

**LEON COUNTY**  
**CODE ENFORCEMENT BOARD HANDBOOK**



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## **I. PURPOSE OF THIS HANDBOOK**

The purpose of this handbook is to provide the basics as to the law and procedures involved in the Code Enforcement Board's activities, so as to assure that new Board members and staff have an understanding of their respective roles and duties in the Code enforcement process.

## **II. CHAPTER 162, FLORIDA STATUTES**

The Local Government Code Enforcement Board Act is found at Sections 162.01-162.13, Florida Statutes. The Act authorizes creation of administrative/quasi-judicial boards which may be given authority to impose administrative fines and other non-criminal penalties where a violation of a code provision has occurred, with the goal of obtaining Code compliance. The purpose of such boards is to provide an equitable, expeditious, effective and inexpensive method for enforcement of local laws. The intent of the Act as a whole is to promote, protect and improve the health, safety and general welfare of the public.

Chapter 162 specifies the number, qualifications and terms of office of Code Enforcement Board ("CEB") members which may be appointed by a local government. It also specifies enforcement procedures to be used, and the basic manner in which CEB hearings are to be conducted. The Act provides that fundamental due process must be observed, but does not require that formal rules of evidence be applied at CEB hearings. Each CEB is given the power to adopt its own rules of conduct for its hearings, beyond the basic requirements of the statute, to subpoena witnesses and evidence, and to issue orders having the force of law to command whatever steps are reasonably necessary to bring a violation into compliance with the law. This order may include a fine of up to \$250 per day for each day that each Code violation continues beyond the date set by the CEB for compliance, or, where a violation is repeated by the same violator, a fine of up to \$500 per day for each day the repeat violation continues past the date the code inspector notified the violator of the repeat violation.

The Act specifies certain factors to be considered by the CEB in determining the amount of a fine, such as gravity of the violation (the damage caused to the environment and to other persons), the violator's efforts prior to hearing to correct the violation, and any previous violations by the violator. Once the per day fine amount is determined and ordered, the Act provides that the fine shall accumulate each day from its effective date (i.e., the ordered compliance date) until the violator notifies the County (and the County verifies) that the violation has been corrected, or until such time as a judgment is rendered in a suit to foreclose on a CEB lien.

Pursuant to Chapter 162, Florida Statutes, the Board of County Commissioners of Leon County has enacted a local ordinance establishing the Leon County Code Enforcement Board, for the purpose of conducting hearings and entering orders to enforce County laws relating to environmental management (storm water, trees and landscaping), zoning and land use, control of junk accumulations in the community, building code, mowing and filthy fluids, etc. A copy of the ALL applicable local ordinances may be reviewed through the office of the Leon County Attorney.

### **III. THE PROCESS**

#### **A. DISCOVERY OF VIOLATION**

Enforcement proceedings must be initiated by a code inspector. Violations are usually discovered as a result of either: (1) a citizen complaint; (2) routine inspection of an area; (3) annual maintenance inspection of premises; or (4) an inspector noticing a violation while engaged in inspection of some other site. CEB members have no power to initiate CEB proceedings. However, CEB members retain their prerogative as citizens of the County to contact the Code Inspection Department and lodge any complaint(s) they may have as to Code violations they become aware of. It would then be the Code Inspector's duty to investigate the matter and institute proceedings as necessary where a violation is found to exist.

#### **B. NOTICE OF VIOLATION**

The next step is determination of ownership of the site in violation. This is necessary in order to provide notice to the owners of the property, as well as any other persons responsible for the violation. The notice will include a demand that the violation be corrected within a reasonable time, unless the violation is a repeat violation, in which case the inspector may demand that the violation be immediately corrected and a hearing scheduled as soon as practicable before the CEB. Where the inspector has reason to believe the violation presents a serious threat to the public, or if the violation is irreparable or irreversible in nature, the inspector need make only a reasonable effort to notify the owner(s) and may immediately request a hearing before the CEB.

#### **C. REQUEST FOR HEARING**

If the owner or violator fails to correct a violation within the time specified in the initial notice, if the violation is a repeat violation, or if the violation is a threat to public health, safety, or welfare or is irreparable/irreversible (as discussed above), the inspector should notify the CEB and

request a hearing by filing a Notice of Violation and Request for Hearing with the CEB Administrator at the Development Support and Environmental Management Office, who then schedules a hearing on the matter before the CEB. The inspector's affidavit should specifically identify each Code Section which is allegedly being violated by activities or circumstances on the particular site, and should indicate "repeat violation" where such is the basis for the hearing request.

**D. NOTICE OF HEARING**

Once a date for hearing is scheduled, the CEB Administrator must send a Notice of Hearing to the alleged violator and to the property owners(s), if different, by certified mail or hand delivery. A copy of the inspector's formal Notice of Violation and Request for Hearing, and a copy of the meeting agenda (when available), are also sent to the alleged violator with the Notice of Hearing. After the alleged violators receive Notice of Hearing, they may make an effort to remedy the violation or may request more time to do so. The CEB Administrator, the County Attorney's office, and the Code Inspectors are always willing to work with violators towards resolving the violation(s) prior to the hearing. Where a violator has contacted the CEB Administrator or the Code Inspector after receiving Notice, and has indicated a sincere willingness to remedy the violation, the Enforcement Administrator may recommend that the hearing be continued to allow additional time for negotiation, remedial effort, and possible resolution of the violation. Where the CEB approves such a request for continuance, a notice to that effect should be sent to the violator and the property owner. Where the violation is corrected prior to the hearing and is not a repeat violation, the Enforcement Administrator may recommend that the CEB remove the case from its agenda.

