



**Town of Surfside  
Town Commission Special Meeting  
Code Compliance Priorities  
AGENDA  
November 7, 2013  
7 p.m.**

Town Hall Commission Chambers - 9293 Harding Ave, 2<sup>nd</sup> Floor  
Surfside, FL 33154

**1. Opening**

- A. Call to Order**
- B. Roll Call of Members**
- C. Welcome and Opening Remarks – Mayor Daniel Dietch**
- D. Report on Past Workshop Results– Joe Damien, Code Compliance Director**
- E. Discussion Items:**
  - 1. Priority Setting
  - 2. Maximum Compliance Period Prior to Imposing Civil Penalty
  - 3. Enforcement Action After Civil Penalties
    - i. Lien
    - ii. Foreclosure
    - iii. Court Action to Compel Compliance
    - iv. Abatement
- F. Staff Recommendations**
- G. Public Comments**
- H. Action Items to Address Discussion Items**
- I. Adjournment**

Respectfully submitted,

Michael P. Crotty  
Town Manager

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THIS MEETING IS OPEN TO THE PUBLIC. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL PERSONS ARE DISABLED; WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT THE OFFICE OF THE TOWN CLERK AT 305-893-6511 EXT. 226 NO LATER THAN FOUR DAYS PRIOR TO SUCH PROCEEDING. HEARING IMPAIRED PERSONS MAY CONTACT THE TDD LINE AT 305-893-7936.

IN ACCORDANCE WITH THE PROVISIONS OF SECTION 286.0105, FLORIDA STATUTES, ANYONE WISHING TO APPEAL ANY DECISION MADE BY THE TOWN OF SURFSIDE COMMISSION, WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING, WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD SHALL INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

AGENDA ITEMS MAY BE VIEWED AT THE OFFICE OF THE TOWN CLERK, TOWN OF SURFSIDE TOWN HALL, 9293 HARDING AVENUE. ANYONE WISHING TO OBTAIN A COPY OF ANY AGENDA ITEM SHOULD CONTACT THE TOWN CLERK AT 305-861-4863. A COMPLETE AGENDA PACKET IS ALSO AVAILABLE ON THE TOWN WEBSITE AT [www.townofsurfsidefl.gov](http://www.townofsurfsidefl.gov)

TWO OR MORE MEMBERS OF OTHER TOWN BOARDS MAY ATTEND THIS MEETING.

THESE MEETINGS MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATIONS MEDIA TECHNOLOGY, SPECIFICALLY, A TELEPHONE CONFERENCE CALL. THE LOCATION 9293 HARDING AVENUE, SURFSIDE, FL 33154, WHICH IS OPEN TO THE PUBLIC, SHALL SERVE AS AN ACCESS POINT FOR SUCH COMMUNICATION.



# Town of Surfside Special Commission Meeting

**Date:** November 7, 2013

**Subject:** Town Commission Special Meeting on Code Compliance Priorities

**Background:**

On the April 17, 2013, the Mayor and Town Commission held a workshop in an effort to set priorities for the Town's Code Compliance program. The Administration requested that each Commission member provide their input and priority rankings on some of the most commonly occurring or reported violations. At the June 11, 2013, Commission Meeting, a report (attached as Exhibit "A") was provided which included the results of the rankings received from three of the Commission members. The Agenda item on that report was not reached, and was deferred. On September 17, 2013, that report was resubmitted as an attachment to a Commission Communication entitled "Comparison of Code Compliance Processes: Notice of Violation vs. Civil Citations" with an updated Compilation of Priorities, including input from a fourth Commission member. Said updated Compilation of Priorities is attached hereto as Exhibit "B".

**Analysis**

At the initial Code Compliance Workshop the Town Commission was asked to individually provide their recommended priority level on a multitude of items in order of importance: 1 for High, 2 for Moderate, 3 for Low, or 4 for None (or minimal). There were three Priority Survey Sheets: one for Single Family Residential Districts; one for Multi-Family Residential Districts; and one for the Business District.

To date, the Administration received responses from four Commission members. A compilation and analysis of the three Priority Surveys received revealed that one respondent marked 10 items had been marked as Priority 1, one had 34 items marked as Priority 1, one had 31 items marked as Priority 1; and one had 12 marked as Priority 1 items.

On the following pages are two lists reflecting the average score for each item, in priority order from highest (being 1) to lowest (being 4). One is in listed by priority within the District and the other by priority amongst all Districts. The average was derived by adding the priority numbers from each category and divided by the number of surveys received.



## **PRIORITIES WITHIN EACH DISTRICT**

### **SINGLE FAMILY DISTRICTS PRIORITIES**

#### **High (1.5 and less)**

- Sight-Triangle (hedge) visibility
- Boats parked in yards
- Construction without permits

#### **Moderate (1.6-2.5)**

- Exterior Surfaces of Houses
- Trash on Curb
- Trash on Yard
- Grass overgrowth
- Stagnant pools/ponds
- Garbage Cans left out at days end
- Hedge Heights (front, rear/side)
- Fence Heights (side/rear)
- Derelict Vehicles or parking on grass
- Garage Sales (unpermitted)
- Barking dogs

#### **Low (2.6-3.5)**

- Roof Surfaces
- Trees/shrubs overhanging R-O-W
- Trees/shrubs overhanging property
- Non-domestic animals kept
- Real Estate Signs
- Garage Sale Signs
- Political Signs
- Boats moored or docked
- POD type storage units
- Chain Link Fences
- Squawking birds
- Other Noise
- Bee hives

### **MULTI-FAMILY DISTRICTS PRIORITIES**

#### **High (1.5 and less)**

- Short Term Rentals

#### **Moderate (1.6-2.5)**

- Exterior Surfaces (paint/clean)
- Overgrowth of Grass
- Overgrowth onto right-of-way
- Housing Standards in interior of units
- Construction without permits
- Inadequate or inappropriate parking
- Barking dogs

- \*Satellite Dishes (Add-on: only response)

#### **Low (2.6-3.5)**

- Other Noise
- Unpermitted use of POD storage units
- Real Estate Signs

### **BUSINESS DISTRICT PRIORITIES**

#### **High (1.5 and less)**

- Exterior Surfaces (paint/cleaning)
- Dumpster maintenance
- Alley cleanliness
- Obstructions (chairs, mannequins, pots, signs)
- Sidewalk Café furniture and equipment and expansion
- Missing awning, with frame remaining
- Interior Violations (maintenance, sanitary, health & safety)

#### **Moderate (1.6-2.5)**

- Alley area used for staging equipment
- Overgrowth of weeds (at alleys)
- Sidewalk (sweep or pressure clean)
- Old signs remaining from prior businesses
- Deteriorated signs
- Window signs
- Electronic Signs
- Sign installation without permits or approvals
- Deteriorated awnings
- Illegal signage on awning
- Awning installation without permits
- Construction without permits
- Parking Lot Maintenance
- Local Business Tax Receipt and Certificate of Use delinquency
- Resort Tax delinquency
- Grease traps

#### **Low (2.6-3.5)**

- Roof Tops
- Signs on R-O-W
- Noise, smoke, or other nuisance

# PRIORITIES AMONGST ALL DISTRICTS

## High (1.5 and less)

### SINGLE FAMILY DISTRICTS PRIORITIES

- Sight-Triangle (hedge) visibility
- Boats parked in yards
- Construction without permits

### MULTI-FAMILY DISTRICTS PRIORITIES

- Short Term Rentals

### BUSINESS DISTRICT PRIORITIES

- Exterior Surfaces (paint/cleaning)
- Dumpster maintenance
- Alley cleanliness
- Sidewalk Obstructions (pots, signs)
- Sidewalk Café furniture & expansion
- Missing awning, w/ frame remaining
- Interior Violations (maintenance, sanitary, health & safety)

## Moderate (1.6-2.5)

### SINGLE FAMILY DISTRICTS PRIORITIES

- Trash on Curb
- Exterior Surfaces of Houses
- Trash on Yard
- Grass overgrowth
- Stagnant pools/ponds
- Garbage Cans left out at days end
- Hedge Heights (front, rear/side)
- Fence Heights (side/rear)
- Derelict Vehicles or parking on grass
- Garage Sales (unpermitted)
- Barking dogs

### MULTI-FAMILY DISTRICTS PRIORITIES

- Overgrowth of Grass
- Exterior Surfaces (paint or clean)
- Overgrowth unto right-of-way
- Housing Standards in interior of units
- Construction without permits
- Inadequate or inappropriate parking
- Barking dogs
- Satellite Dishes (*Add-on: only response*)

