

DIVISION 3. CODE ENFORCEMENT BOARD*

***State law references:** Local Government Code Enforcement Boards Act, F.S. § 162.01 et seq.

Sec. 2-176. Definitions.

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

Code inspectors means those authorized agents or employees of the city whose duty it is to ensure code compliance with the technical codes which are subject to this division.

Code magistrate means a person authorized to hold hearings and assess fines against violators of city codes.

Enforcement board means the city code enforcement board created pursuant to F.S. ch. 162, pt. I (F.S. § 162.01 et seq.).

(Code 1984, § 2-102; Ord. No. 81-O-1845, § 1(10), 4-28-1981; Ord. No. 88-O-0119, § 1, 1-11-1989; Ord. No. 97-O-0014, § 1, 3-26-1997)

Cross references: Definitions generally, § 1-2.

Sec. 2-177. Creation and membership.

(a) There is hereby created a city code enforcement board which shall be composed of seven members, all of whom shall be residents of the city.

(b) There are hereby created code magistrates who shall have the power to prepare and enter orders on behalf of the board. The city manager shall appoint the code magistrates who will serve a three-year term, subject to the city commission's ratification. Code magistrates may be reappointed for successive terms upon the concurrence of the city commission. The city manager shall have the authority to remove a code magistrate with cause after notice. A member of the code enforcement board may serve as an ex officio alternate code magistrate.

(Code 1984, § 2-103; Ord. No. 81-O-1845, § 1(2), 4-28-1981; Ord. No. 82-O-2037, § 1(2-72), 10-26-1982; Ord. No. 89-O-0107AA, 2-14-1990; Ord. No. 97-O-0014, § 2, 3-26-1997; Ord. No. 01-O-35, § 1, 6-27-2001; Ord. No. 05-O-90, § 1, 11-22-2005)

State law references: Authority to create code enforcement board and provide for special masters, F.S. § 162.03; code enforcement board size, F.S. § 162.05(1).

Sec. 2-178. Function; appointment and term of office.

(a) The city code enforcement board and code magistrate shall have the purpose of conducting hearings relating to the enforcement of all ordinances over which the environmental code enforcement board does not have jurisdiction.

(b) Appointment to the code enforcement board shall be made by the city commission, and the membership of the enforcement board shall consist of, whenever possible, an architect, a business person, an engineer, a general contractor, a subcontractor and a realtor.

- (c) The initial terms of members of the code enforcement board shall be as follows:
- (1) Two members shall be appointed for a term of one year;
 - (2) Three members shall be appointed for a term of two years; and
 - (3) Two members shall be appointed for a term of three years.

Thereafter, appointments shall be for a term of three years. Members of the code enforcement board may be reappointed for one successive term upon the concurrence of the city commission. Appointment to fill any vacancy on the code enforcement board shall be for the remainder of the unexpired term of the member.

(d) Any member of the code enforcement board who fails to attend two out of three successive meetings without cause and without prior approval of the chairman of the board shall automatically forfeit such appointment and the city commission shall promptly fill such vacancy. Members of the code enforcement board may also be removed for cause after notice.

(Code 1984, § 2-104; Ord. No. 81-O-1845, § 1(3), 4-28-1981; Ord. No. 82-O-2037, § 2(2-74), 10-26-1982; Ord. No. 85-O-2426, § 1, 2-27-1985; Ord. No. 88-O-0119, § 2, 1-11-1989; Ord. No. 97-O-0014, § 3, 3-26-1997)

State law references: Code enforcement board appointments and membership, F.S. § 162.05.

Sec. 2-179. Organization and expenses.

(a) At the first meeting of the code enforcement board in each year, the members shall elect one of the members to be chairman. The person so elected shall function as chairman for a one-year term.

(b) Four or more members of the code enforcement board present at any meeting shall constitute a quorum in order for the board to conduct its business. Members of the code enforcement board and code magistrate shall serve without compensation.

(Code 1984, § 2-105; Ord. No. 81-O-1845, § 1(4), 4-28-1981; Ord. No. 97-O-0014, § 4, 3-26-1997)

State law references: Similar provisions, F.S. § 162.05(4).

Sec. 2-180. Enforcement procedure.

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

(b) Except as provided in subsection (c) of this section, 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 the code 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 section 2-186 to such violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in section 2-186. 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.

(c) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall 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 section 2-186. 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 rights to this hearing and pay such costs as determined by the code enforcement board.

(Code 1984, § 2-106; Ord. No. 81-O-1845, § 1(5), 4-28-1981; Ord. No. 89-O-0107AA, § 1, 2-14-1990; Ord. No. 01-O-35, § 2, 6-27-2001)

State law references: Similar provisions, F.S. § 162.06.

Sec. 2-181. Hearing procedure.

(a) Upon request of the code inspector, or at such other times as may be necessary, the chairman of the code enforcement board may call enforcement board hearings, such hearings may also be called by a written notice by three members of the code enforcement board. The code enforcement board and code magistrate may at any hearing set a future hearing date.

(b) The code enforcement board shall convene at least once every two months, but may convene more often as the case demand dictates. The code magistrate shall convene at least monthly, but may convene more often as the case demand dictates.

(c) Minutes shall be kept of all hearings held by the enforcement board and code magistrate and all such hearings shall be open to the public.