**E. STAFF PREPARATION FOR HEARING**

**1. AGENDA PACKETS**

The CEB Administrator is responsible for preparing the agenda for each hearing. The Code Inspectors and the Enforcement Administrator review the cases, and prepare staff reports and recommended orders for each case, which are submitted to the CEB Administrator for inclusion in the CEB "agenda packet" for each meeting. Agenda packets usually include the agenda, minutes of prior meeting for review by the CEB, a site map, a Staff Report and any other documentary evidence and correspondence available relating to each case to be heard, status reports on compliance with orders entered at prior hearings, and informational copies of Orders entered at the preceding meeting. An agenda packet is customarily sent to each CEB member for review at least 48 hours prior to the meeting date.

**2. PHOTOGRAPHS, VIDEOTAPES, OR OTHER ILLUSTRATIVE EVIDENCE**

The Code Inspector for each case will generally have visited the site 1 to 2 week before the CEB hearing for purposes of preparing photographic or videotaped evidence of the violation to be presented before the CEB. Drawings and file records are also pulled and highlighted to specify the alleged violations. The alleged violator may exercise his or her prerogative at the hearing to present additional photos, videotapes or other illustrative evidence.

**F. PUBLIC HEARING**

On the date set for the public hearing, each alleged violator is called (by agenda order), and the violator and all witnesses are sworn. The County's Prosecuting Attorney and/or the Code Inspectors present the County's case, followed by an opportunity for the alleged violator to present his/her case and defense(s). If no violation is found by the CEB to exist at the time of the hearing, an order may be entered dismissing the case, unless the case involves a repeat violation. If a violation is found to exist at the time of the hearing, or a repeat violation is found to have existed at the time of the code inspector's initial notice to the repeat violator, the CEB enters an order setting forth the actions to be taken to correct the violation within a stated time frame. The order will also provide notice that a fine will be charged for each day the violation remains uncorrected beyond the ordered deadline, or in the case of a repeat violation, that a fine is imposed for each day from the date of initial notice until the date the violation is or was corrected. The violator is informed of the CEB's order at the conclusion of his or her case. The time for compliance begins to run from the date a written order is entered by the Board. It is the violator's responsibility to notify the code inspector of the need for a compliance inspection immediately upon the violation having been corrected in order to avoid accumulation of the fine imposed. Once the inspector verifies that the violation has been brought into compliance, an Affidavit of Compliance is executed.

**G. WRITTEN ORDER**

After the hearing, the CEB Administrator prepares a written order on each case where a violation is found, which is signed by the CEB Chairman or another CEB member. A copy of the Order is then mailed or delivered to the violator, and to the property owner(s), if different. A certified copy of the order is recorded in the public records of Leon County and thereafter constitutes notice to any subsequent purchasers, successors in interest or assigns concerning real property owned by the violator of the finding of violation and the potential for fine and lien. In the case of a repeat violation,

a lien should also be filed in the public records simultaneously with the filing of the order or as soon thereafter as possible.

A violator who makes a good faith effort to achieve compliance but who encounters difficulties beyond his or her control may contact the CEB through its Administrator prior to the ordered compliance date, and at least one week prior to any scheduled meeting, to request an extension of time for compliance. The CEB will give due consideration to the request at its public meeting, and a notice of its action on the request will be provided thereafter to the violator.

#### **H. FINES AND FILING OF LIEN**

Except in the case of a repeat violation, when a violation remains uncorrected by the deadline set by CEB order, the Code Inspector files an Affidavit of Non-Compliance with the CEB Administrator. Upon receipt of Affidavit of Non-Compliance, the CEB Administrator shall prepare a lien to secure the per day fine amount, which will accrue retroactive from the ordered compliance date. Maximum fines are \$250 per day per violation for a first offense, or \$500 per day per violation for a repeat offense. No additional hearing on the matter is required for imposition of the fine and filing of the lien, although the violator, and the property owner(s) if different, should be furnished with a copy of all filings. The fine amount continues to accrue each day until either:

1. the violator notifies the Inspector, and the Inspector verifies that the violation has been corrected; or
2. a judgment is rendered in a suit to foreclose the lien imposed by the CEB order.

The County Attorney's Office may be directed by the CEB to file suit to foreclose an unpaid lien on property at any time after three (3) months, but within twenty (20) years, of the time the lien is filed. Issues such as the amount of the lien, homestead exemption, existing mortgages, and existence of other liens are taken into consideration in determining whether to pursue foreclosure. If a fine is relatively small, or if the property is homestead, it may not be economically feasible for the County to pursue a lien by foreclosure. Liens should be filed to prevent transfer of the property without payment of the fine amount, even if the property is homestead or if for some other reason it would not be feasible to proceed with foreclosure.

When a lien on a non-homestead property has been filed for more than three months, the CEB Administrator will bring the case to the CEB and request permission to send a letter advising the Respondent(s) that the property has not been found in compliance, that it has been more than three months since the lien was filed, and that the CEB has the authority to authorize the County Attorney's



Office to start foreclosure procedures. This letter should include a deadline date for the Respondent(s) to contact the CEB Administrator for a compliance inspection. If the Respondent(s) does not contact the CEB Administrator by the deadline date, the CEB Administrator will schedule a date for the CEB to consider foreclosure of the lien and will send a letter to the Respondent(s) informing them of the date the CEB will consider beginning foreclosure proceedings. After the CEB considers whether to begin foreclosure proceedings and the CEB recommends foreclosure of the lien, the County Attorney's Office will be authorized to begin foreclosure procedures.

