



**COLLIER COUNTY
CONSOLIDATED CODE ENFORCEMENT ORDINANCE**

ORDINANCE NO. 2010- 04

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2007-44, THE COLLIER COUNTY CONSOLIDATED CODE ENFORCEMENT ORDINANCE, TO CLARIFY PROCEDURES RELATING TO CODE ENFORCEMENT CITATIONS BROUGHT BEFORE THE CODE ENFORCEMENT SPECIAL MAGISTRATE, AND TO ADD APPEALS OF DANGEROUS DOG DETERMINATIONS TO THE JURISDICTION OF THE SPECIAL MAGISTRATE; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the Constitution of Florida authorizes Florida counties to exercise broad home rule powers; and

WHEREAS, Section 125.01(1), *Florida Statutes*, provides that the legislative and governing body of a County shall have the power to carry on County government and that said power includes, but is not restricted to, a number of powers set forth in Section 125.01, so long as any powers exercised are not inconsistent with general or special laws; and

WHEREAS, Section 125.01(1)(t), *Florida Statutes*, provides that a county may adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law; and

WHEREAS, Sections 125.01(3)(a) and (b), *Florida Statutes*, recognize that the enumeration of powers in Section 125.01(1), *Florida Statutes*, incorporates all implied powers necessary or incident to carry out those powers and that Section 125.01, *Florida Statutes*, shall be liberally construed in order to effectively carry out the purpose of the section and to secure for counties the broad exercise of home rule powers authorized by the State Constitution; and

WHEREAS, pursuant to Chapter 162, *Florida Statutes*, "The Local Government Code Enforcement Boards Act," the Board of County Commissioners of Collier County duly enacted Collier County Ordinance No. 2007-44, known as "The Collier County Consolidated Code Enforcement Ordinance."

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA that:

SECTION ONE: Amendment to Ordinance No. 2007-44.

ARTICLE I. General

Section 1. Title and Citation.

This Ordinance shall be known and may be cited as the “Collier County Consolidated Code Enforcement Ordinance.”

Section 2. Applicability.

The provisions of this Ordinance shall apply to, and be enforced in, the unincorporated areas of Collier County. This Ordinance shall apply to, and be enforced in, any municipalities within Collier County that agree, by resolution of the governing bodies of both the County and the municipality, to have this Ordinance apply and be enforced in the municipality.

Section 3. Purpose and Authority.

It is the intent of this Ordinance to promote, protect, and improve the health, safety, and welfare of the citizens of Collier County by authorizing the creation of a Code Enforcement Board, which may act as the Collier County Nuisance Abatement Board from time to time, and a Special Magistrate, with authority to impose administrative fines and other noncriminal penalties; and to provide a Code Enforcement Citation process for enforcement of County codes and ordinances in County Court, all of which is intended to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in Collier County, where a pending or repeat violation exists.

Section 4. General Definitions and Abbreviations.

When used in this Ordinance, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

Code Enforcement Officer means any authorized agent or employee of the County whose duty it is to assure code and ordinance compliance.

Commission means the Board of County Commissioners of Collier County, Florida.

Enforcement Board means the Collier County Code Enforcement Board, which may act as the Collier County Nuisance Abatement Board from time to time, and which is authorized to hear and decide cases involving violations of any County codes and ordinances.

Notice to appear refers to a written order issued by a Code Enforcement Officer requiring a person accused of violating the law to appear in a designated court or government office at a specified date and time. If a person refuses to sign the notice to appear, the Code Enforcement Officer has no authority to arrest such person.

Order means a decision of the Enforcement Board or the Special Magistrate, whether stated orally or reduced to writing.

Person means an individual, association, firm, partnership, corporation, or other legal entity.

Prosecutor means anyone authorized to present cases before the Enforcement Board or Special Magistrate, and shall include Code Enforcement Officers.

Public nuisance means those nuisances as identified in either § 893.138 or § 823.05, Florida Statutes, or other statute or ordinance declaring public nuisances.

Repeat violation shall mean a violation of a provision of a code or ordinance by a person who has been previously found through the Enforcement Board, Special Magistrate, or any other quasi-judicial or judicial process, to have violated the same provision within five years prior to the violation, notwithstanding the former and present violations occurring at different locations.

Secretary to the Enforcement Board, or Secretary to the Special Magistrate, means the administrative staff personnel responsible for the preparation, development and coordination of all administrative and case management services necessary for the proper functioning of the Enforcement Board or Special Magistrate, as the case may be.

Special Magistrate is a person authorized by the Commission to hear and decide cases involving violations of any County codes and ordinances.

Violator means a person (the property owner, tenant, or business entity on the premises, or any combination thereof) alleged or found to have violated any code or ordinance of Collier County, which an Enforcement Board or Special Magistrate has jurisdiction to enforce.

Section 5. Rules of Procedure.

Both an Enforcement Board and a Special Magistrate may adopt such rules and regulations as deemed necessary to carry out their duties, consistent with the provisions of this Article and Chapter 162, Florida Statutes, the Local Government Code Enforcement Boards Act, subject to approval by the Commission.

Section 6. Powers and duties.

