 89-268; s. 1, ch. 94-291; s. 1441, ch. 95-147.

**Note.**—Former s. 166.055.

#### **162.06 Enforcement procedure.—**

(1)(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.

(b) 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.

(2) Except as provided in subsections (3) and (4), if a violation of the codes is found, the code inspector shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify an enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in s. 162.12 to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in s. 162.12. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(3) 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 notify an enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to s. 162.12. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state. If the repeat violation has been corrected, the code enforcement board 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 code enforcement board.

(4) 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 notify the enforcement board and request a hearing.

(5) If the owner of property that is subject to an enforcement proceeding before an enforcement board, 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:

- (a) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.
- (b) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.
- (c) 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.
- (d) 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 5 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (a), (b), and (c) 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.

**History.**—s. 1, ch. 80-300; s. 5, ch. 86-201; s. 1, ch. 87-391; s. 5, ch. 89-268; s. 2, ch. 94-291; s. 1442, ch. 95-147; s. 2, ch. 96-385; s. 4, ch. 99-360; s. 64, ch. 2004-11; s. 2, ch. 2021-167.

**Note.**—Former s. 166.056.

#### **162.07 Conduct of hearing.—**

(1) Upon request of the code inspector, or at such other times as may be necessary, the chair of an enforcement board may call a hearing of an enforcement board; a hearing also may be called by written notice signed by at least three members of a seven-member enforcement board or signed by at least two members of a five-member enforcement board. Minutes shall be kept of all hearings by each enforcement board, and all hearings and proceedings shall be open to the public. The local governing body shall provide clerical and administrative personnel as may be reasonably required by each enforcement board for the proper performance of its duties.

(2) Each case before an enforcement board shall be presented by the local governing body attorney or by a member of the administrative staff of the local governing body. If the local governing body prevails in prosecuting a case before the enforcement board, it shall be entitled to recover all costs incurred in prosecuting the case before the board and such costs may be included in the lien authorized under s. 162.09(3).

(3) An enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(4) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those members present and voting, except that at least four members of a seven-member enforcement board, or three members of a five-member enforcement board, must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in s. 162.09(1), the cost of repairs may be included along with the fine if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the enforcement board shall issue an order acknowledging

compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

**History.**—s. 1, ch. 80-300; s. 6, ch. 82-37; s. 44, ch. 83-217; s. 6, ch. 86-201; s. 6, ch. 89-268; s. 3, ch. 94-291; s. 1443, ch. 95-147; s. 2, ch. 95-297.

**Note.**—Former s. 166.057.

**162.08 Powers of enforcement boards.**—Each enforcement board shall have the power to:

- (1) Adopt rules for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the municipality.
- (3) Subpoena evidence to its hearings.
- (4) Take testimony under oath.
- (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

**History.**—s. 1, ch. 80-300; s. 7, ch. 82-37; s. 7, ch. 86-201; s. 7, ch. 89-268.

**Note.**—Former s. 166.058.

**162.09 Administrative fines; costs of repair; liens.**—

(1) An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in s. 162.06(4), the enforcement board shall notify the local governing body, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in paragraph (2)(a).

(2)(a) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.

(b) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation; and
3. Any previous violations committed by the violator.

(c) An enforcement board may reduce a fine imposed pursuant to this section.

(d) A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in paragraph (a). Such fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs pursuant to subsection (1). Any ordinance imposing such

finest shall include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines, including, but not limited to, those factors set forth in paragraph (b).

(3) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section. After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under s. 4(a), Art. X of the State Constitution.

**History.**—s. 1, ch. 80-300; s. 8, ch. 82-37; s. 2, ch. 85-150; s. 8, ch. 86-201; s. 2, ch. 87-391; s. 8, ch. 89-268; s. 4, ch. 94-291; s. 1, ch. 95-297; s. 5, ch. 99-360; s. 1, ch. 2000-125; s. 65, ch. 2004-11.

**Note.**—Former s. 166.059.

**162.10 Duration of lien.**—No lien provided under the Local Government Code Enforcement Boards Act shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to s. 162.09(3) in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. The local governing body shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

**History.**—s. 9, ch. 82-37; s. 9, ch. 86-201; s. 9, ch. 89-268; s. 5, ch. 94-291; s. 2, ch. 2000-125.

**162.11 Appeals.**—An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board. An appeal shall be filed within 30 days of the execution of the order to be appealed.

**History.**—s. 1, ch. 80-300; s. 10, ch. 82-37; s. 3, ch. 85-150; s. 10, ch. 86-201.

**Note.**—Former s. 166.061.

#### **162.12 Notices.**—

(1) All notices required by this part must be provided to the alleged violator by:

(a) Certified mail, and at the option of the local government return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published in print in a newspaper or on a publicly accessible website as provided in s. 50.0311 for 4 consecutive weeks. If published in print, the notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, 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, in the case of municipalities, at the primary municipal government office, and in the case of counties, at the front door of the courthouse or the main county governmental center in said county.

2. 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.

(c) 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 (1).

(3) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

**History.**—s. 1, ch. 80-300; s. 11, ch. 86-201; s. 3, ch. 87-391; s. 10, ch. 89-268; s. 6, ch. 94-291; s. 6, ch. 99-360; s. 3, ch. 2000-125; s. 1, ch. 2012-13; s. 2, ch. 2013-193; s. 1, ch. 2014-154; s. 14, ch. 2021-17; s. 14, ch. 2022-103.

**Note.**—Former s. 166.062.

**162.125 Actions for money judgments under this chapter; limitation.**—Actions for money judgments under this chapter may be pursued only on fines levied after October 1, 2000.

**History.**—s. 4, ch. 2000-125.

**162.13 Provisions of act supplemental.**—It is the legislative intent of ss. 162.01-162.12 to provide an additional or supplemental means of obtaining compliance with local codes. Except as provided in s. 162.06(1)(b), nothing contained in ss. 162.01-162.12 shall prohibit a local governing body from enforcing its codes by any other means.

