

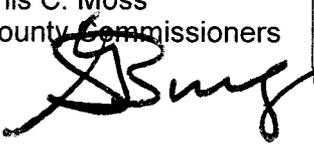
Date: March 3, 2009

To: Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

From: George M. Burgess  
County Manager

Subject: Amendment of Chapter 8CC-10

Amended  
Agenda Item No. 7(G)

  
Ordinance No. 09-17

#09-17

This item was amended by the Board during the March 3, 2009 Board of County Commission meeting to delete all references to Chapter 24 of the Miami-Dade County Code from the ordinance. In addition, the modifications to the attached ordinance due to scrivener's errors have been made to read the following: (1) on handwritten page 7, paragraph marked (1) the term "Code Enforcement Inspector" has been amended to read "Code Inspector." (2) on handwritten page 7, paragraphs marked (1) and (3), the last word "citation" has been modified to read, "civil violation notice." (3) on handwritten page 8 the top three paragraphs have been correctly numbered from (3), (4), and (5) to (4), (5), and (6). The item also includes a provision in 8CC-3 to allow for service of a citation by first class but with no presumption as would exist if served with return receipt.

#### Recommendation

It is recommended that the Board adopt this proposed alternate ordinance amending Chapter 8CC of the Code of Miami-Dade County to reflect the current involvement of the County Attorney's Office, to modernize the County's Code Enforcement service procedures, to amend the schedule of fines to reflect the changes added by the 2007 edition of the Florida Building Code to be more consistent with the State of Florida, and to amend the schedule of fines to reflect changes and additions to regulations of County departments who perform enforcement function.

#### Scope

All County departments that issue civil citations are impacted by these changes. Citations are written for infractions of 27 chapters of the Miami-Dade County Code. The changes to the schedule of fines will provide a means for enforcing departments to issue fines in instances where there is violation of County Code. This alternate in no way changes the procedures of individual departments that issue a Warning Notice or Notice of Violation before issuing a citation.

#### Fiscal Impact/Funding Source

The proposed substitute would provide several alternate ways to provide service of citations, including the use of first-class mail as a form of service for computerized citations which would relieve departments of additional costs for certified mail. At this time, no additional fiscal impact to departments is anticipated.

**Track Record/Monitor**

Each County Department issues citations for its own infractions. Budgets for mailing costs are budgeted and monitored by each respective department.

**Background**

Florida Statute section 162.12 has language that establishes the preferred method of service of citations to be by certified mail, return receipt requested. This amendment of the service provisions is designed to closely reflect the language in Chapter 162.12 of the Florida Statutes. The amendment also allows the use first class mail as a form of service for computerized citations and allows for the use of electronic features of the United States Postal Service to track mail, including the receipt of mail. The amendment also recognizes the validity of electronic copies of documents electronically signed by the Hearing Officer and amends the obligations of the County Attorney Office to reflect the ongoing method of operation of these hearings. Currently the County Attorney's Office does not attend the administrative appeal hearings conducted in front of Hearing Officers. The County Attorney's Office is in agreement with this proposed amendment.

The schedule of fines is being revised to reflect the changes in the Florida Building Code. The 2007 edition will be enacted on March 1, 2009. This change replaces the 2004 edition of the Florida Building Code. It is important to note that the Building Code edition in effect at the time a permit is applied for is the one that applies to the standards and specification used to approve plans and construct the structure. For this reason, it is important to issue notices of violation and citations that are specific to the Building Code year.

Finally, this alternate amends the schedule of fines to reflect changes and additions to regulations of the departments of Planning and Zoning, Environmental Resources Management, Neighborhood Compliance and Solid Waste Management.



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Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

**DATE:** March 3, 2009

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Amended  
Agenda Item No. 7(G)

#09-17

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 Mayor'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 \_\_\_\_\_

Amended  
Agenda Item No. 7(G)  
3-3-09

ORDINANCE NO. 09-17

ORDINANCE AMENDING SECTION 8CC-2, 8CC-3, 8CC-7 AND 8CC-10 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; TO ELIMINATE THE NEED FOR THE COUNTY ATTORNEY TO ATTEND APPEAL HEARINGS; TO PROVIDE IMPROVED SERVICE OF PROCESS OF CITATIONS; TO ALLOW ELECTRONIC RECORDING OF LIENS AND TO UPDATE PENALTY AMOUNTS AND DESCRIPTIONS OF CODE VIOLATIONS; 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 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:<sup>1</sup>

**8CC CODE ENFORCEMENT**

\* \* \*

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

- (a) The County Manager shall create a Hearing Officer Review Board, comprised of three (3) members from code enforcement departments, one (1) member from the County Clerk's Office, two (2) members from the public at large, and one (1) member from the Office of the County Attorney. The duty of the Board shall be to recommend new Hearing Officer appointments and review, on an annual basis, the performance of Hearing Officers and, as necessary recommend the removal or reappointment of Hearing Officers to the County Manager.

