

Memorandum



(Second Reading 01-20-05)

Date: November 30, 2004

Agenda Item No. 6(E)

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of the County Manager.

Subject: Ordinance Amending Chapter 8CC

RECOMMENDATION

It is recommended that the Board of County Commissioners adopt the attached ordinance amending Chapter 8CC of the Code of Miami-Dade County to extend the term of office of the Hearing Officers, to implement an appeal hearing system for the additional penalties imposed under this Chapter and to allow for code enforcement officers to record Civil Violation Notices.

BACKGROUND

Currently, under Chapter 8CC of the Miami-Dade County Code, a County code inspector can place a lien on a property that has been the subject of a County Code violation for up to 20 times the face amount of the original citation if the violation is not corrected within the time period prescribed in the citation. While, under the existing code, the violator has the right to appeal the initial citation and the fine associated with that citation, there is currently no mechanism to appeal the continuing violation penalties that can be assessed if the violation is not corrected.

The District Court of Appeal for the Second District issued an opinion on February 7, 2003 that has implications for the County's current system. The decision, Massey v. Charlotte County, 842 So.2d 142 (Fla. 2nd DCA 2003), determined that a system, similar to that used by Miami-Dade denies a violator procedural due process by not offering a hearing or appeal prior to assessing the continuing violation penalties.

In an effort to improve the County's system and to prevent similar court actions, this amendment to the process has been created to provide procedural due process to the violator. The Clerk of the Court will begin sending a Notice of Assessment of Continuing Penalties to the violator at the time of receipt of an affidavit of non-compliance from a code enforcement officer. The affidavit of non-compliance is currently the means by which the code enforcement officer informs the hearing officer of non-compliance and the need to assess the continuing penalties. The hearing officer then issues an order assessing continuing penalties. The new notice of assessment sent to the violator will inform them that they have the right to appeal the continuing penalty and receive a hearing before a hearing officer.

Any violator that requests an appeal will be scheduled for a hearing before a hearing officer at a regularly scheduled calendar of appeals for enforcement matters for the affected department. The department will need to go forward and show that the violation continued to exist for the length of time set out in the Notice of Assessment. The hearing will be strictly limited to the amount of the continuing

Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners
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penalty based solely on the length of time the violation continued to exist, up to the maximum set forth in the Code for the particular violation. All procedural and evidentiary provision which govern the hearings for the actual citation will apply to the hearing on the continuing penalty.

As with appeals of the issued citation, an appeal of the continuing penalty can result in cost of the appeal being assessed against the violator in the event that the hearing officer rules in favor of the code enforcement officer.

It is expected, that this new procedure will ensure that the violator receives adequate procedural due process.

Currently, the Hearing Officers who hear the appeals of these citations are appointed for a term of one year. This requires the County, on an annual basis to advertise and seek applications for these Hearing Officer positions. This places a burden on County staff to appoint Hearing Officers annually. It is suggested that the term of office be expanded to two years to reduce the quantity of time spent on appointing the Hearing Officers.

There is currently no mechanism to notify the public of the existence of code violations on a piece of property. A purchaser of property can unwittingly purchase a property that is the subject of code enforcement action and not know of the violations or the enforcement action. Allowing the recording of the Civil Violation Notice or a notice of violation, allows an unsuspecting purchaser to know of the violation. It will not act as a lien on the property and will not constitute a cloud upon the title.



Joseph A. Ruiz, Jr.
Assistant County Manager

Memorandum



Date: January 20, 2005

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "George M. Burgess", is written over the printed name and title.

Subject: Ordinance Amending Chapter 8CC

The attached ordinance will allow violators to appeal the imposition of continuing penalties and extend the term of hearing officers to two years. Extending the term of hearing officers will not have a negative fiscal impact to Miami-Dade County. However, the implementation of this ordinance will require that the Office of the Clerk send a notice of assessment of continuing penalties to the violators, which is a step not currently required. To cover the additional cost of implementing this procedure, the Clerk may reduce the fine revenues ultimately received by the issuing departments.