#### **IV. RULES OF PROCESS FOR THE LEON COUNTY CODE ENFORCEMENT BOARD**

**A. NAME:**

The name of the Board shall be the "Leon County Code Enforcement Board."

**B. JURISDICTION:**

The Board has jurisdiction over those matters which are set forth in Chapters 5, 10 and 14 of the Code of Laws of Leon County, Florida.

**C. OFFICERS AND DUTIES:**

1. The officers shall be a Chairman and a Vice-Chairman, both of whom shall be members of the Board. The County shall provide an Administrator to the Board.
2. The Chairman shall preside at all meetings and hearings of the Board, and shall have all duties normally conferred by parliamentary procedures upon such officer.
3. The Vice-Chairman shall preside at all meetings and hearings at which the Chairman is absent, and shall preside in such instances as the Chairman announces intention to abstain from voting on any particular matter.
4. The Chairman and Vice-Chairman shall have the privilege of discussing all matters before the Board, and shall have the same voting rights as each other Board member.

**D. ELECTION OF OFFICERS:**

1. Nomination of officers shall be made from the floor at the annual organizational meeting in September of each year, and the election shall be held immediately thereafter.
2. A candidate receiving a majority vote shall be elected and shall serve a term of one (1) year or until a successor shall take office.

3. Any vacancy in office shall be filled immediately by regular election procedure at any meeting of the Board. The elected candidate shall serve the remainder of the original one (1) year term which has been vacated.

**E. MEETINGS:**

1. Regular Meetings:

Regular meetings shall be held at least once each month, on the third Thursday of each month at 1:00 p.m. EST at a location as designated in advance by the Board Administrator. The Board may set meetings more frequently if necessary.

2. Special Meetings:

Special meetings may be called by the Chairman or by joint request by any three (3) members of the Board by written notification to the Chairman.

3. Notice.

(a) Notice of all meetings, regular and special, shall be given to all Board members at least twenty-four (24) hours in advance of the meeting.

4. Attendance.

(a) Members shall notify the Chairman of the Board, or the Board Administrator, if they cannot attend a meeting.

(b) If a member misses two (2) out of three (3) consecutive meetings without cause and without prior approval of the Chairman, his/her appointment is forfeited.

(c) Members may be removed for cause by the Board of County Commissioners after notice.

5. Quorum:

A quorum of the Board shall consist of four (4) voting members. An affirmative vote of a majority of those present and voting shall be necessary to pass any motion or adopt any order, provided, however, that at least three (3) members of the Board must vote in favor of any action in order for the action to be official.

6. Voting:

Voting shall be by voice vote, and shall be recorded by individual "aye" for those in favor and "aye" for those opposed.

7. Abstention:

Each member present shall cast a vote on each question before the Board, except that if any member has a personal interest in a matter which would constitute a conflict as

defined in Chapter 112, Florida Statutes, he/she may abstain from voting as a member of the Board on that matter and must file a Memorandum of Voting Conflict with the Board Administrator as prescribed by Chapter 112, Florida Statutes. A member who abstains from voting may still participate in discussion of a matter if he or she so elects.

8. Procedure:

Parliamentary procedures in Board meetings shall be governed generally by Roberts' Rules of Order and by the Rules of Procedure contained herein.

9. Order of Business:

(a) Call to order

(b) Roll call

(c) Minutes of previous meetings

(d) Unfinished business

(e) Continuances

(f) Compliances/Dismissals

(g) Public Hearings:

(1) Swearing of witnesses

(2) Prosecution's case-in-chief

(3) Alleged Violator's defenses

(4) Board Discussion

(5) Entry of Order.

(h) Requests for Extensions of Time for Compliance for Legitimate Reasons:

These requests must be submitted in writing, explaining reasons and hardships, prior to the ordered date for compliance and at least one (1) week prior to any scheduled meeting.

(i) Requests for Reduction and/or Rescission of Fines for Legitimate Hardship Purposes:

These requests must be submitted to the Board Administrator in writing after compliance has been achieved and at least two (2) weeks before any scheduled meeting, explaining what hardships the respondent has endured in attempting to comply.

(j) Requests to address the Board

- (k) Old business
- (l) New business other than public hearings
- (m) Informational items
- (n) Adjournment

The order of business may be altered or suspended by a vote of the majority of those members present.

**F. INITIATION OF ACTIONS:**

All actions before the Board shall be initiated by a Code Inspector filing a Request for Hearing and Affidavit of Violation with the Board Administrator. The Board Administrator shall then set the case for hearing, and shall send out a Notice of Hearing to each alleged violator, including but not limited to the property owner(s), by certified mail, return receipt requested, or by personal service as provided in the Leon County Code Enforcement Board Act. A copy of the Notice of Hearing shall also be provided to the County's Prosecuting Attorney, the Enforcement Administrator, and the Code Inspectors involved.

After a case is set for hearing by Notice, the Board is empowered to issue subpoenas as requested by the Code Inspector or the alleged violator, or upon its own initiative. The subpoenas shall be sent to the Leon County Sheriff's Department, or other process service approved by the CEB, to be served.

Requests for subpoena(s) by any party shall be made not later than fourteen (14) days prior to the hearing. Proof of service of such subpoena shall be provided to the Board Administrator not later than two (2) working days prior to the hearing. If proof of service is not provided and the parties requesting the subpoena do not excuse the witness from testifying, the case will be rescheduled for the next possible meeting.