**History.**—s. 11, ch. 82-37; s. 3, ch. 2021-167.

## PART II

### SUPPLEMENTAL COUNTY OR MUNICIPAL CODE OR ORDINANCE ENFORCEMENT PROCEDURES

162.21 Enforcement of county or municipal codes or ordinances; penalties.

162.22 Designation of enforcement methods and penalties for violation of municipal ordinances.

162.23 Notice to appear.

162.30 Civil actions to enforce county and municipal ordinances.

**162.21 Enforcement of county or municipal codes or ordinances; penalties.**—

(1) As used in this section, “code enforcement officer” means any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.

(2) A county or a municipality may designate certain of its employees or agents as code enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Employees or agents who may be designated as code enforcement officers may include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or firesafety inspectors.



Designation as a code enforcement officer does not provide the code enforcement officer with the power of arrest or subject the code enforcement officer to the provisions of ss. 943.085-943.255. Nothing in this section amends, alters, or contravenes the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

(3)(a) A code enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court will hear the charge.

(b) A code enforcement officer 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 public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

(c) Prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, a code enforcement officer may issue a citation to the person who has committed the violation. A code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

(d) A citation issued by a code enforcement officer shall be in a form prescribed by the county or the municipality and shall contain:

1. The date and time of issuance.
2. The name and address of the person to whom the citation is issued.
3. The date and time the civil infraction was committed.
4. The facts constituting reasonable cause.
5. The number or section of the code or ordinance violated.
6. The name and authority of the code enforcement officer.
7. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
8. The applicable civil penalty if the person elects to contest the citation.
9. The applicable civil penalty if the person elects not to contest the citation.
10. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

(4) After issuing a citation to an alleged violator, a code enforcement officer shall deposit the original citation and one copy of the citation with the county court.

(5) A county or a municipality is authorized to enforce codes and ordinances under the provisions of this section and may enact an ordinance establishing procedures for the implementation of such provisions, including a schedule of violations and penalties to be assessed by code enforcement officers. If a county or municipality chooses to enforce codes or ordinances under the provisions of this section, each code or ordinance or the ordinance enacted by the county or municipality establishing procedures for implementation of this section shall provide:

- (a) That a violation of a code or an ordinance is a civil infraction.
- (b) A maximum civil penalty not to exceed \$500.
- (c) A civil penalty of less than the maximum civil penalty if the person who has committed the civil infraction does not contest the citation.

(d) For the issuance of a citation by a code enforcement officer who has reasonable cause to believe that a person has committed an act in violation of a code or an ordinance.

(e) For the contesting of a citation in county court.

(f) Such procedures and provisions as are necessary to provide for the enforcement of a code or an ordinance under the provisions of this section.

(6) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(7) The provisions of this part shall not apply to the enforcement pursuant to ss. 553.79 and 553.80 of the Florida Building Code adopted pursuant to s. 553.73 as applied to construction, provided that a building permit is either not required or has been issued by the county or the municipality.

(8) The provisions of this section are additional and supplemental means of enforcing county or municipal codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. Except as provided in paragraph (3)(b), nothing contained in this section shall prohibit a county or municipality from enforcing its codes or ordinances by any other means.

**History.**—s. 11, ch. 89-268; s. 7, ch. 94-291; s. 1444, ch. 95-147; s. 3, ch. 96-385; s. 4, ch. 98-287; s. 115, ch. 2000-141; s. 35, ch. 2001-186; s. 4, ch. 2001-372; s. 4, ch. 2021-167.

**162.22 Designation of enforcement methods and penalties for violation of municipal ordinances.**—The governing body of a municipality may designate the enforcement methods and penalties to be imposed for the violation of ordinances adopted by the municipality. These enforcement methods may include, but are not limited to, the issuance of a citation, a summons, or a notice to appear in county court or arrest for violation of municipal ordinances as provided for in chapter 901. Unless otherwise specifically authorized and provided for by law, a person convicted of violating a municipal ordinance may be sentenced to pay a fine, not to exceed \$500, and may be sentenced to a definite term of imprisonment, not to exceed 60 days, in a municipal detention facility or other facility as authorized by law.

**History.**—s. 1, ch. 94-255.

**162.23 Notice to appear.**—

(1) Notwithstanding s. 34.07, a code enforcement officer, designated pursuant to s. 162.21(1) and (2), may issue a notice to appear at any hearing conducted by a county court if the officer, based upon personal investigation, has reasonable cause to believe that the person has violated a code or ordinance. A notice to appear means a written order issued by a code enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. If a person issued a notice to appear under this section refuses to sign such notice, the code enforcement officer has no authority to arrest such person.

(2) Prior to issuing a notice to appear, a code enforcement officer shall provide written notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no fewer than 5 days and no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the prescribed time period, a code enforcement officer may issue a notice to appear to the person who has committed the violation. A code enforcement officer is not required to provide the person with a reasonable time period to correct the violation prior to issuing a notice to appear and may immediately issue a notice to appear if a repeat violation is found, or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare or that the violator is engaged in violations of an itinerant or transient nature, as defined by local code or ordinance within the jurisdiction, or if the violation is irreparable or irreversible.

**History.**—s. 1, ch. 96-385; s. 7, ch. 99-360.

**162.30 Civil actions to enforce county and municipal ordinances.**—In addition to other provisions of law authorizing the enforcement of county and municipal codes and ordinances, a county or municipality may enforce

any violation of a county or municipal code or ordinance by filing a civil action in the same manner as instituting a civil action. The action shall be brought in county or circuit court, whichever is appropriate depending upon the relief sought. Counties and municipalities are authorized and required to pay any counsel appointed by the court to represent a private party in such action if the provision of counsel at public expense is required by the Constitution of the United States or the Constitution of the State of Florida and if the party is indigent as established pursuant to s. 27.52. The county or municipality shall bear all court fees and costs of any such action, and may, if it prevails, recover the court fees and costs and expense of the court-appointed counsel as part of its judgment. The state shall bear no expense of actions brought under this section except those that it would bear in an ordinary civil action between private parties in county court.

**History.**—s. 87, ch. 2003-402.



## ARTICLE I. - IN GENERAL

Secs. 9-1—9-18. - Reserved.

