



CODE ENFORCEMENT BOARD HEARING AGENDA

MONDAY
JANUARY 22, 2024 - 9:30 AM

TOWN COUNCIL CHAMBERS
4300 S. ATLANTIC AVE., PONCE INLET, FL

SUNSHINE LAW NOTICE FOR BOARD MEMBERS – Notice is hereby provided that one or more members of the Town Council or other Town Boards may attend and speak at this meeting.

A complete copy of the materials for this agenda is available at Town Hall.

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. ROLL CALL & DETERMINATION OF QUORUM.
 - A. Oaths of Office – Administered by Attorney Cino
 - B. Election of Chairperson
 - C. Election of Vice-Chairperson
4. ADOPTION OF AGENDA.
5. DISCLOSURE OF EX-PARTE COMMUNICATION. *Code Enforcement cases are quasi-judicial and receipt of any information or discussion of any case outside of the public hearing is strongly discouraged. If a board member obtains any information or discusses any case outside the public hearing process, this information must be disclosed in detail by the board member prior to the presentation of the case and may not be considered by the board member when making any decision related to the case.*
6. ADMINISTERING THE OATH TO WITNESSES: Attorney Cino
7. APPROVAL OF THE MINUTES:
 - A. October 23, 2023
8. OLD BUSINESS:
9. NEW BUSINESS:
 - A. Case # 2023-671: Property Address: 4740 South Atlantic Avenue #5
Owner(s): Jamie & Maria Miller
Alleged Violation(s): Work requiring permits
 - B. Case # 2023-698: Property Address: 52 Bay Harbour Drive
Owner(s) Michael & Susan Dancsecs
Alleged Violation(s): Tree removal without permits

- C. Case # 2023-731: Property Address: 4717 South Atlantic Avenue
Owner(s): Raz Real II
c/o Benjamin & Anna Raslavich, owners
Alleged Violation(s): Work requiring permits
- D. Case # 2023-758: Property Address: 125 Ponce DeLeon Circle
Owner(s): Albert & Cyndee Jarrell
Alleged Violation(s): Unsafe Structure
- E. FORECLOSURE PROCEEDINGS
 - 1. Case # 2018-148: Property Address: 42 Jana Drive
Owner(s): Frank Kohlweiss
 - 2. Case # 2021-217: Property Address: 48 Inlet Harbor Road
Owner(s): Southern Bell Tel & Tel Company
 - 3. Case # 2022-433: Property Address: 5 Marsh Court
Owner(s): Richard Lecht
 - 4. Case # 2022-684: Property Address: 4620 Riverwalk Village Court # 7302
Owner(s): Cynthia House & Rhonda Witwer
 - 5. Case # 2022-758: Property Address: 4505 South Atlantic Avenue # 703
Owner(s): Doris & Jerry Clark
- F. Board member Annual Training: Sunshine Law, Public Records, Quasi-Judicial Procedures, and Ethics - Attorney Cino

10. ATTORNEY DISCUSSION.

11. BOARD/STAFF DISCUSSION.

- A. Rental Property Discussion – Ms. Richards
- B. Code Enforcement Activity for year ending 2023

12. ADJOURNMENT.

Next hearing date: Monday, February 26, 2024

If a person decides to appeal any decision made by the Code Enforcement Board with respect to any matter considered at a hearing, he/she will need a record of the proceedings and that for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons who require accommodation to attend this hearing should contact the Clerk's office at 386-236-2150 by 4:00 pm at least 48 hours in advance of the meeting to request such assistance.



Meeting Date: 01/22/2024

Agenda Item: 3-A

Report to Code Enforcement Board

Topic: Oaths of Office

Summary:

At the Council's December 18, 2023 meeting, the following members were reappointed to the Code Enforcement Board. Attorney Smith will administer the Oath to:

1. Peter Finch, Seat #3
2. Rick Fuess, Alternate #1

Suggested motion: N/A

Requested by:

Ms. Stewart, Assistant Deputy Clerk
Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



Meeting Date: January 22, 2024

Agenda Item: 3-B & C

Report to Code Enforcement Board

Topic: Election of Chair and Vice-Chair to each serve a one-year term.

Summary: Boardmembers will be asked to nominate a Chair, obtain a second, acceptance by nominee, and vote; and

Boardmembers will be asked to nominate a Vice-Chair, obtain a second, acceptance by nominee, and vote.

Suggested motion: *The motion may be made in separate motions or include both positions included in one motion as follows:*

I move to nominate _____ to serve as Chair; obtains a second, nominee accepts, and the vote is taken.

OR

I move to nominate _____ to serve as Chair and _____ to serve as Vice-Chair; obtains a second, nominees accept, and the vote is taken.

Requested by:

Ms. Stewart, Assistant Deputy Clerk

Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



Meeting Date: January 22, 2024

Agenda Item: 7-A

Report to Code Enforcement Board

Topic: October 23, 2023 Hearing Minutes

Summary:

Staff has prepared the attached set of hearing minutes for the Board's review and approval.

Suggested motion:

To approve the attached set of hearing minutes As Presented -
OR - As Amended

Requested by:

Ms. Stewart, Assistant Deputy Clerk

Approved by:

Mr. Disher, Town Manager



**Town of Ponce Inlet
Code Enforcement Board
Meeting Minutes
October 23, 2023**

1
2
3
4
5
6 **1. CALL TO ORDER:** The meeting was called to order at 9:30 a.m. in the Council
7 Chambers, 4300 S. Atlantic Avenue, Ponce Inlet, Florida.

8
9 **2. PLEDGE OF ALLEGIANCE:** Led by Chair Finch.

10
11 **3. ROLL CALL & DETERMINATION OF QUORUM:**

12 **Board Members Present:**

13 Ms. Richards, Seat #1

14 Mr. Van Valkenburgh, Seat #2

15 Mr. Finch, Seat #3

16 Mr. Michel, Seat #4

17 Ms. Cannon, Seat #5

18 Mr. Fuess, Alternate Seat #1

19 Mr. Young, Alternate Seat #2

20
21 A quorum was established with five regular and two alternate members present.

22
23 **Staff Members Present:**

24 Attorney Cino, Code Board Attorney

25 Mr. Disher, Town Manager

26 Mr. Hooker, Code Compliance Manager

27 Ms. Hunt, Deputy Clerk

28 Mr. Mincey, Rental & Housing Inspector (Code Division)

29 Attorney Smith, Town Attorney

30
31 **4. ADOPTION OF THE AGENDA:** Vice-Chair Cannon moved to adopt the agenda as
32 presented; seconded by Ms. Richards. The motion PASSED 5-0, consensus.

33
34 **5. DISCLOSURE OF EX-PARTE COMMUNICATION:** None disclosed.

35
36 **6. ADMINISTERING THE OATH TO WITNESSES:** Attorney Cino administered the
37 *Oath* to the witnesses who intended to provide testimony.

38
39 **7. APPROVAL OF THE MINUTES:**

40
41 **A. September 25, 2023** – Chair Finch asked if there were any changes; there were
42 none.

43
44 Vice-Chair Cannon moved to adopt the minutes as presented; seconded by Chair Finch. The
45 motion PASSED 5-0, consensus.

48 **8. OLD BUSINESS:**

49

- 50 **A. Case # 2023-601; Property Address: 76 Aurora Avenue**
51 **Owner(s): New Jersey Holding, LLC; Laszlo Szollas, Agent**
52 **Violation(s): High Grass**

53

54 Mr. Mincey reviewed the case history, noting that the case was presented to this board on
55 September 25, 2023, which found the owners in violation of the cited sections of code. They were
56 granted 14 days or until October 9, 2023 to correct the violations and were assessed the \$250
57 administrative fee. Staff has contacted the owners following last month's hearing who relayed that
58 the grass would be mowed prior to the deadline. The most recent inspection on October 21, 2023
59 indicated the grass had been mowed; all weeds and vines were removed and the property is now
60 considered to be in compliance. Staff is requesting to reiterate the \$250 administrative fee;
61 considering that the property was brought into compliance 11 days after the October 9, 2023
62 deadline, staff also requests a one-time \$100 fine.

63

64 Chair Finch asked if there was anyone present to speak on this case; there was not.

65

66 Mr. Van Valkenburgh moved to reiterate the \$250 administrative fee, reduce the fine to zero, and
67 find the property in compliance; seconded by Mr. Michel. The motion FAILED 2-3, with the
68 following vote: Mr. Van Valkenburgh - yes; Mr. Michel - yes; Ms. Richards - no; Chair Finch -
69 no; Vice-Chair Cannon - no.

70

71 Chair Finch moved to find the property in compliance, reiterate the \$250 administrative fee,
72 impose a one-time \$100 fine, and dismiss the case; seconded by Ms. Richards. The motion
73 PASSED 3-2, with the following vote: Chair Finch - yes; Ms. Richards - yes; Vice-Chair Cannon
74 - yes; Mr. Michel - no; Mr. Van Valkenburgh - no.

75

76 **9. NEW BUSINESS:**

77

- 78 **A. Case # 2023-635; Property Address: 86 Inlet Harbor Road**
79 **Owner(s): Roger & Karen Marshall**
80 **Alleged Violation(s): Parking and Storage of Recreational Vehicle**

81

82 Mr. Mincey provided testimony and photographic evidence that the property is in violation of the
83 cited sections of code with a boat parked in the driveway. Staff recommends the owner be granted
84 14 days or until November 7, 2023, to bring the property into compliance or be brought back at
85 the next scheduled hearing for further adjudication; and to impose the \$250 administrative fee.

86

87 Chair Finch asked if there was anyone present to testify on this case; there was not.

88

89 Vice Chair Cannon moved to find the property in non-compliance; granted 14 days or until
90 November 7, 2023 to bring the property into compliance or be brought back at the next hearing
91 for further adjudication; and assessed the \$250 administrative fee; seconded by Ms. Richards. The
92 motion PASSED 5-0, with the following vote: Vice Chair Cannon - yes; Ms. Richards - yes; Mr.
93 Van Valkenburgh - yes; Chair Finch - yes; Mr. Michel - yes.

94

95

96

- 97 **B. Case #2023-640; Property Address: 45 Tina Maria Circle**
98 **Owner(s): Indira Alvarez & Raul Landete**
99 **Alleged Violation(s): Inoperable Vehicle**

100
101 Withdrawn by staff.

- 102
103 **C. Case #2023-682; Property Address: 4835 South Peninsula Drive**
104 **Owner(s): Robert & Dordina Stone**
105 **Alleged Violation(s): Work Without Permits**

106
107 Withdrawn by staff.

108
109 **10. ATTORNEY DISCUSSION:** None.

110
111 **11. BOARD/STAFF DISCUSSION:**

112 **A. Next meeting date – Monday, November 27, 2023. The Board agreed to leave**
113 **the November 27th hearing date as scheduled.**

114
115
116 Mr. Hooker updated the Board on the status of staff’s request to begin foreclosure proceedings on
117 non-homesteaded properties, noting that Council directed staff to proceed with the foreclosure
118 process. He explained the process, which members discussed in detail. Cases would come before
119 this board for a recommendation to the Council.

120
121 Chair Finch provided an update on Case #2023-101 and the request for lien reduction or abatement
122 in the amount of \$115,000; the Council decided to not abate or reduce the lien.

123
124 **12. ADJOURNMENT:** The hearing was adjourned at 9:59 a.m.

125
126 Respectfully submitted by,

127
128 _____
129 Debbie Stewart, FCRM
130 Assistant Deputy Clerk



Meeting Date: January 22, 2024

Agenda Item: 9-A

Report to Code Enforcement Board

Topic: Case #2023-671
Owner(s): Jamie & Maria Miller
Property Address: 4740 South Atlantic Avenue #5
Alleged Violation(s): Work requiring permits

Summary: Staff will provide testimony and evidence regarding this case. The Board will be asked to make a decision based on that evidence and testimony.

Suggested motion: To be determined by the Board after testimony and evidence has been provided on the case.

Requested by:

Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Code Enforcement Board
THROUGH: Drew Smith, Town Attorney
FROM: David Hooker, Code Compliance Manager
DATE: January 10, 2024
DATE OF MEETING: January 22, 2024

Case Number: 2023-671
Address: 4740 South Atlantic Avenue # 5

Alleged Violation:
Work performed requiring permits

Florida Building Code
Section 105.1 – Required

Brief History:

On September 27, 2023, our staff reached out to the property owner of 4740 South Atlantic Avenue #5 to confirm whether a sliding door changeout had taken place, as the contractor had withdrawn their permit.

During the conversation with the property owner, Mr. Miller, it was revealed that the original contractor's delays prompted him to engage an alternative contractor for the door installation, without obtaining the required permits.

Mr. Miller guided our staff to the upstairs bedroom, where the newly installed door was documented. It was then communicated to Mr. Miller that he should obtain the necessary permits for the door installation, necessitating the involvement of a licensed contractor. Furthermore, he was informed about the requirement for an inspection to ensure proper installation.

As of the date of this memorandum, no permit application has been received. We appreciate your prompt attention to this matter to ensure compliance with the necessary regulations.

Recommendation:

The property to be found in non-compliance and assess fine in accordance with Florida statutes Chapter 162.09.



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 267-6676

Case Number: **CODE2023-000671**

Case Type: **Code Enforcement**

Date Case Established: **09/27/2023**

Compliance Deadline: **12/15/2023**

Violation Notice

Owner: Javier & Maria Miller

Mailing Address

3898 Golden Meadow Ct
Oviedo, Florida 32765

Notice of Violation for the following location:

Address

4740 S ATLANTIC AVE #5
PONCE INLET, FL 32127

Parcel

641920000050

This violation letter is to inform you that staff has observed a violation at that the property, in which according to Volusia County Property Appraiser's Office, this property is owned by you, located in Ponce Inlet, Florida.

The violation and how to correct is:

Unpermitted installation of glass sliding door.

How to correct:

Obtain the necessary permit from the Town of Ponce Inlet. Following the issuance of the permit an inspection of the installed door must occur.

Florida Building Code

Section 105.1 - Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.



Town of Ponce Inlet
4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 267-6676

Case Number: **CODE2023-000671**

Case Type: **Code Enforcement**

Date Case Established: **09/27/2023**

Compliance Deadline: **12/15/2023**

Violation Notice

Compliance Date: 12/15/2023

if you are unable to meet the required compliance date, this case will be referred to the Town's Code Enforcement Board for a hearing scheduled for January 22, 2024, at 9:30 A.M., located at 4300 South Atlantic Avenue, Ponce Inlet, Florida 32127.

If you are found to be in violation of the cited sections of Town Code, a daily fine of up to \$250 per day may be imposed. Furthermore, an administrative fee of \$250 shall also be imposed.

Both these charges will be recorded into the public records of Volusia County and will constitute a lien of your property, as well as any other property that you own in the state of Florida in accordance with Florida Statutes 162.09(3).

If you have any questions related to this matter, please feel free to contact my office.

Kind Regards,

Travis Mincey
Rental Housing Inspector

Certified Mail:

9589-0710-5270-0449-0252-65- 3898 Golden Meadow Ct Oviedo, FL 32765

9589-0710-5270-0449-0252-72- 4740 S Atlantic Ave #5 Ponce Inlet, FL 32127



Meeting Date: January 22, 2024

Agenda Item: 9-B

Report to Code Enforcement Board

Topic: Case #2023-698
Owner(s): Michael & Susan Dancsecs
Property Address: 52 Bay Harbour Drive
Alleged Violation(s): Tree removal without permits

Summary: Staff will provide testimony and evidence regarding the following case. The Board will be asked to make a decision based on that evidence and testimony.