- (1) Both an Enforcement Board and a Special Magistrate shall have the power to:
 - (a) Adopt rules and regulations for the conduct of hearings;
 - (b) Subpoena alleged violators and witnesses to appear at hearings, which subpoenas may be served by the Collier County Sheriff or a duly authorized person;
 - (c) Subpoena evidence including, but not limited to, records, surveys, plats, and other documentary evidence, which subpoena may be served by the Collier County Sheriff or a duly authorized person;
 - (d) Take testimony under oath;
 - (e) Hold hearings on notices of violations and citations;
 - (f) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance;
 - (g) Assess administrative fines, costs, and to impose liens and order the payment of such fines, as provided for herein;

(h) Authorize the county attorney, or his designee, to foreclose on a lien or sue to recover a money judgment for unpaid fines and costs imposed by the eEnforcement bBoard or Special Magistrate; and

(i) Uphold any other powers and duties granted by Chapter 162, Florida Statutes, the Local Government Code Enforcement Board Act.

ARTICLE II. The Code Enforcement Board and Nuisance Abatement Board

Section 1. There shall be one or more Enforcement Boards which shall, from time to time, also function as the Collier County Nuisance Abatement Board. The Enforcement Board shall have jurisdiction to hear and decide cases in which violations are alleged of any provision of Collier County codes or ordinances.

Section 2. The Enforcement Board shall be comprised of seven members and two alternate members appointed by the Commission. Members of the Enforcement Board shall include, whenever possible, an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.

Section 3. Each member of the Enforcement Board shall be a permanent resident of Collier County and shall serve without compensation.

Section 4. Members may be reimbursed for such travel, mileage, and per diem expenses as may be authorized, in advance, by the Commission.

Section 5. Terms of office shall be in accordance with Ordinance No. 2001-55, as it may be amended.

Section 6. Enforcement Board member attendance requirements, including failure to attend meetings and removal from office, shall be governed by Ordinance No. 2001-55 or its successor ordinance. The members shall serve at the pleasure of the Commission and may be suspended and removed for cause by a majority vote of the quorum of the Commission. If any member becomes a candidate for publicly elected office, or becomes an employee of the County, his or her membership will automatically terminate.

Section 7. An alternate member shall act only in the absence, or disqualification, of a regular Enforcement Board member.

Section 8. The initial appointments to the Enforcement Board shall be as follows:

- (1) Two members shall be appointed for a term of one year each;
- (2) Three members shall be appointed for a term of two years each;
- (3) Two members shall be appointed for a term of three years each;
- (4) One alternate member shall be appointed for a term of two years and one alternate member shall be appointed for a term of three years.
- (5) Thereafter, all appointments shall be made by the Commission for a term of three years.
- (6) In the event any member's term, including that of any alternate member's term, expires during the pendency of a case(s) which has not reached conclusion by a final vote, such member's expired term shall automatically be extended for the limited time and for the limited purpose of presiding

over such particular case(s) until conclusion and final vote and the time for rehearing has passed. In the event a rehearing is granted, such member's term shall continue for the limited time and limited purpose to rehear the matter and reach conclusion by final vote.

Section 9. Organization of the Enforcement Board.

(1) An Enforcement Board shall consist of a chairperson, a vice-chairperson, and such other officers as the Enforcement Board shall deem necessary, after election to such position by the regular voting Enforcement Board members.

(2) Officers of an Enforcement Board shall be elected by a majority vote of the membership at the first meeting of the Enforcement Board, after the initial appointment of the membership and annually thereafter.

(3) A minimum of four members of an Enforcement Board shall constitute a quorum. An alternate member shall be considered as one of such members for quorum purposes.

(4) The Commission shall provide such clerical and administrative personnel and legal services as may be reasonably required by an Enforcement Board for the proper performance of its duties.

(5) The Commission shall appoint either the Office of the Collier County Attorney or an attorney who is a member of the Florida Bar, either residing or practicing in the County, to represent and act as legal counsel to the Enforcement Board, and such person shall attend all meetings of the Enforcement Board. If not the County Attorney, the appointed attorney shall be compensated as provided by the Commission.

(6) The Enforcement Board shall be reviewed by the Commission, in accordance with Collier County Ordinance No. 2001-55, as it may be amended.

ARTICLE III. Special Magistrate

Section 1. Jurisdiction of Special Magistrates.

Special Magistrates shall have the same jurisdiction to hear and decide cases as the Enforcement Board, and may also hold hearings on contested citations under the procedures set forth in Article V herein, issued by but not limited to, the Collier County Sheriff's office, the Collier County Code Enforcement Department, Domestic Animal Services, and the Utility Billing and Customer Services Departments for violation of local codes and ordinances. In addition, the Special Magistrate shall have jurisdiction to hear appeals of dangerous dog determinations pursuant to Chapter 767, Florida Statutes.

Section 2. Qualification, appointment, and removal of Special Magistrates.

Appointment of a Special Magistrate shall be based on the following qualifications and terms:

(1) The Commission shall appoint as many Special Magistrates as deemed necessary.

(2) Special Magistrates shall at minimum, (a) be a graduate of a law school accredited by the American Bar Association, (b) demonstrate knowledge of administrative law, land use law and local government regulations and procedures, (c) be a member in good standing with the Florida Bar, and (d) be either a certified mediator under the rules of the Florida Supreme Court, an arbitrator qualified by a recognized Arbitration Association, or a former judge, and (e) meet other such qualifications that may be established by resolution of the Commission.

(3) Special Magistrate appointment shall be for a two year term. Upon recommendation of the Special Magistrate Review Board, any Special Magistrate may be reappointed at the discretion of the Commission. There shall be no limit on the number of reappointments that may be given to any Special Magistrate; provided a determination for removal or reappointment is made for each

individual Special Magistrate at the end of each two-year term. The Commission shall have authority to remove a Special Magistrate with or without cause upon ten days written notice.