## ARTICLE II. - MUNICIPAL CODE ENFORCEMENT BOARD

*Footnotes:*

--- (2) ---

**State Law reference—** *Code enforcement boards, F.S. § 162.01 et seq.*

Sec. 9-19. - Authority.

State law authorizes the enforcement methods provided herein. In any conflict between the provisions of this article and State law, the provisions of State law shall be followed.

Sec. 9-20. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Code Inspector* means those authorized agents or employees of the City whose duty it is to ensure compliance with the Codes or ordinances.

*Enforcement Board or Board* means the City Code Enforcement Board created pursuant to this article.

*Repeat violation* means violation of provisions of a code or ordinance by a person whom the Board or Special Magistrate has previously found to have violated the same provision on the same premises within five years prior to the violation.

*Special magistrate* means an officer appointed as provided in this article who shall have the status and authority of the Board to the extent prescribed herein.

(Code 1973, § 2-100; Code 1992, § 9-20; Ord. No. 1066-F, § 1, 11-3-1988; Ord. No. 1183-F, § 5, 7-12-1990; Ord. No. 2081-F, § 9, 9-5-1991; Ord. No. 699-G, § 1, 11-4-2004)

**State Law reference—** Similar provisions, F.S. § 162.04.

Sec. 9-21. - Creation and membership of Code Enforcement Board.

There is hereby created pursuant to F.S. ch. 162, within the City, a Code Enforcement Board which shall be composed of seven members, all of whom shall be residents of the City.

(Code 1973, § 2-90; Code 1992, § 9-21; Ord. No. 699-G, § 1, 11-4-2004)

**State Law reference**— Authority to create Code Enforcement Board, F.S. § 162.03.

Sec. 9-22. - Function, appointment of members.

- (a) The Code Enforcement Board shall conduct hearings relating to the enforcement of any codes or ordinances of the City.
- (b) Appointments to the Board shall be made by the City Council, and appointments shall be made on the basis of experience or interest in the subject matter jurisdiction of the Board. The membership shall, whenever possible, consist of an architect, a businessman, an engineer, a general contractor, a realtor and a subcontractor.

(Code 1973, § 2-91; Code 1992, § 9-22; Ord. No. 1183-F, § 1, 7-12-1990; Ord. No. 699-G, § 1, 11-4-2004)

**State Law reference**— Code enforcement board membership, F.S. § 162.05.

Sec. 9-23. - Chair, quorum.

- (a) The members of the Board shall elect one of the members to be chair. The person so elected shall function as chair for a one-year term.
- (b) Four or more members of the Board present at any meeting shall constitute a quorum in order for the Board to conduct its business.

(Code 1973, § 2-92; Code 1992, § 9-23; Ord. No. 699-G, § 1, 11-4-2004)

**State Law reference**— Chairman, etc., F.S. § 162.05.

Sec. 9-24. - Special magistrates; appointment, qualifications.

- (a) The City Council may appoint one or more Special Magistrates who shall have the authority to hold hearings, assess fines against violators of the Codes and ordinances of the City, reduce fines in whole or in part, and otherwise exercise the powers of a municipal Code Enforcement Board as provided in F.S. ch. 162, pt. I, as and to the extent provided in this article.
- (b) Special magistrates shall be a resident of the City who is qualified to be appointed as a member of the Board. A former member of the Board who is ineligible for reappointment to the Board because of term limits but who is otherwise qualified for appointment shall be eligible for appointment as a Special Magistrate.
- (c) Special magistrates shall be appointed to a term of three years and may be reappointed, except that a Special Magistrate shall be subject to the term limits set forth in section 2-296.
- (d) Special magistrates shall serve without compensation.
- (e)

Regular and special hearings may be held as often as necessary. All hearings shall be open to the public.

- (f) Minutes and records of hearings before a Special Magistrate shall be kept and maintained by the City in the manner and to the extent required by law. The City shall provide necessary and reasonable clerical and administrative support to enable a Special Magistrate to perform his or her duties. A Special Magistrate shall not be authorized to hire or use the services of any person except those provided by the City to assist him in the performance of his duties.
- (g) A Special Magistrate shall be subject to removal for cause except that a failure to attend one hearing for which notice has been given without cause and without the prior approval of the chair of the Board shall be grounds for removal.

(Code 1992, § 9-24; Ord. No. 699-G, § 1, 11-4-2004)

#### Sec. 9-25. - Presentation of cases.

The City Attorney or assistant shall not present cases before the Board or Special Magistrate. A member of the administrative staff of the City shall present cases before the Board and Special Magistrate.

(Code 1973, § 2-93; Code 1992, § 9-25; Ord. No. 699-G, § 1, 11-4-2004)

**State Law reference—** Presentation of cases, F.S. § 162.07.

#### Sec. 9-26. - Enforcement procedure.

Except where the Code Inspector charged with enforcing a particular section of a code or ordinance has reason to believe that a code violation presents a serious threat to the public health, safety or welfare, the code enforcement procedure under this article shall be as follows:

- (1) It shall be the duty of the Code Inspector to initiate enforcement proceedings.
- (2) Where the Code Inspector finds or is made aware of a code violation, the Code Inspector shall notify the violator and such notice of violation shall provide a reasonable time within which to correct the violation. Should the violation continue beyond the time specified in the correction notice, the Code Inspector schedule a hearing before the Board. Notice of such hearing shall be provided to the violator. The term "reasonable time" means the time that would be required by a prudent person acting diligently to correct the violation, taking into consideration the scope of the work required, the necessity to obtain any required permit or other approval by a government agency, and delays that may reasonably be expected to be encountered such as but not necessarily limited to the weather; however, where a different time period in which to correct the violation is provided for by the ordinance being enforced, that time period shall constitute reasonable time for that particular violation.
- (3)

If the Code Inspector has reason to believe a violation presents a serious threat to the public health, or 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 request a hearing.