### BUSINESS DISTRICT PRIORITIES

- Deteriorated awnings
- Alley area used for staging equipment
- Overgrowth of weeds (at alleys)
- Sidewalk (sweep or pressure clean)
- Old signs remaining from prior businesses
- Deteriorated signs
- Window signs
- Electronic Signs
- Sign installation without permits or approvals
- Illegal signage on awnings
- Awning installation without permits
- Construction without permits
- Parking Lot Maintenance
- Local Business Tax Receipt and Certificate of Use delinquency
- Resort Tax delinquency
- Grease traps

## Low (2.6-3.5)

### SINGLE FAMILY DISTRICTS PRIORITIES

- Roof Surfaces
- Trees/shrubs overhanging R-O-W
- Trees/shrubs overhanging property
- Non-domestic animals kept
- Real Estate Signs
- Garage Sale Signs
- Political Signs
- Boats moored or docked
- POD type storage units
- Chain Link Fences
- Squawking birds
- Other Noise
- Bee hives

### MULTI-FAMILY DISTRICTS PRIORITIES

- Unpermitted use of POD storage units
- Real Estate Signs
- Other Noise

### BUSINESS DISTRICT PRIORITIES

- Roof Tops
- Signs on R-O-W
- Noise, smoke, or other nuisance



## Reaching Consensus on Priorities

Based on the foregoing priority ranking results, and the staff recommendations from the April 17, 2013 Code Compliance Priorities Workshop, the Administration recommends that the Commission establish clear priorities in each of the Districts. Attached as Exhibit "C", are the Administration's recommendations that were previously provided at the April 17, 2013 Workshop for your information and use.


## Compliance Periods, Civil Penalties, and Additional Enforcement Action

Some items that should be considered for discussion include minimum acceptable compliance periods, level of civil penalties imposed, and additional punitive penalties for continued non-compliance, such as:

- How much time should be allowed for compliance prior to imposition of Civil Penalties?
- Should violators be required to pay a fine for non-compliance, after a reasonable compliance period is provided?
- How much of a fine should be imposed for failure to comply?
- Should that fine run on a daily basis until compliance is attained?
- What course of action should be taken if a violator does not comply after a reasonable amount of time for compliance has been granted?
- Should liens be imposed for failure to comply and pay fines?
- If liens fail to compel compliance, what additional action should and can be taken?
  - Abatement?
  - Foreclosure?
  - Civil Court Action?

The response to these questions should serve to facilitate the discussion and provide insight as to which process is ultimately considered as an additional enforcement tool. Attached for your information and use is Exhibit "A", a copy of the September 17, 2013, report (Comparison of Code Compliance Processes: "Notice of Violation" vs. "Civil Citation" for Enforcement of Town Codes) and Exhibit "D" the October 8, 2013 report (Matrix Comparing: "Notice of Violation" vs. "Civil Citation".)

**Conclusion:** Staff recommends that the Town Commission provide clear policy direction on enforcement priorities, the compliance periods, and fines/penalties.



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Joe Damien  
Code Compliance Director



# Town of Surfside Commission Communication

## **Agenda Item #**

**Agenda Date:** June 11, 2013

**Subject:** Code Compliance Priorities Recommendations and Sight Triangle Resolution

The following communication is broken down into two parts, with a general conclusion at the end of the memorandum. The first part involves compliance priorities based on the results of the Code Compliance Workshop, and the second part relates to the corner visibility/sight triangle hedge height issue and the recent discussions that have arisen since enforcement of these provisions were initiated.

## **CODE COMPLIANCE DIVISION ENFORCEMENT PRIORITIES IN GENERAL**

### Background:

Recent Code Compliance Workshop Results: At the Code Compliance Workshop held on April 17, 2013, a survey form was provided to the Mayor and Town Commission requesting each member to provide the recommended priority level on a multitude of items in order of importance: 1 for High, 2 for Moderate, 3 for Low, or 4 for None (or minimal).

A compilation and analysis of the three Priority Surveys received revealed that one member showed 10 items had been marked as Priority 1, another had 34 items marked Priority 1, and the last had 31 Priority 1 items.

On the following pages are two lists reflecting the average score received for each item, in priority order from highest to lowest. One is listed by priority within the District and the other by priority amongst all Districts. The average was derived by adding the priority numbers from each category and divided by the number of surveys received.



## PRIORITIES WITHIN EACH DISTRICT

### SINGLE FAMILY DISTRICTS PRIORITIES

#### High (1.4 and less)

- Trash on Curb
- Sight-Triangle (hedge) visibility

#### Moderate (1.5-2.4)

- Exterior Surfaces of Houses
- Trash on Yard
- Grass overgrowth
- Stagnant pools/ponds
- Garbage Cans left out at days end
- Hedge Heights (front, rear/side)
- Fence Heights (side/rear)
- Derelict Vehicles or parking on grass
- Boats parked in yards
- POD type storage units
- Chain Link Fences
- Construction without permits
- Garage Sales (unpermitted)
- Barking dogs
- Other Noise

#### Low (2.5-3.4)

- Roof Surfaces
- Trees/shrubs overhanging R-O-W
- Trees/shrubs overhanging property
- Non-domestic animals kept
- Real Estate Signs
- Garage Sale Signs
- Political Signs
- Boats moored or docked
- Squawking birds
- Bee hives

### MULTI-FAMILY DISTRICTS PRIORITIES

#### High (1.4 and less)

- Overgrowth of Grass
- Short Term Rentals

#### Moderate (1.5-2.4)

- Exterior Surfaces (paint/clean)
- Overgrowth unto right-of-way
- Construction without permits
- Inadequate or inappropriate parking
- Unpermitted use of POD storage units
- Satellite Dishes (Add-on)

#### Low (2.5-3.4)

- Housing Standards in interior of units
- Barking dogs
- Other Noise
- Real Estate Signs

### BUSINESS DISTRICT PRIORITIES

#### High (1.4 and less)

- Exterior Surfaces (paint/cleaning)
- Dumpster maintenance
- Alley cleanliness
- Obstructions (chairs, mannequins, pots, signs)
- Sidewalk Café furniture and equipment and expansion
- Deteriorated awnings
- Missing awning, with frame remaining
- Interior Violations (maintenance, sanitary, health & safety)

#### Moderate (1.5-2.4)

- Area used for staging equipment
- Overgrowth of weeds (at alleys)
- Sweep or pressure clean
- Old signs remaining from prior businesses
- Deteriorated signs
- Window signs
- Electronic Signs
- Installation without permits or approvals
- Illegal signage
- Installation without permits
- Construction without permits
- Parking Lot Maintenance
- Local Business Tax Receipt and Certificate of Use delinquency
- Resort Tax delinquency
- Grease traps

#### Low (2.5-3.4)

- Roof Tops
- Signs on R-O-W
- Noise, smoke, or other nuisance



# PRIORITIES AMONGST ALL DISTRICTS

## High (1.4 and less)

### SINGLE FAMILY DISTRICTS PRIORITIES

- Trash on Curb
- Sight-Triangle (hedge) visibility

### MULTI-FAMILY DISTRICTS PRIORITIES

- Overgrowth of Grass
- Short Term Rentals

### BUSINESS DISTRICT PRIORITIES

- Exterior Surfaces (paint/cleaning)
- Dumpster maintenance
- Alley cleanliness
- Sidewalk Obstructions (pots, signs)
- Sidewalk Café furniture & expansion
- Deteriorated awnings
- Missing awning, w/ frame remaining
- Interior Violations (maintenance, sanitary, health & safety)

## Moderate (1.5-2.4)

### SINGLE FAMILY DISTRICTS PRIORITIES

- Exterior Surfaces of Houses
- Trash on Yard
- Grass overgrowth
- Stagnant pools/ponds
- Garbage Cans left out at days end
- Hedge Heights (front, rear/side)
- Fence Heights (side/rear)
- Derelict Vehicles or parking on grass
- Boats parked in yards
- POD type storage units
- Chain Link Fences
- Construction without permits
- Garage Sales (unpermitted)
- Barking dogs
- Other Noise

### MULTI-FAMILY DISTRICTS PRIORITIES

- Exterior Surfaces (paint or clean)
- Overgrowth unto right-of-way
- Construction without permits
- Inadequate or inappropriate parking
- Unpermitted use of POD storage units
- Satellite Dishes (*Add-on*)

### BUSINESS DISTRICT PRIORITIES

- Area used for staging equipment
- Overgrowth of weeds (at alleys)
- Sweep or pressure clean
- Old signs remaining from prior businesses
- Deteriorated signs
- Window signs
- Electronic Signs
- Installation without permits or approvals
- Illegal signage
- Installation without permits
- Construction without permits
- Parking Lot Maintenance
- Local Business Tax Receipt and Certificate of Use delinquency
- Resort Tax delinquency
- Grease traps

## Low (2.5-3.4)

### SINGLE FAMILY DISTRICTS PRIORITIES

- Roof Surfaces
- Trees/shrubs overhanging R-O-W
- Trees/shrubs overhanging property
- Non-domestic animals kept
- Real Estate Signs
- Garage Sale Signs
- Political Signs
- Boats moored or docked
- Squawking birds
- Bee hives

### MULTI-FAMILY DISTRICTS PRIORITIES

- Housing Standards in interior of units
- Barking dogs
- Other Noise
- Real Estate Signs

### BUSINESS DISTRICT PRIORITIES

- Roof Tops
- Signs on R-O-W
- Noise, smoke, or other nuisance

## Analysis:

In accordance with its mission statement, the Code Compliance Division strives to provide the Town's residents and business community with a well-balanced code enforcement program and compliance process through a professional, courteous, and stepped approach that will focus on: 1) educating and informing of the provisions of the Town's Codes and Ordinances; 2) provide a better understanding of the underlying principles behind the laws and the benefits of compliance; 3) assisting the affected parties with arriving at mutually agreed upon solutions to compliance; and 4) working with the affected parties in achieving voluntary compliance. We continue to pursue and advance this mission on a daily basis.