(4) If any Special Magistrate resigns or is removed prior to expiration of his or her term or the Review Board determines that the Special Magistrate should not be reappointed, the Review Board shall make a recommendation for reappointment from the candidates previously interviewed to fill the vacancy within 30 days.

Section 3. Establishment of a Special Magistrate Review Board.

The Commission shall create a Special Magistrate Review Board, comprised of two members of the Code Enforcement Department; one member from the Office of the Collier County Attorney; and two sitting members of the Code Enforcement Board. The duty of the Review Board shall be to recommend appointment for the Special Magistrate(s) and review, on an annual basis, the performance of the Special Magistrate(s) in order to recommend the removal or reappointment of said Special Magistrate(s) to the Commission.

ARTICLE IV. Procedures Governing the Code Enforcement Board, Nuisance Abatement Board, and the Special Magistrate

Section 1. Enforcement procedures.

Matters brought to the Enforcement Board not sitting as a Nuisance Abatement Board, or to the Special Magistrate, shall be scheduled on the applicable agenda consistent with the following procedures:

(1) Alleged violations of any code or ordinance may be filed with the Code Enforcement Department by citizens or those administrative officials who have the responsibility of enforcing the various codes and ordinances in force in Collier County.

(2) If a violation(s) of a code or ordinance is believed to exist, the Code Enforcement Officer shall provide notice and specify a reasonable time to correct the violation(s). Notice shall be given in writing and shall specify the alleged violation, the required corrective action and the time period for correction.

(3) Should any violation continue beyond the time specified for correction, the Secretary to the Enforcement Board or Special Magistrate shall give notice to the Violator that a hearing will be conducted concerning the alleged violation(s) as noticed. The notice shall state the time and place of the hearing, as well as the violation(s) which are alleged to exist.

(4) If the violation is corrected and then reoccurs, or if the violation is not corrected by the time specified for correction in the notice, the Code Enforcement Officer may either issue a citation or schedule the case for hearing, and the notice of hearing shall so state. If the Code Enforcement Officer initiates the hearing process, the case may be brought for hearing even if the violation has been corrected prior to hearing, and the notice of hearing shall so state.

(5) If the Code Enforcement Officer 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 Code Enforcement Officer shall make a reasonable effort to notify the Violator and may immediately notify the Enforcement Board or Special Magistrate and request a hearing. Under such circumstances, the Code Enforcement Officer shall not be required to adhere to the notice and time requirements as set forth above.

(6) If a repeat violation is found, the Code Enforcement Officer shall notify the Violator but is not required to give the Violator reasonable time to correct the violation. The Code Enforcement

Officer, upon notifying the Violator of a repeat violation, may request a hearing. The Code Enforcement Department shall give notice to the Violator as set forth in this Ordinance. The case may be brought for hearing even if the repeat violation has been corrected prior to hearing, and the notice of hearing shall so state.

(7) If the owner of property which is subject to an Enforcement Board or Special Magistrate proceeding transfers ownership of such property between the time the notice of violation was served and the time of the hearing, such owner shall:

- a. Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee;
- b. Deliver to the prospective transferee a copy of the notices and other materials relating to the code enforcement proceeding received by the Violator/transferor;
- c. Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the Enforcement Board or Special Magistrate proceeding; and
- d. File a notice with the Code Enforcement Department of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

A failure to make the disclosure described above and before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the hearing shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

Section 2. Enforcement procedures before the Nuisance Abatement Board.

Matters brought to the Enforcement Board sitting as the Collier County Public Nuisance Abatement Board shall be scheduled on a separate agenda in accordance with the following procedures:

(1) Any employee, officer or resident of Collier County may make a complaint and request for prosecution of public nuisances before the Public Nuisance Abatement Board, for public nuisance(s) located within the area of Collier County as set forth in Article 1, Section 2 of this Ordinance. Said complaint shall be made with the Collier County Sheriff's Office if the complaint involves criminal activity as the underlying basis for the nuisance complaint. Any non-criminal nuisance complaints shall be made with the Collier County Code Enforcement Department.

(2) Upon the making of more than two complaints within a six-month period on any particular place or premises, the Collier County Code Enforcement Supervisor or his/her designee shall mail written notice of such complaints by hand delivery or by certified mail, return receipt requested, to the owner of the place or premises complained of at the owner's address listed in the tax collector's office of tax notices. Said notice shall provide for the owner of the place or premises to contact the Collier County Code Enforcement Department within 14 days of receipt of the notice. This time period shall be allowed for the purpose of allowing the owner to take such good faith measures as are appropriate to abate the nuisance. The Code Enforcement Department supervisor or his/her designee may extend the 14 days to allow the owner to initiate or continue actions to abate the nuisance, provided that the actions taken are reasonable.

(3) In the event the owner fails to respond to the notice from the Collier County Code Enforcement Department or fails to take reasonable action to abate the nuisance within the time frames set forth above, the Secretary to the Enforcement Board shall schedule a hearing on the complaint before the Nuisance Abatement Board. The Collier County Sheriff's Office shall provide the Prosecutor with the results of its investigation of the complaint and also assist in

serving any notices required under this division. The Sheriff's Office shall also make available the Sheriff's staff witnesses to appear before the Nuisance Abatement Board without need for subpoena.