- (4) If a Code Inspector finds a repeat violation the Inspector shall notify the violator but is not required to give the violator a reasonable time to correct the repeat violation. Upon notifying the violator, the Code Inspector shall notify the clerk who shall schedule a hearing before the Board and provide notice to the violator. The case may be presented to the Board even if the repeat violation has been corrected prior to the Board hearing, and the notice shall so state.

(Code 1973, § 2-94; Code 1992, § 9-26; Ord. No. 1183-F, § 2, 7-12-1990; Ord. No. 2081-F, § 3, 9-5-1991; Ord. No. 699-G, § 1, 11-4-2004)

**State Law reference**— Similar provisions, F.S. § 162.06.

Sec. 9-27. - Hearing procedures.

- (a) The Chair of the Board may call Board hearings and such hearings may also be called by a written notice signed by three members of the Board. The Board may at any hearing set a future hearing date.
- (b) Cases on the agenda for a particular day shall be heard. All testimony shall be under oath and shall be recorded. The Board shall take testimony from the Code Inspector, the violator and any other person familiar with the case or having knowledge about the case. The Board shall not be bound by formal rules of evidence; however, it shall act to ensure fundamental due process in each of its hearing cases.
- (c) At the conclusion of each hearing the Board shall issue findings of fact and conclusions of law, based on the evidence of record, and its order shall provide relief consistent with section 9-28. The findings shall be by motion approved by a majority of those present and voting. In order for a finding to be official at least four members of the Board must vote. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by such date.

(Code 1973, § 2-95; Code 1992, § 9-27; Ord. No. 2081-F, § 4, 9-5-1991; Ord. No. 699-G, § 1, 11-4-2004)

**State Law reference**— Similar provisions, F.S. § 162.07.

Sec. 9-28. - Powers of Code Enforcement Board and Special Magistrate.

- (a) The Code Enforcement Board shall have the power to:
- (1) Adopt rules for the conduct of the hearings it holds.
  - (2) Subpoena alleged violators and witnesses to its hearings.
  - (3) Subpoena evidence, records, surveys, plats and other material.

- (4) Take testimony under oath.
  - (5) Issue orders following a hearing, which orders shall have the force of law and which orders shall set forth the steps necessary to be accomplished in order to bring a violation into compliance with the Code that has been violated, including requirements for compliance by a specific date, and provision for daily fines if the violation continues.
- (b) A Special Magistrate shall have the power to conduct a hearing and take testimony under oath in any case in which the Board has previously:
- (1) Found that one or more violations of the Codes or ordinances of the City exist;
  - (2) Entered an order requiring compliance by a specified date; and
  - (3) Provided that a fine may be imposed for each day thereafter that the violation continues past the date set for compliance.

(Code 1973, § 2-96; Code 1992, § 9-28; Ord. No. 2081-F, § 5, 9-5-1991; Ord. No. 699-G, § 1, 11-4-2004; Ord. No. 197-H, § 1, 9-17-2015)

**State Law reference**— Similar provisions, F.S. § 162.08.

Sec. 9-29. - Fine, lien and foreclosure.

- (a) Upon being notified by the Code Inspector that a previous order of the Board finding a violation to exist and ordering correction of the violation within a time certain has not been complied with within the time established in such order, the Board or Special Magistrate may, after giving the violator notice and an opportunity to be heard, impose a fine at the daily rate previously set by the Board or at a lesser daily rate for each day the violation is found. Such fine to the City shall not exceed \$250.00 for each day that the violation continues past the date set for compliance and shall not exceed \$500.00 per day for repeat violations. Notice of the hearing at which the imposition of a fine and certification of a lien will be considered shall be provided to the violator.
- (1) In determining the amount of the fine, if any, the Board or Special Magistrate shall consider the following factors:
    - a. The gravity of the violation;
    - b. Any actions taken by the violator to correct the violation; and
    - c. Any previous violations committed by the violator.
  - (2) In the alternative, the Board or Special Magistrate may defer the imposition of a fine and may defer certification of a lien securing such fine for a reasonable time necessary to correct the violation.
- (b) A certified copy of an order by the Board or a Special Magistrate imposing the fine may be recorded in the public records of the county, and thereafter such order shall constitute a lien against the land on which the violation existed and upon any other real or personal property

owned by the violator. The Board or a Special Magistrate may reduce or release a lien imposed pursuant to this section. The Board may establish objective criteria to reduce or release liens and may delegate said authority to reduce or release liens to the POD.

(Code 1973, § 2-97; Code 1992, § 9-29; Ord. No. 1183-F, § 3, 7-12-1990; Ord. No. 2081-F, § 6, 9-5-1991; Ord. No. 699-G, § 1, 11-4-2004; Ord. No. 197-H, § 2, 9-17-2015)

**State Law reference**— Similar provisions, F.S. § 162.09.

#### Sec. 9-30. - Appeal.

Any aggrieved party including the City may appeal a ruling or order of the Code Enforcement Board or Special Magistrate to the circuit court as provided by law.

(Code 1973, § 2-98; Code 1992, § 9-30; Ord. No. 2081-F, § 7, 9-5-1991; Ord. No. 699-G, § 1, 11-4-2004)

**State Law reference**— Similar provisions, F.S. § 162.11.

#### Sec. 9-31. - Notices.

- (a) All notices required to be provided by this article, other than the initial violation warning letter and notices of violations addressed in subsection (b) hereof, shall be by certified mail, return receipt requested, hand delivery to the violator, or by hand delivery at the violator's usual place of residence with any 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) of this section, notice may also be served by publication. Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county.
- (c) In lieu of publication as described in subsection (b), such notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, 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 City Hall.
- (d) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a) of this section, together with proof of publication as provided in subsection (b) of this section or with proof of posting as provided in subsection (c), shall be sufficient to show that the notice requirements have been met, without regard to whether or not the violator actually received such notice.

(Code 1973, § 2-99; Code 1992, § 9-31; Ord. No. 1183-F, § 4, 7-12-1990; Ord. No. 2081-F, § 8, 9-5-1991; Ord. No. 699-G, § 1, 11-4-2004; Ord. No. 197-H, § 3, 9-17-2015)

**State Law reference—** Similar provisions, F.S. § 162.12.

Secs. 9-32—9-40. - Reserved.