Suggested motion: To be determined by the Board after testimony and evidence has been provided on the case.

Requested by:

Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



MEMORANDUM
TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Code Enforcement Board
THROUGH: Drew Smith, Town Attorney
FROM: David Hooker, Code Compliance Manager
DATE: January 10, 2024
DATE OF MEETING: January 22, 2024

Case Number: 2023-698
Address: 52 Bay Harbour Drive

Alleged Violation:
Tree removal without permits

Land Development Code
Section 4.10.4 – Tree / vegetation Protection and Removal

Brief History:
In 2022 the Florida Legislators updated a provision of law (FS 163.045) involving tree pruning, trimming, or removal on residential properties.

Government entities may not require applications, approval, permit, fee, or mitigation form pruning, trimming, or removal of a tree on a residential property if the property owner possesses documentation from an arborist certified by the ISA or a Florida licensed landscape architect that a tree poses an **“unacceptable risk”** to persons or property.

The ISA tree risk assessment methodology categorizes “risk” into four (4) separate categories’ (low, moderate, high and extreme)

A tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate, as determined by the tree risk assessment procedures outlined in best management practices.

In August 2023, the Town received an arborist report provided by an Arborist Mr. Don Spence. In the report it indicated two separate trees, and 18 inch and 23-inch Laurel Oak (*Quercus Laurifolia*).

In this report a few options were given to mitigate to lower the risk from these trees. One of the options was to prune the canopy to reduce the length of the branches by 30%. With this treatment, the risk rating would become LOW, meaning removal was not required.

In the second report from Ray Jarrett, ISA Certified Arborist, on October 7, 2023, also indicated that pruning to reduce the length of lateral branches by 30% could reduce the risk from Moderate to low.

Complete removal would require a permit for removal plus any other mitigation measures that may come with the removal. Removal under these circumstances would not qualify for a permit exemption under state law.

In October, it was noticed by staff that these trees were being removed and contact was made with the tree service and owner. It was advised that a permit was needed for removal. The owner provided the required arborist reports indicating the conditions of the trees.

However, both reports indicated that trimming of the trees would make the risk LOW, meaning that the removal of the trees wasn't necessary, rather a choice of the homeowner.

Furthermore, given the size, the 23-inch tree would have had to be taken to the Cultural Services Board for a decision on removal as well per adopted Town Code.

Recommendation:

The property to be found in non-compliance and assess fine in accordance with Florida statutes Chapter 162.09.



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 267-6676

Case Number: **CODE2023-000698**

Case Type: **Code Enforcement**

Date Case Established: **10/06/2023**

Compliance Deadline: **01/06/2024**

Violation Notice

Property Owner: Michael & Susan Dancsecs

Notice of Violation for the following location:

Address

52 BAY HARBOUR DR
PONCE INLET, FL 32127

Parcel

643011000190

Michael & Susan Dancsecs:

An inspection of the property at the above address has revealed that you have committed violations of the Land Use and Development Code, Section 4.10.4, 4.10.5 and 4.10.6.

Specifically, removal of (2) trees without a valid permit issued by the town of Ponce Inlet.

Please note, said statutes require an assessment to be performed in accordance with "best management practices- Tree Risk Assessment (2017)" performed and signed by an ISA certified arborist or licensed landscape architect. In order for trees to be removed without permits, the assessment must find and set forth that the trees to be removed present an "unacceptable risk to persons or property ". Merely finding that a tree could pose a threat to persons or property does not satisfy the statutory exemption from permitting. Upon review, the tree removal that was performed did not satisfy the requirements of Section 163.045 Florida statutes and was removed in violation of the Land Development Code of the town.

IRREPARABLE VIOLATION: Due to the nature of this violation, in accordance with section 162.09(2)(a)(1), Florida Statutes, the Town shall request the Code Enforcement Board find the violation related to the tree removal to be irreparable and shall request the Board impose fines in the amount of \$5,000 for any tree unlawfully removed.

You are hereby cited with the violations of the above stated Code Sections, which sections are enclosed herewith for your reference, as a result of the unpermitted tree removal without the required permit.

4.10.4 - Tree/vegetation Protection and Removal (A-1)

A. Permit applicability and exemptions.

1. *Permit required for tree/vegetation removal.* Except as provided below, a permit is required to clear land, alter the existing grade, or otherwise remove any protected tree or vegetation (as



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 267-6676

Case Number: **CODE2023-000698**

Case Type: **Code Enforcement**

Date Case Established: **10/06/2023**

Compliance Deadline: **01/06/2024**

Violation Notice

defined in article 9) on any property within the town.

- a. A tree/vegetation removal permit is required for the removal of individual trees and/or the clearing of trees and vegetation, unless exempted below.
- b. Changes to the existing or natural grade require a grading permit.
- c. A separate tree/vegetation removal permit is not required for land clearing, grading, and/or removal of trees or vegetation in conjunction with any activity for which a development permit is required.
- d. Cutting or removal of trees and vegetation on public property must first be authorized by the town, pursuant to Code of Ordinances

4.10.4 - Tree/vegetation Protection and Removal (3)

3. Permit fee and tree replacement mitigation exemptions. The following activities require a tree removal permit but are exempt from permit fees in all cases, and from tree replacement mitigation provided the number of trees remaining on the property still meets the minimum requirement under section 4.10.3. Such exemptions are limited to the removal of trees that have the potential to cause imminent or future personal injury or significant damage to existing buildings and structures.

- a. Trees that are clearly and completely dead, as determined by the Town or professional arborist, including dead trees required to be removed pursuant to paragraph 4.10.3.G.
- b. Trees that are weakened by age, storm, fire, or disease and have the potential to fall on existing buildings and structures;
- c. Trees demonstrated to have already caused property damage and are likely to do so again if not removed; and
- d. Trees located within eight feet of an existing principal structure on single- and two-family lots. The property owner shall provide proof of the injury or damage, including photographs, repair receipts/estimates, or other acceptable documentation. When time is of the essence and immediate removal of the tree is necessary, the director may verbally authorize such removals, but shall issue the written permit within five working days.



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 267-6676

Case Number: **CODE2023-000698**

Case Type: **Code Enforcement**

Date Case Established: **10/06/2023**

Compliance Deadline: **01/06/2024**

Violation Notice

Land Development Code

4.10.5 – Procedures (B-1)

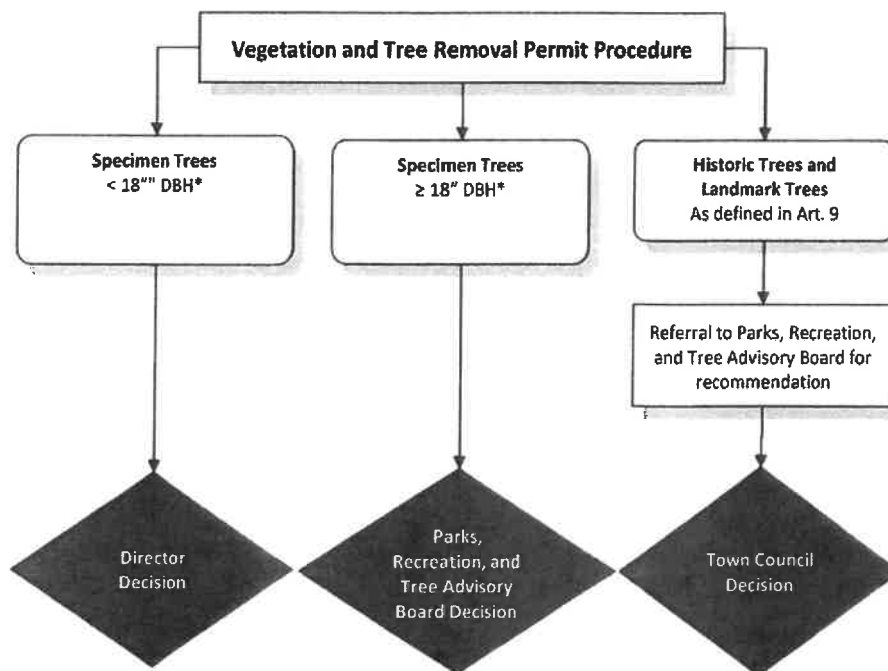
B. Vegetation and tree removal permitting.

1. *Permit application requirements.* Applications for vegetation/tree removal permits shall be submitted and reviewed in accordance with the standards in this section.

4.10.5 – Procedures (B-2) Historic and Specimen Tree Removal

Table 4-21 below establishes the review and decision-making authority for tree removal, including that of historic and specimen trees. Table 4-21 indicates whether the tree removal requires a referral to the parks, recreation, and tree advisory board (PRTAB) and/or town council. The "final decision maker" is agency or official with authority to approve, approve with conditions, or deny the proposed tree removal.

Figure 4.18 Vegetation and Tree Removal Permit Procedure



*DBH = Diameter at Breast Height



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 267-6676

Case Number: **CODE2023-000698**

Case Type: **Code Enforcement**

Date Case Established: **10/06/2023**

Compliance Deadline: **01/06/2024**

Violation Notice

Table 4-21 Procedures for Historic or Specimen Trees

Tree Type/Size	Referral to PRTAB?	Final Decision-maker
Specimen trees < 18" DBH	No	Director
Any specimen tree ≥18" DBH	Yes	PRTAB
Historic trees and Landmark trees	Yes	Town Council

b. The removal of historic and specimen trees is subject to all provisions of this section, and the following procedures:

(1) Applications for the removal of historic and specimen trees ≥ 18 inches DBH are referred to the parks, recreation and tree advisory board. This board shall consider the application at its next scheduled meeting. If no meeting is scheduled or held within 31 days from submission of a substantially complete application, no referral is required. Applications submitted closer than two weeks prior to any scheduled parks, recreation and tree advisory board meeting shall be referred to the following scheduled meeting.

(2) Referral comments and review by a certified arborist or licensed landscape specialist may be obtained by the director at his/her discretion to determine the probable age, health, rarity, environmental value, and relative importance of preserving the specimen tree.

4.10.6 - Violations and appeals.

Right of redemption.

1. Upon notice of a violation, the property owner shall provide the necessary treatment and care to restore any damaged plants. The treatment plan and procedures must restore the plants to their normal growth and the original design intent within 90 days, or else the plants must be replaced.

a. Trees and vegetation removed without a permit shall be replaced pursuant to sections 4.10.3 and 4.10.4. However, tree replacement shall equal 100 percent of the total DBH of the tree(s) removed. For example, a ten-inch DBH tree unlawfully removed would need to be replaced with four 2.5-inch DBH trees or other combination adding up to ten inches. Replacement vegetation must equal the mass and volume of vegetation removed.



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 267-6676

Case Number: **CODE2023-000698**

Case Type: **Code Enforcement**

Date Case Established: **10/06/2023**

Compliance Deadline: **01/06/2024**

Violation Notice

b. Replacement landscaping and materials different from the original approved landscaping plans shall be approved by the town prior to installation.

2. *Code enforcement action.* Violations left uncorrected after 90 days are subject to code enforcement action and are punishable pursuant to LUDC article 8 and section 1-11 of the Code of Ordinances.

B. *Appeals.* Decisions of the parks, recreation and tree advisory board may be appealed to the town council. Appeals shall be in writing and submitted to the town within 15 days of the decision or action of the board. The town council will hear the appeal at its next available meeting.

Florida Statute 163.045 Tree pruning, trimming, or removal on residential property.—

(1) For purposes of this section, the term:

(a) “Documentation” means an onsite assessment performed in accordance with the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017) by an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect and signed by the certified arborist or licensed landscape architect.

(b) “Residential property” means a single-family, detached building located on a lot that is actively used for single-family residential purposes and that is either a conforming use or a legally recognized nonconforming use in accordance with the local jurisdiction’s applicable land development regulations.

(2). A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on a residential property if the property owner possesses documentation from an arborist certified by the ISA or a Florida licensed landscape architect that the tree poses an unacceptable risk to persons or property. A tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate, as determined by the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017).

(3). A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.

(4). This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333.



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 267-6676

Case Number: **CODE2023-000698**

Case Type: **Code Enforcement**

Date Case Established: **10/06/2023**

Compliance Deadline: **01/06/2024**

Violation Notice

Compliance Date: 01/06/2023

If you fail to cure the violations within the required deadline, or if the violations are cured and then recur, this case will be referred to the Town's Code Enforcement Board for a hearing. The next scheduled hearing for your case will be on January 22, 2024, at 9:30 A.M., located at 4300 South Atlantic Avenue, Ponce Inlet, Florida 32127.

If you have any questions related to this notice or intend to or have corrected the violation, please contact our office.

Kind Regards,

Travis Mincey
Rental Housing Inspector

Certified Mail:

9589-0710-5270-0449-0252-41 Homeowner
52 Bay Harbour Dr Ponce Inlet, FL 32127

9589-0710-5270-0449-0252-34 Atlantic Tree Services, LLC
Registered Agent: Cal Clay 14 Woodlands Blvd Ormond Beach, FL 32174

9589-0710-5270-0449-0252- 27 Atlantic Tree Services, LLC
PO BOX 730297 Ormond Beach, FL 32173



Meeting Date: January 22, 2024

Agenda Item: 9-C

Report to Code Enforcement Board

Topic: Case #2023-731
Owner(s): Raz Real II
c/o Benjamin & Anna Raslavich, Owners
Property Address: 4717 South Atlantic Avenue
Alleged Violation(s): Work requiring permits

Summary: Staff will provide testimony and evidence regarding the following case. The Board will be asked to make a decision based on that evidence and testimony.

Suggested motion: To be determined by the Board after testimony and evidence has been provided on the case.

Requested by:

Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



MEMORANDUM
TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Code Enforcement Board
THROUGH: Drew Smith, Town Attorney
FROM: David Hooker, Code Compliance Manager
DATE: January 10, 2024
DATE OF MEETING: January 22, 2024

Case Number: 2023-731
Address: 4717 South Atlantic Avenue

Alleged Violation:
Work performed requiring permits

Florida Building Code
Section 105.1 – Required

Brief History:

On October 24, 2023, the staff received information about an unauthorized walkway construction to the beach. Immediate contact was made with the workers, who subsequently reached out to the owner, Mr. Raslavich. Following a brief conversation with Mr. Raslavich, it was conveyed that proper permits were necessary for the ongoing project.

Mr. Raslavich contended that permits were unnecessary, asserting that the work involved was only repairs. I clarified that the new supports, stringers, and stairs constituted significant alterations, requiring permits from the Department of Environmental, County of Volusia, and the Town. In response, a STOP WORK ORDER was issued to Mr. Raslavich and the workers, halting any further progress on the project.

Despite this directive, a few days later, during routine inspections on the beach, staff observed the completion of the deck and the addition of handrails. Subsequently, a formal notice of violation/hearing was issued.

On December 5, 2023, a permit application was submitted and underwent review. However, on December 8, 2023, an email was dispatched to the contractor outlining additional requirements essential for permit issuance.

On January 8, 2024, the permit conditions had been signed by the owner and contractor as required, permit has paid and issued to the contractor.

Recommendation:

The property to be found in non-compliance and assess fine in accordance with Florida statutes Chapter 162.09.