**Current Operational Responsibilities:** The Division is charged with a myriad of responsibilities with only two staff members. Responsibilities include but are not limited to enforcement of Property Maintenance Standards, Minimum Housing Code, Zoning Code, Florida Building Code, Stop Work Orders on construction without permits, Resort Tax Delinquency and audit avoidance, Local Business Tax Receipt delinquency, and Certificate of Use delinquency, as well as conducting Lien Searches for open code violations. The Division is also responsible for management and administration of the Special Master process, including but not limited to generation, execution and mailing of Notices to Appear, prosecution at hearings, Order preparation and mailing, engaging Special Masters and payment processing. Other responsibilities include public education on codes, violation abatement/remediation (i.e. property board-up, lawn cutting, mosquito control, and property clean-up), lien and lien satisfaction preparation, billing for fines and abatement reimbursements, check requests, and preparation of settlement agreements.

**Current Enforcement Policy:** To date, a mostly reactive enforcement program has been pursued, responding to complaints received from residents, business owners, and referrals from other Departments. Because of the measured and stepped approach we have been pursuing, attaining compliance is a slow process. However, the goal has been to continue to pursue all cases until compliance is attained. We believe that pursuing each case through completion, no matter the issue or level of gravity will serve to establish a foundation for compliance that will inure to the benefit of the community as a whole.

**Implementation of a More Proactive Program:** The time necessary to fully implement and conclude a more proactive program town-wide, including identifying every single property that may be in violation, will depend on the resources allocated. As such, the more resources that are made available the faster the program may be fully implemented.

**Enforcement in General:** As stated previously, no matter the level of resources allocated, or the time required to fully implement any program based thereon, once the program is fully completed a foundation would have been established. From that point forward, one can control the level of enforcement, as well as the speed at which results should be attained by adding or decreasing the resources allocated. The key is to make every effort to pursue each and every non-compliant property that is identified for enforcement action until compliance is attained or until all legal recourse is exhausted. In most cases compliance will be attained, and in others the result may be the placement of a lien on the property. The lien may be resolved when the property changes hands or ultimately may be foreclosed upon if the Town chooses. Once a program is established, you have a better opportunity to allocate resources to either increase the number of items you enforce, or better control the time which is required to attain compliance.



**As to Enforcement Priorities:** The Administration recommends continuing its reactive enforcement program, including continuing to respond to complaints from the public and referrals from outside agencies or internal departments. Moreover, if a more proactive enforcement program is considered it is recommended that the majority of the top-tier priorities established by the Workshop Surveys, as averaged, be pursued with the inclusion of two additional items and re-consideration of one. First and foremost, the Administration, at its discretion should pursue any other issue that is deemed to affect the health, safety and welfare of the community, and secondly pursuit of construction work without permits should be considered a priority, as the Town has made a commitment to control this issue as a result of the FEMA related situation. As to Short Term Rentals, this item will undoubtedly require the most time and effort to produce a case that will hold up in court. The Town would have to establish a documentable and direct relationship between the Landlord and the Short Term Tenant, which in order to do so may require obtaining copies of binding short term lease agreements, copies of utility records, surveillance of the property, cooperation from the condominium associations or building owners, as well as the probability that some of the actions may require the subpoenaing of records. Based on prior experience and according to other jurisdictions that have similar laws, these types of investigations can take months of full time work and have shown mixed results. As such, careful consideration should be given to how this item is prioritized.

The Administration recommends that enforcement of any code provision include a penalty for non-compliance, but only after a measured and stepped approach is provided that includes a reasonable amount of time for compliance. Anything short of that will result in compliance mainly by those community minded individuals who ultimately choose to take responsibility, and allow those who opt not to comply to continue to violate the Town's code without any downside. Eventually, if non-compliance becomes an option the effectiveness of the enforcement program will be seriously compromised.

#### **Other Recommendations:**

Leaf Blower ordinance should be enforced or amended. If amended to allow same, then all blowing should be from the street towards the property only.

Sight triangle provisions should be enforced "as-is" or amended. If amended, the provision should contain clear and unambiguous language for enforcement staff. Moreover, any proposed solution should involve recommendations from traffic professionals, and the resulting provision should be acceptable to the residents and the Town Commission. Once the new provision is decided upon, any relief from said provision should only be sought; a clear and definitive process should be provided on a case-by-case basis and should be separated from the enforcement division.

Hedge heights on yards facing streets, waterways or other rights-of-way should be considered for amendment with legislation that gives more flexibility to hedges fronting public rights-of-way (except for sight triangles).

As to neighbor to neighbor disputes (i.e. barking dogs, other noises, dog feces, overhanging trees, hedges, bees) at minimum, consideration should be given to establish a policy not to react to situations that only impact one neighbor, or in the alternative the code provision could be eliminated. The opening section of the Noise Ordinance provides that "The purpose of this division is to control noises and the nuisance thereby created in such a manner as to cause the least hardship or offense to the greatest number of people. With the limited

resources available to the Town, we believe this statement reflects the spirit of how enforcement priorities should be considered in these types of situations.

Permitting requirements as to landscaping, or tree planting (removal or relocation) and other situations wherein the policy or code is not clear should be clarified or codified.

Any outdated, ambiguous, unclear, or unnecessary code provision should be eliminated or clarified. Special attention should be given to review of: the Sign Ordinance in general (particularly temporary signs, construction signs, banners, real estate signs), noise, boat & trailer parking, boat docking and mooring, overhanging trees and shrubs, garbage cans, trash and debris, tree trimming and yard clippings, residential paint permits.

Clear direction on enforcement of the white fly provisions should be provided to the Administration.

Software for the Code Compliance Division should be revisited to address long term solutions for integration with Finance, Public Works, LBTR, CU, and Building Department functions.

*Recommendations on the enforcement of hedges and sight triangle  
and corner visibility matters may be found on the following pages.*



## ENFORCEMENT OF HEDGES & SIGHT TRIANGLE/CORNER VISIBILITY VIOLATIONS

### Background:

Enforcement of the sight triangle/corner visibility provisions began in November 2011, in response to a complaint received regarding three specific addresses with line-of-sight obstructions that were deemed by complainants to be dangerous to pedestrians, bicyclists and vehicle operators. A cursory review of other intersections around the Town revealed that there were multiple locations that were, and continue to be in violation of the current Town Code.

### Analysis:

Initially, 22 Courtesy Notices were issued, with the intent to follow up with the balance of the non-compliant properties once time and resources would permit. The initial group of non-compliant property owners were each provided with a Courtesy Notice clearly identifying the issue, including: 1) a description of the violation, as well as the language of the Town Code Section; 2) the location of the violation; 3) a diagram, both in plan and elevation, delineating the specific code requirements; 4) a request for their cooperation; and 5) that they contact the Town if they had any questions or needed clarification. Each Courtesy Notice was sent via Certified Mail, and property owners were given ten days to comply. The Code Compliance Director made himself available and personally met with all parties who contacted him. In March of 2012 a second notice was provided to any property owner whose property remained non-compliant and providing for an additional 7 days to comply. Although the staff continued to meet with the affected parties while attending to other compliance issues there was a definitive group of property owners that continued to seek alternatives to compliance citing privacy, children and pet safety, and other issues that were of a higher importance to them.

Eventually, as time permitted pursuit of the non-compliant cases was continued. As of early December 2012, only four properties of the 22 were in compliance. At that time Civil Citations were issued to the non-compliant properties, via certified mail, providing for: 1) an additional ten days to comply; 2) an appeal period of 20 days from receipt of notice; 3) a \$100 per day civil penalty for failure to comply at the expiration of the additional ten day period if no appeal was filed. Only two property owners took advantage of the appeal process.