Fiscal01205



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez DATE: January 20, 2005
and Members, Board of County Commissioners

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 6(E)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 6(E)
01-20-05

ORDINANCE NO. _____

ORDINANCE AMENDING SECTIONS 8CC-2, 8CC-3, 8CC-4, 8CC-5 AND 8CC-6 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; EXTENDING THE TERM OF HEARING OFFICERS TO TWO YEARS; CREATING A RIGHT TO APPEAL THE IMPOSITION OF CONTINUING PENALTIES AND SETTING THE PROCEDURE THEREFOR; PROVIDING FOR CODE ENFORCEMENT OFFICER TO RECORD THE CIVIL VIOLATION NOTICE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 8CC-2 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 8CC-2. Qualifications of officers and removal; organization.

* * *

- (d) The County Manager or his designee shall appoint as many Hearing Officers as are deemed necessary. Appointments shall be made for a term of ~~[[one (1)]]~~ >>two (2)<< year>>g<<. Upon recommendation of the Hearing Officer Review Board, any Hearing Officer may be reappointed at the discretion of the County Manager, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual Hearing Officer; provided, however, that a determination as to removal or

¹ Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

reappointment must be made for each individual Hearing Officer at the end of each of his or her ~~[[one]]~~ >>two<<-year term. The County Manager shall have authority to remove individual Hearing Officers with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.

* * *

Section 2. Section 8CC-3 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8CC-3. Enforcement procedures.

* * *

(e) A Code Inspector who finds such a violation shall issue a civil violation notice to the violator. Service shall be effected by delivering the civil violation notice to the violator or his agent, or by leaving the civil violation notice at the violator's usual place of abode with any person residing therein who is fifteen (15) years of age or older and informing that person of its contents. If such service cannot be effected, the civil violation notice may be sent by certified mail, return receipt requested, or by posting of the civil violation notice in a conspicuous place on the premises or real property upon which the violation has been observed >>or by mailing to or posting the civil violation notice at the property owner's mailing address as listed in the tax records of Miami-Dade County<<. Such posting of the civil violation shall be deemed proper service, and the time for compliance, stated in the notice, shall commence with the date such notice is posted.

* * *

>>(g) A Code Inspector is authorized to record in the public record the civil violation notice or a notice of violation which is based upon the civil violation notice. The recording of the civil violation or a notice of violation under this section shall not act as or be a lien on the property and shall not act as a notice of a lien on the property but shall merely act as public notice of the existence of the violation.<<

Section 3. Section 8CC-4 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8CC-4. Civil penalties and related terms construed.

* * *

(g) >>Continuing violation penalties shall be assessed by the hearing officer upon the filing of an Affidavit of Non-Compliance by the Code Inspector. The violator may request an administrative hearing, which hearing shall be strictly limited to the amount of the continuing violation based upon the length of time the violation continued to exist. Upon the filing of the Affidavit of Non-Compliance, the Clerk shall send a Notice of Assessment of Continuing Penalties to the violator by first class mail, at the last known address of the violator. Said notice shall include but not be limited to the following:

- (1) The date of issuance.
- (2) Department or division issuing the original notice.
- (3) Section number of Code that has been violated.
- (4) Amount of continuing penalty to be assessed by the hearing officer.
- (5) Notice of right to request an administrative hearing and instructions on how to file for the administrative hearing.
- (6) Notice that failure to request an administrative hearing within twenty (20) days after the receipt of the Notice of Assessment shall constitute a waiver of the violator's right to the administrative hearing.
- (7) Notice that the administrative hearing is strictly limited to the amount of the continuing penalty based solely upon the length of time the violation continued to exist but in no case in excess of the maximum set forth in the Code.

(8) Notice that the violator shall be liable for the reasonable costs of the administrative hearing if the violator is unsuccessful at the hearing.<<

~~[(g)]~~>>(h)<<Civil penalties assessed pursuant to this chapter are due and payable to Miami-Dade County on the last day of the period allowed for the filing of an appeal from the Hearing Officer's decision, or, if proper appeal is made, when the appeal has been finally decided adversely to the named violator.