**G. PUBLIC HEARINGS:**

1. The following procedures will be observed in public hearings before the Board:
  - (a) The Board Administrator or the Chairman shall read the case number and the name of the alleged violator, and the name of the property owner(s) if different.

- (b) The alleged violator shall be asked, if present, if he/she wishes to contest the charges, to testify, or to call witnesses.
- (c) All witnesses shall be sworn in.
- (d) The County shall present its case, describing the nature of the violation in a brief opening statement and presenting its evidence. The alleged violator shall then present his/her case. Both parties will have an opportunity to cross-examine the other party's witnesses.
- (e) The Board may question any witness or call any witness as it deems necessary.
- (f) If legal counsel is present, they may be permitted an opportunity to present brief opening and/or closing statements.
- (g) The Board may, in its discretion, at any time during the hearing, may continue the hearing to the next meeting date and request further information from either party.
- (h) Upon completion of all the evidence in the case, the Chairman shall initiate deliberation. The Board shall deliberate in open session.
- (i) The Board shall orally issue an Order which is approved by a majority (at least 3 members) of the Board, containing findings of fact and conclusions of law, stating the affirmative action to be required, and for violations other than repeat violations. Providing notice that a subsequent Order may be entered imposing a fine of up to \$250 per day upon the violator for each day he remains in non-compliance beyond the required date set for completion of the affirmative corrective actions. For repeat violations, the Board shall issue an order as aforementioned but specifically imposing a fine in a specific amount of up to \$500 per day for each day the repeat violation has continued and may continue from the date of initial notice of repeat violator. Such Orders shall be reduced to writing within ten (10) working days and mailed to the violator, and the property owner, if different. A certified copy of the order shall thereafter be recorded in the public records of Leon County.

**H. ENFORCEMENT OF ORDERS:**

1. After an order has been issued by the Board with a scheduled date for compliance, the Code Inspector shall make an inspection to determine if the violation has been

corrected as required. Whenever possible, such inspection shall occur within seven (7) days of the date of request for compliance inspection by the violator, or, when no such request is made by the violator, within ten (10) days after the ordered date for compliance.

2. The Code Inspector shall issue an Affidavit of Compliance or Non-Compliance, as appropriate, after completing a compliance inspection as specified above. Such Affidavit shall be filed with the Board through the Board Administrator, and a copy shall be mailed to the violator, and to the property owner(s) if different. In the event compliance is not achieved by the required date, the Board's previous order imposing a fine in a specific amount of up to \$250 per day for each day the violation continues shall automatically become effective, retroactive to the required compliance deadline date as established by the previous Board order on the case, and the Board Administrator shall request the Board to order that a Notice of Lien in favor of Leon County be filed in the public records as soon as possible. A copy of the notice of lien shall be furnished to the violator, and to the property owner(s) if different.
3. The Board shall hold hearings as necessary to ensure the effectiveness of any Order issued by the Board. Status reports on violator's progress towards meeting requirements of any Board Order shall be included as appropriate as part of old business at any regular meeting of the Board, until such time as compliance is achieved. Approximately three (3) months after filing of a lien, the existence of the First Notice of Possible Foreclosure Action Letter should be brought to the Board's attention by the CEB Administrator. All existing liens should be brought to the Board's attention during the review and approval of the Board's Annual Report.

**I. MISCELLANEOUS:**

1. The rules of procedure may be altered in any manner not inconsistent with the County Code during a regular meeting by the affirmative vote of a majority of at least four (4) members of the Board, provided that notice of the proposed change is given to the Board at a preceding regular meeting.
2. The provisions of these rules of procedure shall be discussed, amended as necessary, and adopted or re-adopted by the Board.
3. All meetings and all hearings shall be open to the public, in accordance with the provisions of Florida's "Sunshine Law," Chapter 286, Florida Statutes.

4. All records of the Board shall be open to public examination and copying, in accordance with the provisions of the Florida "Public Records Law," Chapter 119, Florida Statutes.

**V. HEARING FORMAT**

**A. INTRODUCTION:**

The Chairman of the Board shall open each meeting by providing an introduction in basically the following form:

Welcome to this meeting of the Code Enforcement Board of Leon County. The purpose of this meeting is to provide a hearing as to allegations of Code violations which have been filed by Leon County.

The Code Enforcement Board was established to obtain compliance with County Code provisions. The Board has no authority to change the ordinances; that can only be done by the Board of County Commissioners. The Code Enforcement Board is empowered to determine whether a violation has occurred or has been repeated, to order actions as it deems reasonably necessary to bring about compliance with the Code, to levy a fine if compliance is not achieved as ordered or if a repeat violation has occurred, and to modify or rescind a fine after compliance is achieved where circumstances warrant. Decisions of the Code Enforcement Board may be appealed to the Circuit Court. They are not appealable to the Board of County Commissioners.

Each case will be called by number and by alleged violator's name. Any witnesses proposed by the County and those proposed by each respondent, including the respondent, will be sworn or affirmed to tell the truth. The County's Prosecuting Attorney may then present a brief opening statement, and the Code Inspector will present the County's case. Each respondent will then have an opportunity to present his/her defenses to the case. Each party may cross-examine the other party's witnesses. At the close of all testimony and evidence on the case, the Board will make a decision and an Order will be entered.

We will follow the sequence of the printed agenda, except that we will take up those cases in which persons are appearing before other cases are considered.