Neutral

As of: July 1, 2024 7:42 PM Z

## **City of Miami Beach v. Nichols**

Court of Appeal of Florida, Third District

September 23, 2020, Opinion Filed

No. 3D19-1954

### **Reporter**

314 So. 3d 313 \*; 2020 Fla. App. LEXIS 13288 \*\*; 45 Fla. L. Weekly D 2206; 2020 WL 5648554

City of Miami Beach, Florida, Appellant, vs. Natalie Nichols, Appellee.

**Prior History:** **[\*\*1]** An appeal from a nonfinal order from the Circuit Court for Miami-Dade County, Michael A. Hanzman, Judge. Lower Tribunal No. 18-21933.

[City of Miami Beach v. Nichols, 2020 Fla. App. LEXIS 10401 \(Fla. Dist. Ct. App. 3d Dist., July 22, 2020\)](#)

## **Case Summary**

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### **Overview**

**HOLDINGS:** [1]-A city that had created an alternate code enforcement system pursuant to the authority of [§ 162.03, Fla. Stat.](#), could not lawfully levy fines against property code violators in excess of those authorized under the Local Government Code Enforcement Boards Act because municipal ordinances were inferior and subordinate to State law, and Miami Beach, Fla., Code § 30-2's much higher fines conflicted with [§ 162.03](#); [2]-The city was entitled to sever the offending fines in order to preserve the validity of the ordinance as it had both an express severability clause and fining provisions that automatically applied in the absence of a specified penalty.

### **Outcome**

Affirmed in part, reversed in part, and remanded for further proceedings.

**Counsel:** Raul Aguila, City Attorney, and Aleksandr Boksner, Chief Deputy City Attorney; and Carlton Fields, P.A., and Richard J. Ovelmen, Enrique D. Arana, Scott E. Byers, and Rachel A. Oostendorp; and Jean K. Olin, for appellant.

Van de Bogart Law P.A., and Joseph S. Van de Bogart (Fort Lauderdale); and Goldwater Institute, and Matthew R. Miller (Phoenix, AZ), for appellee.

**Judges:** Before FERNANDEZ, LINDSEY, and MILLER, JJ.

**Opinion by:** MILLER

## **Opinion**

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**[\*314] ON MOTION FOR REHEARING**



MILLER, J.

We grant appellant's motion for rehearing, withdraw our previously issued opinion, and substitute the following in its stead:

Appellant, the City of Miami Beach, challenges a nonfinal order granting injunctive relief in favor of appellee, Natalie Nichols. We have jurisdiction. See *Fla. R. App. P. 9.130(a)(3)(B)*. The issue presented by the parties on appeal is whether the City, having created an alternate code enforcement system pursuant to the authority of [section 162.03, Florida Statutes](#) (2019), may lawfully levy fines against certain property code violators in excess of those authorized under the Local Government Code Enforcement Boards Act. See [§§ 162.01-13, Fla. Stat.](#) Consistent with the sagacious **[\*\*2]** reasoning engaged by the lower tribunal, along with well-established precedent, we conclude the City is bound to impose fines within the statutorily prescribed limits.

## PROCEDURAL HISTORY

In 2010, the City enacted [Miami Beach Code section 142-1111](#) (the "Ordinance"), prohibiting short-term rentals of apartment units or townhomes in specified zoning districts located within its boundaries.<sup>1</sup> Property owners found in violation are subject to substantial mandatory fines, administered by special masters, under the City's "alternate code enforcement system." *Miami Beach, Fla., Code* § 30-2. The alternate code enforcement system was expressly adopted pursuant to the authority of [Chapter 162, Florida Statutes](#). *Id.* ("The city creates, pursuant to F.S. ch. 162, an alternate code enforcement system.").

**[\*315]** Nichols, the owner of two properties purportedly subject to regulation by the Ordinance, filed suit below, alleging the Ordinance conflicted with the [Local Government Code Enforcement Boards Act](#) (the "Act") and asserting various constitutional challenges. Before reaching the constitutional issues, the lower tribunal found the Ordinance violated the Act and granted injunctive relief. The instant appeal ensued.

## STANDARD OF REVIEW

"The interpretation of a **[\*\*3]** statute is a purely legal matter and therefore subject to the de novo standard of review." [Kephart v. Hadi, 932 So. 2d 1086, 1089 \(Fla. 2006\)](#) (citations omitted).

## LEGAL ANALYSIS

[Chapter 162, Florida Statutes](#), "is divided into two parts, both of which authorize proceedings for code enforcement." [Sarasota Cty. v. Nat'l City Bank of Cleveland, 902 So. 2d 233, 235 \(Fla. 2d DCA 2005\)](#). Part I, entitled the "Local Government Code Enforcement Boards Act," allows a county or municipality to adopt an administrative code enforcement system. *Id.* at 233; see also [§ 162.03\(2\), Fla. Stat.](#) Part II provides for supplemental methods of enforcement within the judicial system. [§ 162.21\(8\), Fla. Stat.](#)

Under the Act, a city may enforce its code through an administrative process by designating either a code enforcement board or special master, or both, to preside over enforcement proceedings. [§ 162.03\(2\), Fla. Stat.](#) However, in this administrative setting, the amounts of fines that may be imposed are strictly limited by two statutory provisions.

The first, [section 162.09\(2\)\(a\), Florida Statutes](#), establishes the following baseline fines for all cities:

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<sup>1</sup> The Ordinance further forbids certain advertising of the same.

A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs . . . However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed **[\*\*4]** \$5,000 per violation.

The second, [section 162.09\(2\)\(d\), Florida Statutes](#), allows the more populous cities of our state to impose heightened fines:

A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in [paragraph \(a\)](#).