After allowing for additional time, in early February of 2012, eight of the cases which remained non-compliant, including the two appeals, were provided a Notice to appear before a Special Magistrate on February 27, 2013, and given the opportunity to be heard. The balance of the cases were to be scheduled at the next hearing date which is tentatively set for June 20, 2013.

To date, our efforts have resulted in the following:

|                                       |    |                                      |   |
|---------------------------------------|----|--------------------------------------|---|
| Courtesy Notices Issued               | 22 | Complied prior to scheduling hearing | 5 |
| Compliance Attained Prior to Citation | 4  | Complied after hearing was scheduled | 4 |
| Civil Citations Issued                | 18 | Hearings still to be scheduled       | 9 |
| Special Master(SM) Hearing Scheduled  | 8  | Cases that remain non-compliant      | 9 |
| S.M. Continuances Granted             | 2  | Orders with Liens                    | 6 |
| S.M. Hearings Held                    | 6  |                                      |   |

At the May 15, 2013 Commission Meeting the Mayor and Town Commission directed the Administration to discontinue enforcement of Sections 90-52 and 90-92 of the Town Code which address corner visibility and sight-line obstructions at corner properties within the Town by:

1. ceasing to issue Courtesy Notices and Civil Citations associated therewith;
2. tolling any fines that may be accruing on existing Civil Citations that have already been issued but have yet to be scheduled to be heard by a Special Magistrate; and
3. continuing to toll any fines that had already been tolled by a Special Magistrate.

Moreover, the Commission sought answers to the following questions related to same:

When compliance has been attained:

1. Does the Administration or the Town Commission have authorization to reduce or waive fines that have accrued from Civil Citations on cases that have been heard by a Special Magistrate?
2. Does the Administration or the Town Commission have authorization to reduce or waive fines that have accrued from Civil Citations on cases that have not been heard by a Special Magistrate?
3. Does the Administration or the Town Commission have authorization to release liens that have been filed associated with Civil Citations on cases that have or have not been heard by a Special Magistrate?

When compliance has not been attained, does the Administration or the Town Commission have authorization to reduce or waive fines and/or release liens associated with the Civil Citations?

Answers to these questions are being addressed by the Town Attorney's Office.

As to the Code Compliance process, the Administration has discontinued enforcement of Town Code Sections 90-52 and 90-92 as directed, and will toll the fines on cases that have yet to be heard by a Special Magistrate but remain in non-complied status.

Pursuant to Town Code the Special Magistrates may have sole discretion on reduction of fines on cases that have been heard by a Magistrate. However, the fines associated with these cases are not originally imposed by the Magistrate, but in accordance to the provisions of the Town Code the fines begin to accrue when the compliance period provided in the Civil Citation expires and if no appeal is filed by the property owner. At the hearings, the Magistrates do confirm that a default has occurred, confirm the imposition of the fines, and further confirm that a lien may be recorded. The hearing also provides a venue wherein the respondents may have an opportunity to express themselves, if they did not timely file an appeal of the Code Officer's determination.

Notwithstanding the outcome of this specific group of cases, it is recommended that careful consideration be given to how enforcement of the Town Code is addressed going forward. As per the direction given to the Code Compliance Division, the Division has gone to great lengths to enforce the Town Codes in a very measured and stepped approach so as not to impose harsh penalties or create a hardship for the Town's residents. Although there has been a lot of debate about the amount of the fines that have accrued in certain instances, one must not lose



sight that these fines accumulated only because of a lack of compliance that endured for weeks or months on end on the part of the property owners, and not because they were arbitrarily imposed at one time by the Division or the Magistrate. Moreover, the fines did not immediately begin accruing, but did so only after months and months of notices, conversations and discussions.

Enforcement of any code provision without a substantial penalty for non-compliance will only result in compliance by responsible community minded residents and business owners only, leaving those who opt not to comply without any down-side.

**Budget Impact:** None expected with current staffing levels and available resources.

**Staff Impact:** Continuing a reactive program should not considerably impact staff, unless there is a substantial increase in demand for services. A more proactive enforcement program would increase demand on staff both as to number of inspections required and the increased level of clerical work required associated therewith. The number of high-priority items that are chosen for proactive enforcement will have a direct correlation to the amount of staff time required and the level of resources that remain available for reactive enforcement.

**Conclusion:** The Administration will continue to enforce the Town's codes using the same stepped and measured approach towards compliance, including: 1) the Courtesy Notice with time to comply; 2) followed by the Civil Citation (with a 20 day appeal period provision) and additional time to comply, but with imposition of a daily fine at the end of the compliance period; and 3) then followed by the scheduling of a hearing to allow for a venue at which the respondents may be heard by a third party Special Magistrate. The Administration will also adhere to the Town Commission's directive on priorities. If no clear direction is provided we will continue to pursue a more reactive enforcement program and prioritize and pursue code violations at the discretion of the Town Manager and/or his designee(s) keeping violations that may affect the health, safety and welfare of the community as a high priority.

  
\_\_\_\_\_  
Department Head

  
\_\_\_\_\_  
Town Manager



# Town of Surfside Commission Communication

## **Agenda Item #**

**Agenda Date:** September 17, 2013

**Subject:** Comparison of Code Compliance Processes: "Notice of Violation" vs. "Civil Citation" for Enforcement of Town Codes

## **Background:**

Several members of the Town Commission have recently expressed concerns over the rate and pace at which civil penalties (fines) accrue on Civil Citations that have been issued by the Code Compliance Division. At the August 13, 2013, Town Commission meeting the Mayor and Town Commission directed the Administration to provide a comparison of the Civil Citation procedures currently being used by the Code Compliance Division (pursuant to Town Code) and alternatives that may be available to the Town based on Florida Statutes, and or other Town Code provisions.

Below is a summary of the comparison between enforcement methods currently contained in the Town Code and Florida Statutes that are, or may be available to the Town.

## **Statutory Authority**

Chapter 162 of the Florida Statutes provides municipalities the authority to create administrative boards that may be granted the authority to impose administrative fines and other noncriminal penalties and to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist. The intent of the Chapter is to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of the state.



A municipality may, at its option, create or abolish by ordinance local government code enforcement boards (or special magistrates). A municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board.

### **Florida Statutes Chapter 162: Parts I and II**

The Florida Statutes provides municipalities and counties two approaches for the enforcement of local ordinances, as well as allowing municipalities to create alternative enforcement methods. The two statutorily provided methods are: 1) under Part I of Chapter 162; and 2) under Part II of Chapter 162.

Part I provides for Notice of Violation (NOV) and Part II provides for a Civil Citation/Civil Violation Notice (CVN). One of the key differences is that under the NOV the daily fine is imposed by a Special Magistrate at a hearing (the Officer issuing the Notice does not determine the amount of the fine), while under the Civil Citation process the officer determines the amount of the fine, which begins accruing after the compliance period expires on the CVN expires.

### **Chapter 162 Part I: LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS: (ss. 162.01-162.13)**

Under the Notice of Violation procedure:

1. A violation is witnessed by an Officer
2. An NOV is generated and sent via Certified Mail
3. The NOV allows for a compliance period (not to exceed 30 days)
4. After the compliance period expires, if compliance is not attained the matter has to be set for hearing before a Special Magistrate.
5. At the hearing the Magistrate has the authority to impose a fine, or may allow additional time for compliance. The Magistrate may also set a new hearing date for a progress report, prior to considering imposition of a fine.
6. If a fine is imposed, it will continue to accrue until compliance is attained, and the Magistrate's Order may provide for a Lien to be filed.
7. If non-compliance continues, the fine will continue to accrue and the lien remains.
8. If and when compliance is attained, the Respondent may request a mitigation hearing.
9. Fines (as may be mitigated) would need to be paid to the Town before any release of lien should be granted.