(4) Written notice of a hearing before the Public Nuisance Abatement Board shall be provided by the Secretary to the Enforcement Board by certified mail, return receipt requested, to the owner of the place or premises and to the complainant at least ten calendar days prior to the scheduled hearing. Said notice shall include:

- a. A statement of the time, place and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and ordinances involved; and
- d. A short and plain statement summarizing the nuisance, which is the subject of the complaint.

Section 3. Subpoena procedures for Enforcement Board, Nuisance Abatement Board, and Special Magistrate.

(1) Every subpoena for testimony before an Enforcement Board, Nuisance Abatement Board or Special Magistrate shall be approved in advance of issuance by the Enforcement Board, Nuisance Abatement Board or Special Magistrate, respectively. Each subpoena shall state the name of the Enforcement Board, the title of the action, the case number of the action, the name and address of the person to whom the subpoena is issued, and the time, place and location of the hearing at which the person is directed to appear, and shall be prepared by the party requesting issuance.

(2) A subpoena for production of documentary evidence may also be issued to command the person to whom it is directed to produce the books, papers, documents or tangible items designated therein. The Enforcement Board, upon motion made timely and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the person on whose behalf the subpoena is issued of the reasonable cost of producing the requested books, papers, documents or tangible items.

(3) A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party to the action and who is not less than 18 years of age. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so. Proof of service shall be filed with the Secretary of the Enforcement Board. The party at whose request the service is made shall make payment of any service fee.

(4) Persons subpoenaed shall be entitled to a witness fee and mileage compensation as provided for in § 92.142, Florida Statutes. The cost of the witness fee and mileage compensation shall be borne by the party at whose request the subpoena is issued and shall be paid to the witness at or before the time of service of the subpoena.

Section 4. Conduct of hearing.

(1) Hearings relating to violations of local codes and ordinances shall be conducted in the following manner whether being held by the Code Enforcement Board, Nuisance Abatement Board or Special Magistrate:

(a) Upon request of the Code Enforcement Officer, or at such times as may be necessary, a hearing before the Enforcement Board or Special Magistrate may be convened.

(b) All hearings shall be open to the public and any person whose interests may be affected by the matter before the Enforcement Board shall be given an opportunity to be heard. Official minutes of all hearings shall be kept.

- (c) Hearings may be informal and need not be conducted in accordance with the technical rules relating to evidence and witnesses. They shall, however, be conducted in accordance with accepted parliamentary procedures relative to motions, votes and decisions. Fundamental due process shall be observed and shall govern all hearings.
- (d) At the hearing, the burden of proof shall be upon the Prosecutor to show by a preponderance of the evidence that a violation(s) does exist and that the Violator committed, or was responsible for maintaining or allowing the violation to continue.
- (e) Where notice of the hearing has been provided to the Violator as provided for herein, a hearing may be conducted and an order rendered even in the absence of the Violator.
- (f) All testimony shall be under oath and shall be recorded by a certified court reporter and/or a recording instrument. The Violator may cause the proceedings to be recorded by an independent certified court reporter.
- (g) All relevant evidence shall be admitted if, in the opinion of the Enforcement Board or Special Magistrate, it is the type of evidence upon which reasonable persons would normally rely in the conduct of business affairs, regardless of the existence of any common law or statutory rule which might make such evidence inadmissible over objection in civil actions. Any part of the evidence may be received in written form.
- (h) Hearsay evidence may be accepted for the purpose of supplementing or explaining any direct evidence, but such hearsay evidence shall not in and of itself be considered sufficient to support a finding or decision.
- (i) Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence. The Violator may be represented by legal counsel at all hearings.
- (j) At the conclusion of the hearing, an Order shall be issued. Orders shall be based on competent and substantial evidence entered into the record, and must be based on a preponderance of the evidence. The decision shall then be sent, by regular First Class United States Mail, to the Violator in the form of a written Order including findings of fact and conclusions of law based on evidence of record.
- (k) Should an Enforcement Board or Special Magistrate be unable to issue a decision immediately following any hearing because of questions of law or other matters of such nature that a decision cannot be immediately made, the Enforcement Board may withhold issuing its decision until a subsequent meeting, and the Special Magistrate may withhold issuing his or her decision for a period not exceeding thirty (30) days. In such a case, further discussion of the pending matter and all deliberations relating thereto by members of an Enforcement Board shall occur at a public meeting of the Enforcement Board. The Enforcement Board or Special Magistrate shall thereafter issue its decision pursuant to subsection (1)(j) of this Section.
- (l) A certified copy of such order may be recorded in the public records of Collier County and shall constitute notice to any subsequent purchasers, successors in interest, or assigns as the violation(s) concern(s) real property, and the findings therein shall be binding upon the Violator and, if the violation(s) concern(s) real property, any subsequent purchasers, successors in interest, or assigns.
- (m) If Collier County prevails in prosecuting a case before the Enforcement Board or Special Magistrate, it shall be entitled to recover all costs incurred in prosecuting the case, including costs incurred by the County in enforcing its codes and ordinances, and all costs of repairs incurred by the County. Whether and to what extent such costs are imposed shall be within the discretion of the Enforcement Board or Special Magistrate, but shall not exceed the costs incurred.