<sup>1</sup> 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.

- (b) The Hearing Officer Review Board shall use as its basis for recommendation for appointment, criteria to be developed by the Review Board for approval and concurrence of the County Manager and Clerk of the Board of County Commissioners. Such appointments by the County Manager shall be submitted to the Clerk of the Board for ratification by the Clerk.
- (c) Hearing Officers shall be residents of Miami-Dade County who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the County Manager or his designee upon recommendation of the Hearing Officer Review Board and on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk.
- (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 two (2) years. 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 reappointment must be made for each individual Hearing Officer at the end of each of his or her 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.
- (e) The Miami-Dade County Attorney's Office shall serve as general counsel to the Hearing Officers. ~~[[If an appeal hearing is held pursuant to Section 8CC 8, the County Attorney's Office shall represent the County at such proceedings.]]~~

**Sec. 8CC-3. Enforcement procedures.**

- (a) For the purposes of this chapter, a "Code Inspector" is defined to be any agent or employee of Miami-Dade County whose duty is to assure the enforcement of and compliance with the Code of Miami-Dade County. Prior to being provided the authority to initiate enforcement proceedings under this Chapter, a Code Inspector shall be required to successfully complete a criminal background investigation as prescribed by administrative order of the County Manager. Subject to the requirements of Section 8CC-11 below, a "Code Inspector" is also defined to be any agent or employee of a municipality who has been authorized pursuant to that Section to assure code compliance. Municipal employees shall also be required to successfully complete a criminal background investigation prior to being provided authority to initiate enforcement proceedings under this Chapter.
- (b) Code Inspectors shall have the authority to initiate enforcement proceedings as provided below. No Hearing Officer shall have the power to initiate such proceedings.
- (c) For the purposes of this chapter, "violators" shall be deemed to be those persons or entities legally responsible for the violation of the ordinances listed in Section 8CC-10.
- (d) A Code Inspector who finds a violation of those ordinances of this Code listed in Section 8CC-10 shall determine a reasonable time period within which the violator must correct the violation. This determination shall be based on considerations of fairness; practicality; ease of correction; ability to correct; severity of violation; nature, extent and probability of danger or damage to the public; and other relevant factors relating to the reasonableness of the time period prescribed. A time for correction need not be specified if the violation is deemed to be an uncorrectable violation.
- (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.]]>>by:~~

- (1) First Class Mail, return receipt requested, or other available delivery confirmation, to the owner of the property in question or such other violator as the Code Inspector shall cite; A signed return receipt or other delivery confirmation shall be conclusive of service of the civil violation notice.
- (2) First Class Mail with out return receipt provided however that no conclusive effect shall be ascribed to this method absent proof of delivery. Service in this matter shall be evidenced by a properly executed proof of mailing, affidavit confirming the first class mailing, or certificate of mailing;
- (3) If the notice is sent to the owner of the property in question, as provided in paragraph (e)(1), at the address listed in the records of the property appraiser's office for tax notices, and at any other address provided to the County by such owner, and if the notice is returned as unclaimed or refused, service may be effected by posting said notice in a conspicuous location at the premises where the violation occurred and/or at the owner's address(es) and combined with sending the notice by first class mail directed to the address(es) furnished to the local government. Service in this matter shall be evidenced by a properly executed proof of mailing, affidavit confirming the first class mailing, or certificate of mailing and shall be conclusive of service of the civil violation notice;

- (4) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;
- (5) 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
- (6) In the case of commercial premises, leaving the notice with the manager or other person in charge.

The time for compliance stated in the notice shall commence upon service under this section. Service under section (e)(3) shall be deemed proper and the time for compliance shall commence on the latter of the posting or mailing of the notice.<<

\* \* \*

**Sec. 8CC-7. Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; interest to be paid on liens; foreclosure; prohibition of the issuance of permits, licenses, certificates of use and occupancy, or zoning approvals to violators with unpaid civil penalties or liens.**

- (a) Miami-Dade County may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.
- (b) A certified copy of an order imposing a civil penalty >>or an electronic copy of such order<< may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this State, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After one (1) year from the filing of any such lien which remains unpaid, Miami-Dade County may foreclose or otherwise execute on the lien.