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 293-0032

Case Number: **CODE2023-000731**

Case Type: **Code Enforcement**

Date Case Established: **10/24/2023**

Compliance Deadline: **12/10/2023**

Violation Notice

Owner: Raz Real II LLC
c/o Benjamin & Anna Raslavich, owners

Mailing Address

2110 West Platt Street
Tampa, Florida 33606-1759

Notice of Violation for the following location:

Address

4717 S ATLANTIC AVENUE
PONCE INLET, FL 32127

Parcel

6419-03-00-0280

This violation letter is to inform you that staff has observed a violation at that the property, in which according to the Volusia County Property Appraiser's Office is owned by you, located in Ponce Inlet.

The violation and how to correct are:

1 – construction of a dune / beach walkover without permits or required inspection approvals.

How to correct:

Item number 1 – obtain required permits and inspections as required through the required agencies.

As you are aware, on October 23, 2023, we spoke about the work being performed and staff advised you that permits were needed. A follow up email was also sent to you on following day, giving you contact information of individuals that you needed to for Volusia County.

A follow up phone conversation took place on November 8, 2023 for a status update, at which time you advised that you had obtained a survey of the property and were still working on drawing and engineering for the work that was performed.

At this time, you are hereby cited with the following adopted sections of technical code:

Florida Building Code

Section 105.1 – Required

Any owner or authorized or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

Compliance Date: 11/30/2023

If you are unable to meet the required compliance date, this case will be referred to the Town's Code Enforcement Board for a hearing scheduled for January 22, 2024, at 9:30 a.m. located at 4300 South Atlantic Avenue, Ponce Inlet, Florida.



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 293-0032

Case Number: **CODE2023-000731**

Case Type: **Code Enforcement**

Date Case Established: **10/24/2023**

Compliance Deadline: **12/10/2023**

Violation Notice

If you are found to be in violation of the cited sections of Town code, a daily fine of up to \$250 per day may be imposed. Furthermore, an administrative fee of \$250 shall also be imposed.

Both these charges will be recorded into the public records of Volusia County and constitute a lien of your property, as well as any other property that is owned by you in the state of Florida in accordance with Florida statutes 162.09(3).

If you should have any questions related to this matter, please do not hesitate to contact my office.

Kindest regards,

David Hooker, CEP
Code Compliance Manager

Certified Mail

9589-0710-5270-0449-0235-06 – 4717 South Atlantic Avenue – (RAZ REAL II, LLC)

9589-0710-5270-0449-0235-13 – 2110 West Platt Street – (RAZ REAL II, LLC)

9589-0710-5270-0449-0235-20 - 2110 West Platt Street – (Benjamin Raslavich)



Meeting Date: January 22, 2024

Agenda Item: 9-D

Report to Code Enforcement Board

Topic: Case #2023-758
Owner(s): Albert & Cyndee Jarrell
Property Address: 125 Ponce DeLeon Circle
Alleged Violation(s): Unsafe Structure

Summary: Staff will provide testimony and evidence regarding the following case. The Board will be asked to make a decision based on that evidence and testimony.

Suggested motion: To be determined by the Board after testimony and evidence has been provided on the case.

Requested by:

Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Code Enforcement Board
THROUGH: Drew Smith, Town Attorney
FROM: David Hooker, Code Compliance Manager
DATE: January 10, 2024
DATE OF MEETING: January 22, 2024

Case Number: 2023-758
Address: 125 Ponce DeLeon Circle

Alleged Violation:
Work performed requiring permits

Florida Building Code
Section 116.1 – Conditions

International Property Maintenance Code
Section 101.1 – General
Section 108.1.5 (3) & (7) - Dangerous Structures or Premises
Section 301.3 – Vacant structures and land
Section 302.7 – Accessory Structures

Brief History:
On March 31, 2022, a contractor submitted a permit application (285-2022) for the reconstruction of a seawall at the specified location. Upon commencement of the work, inspections revealed deviations from the approved plans, leading to the issuance of a STOP WORK ORDER.

Over the following weeks, the contractor collaborated with the staff to address the STOP WORK ORDER issue. On February 15, 2023, recognizing the impending expiration of the permit, the contractor formally requested an extension to prevent permit expiration.

During this period, the property owner decided to sell the property to Mr. & Mrs. Jarrell, the current owners, in April 2023. Seeking resolution, the Jarrell's consulted with the building official, who provided guidance on addressing the permitting challenges.

Unfortunately, the permit expired during the resolution process, and consequently, no further work transpired. Thus, a notice of violation/hearing was issued, citing the structure as unsafe.

Since receiving the certified letter, the Jarrell's have engaged in communication with the building department once again to actively resolve the outstanding issues. As of the date of this memorandum, there is no active permit for the seawall, and the structure remains in an unsafe condition. Efforts are ongoing to rectify the situation and secure the necessary approvals.

Recommendation:

The property to be found in non-compliance and assess fine in accordance with Florida statutes Chapter 162.09.



Town of Ponce Inlet
4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 293-0032

Case Number: **CODE2023-000758**

Case Type: **Code Enforcement**

Date Case Established: **11/14/2023**

Compliance Deadline: **11/25/2023**

Violation Notice

Owner: Albert & Cyndee Jarrell

Mailing Address

3915 South Atlantic Avenue
Wilbur by the sea, Florida 32127

Notice of Violation for the following location:

Address

125 PONCE DE LEON CIR
PONCE INLET, FL 32127

Parcel

6430-01-00-0030

This violation letter is to inform you that a violation was observed at the property in which according to the Volusia County Property Appraiser's Office, the property is owned by you located in Ponce Inlet.

The violation and how to correct are:

1 – unsafe structure (seawall)

How to correct:

Item number 1 – secure permit from a licenses marine contractor to finish the installation of the seawall.

You are hereby cited with the following sections of adopted Town codes:

Florida Building Code

Section 116.1 – Conditions

Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or that constitutes a fire hazard, or are dangerous to human life or the public welfare, or that may involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

International Property Maintenance Code

Section 108.1 – General

When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

International Property Maintenance Code

Section 108.1.5 (3) & (7) – Dangerous Structure or premises

For the purpose of this code, and structure or premises that has any or all of the conditions or defects described as follows shall be considered to be dangerous.



Town of Ponce Inlet
4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 293-0032

Case Number: **CODE2023-000758**

Case Type: **Code Enforcement**

Date Case Established: **11/14/2023**

Compliance Deadline: **11/25/2023**

Violation Notice

(3) Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged.

(7) The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or immoral person, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.

International Property Maintenance Code Section 301.3 – Vacant structures and land

Vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure, and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

International Property Maintenance Code Section 302.7 – Accessory structures

Accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good condition.

Compliance Date: January 2, 2024

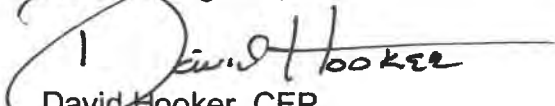
If you are unable to meet the required compliance date, this case will be referred to the Town's Code Enforcement Board for a hearing scheduled for January 22, 2024, at 9:30a.m. located at 4300 South Atlantic Avenue, Ponce Inlet, Florida.

If you are found to be in violation of the cited sections of Town code, a daily fine of up to \$250 per day may be imposed. Furthermore, an administrative fee of \$250 shall also be imposed.

Both these charges will be recorded into the public records of Volusia County and will constitute a lien of your property, as well as any other property that is owned by you in the state of Florida in accordance with Florida Statutes 162.09(3).

If you should have any questions related to this matter, please do not hesitate to contact my office.

Kindest Regards,


David Hooker, CEP
Code Compliance Manager

Certified Mail
9589-0710-5270-0449-0235-75 – 3915 S Atlantic Avenue
9589-0710-5270-0449-0235-68 – 3703 S. Atlantic # 1106
9589-0710-5270-0449-0235-68 – 3703 S. Atlantic # 503



Meeting Date: January 22, 2024

Agenda Item: 9-E1

Report to Code Enforcement Board

Topic: Foreclosure Proceedings

Summary: The following case has previously been presented to the Board and remain in non-compliance. On October 25, 2023, certified letters were sent to owners with outstanding liens, notify them of the final date of January 15, 2024, to either contact staff or settle the outstanding amount.

Staff will provide updated testimony and evidence. The Board will be asked to make a recommendation to the Town Council based on that evidence and testimony.

1. CN #2018-148: Property Address: 42 Jana Drive
Owner(s): Frank Kohlweiss

Suggested motion: Recommendation to Town Council by the Board after testimony and evidence has been provided on the case.

Requested by:

Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



MEMORANDUM
TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Code Enforcement Board
THROUGH: Drew Smith, Town Attorney
FROM: David Hooker, Code Compliance Manager
DATE: January 10, 2024
DATE OF MEETING: January 22, 2024

Case Number: 2018-148
Address: 42 Jana Drive

FORECLOSURE PROCEEDING:

Violation:
 Property maintenance issues involving lot and or dwelling

International Property Maintenance Code
Section 304.1 - General
Section 304.10 – Stairways, decks, porches and balconies
Section 304.13 – Window, skylight and door frames

Brief History:

On June 20, 2018, our staff conducted an investigation and verified a received complaint regarding a second-story balcony in disrepair and a window on the western side of the property in need of attention. The notice of violation was promptly dispatched to the recorded property owner on the same day.

In the first week of July 2018, Mr. Kohlweiss, residing in California, contacted us, clarifying that the property was not rented, and he does not allow anyone to stay in the home while he is away. Mr. Kohlweiss informed us of ongoing repairs to the balcony, acknowledging the need for a permit. He assured us of his return to Ponce Inlet in October.

After several months of no communication, a formal notice of hearing was sent to the owner on December 20, 2018. Subsequently, on January 28, 2019, the case was presented before the Board, which determined a violation of the property maintenance code due to deteriorated conditions of the balcony and windows. The Board granted a 60-day period for obtaining the necessary permits and imposed a \$250 administrative fee.

Following the granted time frame, a re-inspection revealed continued non-compliance, leading to the case being brought before the Board on April 22, 2019. The property was still deemed noncompliant, resulting in a daily fine of \$20 and the reiteration of the original \$250 administrative fee.

Over the next 22 months, our staff issued courtesy letters to Mr. Kohlweiss, notifying him of the outstanding lien on the property, accruing until the violations were rectified.

On June 8, 2021, Mr. Kohlweiss applied for a building permit to address the issues outlined in the original notice of violation. A successful inspection was conducted on June 14, 2021.

In May 2023, a courtesy letter was sent to Mr. Kohlweiss, reiterating the outstanding lien. In response, he approached the Town, requesting a reduction or abatement.

During the Town Council hearing on August 17, 2023, Mr. Kohlweiss's request was denied, leaving the outstanding lien amount of \$15,910. Staff communicated with the Code Enforcement Board and Town Council in September and October 2023, urging attention to foreclosure proceedings for non-homesteaded properties with outstanding liens exceeding 90 days.

On October 25, 2023, certified letters were sent to owners with outstanding liens, notifying them of the final date of January 15, 2024, to either contact staff or settle the outstanding amount.

Recommendation:

That in accordance with Florida Statutes 162.09(3) the Code Enforcement Board authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgement for the amount of the lien plus accrued interest.

The decision of this Board will be brought to Town Council for consideration to this proceeding.

BEFORE THE CODE ENFORCEMENT BOARD
OF THE TOWN OF PONCE INLET, FLORIDA

TOWN OF PONCE INLET, FLORIDA,
a municipal corporation,

Petitioner,

vs.

CASE NO.: 2018-148

FRANK KOHLWEISS,

Respondent.

ORDER IMPOSING FINES AND CREATING LIEN

This cause was heard on the 22nd day of April, 2019 by the Code Enforcement Board of the Town of Ponce Inlet after due notice to Respondent and a public hearing, and the Code Enforcement Board, having heard testimony and argument thereon, and being otherwise duly advised in the premises, makes the following FINDINGS OF FACT:

1. Respondent is the owner of property located at 42 Jana Drive, Ponce Inlet, Florida, more particularly described as

LOT 27 SEA GULL LANDING SUB MB 40 PGS 20 & 21 PER OR 3865
PG 1916 PER OR 5574 PG 1953

with Volusia County Parcel ID 6313-19-00-0270 (the "Subject Property").

2. On February 7, 2019 the Code Enforcement Board entered an Order finding Respondent in violation of Sections 304.1, 304.10, and 304.13 of the International Property Maintenance Code due to the dilapidated condition of the second story deck and a window frame of the structure located on the Subject Property and allowed Respondent sixty days within which to cure the violations.

3. As of April 22, 2019, Respondent has not cured the violations.

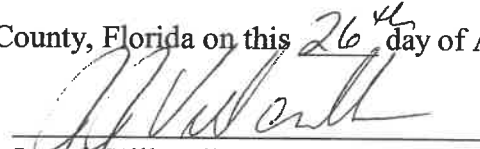
BASED ON THE FOREGOING IT IS ORDERED AND ADJUDGED that:

4. A fine of twenty dollars per day, beginning on April 22, 2019 and continuing until the violations are cured is hereby assessed and imposed which, together with the \$250.00 administrative costs ordered to be paid to the Town by Respondent, shall, upon recordation of a certified copy of this Order with the Clerk of Court for Volusia County, constitute a lien against the Subject Property and any other real or personal property owned by Respondent within Volusia County, Florida

5. Respondent is further ordered to continue to not allow any occupancy of the second story deck and keep all doors and windows leading to the second story deck secured until the violations are cured.

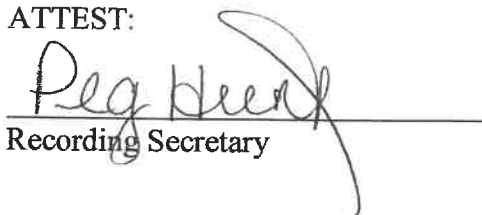
6. Respondent shall notify the Code Enforcement Officer upon completion of the repairs necessary to cure these violations.

ORDERED at Ponce Inlet, Volusia County, Florida on this 26th day of April, 2019.



Joseph Villanella, Chairperson
Code Enforcement Board

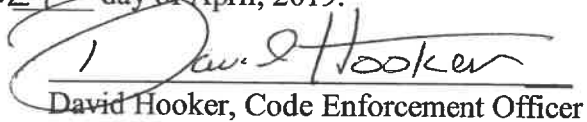
ATTEST:



Recording Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Respondent by U.S. Mail, First Class, the 29th day of April, 2019.



David Hooker, Code Enforcement Officer



Meeting Date: January 22, 2024

Agenda Item: 9-E2

Report to Code Enforcement Board

Topic: Foreclosure Proceedings

Summary: The following case has previously been presented to the Board and remain in non-compliance. On October 25, 2023, certified letters were sent to owners with outstanding liens, notify them of the final date of January 15, 2024, to either contact staff or settle the outstanding amount.

Staff will provide updated testimony and evidence. The Board will be asked to make a recommendation to the Town Council based on that evidence and testimony.

1. CN #2018-148: Property Address: 48 Inlet Harbor Road
Owner(s): Southern Bell Tel & Tel Company

Suggested motion: Recommendation to Town Council by the Board after testimony and evidence has been provided on the case.

Requested by:

Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Code Enforcement Board
THROUGH: Drew Smith, Town Attorney
FROM: David Hooker, Code Compliance Manager
DATE: January 10, 2024
DATE OF MEETING: January 22, 2024

Case Number: 2021-217
Address: 48 Inlet Harbor Road

FORECLOSURE PROCEEDINGS:

Violation:
 Property maintenance issues involving lot and or dwelling

International Property Maintenance Code
Section 102-2 – Maintenance
Section 108.1.2 – Unsafe equipment
Section 301.3 – Vacant structures and land
Section 304.1 – General
Section 304.2 – Protective treatment
Section 304.6 – Exterior walls
Section 304.7 – Roof and drainage
Section 604.3 – Electrical system hazard
Section 304.3.1 – Abatement of electrical hazards associated with water

Brief History:

In June 2021, the staff received a complaint regarding the insufficient maintenance of a property owned by Southern Bell Telephone & Telegraph Company, more commonly known as AT&T. Despite multiple attempts to contact local representatives, no response was received, prompting the issuance of a formal notice of violation.