**Chapter 162 Part II: SUPPLEMENTAL COUNTY OR MUNICIPAL CODE OR ORDINANCE ENFORCEMENT PROCEDURES (ss. 162.21-162.30)**

Under the Civil Citation procedure:

1. A violation is witnessed by an Officer
2. An initial Notice is issued (no fines)
3. The initial Notice allows for a compliance period (not to exceed 30 days)
4. After the compliance period expires, if compliance is not attained a Civil Citation (CVN) is issued and sent via Certified Mail, or hand delivered, or posted on the Property and at Town Hall. No additional time to comply is required.
5. A fine may begin to accrue immediately, and continue on a daily basis, until compliance is attained.
6. If the Respondent disagrees with the Officer's determination that a violation exists, the CVN provides for an appeal period of 20 days from the date of receipt of the CVN. This appeal would be brought to a Special Magistrate for a hearing.
  - a. At the hearing the Magistrate will rule on the validity of the Violation.
    - i. If valid, the Magistrate may rule and confirm the fines that have accrued and provide for a Lien to be imposed. The Magistrate may also toll the fines and allow for additional time to comply, and set a new hearing date for a progress report; or
    - ii. If found invalid the case is dismissed.
7. Fines will continue to accrue until compliance is attained.
8. A notice is sent to the Respondent advising that fines are due, and that a lien will be imposed if the fines remain unpaid and the violations are not corrected.
9. If the violation remains uncorrected and/or the fines are not paid a lien may be imposed.
10. The lien may be foreclosed upon if no action is taken by the Respondent.
11. If and when compliance is attained, the Respondent may submit a request for mitigation.
12. Fines (as may be mitigated) should be paid to the Town before any release of lien should be granted.

Although the Town Code allows the Town discretion to use other legally permitted enforcement mechanisms, the alternative enforcement procedure that has been adopted in the Town Code, and has been historically used for enforcement, is similar to that contained in Part II, of Chapter 162 of the Florida Statutes. That is the procedure currently being used by the Code Compliance Division.

## Chapter 15 of the Town Code

The Code Compliance Division substantially follows the Town Code provisions found in Chapter 15. This procedure includes an initial written notice (e.g. Courtesy Notice) with time to comply. The Notice is either posted on the property, hand delivered or sent via first class U.S. Mail. If compliance is not attained, a Civil Citation is issued, which includes: 1) an additional compliance period; 2) provides for a Special Magistrate appeal process (if the violator is disagrees with the Officer's determination); 3) a civil penalty (i.e. a fine) if compliance is not attained within the additional compliance period provided. The Town currently takes an additional step that is not required by Town Code which is to set Special Magistrate hearings for non-compliant Respondents which provides a venue to address their grievances. These hearings also allow the Town to confirm and support their findings by way of a Special Magistrate Order, confirming the fines, imposing a lien, and at times support abatement action.

Pursuant to Town Code the Special Magistrates may have sole discretion on reduction of fines on cases that have been heard by a Magistrate. However, the fines associated with these cases are not originally imposed by the Magistrate, but in accordance to the provisions of the Town Code the fines begin to accrue when the compliance period provided in the Civil Citation expires (if no appeal is filed). At the hearing, the Magistrate does confirm that a default has occurred, confirms the imposition of the fine, and further confirms that a lien may be recorded. The hearing also provides a venue wherein the respondents may have an opportunity to express themselves, if they did not timely file an appeal of the Code Officer's determination.

### Additional Enforcement Powers

Town Code Section 15-17 also provides that in addition to the powers and authority given to the special masters, the Town may, in its discretion, exercise any powers given to municipalities or their special masters by the Florida Constitution and Florida Statutes. Alternatively, the Town may choose to enforce compliance for any code violation, depending on issues of health, safety and welfare, through the filing of an action, seeking an injunction in a court of competent jurisdiction or utilizing the procedures set forth in section 15-19.

Section 15-19, provides that the Town may abate a code violation when: 1) voluntary correction by the property owner could not be attained; or 2) a courtesy notice of violation to the property owner has been issued pursuant to Chapter 15 of the Town Code, and the required compliance has not been completed by the date specified; or 3) the violation is considered a public nuisance and subject to summary abatement.



## Analysis

With the limited staff and resources available to the Code Compliance Division it is considered that the CVN (citation) process is by far the most effective and efficient manner in which to address code violations in the Town.

The NOV process requires a tremendous amount of work by the code officers, on the front end with little impact to the Respondents. The only “teeth” the process provides rests with a Special Magistrate’s decision at a hearing, which historically occurs only after additional time to comply has been granted. This puts the Officer in a position to do multiple inspections, generate multiple notices, and prepare for hearings, which may all be moot if a violator complies after receiving multiple extensions of time with all the costs, including staff time and resources, borne strictly by the Town.

Some of the questions that need to be addressed as we move forward are:

- How much time should be allowed for compliance?
- Should violators be required to pay a fine for non-compliance, after a reasonable compliance period is provided?
- How much of a fine should be imposed for failure to comply?
- Should that fine run on a daily basis until compliance is attained?
- What course of action should be taken if a violator does not comply after a reasonable amount of time for compliance has been granted?
- Should liens be imposed for failure to comply and pay fines?

The response to these questions should serve to facilitate the discussion and provide insight as to which process is ultimately considered as a primary enforcement tool.

The Code Compliance Division will continue to strive to provide the Town’s residents and business community with a well-balanced code enforcement program and compliance process through a professional, courteous, and stepped approach that focuses on education, information, arriving at mutually agreed upon solutions to compliance, and working with the affected parties in achieving voluntary compliance.

Due to the limited staff, the more direct and efficient methods that are made available to attain these goals, the more cost effective it should be for the Town.

**Budget Impact:** Costs to create and implement new processes and amend Town Code. Additional staff time to process under new NOV procedures.


**Staff Impact:** A change to an NOV process would entail employing additional staff time to implement new NOV procedures, plus a revamping of the Division’s procedural processes now in place. Moreover, the Town Code may need to be amended to include the new provisions, or to specify that the additional enforcement methods are being adopted directly from the Florida Statutes.

**Conclusion:** The Town Commission will hold a meeting in November 2013, specifically addressing Code Compliance. Staff recommends that no interim changes be made in code enforcement procedures prior to this meeting. The November meeting will be a follow-up on the April 17, 2013, Workshop on code issues. Attached is a report that was provided, but deferred, at the June 11, 2013, Commission Meeting addressing code compliance priorities, including input from three Commission members on their individual code priorities. Attached to said report, is an updated compilation of priorities that includes input from a fourth Commission member. This code compliance priorities report, plus this information on enforcement options (Notice of Violation vs. Civil Citation) should serve to facilitate discussions at the November meeting. In order to have a successful code compliance program, it is essential that clear policy be provided on the enforcement priorities; the compliance process; and fines/penalties.



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Joe Damien  
Code Compliance Director



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Michael Crotty  
Town Manager



## Town of Surfside Commission Communication

**Agenda Item #**

**Agenda Date:** June 11, 2013

**Subject:** Code Compliance Priorities Recommendations and Sight Triangle Resolution

The following communication is broken down into two parts, with a general conclusion at the end of the memorandum. The first part involves compliance priorities based on the results of the Code Compliance Workshop, and the second part relates to the corner visibility/sight triangle hedge height issue and the recent discussions that have arisen since enforcement of these provisions were initiated.

### CODE COMPLIANCE DIVISION ENFORCEMENT PRIORITIES IN GENERAL

#### Background:

##### Recent Code Compliance Workshop Results

At the Code Compliance Workshop held on April 17, 2013, a survey form was provided to the Mayor and Town Commission requesting each member to provide the recommended priority level on a multitude of items in order of importance: 1 for High, 2 for Moderate, 3 for Low, or 4 for None (or minimal).

A compilation and analysis of the three Priority Surveys received revealed that one respondent showed 10 items had been marked as Priority 1, another had 34 items marked Priority 1, and the last had 31 Priority 1 items.

On the following pages are two lists reflecting the average score for each item, in priority order from highest to lowest. One is listed by priority within the District and the other by priority amongst all Districts. The average was derived by adding the priority numbers from each category and divided by the number of surveys received.



## **PRIORITIES WITHIN EACH DISTRICT**

### **SINGLE FAMILY DISTRICTS PRIORITIES**

#### **High (1.4 and less)**

- Trash on Curb
- Sight-Triangle (hedge) visibility

#### **Moderate (1.5-2.4)**

- Exterior Surfaces of Houses
- Trash on Yard
- Grass overgrowth
- Stagnant pools/ponds
- Garbage Cans left out at days end
- Hedge Heights (front, rear/side)
- Fence Heights (side/rear)
- Derelict Vehicles or parking on grass
- Boats parked in yards
- POD type storage units
- Chain Link Fences
- Construction without permits
- Garage Sales (unpermitted)
- Barking dogs
- Other Noise

#### **Low (2.5-3.4)**

- Roof Surfaces
- Trees/shrubs overhanging R-O-W
- Trees/shrubs overhanging property
- Non-domestic animals kept
- Real Estate Signs
- Garage Sale Signs
- Political Signs
- Boats moored or docked
- Squawking birds
- Bee hives

### **MULTI-FAMILY DISTRICTS PRIORITIES**

#### **High (1.4 and less)**

- Overgrowth of Grass
- Short Term Rentals

#### **Moderate (1.5-2.4)**

- Exterior Surfaces (paint/clean)
- Overgrowth unto right-of-way
- Construction without permits
- Inadequate or inappropriate parking
- Unpermitted use of POD storage units
- Satellite Dishes (Add-on)