Even the enhanced fines, however, are capped. The fines "shall not exceed \$1,000 per day per violation for the first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature." [§ 162.09\(2\)\(d\), Fla. Stat.](#)

The City adopted an alternate code enforcement system, as authorized by the Act. *See Miami Beach, Fla., Code § 30-2; § 162.03(2), Fla. Stat.* Nevertheless, violators of the City's short-term rental Ordinance are subject to escalating mandatory administrative fines vastly exceeding the statutory caps. Indeed, the Ordinance prescribes penalties of \$20,000.00 for the first offense, \$40,000.00 for the second, \$60,000.00 for the third, \$80,000.00 for the fourth, **[\*\*5]** and \$100,000.00 for each subsequent offense. [Miami Beach, Fla., Code § 142-1111\(e\)\(1\)\(A\)-\(E\)](#).<sup>2</sup>

**[\*316]** "Municipal ordinances are inferior in stature and subordinate to the laws of the state. Accordingly, an ordinance must not conflict with any controlling provision of a state statute." [Rinzler v. Carson, 262 So. 2d 661, 668 \(Fla. 1972\)](#). Hence, "[a] municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden." *Id.* (citations omitted).

Referencing two discrete passages within Chapter 162, however, the City contends it is authorized to "opt-out" of the fine schedule codified within the Act. The first, [section 162.03\(2\), Florida Statutes](#), reflects the following:

A . . . municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances.

The City argues that, by endorsing the adoption of alternate code enforcement systems under [section 162.03\(2\)](#), the legislature vested local governments with the right to adopt penalties exceeding the limits of those authorized in [section 162.09\(2\)](#). We respectfully disagree. **[\*\*6]**

The cited provision is unambiguous. The sole function of our court "is to enforce [the statute] according to its terms." [Dodd v. United States, 545 U.S. 353, 359, 125 S. Ct. 2478, 2483, 162 L. Ed. 2d 343 \(2005\)](#) (citation omitted). Thus, our analysis "begins with 'the language of the statute[s],' and because the 'statutory language provides a clear answer, it ends there as well.'" [Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438, 119 S. Ct. 755, 760, 142 L. Ed. 2d 881 \(1999\)](#) (citations omitted).

By its plain wording, [section 162.03\(2\)](#) merely authorizes the City to enact an ordinance implementing an alternative code enforcement system, differing from that set forth in detail in the Act. Although the statutory provision permits the City, under the alternate system, to delegate the task of assessing an appropriate fine to a code enforcement board or special master, it does not authorize administrative monetary penalties in excess of the limits established within [section 162.09\(2\)](#).

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<sup>2</sup> The special master is expressly divested of any discretion to reduce or waive the applicable penalty. [Miami Beach, Fla., Code § 142-1111\(e\)](#).

Under our state constitution, "[n]o administrative agency . . . shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law." [Art. 1, § 18, Fla. Const.](#) "[T]he phrase 'as provided by law' means as passed 'by an act of the legislature.'" [Holzendorf v. Bell, 606 So. 2d 645, 648 \(Fla. 1st DCA 1992\)](#) (citation omitted).

Here, the administrative body derives its authority to impose fines from the Act. See Annabella Barboza, *Code Liens Are Not "Superpriority" Liens: Is It **[\*\*7]** the End of the Debate?*, 87 Fla. Bar. J. 28, 28 (2013) ("The enactment of F.S. Ch. 162 responded to the need to implement an administrative enforcement proceeding allowing the imposition of administrative fines by local governments to satisfy the requirements of the Florida Constitution."). Chapter 162 prescribes a maximum fine schedule. Accordingly, even under the alternate enforcement system, the City must abide by the statutory caps.

The second provision the City relies upon, [section 162.13, Florida Statutes](#), provides: **[\*317]** "[i]t is the legislative intent of [\[sections\] 162.01-162.12](#) to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in [\[sections\] 162.01-162.12](#) shall prohibit a local governing body from enforcing its codes by any other means."

This concise language lends itself to a single, readily ascertainable construction. A local government is permitted to enforce its ordinances through means other than code enforcement boards or by invoking cumulative remedies. For instance, the governing body may pursue enforcement by way of civil action through the county court, or even criminal prosecution. See [§ 162.22, Fla. Stat.](#); [Goodman v. Cty. Court in Broward Cty., 711 So. 2d 587, 589 \(Fla. 4th DCA 1998\)](#) ("The creation of the code enforcement board and the assignment to it of the enforcement of housing code violations does not prohibit the **[\*\*8]** City from bringing a charge in county court for a municipal code violation."). Further, relief may be sought through ancillary administrative methods, including interlocal agreement. See [§ 163.01, Fla. Stat.](#); [Op. Att'y Gen. Fla. 2000-34 \(2000\)](#) (A small municipality "may enter into an interlocal agreement to have the county code enforcement board enforce the town's codes as an alternate means of code enforcement pursuant to [Chapter 162, Florida Statutes](#)"). However, the language does not expand the fines available in the administrative context. We decline to import an unpenned delegation of authority into the Act. Thus, in choosing to pursue administrative enforcement of its Ordinance, the City is dutybound to adhere to the statutorily prescribed caps on fines.

The City requests severance of the offending fines in order to preserve the validity of the Ordinance.<sup>3</sup> Observing the "legislative preference for the severability of voided clauses, although not binding, is highly persuasive," here, it is axiomatic the Code itself reflects both an express severability clause and fining provisions that automatically apply in the absence of a specified penalty. [State v. Champe, 373 So. 2d 874, 880 \(Fla. 1979\)](#); see also *Miami Beach, Fla., Code § 1-13* ("It is the intention of the city commission that **[\*\*9]** the sections, paragraphs, sentences, clauses and phrases of this Code are severable."); *Miami Beach, Fla., Code § 30-74(d)* ("A fine imposed pursuant to this section shall not exceed \$1,000.00 per day for a first violation and shall not exceed \$5,000.00 per day for a repeat violation. In addition, the special master may include all costs of repairs pursuant to *subsection 30-74 (c)*. However, if the special master finds the violation to be irreparable or irreversible in nature, he may impose a fine not to exceed \$15,000.00 per violation."); *Miami Beach, Fla., Code § 114-8* ("Any person, firm or corporation who shall violate or fail to comply with any of the provisions of these land development regulations or with any of the requirements thereof, or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder, shall be subject to enforcement procedures as set forth in the City Code. The special master may assess fines and impose liens as provided in *chapter 30* and [F.S. ch. 162](#)"). Thus, severance will neither impair "the operation or effectiveness" nor "the stated purpose or intent of the [O]rdinance," and we rebuff the view that the prohibition upon short-term rentals **[\*\*10]** must be invalidated in its entirety. [St. Johns Cty. v. Ne. Fla. Builders Ass'n, Inc., 583 So. 2d 635, 640 \(Fla. 1991\)](#); see [Small v. Sun Oil Co., 222 So. 2d 196, 199 \(Fla. 1969\)](#) ("If the . . . purpose expressed in the valid portions of the [Ordinance] can be **[\*318]** accomplished independently of the invalid provisions, and if, considering the [Ordinance] as a whole, it cannot be said that the [municipality] would not have passed the valid portion had it been known that the invalid portion would fall, then it is the duty of

