

BREVARD COUNTY
PROPERTY OWNERS / RESIDENTS
(CITIZENS)

CODE ENFORCEMENT
BILL OF RIGHTS

History

Under English common law, as adopted as the common law of Florida, ownership of private property has always included the right to freely use such property as the owner desires, with but two limitations:

1. Property (including land) can not be used in a manor which constitutes a **DANGER** to the health, safety, morals or the general welfare of the public; and,
2. Private land cannot be used to interfere with the above property rights of others to use and enjoy their property.

Under these principals of common law, the presumption of use and enjoyment runs in favor of the citizen /owners rights to use privately owned property as the owner desires.

Upon the alleged misuse of private property or the encroachment upon the rights of another citizen's private property rights, the burden has always been on the government to prove the owners use constituted a public nuisance requiring restriction of use in order to protect the public. The common law remedy to impose a limitation on the use of private property was a suit in equity for the abatement of public and private nuisances.

In choosing to replace suits in equity as the procedure for abatement of public and private nuisances, Brevard County adopted Chapter 162 Florida Statutes as relating to "County or Municipal Code Enforcement", as set forth within Section 2-168 Brevard County Codes. As such, Brevard County code enforcement activities are governed, controlled, and limited by sec.162 et.seq., Florida Statutes.

Citizens Constitutional / Statutory Rights

Property owners and residents private property rights are secured and protected by both the UNITED STATES CONSTITUTION and the FLORIDA CONSTITUTION. The Federal Constitutions "BILL of RIGHTS" – Amendments I through X – are guaranteed to the citizens of Florida by the XIV Amendment. Article I – "Declaration of Rights"- of the Florida Constitution grants its citizens specific "unalienable" rights.

Among these "unalienable" rights are the protections:

1. That all natural persons "are equal before the law", with the right to "acquire, possess, and protect property". Article I, Section 2. "Basic Rights", Fla. Const., Amendment XIV, Section 1. U.S. Const.

2. That “no person shall be deprived of...property without due process of law..”. Article I, Section 9. “Due Process”, Fla. Const., Amendment XIV, Section 1., U.S. Const.
3. That “the right of the people to be secure in their person, houses...against unreasonable searches and seizures...shall not be violated.” Article I, Section 12. “Searches and Seizures”, Fla. Const., Amendment IV, U.S. Const.
4. That “excessive fines, forfeiture of estate...are forbidden”. Article I, Section 17. “Excessive Punishments”, Fla. Const.; and, “excessive bail shall not be required, nor excessive fines imposed”. Amendment VIII, U.S. Const.
5. That “no administrative agency”...shall...impose any penalty except as provided by law.” Article I, Section 18. “Administrative Penalties”, Fla. Const.
6. That “no person charged with a crime shall be compelled to pay cost before a judgment of conviction has become final”. Article I, Section 19. “Cost”, Fla. Const.
7. That “the courts shall be open to every person for redress of any injury...”. Article I, Section 21. “Access to Courts”, Fla. Const.
8. That “the right of trial by jury shall be secure to all and remain inviolate”. Article I, Section 22. “Trial by Jury”, Fla. Const.
9. That “in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...”. Amendment VII, U.S. Const.
10. That “every natural person has the right to be let alone and free from governmental intrusion into the persons private life...”. Article I, Section 23. “RIGHT of PRIVACY”, Fla. Const.

Both section 162.07(3) Florida Statutes and section 2-174 Brevard County Codes requires that “fundamental due process shall be observed” in the code enforcement process.

Preamble

Citizens of the County have the right to the 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.

Citizens Code Enforcement Bill of Rights

I. Specified Danger. In all enforcement actions, code enforcement shall identify with specificity the **public danger** to the 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.

II. 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.

III. Identification of Violator. In all code enforcement activities, the alleged “violator” shall be specifically identified by name. The property owner is **not** always the alleged violator, i.e., landlords, based upon restrictions placed upon them by the “Florida Residential Landlord Tenant Act” (section 83.40 et.seq. Florida Statutes), shall not be held liable for the actions of their tenants. The above landlord / tenant relationship is not the only example of when a “property owner” may not be the alleged “violator”.

IV. Illegal Searches, Right to Refuse Consent. Code enforcement officials **do not** have the right to enter upon private property for inspection or any other purpose, without the advance, informed consent of the citizen / property owner, or a legally obtained inspection warrant based upon sworn affidavit with lawful probable cause. Code enforcement personnel shall not trespass in order to look over privacy fences. Code officials shall advise citizens they have the right to refuse inspection requests. See Florida Attorney General Opinion 2002-27, as dated April 4, 2002.

V. Actions Prohibited by Code Enforcement. Code enforcement personnel shall at all times respect the constitutional rights of the citizen / property owners they serve and shall treat them with dignity and respect.

a). Code enforcement officers shall not demonize 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). As aesthetics and appearance are subjective to arbitrary and capricious determinations, code officials shall avoid violations based upon aesthetics and appearance.

c). Anonymous complaints lead to a greater chance of harassment and the loss of the right of privacy and peaceful enjoyment of property. Therefore, anonymous complaints shall be rejected.

d). Code officials shall make no representations that “court cost” or “administrative hearing fees” will be assessed against an alleged violator for simply contesting an alleged violation. Code enforcement shall make the affirmative statement that no cost or fees shall accrue absent a finding that a violation occurred.

e). Code officials shall refrain from “overreaching” or “piling on” when issuing alleged violations. One act shall not result in multiple violations.

VI. 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.

VII. Right 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.

VIII. Recurring and Repeat Violations. Chapter 162 Florida Statutes only recognizes “repeat” violations –~~not~~ recurring violations. Pursuant the statutory definition, repeat violations can only be issued for an identical violation for which past violation was found. A “repeat” violation cannot be issued for an unrelated, different new violation.

IX. 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.

X. Excessive Fines / Forfeitures of Estate. The local Governing body shall set definitive fines for minor code / ordinance violations in order to avoid the excessive fines that can result from daily accruing, open -ended fines. No liens shall attach for minor violations. 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. 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.

Florida F.A.C.E. OFF (Fight Against Code Enforcement OFFice) Movement

faceoffmovment.blogspot.com/

Rev.2 October 25, 2009