(d) The city manager shall provide clerical and administrative personnel as may be required to assist the board and code magistrate in the proper performance of its duties.

(e) Each case before the enforcement board or code magistrate shall be presented by a member of the city administrative staff or the city attorney's staff.

(f) The city may provide counsel to the code enforcement board or code magistrate, but in no case shall the city attorney's staff present a case and represent the code enforcement board in the same case.

State law references: Similar provisions, F.S. § 162.06(5).

(g) Cases on the agenda for a particular day shall be heard. All testimony shall be under oath and shall be recorded. The code enforcement board or code magistrate shall take testimony from the code inspector, the violator and any other person familiar with the case or having knowledge about the case. The code enforcement board and code magistrate shall not be bound by formal rules of evidence; however, it shall act to ensure fundamental due process in each of its hearing cases.

(h) 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 in this division. The finding shall be by motion approved by a majority of those members present and voting, except that at least four members of the code 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 subsection 2-183(a), the cost of repairs may be included along with the fine if the order is not complied with by such 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.

(Code 1984, § 2-107; Ord. No. 81-O-1845, § 1(6), 4-28-1981; Ord. No. 82-O-2037, § 3(2-77), 10-26-1982; Ord. No. 89-O-0107AA, § 1, 2-14-1990; Ord. No. 97-O-0014, § 5, 3-26-1997)

State law references: Similar provisions, F.S. § 162.07.

Sec. 2-182. Powers of the code enforcement board and code magistrate.

The code enforcement board and code magistrate shall have the power to:

- (1) Adopt rules for the conduct of the hearings it holds pursuant to section 2-181.
- (2) Subpoena alleged violators and witnesses to its hearings. Such subpoenas may be served by the city's police department.
- (3) Subpoena evidence.
- (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 technical code that has been violated.

(Code 1984, § 2-108; Ord. No. 81-O-1845, § 1(7), 4-28-1981; Ord. No. 97-O-0014, § 6, 3-26-1997)

State law references: Similar provisions, F.S. § 162.08.

Sec. 2-183. Administrative fines; costs of repair; liens.

(a) The code enforcement board or code magistrate, upon notification by the code inspector that an order of the enforcement board or magistrate 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 section 2-180, the enforcement board or code magistrate shall notify the city commission, 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. If a finding of a violation or a repeat violation has been made, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, the code enforcement board or code magistrate finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in subsection (b) of this section.

(b) A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (a) of this section. However, if the code enforcement board or code magistrate finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.

(c) In determining the amount of the fine, if any, the enforcement board or code magistrate 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.

(d) The code enforcement board may reduce a fine imposed pursuant to this section.

(e) A certified copy of an order imposing a fine 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 may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, 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 to foreclose on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city commission, and the city commission may execute a satisfaction or release of lien entered pursuant to this section. After three months from the filing of any such lien which remains unpaid, the code enforcement board or code magistrate may authorize the city attorney to foreclose on the lien. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under Fla. Const. art. X, § 4.

(Code 1984, § 2-109; Ord. No. 81-O-1845, § 1(8), 4-28-1981; Ord. No. 82-O-2037, § 4(2-78), 10-26-1982; Ord. No. 89-O-0107AA, § 3, 2-14-1989; Ord. No. 97-O-0014, § 7, 3-26-1997; Ord. No. 01-O-35, § 3, 6-27-2001)

State law references: Similar provisions, F.S. § 162.09.

Sec. 2-184. Duration of lien.

No lien provided under this division 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 to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The city commission 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.

(Code 1984, § 2-109; Ord. No. 81-O-1845, § 1(8), 4-28-1981; Ord. No. 82-O-2037, § 4(2-78), 10-26-1982; Ord. No. 89-O-0107AA, § 3, 2-14-1989; Ord. No. 97-O-0014, § 7, 3-26-1997)

State law references: Similar provisions, F.S. § 165.10.

Sec. 2-185. Appeals.

An aggrieved party, including the city, may appeal a final administrative order of the enforcement board or code magistrate 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 code enforcement board or code magistrate. An appeal shall be filed within 30 days of the entry of the order to be appealed.

(Code 1984, § 2-111; Ord. No. 82-O-2037, § 4(2-1981), 10-26-1982; Ord. No. 97-O-0014, § 8, 3-26-1997)

State law references: Similar provisions, F.S. § 162.11.

Sec. 2-186. Notices.

(a) All notices required by this division shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the code inspector or police department or by 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.

(b) In addition to providing notice as set forth in subsection (a) of this section, at the option of the code enforcement board or code magistrate, notice may also be served by publication or posting, as follows:

(1) 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. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements.

(2) Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

(c) In lieu of publication as described in subsection (b)(1) of this section, such notice may be posted for at least ten days in at least two locations, one of which shall be the property upon which the violation

is alleged to exist and the other of which shall be at city hall.

(d) 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.

(e) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a) of this section. 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 or posting as provided in subsection (b) of this section, 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.

(Code 1984, § 2-110; Ord. No. 81-0-1845, § 1(9), 4-28-1981; Ord. No. 89-O-0107AA, § 4, 2-14-1989)

State law references: Similar provisions, F.S. § 162.12.

Secs. 2-187--2-190. Reserved.