

Meeting Date
May 20, 2010



**AGENDA REPORT**  
*BREVARD COUNTY CHARTER REVIEW COMMISSION*

AGENDA	
Proposal #	43
Item No.	IX. C.

SUBJECT: Sections 1.8.1-1.8.11 Citizens Code Enforcement Bill of Rights

PETITIONER: Penny Canales

Requested Action:  
 Requesting the Charter Review Commission consider approval of a Charter Amendment to add a section for Citizens Code Enforcement Bill of Rights.

Summary Explanation & Background:  
 This proposal requests that the Charter Review Commission approve an amendment to the Charter to add a section for the purpose of establishing a Citizens Code Enforcement Bill of Rights.

The proposed section 1.8 Citizens Code Enforcement Bill of Rights will establish the following:

- 1.8.1 Purpose of Code Enforcement
- 1.8.2 Specified Danger
- 1.8.3 Equal Protection
- 1.8.4 Identification of Violator
- 1.8.5 Illegal Searches, Right to Refuse Consent
- 1.8.6 Actions Prohibited by Code Enforcement Personnel
- 1.8.7 Notice of Hearing
- 1.8.8 Right to Question Complainant
- 1.8.9 Recurring and Repeat Violations
- 1.8.10 Jury Trial/Hearing
- 1.8.11 Excessive Fines/Forfeitures of Estate

See attached exhibit A

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Exhibits Attached:  
 Exhibit A

Reviewed by Administrative Secretary/Chairman	Yes <input type="checkbox"/> No <input type="checkbox"/>
	County Department

## Exhibit A

### 1.8.1 Purpose of Code Enforcement

Citizens of Brevard County have the right to full enjoyment and peaceful use of their own private real and personal property. Citizens have the right to be free from harassment and arbitrary or capricious code enforcement activities. Code enforcement exists to protect the health, safety, and general welfare of the PUBLIC from the DANGERS of improper use of private property. If NO PUBLIC DANGER exists, there should be no enforcement action taken. It is not the job of code enforcement to protect people from their own actions when taken on their own property. Code enforcement officials are employees of the taxpaying citizens of the County and as such, shall strive to treat citizens they come into contact with respect, dignity and fairness. Code enforcement officials shall recognize the unalienable rights of the County's property owners and residents and comply with those rights. Code enforcement shall not be used as a means to enrich County coffers.

### 1.8.2 Specified Danger.

In all enforcement actions, code enforcement shall identify with specificity the public danger to health, safety or welfare caused by any alleged violation. Said alleged "public danger" shall be clearly stated within the served "notice" of the alleged violation.

### 1.8.3 Equal Protection.

Enforcement actions shall be equally applied to all persons and property in Brevard County.

### 1.8.4 Identification of Violator.

In all code enforcement activities, the alleged "violator" shall be specifically identified by name and the violation sited to the property.

### 1.8.5 Illegal Searches, Right to Refuse Consent.

Code enforcement officials shall at all times respect the citizens private property rights.

- (a) Code enforcement personnel shall not enter onto a property without informed consent of the citizen/property owner, or a legal warrant based upon sworn affidavit with lawful probable cause.
- (b) Code enforcement personnel shall provide the citizen/property owner with their legal rights.

### 1.8.6 Actions Prohibited By Code Enforcement Personnel.

Code enforcement personnel shall at all times respect the Constitutional rights of the citizen/property owner they serve and shall treat them with dignity and respect.

- (a) Code enforcement officers shall limit citations to legal violations. Such classifications shall not be arbitrary or capricious, but shall be based on a specified danger to public health, safety, and welfare.
- (b) Code enforcement officers shall avoid violations based upon aesthetics and appearance.
- (c) Anonymous complaints shall be prohibited.
- (d) Complaints will only be accepted by occupants of properties immediately affected by the specific complaint.
- (e) Code enforcement officers shall make no representation of accrued costs or fees in the absence of violations.
- (g) Each citation should be a specific violation.

### 1.8.7 Notice of Hearing.

- (a) All alleged violators shall be provided written notice of hearing, name of complainant and any supporting facts.
- (b) Review of such evidence shall be in such a manner and time that will allow the accused to prepare a meaningful defense.
- (c) This notification shall also provide:
  1. a statement of the procedures to be used at hearing
  2. a statement the accused can request a continuance in order to prepare a defense
  3. a statement of his/her "fundamental" due process rights.

#### 1.8.8 Rights to Question the Complainant.

- (a) At the alleged violator's request, the hearing officer shall subpoena the person that filed the original code violation complaint.
- (b) At the hearing the complainant shall be required to appear at and be subject to examination of complaint.
- (c) Should this government witness fail to appear at this hearing, the case shall be dismissed, without cost assessed to the alleged violator.

#### 1.8.9 Recurring and Repeat Violations.

“Recurring” violations shall not be misconstrued as “Repeat” violations.

Repeat violations can only be issued for an identical violation for which past violation was found.

*FS 162.04 (5) Definitions*

#### 1.8.10 Jury Trial/Hearing.

Both the Federal and Florida Constitutions guarantee an accused the right to mediation or to redress the court. Any accused should be given the opportunity to demand a trial by jury.

#### 1.8.11 Excessive Fines/Forfeitures of Estate

- (a) The local government body shall set definitive fines for minor code/ordinance violations in order to avoid the excessive fines that can result from daily accruing or open-ended fines.
- (b) Liens shall be properly recorded.
- (c) Statutory maximum fines and liens shall accrue and attach only to violations, which pose severe and imminent danger to the public health, safety, and welfare.
- (d) The local governing body has the statutory authority to waive fines and release liens. These fine waivers and lien releases shall be made upon the local body's own motion or upon petition by the violator.