#### **Low (2.5-3.4)**

- Housing Standards in interior of units
- Barking dogs
- Other Noise
- Real Estate Signs

### **BUSINESS DISTRICT PRIORITIES**

#### **High (1.4 and less)**

- Exterior Surfaces (paint/cleaning)
- Dumpster maintenance
- Alley cleanliness
- Obstructions (chairs, mannequins, pots, signs)
- Sidewalk Café furniture and equipment and expansion
- Deteriorated awnings
- Missing awning, with frame remaining
- Interior Violations (maintenance, sanitary, health & safety)

#### **Moderate (1.5-2.4)**

- Area used for staging equipment
- Overgrowth of weeds (at alleys)
- Sweep or pressure clean
- Old signs remaining from prior businesses
- Deteriorated signs
- Window signs
- Electronic Signs
- Installation without permits or approvals
- Illegal signage
- Installation without permits
- Construction without permits
- Parking Lot Maintenance
- Local Business Tax Receipt and Certificate of Use delinquency
- Resort Tax delinquency
- Grease traps

#### **Low (2.5-3.4)**

- Roof Tops
- Signs on R-O-W
- Noise, smoke, or other nuisance

## PRIORITIES AMONGST ALL DISTRICTS

### High (1.4 and less)

#### SINGLE FAMILY DISTRICTS PRIORITIES

- Trash on Curb
- Sight-Triangle (hedge) visibility

#### MULTI-FAMILY DISTRICTS PRIORITIES

- Overgrowth of Grass
- Short Term Rentals

#### BUSINESS DISTRICT PRIORITIES

- Exterior Surfaces (paint/cleaning)
- Dumpster maintenance
- Alley cleanliness
- Sidewalk Obstructions (pots, signs)
- Sidewalk Café furniture & expansion
- Deteriorated awnings
- Missing awning, w/ frame remaining
- Interior Violations (maintenance, sanitary, health & safety)

### Moderate (1.5-2.4)

#### SINGLE FAMILY DISTRICTS PRIORITIES

- Exterior Surfaces of Houses
- Trash on Yard
- Grass overgrowth
- Stagnant pools/ponds
- Garbage Cans left out at days end
- Hedge Heights (front, rear/side)
- Fence Heights (side/rear)
- Derelict Vehicles or parking on grass
- Boats parked in yards
- POD type storage units
- Chain Link Fences
- Construction without permits
- Garage Sales (unpermitted)
- Barking dogs
- Other Noise

#### MULTI-FAMILY DISTRICTS PRIORITIES

- Exterior Surfaces (paint or clean)
- Overgrowth unto right-of-way
- Construction without permits
- Inadequate or inappropriate parking
- Unpermitted use of POD storage units
- Satellite Dishes (*Add-on*)

#### BUSINESS DISTRICT PRIORITIES

- Area used for staging equipment
- Overgrowth of weeds (at alleys)
- Sweep or pressure clean
- Old signs remaining from prior businesses
- Deteriorated signs
- Window signs
- Electronic Signs
- Installation without permits or approvals
- Illegal signage
- Installation without permits
- Construction without permits
- Parking Lot Maintenance
- Local Business Tax Receipt and Certificate of Use delinquency
- Resort Tax delinquency
- Grease traps

### Low (2.5-3.4)

#### SINGLE FAMILY DISTRICTS PRIORITIES

- Roof Surfaces
- Trees/shrubs overhanging R-O-W
- Trees/shrubs overhanging property
- Non-domestic animals kept
- Real Estate Signs
- Garage Sale Signs
- Political Signs
- Boats moored or docked
- Squawking birds
- Bee hives

#### MULTI-FAMILY DISTRICTS PRIORITIES

- Housing Standards in interior of units
- Barking dogs
- Other Noise
- Real Estate Signs

#### BUSINESS DISTRICT PRIORITIES

- Roof Tops
- Signs on R-O-W
- Noise, smoke, or other nuisance

Analysis:

In accordance with its mission statement, the Code Compliance Division strives to provide the Town's residents and business community with a well-balanced code enforcement program and compliance process through a professional, courteous, and stepped approach that will focus on: 1) educating and informing of the provisions of the Town's Codes and Ordinances; 2) provide a better understanding of the underlying principles behind the laws and the benefits of compliance; 3) assisting the affected parties with arriving at mutually agreed upon solutions to compliance; and 4) working with the affected parties in achieving voluntary compliance. We continue to pursue and advance this mission on a daily basis.

**Current Operational Responsibilities:** The Division is charged with a myriad of responsibilities with only two staff members. Responsibilities include but are not limited to enforcement of Property Maintenance Standards, Minimum Housing Code, Zoning Code, Florida Building Code, Stop Work Orders on construction without permits, Resort Tax Delinquency and audit avoidance, Local Business Tax Receipt delinquency, and Certificate of Use delinquency, and Lien Searches for open code violations. The Division is also responsible for management and administration of the Special Master process, including but not limited to generation, execution and mailing of Notices to Appear, prosecution at hearings, Order preparation and mailing, engaging Special Masters, and payment processing. Other responsibilities include public education on codes, violation abatement/remediation, (property board-up, lawn cutting, mosquito control, and property clean-up), lien and lien satisfaction preparation, billing for fines and abatement reimbursements, check requests, preparation of settlement agreements.

Because of the measured and stepped approach we have been pursuing, attaining compliance is a slow process. However, if we continue to pursue all cases until compliance is attained, the benefits to the community as a whole will be reaped by all concerned.

**Implementation of a More Proactive Program:** The time necessary to fully implement a proactive program town-wide, including identifying every single property that may be in violation, will depend on the resources allocated. As such, the more resources the faster the result.

**Enforcement in General:** No matter the level of resources allocated, or the time required to fully implement any program based thereon, once the program is fully completed a foundation would be established. From that point forward, one can control the level of enforcement, as well as the speed at which results should be attained by adding or decreasing the resources allocated. The key is to make every effort to pursue each and every non-compliant property that is identified for enforcement action until compliance is attained or until all legal recourse is exhausted. In most cases compliance will be attained, and in others the result may be the placement of a lien on the property. The lien may be resolved when the property changes hands or ultimately may be foreclosed upon if the Town chooses. Once a program is established, you have a better opportunity to allocate resources to either increase the number of items you enforce, or control the time which is required to attain compliance.

As to priorities, the Administration recommends continuing its reactive enforcement program, including continuing to respond to complaints from the public. Moreover, if a more proactive enforcement program is considered it is recommended that the top-tier priorities established by the survey, as averaged, be pursued, with the inclusion of two additional items. First and foremost, the Administration, at its discretion should pursue any other issue that is deemed to affect the health, safety and welfare of the community, and secondly pursuit of construction



work without permits should be considered a priority, as the Town has made a commitment to control this issue as a result of the FEMA related situation.

The Administration recommends that enforcement of any code provision include a penalty for non-compliance, only after a measured and stepped approach is provided with a reasonable time for compliance. Anything short of that will result in compliance by those who ultimately choose to take responsibility as members of a community and allowing those who opt not to comply to violate the Town's code. Eventually, if non-compliance becomes an option the effectiveness of the enforcement process will be compromised.

**Other Recommendations:**

Leaf Blower ordinance should be enforced or amended. If amended to allow same, then all blowing should be from the street towards the property only.

Sight triangle provisions should be enforced or amended. If amended, it should contain clear and unambiguous language for enforcement staff. If any type of relief is allowed to be sought, a clear and definitive process should be provided on a case-by-case basis and should be separated from the enforcement division.

Hedge heights on yards facing streets, waterways or other rights-of-way should be considered for amendment with legislation that gives more flexibility to hedges fronting public rights-of-way (except for sight triangles).

As to neighbor to neighbor disputes (i.e. barking dogs, other noises, dog feces, overhanging trees, hedges, bees) at minimum, consideration should be given to establish a policy not to react to situations that only impact one neighbor, or in the alternative the code provision could be eliminated. The opening section of the Noise Ordinance provides that "The purpose of this division is to control noises and the nuisance thereby created in such a manner as to cause the least hardship or offense to the greatest number of people. With the limited resources available to the Town, we believe this statement reflects the spirit of how enforcement needs to be addressed in these situations.

Permitting requirements as to landscaping, or tree planting (removal or relocation) and other situations wherein the policy or code is not clear and should be clarified or codified.

Any outdated, ambiguous, unclear, or unnecessary code provision should be eliminated or clarified.

Clear direction on enforcement of the white fly provisions should be provided to the Administration.

Coordination between departments especially with Building and Public Works is critical due to the limited resources available to each.

Software for the Code Compliance Division should be revisited to address long term solutions for integration with Finance, Public Works, LBTR, CU, and Building Department functions.