Certified receipts were returned unanswered, leading to the issuance of a notice of hearing. On August 23, 2021, the case was presented to the Code Enforcement Board, resulting in a finding of violation of the relevant sections of the adopted code. The Board granted an extension until the end of September 2021 for the property to achieve compliance.

Conversations with a representative, Janjay Eastman, Corporate Facility Manager, commenced on October 19, 2021, assuring the Town that repairs were underway and scheduled. However, on October 25, 2021, the case was revisited by the Code Enforcement Board for further adjudication. Following staff testimony, a supplemental order was issued, granting until November 8, 2021, to apply for permits and initiate the necessary work to bring the property into compliance.

The case returned to the Code Enforcement Board on November 15, 2021, due to the failure to obtain required permits and complete the mandated repairs. Consequently, the Code Enforcement Board imposed fines.

Finally, on January 27, 2022, the property was deemed in compliance with the adopted regulations, leading to the cessation of daily fines. The property remained in violation from November 9, 2021, to January 27, 2022, accumulating fines totaling \$4,250 in liens over a span of 80 days.

Staff communicated with the Code Enforcement Board and Town Council in September and October 2023, urging attention to foreclosure proceedings for non-homesteaded properties with outstanding liens exceeding 90 days.

On October 25, 2023, certified letters were sent to owners with outstanding liens, notifying them of the final date of January 15, 2024, to either contact staff or settle the outstanding amount.

Recommendation:

That in accordance with Florida Statutes 162.09(3) the Code Enforcement Board authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgement for the amount of the lien plus accrued interest.

The decision of this Board will be brought to Town Council for consideration to this proceeding.

BEFORE THE CODE ENFORCEMENT BOARD
OF THE TOWN OF PONCE INLET, FLORIDA

TOWN OF PONCE INLET, FLORIDA,
a municipal corporation,

Petitioner,

vs.

CASE NO.: 2021-217

SOUTHERN BELL TEL & TEL COMPANY
c/o BELLSO TEL COMM TX RM 5E03 CAM

Respondent.

ORDER OF NONCOMPLIANCE AND IMPOSITION OF FINE

This cause was heard on the 15th day of November, 2021 by the Code Enforcement Board of the Town of Ponce Inlet after due notice to Respondent and a public hearing, and the Code Enforcement Board, having heard testimony and argument thereon, and being otherwise duly advised in the premises, makes the following FINDINGS OF FACT:

1. Respondent is the owner of property located at 48 Inlet Harbor Road, Ponce Inlet, Florida, with Volusia County Parcel ID 6430-00-02-0011 and more particularly described as:

IRREG PARCEL IN GOVT LOT 2 MEAS 123 FT ON E/L &
96.21 FT ON W/L & MEAS 83.0 FT ON N/L OF INLET
HARBOR DR, PER OR 2366 PG 1822

(the "Subject Property").

2. On August 23, 2021 this Board found Respondent in violation of Sections 102.2, 108.1.2, 301.3, 304.1, 304.2, 304.6, 304.7, 604.3, and 604.3.1 of the International Property Maintenance Code.

3. Specifically, this Board found the structure located upon the Subject Property to be in a state of significant disrepair including: deteriorated roof, exposed electrical wiring, vines and vegetative growth upon the structure, and mold and mildew growing upon the structure.

4. On October 25, 2021, based on positive communication from the Respondent, this Board allowed additional time for Respondent to cure the violations extending the compliance date to November 8, 2021.

5. Subsequent to the extension of the cure date, Respondent has made no further communications to Town regarding their efforts to cure the violation and no progress toward compliance has been observed.

6. Respondent has not paid the administrative costs assessed of \$250.00.

BASED ON THE FOREGOING IT IS ORDERED AND ADJUDGED that:

7. A fine in the amount of fifty dollars (\$50.00) per day for each day Respondent has been and remains in noncompliance with the Order to cure the violation related to the fill dirt is hereby imposed. Said fines begin accrual as of November 9, 2021 and shall continue to accrue until the noncompliance is cured.

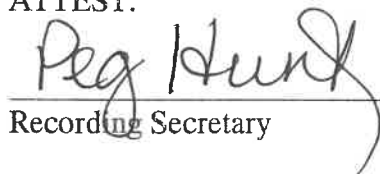
8. Upon recording by the Town of a certified copy of this Order in the Official Records of Volusia County, Florida, this Order shall constitute a lien against the Subject Property and any other real property owned by Respondent in Volusia County, Florida in the amount of the accrued fines imposed herein as well as the administrative costs awarded by the Code Enforcement Board in the amount of two hundred fifty dollars (\$250.00).

ORDERED at Ponce Inlet, Volusia County, Florida on this 22nd day of November, 2021.



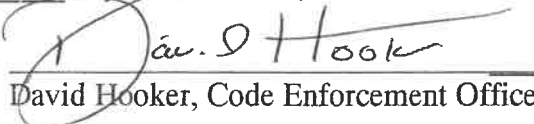
Peter Finch, Vice-Chairperson
Code Enforcement Board

ATTEST:


Recording Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Respondents by U.S. Mail, First Class, the 22 day of November, 2021.


David Hooker, Code Enforcement Officer



Meeting Date: January 22, 2024

Agenda Item: 9-E3

Report to Code Enforcement Board

Topic: Foreclosure Proceedings

Summary: The following case has previously been presented to the Board and remain in non-compliance. On October 25, 2023, certified letters were sent to owners with outstanding liens, notify them of the final date of January 15, 2024, to either contact staff or settle the outstanding amount.

Staff will provide updated testimony and evidence. The Board will be asked to make a recommendation to the Town Council based on that evidence and testimony.

1. CN #2018-148: Property Address: 5 Marsh Court
Owner(s): Richard Lecht

Suggested motion: Recommendation to Town Council by the Board after testimony and evidence has been provided on the case.

Requested by:

Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Code Enforcement Board
THROUGH: Drew Smith, Town Attorney
FROM: David Hooker, Code Compliance Manager
DATE: January 10, 2024
DATE OF MEETING: January 22, 2024

Case Number: 2022-433
Address: 5 Marsh Court

FORECLOSURE PROCEEDINGS:

Violation:

Property maintenance issues involving lot and or dwelling

Code of Ordinance

Section 82-111 – Growth in excess of 12 inches prohibited

Section 82-112 – Notice to cut or remove

Brief History:

In June 2022, a conspicuous neglect of the property came to our attention, marked by an overgrown yard and an apparent vacancy. Despite attempts to establish contact, all efforts proved futile. Consequently, on July 1, 2022, a notice of violation was formally issued to the property owners.

Regrettably, the certified letter sent to the owners was returned to the Town marked as "unclaimed." On August 12, 2022, in accordance with Florida Statute, our staff posted the property. Subsequent inspections yielded no improvement in the condition of the grounds.

The Code Enforcement Board convened on August 22, 2022, to address the case. After finding the property in violation of the specified sections of the Town code, the Board granted the owners additional time to rectify the situation. However,

upon the expiration of the compliance date without any progress, the case was brought back before the Code Enforcement Board for the imposition of fines. It wasn't until October 1, 2022, that the property was finally deemed in compliance with the adopted regulations, leading to the cessation of daily fines. The property had remained in violation from September 9, 2022, to October 1, 2022, accruing fines totaling \$750 in liens over a span of 25 days.

In September and October 2023, our staff communicated with the Code Enforcement Board and Town Council, urging prompt attention to foreclosure proceedings for non-homesteaded properties with outstanding liens surpassing 90 days.

On October 25, 2023, certified letters were dispatched to owners with lingering liens, notifying them of the final date of January 15, 2024, to either engage with our staff or settle the outstanding amount.

On November 3, 2023, Mr. Lecht visited our office to discuss the outstanding lien and explore his options. He was presented with two choices:

1. Settle the outstanding debt.
2. Request an abatement/reduction hearing before the Town Council.

Opting for the latter, Mr. Lecht was furnished with the necessary forms and advised to return them promptly to secure a spot on the earliest agenda for his request. He was reminded that resolution of this matter was imperative by the January 15, 2024, deadline.

As of this memorandum's current date (January 10, 2024), no further communication has occurred with Mr. Lecht, and his request forms remain outstanding.

Recommendation:

That in accordance with Florida Statutes 162.09(3) the Code Enforcement Board authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgement for the amount of the lien plus accrued interest.

The decision of this Board will be brought to Town Council for consideration to this proceeding

Prepared by & return to:
Town of Ponce Inlet
Attn: Code Enforcement Division
4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

BEFORE THE CODE ENFORCEMENT BOARD
OF THE TOWN OF PONCE INLET, FLORIDA

TOWN OF PONCE INLET, FLORIDA,
A municipal corporation,

Petitioner,

vs.

CASE NO.: 2022-433

Richard Lecht,

Respondent/Owner
_____ /

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

This cause was heard on the 22nd day of August, 2022 by the Code Enforcement Board of the Town of Ponce Inlet after due notice to Respondent and a public hearing, and the Code Enforcement Board, having heard testimony and argument thereon, and being otherwise duly advised in the premises, makes the following FINDINGS OF FACT:

1. The property which is the subject of this code enforcement action is located at 5 Marsh Court, Ponce Inlet, Florida and has the Volusia County Parcel ID 6312-20-00-0100 (the "Subject Property").
2. On July 7, 2022, the Code Compliance Manager issued a Notice of Violation to Respondent citing a violation of Section 82-111 and Section 82-112 of the Town's adopted Code of Ordinances for growth of grass and weeds in excess of 12 inches and directed Respondent to cure the violation on or before July 21, 2022.
3. Respondent has not yet cured the violation as of the date of the hearing.

BASED ON THE FOREGOING IT IS ORDERED AND ADJUDGED that:

4. The Respondent is found to be in violation of Sections 82-111 and 82-112 of the Code of Ordinances.
5. The Respondent shall cure the violations on the Subject Property within fourteen (14) days of the date of this Order. (September 5, 2022)

6. If violation remains after 14 days (September 5, 2022), this case will be heard at the September 26, 2022 code board hearing for further consideration of imposition of fines.
7. Respondent shall pay to the Town of Ponce Inlet the administrative costs incurred by the Town in prosecuting this case in the amount of \$250.00, which amount shall be due on or before September 5, 2022.
8. Any violation of the same code section by any Respondent within five years of the date of this Order may be prosecuted as a repeat violation pursuant to Chapter 162, Florida Statutes.

ORDERED at Ponce Inlet, Volusia County, Florida on this 22nd day of August, 2022.



Joseph Villanella, Chairman
Code Enforcement Board

ATTEST:


Recording Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Respondent by U.S. Mail, First Class, the 22nd day of August, 2022.



David Hooker, Code Compliance Manager



Meeting Date: January 22, 2024

Agenda Item: 9-E4

Report to Code Enforcement Board

Topic: Foreclosure Proceedings

Summary: The following case has previously been presented to the Board and remain in non-compliance. On October 25, 2023, certified letters were sent to owners with outstanding liens, notify them of the final date of January 15, 2024, to either contact staff or settle the outstanding amount.

Staff will provide updated testimony and evidence. The Board will be asked to make a recommendation to the Town Council based on that evidence and testimony.

1. CN #2018-148: Property Address: 4620 Riverwalk Village Court #7302
Owner(s): Cynthia House & Rhonda Witwer

Suggested motion: Recommendation to Town Council by the Board after testimony and evidence has been provided on the case.

Requested by:

Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Code Enforcement Board
THROUGH: Drew Smith, Town Attorney
FROM: David Hooker, Code Compliance Manager
DATE: January 10, 2024
DATE OF MEETING: January 22, 2024

Case Number: 2022-684
Address: 4620 Riverwalk Village court # 7302

FORECLOSER PROCEEDINGS:

Violation:
 Expired Rental Permit

Land Development Code

Section 2.40.1 – Interpretation of uses and structures permitted

Section 3.18.1 – Applicability

Section 3.18.2 – Rental permit application process

Section 3.18.4 – General regulations

Section 3.18.5 – Fees and application schedule

Section 3.18.6 – Enforcement and penalties

Section 3.18.7 – Annual reporting requirements

Section 10.1.10 – Rental permit applications

Brief History:

In November 2022, our team identified that the property in question was being utilized as a rental property without the necessary rental permit. Consequently, we initiated contact with the property owners and subsequently issued a notice of violation.

Despite granting the owners additional time to complete the required paperwork, they failed to provide the necessary documents. As a result, a formal notice of

hearing was issued. The Code Enforcement Board conducted a hearing on May 22, 2023, determining that the owners were in violation of specified sections of the adopted code. They were granted additional time to obtain the required permit.

Following the expiration of the compliance date without resolution, the case was brought back to the Code Enforcement Board on July 24, 2023, for the imposition of fines. The Board ordered a retroactive daily fine of \$25 starting from the original compliance date of June 5, 2023. Despite ongoing fines, the owners have not renewed their required rental permit.

In September and October 2023, our team communicated with both the Code Enforcement Board and Town Council, emphasizing the need for prompt attention to foreclosure proceedings for non-homesteaded properties with outstanding liens exceeding 90 days.

On October 25, 2023, certified letters were dispatched to owners with lingering liens, notifying them of the final date of January 15, 2024, to either engage with our staff or settle the outstanding amount.

Recommendation:

That in accordance with Florida Statutes 162.09(3) the Code Enforcement Board authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgement for the amount of the lien plus accrued interest.

The decision of this Board will be brought to Town Council for consideration to this proceeding

BEFORE THE CODE ENFORCEMENT BOARD
OF THE TOWN OF PONCE INLET, FLORIDA

TOWN OF PONCE INLET, FLORIDA,
a municipal corporation,

Petitioner,

vs.

CASE NO.: 2022-684

CYNTHIA HOUSE and
RHONDA WITWER,

Respondents.

ORDER OF NON-COMPLIANCE AND IMPOSITION OF FINE

This cause was heard on the 24th day of July, 2023 by the Code Enforcement Board of the Town of Ponce Inlet after due notice to Respondents and a public hearing, and the Code Enforcement Board, having heard testimony and argument thereon, and being otherwise duly advised in the premises, makes the following FINDINGS OF FACT:

1. Respondents are the owners of property located at 4620 Riverwalk Village Court # 7302, Ponce Inlet, Florida, 32127 with Volusia County Parcel ID 6419-37-00-7302 and is more particularly described as:

UNIT 7302 BLDG 700 HARBOUR HOUSE AT HARBOUR VILLAGE
CONDO PER OR 4871 PGS 3300-3397 INC PER OR 4897 PGS 4553-4554 PER
OR 5938 PG 4576
(the "Subject Property")
2. On November 1, 2022, the Rental Housing Inspector issued a Notice of Violation to Respondents citing a violation of Sections 2.40.1, 3.18.1, 3.18.2, 3.18.3, 3.18.4, 3.18.5, 3.18.6, 3.18.7 and 10.1.10. of the Town of Ponce Inlet Land Development Code for offering a rental without a valid permit.
3. On May 22, 2023, the Code Enforcement Board entered an order finding Respondents in violation of the cited code sections and ordering Respondents to cure the violation no later than June 5, 2023.
4. Respondents has not cured the violations as of the date of the hearing.