(2) Special Additional Rules for Nuisance Abatement Board. The Collier County Code Enforcement Department shall present cases before the Nuisance Abatement Board. The Collier County Sheriff's Office shall only be responsible for receiving and investigating complaints, sharing said investigative information with the Code Enforcement Department, notifying the Code Enforcement Department of the need to schedule hearings, assisting Code Enforcement Department staff in serving any notices required under this Ordinance, and making available investigative witnesses at Nuisance Abatement Board hearings. Where appropriate, the public may be given an opportunity to present oral or written communications, in which event all parties shall be given an opportunity to cross-examine, challenge, or rebut said material. After considering all evidence, the Nuisance Abatement Board may declare the place or premises to be a public nuisance, as defined by applicable County ordinances and Florida Statutes, and may enter an order immediately prohibiting:

- (a) The maintaining of a nuisance;
- (b) The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof;
- (c) The conduct, operation or maintenance of any business or activity on the premises which is conducive to such nuisance.

An Order entered under subsection (b) shall expire after one year or at such earlier time as stated in the Order. The Nuisance Abatement Board may retain jurisdiction to modify its Orders prior to the expiration of said Orders. The Nuisance Abatement Board or any other authorized person, may bring a complaint under § 60.05, Florida Statutes, seeking a permanent injunction against any public nuisance.

Section 5. Penalties before Enforcement Board and Special Magistrate.

(1) Upon a finding of violation, the Enforcement Board or Special Magistrate may order the Violator to pay a fine which shall not exceed \$1,000.00 per day per violation for each day the first violation continues past the date set for compliance by the Enforcement Board or Special Magistrate; or in the case of a repeat violation, may order the repeat Violator to pay a fine which shall not exceed \$5,000.00 per day per violation for each day the repeat violation continues past the date set for compliance by the Code Enforcement Board, or from the time the violation has been repeated, and a hearing shall not be necessary for the issuance of the Order. If the Enforcement Board or Special Magistrate finds a violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$15,000.00 per violation.

(2) In determining the amount of the fine, if any, the Enforcement Board or Special Magistrate, as the case may be, shall consider the following factors:

- (a) The gravity of the violation;
- (b) Any actions taken by the Violator to correct the violation; and
- (c) Any previous violations committed by the Violator.

(3) The Nuisance Abatement Board may order the Violator to pay a fine which shall not exceed \$250.00 per day for each day the first violation continues past the date set for compliance; or in the case of a repeat Violator, may order the repeat Violator to pay a fine which shall not exceed \$500.00 per day.

(4) Where the Nuisance Abatement Board hears an administrative action, based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the property owner shall not be subject to a lien against his or her property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the

property owner of a second stolen property conviction of the tenant. The total fines imposed pursuant to the authority of § 893.138, Florida Statutes, shall not exceed \$15,000.00.

(5) A certified copy of an Enforcement Board or Special Magistrate's Order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation occurred or exists, and upon any other real or personal property owned by the Violator; and shall be superior to the interest on such parcel or property of any owner, lessee, tenant, mortgagee, or other person except the lien of county taxes, and shall be coequal with county taxes enforced in the same manner as a court judgment by the sheriffs of this state, including levy against personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the enforcement board may authorize the county attorney to foreclose on the lien or forward the lien to a collection agency. No lien created pursuant to this Section may be foreclosed on real property that is a homestead under Article X, Section 4 of the Florida Constitution.

(6) No lien provided under this division shall continue for a period longer than 20 years after the certified copy of an Order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

Section 6. Costs for nuisance abatement cases.

In the event the Nuisance Abatement Board declares a place or premises to be a nuisance and issues an order, the Nuisance Abatement Board shall assess against the owner of the place or premises the costs which the county, its attorney and/or the sheriff's office have incurred in the preparation, investigation and presentation of the case. These costs shall be due and payable 20 days after the written order of the Nuisance Abatement Board has been filed in the public records. A certified copy of an Order imposing costs may be recorded in the official records and thereafter shall constitute a lien against the land on which the violation exists or, if the Violator does not own the land, upon any other real or personal property owned by the Violator. Upon petition to the circuit court, said order/lien may be enforced in the same manner as a court judgment except for enforcement purposes. After one year from the filing of any such lien, which remains unpaid, Collier County may foreclose or otherwise execute on the lien with recovery of all costs, including reasonable attorney fees, associated with the recording of the order and foreclosure. Interest shall accrue on the unpaid costs at the legal rate of interest set forth in § 55.03, Florida Statutes, as said statute may be amended, replaced, or superseded from time to time. No lien created pursuant to the provisions of this Section may be foreclosed on real property that is a homestead under Article X, Section Four of the Florida Constitution.

Section 7. Rehearing of Enforcement Board or Special Magistrate action.

(1) A request for rehearing shall be made in writing. Either the Prosecutor or the Violator may request a rehearing of the decision of an Enforcement Board or Special Magistrate. In the case of Enforcement Board decisions, said requests shall be filed with the Secretary to the Enforcement Board, and in the case of Special Magistrate decisions, with the Secretary to the Special Magistrate, within ten days of the date of receipt of the written Order of the Enforcement Board or Special Magistrate, but in no event more than 20 days from the date of mailing of the written order. A request for rehearing shall be based only on the ground that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law, which was fundamental to the

decision of the Enforcement Board or Special Magistrate. The written request for rehearing shall specify the precise reasons therefore.