Section 4. Section 8CC-5 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8CC-5. Rights of violators; payment of fine; right to appeal; failure to pay and correct, or to appeal.

(a) A violator who has been served with a civil violation notice >>or a notice of assessment<< shall elect either to:

(1) Pay the civil penalty in the manner indicated on the notice, and correct the violation within the time specified on the notice (if applicable); or

(2) Request an administrative hearing before a Hearing Officer to appeal the decision of the Code Inspector which resulted in the issuance of the civil violation notice >>or notice of assessment<<.

* * *

Section 5. Section 8CC-6 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8CC-6. Scheduling and conduct of hearing.

* * *

(k) The Hearing Officer shall make findings of fact based on evidence of record. >>The Hearing Officer shall make the findings of fact immediately upon conclusion of the hearing. Once commenced, no hearing shall be deferred, however, the violator shall have the option to request a reschedule of the hearing. A request to reschedule shall

only be considered prior to the commencement of testimony and presentation of evidence.<< In order to make a finding upholding the Code Inspector's decision, the Hearing Officer must find that a preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant Section of the Code as charged >>for purposes of a civil violation notice, or that the violation continued to exist for the time period set out in the notice of assessment, for purposes of a notice of assessment<<.

- (l) If the named violator is found guilty of the violation >>or if the violation is found to be a continuing violation pursuant to a notice of assessment<<, he shall pay the reasonable costs of the administrative hearing and the costs and expenses of the County for investigation, enforcement, testing, or monitoring. The costs and expenses of the County for investigation, enforcement, testing, or monitoring shall be calculated and submitted to the Hearing Officer, to be attached to the final order for amount owed, in standard format as prescribed by departmental administrative orders of the County Manager. All costs of enforcement shall be paid within thirty (30) days of the date of the administrative hearing unless an alternate timeframe is established by the department.
- (m) The fact-finding determination of the hearing officer >>for purposes of a civil violation notice<< shall be limited to whether the violation alleged did occur and, if so, whether the person named in the civil violation notice can be held responsible for that violation. >>The fact-finding determination of the hearing officer for purposes of a notice of assessment shall be strictly limited to length of time that the violation existed.<< Based upon this fact-finding determination, the Hearing Officer shall either affirm or reverse the decision of the Code Inspector ~~[[as to the responsibility of the named violator for the Code violation]]~~. If the Hearing Officer affirms the decision of the Code Inspector >>with respect to a civil violation notice<<, the hearing officer, pursuant to Section 8CC-4(f), shall determine a reasonable time period within which correction of the violation must be made, provided however, that such time period shall be no more than thirty (30) days. If the Hearing Officer reverses the decision of the Code Inspector and finds the named violator not

responsible for the Code violation alleged in the civil violation notice, the named violator shall not be liable for the payment of any civil penalty, absent reversal of the Hearing Officer's findings pursuant to Section 8CC-8(a). If the decision of the Hearing Officer is to affirm, then the following elements shall be included:

* * *

- (o)(1) A Hearing Officer shall postpone and shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized County board of appropriate jurisdiction>>, if one exists,<< an administrative appeal concerning the interpretation or application of any technical provisions of the Code Section allegedly violated. >>It shall be the responsibility of the violator to provide evidence at the time of the hearing to show that such administrative appeal has been filed with the County board of appropriate jurisdiction.<< However, once an issue had been determined by a Hearing Officer in a specific case, that issue may not be further reviewed by a County board in that specific case. A named violator waives his right to administrative appeal to other County boards if the violator does not apply for such appeal prior to the violator's code enforcement hearing before the Hearing Officer.

* * *

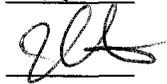
Section 6 If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 7. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 8. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

RA6


Prepared by:

Thomas H. Robertson