BASED ON THE FOREGOING IT IS ORDERED AND ADJUDGED that:

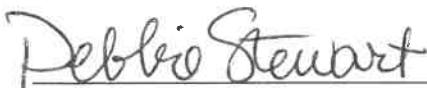
5. The Respondents remain in violation of sections 2.40.1, 3.18.1, 3.18.2, 3.18.3, 3.18.4, 3.18.5, 3.18.6, 3.18.7 and 10.1.10 of the Town of Ponce Inlet Land Development Code.
6. Respondents have failed to comply by the June 5, 2023, deadline.
7. A fine in the amount of twenty-five (\$25.00) per day, for each day the respondents remain in noncompliance with the Order to cure the violation is hereby imposed. The period of accrual of said fines begins as of June 5, 2023 and shall continue to accrue on a daily basis until the violation is cured.
8. Upon recording by the Town of a certified copy of this Order in the Official Records of Volusia County, Florida, this Order shall constitute a lien in the amount of the fines accrued together with the \$250 administrative fee assessed by the Code Enforcement Board. The lien shall attach to the subject Property and any other real property owned by the Respondents.
9. Any violation of the same code section by any Respondents within five (5) years of the date of this Order may be prosecuted as a repeat violation pursuant to Chapter 162, Florida statutes.
10. In accordance with Florida Statutes 162.09(3), this recording into the public records shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.

ORDERED at Ponce Inlet, Volusia County, Florida on this 25TH day of July 2023.



Peter Finch, Chairperson
Code Enforcement Board

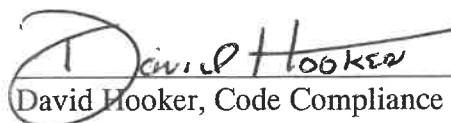
ATTEST:



Recording Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Respondent by U.S. Mail, First Class, the _____ day of July, 2023.



David Hooker, Code Compliance Manager



Meeting Date: January 22, 2024

Agenda Item: 9-E5

Report to Code Enforcement Board

Topic: Foreclosure Proceedings

Summary: The following case has previously been presented to the Board and remain in non-compliance. On October 25, 2023, certified letters were sent to owners with outstanding liens, notify them of the final date of January 15, 2024, to either contact staff or settle the outstanding amount.

Staff will provide updated testimony and evidence. The Board will be asked to make a recommendation to the Town Council based on that evidence and testimony.

1. CN #2018-148: Property Address: 4505 South Atlantic Avenue #703
Owner(s): Doris & Jerry Clark

Suggested motion: Recommendation to Town Council by the Board after testimony and evidence has been provided on the case.

Requested by:

Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Code Enforcement Board
THROUGH: Drew Smith, Town Attorney
FROM: David Hooker, Code Compliance Manager
DATE: January 10, 2024
DATE OF MEETING: January 22, 2024

Case Number: 2022-758
Address: 4505 South Atlantic Avenue #703

FORECLOSURE PROCEEDINGS:

Violation:
 Expired Rental Permit

Land Development Code

Section 2.40.1 – Interpretation of uses and structures permitted
Section 3.18.1 – Applicability
Section 3.18.2 – Rental permit application process
Section 3.18.4 – General regulations
Section 3.18.5 – Fees and application schedule
Section 3.18.6 – Enforcement and penalties
Section 3.18.7 – Annual reporting requirements
Section 10.1.10 – Rental permit applications

Brief History:

In September 2022, discussions were held with Mr. Clark regarding the renewal of his rental permit. Mr. Clark highlighted that the renewal forms should have been sent to an alternative address, not previously on our records.

Subsequently, our staff promptly dispatched the renewal application to the updated address. Unfortunately, upon receipt, it was observed that certain mandatory information was inadvertently omitted.

Despite numerous attempts to establish contact with Mr. Clark, all efforts proved unsuccessful. Consequently, a notice of violation was issued. As the compliance date elapsed with no corrective action, a notice of hearing was convened on February 27, 2023, before the Code Enforcement Board. The Board determined noncompliance but granted additional time for resolution.

Upon the expiration of the extended period, and with no responses from the property owners, the case was returned to the Code Enforcement Board. A retroactive daily fine of \$250, commencing from the original compliance date of March 13, 2023, was imposed. Regrettably, the required rental permit remains unaddressed, despite ongoing fines.

In September and October 2023, our team communicated with both the Code Enforcement Board and Town Council, emphasizing the need for prompt attention to foreclosure proceedings for non-homesteaded properties with outstanding liens exceeding 90 days.

On October 25, 2023, certified letters were dispatched to owners with lingering liens, notifying them of the final date of January 15, 2024, to either engage with our staff or settle the outstanding amount.

Recommendation:

That in accordance with Florida Statutes 162.09(3) the Code Enforcement Board authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgement for the amount of the lien plus accrued interest.

The decision of this Board will be brought to Town Council for consideration to this proceeding.

BEFORE THE CODE ENFORCEMENT BOARD
OF THE TOWN OF PONCE INLET, FLORIDA

TOWN OF PONCE INLET, FLORIDA,
a municipal corporation,

Petitioner,

vs.

CASE NO.: 2022-758

DORIS & JERRY CLARK,

Respondents.

ORDER OF NON-COMPLIANCE AND IMPOSITION OF FINE

This cause was heard on the 27th day of March, 2023 by the Code Enforcement Board of the Town of Ponce Inlet after due notice to Respondents and a public hearing, and the Code Enforcement Board, having heard testimony and argument thereon, and being otherwise duly advised in the premises, makes the following FINDINGS OF FACT:

1. Respondents are the owners of property located at 4505 South Atlantic Avenue #703, Ponce Inlet, Florida, 32127 with Volusia County Parcel ID 6313-06-01-7030 and is more particularly described as:

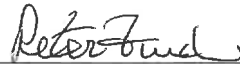
UNIT 7C EAST WIND SOUTH PER OR 1618 PG 308 MB 32 PG 116 TO 124
PER OR 3851 PG 3642 PER OR

(the "Subject Property")
2. On November 1, 2022, the Rental Housing Inspector issued a Notice of Violation to Respondents citing a violation of Sections 2.40.1, 3.18.1, 3.18.2, 3.18.3, 3.18.4, 3.18.5, 3.18.6, 3.18.7 and 10.1.10. of the Town of Ponce Inlet Land Development Code for offering a rental without a valid permit.
3. On February 27, 2023, the Code Enforcement Board entered an order finding Respondents in violation of the cited code sections and ordering Respondents to cure the violation no later than March 13, 2023.
4. Respondents has not cured the violations as of the date of the hearing.

BASED ON THE FOREGOING IT IS ORDERED AND ADJUDGED that:

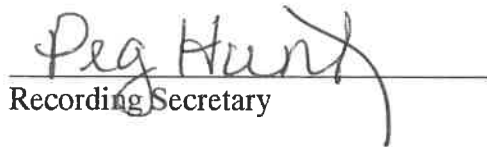
5. The Respondents remain in violation of sections 2.40.1, 3.18.1, 3.18.2, 3.18.3, 3.18.4, 3.18.5, 3.18.6, 3.18.7 and 10.1.10 of the Town of Ponce Inlet Land Development Code.
6. Respondents have failed to comply by the March 13, 2023, deadline.
7. A fine in the amount of two hundred fifty (\$250.00) per day, for each day the respondents remain in noncompliance with the Order to cure the violation is hereby imposed. The period of accrual of said fines begins as of March 13, 2023 and shall continue to accrue on a daily basis until the violation is cured.
8. Upon recording by the Town of a certified copy of this Order in the Official Records of Volusia County, Florida, this Order shall constitute a lien in the amount of the fines accrued together with the \$250 administrative fee assessed by the Code Enforcement Board. The lien shall attach to the subject Property and any other real property owned by the Respondents.
9. Any violation of the same code section by any Respondents within five (5) years of the date of this Order may be prosecuted as a repeat violation pursuant to Chapter 162, Florida statutes.
10. In accordance with Florida Statutes 162.09(3), this recording into the public records shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.

ORDERED at Ponce Inlet, Volusia County, Florida on this 27th day of March 2023.



Peter Finch, Chairperson
Code Enforcement Board

ATTEST:


Recording Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Respondent by U.S. Mail, First Class, the 27 day of March, 2023.


David Hooker, Code Compliance Manager



Meeting Date: January 22, 2024

Agenda Item: 9-F

Report to Code Enforcement Board

Topic: Annual Boardmember Sunshine Law, Public Records, Quasi-Judicial procedures, and Ethics training.

Summary: The Board's Attorney will provide an overview of the training materials and be available to answer questions.

Suggested motion: N/A

Requested by:

Ms. Stewart, Assistant Deputy Clerk
Ms. Cherbano, Town Clerk
Mr. Hooker, Code Compliance Manager

Approved by:

Mr. Disher, Town Manager



**Town
of
Ponce Inlet**

**Boardmember
Annual
Training
Packet**

Code Enforcement Board



Town of Ponce Inlet

Boardmember Annual Training Packet

TABLE OF CONTENTS

Section	Document Name
I	Florida's Sunshine Law & Public Records
II	Formal Quasi-Judicial Hearings & Proceedings
III	Conducting a Meeting "Cheat Sheet" and Open Meetings
IV	Robert's Rules of Order & Parliamentary Procedure
V	Town Policy for Use of Social Media by Board Members
VI	Standard of Conduct / Ethics - F.S. Chapter 112
VII	Public Business - F.S. Chapter 286 (abridged)
Addendum	FS Chapter 162 - Code Enforcement
Addendum	FS Chapter 163 - Local Planning Agency
Addendum	LUDC, Article 6.2.2 - Planning Board
Addendum	LUDC, Article 6.2.3 - Cultural Services, Historic Preservation, and Tree Advisory Board
Addendum	Code of Ordinances Chapter 2, Article IV, Division 3 Essential Services Advisory Board

Disclaimer:

The information contained herein is provided as a **Guide**; it is not intended to be all-inclusive. Always refer to the appropriate State Statute, Town staff member or the Town Attorney.



Section I

Florida's Sunshine Law & Public Records Law

FLORIDA SUNSHINE, PUBLIC RECORDS, AND CODE OF ETHICS LAWS

This presentation is intended to provide a general overview of Florida Sunshine and Public Records law and the Florida Code of Ethics. For specific guidance or a legal opinion, please contact the Attorney's office.

All boards or commissions of any state, county, municipal corporation or political subdivision have a legal obligation to comply with:

- The Sunshine Law, and
- The Public Records Law, and
- The Florida Code of Ethics.

THE LAWS

■ SUNSHINE LAW [FS §286.011 (“Sunshine Law”) and FL Constitution Art. I, Sec. 24]

Protects the public from “closed door” decision making and provides a right of access to governmental meetings.

■ PUBLIC RECORDS LAW [FS Chap. 119]

Creates a right of access to records made or received in connection with official business of a public body.

■ CODE OF ETHICS [FS 112, Part III, Code of Ethics for Public Officers and Employees and the FL Constitution Art. II, §8]

Protects against conflict of interest and establishes standards for the conduct of elected official and government employees in situations where conflicts may exist.

Committee type determines the applicability of these laws. There are two types of committees:

1. Decision Making Committees
2. Fact Finding/Focus Group Committees

1. Decision Making Committees - become part of the governing body’s decision making process and:

- Choose alternatives and direction; narrow or eliminate options for the governing body’s consideration.
- Make decision by voting.
- Make recommendations to the governing body directly or through staff.
- Create by-laws.

2. Fact Finding/Focus Groups - provide a source of community input and factual resources and:

- Have no characteristics of a Decision Making Committee.
- Do not need by-laws.
- Provide individual input, data and factual findings to staff, as part of staff’s development in its advisement to the governing body.
- Do not take votes.
- Maintain a brainstorming focus.

THE SUNSHINE LAW - gives the public access to meetings of “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision” (“Governing Body”) AND

- Allows the public to observe each preliminary step leading to the final decision.
- Prevents the governing body from creating closed committees that narrow the governing body’s decisions.
- Applies to appointed committees.
- An AG opinion advises it also applies to an individual Board member, appointed to negotiate, narrow decisions, or make decisions for the full board.

MEETINGS SUBJECT TO THE SUNSHINE LAW - include formal or casual discussions about a matter on which the governing body may foreseeably take action, between:

- Two or more members of the governing body, or
- Two or more members of a Decision Making Committee.

Discussions may occur through telephone or e-mail communications, or exchanges during workshops, social events, football games and neighborhood barbeques.

■ **THE SUNSHINE LAW IMPOSES THREE OBLIGATIONS OF OPENNESS**

1. Reasonable notice of meetings subject to the Sunshine Law must be given; requires giving the public reasonable and timely notice so they can decide whether to attend.

What is “reasonable” or “timely” depends on the circumstances. Does not necessarily require a newspaper advertisement (contact the Attorney’s office for guidance).

2. Public must be allowed to attend meetings; however there is no obligation to allow the public to participate.
 - Meetings cannot be held at exclusive or inaccessible facilities.
 - No evasive actions are allowed, such as:
 - a. Circulating written reports to elicit responses or positions on issues.
 - b. Using staff, lobbyists, or other means to seek other members’ positions about issues.
3. Minutes of the meetings are required. Written minutes must be taken and made available promptly.
 - Sound recordings may also be used, in addition to written minutes.
 - Minutes may be a brief summary of meeting’s events.
 - Minutes are public records.
 - Minutes must record the votes.

■ **THE SUNSHINE LAW APPLIES WHEN:**

- Two or more members of a governing body discuss a matter that may foreseeably come before the governing body.
- A governing body moves any part of its decision making process to a committee or group, thereby appointing an “alter ego.”

According to an AG opinion, this may also include an individual Board or Committee member appointed formally or informally to negotiate, narrow or eliminate options or decisions for the full Board or Committee.

- **THE SUNSHINE LAW DOES NOT APPLY TO:**
 1. Committees or groups appointed to engage only in fact-finding activities.
 2. Created focus groups or other such committees that:
 - a. Only provide individual input, data and facts as part of staff's development in its advisement to the governing body.
 - b. Do not narrow options.

The Sunshine Law is *broadly* construed. ~ Exemptions are *narrowly* construed.

- **SUNSHINE LAW:**
Penalties for Noncompliance (also applies to Decision Making Committees)
A violation of the Sunshine Law by the governing body or a Decision Making Committee, can nullify governing body's decisions.
- **Criminal Penalties:**
 1. It is a second degree misdemeanor to knowingly violate the Sunshine Law.
 2. Is Punishable with a fine of up to \$500 and/or up to 60 days imprisonment.
- **Other Penalties Include:**
 1. Removal from position.
 2. Payment of attorney's fees incurred by the challenging party, as well as declaratory and injunctive relief.

SENTENCED TO JAIL FOR SUNSHINE LAW VIOLATIONS:
Suspended Escambia County Commissioner, W.D. Childers, was sentenced to 60 days in jail for discussing redistricting in a telephone conversation while fellow commissioner listened on a speaker phone, and pleaded no contest for talking with two fellow commissioners about county building projects in front of a staffer.

- **PUBLIC RECORDS LAW:**
Public Records Include: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form or means of transmission made or received pursuant to law in connection with transaction of official business by the agency. (Fl. Stat. Chapter 119)

THE PUBLIC RECORDS LAW APPLIES TO:

- Records developed by the governing body, Board Appointed Committees, and employees;
- All types of records including written communications, letters, notes and e-mails. Numerous exemptions are identified in FS 119.07 and other statutes.