**B. PROCEDURES FOR EACH CASE:**

1. The Board Administrator or Chairman will read the name of the case and ask if the respondent or a representative of the respondent is present. If so, the Board will proceed to hear that case after swearing in all anticipated witnesses. If not, the Board will delay hearing on that case until all other cases wherein a respondent is present have been heard.

2. The County will present its case:
  - (a) A brief opening argument, summarizing the nature of the alleged violations may be presented.
  - (b) Testimony, evidence, and pictures, as available, are presented.
  - (c) The respondent is allowed to ask questions of the County's witnesses.
  - (d) The Board members may ask questions.
  - (e) The County presents its staff recommendation to the Board.
3. The respondent may present his/her defense(s) or plea for time:
  - (a) A brief opening argument, summarizing the respondent's position, may be presented by respondent or his/her counsel.
  - (b) Testimony, evidence, and pictures, as available, are presented by the respondent.
  - (c) The County may ask questions of the respondent and any witnesses providing testimony on respondent's behalf.
  - (d) The Board may ask questions.
  - (e) The respondent may voice objections or concerns as to the staffs recommended order on the case. The County will be given an opportunity to amend its recommendation if desired.
4. Counsel for each party may present a brief closing argument to the Board.
5. Board discussion and motion:

The Board will openly deliberate and discuss the case at the close of all evidence. Each Board member should speak clearly into the microphone at all times. (The quasi-judicial hearing being subject to government in the Sunshine Law, the public has a right to hear all discussion ensuing at the presentation of the case).

When a Board member desires to make a motion for a finding of guilt before the Board, that member should address the Chairman and make a motion in substantially the following manner:

"Mister (or Madam) Chairman, based upon the testimony and evidence presented, I move to find that violations of Sections \_\_\_\_ of the County Code exist on the cited premises, that the respondent has responsibility for the occurrence or presence of such violations, and that the respondent is therefore guilty of the violation(s), allowing days to bring the violation(s) into compliance as recommended by the County, and assessing a fine of \$ per day for each day thereafter until respondent brings the property into compliance."



At this stage the Chairman should ask for a second to the motion. If there is a second, then the Board should discuss the motion. The Chairman may recognize either or both the County's Prosecuting Attorney and the respondent for comment before calling for a vote on the motion. Once discussion is complete the Chairman should call for a vote on the motion.

If no member takes the initiative to make a motion, the Chairman may suggest that "the Chair will entertain a motion." Failing a response, the Chairman may request that the County repeat its recommendation, which may serve as a model for a motion.

The following motions, in addition to the previously mentioned motion to find for the County, may serve as models:

(a) TO FIND FOR THE RESPONDENT

"Mister (or Madam) Chairman, based upon the testimony and evidence presented, I move to find the respondent NOT guilty."

(b) TO CONTINUE THE CASE

"Mister (or Madam) Chairman, based upon the testimony and evidence presented, I move to continue the case until the next meeting."

(c) TO FIND A REPEAT VIOLATOR

"Mister (or Madam) Chairman, based upon the testimony and evidence presented, I move to find the respondent guilty as a repeat violator of \_\_\_\_\_ of the County Code, and to assess a fine of \$\_\_\_\_\_ per day for each day the repeat violation has been shown to have continued beyond \_\_\_\_\_, the date of initial notice to respondent, through such date as respondent has brought the property into compliance."

(d) TO DISMISS FOR COMPLIANCE

"Mister (or Madam) Chairman, based upon the representation by the County and the respondent that a violation has occurred but has been corrected prior to this hearing in a manner consistent with the County Code, I move to dismiss this case for compliance."

(e) TO EXTEND TIME FOR COMPLIANCE

"Mister (or Madam) Chairman, based upon the testimony and evidence presented, I move to find that the respondent has shown reasonable and sufficient hardship requiring an extension of time within which to comply with the previous Order of this Board as entered on (date), and that the Board

therefore grant respondent an extension of time for compliance to the date of \_\_\_\_\_, after which the daily fine as set forth in the previous Order will be imposed for each day until the violation has been brought into compliance."

(f) TO REDUCE FINE

"Mister (or Madam) Chairman, based upon the evidence and testimony presented, I move to find that the respondent has complied with this Board's Order of (date), as of (date), that respondent has made a sufficient showing of his reasonable effort to comply and sincere hardship endured in attempting to comply, and therefore that this Board reduce the accrued fine amount of \$\_\_\_\_\_ to \$\_\_\_\_, provided that such reduced sum be paid within\_\_\_\_\_ days of the date of this order. If not paid within\_\_\_ days of this Order as above mentioned, the fine amount shall revert to the sum otherwise due."

(g) TO RESCIND FINE

"Mister (or Madam) Chairman, based upon the evidence and testimony presented, I move to find that respondent has complied with this Board's Order of (date) as of (date), that respondent has shown reasonable and good faith effort to comply and sufficient hardship endured in attempting to comply, and therefore that this Board rescind the accrued fine and lien of \$\_\_\_\_\_ in this case and file a satisfaction of lien in the public records."

## **VI. SETTING OF FINES**

Several Attorney General Opinions have provided that the procedures set forth in Chapter 162, Florida Statutes, are the exclusive method for enforcing local codes and ordinances. (AGO 85-17 and AGO 85-84). Section 162.09, Florida Statutes, sets forth the exclusive procedure to be followed for administrative fines and liens. The Section contains no provision for the establishment of a "schedule" of fines for particular offenses.

Section 162.09, Florida Statutes, provides in part:

- (2)(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.

The word "shall" has been statutorily interpreted to mean mandatory. Therefore, the three criteria provided in Section 162.09(2), Florida Statutes, are mandatory criteria. There is no discussion of other guidelines or setting a schedule of fines in the statute.