- (c) Liens created pursuant to Section 8CC-7 may be discharged and satisfied by paying to Miami-Dade County the amount specified in the notice of lien, together with interest thereon from the date of the filing of the lien computed at the rate of twelve (12) percent per annum, together with the administrative costs, filing and recording fees and fees paid to file a satisfaction of the lien in the public records. When any such lien has been discharged, Miami-Dade County shall promptly cause evidence of the satisfaction and discharge of such lien to be recorded in the public records. Any person, firm, corporation or legal entity, other than the present owner of the property involved, who pays any such unsatisfied lien shall be entitled to receive an assignment of the lien held by the County and shall be subrogated to the rights of the County in respect to the enforcement of such lien, as permitted by law.
  
- (d) Notwithstanding any provision of this Code, no County or municipal officer, agent, employee or Board shall approve, grant or issue any operating permit, license, building permit, certificate of use and occupancy, municipal occupational licenses, platting action, or zoning action to any named violator with (i) unpaid civil penalties; (ii) unpaid administrative costs of hearing; (iii) unpaid County investigative, enforcement, testing, or monitoring costs; or (iv) unpaid liens, any or all of which are owed to Miami-Dade County pursuant to the provisions of the Code of Miami-Dade County, Florida.

**Sec. 8CC-10. Schedule of civil penalties.**

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
	*	*
8-1	2001 FBC § 104: Failure of owner-builder or contractor to obtain permit	500.00

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
>>8-1<<	>>2007 FBC § 105.1: <u>Failure of owner-builder or contractor to obtain a permit</u> <<	>>500.00<<
8-1	2001 FBC § 105.5: Failure to display permit card	100.00
8-1	2001 FBC § 105.6: Failure to obtain required inspection	500.00
>>8-1<<	>>2007 FBC § 105.7: <u>Failure to maintain the building permit or copy on the site of work until completion of the project</u> <<	>>100.00<<
8-1	2001 FBC § 106.1: Failure to obtain required Certificate of Occupancy ("CO") prior to use or occupancy or before a temporary CO expires	500.00
8-1	2001 FBC § 106.2: Failure to obtain required Certificate of Completion ("CC") prior to use or occupancy	500.00
8-1	2001 FBC § 106.3: Unlawfully connecting utility service	500.00
>>8-1<<	>>2007 FBC § 110.1: <u>Failure to obtain required Certificate of Occupancy ("CO") prior to use or occupancy or before a temporary CO expires</u> <<	>>500.00<<
>>8-1<<	>>2007 FBC § 110.2: <u>Failure to obtain required Certificate of Completion ("CC") prior to use or occupancy</u> <<	>>500.00<<
8-1	2001 FBC Chapter 11: Failure to provide required handicapped accessibility	500.00

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
8-1	2001 FBC § 1817.1: Failure to properly guard and protect an excavation	500.00
8-1	2001 FBC § 1817.1: Failure to properly underpin or protect a footing or foundation against settlement caused by an excavation	1,000.00
>>8-1<<	>>2007 FBC § 1817.1: <u>Failure to properly guard and protect an excavation</u> <<	>>500.00<<
>>8-1<<	>>2007 FBC § 1817.1: <u>Failure to properly underpin or protect a footing or foundation against settlement caused by an excavation</u> <<	>>1,000.00<<
8-1	2001 FBC § 1817.2: Unlawfully making an excavation which endangers adjoining property or buildings or is a menace to public health or safety	1,000.00
>>8-1<<	>>2007 FBC § 1817.2: <u>Unlawfully making an excavation which endangers adjoining property or buildings or is a menace to public health or safety</u> <<	>>1,000.00>>
8-1	2004 FBC § 105.1: Failure of owner-builder or contractor to obtain a permit	500.00
8-1	2004 FBC § 105.7: Failure to maintain the building permit or copy on the site of work until completion of the project	100.00
8-1	2004 FBC § 109.3: Failure to obtain required inspection	500.00

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
8-1	2004 FBC § 110.1: Failure to obtain required Certificate of Occupancy ("CO") prior to use or occupancy or before a temporary CO expires	500.00
8-1	2004 FBC § 110.2: Failure to obtain required Certificate of Completion ("CC") prior to use or occupancy	500.00
8-1	2004 FBC § 111.1: Unlawfully connecting utility service	500.00
>>8-1<<	>>2007 FBC § 111.1: <u>Unlawfully connecting utility service</u> <<	>>500.00<<
8-1	2004 FBC § 114.3: Failure to comply with a lawful stop work order	500.00
>>8-1<<	>>2007 FBC § 114.3: <u>Failure to comply with a lawful stop work order</u> <<	>>500.00<<
8-1	2004 FBC § 1817.1: Failure to properly guard and protect an excavation	500.00
8-1	2004 FBC § 1817.1: Failure to properly underpin or protect a footing or foundation against settlement caused by an excavation	1,000.00
8-1	2004 FBC § 1817.2: Unlawfully making an excavation which endangers adjoining property or buildings or is a menace to public health or safety	1,000.00
8-1	2004 FBC Chapter 11 Failure to provide required handicapped accessibility	500.00