Public Records Requests can be made:

- Verbally or in writing,
- By any person.

THE GOVERNING BODY OR APPOINTED COMMITTEE:

- Has a "reasonable" time to respond.
- Can charge for the cost of retrieving records if the amount requested is voluminous.
- Can charge 15 cents/page.

THE PUBLIC RECORDS LAW DOES NOT REQUIRE:

- The retention of records (this is covered under the State's records retention policy).
- The creation of records or the provision of records in the format requested.
- And explanation of the records.

FLORIDA CODE OF ETHICS:

- ADDRESSES:
 - a. Standards of conduct
 - b. Voting Conflicts
 - c. Financial Disclosure
 - d. Prohibits certain action or conducts.
 - e. Requires certain disclosures be made to the public.

Standards of Conduct Prohibit Public Officials from:

- **Soliciting and Accepting Gifts** - May not solicit or accept anything of value that is based on an understanding that their vote, official action, or judgment would be influenced by such a gift.
- **Accepting Unauthorized Compensation** - May not accept any compensation, payment, or thing of value that is given to influence a vote or other official action.
- **Misusing his/her Public Position** - May not corruptly use their official position to obtain a special privilege for themselves or others.
- **Disclosing or Using Certain Information** - May not disclose or use information not available to the public and obtained by reason of their public positions for the personal benefit of themselves or others.
- **Doing business with their agency** - A public official's agency may not do business with a business entity in which the public official, or their spouse or child own more than 5% interest.
- **Engaging in Conflicting Employment or Contractual Relationships** - A public official may not be employed or contract with any business entity regulated by or doing business with his or her public agency.

THE GOVERNING BODY MAY WAIVE THE LAST TWO PROHIBITIONS, AS THEY RELATE TO APPOINTED COMMITTEES.

Voting Conflicts of Interest

- Requires no County, municipal, or other Local Public officer (including members of the appointed committees) shall vote in an official capacity upon any measure which would inure to the special private gain or loss of themselves, any principal or entity by whom they are retained, other than an agency as defined in the Fl. Stat. 112.312(2), or to any relative or business associate.
- Requires that public officers, including members of decision making committees:
 1. Must announce the nature of the conflict before the vote; abstain from voting; and file a memorandum of voting conflict
 2. May not participate in the discussion without first disclosing the nature of their interest in the matter (either in writing prior to the meeting, or orally as soon as they become aware that a conflict exists).

BECOMES AN ISSUE WHEN STAKEHOLDERS ARE APPOINTED TO DECISION-MAKING COMMITTEES

- FINANCIAL DISCLOSURES

Appointed committee members with land-planning, zoning or natural resources responsibilities must file an annual financial statement.

Which Laws Apply to Which Committees?

	Focus Group	Decision-making Committee
Florida Laws		
Sunshine law		X
Public Records Law	X	X
Code of Ethics		
Standards of Conduct	X	X
Voting Conflict		X
Financial Disclosure		X

*Includes discussions about a matter which may foreseeably come before the Committee;; between one or more Committee member(s), or involving subcommittees or an individual Committee member who has been formally or informally authorized to exercise any decision-making authority or to reduce options for the Committee’s consideration.

**Committees with land-planning, zoning, or natural resources responsibilities.

OPEN GOVERNMENT OVERVIEW:

Sunshine Law and Public Records Law



Patricia R. Gleason
Special Counsel for Open Government
Attorney General Pam Bondi

SUNSHINE LAW

- Florida's Government in the Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. In the absence of statutory exemption, it applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.

Scope of the Sunshine Law

- Board members may not engage in private discussions with each other about board business, either in person or by telephoning, emailing, texting or any other type of electronic communication (i.e. Facebook, blogs).

Scope of the Sunshine Law

- While an individual board member is not prohibited from discussing board business with staff or a nonboard member, these individuals may not be used as a liaison to communicate information between board members. For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

SCOPE OF THE SUNSHINE LAW

There are three basic requirements:

- 1) Meetings of public boards or commissions must be open to the public
- 2) Reasonable notice of such meetings must be provided;and
- 3) Minutes of the meetings must be prepared promptly and open to public inspection.

SCOPE OF THE SUNSHINE LAW

- The Sunshine Law applies to advisory boards created pursuant to law or ordinance or otherwise established by public agencies or officials.

Scope of the Sunshine Law

- Staff meetings are not normally subject to the Sunshine Law.
- However, staff committees may be subject to the Sunshine Law if they are deemed to be part of the “decision making process” as opposed to traditional staff functions like factfinding or information gathering.

Scope of the Sunshine Law

- Only the Legislature may create an exemption from the Sunshine Law (by a two-thirds vote).
- An exemption from the Public Records Law does not allow a board to close a meeting. Instead, a specific exemption from the Sunshine Law is required.

Board meetings

- While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine law does not allow boards to ban nondisruptive videotaping, tape recording, or photography at public meetings.

Board meetings

- Section 286.0114, F.S., provides, subject to listed exceptions, that boards must allow an opportunity for the public to be heard before the board takes official action on a proposition. The statute does not prohibit boards from “maintaining orderly conduct or proper decorum in a public meeting.”

Penalties

- Civil action
 - Action taken in violation of the Sunshine Law may be invalidated.
- Criminal penalties
- Suspension or removal from office

PUBLIC RECORDS LAW

- Florida's Public Records Act, Chapter 119, Florida Statutes, provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- If material falls within the definition of "public record" it must be disclosed to the public unless there is a statutory exemption.

The term “public records” means:

- a) All “documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, regardless of the physical form, characteristics, or means of transmission” **(includes electronic communications like text messages, emails).**
- b) Made or received pursuant to law or ordinance or in connection with the transaction of official business
- c) By any agency [including a private entity acting ‘on behalf of’ a public agency]
- d) Which are used to perpetuate, communicate, or formalize knowledge

PROVIDING PUBLIC RECORDS

- a) Public records cannot be withheld at the request of the sender
- b) A requestor is not required to show a “legitimate” or “noncommercial interest” as a condition of access
- c) A request cannot be denied because it is “overbroad”
- d) Unless authorized by another statute, an agency may not require that public records requests be in writing or require the requestor to identify himself or herself

PROVIDING PUBLIC RECORDS

- The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days).
- The Florida Supreme Court has stated that the only delay in producing records permitted under the statute is the reasonable time allowed the custodian to retrieve the record and redact those portions of the record the custodian asserts are exempt.

PROVIDING PUBLIC RECORDS

- An agency is not required to comply with a “standing” request for records that may be created in the future.
- An agency is not required to answer questions about the public records (other than information on how to obtain them, like the cost)
- An agency is not required to create a new record

PROVIDING PUBLIC RECORDS

- Chapter 119 authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 inches or less. An additional 5 cents may be charged for two-sided copies. For other copies, the charge is the actual cost of duplication of the record. Actual cost of duplication means the cost of the material and supplies used to duplicate the record but does not include labor or overhead cost.

Fees

- In addition to the actual cost of duplication, an agency may impose a reasonable service charge for the actual cost of extensive labor and information technology required due to the large volume of a request.

Retention

All public records must be retained in accordance with retention schedules approved by the Department of State

Even exempt records must be retained.


Penalties for noncompliance

- a) Criminal penalties
- b) Civil action
- c) Attorney's fees

In the Sunshine

Florida Sunshine Law Public Records Ch.119 F.S.

Presented by Clifford B. Shepard
Materials by John G. Hubbard & Clifford B. Shepard



1

In the Sunshine

Public Records Law

Perpetuate

Communicate

Formalize



2

Florida Constitution Article I, section 24

- (a) **Every person** has the right to **inspect or copy** any public record made or received in connection with the **official business** of any public body, officer, or employee of the state, **or persons acting on their behalf**, except with respect to records **exempted** pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

“or persons acting on their behalf”



3

119.01 General State Policy on Public Records

- (1) It is the policy of this state that all state, county, and **municipal** records are open for **personal inspection and copying by any person**. Providing **access** to public records is a **duty** of each agency.

THE DUTY IS ALSO YOURS, IF YOU HAVE CUSTODY



4

119.07 General State Policy on Public Records

(1)(a) Every **person** who has **custody** of a public record shall permit the record to be **inspected and copied** by any person desiring to do so, at any **reasonable time**, under **reasonable conditions**, and **under supervision by the custodian** of the public records.

**DO YOU HAVE CUSTODY?
TRANSFER CUSTODY TO CITY CLERK**



5

119.07 General State Policy on Public Records

(c) A **custodian** of public records and his or her designee must **acknowledge** requests to inspect or copy records **promptly** and **respond to such requests in good faith**. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

DUTY: ACKNOWLEDGE PROMPTLY



6

119.07 General State Policy on Public Records

- (d) A person who has **custody** of a public record who **asserts that an exemption applies** to a part of such record shall **redact** that portion of the record to which an exemption has been asserted and validly applies, and such person **shall produce the remainder** of such record for inspection and copying.

DUTY: IF PORTIONS ARE EXEMPT, REDACT AND PRODUCE
ISSUES: IS THE RECORD EXEMPT, CONFIDENTIAL
OR BOTH?



7

119.07 General State Policy on Public Records

- (e) If the person who has **custody** of a public record **contends** that all or part of the record is **exempt** from inspection and copying, he or she shall **state the basis** of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.
- (f) **If requested** by the **person seeking** to inspect or copy the record, the **custodian** of public records shall **state in writing** and with particularity the **reasons** for the conclusion that the record is exempt or confidential.

DUTY: STATE STATUTORY BASIS FOR
EXEMPTION – IN WRITING



8

119.07 General State Policy on Public Records

- (4) **The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law.** If a fee is not prescribed by law, the following fees are authorized:

DUTY: FURNISH COPY

ADVICE: COLLECT IN ADVANCE FOR COPY FEES



9

119.07 General State Policy on Public Records

- (d) If the **nature or volume** of public records requested to be inspected or copied pursuant to this subsection is such as to require **extensive use of information technology** resources or **extensive clerical or supervisory assistance** by personnel of the agency involved, or both, **the agency may charge**, in addition to the actual cost of duplication, **a special service charge**, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

DUTY: GATHER DOCUMENTS FOR INSPECTION

ADVICE: COLLECT SPECIAL SERVICE FEE IN ADVANCE



10

Definition of Public Records

Statutory

Public records means **all** documents, papers, letters, mps, books, tapes, photographs, films, sound recordings, data processing software, or other material, **regardless of the physical form**, characteristics, or means of transmission, **made or received pursuant** to law or ordinance or **in connection with the transaction of official business** by any agency.



11

Definition of Public Records

Case Law

Any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.

Perpetuate

Communicate


Formalize



12

Clearwater Case

STATUTORY TEST: TRANSACTION OF OFFICIAL BUSINESS




A cartoon illustration of two laptops with human-like faces on their screens, appearing to be in conversation. They are positioned on a desk in front of a sign that reads "COMPUTERS". The scene is set against a warm, orange-toned background.

13

13

Life Lesson

Merlot and email do not mix



A silhouette of a person's head and hand holding a wine glass, drinking wine. The background is a sunset or sunrise, with the sun low on the horizon.

14

Meeting Notes
Draft documents

Perpetuate
Communicate
Formalize




15

Retention of Records

The custodian has an obligation to retain public records (this might be you.)

Department of State, Division of Library Services

Deposit with City Clerk



16

Schwab Case

Totality of factors case
“persons acting on their behalf”



17

119.10 Violation of chapter; penalties.

- (1) Any public officer who:
- (a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.
 - (b) **Knowingly** violates the provisions of s. [119.07\(1\)](#) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#). (2) Any person who **willfully and knowingly** violates:
- (a) Any of the provisions of this chapter commits a **misdemeanor** of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).
 - (b) Section [119.105](#) F.S. commits a **felony** of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).



18

Yes, you can go to jail for this too.

Martin County's Sarah Heard Indicted and Booked for Public Records Violations

By [BARBARA CLOWDIS](#) (SOURCE: [BARBARA CLOWDIS](#))
January 5, 2018 - 8:15am



The story of Florida public records law violations in Martin County moved further into the public light Thursday for County Commissioner Sarah Heard and former commissioner Anne Scott.

Heard was indicted and booked on two criminal counts of violating public records laws, according to the Martin County Sheriff's Office. She was released on her own recognizance after her fingerprints and mug shot were taken.

Her charges are criminal misdemeanors that could lead to a fine and/or jail time if she's found guilty. She also could be removed from office by the governor.

Thursday's charges were in addition to a previous non-criminal infraction filed by the prosecutor Nov. 27 for not responding to a public records request in January 2013, to which she pleaded not guilty.

A hearing date was set for Feb. 19. The state prosecutor informed Heard's attorney, Barbara Kibbey Wagner, during a December court hearing that five days needed to be set aside for the hearing due to the case's complexity.

Officials close to the case, however, anticipate the additional misdemeanor charges will result in a request for a hearing continuance. Heard also may now ask for a jury trial, if she pleads not guilty.

Heard is up for re-election in August for the District 4 County Commission seat; however, she has not yet filed, according to Martin County Elections Office records.

Former commissioner Scott, of Jupiter Island, also was charged Thursday with two additional criminal misdemeanor counts of violating public records laws. She, too, was booked and released on her own recognizance, according to the Martin County Sheriff's Office.



19

Lawsuits are no bargain.

Lawsuit alleges Sarasota city manager broke public records law

Source: [Herald Tribune](#)
By: [Nicole Rodriguez](#) - Staff Writer

The suit asks a judge to grant an accelerated hearing in the case, and declare that Barwin and the city violated state record retention rules and the Sunshine Law

SARASOTA — A lawsuit filed Thursday against Sarasota City Manager Tom Barwin and the city alleges that the top administrator's frequent failure to produce city-related discussions from his private Gmail account as part of numerous public records requests broke state open records law and eroded public trust in local government.

The suit, filed by Michael Borfield, a paralegal consultant and president of the Florida American Civil Liberties Union, asks a judge to grant an accelerated hearing in the case, and declare that Barwin and the city violated state record retention rules and the Sunshine Law, which is intended to guarantee that citizens have access to public records and the decision-making of governmental officials. The 23-page suit requests a judge to order Barwin and the city to follow the law, make records on Barwin's personal electronic devices available for inspection, pay Borfield's legal fees and award any other relief the court deems appropriate.



20

Perpetuate
Communicate
Formalize



21

Thank You!

Clifford B. Shepard, Esq.
Shepard, Smith, Kohlmyer & Hand, P.A.
2300 Maitland Center Pkwy.
Suite 100
Maitland, Florida 32751
407-622-1772
407-622-1884 fax
cshepard@shepardfirm.com
Materials by John G. Hubbard & Clifford B. Shepard



22



Section II

Formal Quasi-Judicial Hearings & Proceedings

Quasi-Judicial Hearings - A Guide

For the purposes of this document, “Petitioner” and “Applicant” or variations thereof, shall have the same meaning.

