

Cocoa Beach Police Department

Standard Operating Procedure



Effective Date: August 8, 2022	Revision: Amends:	Number: 215.00
Subject: Code Enforcement Operations		Re-evaluation Date: 2024
Distribution: ALL PERSONNEL	Related Standards:	

This order consists of the following numbered sections:

1. Purpose
2. Scope
3. Policy
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5. Introduction
6. General Procedures
7. Property Access
8. Statutorial Requirements for Notice
9. Special Magistrate Hearing Procedures
10. Conduct of Hearing
11. Administrative Fines/Repair Costs
12. Abatement By City
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1. **PURPOSE**

Provide an efficient process for the enforcement of City Codes, Land Development Regulations and Florida Statutes when involving the regulatory responsibilities and expertise of departments other than Code Enforcement.

2. **SCOPE**

The provisions set forth herein apply to all members of the Department.

3. **POLICY**

Code Enforcement is an “enforcement” division that uses the authorities granted under Chapter 162, F.S.S to enforce the City’s Code, International Property Maintenance Code (IPMC) and Land Development Regulations, as well as any applicable law. All Code Enforcement Officers are trained to address property maintenance, minimum housing standards, and nuisance complaints.

4. **DEFINITIONS**

- A. Abatement- Termination of a nuisance as defined by City Ordinance.
- B. Code Enforcement Officer (CEO)- An employee of the Cocoa Beach Police Department whose duty is to enforce the various codes and Ordinances and to initiate enforcement proceedings before the Special Magistrate.
- C. Courtesy Letter/Informational Letter- A letter sent to the owner of the property notifying them of a code violation on their property with a request for corrective action in a timely manner.
- D. Imminent Public Danger- A discretionary finding by the CEO causing the owner and/or property owner to appear before the Special Magistrate at the earliest practical hearing. This finding is one circumstance in which a "reasonable time" does not have to be provided to correct the violation.
- E. Notice of Abatement- The document upon which an owner and/or property owner is informed of the intent of the City to obtain an order from the City Manager or Special Magistrate to have City resources correct the violation on the property.
- F. Notice of Hearing (NOH)- The document upon which an owner and/or property owner is informed of the date, time and location of the formal hearing before the Special Magistrate where the case will be heard.

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- G. Notice of Violation (NOV)- Formal document upon which a code violation is documented. This document serves as notice that a violation of code was observed. Included on this document shall be identifying characteristics of the property, owner information if available, amount of time given to correct the violation, and the contact information for Code Enforcement.
- H. Reasonable time- A statutory requirement and pre-condition for Code Enforcement. The CEO must provide the owner and/or property owner with a reasonable amount of time to bring a violation into compliance prior to scheduling the matter for hearing. Although "reasonable time" may vary based on the facts of the case, a recommended rule of thumb is the CEO should provide ten (10) business days to cure a violation.
- I. Special Magistrate- Appointed by the City Commission or designee to hear code compliance cases.

5. **INTRODUCTION**

Code Enforcement is responsible for the enforcement of the City's Ordinances and all other issues directed by the Cocoa Beach Police Department for Code Enforcement. These Ordinances and codes are designed to protect the health, safety, and welfare of all who live, work, or visit the City. They also ensure a positive effect on property value, community appearance, and neighborhood pride.

Responsibility for maintenance of properties and the overall aesthetic appearance of neighborhoods ultimately lie with the property owners and tenants in the City. Properties that are not properly maintained often fall into disrepair; deteriorate; devalue neighborhoods; become an encouragement to crime, and lead to community deterioration.

Code Enforcement's primary goal is voluntary compliance. This is achieved through a proactive, comprehensive community communication initiative that stresses cooperation through education.

