

M E M O R A N D U M

To: Tom Harmer, Town Manager
From: Allen Parsons, AICP
Director, Planning, Zoning and Building Department
Report date: August 24, 2022
Meeting date: September 12, 2022
Subject: Ordinance 2022-12, Amending Chapter 33, Code Enforcement

Recommended Action

Forward Ordinance 2022-12 to the October 3, 2022 Regular Meeting for second reading and public hearing.

Background

Ordinance 2022-12 provides a clean-up of Town Code provisions that reference the make-up, organization, and hearing process of the cases that were heard by the Town's former Code Enforcement Board. This Board sunset on September 30, 2019 and has been replaced by a Special Magistrate (per Ord. 2018-03).

The following outlines the proposed amendments to Chapter 33, Code Enforcement, to reflect the termination of the Code Enforcement Board and the addition of several clarifying provisions associated with the role of the Special Magistrate in the Code Enforcement process. Minor revisions, including, but not limited to, capitalizations, renumbering, and reorganization of various Sections, have largely been omitted from the list below. If there are non-substantive (N/S) changes to a particular Section, the list below will reflect (N/S).

Proposed revisions include:

- Chapter Title – Removed reference to Code Enforcement Board.
- Section 33.01 – Intent – Revised to reflect that the Special Magistrate is an appointed position.
- Section 33.02 – Definitions
 - Eliminated reference to the Code Enforcement Board.
 - Amended definition of Code Enforcement Officer to note that the position is appointed by the Town Manager.
 - Sections 33.03 and 33.04 – Code Enforcement Board Establishment/Members and Organization/Quorum and Compensation provisions eliminated.
- Section 33.05 (Renumbered to 33.03) – Special Magistrates – (N/S).
- (New) Section 33.04 – Special Magistrate Powers –

- Relocated provisions addressing authority to establish procedures for the presentation of cases, and authority to reduce fines from former Section 33.05 to this Section.
- Added provisions: cross-referencing statutory authority; addressing the Special Magistrate's authority to control hearings, to enforce authorized Town Code provisions; and to accept, reject or modify enforcement related settlement agreements.
- Section 33.06 (Renumbered to 33.05) – Enforcement Procedure – Added reference to the recently revised Statute that eliminated the ability for Code Enforcement complaints to be lodged anonymously.
- Section 33.07 (Renumbered to 33.06) – Repeat Violations and Property Transfers – (N/S).
- Section 33.08 (Renumbered to 33.07) – Hearings –
 - Added procedural provisions regarding audio recordings.
 - Added provisions regarding conduct of hearings, including the hearing of cases on the published agenda, and the taking of evidence and testimony.
 - Added language indicating it is the Town's burden to demonstrate that a violation occurred.
 - Added a provision to allow for multiple violations to be heard singularly or in combination; a provision regarding a compliance deadline and the Special Magistrate's authority to allow for extensions due to exceptional circumstance, or good cause having been shown.
- Section 33.09 – Code Enforcement Board Powers – deleted.
- Section 33.10 (Renumbered to 33.08) – Administrative Fines and Lien –
 - Combined provisions related to the Special Magistrate's authority to reduce fines.
 - Added a provision that would not allow for a reduction below \$500.00 in order to recoup some of the administrative costs related to the enforcement actions.
 - Added a provision addressing the payment of fines and lien clarifying the current practice that the Town Attorney, Town Manager or Town Manager's designee (currently the Finance Director) have delegated authority to discharge liens upon full payment.
- Section 33.11 (Renumbered to 33.09) – Appeals – (N/S).
- Section 33.12 (Renumbered to 33.10) – Notice – (N/S).
- Section 33.13 (Renumbered to 33.11) – Special Magistrate to Be Non-Exclusive – (N/S).
- Section 33.14 (Renumbered to 33.12) – Code Enforcement Citations, Authority and Purpose – (N/S).
- Section 33.15 (Renumbered to 33.13) – Authority to Issue Citations – (N/S).
- Section 33.16 (Renumbered to 33.14) – Ordinances Enforced, Civil Penalties, and Citation Contests –

- Consistent with Florida Statutes, added a provision indicating that the maximum citation amount allowed is \$500 for each calendar day the violation exists.
- Added a provision that the schedule of violations and fines is established by the Town Commission and may be amended.
- Section 33.17 (Renumbered to 33.15) – Violations, Procedure – (N/S).
- Section 33.18 (Renumbered to 33.16) – Appeals of Contest Determination – (N/S).
- Section 33.19 (Renumbered to 33.17) – Code Enforcement Board Dissolution – (N/S). Left in the Code as a record of prior Town action dissolving the Code Enforcement Board.