1. Introduction(s) - the Chairperson reads the case type and nature of the issue
2. Affected Party determination
3. Ex-parte communication - the Board members disclose any ex-parte communications that may have occurred. The Petitioner (applicant) and any affected party may ask questions of each Board member about these communications (directed through the Chairperson).
4. Swearing-in of the parties - the Petitioner (applicant), staff, and all witnesses shall be collectively sworn.
5. Staff presentation - Town staff shall present any staff, board, or other report on the matter. These reports any all other documentary evidence shall become part of the record. Evidence will be presented through oral testimony of witnesses and documentary evidence.
6. Petitioner (applicant) presents its case - the Petitioner or applicant may include a description and nature of the application if there is additional information that has not been previously provided by the Town staff. The Petitioner may introduce any documentary evidence and elicit testimony through witnesses.
7. Affected Party *for* the Petitioner (Applicant) - any affected person will present its case clearly indicating if they are in support of the Petition. The affected person may introduce documentary evidence and elicit testimony through witnesses.
8. Affect Party *against* the Petitioner (Application) - any affected person will present its case clearly indicating if they are opposed to the Petition. The affected person may introduce documentary evidence and elicit testimony through witnesses.
9. Any rebuttal by Petitioner (Applicant).
10. Any rebuttal by Staff.
11. Close of presentation by petitioner, staff, and affected parties.
12. Public Hearing.
13. Close Public Hearing; deliberations and vote of the Board.

General rules as to Witnesses:

After each witness testifies, any member of the Board, the Petitioner, or any affected party is permitted to question the witness, unless the Chairperson deems the question to be irrelevant or immaterial. The Chairperson may defer to the Town Attorney to determine the scope of questioning. The questioning party is not permitted to make statements - only to ask questions which are directly related to the testimony presented.

The Board may, in its discretion and at any time during the hearing, continue the hearing, and may request further information from any party.

Instructions:

Consideration of the Evidence - In Board deliberations, Board members must *only* consider the evidence - that is, the testimony of witnesses and the exhibits and all evidence admitted into the record.

The Board is not bound by strict rules of evidence or limited to consideration of the evidence which would be admissible in a court of law, but as you consider the evidence, both direct and circumstantial, you may make deductions and reach conclusions which reason and common sense lead you to make. The Board shall weigh all the competent, material, and/or relevant evidence presented, giving each piece of evidence the weight he or she sees fit.

The Board may exclude evidence or testimony which is not relevant, material or competent, or testimony which is unduly repetitious.

The Board will determine the relevancy of evidence, and the Board may ask the Attorney for opinions on the relevancy of evidence. However, the **attorney's opinion is not evidence** in the case - it is your own recollection and interpretation of the evidence that controls.

The public may provide input to the Board. The Board must not act merely because there is public sentiment for or against the petitioner. The Board must base its decision on the facts and competent evidence presented at the hearing.

Credibility of Witness(es) - You should decide whether you believe what each witness states and how important the testimony was. In making that decision, you may believe or disbelieve any witness; in whole or in part. Also, the number of witnesses testifying concerning any particular matter is not controlling. You may decide that the testimony of a smaller number of witnesses is more believable than the testimony of a larger number of witnesses to the contrary.

You should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or whether there was evidence that at some other time, the witness said or did something or failed to say or do, which was different from the testimony he or she gave before you during the hearing.

Expert Witness(es) - When knowledge of a technical subject matter might be helpful, a person having special training or experience in that technical field (an expert witness) is permitted to state his or her opinion concerning those technical matters. Merely because an expert witness has expressed an opinion however, does not mean that you must accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.

Information obtained from: <https://floridaldrs.com/tag/quasi-judicial-hearings/>



Section III

Conducting a Meeting

“Cheat Sheet”



BOARD MEETING “CHEAT SHEET” - A GUIDE

Note: you must be recognized by the Chair prior to speaking, by stating “*Chairman, I have a question*” or “*Chairman, may I make a comment*”. This procedure prevents members from speaking over each other and avoids confusion when preparing minutes.

Meeting Procedures: Meetings generally run in the following order (according to an approved agenda format):

1. Call to Order and Pledge of Allegiance
2. Roll Call / Determination of Quorum
3. Adoption of Agenda
4. Approval of Minutes (of prior meetings)
5. Report of Staff
6. Correspondence and Disclosure of Ex-parte Communication
7. Hearing of Cases
8. Business Items
9. Public Comment
10. Board Discussion
11. Adjournment

1. Call to Order and Pledge of Allegiance – the Chair will call the meeting to Order, noting the date, Board name, and time. The Chair leads attendees in the Pledge of Allegiance.

2. Roll Call and Determination of Quorum - the Board Secretary will perform the roll call to determine a quorum and document member’s attendance/absence.

3. Adoption of the Agenda – the Chair will ask if there are any changes to the Agenda; a motion and second to “adopt agenda as presented” - or - “adopt the agenda as amended” is required. A vote by consensus is acceptable (all in favor/opposed).

4. Approval of the Minutes – the Chair will ask if there are any changes to the Minutes; a motion and second to “approve the minutes as presented -or - as amended” is required. A vote by consensus is acceptable (all in favor/opposed).

5. Report of Staff - Staff will provide an update to projects currently under review.

6. Correspondence and Disclosure of Ex-parte Communication - the Chair will ask if any correspondence has been received regarding any of the items on the agenda; the Chair asks members to disclose ex-parte communication.

7. Hearing of Cases (Quasi-Judicial) – the Chair should refer to the procedure designated in the “Formal Quasi-Judicial Hearings” guide or consult the Board Attorney. All matters decided during hearings must be by **roll-call vote**, indicating which members voted for or against the issue as a matter of clarity for the record.

8. Business Items (Non-Quasi-Judicial) – staff introduces the item, providing relevant information and making a recommendation. Once finished, the Chair will ask for public comments. After the public has had the opportunity to comment, the Chair will bring the item back to the Board for discussion and deliberation. Board members discuss their viewpoints on the item. If action is required, the Chair will ask for a motion and second. A **roll-call vote** is taken indicating which members voted for and against the issue as a matter of clarity for the record.

9. Public Comment – the Chair asks if any members of the public wish to speak about an item not listed on the agenda.

10. Board Discussion – the Chair asks if any member of the Board wishes to discuss a topic not listed on the agenda. *Note: it is common to add discussion items in advance during Adoption of the Agenda section.*

11. Adjournment – the Chair may ask for a Motion to Adjourn, followed by a second, and vote to adjourn by consensus; or the Chair may simply adjourn the meeting and state the time.

Motions and Voting:

The Town follows a simplified version of Robert’s Rules of Order. Nearly everything can be accomplished in a meeting by a **Main Motion** and/or by **Amending a Main Motion**.

How a Main Motion is brought: used when a member wants to propose action by the Board.

- A member states: “I move that” (or ‘to’) ...
- Another member seconds the motion
- The Chair requests public comment
- The Chair requests Board comment
- The Chair requests a vote
- If a majority votes in favor of the motion, then the motion **PASSES**. If a majority votes in opposition to the motion, or if the vote is a tie, then the motion **FAILS**. The Board Secretary will state the results.

Amending a Main Motion: A member may make a motion to amend a main motion. The Chair will then ask for a member to second the amended motion. If seconded, then the Chair may deem the motion amended; if not seconded, the amendment dies and the original motion stands.

Other motions: A *Motion to Rescind* or *Motion to Consider* may also be made, but these types of motions are rarely utilized and can be explained by the Attorney if needed.

Voting: All members present must vote on the agenda item unless a conflict is declared. In those instances, a Form 8B will be provided to the member, who must complete and return the form to the Board Secretary for filing with the meeting minutes.



Section IV

Robert's Rules of Order & Parliamentary Procedure

Robert's Rules of Order & Parliamentary Procedure

- I. What is Parliamentary Procedure?
It is a set of rules for conduct at meetings that allows everyone to be heard and to make decisions without confusion.
- II. Why is Parliamentary Procedure important?
Because it is a time-tested method used for conducting business at meetings and it can be adapted to fit the needs of any organization. Robert's Rules of Order is the basic handbook of operation for most organizations – so it is important to know the basic rules.
- III. Organizations using Parliamentary Procedure usually follow a fixed order of business called an Agenda.
- IV. The method used by members to express themselves is in the form of “motions”. A motion is a proposal that the entire membership take action or a stand on an issue.
Individual members can:
 1. Call to Order
 2. Second motions
 3. Debate motions
 4. Vote on motions
- V. How are Motions presented?
 1. Obtaining the floor:
 - a. Wait until the last speaker has finished
 - b. Raise your hand and address the Chairman by saying, “Mr./Madam Chairman”
 - c. Wait until the Chairman recognizes you before speaking
 2. Make your motion:
 - a. Speak in a clear and concise manner
 - b. Always state a motion in the positive (for example, say, “I move that we ...” rather than, “I move that we do not ...”)
 - c. Avoid personality conflicts and stay on topic
 3. Wait for someone to second your motion: another member will state second, or the Chairman will call for a second. If there is no second to the motion, the motion dies.
 4. The Chairman re-states the motion:
 - a. The Chairman states, “it has been moved and seconded that we ...”. Thus placing your motion before the members for consideration and action.
 - b. The membership then either debates your motion or may move directly to a vote.
 - c. Once your motion is presented to the membership by the Chairman, it cannot be changed by you without the consent of the members.
 6. Expanding on Your Motion:

- a. Now is the time for you to speak in favor of your motion – not when you first make the motion.
- b. The **mover** is always allowed to speak first.
- c. All comments and debate must be directed to the Chairman.
- d. The mover may speak again **only** after all other speakers are finished (unless called upon by the Chairman).

7. Putting the Question (Motion) to the Membership:

- a. The Chairman asks, “Are you ready to vote on the motion?”
- b. If there is no more discussion, a vote is taken.
- c. The Board Secretary will state the results for the record.

VI. Voting on a Motion: The method of vote on any motion depends on the situation and the By-laws of the Board. These are typical methods:

1. By **Voice** – the Chairman asks those in favor to say, “aye”, those opposed to say “no”. Any member may move for an exact count.
2. By **Roll Call** – the member answers “yes” or “no” as his/her name is called. This method is used when a record of each person’s vote is required or desired.
3. By **General Consent** – when a motion is not likely to be opposed, the Chairman says, “if there is no objection ... “ The membership shows agreement by their silence, however if one member says, “I object,” the item must be put to a vote.
4. By **Ballot** – members write their vote on a slip of paper; the Clerk calculates and announces the results to the Chairman.

These are two other motions that are commonly used:

1. **Motion to Table** – this motion is often used to provide an extended, indefinite period of time to resolve concerns before a final vote is taken. Tabled items are removed from subsequent meeting agendas until brought back by a vote of the Board. The option is always present, to “take off the table” for reconsideration by the membership.
2. **Motion to Continue to a Date Certain** – this motion is used to allow a limited period of time to obtain additional information, resolve outstanding issues, or reschedule an item that has been previously advertised and noticed. No further public notice is required as long as the date and time of the future meeting are announced. The discussion on that particular item “continues” to the future date.

Robert’s Rules of Order and Parliamentary Procedure provides a standard of orderly framework for getting work done. Your meetings will be successful and productive by following these tips:

1. Allow motions that are in order;
2. Have members obtain the floor properly;
3. Speak clearly and concisely;
4. Obey the rules of debate; and most importantly ...
5. Be courteous.



Section V

Town's Policy for Use of Social Media by Board Members

Per Resolution 2020-17

Town of Ponce Inlet Policy for Use of Social Media by Board Members

3.0 Informational Policy

3.1 Policy

The Town understands that social media can be a beneficial and rewarding way for individuals to share information about themselves and interact with others and the public at large. However, when it comes to members of the Town Council, as well as other Town boards and committees, use of social media can violate Sunshine and Public Records laws when discussing public business, resulting in potential litigation and even criminal charges. In addition, using a Social Media Channel for official statements can transform the Channel into a “public forum” subject to First Amendment considerations. The following is a policy for use of social media to be used as guidance to avoid creating actual or perceived violations of the First Amendment, as well as Sunshine and Public Records laws.

3.2 Definitions

For purposes of this Policy:

Board Member means a member of the Town Council, or any Town Board or Committee which is subject to Section 286.011, *Florida Statutes*.

Social media content or content means and includes any materials, documents, photographs, graphics, or other information that is created, posted, distributed, or transmitted on a Social Media Channel.

Posts or Postings mean information, articles, pictures, videos of any other form of communication posted on a Social Media Channel.

Social Media Account means the legal arrangement with a social media provider to authorize use of a social media tool. For example, a Facebook account authorizes use of Facebook.

Social Media Tool means an online utility that provides for mass communication, such as message boards, web sites, and blogs. Specific examples include Facebook, Twitter, LinkedIn, YouTube, Pinterest, and Instagram. Social media tools may provide for one-way or two-way communication.

Social Media Channel means a specific social media platform available through a Social Media Account. For example, each Facebook Page opened through the establishment of a Facebook account is a Social Media Channel.

Personal Social Media Channel means a specific social media platform available through a Social Media Account managed by an Employee which is not associated with the Town, such as an Employee’s personal Facebook page.

3.3 Guidance

- A. Any Board Member who uses a Social Media Channel to make statements relating to public business should not prevent any other user from interacting with any post on that Social Media Channel. Board Members may not take any action to make any individual's comments or replies to posts on the Social Media Channel less visible to others. If available, Board Members may instead choose to turn off replies and comments entirely on any given post.
- B. Board Members should not interact with other members of their same board through Social Media Tools on any matter which could be perceived as relating to public business. "Interacting" includes both substantive and non-substantive interactions, such as commenting on one another's posts, tagging one another on statements, liking one another's posts, or making any statement explicitly or implicitly referring to a member of the same board.
- C. Board Members should not use a Social Media Channel to state an opinion on a matter which may come before their board in a quasi-judicial capacity. Board Members should avoid engaging in *ex parte* communications regarding quasi-judicial matters through Social Media Tools. If a Board Member does communicate regarding a quasi-judicial matter using a Social Media Tool, the Board Member shall disclose such *ex parte* communications at the relevant hearing on the matter.
- D. Board Members should avoid making any statements regarding public business through posts which are not publicly available. For the purposes of this policy, "publicly available" shall mean accessible by hyperlink without any required sign-in or other credential. If a Social Media Tool does not provide for the creation of publicly available posts, Board Members should refrain from utilizing that Social Media Tool.
- E. Whenever a Board Member makes any statement regarding public business using a Social Media Tool, including a reply to another user's post, the Board Member should immediately create a copy of the statement and provide the copy to the Town Clerk. The copy may either be physical form or a computer file, such as a PDF. Board Members who desire technical guidance in creating a copies of social media posts should contact the Town Clerk.
- F. Board Members may not delete any posts which relate to public business.
- G. The Town reserves the right to change, modify, or amend all or part of this policy at any time.



Town of Ponce Inlet
Boardmember
Annual Training Packet

Section VI

Code of Ethics

FL Statute Chapter 112

(5) SALARY AND EXPENSES.—No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. No local government attorney shall be prevented from considering any matter affecting his or her salary, expenses, or other compensation as the local government attorney, as provided by law.

(6) MISUSE OF PUBLIC POSITION.—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. [104.31](#).

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.—A current or former public officer,

employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. [110.402](#) or any person holding a position in the Selected Exempt Service as defined in s. [110.602](#) or any person having authority over policy or procurement employed by the Department of the Lottery.

(II) The Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives.

(III) The executive director and deputy executive director of the Commission on Ethics.

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

(V) The Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state university.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

b. "Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.

c. "State agency" means an entity of the legislative, executive, or judicial branch of state

2020 Florida Statutes

government over which the Legislature exercises plenary budgetary and statutory control.

3.a. No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

b. For a period of 2 years following vacation of office, a former member of the Legislature may not act as a lobbyist for compensation before an executive branch agency, agency official, or employee. The terms used in this sub-subparagraph have the same meanings as provided in [s. 112.3215](#).