6. **GENERAL PROCEDURES**

- A. Code Enforcement shall be staffed by non-sworn personnel.
- B. The primary goal of Code Enforcement is gaining voluntary compliance.
- C. All allegations of violation of City Ordinances will be primarily investigated by a CEO. Anonymous reports of violation are generally not accepted. Anyone reporting a violation must generally provide a name and address.
- D. Personal knowledge of a violation is one key factor in meeting the burden of proof required to prove a case at a hearing. As such, the violation should be physically observed, in person, by the CEO.
- E. The violation must be observed from a location where the CEO is legally authorized to be.
- F. If a violation is observed, the CEO will take photographs utilizing the Department issued device.
- G. When a violation is observed, the CEO shall notify the owner that a violation exists and a reasonable time to correct it shall be made prior to the issuance of an NOV, unless there is a safety, health, or welfare issue.
- H. F.S.S. 162.06(2) imposes a condition that requires the CEO to first notify the owner of the violation and then provide the owner with a "reasonable time" to correct the violation prior to scheduling the owner for a hearing. What is deemed to be "reasonable" is left to the discretion of the CEO and will be based upon the nature of the violation, unless specifically provided for in the applicable City Ordinance. In general, the CEO should provide ten (10) business days to cure a violation.
- I. If a CEO finds that the owner has not corrected the violation within the allotted "reasonable time" period, the CEO shall issue a formal NOV.
- J. If upon re-inspection, the CEO finds that the violation has not been corrected, the CEO shall initiate the process to cause the owner and/or property owner to appear before the Special Magistrate.
- K. F.S.S. 162.06(3) states if a "Repeat Violation" is observed, the CEO shall notify the owner and/or property owner of the violation but is not required to give "reasonable time" to correct the violation. A violation of this nature will be scheduled for the next practical Special Magistrate hearing.
- L. F.S.S. 162.06(4) states if the CEO has reason to believe a violation or the condition causing the violation is irreparable or irreversible in nature, the CEO shall make a reasonable effort to notify the owner and/or property owner and then schedule the violation for the next practical Special Magistrate hearing.
- M. If the CEO believes the violation is an emergency which represents a serious threat to the public health, safety, and welfare, the CEO shall immediately issue the NOV citing the provisions of F.S.S. 162.06(4). The NOV shall specifically state what condition constitutes the public danger and what specific action needs to be taken to correct the violation. The NOV shall state the City of Cocoa Beach will take action to abate the violation and the property owner with applicable costs should the violation not be corrected. All statutory requirements governing "notice" shall be followed. It is the responsibility of the property owner to notify the CEO that correct measures were taken and the violation has been corrected.

7. **PROPERTY ACCESS**

- A. Violations must be visible from the public right-of-way or from a point where the CEO is legally permitted to be.
- B. A CEO is permitted to approach the front door of a residence to make contact with the owner and/or property owner regarding the violation, unless the custodian/or property owner has previously advised the CEO not to enter the property. In the latter instance, an NOV shall be mailed to the owner and/or property owner by certified mail, return receipt requested.
- C. A CEO may not trespass on private property for the sole purpose of viewing an alleged violation code.
- D. If an adjoining property owner grants permission for the CEO to enter onto his/her property to view an alleged violation, the CEO would then be in a legally permitted area. The violation must be in plain view.

8. **STATUTORIAL REQUIREMENTS FOR NOTICE**

To comply with F.S.S 162.12, all required notices (notice of hearing) must be provided to the property owner by;

- A. Certified mail, return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database.
 - 1. For property owned by a corporation, notices may be provided by certified mail, return receipt requested, to the registered agent of the corporation.
- B. Hand delivered by the CEO. If the notice is hand delivered; the CEO will complete an affidavit noting the date, time, and the name of the person noticed.
- C. Leaving the notice at the owner's usual place of residence with any person residing therein who is above fifteen 15 years of age and informing such person of the contents of the notice. If the notice is provided in this manner, CEO will complete an affidavit stating how residency was determined, how the person who accepted notice was determined to be a resident along with specific proof that the person who accepted notice was over fifteen (15) years old.
- D. In addition to providing notice as above, notice may be served by posting as follows:
 - 1. At least ten (10) working days prior to the expiration of any deadline contained in the notice, in at least two (2) locations, one of which shall be property in which the violation is alleged to exist, and the other shall be at Cocoa Beach City Hall.
 - 2. Proof of posting shall be a picture of the posting which will be added to the case file and an Affidavit of Service completed.
 - 3. Notice by posting may run concurrently with, or may follow, an attempt to provide notice by hand delivery or by certified mail.
- E. Evidence that an attempt has been made to hand deliver or certify mail notice, together with proof of posting shall be sufficient to show that the notice requirements have been met.
- F. Multiple owners of property: Every owner of a property must have notice. All identifiable owners must be served.
- G. Do not serve process on Sunday—Service is void.

