

Meeting Date
May 6, 2010



AGENDA REPORT
BREVARD COUNTY CHARTER REVIEW COMMISSION

AGENDA	
Proposal #	43
Item No.	X. A.

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

Contacts: Penny Canales 321-951-2775 canpen62@yahoo.com

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 the 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.

No enforcement action shall be taken against a private citizen/property owner for any alleged violation/condition which can be found to exist on nearby County owned or other public property.

1.8.4 Identification of Violator.

In all code enforcement activities, the alleged "violation" shall be specifically identified by name.

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 begin an inspection without informed consent of the citizen/property owner, or a warrant based upon sworn affidavit with lawful probable cause.
- (b) Code enforcement personnel may not trespass to look over privacy fences.
- (c) Code enforcement personnel shall advise citizen/property owner they have the right to refuse inspection requests.
- (ci)

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 not demoralize or disparage citizens by characterizing their treasured personal property/belongings as "junk, debris, or litter" without specific identification and cause. Such classifications shall not be arbitrary or capricious, but shall be based upon 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 rejected.
- (d) Complaints will only be accepted by person(s) residing within 1000' of the accused violator.
- (e) Code enforcement officers shall make no representation that "court cost" or "administrative hearing fees" will be assessed against an alleged violator for simply contesting an alleged violation.
- (f) Code enforcement officers shall make the affirmative statement that no cost or fees shall accrue absent a finding that a violation occurred.
- (g) Code enforcement officers shall refrain from "overreaching", "piling on" and "stacking" when issuing alleged violations. One act shall not result in multiple violations.

Exhibit A

1.8.7 Notice of Hearing.

All alleged violators shall receive with the statutorily proscribed hearing notice, the name of the original complainant, a statement of the evidence obtained against them, how said evidence was obtained, and how the defendant can obtain copies of said evidence or otherwise review said evidence. Review of such evidence shall be in such a manner and time that will allow the accused to prepare a meaningful defense. This notification shall also provide a statement of the procedures to be used at hearing, a statement the accused can request a continuance in order to prepare a defense, and all other information concerning the accused “fundamental” due process rights.

1.8.8 Rights to Question the Complainant.

At the alleged violator's request, the hearing officer shall subpoena the person that filed the original code violation complaint. At the hearing, the violator shall have the right to question the complainant as to what perceived danger the alleged code violation posed to them personally, or the perceived danger posed to the public at large. 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.

1.8.10 Jury Trial/Hearing.

Both the federal and Florida Constitutions guarantee an accused the right to trial by jury. Any accused should be able 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) No liens shall attach for minor violations.
- (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 could be made upon the local body's own motion or upon petition by the violator.