(2) The Enforcement Board, or Special Magistrate, as the case may be, shall make a determination whether to rehear the matter and its decision shall be made at a public meeting, reduced to writing, and mailed to the interested parties within ten days after the date the decision is made. If the Enforcement Board or Special Magistrate determines it will grant a rehearing, it may either:

(a) Schedule a hearing where the parties will be given the opportunity of presenting evidence or argument limited by the Enforcement Board and Special Magistrate to the specific reasons for which the rehearing was granted; or

(b) Modify or reverse the prior order, without receiving further evidence, provided that any modification is based on a finding that the prior decision of the Enforcement Board or Special Magistrate resulted from a ruling on a question of law which the Enforcement Board or Special Magistrate has been informed was an erroneous ruling.

(3) The Order of the Enforcement Board or Special Magistrate shall be stayed and the time for taking an appeal, pursuant to Section 8 below, shall not commence to run until a request for rehearing has been denied or otherwise disposed of and the written decision has been received by the interested parties; provided, however, that in no event shall the Order be stayed for a period longer than 20 days from the date of mailing of the rehearing decision.

Section 8. Appeals.

(1) With the exception of violations of Ordinance No. 72-8; Ordinance No. 74-9, as amended; Ordinance No. 76-13; and Ordinance No. 93-56, as amended, as collectively codified in Chapter 14 of the County Code of Laws and Ordinances, any aggrieved party, including the Commission, may challenge a final administrative order of an Enforcement Board or Special Magistrate to the Collier County Circuit Court. Such challenge shall not be a hearing de novo but shall be limited to appellate review of the record created before the Enforcement Board or Special Magistrate. Any appeal shall be filed within 30 days of the execution of the Order to be appealed.

(2) For violations of Ordinance No. 72-8; Ordinance No. 74-9, as amended; Ordinance No. 76-13; and Ordinance No. 93-56, as amended, as collectively codified in Chapter 14 of the County Code of Laws and Ordinances, any aggrieved party, including the Commission, may seek to overturn the Order by making application to the County Court for a trial de novo on the merits within 30 days of the execution of the Order to be appealed. These requirements for appeal are jurisdictional.

(3) In the event that a party to the proceedings before an Enforcement Board or Special Magistrate should elect to appeal, a verbatim record of the proceedings may be required or may be desirable. It shall be the sole responsibility of the alleged Violator to ensure that a record is made which includes the testimony upon which an appeal may be taken. Collier County, an Enforcement Board, and the Special Magistrate shall not have responsibility to provide a verbatim transcript of the proceedings.

Section 9. Notices.

(1) All notices required by this Ordinance shall be provided to the alleged Violator by:

(a) Certified mail, return receipt requested, provided if such notice is sent to the owner of the property in question at the address listed in the tax collector's offices for tax notices, and at any other address provided to the local government by such owner and is returned as unclaimed or refused, notice may be provided by posting as described below, and by first class mail directed to

the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing;

(b) Hand-delivery by the sheriff or other law enforcement officer, Code Enforcement Officer, or other person designated by the Commission;

(c) Leaving the notice at the Violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1) above, at the option of the Enforcement Board or Special Magistrate, notice may also be served by publication or posting, as follows:

(a) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Collier County. The newspaper shall meet such requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements.

(b) Proof of publication shall be made as provided in §§ 50.041 and 50.051, Florida Statutes.

(3) In lieu of publication as described in subsection (2) of this Section, such notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at or near the front door of the Collier County Courthouse.

(4) Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of posting.

(5) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1) of this Section.

(6) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1) of this Section, together with proof of publication or posting, shall be sufficient to show that the notice requirements of this Section have been met, without regard to whether or not the Violator actually received such notice.

(7) Proper notice may be assumed when a notice of violation and/or hearing has been mailed to, and accepted by, the Violator or his or her agent or other person in the household or business, or where a Code Enforcement Officer, under oath testifies that he/she did hand-deliver the notice to the Violator.

ARTICLE V. Code Enforcement Citation Regulations

Section 1. Purpose and Authority.

It is the intent of this Article to promote, protect, and improve the health, safety, and welfare of the citizens of Collier County by providing a supplemental means of enforcing County ordinances by creating an option for the issuance of civil citations for adjudication of ordinances in Collier County Court and before the Code Enforcement Board, Nuisance Abatement Board, or Special Magistrate. The authority for this Article is Chapters 125 and 162, Florida Statutes, Part II.

Section 2. Designation of certain county employees as code enforcement officers and authorization to issue citations and notices to appear.

(1) Subject to the successful completion of required training, the following county employees or agents are hereby designated as code enforcement officers with authorization to issue citations and notices to appear as an additional and supplemental means of obtaining compliance with county codes and ordinances: law enforcement officers; code enforcement director; code enforcement supervisors; code enforcement investigators; and code enforcement compliance investigator for revenue services.

(2) Designation as a code enforcement officer with authorization to issue citations and notices to appear does not provide the designated code enforcement officer with the power of arrest or subject the code enforcement officer to the provisions of §§ 943.085-943.255, Florida Statutes.

Section 3. Training of designated code enforcement officers to issue citations and notices to appear.

The training of designated code enforcement officers for issuing citations/notices to appear shall be implemented by the Collier County Code Enforcement and Human Resources Departments, which shall maintain in their respective department files a written procedure as to the necessary training requirements. Topics in the training shall include, but are not limited to, the following:

(1) *The citation and notice to appear.*

- a. Applicable laws and enabling legislation.
- b. Purpose of citation and notice to appear procedures.
- c. Powers and limitations of citation and notice to appear procedures.

(2) *Responsibilities of the code officer.*

- a. Enforcement policies.
 1. When to use citation and notice to appear power.
 2. Warnings.