9. **SPECIAL MAGISTRATE HEARING PROCEDURES**

- A. Should a violation continue beyond the time specified for correction on the NOV, the CEO may prepare the case for a hearing before the Special Magistrate.
- B. If the violation is not corrected by the time specified for correction by the CEO, but is brought into compliance prior to the hearing date, the CEO has the discretion to close the case or proceed with presenting the case to the Special Magistrate. The purpose of presenting the case to the Special Magistrate at this point would be to have an order entered documenting a failure to correct within the allotted time. Should the violation recur, it would automatically become a repeat violation.
- C. If a repeat violation is found, the CEO shall notify the property owner of the repeat violation and shall prepare the case for the next practical hearing before the Special Magistrate. In this instance, the CEO is not required to give the property owner a reasonable amount of time to correct the violation. The case may also be presented to the Special Magistrate even if the repeat violation has been corrected prior to the hearing date. In accordance with F.S.S 162.06(3), the NOV shall specifically state this.
- D. If the CEO has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the CEO shall make a reasonable effort to notify the property owner and may immediately prepare the case for a hearing before the Special Magistrate. In accordance with City Ordinance, the Special Magistrate has the authority to order the City administration to make reasonable repairs as necessary to bring properties into compliance, and to charge the property owner with the reasonable cost of repairs, where it is determined that a violation presents a serious threat to the public health, safety, or welfare, or the violation is irreparable or irreversible in nature.

- E. Once the determination is made to cause the property owner to appear before the Special Magistrate, the CEO shall schedule a hearing.
10. **CONDUCT OF HEARING**
- A. The property owner shall be given at least seven (7) working days' written notification of the hearing.
 - B. Each case before the Special Magistrate may be presented by the local governing body attorney, the CEO, or by a member of the administrative staff of the local governing body.
 - C. The burden of proof shall be with the CEO to show by the greater weight of the evidence (fifty-one percent) that a code violation exists and that the alleged property owner committed or was responsible for maintaining the violation.
 - D. If written notice has been provided to a property owner of the hearing, a hearing may be conducted and an order rendered in the absence of the owner and/or property owner.
11. **ADMINISTRATIVE FINES/REPAIR COSTS/LIENS**
- A. At the conclusion of each Special Magistrate hearing, property owner, hereafter referred to as Respondent, who was adjudicated responsible for a violation of the City of Cocoa Beach Code of Ordinances will be sent a Final Order via certified mail, return receipt requested.
 - B. The Final Order contains the findings of fact, conclusions of law, and the order from the Special Magistrate to cure the violation by a specified date.
 - C. The Final Order provides instruction to the Respondent to contact the CEO upon compliance with the order for the purpose of re-inspection. If upon re-inspection compliance has been achieved, the CEO will close the case.
 - D. The Final Order also serves to inform the Respondent of the date, time and location of the penalty hearing should the violation remain out of compliance after the date ordered by the Special Magistrate. The Respondent may attend the hearing and may be heard.
 - E. Lastly, the Final Order provides remedy instructions to the Respondent should he/she desire to appeal the final administrative order in Circuit Court. All appeals must be filed within thirty days (30) of the date of the Final Order. All Final Orders will comply with "notice" requirements as previously stated in Section "Statutorial Requirements for Notice." Should the Special Magistrate order the Imposition of Fine and Claim of Lien, all Orders will comply with "notice" requirements as previously stated in Section "Statutorial Requirements for Notice."
12. **ABATEMENT BY CITY**
- A. The CEO may request an Abatement Order at the Special Magistrate hearing if the violation presents a serious threat to the public health, safety, and welfare of the public, or that said violation is irreparable or irreversible in nature.
 - B. Abatement Orders concerning a property may be requested following a case review and subsequent approval by the City Manager designee.
 - C. Should the Special Magistrate authorize the City to abate the violation, the Abatement Order will state that the CEO made a reasonable effort via certified mail and/or posting to notify the owner of the violation and that the owner or occupant has failed, refused, or neglected to abate the violation.
 - D. The Order will authorize the City, through its personnel or private contractor, to abate and clear the violation as it deems appropriate; after a date specified within the Order. The Order will state that the costs plus interest shall be assessed against and upon the property and shall constitute a lien pursuant to Chapter 162 of the Florida Statutes.
 - E. Following the date specified on the Abatement Order, the CEO will complete a work order requesting that the appropriate City department complete the specifically described remedy contained within the Order.
 - F. Once a violation has been brought into compliance by the City's resources and any lien or fine placed upon the property (if applicable) is satisfied, the case file shall reflect the date of compliance and the case will be closed. A case will not be closed until all monetary obligations by the property owner are met.
13. **CITATIONS**
- A. Citations are an alternate method, and in some circumstances, the most effective method of compliance at the CEO's disposal.
 - B. Citations can be issued in lieu of notices of violation or notices of hearing generally after a warning has been issued in accordance with state statute. Although Chapter 162 F.S.S. does not specify the form of warning required to be given prior to the issuance of a citation, a written warning is generally the best evidence the warning has been issued.

14. **REFERENCE**

[Florida Statutes Chapter 162 County or Municipal Code Enforcement](#)

15. **APPENDICES**

- A. [Notice of Violation](#)
- B. [Notice of Hearing](#)
- C. [Affidavit of Hand Delivery](#)



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Date: 7/22/2022