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<sup>3</sup> The lower court invalidated the prohibition on short-term rentals in its entirety.

the court to give effect to so much of the statute as is good.") (citations omitted); [\*City of Temple Terrace v. Tozier\*, 903 So. 2d 970, 972 \(Fla. 2d DCA 2005\)](#) ("And, because the ordinance contains a severability clause that expressly provides for severance of any part of the ordinance declared invalid by a court of competent jurisdiction, the development agreement condition should be considered severed and the vacation should stand.").

Affirmed in part, reversed in part, and remanded for further proceedings.

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End of Document

# Codes Compliance Fine/Lien Structure

PSI Committee Meeting  
July 11, 2024





## Background

- Enforcement authority for Codes Compliance is delegated from the State in Chapter 162 of Florida State Statutes.
- Most of the delegated authority from Chapter 162 is mirrored in Chapter 9 of City Code.
- Chapter 162 contains provisions to allow for a higher fine/lien structure, but this has not been adopted into Chapter 9 of City Code.



# Current Process

- **Violation is observed**
  - Violation notice issued to owner of record and provides 23 days to correct the violation (20 days + 3 for mailing).
  - This timeframe takes into consideration that if compliance isn't achieved, it takes an additional 45-60 days to schedule a hearing before the Code Enforcement Board.
- **Code Enforcement Board Hearing**
  - Testimony provided by Codes staff and the property owner or their authorized representative.
  - Board determines whether a violation of City code exists.
  - If they determine a violation exists, an Order of the Board is entered, providing the owner with a timeframe to correct the violations (between 5 – 180 days) or a daily fine will start to accrue (between \$50 - \$250) for each day the property remains out of compliance after the extension.
  - Accrued daily fine could be certified as a lien against the property at a future Special Magistrate Hearing.
- **Special Magistrate Hearing**
  - Testimony provided by Codes staff and the property owner or their authorized representative.
  - May defer certification of the accrued fines as a lien against the property or certify any amount of the accrued fines as a lien against the property.





# Challenges

Department has experienced difficulties with promptly addressing some violations using the current enforcement mechanism.

- Several months can pass without fines/liens being placed against the property to encourage compliance.
- Penalties may not be high enough to proactively deter violations that produce income.

## Examples of Specific Violations:

- **Irreparable violations** – Tree removal without permits and Illicit Discharges
- **Unsafe Violations** - Significant life safety issues that would not be addressed through the condemnation process but require immediate attention.

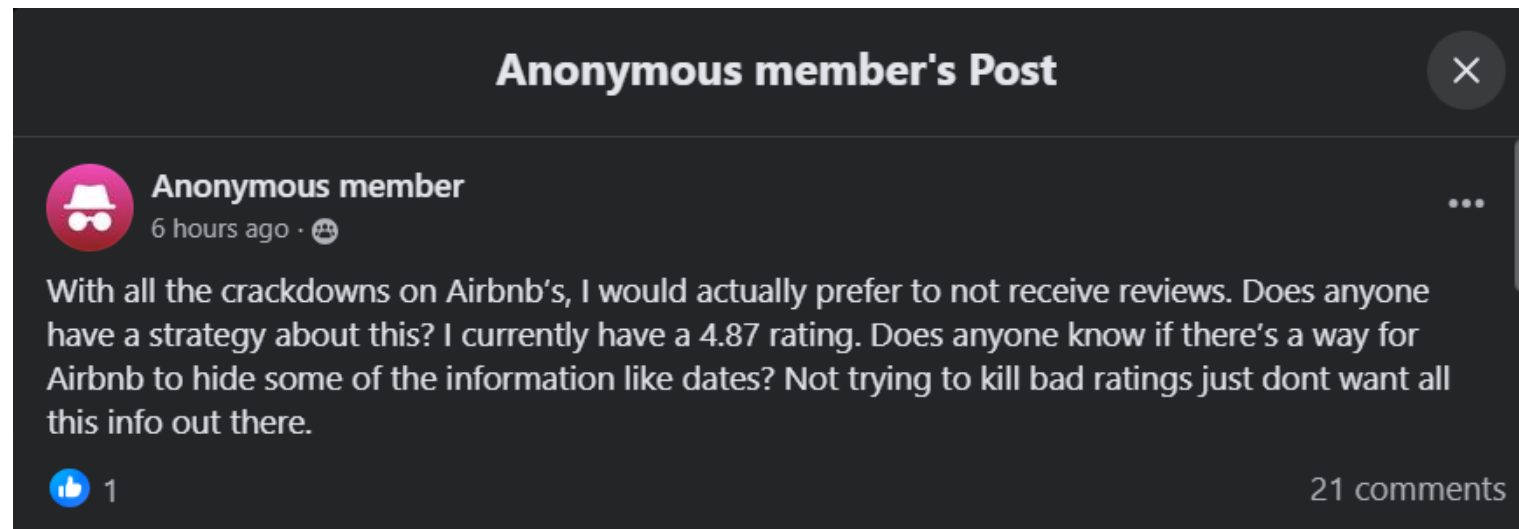






# Challenges

- **Short-Term Rentals**
  - Most owners attempt to conceal rather than comply.
  - Obtaining sufficient evidence can be difficult due to the ease in which advertisements can be altered and removed.
  - Nightly rental rates are often higher than the current daily fine amounts.
  - The current penalties can be viewed as a cost of doing business and are not sufficient to discourage bad actors.