Section 162.08, Florida Statutes, sets forth the powers of the Code Enforcement Board. None of these powers include the establishment of a schedule of fines or guidelines for determining fines. However, this does not mean that fines should be set arbitrarily. The three criteria in Section 162.09, Florida Statutes, do provide some general guidelines to be used on a case by case basis. Also, the CEB should keep in mind that if cases in their entirety are factually very similar, including the respondent's own history as to past code violations, then there should be some consistency in the fines applied. A suggestion was made at a November, 1988 CEB workshop that statistics might be developed to show what fines had been applied in the past for particular violations. A review of the Attorney General Opinions [AGO 85-84 (10125/85)] indicates that use of such statistical data is not recommended, because it could be viewed as an inappropriate "schedule" of fines unless all facts of each case are given with the statistics.

## **VII. SUMMARY OF RECENT ATTORNEY GENERAL'S OPINIONS**

### **A. AGO 84-55: IMPOSITION OF FEES AND/OR COSTS**

**QUESTION:** May a local government that has established a local CEB pursuant to Chapter 162, Florida Statutes, require that the CEB impose an administrative charge or fee on individuals, businesses or other entities found guilty of violation of one or more of the government's technical codes?

**ANSWER:** A local governmental body may not by ordinance authorize or require that a CEB impose an administrative charge or fee on individuals, businesses or other entities found guilty by the board of violation of one or more of that government's technical codes.

### **B. AGO 85-17: FINES AND LIENS**

**QUESTION 1:** May a CEB refuse to extinguish a lien against property cited and fined for a violation of an ordinance where the fine imposed by the CEB has been paid but the property remains in noncompliance?

**ANSWER:** A CEB is not authorized to refuse to extinguish a lien against property cited and fined for a violation of an ordinance where the fine amount which has been imposed by lien has been paid, even though the property remains in noncompliance. [NOTE: The Legislature amended Chapter 162 in 1989 to provide that fines shall continue to accrue, and the corresponding lien shall continue to exist, until the violator comes into compliance or until a judgment is rendered in a suit to foreclose. This amended language appears to eliminate any possibility of a violator "extinguishing" a lien by payment prior to bringing the property into compliance.]

**QUESTION 2:** May a CEB levy a fine against a person who is cited for a code violation but who brings the property into compliance before the case is heard?

**ANSWER:** A CEB may not levy a fine against a person who is cited by who brings the property into compliance prior to the case being presented to the CEB. [NOTE: This restriction does not apply to

repeat violations, which may be fined retroactively for the days the repeat violation existed, even if the violation is brought into compliance prior to CEB hearing. See AGO 86-76 and 1989 Amendments to Chapter 162, Florida Statutes.]

**QUESTION 3:** Is a CEB authorized to impose an initial fine on a violator based solely on its finding that a violation has occurred and before the CEB has actually ordered compliance and before the compliance period has expired?

**ANSWER:** A CEB possesses no authority to impose an initial fine on a violator based solely on its finding that a violation has occurred and before the board has actually ordered compliance and the compliance period has expired. [NOTE: This restriction does not apply as to repeat violations. See AGO 86-76 and 1989 Amendments to Chapter 162, Florida Statutes.]

**C. AGO 85-26: HOMESTEAD PROPERTY**

**SUMMARY:** A CEB lien is not enforceable against homestead property by foreclosure. The liens created pursuant to Section 162.09, F.S., are neither a "tax" nor an "assessment" within the constitutional meaning of those terms.

**NOTE:** Although the County cannot foreclose against homestead property, it can preserve its lien for a longer time period (prior to automatic extinguishment 20 years after filing of the lien) by obtaining a final judgment against the owner and the property. Then if the homestead property were sold, the County would become a judgment creditor and the judgment would have to be paid before clear title could pass to the purchaser.

**D. AGO 85-27: REQUESTS FOR REHEARING**

**QUESTION:** May a CEB grant a violator a rehearing after entry of an order finding a violation and ordering corrective action and, if so, what is the time limit for such rehearing request?

**ANSWER:** A CEB has the authority to rehear or reconsider a matter which is the subject of one of its orders, and to modify its order if necessary. Such rehearing or reconsideration request must be made before an appeal has been taken as provided in Section 162. 11, F.S., and before the 30-day time period provided by that statute for taking an appeal to the circuit court has expired. A local governing body has no power to remove or restrict the right of a CEB to rehear or reconsider a matter, or to set by ordinance the time period for the rehearing application other than as provided in Chapter 162, F.S.

**E. AGO 85-33 : MAJORITY VOTE; INTERMITTENT CODE VIOLATION; COMMUNITY SERVICE AS A PENALTY; FINES**

**QUESTION 1:** May a CEB take action on the affirmative vote of three members where only four members are present and voting?

**ANSWER 1:** Yes.

**QUESTION 2:** In the case of an intermittent code violation, what authority does a CEB have to provide that:

- (a) A fine shall be assessed for each day that a code inspector observes noncompliance, even though compliance may be observed on other days?

- (b) Upon future determination by a code inspector that a violation exists, notice shall be given to the violator by posting on property or by certified mail that the violation is presumed to continue until proof is given to the code inspector that the violation has ceased?
- (c) A fine shall be assessed in the event of future noncompliance, even though at the time of such provision by the board the violator has come into compliance?