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## **CODE COMPLIANCE ENFORCEMENT OF HEDGES & SIGHT TRIANGLE VISIBILITY**

Enforcement of the sight triangle/corner visibility provisions began in November 2011, in response to a complaint received regarding three specific addresses with line-of-sight

obstructions that were deemed by complainants to be dangerous to pedestrians, bicyclists and vehicle operators. A cursory review of other intersections around the Town revealed that there were multiple locations that were, and continue to be in violation of the current Town Code.

**Analysis:**

Initially, 22 Courtesy Notices issued, with the intent to follow up with the balance of the properties once time and resources would permit. The initial group was each provided with a Notice clearly identifying and including: 1) the problem issue including the language of the Town Code Section, 2) the location of the problem; 3) a diagram, both in plan and elevation delineating the specific code requirements; 4) a request for their cooperation; and 5) that they contact the Town if they had any questions or needed clarification. Each Courtesy Notice was sent via Certified Mail, and residents were given ten days to comply. The Code Compliance Director made himself available and personally met with all parties who contacted him. In March of 2012 a second notice was provided to any property owners whose property remained non-compliant, providing for an additional 7 days to comply. Although the staff continued to meet with the affected parties while attending to other compliance issues there was a definitive group of residents that continued to seek alternatives to compliance citing privacy, children and pet safety, and other issues that were of a higher importance to them.

Eventually, as time permitted the non-compliant cases were pursued. As of early December of 2012, only four properties of the 22 were in compliance. At that time Civil Citations were issued to the non-compliant properties, via certified mail, providing for: 1) an additional ten days to comply; 2) an appeal period of 20 days from receipt of notice; 3) and advising that a \$100 per day civil penalty for failure to comply would ensue at the end of the additional ten day period and if no appeal was filed. Only two property owners took advantage of the appeal process.

After allowing for additional time, in early February of 2012, eight of the cases which remained non-compliant were provided a Notice to Appear to appear before a Special Magistrate on February 27, 2013, and given the opportunity to be heard. The balance would have been scheduled at the next hearing date which is tentatively set for June 20, 2013.

To date, our efforts have resulted in the following:

|                                       |    |                                      |   |
|---------------------------------------|----|--------------------------------------|---|
| Courtesy Notices Issued               | 22 | Complied prior to scheduling hearing | 5 |
| Compliance Attained Prior to Citation | 4  | Complied after hearing was scheduled | 4 |
| Civil Citations Issued                | 18 | Hearings still to be scheduled       | 9 |
| Special Master(SM) Hearing Scheduled  | 8  | Cases that remain non-compliant      | 9 |
| S.M. Continuances Granted             | 2  | Orders with Liens                    | 5 |
| S.M. Hearings Held                    | 6  |                                      |   |

At the May 15, 2013 Commission Meeting the Mayor and Town Commission directed the Administration to discontinue enforcement of Sections 90-52 and 90-92 of the Town Code that addresses corner visibility and sight-line obstructions at corner properties within the Town by:

1. ceasing to issue Courtesy Notices and Civil Citations associated therewith;
2. tolling any fines that may be accruing on existing Civil Citations that have already been issued but have yet to be scheduled to be heard by a Special Magistrate; and
3. continuing to toll any fines that have been already been tolled by a Special Magistrate.

Moreover, the Commission sought answers to the following questions related to same:

When compliance has been attained:

1. Does the Administration or the Town Commission have authorization to reduce or waive fines that have accrued from Civil Citations on cases that have been heard by a Special Magistrate?
2. Does the Administration or the Town Commission have authorization to reduce or waive fines that have accrued from Civil Citations on cases that have not been heard by a Special Magistrate?
3. Does the Administration or the Town Commission have authorization to release liens that have been filed associated with Civil Citations on cases that have or have not been heard by a Special Magistrate?

When compliance has not been attained, does the Administration or the Town Commission have authorization to reduce or waive fines and/or release liens associated with the Civil Citations?

Answers to these questions are being addressed by the Town Attorney's Office.

As to the Code Compliance process, the Administration has discontinued enforcement of Town Code Sections 90-52 and 90-92 as directed, and will toll the fines on cases that have yet to be heard by a Special Magistrate but remain in non-complied status.

Pursuant to Town Code the Special Magistrates may have sole discretion on reduction of fines on cases that have been heard by a Magistrate. However, the fines associated with these cases are not originally imposed by the Magistrate, but in accordance to the provisions of the Town Code the fines begin to accrue when compliance period provide in the Civil Citation expires and if no appeal is filed. At the hearing, the Magistrate does confirm that a default has occurred, confirms the imposition of the fine, and further confirms that a lien may be recorded. The hearing also provides a venue wherein the respondents may have an opportunity to express themselves, if they did not timely file an appeal of the Code Officer's determination.

Notwithstanding the outcome of this specific group of cases, it is recommended that careful consideration be given to how enforcement of the Town Code is addressed going forward. As per the direction given to the Code Compliance Division, the Division has gone to great lengths to enforce the Town Codes in a very measured and stepped approach so as not to impose harsh penalties or create a hardship for the Town's residents. Although there has been a lot of debate about the amount of fines that have accrued in certain instances, one must not lose sight that these fines accumulated only because of a lack of compliance that endured for weeks or months on end on the part of the respondents, and not because they were arbitrarily imposed at one time by the Division or the Magistrate. Moreover, the fines did not immediately begin accruing, but did so only after months and months of notices, conversations and discussions.

Enforcement of any code provision without a substantial penalty for non-compliance will only result in compliance by responsible community minded residents and business owners only, leaving those who opt not to comply without any down-side.

**Budget Impact:** None expected with current staffing levels and available resources.



**Staff Impact:** Continuing a reactive program should not considerably impact staff, unless there is a substantial increase in demand. A more proactive enforcement program would increase demand on staff both as to number inspections required and clerical work required associated therewith. The number of high-priority items that are chosen for enforcement will have a direct correlation to the amount of time staff and the resources that are available for reactive enforcement.

**Conclusion:** The Administration will continue to enforce the Town's codes using the same stepped and measured approach towards compliance, including: 1) the Courtesy Notice with time to comply; 2) followed by the Civil Citation (with a 20 day appeal period provision) and additional time to comply, but with imposition of a daily fine at the end of the compliance period; and 3) then followed by the scheduling of a hearing to allow for a venue at which the respondents may be heard by a third party Special Magistrate. The Administration will also adhere to the Town Commission's directive on priorities. If no clear direction is provided we will continue to pursue a more reactive enforcement program and prioritize and pursue code violations at the discretion of the Town Manager and/or his designee(s) keeping violations that may affect the health, safety and welfare of the community as a high priority.

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Department Head

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Town Manager

| <b>BUSINESS DISTRICT PRIORITIES</b>                     |              |                  |                |              |  |      |
|---|--------------|------------------|----------------|--------------|--|------|
|   | Mayor Dierch | Michelle Klugman | Comm. Graubart | Comm. Olchyk |  | Mean |
| <b>Exterior Property Maintenance</b>                    |              |                  |                |              |  |      |
| Exterior Surfaces (paint/cleaning)                      | 1            | 1                | 1              | 1            |  | 1    |
| Roof Tops   | 3            | 2                | 4              | 2            |  | 3    |
| <b>Rear At Alley</b>                                    |              |                  |                |              |  |      |
| Dumpster maintenance                                    | 1            | 1                | 2              | 1            |  | 1    |
| Alley cleanliness                                       | 1            | 1                | 1              | 1            |  | 1    |
| Area used for staging equipment                         | 2            | 2                | 3              | 2            |  | 2    |
| Overgrowth of weeds (at alleys)                         | 1            | 1                | 4              | 2            |  | 2    |
| <b>Sidewalks</b>  |              |                  |                |              |  |      |
| Obstructions (chairs, mannequins, pots, signs)          | 1            | 1                | 2              | 2            |  | 2    |
| Sidewalk Café furniture and equipment and expansion     | 1            | 1                | 1              | 2            |  | 1    |
| Signs on R-O-W  | 2            | 2                | 3.5            | 3            |  | 3    |
| Sweep or pressure clean                                 | 1            | 1                | 3              | 2            |  | 2    |
| <b>Signs</b>  |              |                  |                |              |  |      |
| Old signs remaining from prior businesses               | 1            | 1                | 4              | 1            |  | 2    |
| Deteriorated signs                                      | 1            | 1                | 4              | 3            |  | 2    |
| Window signs  | 1            | 1                | 4              | 3            |  | 2    |
| Electronic Signs  | 1            | 1                | 4              | 2            |  | 2    |
| Installation without permits or approvals               | 1            | 1                | 4              | 1            |  | 2    |
| <b>Awnings</b>  |              |                  |                |              |  |      |
| Deteriorated awnings                                    | 1            | 1                | 2              | 3            |  | 2    |
| Missing awning, with frame remaining                    | 1            | 1                | 1              | 2            |  | 1    |
| Illegal signage   | 1            | 1                | 4              | 3            |  | 2    |
| Installation without permits                            | 1            | 1                | 4              | 1            |  | 2    |
| <b>Other</b>  |              |                  |                |              |  |      |
| Construction without permits                            | 1            | 2                | 4              | 1            |  | 2    |
| Noise, smoke, or other nuisance                         | 2            | 3                | 4              | 3            |  | 3    |
| Parking Lot Maintenance                                 | 2            | 2                | 2              | 3            |  | 2    |
| Local Business Tax Receipt and Certificate of Use       | 1            | 2                | 4              | 2            |  | 2    |
| Resort Tax delinquency                                  | 1            | 1                | 4              | 2            |  | 2    |
| Interior Violations (maintenance, sanitary, health & sa | 1            | 2                | 1              | 1            |  | 1    |
| Grease traps  | 1            | 2                | 3              | 1            |  | 2    |
|   |              |                  |                |              |  |      |

