

AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
February 21, 2024

Agenda Item:

First Reading Ordinance No. 2024-03 regarding code enforcement procedures.

Background:

The process of local government code enforcement is regulated primarily by Florida Statutes Chapter 162. Article II of Chapter 1 of the Village Code currently addresses code enforcement within the Village. Those provisions were adopted in 2015 and have not been revisited by the Council since.

On January 3rd 2024, the Village Council conducted a workshop session related to the topic of code enforcement and provided feedback to Village staff on Council's current perspective on how the process is conducted. At its meeting on January 24th 2024, the Village Council asked the Village Attorney to perform a review of the Village Code and to bring back recommended revisions to remove or revise any outdated, preempted or lawfully questionable provisions, and to incorporate best practices as to the governmental/regulatory functions the Village performs.

The Village Attorney has reviewed the Village's code enforcement code and has drafted the attached Ordinance 2024-03 recommending revisions to the current code. With respect to issues in the current code:

- Currently, the code refers to a code enforcement board. However, that enforcement method is not used by the Village as the Village adopted a special magistrate model. References to a CEB are therefore removed.
- The current code provide that the issuance of liens shall be at the discretion of the CEB or magistrate, but that the Council may, by resolution, adopt standard code fines. However, the magistrate does not play a role in a code enforcement order imposing fines becoming a lien. Rather, the Village's code enforcement staff will made the decision to file such orders with the Clerk of Courts, thus causing the orders to become liens. In addition, since Florida law requires the magistrate to consider the amount of each daily fine to be imposed on a case-by-case basis,

creation of uniform code fines is not advised. These provisions are therefore removed.

- The current code does not provide for a level of detail with respect to the notice procedures which are not only called for in the statutes, but which the state's courts have over time ruled are requirements to ensure due process is afforded.

The draft Ordinance provides, in a 'one stop' location for residents and staff to refer to, the enforcement options available to the Village, the extent of authority of the magistrates, and the important procedural steps of which both Village staff and residents involved in the process should be aware. Among the enhancements provided to the current code, the Ordinance:

- Provides for a statement of intent with respect to why the Village engages in the code enforcement process
- Confirms that the Village's primary method of enforcement is by way of the special magistrate system, while also preserving the Village's authority to utilize alternative enforcement methods, and affirming the independent authority of the Fire Marshal and Building Official to exercise their authority independent of the code enforcement process
- Provides a definition section so residents can easily access the meaning of the key terms used in the code enforcement process.
- Provides for the appointment of more than one special magistrate to ensure that cases can be heard regardless of availability or potential conflict related to an individual magistrate, and clarifies the standards to be applied by magistrates when a party seeks their recusal due to conflicts.
- Clarifies the role of the Village Attorney in the process is to represent the Village, and not the magistrate, during proceedings.
- Provides for an initial 'courtesy' notice for non-urgent/non-repeat violations prior to the code enforcement officer's initiation of a formal violation notice.
- Sets forth the process to be followed by the owner-violator should property subject to a violation notice is transferred during the enforcement process.

- Provides for standard procedures for the conduct of enforcement hearings, including setting forth the process a magistrate must use prior to ordering the removal of anyone from a hearing.
- Contains an important provision which confines the magistrate’s authority to only ruling upon the code enforcement violation charge at issue, and clarifying that the magistrate does not have the jurisdiction to render a declaration regarding underlying title to property rights/ownership, or declarations regarding whether a property is grandfathered under the Village’s zoning code, or to address a party’s assertion that their constitutional rights were violated.
- Sets forth the three factors a magistrate must consider prior to imposing a daily fine.
- Confirms that, in accordance with state law, the Village Council is the authority which must agree to compromise or eliminate a recorded code lien.
- Sets forth the information which a Village code lien must contain in order to be valid against creditors and subsequent purchasers.
- Prohibits violators or witnesses from engaging in *ex parte* communications with the magistrate outside of the hearing setting.
- Provides the violator and the Village Council may appeal from a ruling of the magistrate.
- Provides for the process to be used if a Deputy issues a citation for county court based on their authority to enforce municipal codes.
- Confirms that in addition to using the quasi-judicial enforcement process, the Village may elect to file a civil suit (including a public nuisance action) if the circumstances suggest that method would be most advantageous to gaining compliance and remediation.

The Village’s code enforcement staff has reviewed the provisions of the Ordinance and are supportive of the Ordinance’s adoption.

Action Requested: Motion to Pass first reading of Ordinance No. 2024-03 and set second reading for March 6, 2024 to adopt Ordinance No. 2024-03.

Process and Timeline:

If Ordinance is adopted on first reading, a public hearing date will be set for the second reading.

Financial Impact:

The Ordinance brings the Village's published policy more in line with how the Village is already operating the code enforcement function. Therefore, there is no fiscal impact related to the Ordinance's adoption.

Prepared by: Robert Eschenfelder, Village Attorney

Attachments:

1. Ordinance No. 2024-03