# Six Bedroom Home in North Downtown!

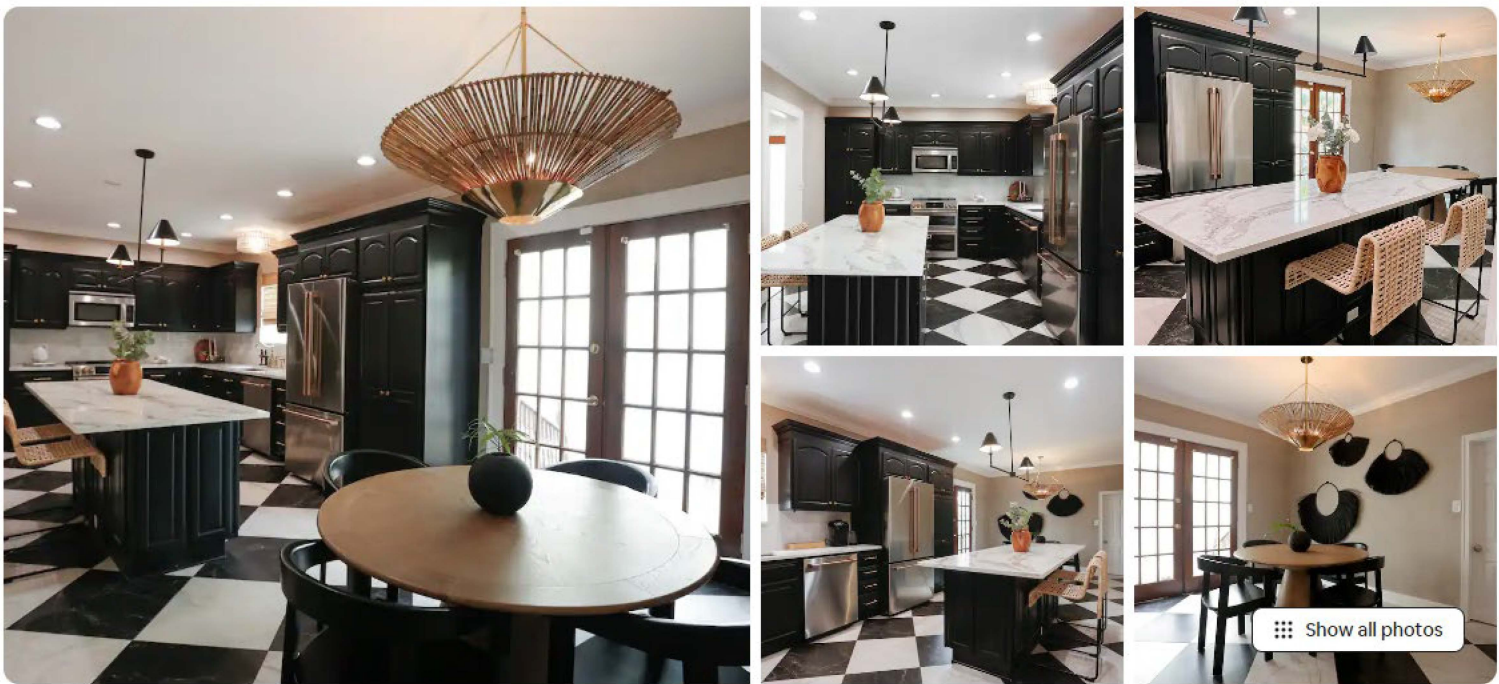
★ 5.0 · [12 reviews](#) · [St Petersburg, Florida, United States](#)

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# Six Bedroom Home in North Downtown!

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# Challenges

- **Excessive Outdoor Storage**
  - Significant amount of outdoor storage often results in the City obtaining injunctive relief to remove junk and debris from properties that have failed to comply with prior notice and are now causing neighborhood blight/public safety concern.
  - Courts require a high threshold to prove the City has used all available enforcement mechanisms to gain compliance prior to issuing the injunction.
  - Working through the current process to meet that threshold can take up to 12 months.





## Proposed Changes

- Adopt language from Florida State Statutes 162.09 3(d)

*A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in paragraph (a). Such fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs pursuant to subsection (1). Any ordinance imposing such fines shall include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines, including, but not limited to, those factors set forth in paragraph (b).*

- Proposed ordinance will cap the maximum fine amount for a single case at \$10,000 per hearing, despite allowance for higher fine amounts.



# Intent

- Provide the Department with a more effective method of addressing these specific violations and act as a deterrent for future violations.
- Draft an ordinance that is intentional about the use of this process to prevent any future unintended consequences.
  - Only specific violations will be included in the ordinance.
  - A set fee structure will be established based on the following recommendations:

Violation Type	Fee
Junk, Rubbish, Outdoor Storage	\$150 per day
Irreparable	\$200 per day
Short-Term Rental	\$200 per day
Life-Safety/Unsafe	\$250 per day

- Establish a separate hearing process for the new fine structure.
  - Fines would be imposed by the Code Enforcement Board rather than a singular Special Magistrate.
  - Property owners would still be eligible to apply for relief through the lien release process once violations were in compliance.



## Applicable Case Law

- **City of Miami Beach v. Nichols**
  - City of Miami Beach adopted the following fine structure for short-term rental violations:
    - \$20,000 for first offense
    - \$40,000 for the second
    - \$60,000 for the third
    - \$80,000 for the fourth
    - \$100,000 for the fifth and each subsequent offense.
  - Third District Court of Appeal held that the City was preempted by Florida Law from imposing its own fines for violations of short-term rental restrictions since the fine structure exceeded those established by Chapter 162.
  - As a result, their short-term rental ordinance was amended to align fine structure with provisions outlined in Chapter 162.



## Request

- Provide feedback on proposed changes.
- Refer proposal to Council or future Committee Meeting if necessary.

# THANK YOU

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**Codes Compliance Assistance Department**

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[www.stpete.org/codes](http://www.stpete.org/codes)