**ANSWER:** A CEB has no authority to take action with respect to an intermittent code violation unless the code inspector initiates proceedings, and the CEB determines at a hearing, that such violation has not been brought into compliance at the time of the hearing. Moreover, a CEB has no authority to delegate the power to assess a fine for noncompliance to a code inspector, nor to establish any presumptions relative thereto, and may levy a fine against a violator only pursuant to the provisions of Section 162.09, Florida Statutes. [Note: But see AGO 86-76, Question/Answer 2, relating to repeat violations, and 1989 Amendments to Chapter 162, Florida Statutes, allowing quicker imposition of fine on repeat violations.]

**QUESTION 3:** May a CEB require community service rather than payment of a monetary fine as a method of assuring continued compliance?

**ANSWER:** In the absence of any provision of law authorizing a CEB to impose a penalty other than the fine provided for in Section 162.09, F.S., such a board may not require community service rather than payment of the monetary fine prescribed by Section 162.09, F.S., as a method of assuring continued compliance with applicable codes.

**NOTE:** Although "community service" may not be required by CEB order, there appears to be authority to order other mitigation-related measures specifically relating to the environmental damage done to a site, which may benefit the public (such as providing seedling trees for replacement), pursuant to the language of Chapter 162, F.S., and Leon County's ordinances.

**QUESTION 4:** What flexibility does a CEB have under Chapter 162, F.S., in assessing one fine for noncompliance during a brief period after the order is given, and then no fine or a lesser fine for another period of time?

**ANSWER:** A CEB has no flexibility to assess one fine for noncompliance during a brief period after the order is given, and then no fine or a lesser fine for another period of time.

**QUESTION 5:** Where a person is found to have been in violation, but to have corrected the violation by the time of the hearing before the CEB, may a fine or an administrative fee be assessed for the past violation?

**ANSWER:** A CEB has no authority to assess any fine or administrative fee for a violation which has been corrected by the time of the hearing of the board.

**NOTE:** There is an exception in the current statute and local ordinance for assessing fines for violations that have been corrected at the time of hearing where the violation is found not only to have occurred but to have been a repeat of a violation for which an order has previously been entered against the violator. In case of a repeat violation, fine may be imposed retroactively for days the violation is shown to have existed subsequent to the date of the inspector's initial notice of violation even though the violation has been corrected at the time of hearing.

**F. AGO 85-84: REPEAT VIOLATIONS; CONSENT AGREEMENTS; NOTICE**

**QUESTION 1:** Is a CEB authorized after an initial hearing to issue an order demanding compliance with a code provision within some set period, whereby said order specifically requires that if the violator is in noncompliance, either at the conclusion of the 30 day period or at any time within 1 year or other reasonable time period from the date of the CEB's original order, then the CEB shall meet again to certify a fine for the time period during which the violator was in noncompliance with the CEB's prior order?

**ANSWER:** A CEB must find that the same violation has been repeated by the same violator before it may impose a fine for each day the repeated violation continued. (NOTE: But see AGO 86-76, Question/Answer 2, discussing 1986 amendments to Chapter 162, Florida Statutes, which allows fine for repeat violation without additional hearing; See also 1989 Amendments to Chapter 162, Florida Statutes.)

**QUESTION 2:** May a CEB establish a plan involving a schedule of fines for particular offenses which a violator of a code provision may consent to pay to avoid the initial hearing before the code enforcement board?

**ANSWER:** A CEB is not authorized to establish a plan involving a schedule of fines for particular offenses whereby a violator of a code provision may consent to pay a designated fine in order to avoid the initial hearing before the board.

**QUESTION 3:** Is a CEB authorized to post or publish notices required by Chapter 162, F.S., where the methods specified in the act are impossible or impractical?

**ANSWER:** A CEB may not authorize an alternative method of delivering notice than that prescribed in Chapter 162, F.S., as amended. [NOTE: 1989 Amendments to Chapter 162, Florida Statutes, allow alternative service methods where regular notice methods are impossible under circumstances as specified.]

**G. AGO 86-10: LIENS; FINES**

**SUMMARY:** A CEB is not authorized to provide for the continued running of a fine against a property owner for noncompliance after the lien has been recorded, nor may a particular lien be amended to add additional fines. [NOTE: 1989 Amendments to Chapter 162, Florida Statutes, provide that fines continue to accrue, even after lien is filed, until the property is brought into compliance or until a judgment is rendered in a suit of foreclose such a lien.]

**H. AGO 86-76: SETTING FINES; NOTICE**

**QUESTION 1:** May a CEB set fine for noncompliance at the time an order is entered requiring compliance with an ordinance within some specified period?

**ANSWER:** No. The initial order should set forth required remedial action to achieve compliance, with some specified time within which compliance must result, and should include notice that CEB may order a fine to be imposed upon the violator for each day noncompliance continues beyond the ordered compliance date. If the code inspector later notifies CEB by affidavit that the order has not

been complied with, CEB may then issue another order setting a per day fine amount, retroactive from the originally required compliance date, without further hearing being required. [NOTE: The fine amount may be set, retroactive from the date of the code inspector's notice of a repeat violation to the violator, in the initial order all a repeat violation, as set forth in 1989 Amendments to Chapter 162, Florida Statutes.]

**QUESTION 2:** May a CEB at the time an order is entered requiring compliance set a fine for any subsequent repeat violation by the violator?