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
>>8-1<<	>>2007 FBC Chapter 11 <u>Failure to provide required handicapped accessibility</u> <<	>>500.00<<
8-1	2004 FBCR § 4404.1.1: Failure to properly guard an excavation	500.00
8-1	2004 FBCR § 4404.1.1: Failure to properly underpin or protect a footing or foundation against settlement caused by an excavation	1,000.00
8-1	2004 FBCR § 4404.1.2: Unlawfully making an excavation which endangers adjoining property or buildings or is a menace to public health or safety	1,000.00
>>8-1<<	>>2007 FBCR § 4404.1.1: <u>Failure to properly guard an excavation</u> <<	>>500.00<<
>>8-1<<	>>2007 FBCR § 4404.1.1: <u>Failure to properly underpin or protect a footing or foundation against settlement caused by an excavation</u> <<	>>1,000.00<<
>>8-1<<	>>2007 FBCR § 4404.1.2: <u>Unlawfully making an excavation which endangers adjoining property or buildings or is a menace to public health or safety</u> <<	>>1,000.00<<
	*	*
8	All other Building Code violations	[[200.00]] >>500.00<<
	*	*

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
15-2	Utilizing the waste collection services of an unauthorized waste collection agency by a commercial establishment	600.00
15- <del>[[2]]</del> >>5<<	Having waste container at curbside, right-of-way, or street edge before or after specified hours of normal collection day	100.00
15-2.1	Unauthorized removal of recyclable materials or recycling containers with the use of a motorized vehicle	250.00
<del>[[15-2.2]]</del>	<del>[[Unauthorized removal of recyclable materials or recycling containers without the use of a motorized vehicle]]</del>	<del>[[50.00]]</del>
15-2.2	Failure by multifamily residential establishment having up to 25 units to provide a recycling program in compliance with the requirements of Section 15-2.2	300.00
15-2.2	Failure by multifamily residential establishment having between 26 units and <del>[[404]]</del> >>100<< units to provide a recycling program in compliance with the requirements of Section 15-2.2	650.00
	*	*
15-6(b)(1), (3)	Illegal dumping in an amount <del>[[not]]</del> exceeding 100 <del>[[but less than</del> 500<< pounds in weight or 50 cubic feet in volume	400.00
	*	*

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
15- <del>[[74]]</del> >> <u>(17)</u> <<.4	Failure to register vehicle	500.00
*	*	*
16A-10(VI)(h)	<del>[[M]]</del> >> <u>Performing work during the m</u> <<oratorium>> <u>period</u> <<	<del>[[400.00]]</del> >> <u>500.00</u> <<
16A-11(I)	Certificate of appropriateness required	<del>[[400.00]]</del> >> <u>500.00</u> <<
16A-11(VII)	Failure of work to comply with certificate of appropriateness	<del>[[400.00]]</del> >> <u>500.00</u> <<
16A-13.1	Demolition by neglect	500.00
16A-14	Certificates to dig	<del>[[400.00]]</del> >> <u>500.00</u> <<
*	*	*
>> <u>17A-19</u> <<	>> <u>Failure to register vacant property subject to foreclosure</u> <<	>> <u>500.00</u> <<
<del>[[25-10.21(C)]]</del>	<del>[[Unauthorized aircraft engine run-up]]</del>	<del>[[500.00]]</del>
<del>[[*</del>	<del>*</del>	<del>*]]</del>
33-8 <del>[[a]]</del>	Failure to obtain certificate of use and occupancy <del>[[for Florida Building Code Group A, B, C, D, E, and F occupancies]]</del>	500.00
33-8(b)	Failure to <del>[[obtain certificate of use and occupancy for SFBC Group G and H occupancies]]</del> >> <u>permit an inspection of the premises to establish legality of use</u> <<	200.00
<del>[[33-8(c)]]</del>	<del>[[Failure to obtain certificate of use and occupancy for SFBC Group I and J occupancies]]</del>	<del>[[400.00]]</del>

15

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
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**Section 2.** 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 3.** 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 4.** 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: **March 3, 2009**

Approved by County Attorney as  
to form and legal sufficiency:



Prepared by:



Thomas H. Robertson