(3) *Issuing citation and notice to appear.*

- a. Form of citation and notice to appear.
- b. Applicable laws.
- c. Warning notice required.
- d. Court data.
- e. Practice writing citations and notices to appear.

(4) *Signature of code Violator and/or refusal to sign.*

- a. What to do to obtain signature.
- b. Procedure for refusal to sign.
- c. How to obtain sheriff's assistance.
- d. Emergency contact procedures.

(5) *Public contact.*

- a. How to handle difficult situations.
- b. Angry people.

(6) *Sworn statements.*

(7) *Keeping files.*

- a. Documentation and building a case.
- b. What to do with files for court action.

(8) *Court room procedures.*

- a. Appearance.
- b. Demeanor.
- c. Testimony.
- d. Judges.

Section 4. Powers and duties of designated Code Enforcement Officers.

(1) It shall be the duty of those persons designated in this Article, who have successfully completed the required training, to issue a citation(s) or notice(s) to appear to a person(s) when, based upon personal investigation, the Code Enforcement Officer has reasonable cause to believe that the person(s) has (have) committed a civil infraction in violation of any duly enacted county codes or ordinances.

(2) As may otherwise be permitted by law, all Collier County codes and ordinances may be enforced by the procedures set forth in this Article.

Section 5. Civil infraction.

A violation of any codes or ordinance for which a citation/notice to appear is issued, under the authority provided herein, is a civil infraction subject to the enforcement procedures set forth in this article and any other applicable enforcement procedure set forth in any other county code or ordinance, and in Florida Statutes. Said civil infraction shall carry a maximum civil penalty not to exceed \$500.00. A civil penalty of less than the maximum civil penalty may apply if the person who has committed the civil infraction does not contest the citation. Each violation of a code or ordinance shall be a separate civil infraction. Each day each violation shall continue beyond the time period for correction stated in the written warning notice, citation or notice to appear, shall be deemed to constitute a separate civil infraction.

Section 6. Citation and notice to appear procedures.

(1) Prior to issuing a citation or a notice to appear, a Code Enforcement Officer shall provide written notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days if a citation is issued. Such time period shall be no fewer than five days and no more than 30 days if a notice to appear is issued. If, upon personal investigation, a Code Enforcement Officer finds that the person has not corrected the violation within the time period, a Code Enforcement Officer may issue a citation or a notice to appear to the person who has committed the violation. A Code Enforcement Officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation or notice to appear, and may immediately issue a citation or notice to appear if a repeat violation is found or if the Code Enforcement Officer has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or if the violation is irreparable or irreversible.

(2) Written warning notices, if applicable, and citations and notices to appear shall be provided to the Violator by certified mail, return receipt requested, or by hand-delivery by the Code Enforcement Officer, sheriff, or other law enforcement officer. Issuance of a written warning notice or citation or notice to appear to a business may be accomplished by leaving a copy at the business, during regular business hours, with any employee and informing the employee of the contents or by certified mail, return receipt requested. Each employee of the business shall be deemed to be an agent of the business for service of warning notices, citations, and notices to appear; said warning notices, citations, and notices to appear may also be served on the registered agent for the business.

(3) After issuing a citation or notice to appear to the Violator, the Code Enforcement Officer shall deposit the original citation or notice to appear and two copies of the citation or notice to appear with the county court.

- (4) Upon issuance of a citation or notice to appear, the following options apply:
 - (a) A person who elects not to contest the citation or notice to appear may pay the civil penalty as set out herein within 30 days from issuance of the citation or notice to appear; or
 - (b) The person cited may contest the citation or notice to appear in county court. In such cases where a person wishes to contest the citation or notice to appear, the person must request, in writing, a court date from the clerk of courts within 30 days of issuance of the citation or notice to appear.
- (5) A person who fails to pay the civil penalty within the established period of time, fails to request a court date, and/or fails to timely contest the citation or notice to appear shall be deemed to have waived his or her right to contest the citation or notice to appear and, in such case, judgment shall be entered against the person for the amount of the maximum civil penalty \$500.00.
- (6) In the event a civil judgment is entered against a person pursuant to the provisions of this article, the county may record a certified copy of said judgment in the official records of the county. If a person pays the civil penalty for which a civil judgment has been recorded, the clerk of courts shall notify the Collier County Code Enforcement Department when the judgment has been paid. Upon receipt of written verification of payment from the clerk of courts, the Director of the Code Enforcement Department, or authorized delegate, shall prepare, execute and record a satisfaction of judgment in the Official Records of Collier County.
- (7) The provisions of this Article are an additional and supplemental means of enforcing county codes and ordinances and may be used for the enforcement of all applicable county codes or ordinances as may be permitted by law. Nothing contained in this Article shall prohibit the county from enforcing its codes and ordinances by any other civil, administrative and/or criminal means.
- (8) The provisions of this Section shall not apply to enforcement, pursuant to §§ 553.79 and 553.80, Florida Statutes, of the Building Codes adopted pursuant to § 553.73, Florida Statutes, as they apply to construction; provided that a building permit is either not required, or has been issued by the county or a municipality. For the purpose of this subsection, "building codes" means only those codes adopted pursuant to § 553.73, Florida Statutes.

Section 7. Form of citations and notices to appear.