**ANSWER:** As discussed in the preceding question, two orders are necessary --one setting a required compliance date, and another setting the per day fine amount for a violation a code inspector reports as remaining unremedied by the date set by a CEB order for compliance. However, a second hearing is not necessary as a precedent to the second order, and upon notification to CEB that, although the violation was corrected within the time specified, the violation has been repeated, the CEB may order the violator to pay a fine up to \$500 per day for each repeated occurrence of the violations without additional hearing. [NOTE: 1986 Amendments to 162.09 lead to this result, which is a change from previous AG opinion requiring separate hearing as to each alleged repeat violation. But see 1989 Amendments, which allow a retroactive fine of up to \$500 per day in the initial CEB order, after hearing, on a repeat violation.]

**QUESTION 3:** May proper service of notice of CEB hearing be obtained by posting the property where the violation occurs and by posting said notice in a conspicuous place in City Hall at least five (5) days prior to the hearing date if methods of service set forth in Section 162.12, Florida Statutes (certified mail or hand-delivery by code inspector), have failed?

**ANSWER:** No; the statute does not authorize notice to be served by posting as an alternative service method. However, the amended statute does permit the sheriff or other law enforcement officer or other person designated by the local governing body, in addition to the code inspector, to serve the notice. [NOTE: The Legislature amended Section 162.12, Florida Statutes, in 1989 to provide for alternative methods of service (i.e. posting and/or publication) where warranted under the circumstances of a case.]

**I. AGO 87-24: CEB ALTERNATE MEMBER APPOINTMENTS**

**QUESTION:** May a local governing body appoint one or more individuals to serve as alternate members of CEB, in addition to the Board's seven regular members?

**ANSWER:** No, there is no authority under Chapter 162, Florida Statutes, for appointment of alternate CEB members. [NOTE: Chapter 162, Florida Statutes, was amended in 1989 to specifically provide for appointment of up to two alternate CEB members.]

**J. AGO 88-36: AGGREGATION OF SEPARATE PROPERTIES INTO SINGLE CEB ACTION: NOTICE TO OWNERS**

**QUESTION 1:** May properties with different physical locations/addresses, but owned by one owner, be aggregated into one action for a code violation hearing pursuant to Chapter 162, Florida Statutes?

**ANSWER:** No. Chapter 162 appears to contemplate that each code violation will be treated as a separate cause of action to be considered by the CEB, and does not authorize consolidation of all properties with violations owned by one person into a single action.

**QUESTION 2:** If property is held jointly or by two or more persons, should notification and service required by Sections 162.06 and 162.12, Florida Statutes, be achieved as to all persons owning an interest in such property?

**ANSWER:** Chapter 162, Florida Statutes, requires notice to be given to the violator of an ordinance. In the absence of any legislative or judicial direction otherwise, the Attorney General cannot conclude that written notice of a violation should be given to all persons owning an interest in property upon which a violation has occurred. [NOTE: In the sense that all property owners can be considered "violators" under Leon County Code provisions, and to ensure that liens filed are not subjected to challenge, it is recommended that all record owners of a parcel in violation be provided with notice as to CEB actions. In addition, 1989 Amendments to Chapter 162, Florida Statutes, provide for filing of initial CEB orders on violations in the public records to provide notice to all subsequent owners or other persons interested in property owned by a violator.]

**K. AGO 88-62: CEB MEMBERS ABSTAINING FROM VOTE: ATTENDANCE REQUIREMENTS**

**QUESTION 1:** May a CEB member disqualify himself from considering a matter before the CEB, pursuant to Chapter 38, Florida Statutes, and if not, is there any basis for disqualification for the reasons set forth in Chapter 38?

**ANSWER:** A CEB member may not disqualify himself from considering a matter pursuant to Chapter 38, Florida Statutes (relating to disqualification of judges). If the CEB adopts rules relating to the conduct of meetings, such rules must conform to Section 286.012, Florida Statutes, which requires a CEB member to vote regarding any official act to be taken or adopted at a CEB meeting unless there appears to be a conflict of interest pursuant to Sections 112.311, 112.313, or 112.3143, Florida Statutes, in which case the member shall comply with disclosure requirements of Section 112.3143, Florida Statutes. Any question as to what constitutes a "conflict of interest" as used in Chapter 112, Florida Statutes, must be submitted to the Florida Commission on Ethics.

**QUESTION 2:** Are the provisions of Section 162.05(1), Florida Statutes, regarding absence from 2 of 3 consecutive meetings, applicable to regular meetings only?

**ANSWER:** The provisions of Section 162.05(1), Florida Statutes, apply to all meetings of the CEB, in the absence of a legislative or judicial determination otherwise. Nothing in the language of Section 162.05(1), Florida Statutes, defines or limits the term "meetings" to particular types of meetings of the CEB.

**L. AGO 91-28: FORECLOSING ON A CEB LIEN**

**SUMMARY:** An opinion by the Attorney General's Office (AGO 91-28) expressing the opinion that local governments are authorized to recover all costs incurred in foreclosing on a code enforcement board lien; and, that Section 170.10, Florida Statutes, authorizes a local government to foreclose against a property owner for unpaid special assessments and to include legal costs incurred in such a foreclosure.



## **VIII. GUIDE TO THE SUNSHINE AMENDMENT AND CODE OF ETHICS**

A copy of a booklet on Ethics and the Sunshine Laws, published by the Florida Commission on Ethics, will be provided to each CEB member by the Leon County Agenda Coordinator. As to government ethics and disclosure in particular, a special section for note to CEB members is F.S. Section 112.3143, which relates to voting conflicts. Provisions of that section apply to CEB members, as appointees to a governmental quasi-judicial body, with regard to conflicts and their effect on a member's ability or choice to vote in particular cases. A copy of F.S. Section 112.3143 is included in the Appendix to this handbook for your review.

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