Staff is also including a draft of Resolution 2022-16, which would provide for an expansion of the Town Code provisions subject to a citation process. This Resolution will be amending the current Schedule of Violations and Fines, by public hearing, following adoption of Ordinance 2022-12 at the October 3, 2022 Regular Meeting.

Resolution 2022-16 provides for an expansion of the Town Code provisions subject to civil citation, which is an enforcement mechanism to immediately address “point-in-time” violations. Point-in-time violations are those that are inherently transitory such as a short-term rental violation that is corrected once the short-term occupancy ends. These types of violations are ill-suited for the typical Code Enforcement process that provides a violator multiple opportunities to correct a violation prior to receiving an order from the Special Magistrate to correct the violation or be subject to monetary fines in the form of a property lien. The civil citation approach to Code Enforcement authorizes the imposition of monetary fines (but not a lien) against violators.

The initial Code Enforcement issues addressed with citations represented a pilot-testing of consistently challenging issues for the Town to pursue to via the typical Code Enforcement process, which often involve cases such as contractors or non-residents that do not own real property within the Town. There are four Code provisions that are currently subject to citations:

- Short term rental violations as provided for in Chapter 158, Town Code.
- Unpermitted construction activities as provided for in Chapter 150, Town Code.
- Marine turtle protection regulations as provided for in Chapter 100, Town Code.
- Commercial Vendors and Prohibited Activities in Town Parks, Public Beaches and Public Beach Accesses, as provided for in Chapter 92.

Staff has had four years of experience with citations as an additional Code Enforcement tool and believes they are effective for point-in-time type violations that are egregious or

where a violator has been adequately informed of applicable Code requirements and continues to violate Town Code on a short-duration or repeated basis. The issuance of citations in specific circumstances where contested by a violator have been upheld by the Special Magistrate.

With this experience staff believes this is an opportune time to include additional Code provisions that can have short-duration type violations and is proposing the addition of another ten Code provisions. These additional Code provisions have been coordinated with the Police Department and include two Town Code Sections (Dogs or Cats Prohibited on Beaches and Dog Excreta) that, when violated, law enforcement have requested be eligible for citations rather than pursuing through the county court systems. The additional Code provisions include:

- Stormwater; Unpolluted Drainage as provided for in Section 52.31, Town Code.
- Emergency Water Use Restrictions as provided for in Section 53.10, Town Code.
- (Dogs or Cats) Prohibited on Beaches as provided for in Section 91.17, Town Code.
- Dog excreta as provided for in Section 91.18, Town Code.
- Accumulations Prohibited; Exceptions as provided for in Section 95.25, Town Code.
- Property Maintenance Standards, as provided for in Chapter 104, Town Code.
- Sound Regulations as provided for in Section 130.02, Town Code.
- Annoying Spotlights or Floodlights as provided for in Section 130.03, Town Code.
- Construction Materials as provided for in Section 130.08, Town Code.
- Sign Code as provided for in Chapter 156, Town Code.

Immediately following adoption of Ordinance 2022-12 and Resolution 2022-16, staff will initiate outreach efforts to make the public aware of the additional Code provisions enforceable by civil citations. Outreach will include press releases, social media postings, web page information, information provided to groups such as Homeowners Associations, Chamber of Commerce, Federation of Condominiums, Property Management Groups, Longboat Key Turtle Watch and other associated organizations.

Any Commission input on the proposed amendments to Chapter 33 or to the Schedule of Violations and Fines will be addressed when the Ordinance and Resolution come back for final action at the October 3, 2022 Regular Meeting.

Staff Recommendation

Forward Ordinance 2022-12 to the October 3, 2022 Regular Meeting for second reading and public hearing.

Attachments

- A. Ordinance 2022-12, Amending Chapter 33, Code Enforcement (Available in Town Clerk's Office)
- B. Resolution 2022-16, Schedule of Violations and Fines (Available in Town Clerk's Office)
- C. PowerPoint Presentation (Available in Town Clerk's Office)

End of Agenda Item