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

5. Any person violating this paragraph shall be subject to the penalties provided in [s. 112.317](#) and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

6. This paragraph is not applicable to:

- a. A person employed by the Legislature or other agency prior to July 1, 1989;
- b. A person who was employed by the Legislature or other agency on July 1, 1989, whether or not the person was a defined employee on July 1, 1989;
- c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;
- d. A person who has reached normal retirement age as defined in [s. 121.021\(29\)](#), and who has retired under the provisions of chapter 121 by July 1, 1991; or
- e. Any appointed state officer whose term of office began before January 1, 1995, unless reappointed to that office on or after January 1, 1995.

(b) In addition to the provisions of this part which are applicable to legislators and legislative employees by virtue of their being public officers or employees, the conduct of members of the Legislature and legislative employees shall be governed by the ethical standards provided in the respective rules of the Senate or House of Representatives which are not in conflict herewith.

(10) EMPLOYEES HOLDING OFFICE.—

(a) No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council,

commission, or authority, by whatever name known, which is his or her employer while, at the same time, continuing as an employee of such employer.

(b) The provisions of this subsection shall not apply to any person holding office in violation of such provisions on the effective date of this act. However, such a person shall surrender his or her conflicting employment prior to seeking reelection or accepting reappointment to office.

(11) PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS.—No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a state examining or licensing board for the profession or occupation.

(12) EXEMPTION.—The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

(a) Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.

(b) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:

1. The official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;

2. The official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and

3. The official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.

(c) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.

(d) An emergency purchase or contract which would otherwise violate a provision of subsection (3) or subsection (7) must be made in order to protect the health, safety, or welfare of the citizens

of the state or any political subdivision thereof.

(e) The business entity involved is the only source of supply within the political subdivision of the officer or employee and there is full disclosure by the officer or employee of his or her interest in the business entity to the governing body of the political subdivision prior to the purchase, rental, sale, leasing, or other business being transacted.

(f) The total amount of the transactions in the aggregate between the business entity and the agency does not exceed \$500 per calendar year.

(g) The fact that a county or municipal officer or member of a public board or body, including a district school officer or an officer of any district within a county, is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such public board or body, provided it appears in the records of the agency that the governing body of the agency has determined that such officer or member of a public board or body has not favored such bank over other qualified banks.

(h) The transaction is made pursuant to s. [1004.22](#) or s. [1004.23](#) and is specifically approved by the president and the chair of the university board of trustees. The chair of the university board of trustees shall submit to the Governor and the Legislature by March 1 of each year a report of the transactions approved pursuant to this paragraph during the preceding year.

(i) The public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.

(j) The public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his or her agency and:

1. The price and terms of the transaction are available to similarly situated members of the general public; and
2. The officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

(13) COUNTY AND MUNICIPAL ORDINANCES AND SPECIAL DISTRICT AND SCHOOL DISTRICT RESOLUTIONS REGULATING FORMER OFFICERS OR EMPLOYEES.—The governing body of any county or municipality may adopt an ordinance and the governing body of any special district or school district may adopt a resolution providing that an appointed county, municipal, special district, or school district officer or a county, municipal, special district, or school district employee may not personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or employee for a period of 2 years following vacation of office or termination of employment, except for the purposes of collective bargaining. Nothing in this section may be construed to prohibit such ordinance or resolution.

(14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.—A person who has been elected to

any county, municipal, special district, or school district office or appointed superintendent of a school district may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection:

(a) The “government body or agency” of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.

(b) The “government body or agency” of any other county elected officer is the office or department headed by that officer, including all subordinate employees.

(c) The “government body or agency” of an elected municipal officer consists of the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.

(d) The “government body or agency” of an elected special district officer is the special district.

(e) The “government body or agency” of an elected school district officer is the school district.

(15) ADDITIONAL EXEMPTION.—No elected public officer shall be held in violation of subsection (7) if the officer maintains an employment relationship with an entity which is currently a tax-exempt organization under s. 501(c) of the Internal Revenue Code and which contracts with or otherwise enters into a business relationship with the officer’s agency and:

(a) The officer’s employment is not directly or indirectly compensated as a result of such contract or business relationship;

(b) The officer has in no way participated in the agency’s decision to contract or to enter into the business relationship with his or her employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the agency, or otherwise; and

(c) The officer abstains from voting on any matter which may come before the agency involving the officer’s employer, publicly states to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining, and files a written memorandum as provided in s.112.3143.

(16) LOCAL GOVERNMENT ATTORNEYS.—

(a) For the purposes of this section, “local government attorney” means any individual who routinely serves as the attorney for a unit of local government. The term shall not include any person who renders legal services to a unit of local government pursuant to contract limited to a specific issue or subject, to specific litigation, or to a specific administrative proceeding. For the purposes of this section, “unit of local government” includes, but is not limited to, municipalities, counties, and special districts.

(b) It shall not constitute a violation of subsection (3) or subsection (7) for a unit of local

government to contract with a law firm, operating as either a partnership or a professional association, or in any combination thereof, or with a local government attorney who is a member of or is otherwise associated with the law firm, to provide any or all legal services to the unit of local government, so long as the local government attorney is not a full-time employee or member of the governing body of the unit of local government. However, the standards of conduct as provided in subsections (2), (4), (5), (6), and (8) shall apply to any person who serves as a local government attorney.

(c) No local government attorney or law firm in which the local government attorney is a member, partner, or employee shall represent a private individual or entity before the unit of local government to which the local government attorney provides legal services. A local government attorney whose contract with the unit of local government does not include provisions that authorize or mandate the use of the law firm of the local government attorney to complete legal services for the unit of local government shall not recommend or otherwise refer legal work to that attorney's law firm to be completed for the unit of local government.

(17) BOARD OF GOVERNORS AND BOARDS OF TRUSTEES.—No citizen member of the Board of Governors of the State University System, nor any citizen member of a board of trustees of a local constituent university, shall have or hold any employment or contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to s. [11.045](#).

History.—s. 3, ch. 67-469; s. 2, ch. 69-335; ss. 10, 35, ch. 69-106; s. 3, ch. 74-177; ss. 4, 11, ch. 75-208; s. 1, ch. 77-174; s. 1, ch. 77-349; s. 4, ch. 82-98; s. 2, ch. 83-26; s. 6, ch. 83-282; s. 14, ch. 85-80; s. 12, ch. 86-145; s. 1, ch. 88-358; s. 1, ch. 88-408; s. 3, ch. 90-502; s. 3, ch. 91-85; s. 4, ch. 91-292; s. 1, ch. 92-35; s. 1, ch. 94-277; s. 1406, ch. 95-147; s. 3, ch. 96-311; s. 34, ch. 96-318; s. 41, ch. 99-2; s. 29, ch. 2001-266; s. 20, ch. 2002-1; s. 894, ch. 2002-387; s. 2, ch. 2005-285; s. 2, ch. 2006-275; s. 10, ch. 2007-217; s. 16, ch. 2011-34; s. 3, ch. 2013-36; s. 2, ch. 2018-5.



Town of Ponce Inlet
Boardmember
Annual Training Packet

Section VII

Public Business

FL Statute Chapter 286
(Abridged)

2018 Florida Statutes

Title XIX PUBLIC BUSINESS (Abridged)

Chapter 286

PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

- 286.0105 Notices of meetings and hearings must advise that a record is required to appeal.
- 286.011 Public meetings and records; public inspection; criminal and civil penalties.
- 286.0113 General exemptions from public meetings.
- 286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.
- 286.0115 Access to local public officials; quasi-judicial proceedings on local government land use matters.
- 286.012 Voting requirement at meetings of governmental bodies.
- 286.26 Accessibility of public meetings to the physically handicapped.

286.0105 Notices of meetings and hearings must advise that a record is required to appeal. —

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

History.—s. 1, ch. 80-150; s. 14, ch. 88-216; s. 209, ch. 95-148.

286.011 Public meetings and records; public inspection; criminal and civil penalties. —

- (1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.
- (2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this

state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a

violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

History.—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.

286.0113 General exemptions from public meetings. —

(1) That portion of a meeting that would reveal a security or fire safety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

(2)(a) For purposes of this subsection:

1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. “Team” means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

(b) 1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c) 1. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

3. If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

History.—s. 2, ch. 2001-361; s. 44, ch. 2005-251; s. 2, ch. 2006-158; s. 2, ch. 2006-284; s. 13, ch. 2010-151; s. 2, ch. 2011-140; s. 2, ch. 2016-49; s. 3, ch. 2018-146.

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(1) For purposes of this section, “board or commission” means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

(c) A meeting that is exempt from s. 286.011; or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

(7) (a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

History.—s. 1, ch. 2013-227.

286.0115 Access to local public officials; quasi-judicial proceedings on local government land use matters. —

(1) (a) A county or municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials pursuant to this subsection or by adopting an alternative process for such disclosure. However, this subsection does not require a county or municipality to adopt any ordinance or resolution establishing a disclosure process.

(b) As used in this subsection, the term “local public official” means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.

(c) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member. If adopted by county or municipal ordinance or resolution, adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with local public officials.

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject local public officials to part III of chapter 112 for not complying with this paragraph.

(2) (a) Notwithstanding the provisions of subsection (1), a county or municipality may adopt an ordinance or resolution establishing the procedures and provisions of this subsection for quasi-judicial proceedings on local government land use matters. The ordinance or resolution shall provide procedures and provisions identical to this subsection. However, this subsection does not require a county or municipality to adopt such an ordinance or resolution.

(b) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decision-making body who is not a party or party-intervenor shall be allowed to testify before the decision-making body, subject to control by the decision-making body, and may be requested to respond to questions from the decision-making body, but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness. The decision-making body shall assign weight and credibility to such testimony as it deems appropriate. A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-intervenors, and shall be required to be qualified as an expert witness, as appropriate.

(c) In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the decision-making body by application of ex parte communication prohibitions. Disclosure of such communications by a member of the decision-making body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decision-making body. All decisions of the decision-making body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications.

(3) This section does not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials.

History.—s. 1, ch. 95-352; s. 31, ch. 96-324.

286.012 Voting requirement at meetings of governmental bodies. — A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is, or appears to be, a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the only conflict or possible conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s.

112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

History.—s. 1, ch. 72-311; s. 9, ch. 75-208; s. 2, ch. 84-357; s. 13, ch. 94-277; s. 19, ch. 2013-36; s. 7, ch. 2014-183.

286.26 Accessibility of public meetings to the physically handicapped. —

(1) Whenever any board or commission of any state agency or authority, or of any agency or authority of any county, municipal corporation, or other political subdivision, which has scheduled a meeting at which official acts are to be taken receives, at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority, such chairperson or director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible to such person.

(2) If an affected handicapped person objects in the written request, nothing contained in the provisions of this section shall be construed or interpreted to permit the use of human physical assistance to the physically handicapped in lieu of the construction or use of ramps or other mechanical devices in order to comply with the provisions of this section.

History.—s. 1, ch. 77-277; s. 1, ch. 79-170; s. 116, ch. 79-400; s. 1, ch. 81-268.

“LET THE SUNSHINE IN” Public Meetings Law Chapter 286 F.S.

Clifford B. Shepard

Materials by John G.
Hubbard, Esq. & Clifford
B. Shepard



1

Florida Constitution Article I, section 24 (b)

(b) All **meetings** of any **collegial public body** of the executive branch of state government or of any collegial public body of a county, **municipality**, school district, or special district, at which **official acts are to be taken** or at which **public business** of such body is to be **transacted or discussed**, shall be **open and noticed** to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

2

2

Florida Statute 286.011

- (1) All **meetings** of any board or commission of any state agency or authority or of any **agency or authority** of any county, **municipal** corporation, or political subdivision, except as otherwise provided in the Constitution, at which **official acts are to be taken** are declared to be public meetings **open to the public at all times**, and **no resolution, rule, or formal action** shall be considered **binding** except as taken or made at such meeting. The board or commission must provide **reasonable notice** of all such meetings.

3

3

Florida Statute 286.011

- 2) The **minutes** of a meeting of any such board or commission of any such state agency or authority shall be **promptly recorded**, and such records shall be **open to public inspection**. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

4

4

Notice

Reasonable

Location

Restaurant ❌

Private club ❌

Identification required ❌

In city limits ⚡

No “CHILLING” effect

Minutes

Summary v. verbatim

Draft is a public record

Must be approved timely



Public Meeting
At City Hall

5

Florida Statute 286.011 = MEETING LOCATION

(6) All **persons** subject to subsection (1) are **prohibited from holding** meetings at any facility or **location** which **discriminates on the basis of sex, age, race, creed, color, origin, or economic status** or which **operates** in such a manner as to **unreasonably restrict public access** to such a facility.

- **Public meetings must be accessible to the physically handicapped Chapter 286.26 FS**

6

Florida Statute 286.011

- **Knowingly attending a meeting in violation of the statute is a misdemeanor of the second degree**
- **Conduct outside the State is a misdemeanor of the second degree**
- **A court may assess an attorney's fee against you for enforcement of this statute unless you have sought and followed the advice of the city's attorney**

7

7

What is a public meeting?

Florida Constitution

Meeting of a collegial public body at which official acts taken or business discussed

Florida Statutes

Meeting at which official acts taken

Case Law

All meetings where there are discussions of matters which may foreseeably come before a board or commission

"All meetings" include staff, committees, temporary groups or even a single person.

8

Yes, Prosecutions Still Happen

Grand Jury To Review Century Town Operations; Council Members Charged With Sunshine Law Violations

January 4, 2019



A grand jury will investigate operations of the Town of Century, and three council members have been charged with violating the Sunshine Law.

"A number of issues have been brought to the attention of the State Attorney's Office regarding the manner in which the town has operated, and these are the issues that may brought before the grand jury." Assistant State

9

9

What's going on here?



The fact that we don't know IS the point.

10

10

W.D. Childers goes to jail



11

Florida Statute 286.011

- The statute is “broadly construed to effect it’s remedial and protective purposes.”
- Applicable to elected and appointed bodies
- Substantial delegation affecting a decision...single individual
- Recommendations limit choices; part of decision process
- Fact finding only IS AN EXCEPTION: **EXCEPT FOR ELECTED BODIES!**

12

12

Major Exceptions – ALL STATUTORY

- Pending litigation...settlement negotiations or strategy sessions related to litigations expenditures...limited attendees
- Labor negotiations-bargaining team – exemption as to public meetings and public records Chap 447 F.S.
- Risk management committee
- Security system meeting
- Negotiation with a vendor

13

13

Exchange of written memorandums

- First bite at the apple
- No response



14

14

Outside Contact

- You can socialize with other board members
- You can attend the same meeting....**BUT...**



15

You Can Cure a Violation

- No rubber stamp meeting
- Ultimate decision safeguarded
- Multiple cases describing proper procedure

Cure...
Don't Ignore



16

Notice

Location

Minutes

17

17

New Challenges

E-mail...twitter...texting...Facebook...websites



18

18

Thank You

Clifford B. Shepard, Esq.
Shepard, Smith, Kohlmyer & Hand, P.A.
2300 Maitland Center Pkwy.
Suite 100
Maitland, Florida 32751
407-622-1772
407-622-1884 fax
cshepard@shepardfirm.com

Materials by John G. Hubbard, Esq.

19



Addendum

FS Chapter 162

County or Municipal Code Enforcement

Entire Statute

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 non-charter 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) 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.

(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.

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 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).

(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 once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation 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.

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. 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.