



Legislation Text

File #: 18-072, **Version:** 1

TO: Mayor and Commissioners
FROM: R. Max Lohman, City Attorney
THROUGH: Mark R. Lauzier, City Manager
DATE: February 6, 2018

ORDINANCE NO. 03-18: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 37, "DELRAY BEACH CODE ENFORCEMENT GENERAL PROVISIONS", BY REPEALING SECTIONS 37.01 THROUGH 37.46 AND READOPTING SAME, AS REVISED IN ORDER TO AMEND AND REVISE THE CITY'S CODE ENFORCEMENT PROCEDURES IN ACCORDANCE WITH CHAPTER 162, FLORIDA STATUTES; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES (FIRST READING)

Recommended Action:

Motion to approve Ordinance 03-18 amending Chapter 37 to conform to the requirements of Chapter 162, Fla. Stat. and allowing the City Manager to appoint a Code Enforcement Board attorney.

Background:

Over the past three months, the City Attorney's office has undertaken a complete review of policies and procedures of the City's code enforcement operations. As part of this review, the City Attorney has engaged in all aspects of code enforcement, including preparing and presenting the cases to the code board, initiating code lien foreclosure actions, and training code board members and code enforcement officers on the requirements of the law, including due process rights and evidentiary rules. Throughout the review process several areas of improvement were identified. As a result, the City Attorney has drafted an amendment to Chapter 37 and recommends its adoption to address several procedural, legal, and operational deficiencies. These changes will make the City's code enforcement operations consistent with state law, make the City's code enforcement process more efficient, and balance the needs of the citizens who are affected by code violations with the legal rights of the code violators.

1. Expand the City Manager's authority

The City Attorney recommends that the City Manager be delegated the authority to retain the services of an attorney to serve as the Code Enforcement Board's attorney. This attorney will serve as independent legal counsel for the code enforcement board. This change will enable the City Manager to quickly fulfill the City's present need to appoint dedicated legal counsel.

Because the City Attorney's office has begun to prosecute the code enforcement cases, legal counsel from outside the City attorney's office must be provided to the code enforcement board to avoid a conflict of interest. Furthermore, a dedicated code enforcement attorney will be able to assist the code enforcement board with questions of law and evidentiary and procedural matters. A code board attorney is required to provide the board members with the information and assistance necessary for

them to ethically and professionally discharge their responsibilities.

2. Move description of enforcement procedures to a policies and procedures manual

Presently, the code provides a detailed description of the hearing procedures. The City Attorney recommends that these procedures be relocated in a Code Enforcement Policies and Procedures Manual that will be reviewed and approved by the City Manager. Code enforcement is an administrative and operational function of the city and falls within the scope of the City Manager's area of responsibility. This change is consistent with the recent changes to the Code of Ordinances that have moved various administrative procedures such as those relating to purchasing, human resources, and special events from the code to a separate policies and procedures manual.

3. Make Chapter 37 consistent with state law

The City Attorney recommends substantial revisions to the City's code to make it consistent with state law. There are many sections of Chapter 37 that restate provisions of Chapter 162 of the Florida Statutes, which is the state law that establishes administrative code enforcement procedures for local governments. The proposed revision amends these sections to refer directly to the appropriate section of the statute. Not only does this change streamline the City's code, it also prevents inconsistencies in the event changes are made to the state law.

A significant change involves the removal of the sections relating to the City's supplemental code enforcement procedure. This procedure currently allows the City to issue civil citations, which provides violators the option to pay a fine without attending a hearing. While state law does authorize a municipality to adopt a supplemental code enforcement procedure, it may do so as long as the procedure does not conflict with the procedure set forth in state law. The City's supplemental code enforcement procedure, as it currently exists, conflicts with state law. Currently, civil citations are adjudicated before a Special Magistrate, rather than a county court judge as required by Chapter 162, Fla. Stat. and fails to properly afford alleged violators procedural due process. Additionally, most of the fines that are imposed via the civil citation method are less than the cost of filing the case in the county court and the prosecution of the cases requires an assistant city attorney to travel to the courthouse to prosecute minor code infractions. This enforcement method is cost prohibitive and unwieldy. Accordingly, the City Attorney recommends deleting the subsections governing the supplemental code enforcement procedure.

City Attorney Review:

Approved as to form and legal sufficiency.