The citation and notice to appear forms to be issued by the Code Enforcement Officers designated herein shall be in a form prescribed by the county and shall contain:

- (1) The date and time of issuance.
- (2) The name and address of the person to whom the citation is issued.
- (3) The date and time the civil infraction was committed.
- (4) The facts constituting reasonable cause.
- (5) The number or section of the code or ordinance violated.
- (6) The name and authority of the code enforcement officer.
- (7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation or notice to appear in county court.
- (8) The applicable potential civil penalty if the person elects to contest the citation or notice to appear.
- (9) The applicable civil penalty if the person elects not to contest the citation or notice to appear.
- (10) A conspicuous statement that, if the person fails to pay the civil penalty within the time allowed, and/or fails to request a hearing date and/or appear in county court to timely contest the citation or notice to appear, such person shall be deemed to have waived the right to contest the

citation or notice to appear and that, in such case, judgment shall be entered by the clerk of courts against the person for the amount of the maximum civil penalty of \$500.00.

Section 8. Establishing a schedule of violations, options and penalties, regarding citations and notices to appear.

(1) The Commission hereby establishes a schedule of violations and penalties to be assessed by Code Enforcement Officers for those codes and ordinances enforced pursuant to this Article.

(2) Schedule of violations and penalties: Except as otherwise provided by law, Ffor uncontested violations cited under this Article, the following schedule of civil penalties is imposed for the corresponding offense; first offense \$105.00, second offense \$255.00, and third or more offense \$405.00.

(3) The following options are available to a person who has been issued a citation or notice to appear in accordance with this Article:

(a) If a person elects not to contest a citation or notice to appear, the person may pay the appropriate civil penalty, as set forth above in this article, within 30 days from issuance of the citation or notice to appear to the clerk of the circuit court.

(b) If a person elects to contest a citation or notice to appear in county court and, after trial before the county court, is adjudicated to have committed a violation, a civil penalty not to exceed \$500.00 shall be imposed by the county court. The county judge may also order the Violator to correct the violation within a time certain and as may be specified. Court costs, legislative assessments, and costs of prosecution, all as provided for by law, shall be assessed by the county court.

(4) If a person fails to pay the civil penalty specified by the schedule of penalties within the time allowed, or fails to request a hearing or fails to appear in county court to contest the citation or notice to appear, the Violator shall be deemed to have waived the right to contest the citation or notice to appear and judgment shall be entered against the person in an amount up to the maximum civil penalty of \$500.00 per violation, but not less than the amount of the penalty set forth in the schedule for uncontested violations.

(5) Any person who willfully refuses to sign and accept a citation issued by a designated Code Enforcement Officer shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, Florida Statutes.

(6) Unless otherwise required by law, all monies required to be paid for civil penalties, or as may otherwise be awarded by the county court, pursuant to this ordinance will be distributed as follows:

(a) The first \$5.00 of any fine or order of the court will be retained by the clerk of courts, and;

(b) All other monies paid by, and collected from, violations will be remitted to the Collier County Code Enforcement Department.

ARTICLE VI. Affirmative Defense

Section 1. Affirmative defenses to alleged code violations.

It shall be a complete defense to any Enforcement Board or Special Magistrate action founded upon an alleged failure to obtain a permit required by the Collier County Code of Laws and Ordinances, if said permit was required to be obtained prior to April 1, 1997, and the person charged with such alleged failure demonstrates by a preponderance of the evidence that the work

which was alleged to have been completed without a permit being duly issued meets all codes and requirements in effect at the time the permit was required.

SECTION THREE: Conflict and Severability.

In the event this Ordinance conflicts with any other ordinance of Collier County, the more restrictive shall apply. If any phrase or portion of this Ordinance, or the particular application thereof, shall be held invalid or unconstitutional by any court, administrative agency or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses or phrases and their application shall not be affected thereby.

SECTION FOUR: Inclusion in the code of laws and ordinances.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Collier County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION FIVE: Effective Date.

This Ordinance shall become effective upon filing with the Florida Department of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida this 24 day of January, 2010.

ATTEST
Dwight E. Brock, Clerk

By: *Dwight E. Brock*
Attest as to Chairman's Deputy Clerk
signature only

BOARD OF COUNTY COMMISSIONERS
OF COLLIER COUNTY, FLORIDA

By: *Fred W. Coyle*
FRED COYLE, Chairman

Approved as to form
and legal sufficiency:
Jeff E. Wright
Jeff E. Wright
Assistant County Attorney

This ordinance filed with the
Secretary of State's Office the
1 day of Feb 2010
and acknowledgment of that
filing received this 8 day
of Feb 2010
by *Dwight E. Brock*

STATE OF FLORIDA)

COUNTY OF COLLIER)

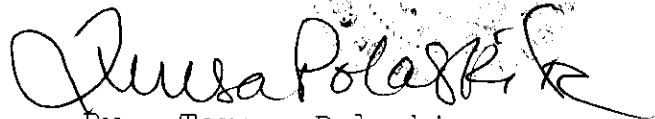
I, DWIGHT E. BROCK, Clerk of Courts in and for the Twentieth Judicial Circuit, Collier County, Florida, do hereby certify that the foregoing is a true and correct copy of:

ORDINANCE 2010-04

Which was adopted by the Board of County Commissioners on the 26th day of January, 2010, during Regular Session.

WITNESS my hand and the official seal of the Board of County Commissioners of Collier County, Florida, this 28th day of January, 2010.

DWIGHT E. BROCK
Clerk of Courts and Clerk
Ex-officio to Board of
County Commissioners



By: Teresa Polaski,
Deputy Clerk