| <b>MULTI-FAMILY DISTRICTS PRIORITIES</b>       |              |                  |                |              |  |      |
|--|--------------|------------------|----------------|--------------|--|------|
|  | Mayor Dierch | Michelle Kligman | Comm. Graubart | Comm. Olchyk |  | Mean |
| <b>Exterior Property Maintenance</b>           |              |                  |                |              |  |      |
| Exterior Surfaces (paint or pressure           | 2            | 1                | 2              | 2            |  | 2    |
| Overgrowth of Grass                            | 2            | 1                | 1              | 3            |  | 2    |
| Overgrowth unto right-of-way                   | 2            | 1                | 3              | 1            |  | 2    |
| <b>Interior Property Maintenance (Rentals)</b> |              |                  |                |              |  |      |
| Housing Standards in interior of units         | 2            | 2                | 4              | 2            |  | 3    |
| <b>Other</b>                                   |              |                  |                |              |  |      |
| Construction without permits                   | 1            | 2                | 2              | 3            |  | 2    |
| Inadequate or inappropriate parking            | 1            | 2                | 4              | 2            |  | 2    |
| Barking dogs                                   | 2            | 3                | 3              | 2            |  | 3    |
| Other Noise                                    | 2            | 4                | 4              | 4            |  | 4    |
| Real Estate Signs                              | 2            | 3                | 4              | 4            |  | 3    |
| Unpermitted use of POD storage units           | 1            | 2                | 4              | 4            |  | 3    |
| Short Term rentals                             | 1            | 1                | 1              | 3            |  | 2    |
| Satellite Dishes                               |              | 2                |                |              |  |      |



| <b>SINGLE FAMILY DISTRICTS PRIORITIES</b> |              |                |             |              |  |      |
|---|--------------|----------------|-------------|--------------|--|------|
|   | Mayor Dierch | Michelle Klign | Comm. Graub | Comm. Olchyk |  | Mean |
| <b>Exterior Property Maintenance</b>      |              |                |             |              |  |      |
|   | 2            | 1              | 4           | 2            |  | 2.3  |
| Roof Surfaces                             | 2            | 3              | 4           | 2            |  | 2.8  |
| Trash on Curb                             | 1            | 1              | 2           | 3            |  | 1.8  |
| Trash on Yard                             | 2            | 1              | 3           | 3            |  | 2.3  |
| Grass overgrowth                          | 2            | 1              | 4           | 2            |  | 2.3  |
| Stagnant pools/ponds                      | 1            | 1              | 4           | 3            |  | 2.3  |
| Garbage Cans left out at days end         | 1            | 3              | 1           | 3            |  | 2    |
| Trees/shrubs overhanging R-O-W            | 2            | 3              | 4           | 2            |  | 2.8  |
| Trees/shrubs overhanging property         | 2            | 3              | 4           | 3            |  | 3    |
| Non-domestic animals kept                 | 2            | 3              | 4           | 2            |  | 2.8  |
| <b>Zoning</b>                             |              |                |             |              |  |      |
| Hedge Heights (front, rear/side)          | 2            | 1              | 3           | 2            |  | 2    |
| Fence Heights (side/rear)                 | 2            | 1              | 4           | 2            |  | 2.3  |
| Derelict Vehicles or parking on grass     | 1            | 1              | 4           | 3            |  | 2.3  |
| Sight-Triangle (hedge) visibility         | 1            | 1              | 1           | 3            |  | 1.5  |
| Real Estate Signs                         | 2            | 3              | 4           | 2            |  | 2.8  |
| Garage Sale Signs                         | 2            | 3              | 4           | 2            |  | 2.8  |
| Political Signs                           | 2            | 3              | 4           | 2            |  | 2.8  |
| Boats parked in yards                     | 1            | 2              | 2           | 1            |  | 1.5  |
| Boats moored or docked                    | 2            | 3              | 4           | 2            |  | 2.8  |
| POD type storage units                    | 1            | 2              | 4           | 4            |  | 2.8  |
| Chain Link Fences                         | 2            | 1              | 4           | 4            |  | 2.8  |
| <b>Other</b>                              |              |                |             |              |  |      |
| Construction without permits              | 1            | 2              | 2           | 1            |  | 1.5  |
| Garage Sales (unpermitted)                | 1            | 2              | 4           | 3            |  | 2.5  |
| Barking dogs                              | 2            | 3              | 1           | 2            |  | 2    |
| Squawking birds                           | 2            | 3              | 4           | 2            |  | 2.8  |
| Other Noise                               | 2            | 2              | 3           | 4            |  | 2.8  |
| Bee hives                                 | 2            | 3              | 4           | 4            |  | 3.3  |

| SINGLE FAMILY DISTRICTS PRIORITIES    |              |               |                |              |  |      |
|---------------------------------------|--------------|---------------|----------------|--------------|--|------|
|                                       | Mayor Dierch | Comm. Kligman | Comm. Graubart | Comm. Olchyk |  | Mean |
| <b>Exterior Property Maintenance</b>  |              |               |                |              |  |      |
| Exterior Surfaces of Houses (Paint)   | 2            | 1             | 4              | 2            |  | 2.3  |
| Roof Surfaces                         | 2            | 3             | 4              | 2            |  | 2.8  |
| Trash on Curb                         | 1            | 1             | 2              | 3            |  | 1.8  |
| Trash on Yard                         | 2            | 1             | 3              | 3            |  | 2.3  |
| Grass overgrowth                      | 2            | 1             | 4              | 2            |  | 2.3  |
| Stagnant pools/ponds                  | 1            | 1             | 4              | 3            |  | 2.3  |
| Garbage Cans left out at days end     | 1            | 3             | 1              | 3            |  | 2.0  |
| Trees/shrubs overhanging R-O-W        | 2            | 3             | 4              | 2            |  | 2.8  |
| Trees/shrubs overhanging property     | 2            | 3             | 4              | 3            |  | 3.0  |
| Non-domestic animals kept             | 2            | 3             | 4              | 2            |  | 2.8  |
| <b>Zoning</b>                         |              |               |                |              |  |      |
| Hedge Heights (front, rear/side)      | 2            | 1             | 3              | 2            |  | 2.0  |
| Fence Heights (side/rear)             | 2            | 1             | 4              | 2            |  | 2.3  |
| Derelict Vehicles or parking on grass | 1            | 1             | 4              | 3            |  | 2.3  |
| Sight-Triangle (hedge) visibility     | 1            | 1             | 1              | 3            |  | 1.5  |
| Real Estate Signs                     | 2            | 3             | 4              | 2            |  | 2.8  |
| Garage Sale Signs                     | 2            | 3             | 4              | 2            |  | 2.8  |
| Political Signs                       | 2            | 3             | 4              | 2            |  | 2.8  |
| Boats parked in yards                 | 1            | 2             | 2              | 1            |  | 1.5  |
| Boats moored or docked                | 2            | 3             | 4              | 2            |  | 2.8  |
| POD type storage units                | 1            | 2             | 4              | 4            |  | 2.8  |
| Chain Link Fences                     | 2            | 1             | 4              | 4            |  | 2.8  |
| <b>Other</b>                          |              |               |                |              |  |      |
| Construction without permits          | 1            | 2             | 2              | 1            |  | 1.5  |
| Garage Sales (unpermitted)            | 1            | 2             | 4              | 3            |  | 2.5  |
| Barking dogs                          | 2            | 3             | 1              | 2            |  | 2.0  |
| Squawking birds                       | 2            | 3             | 4              | 2            |  | 2.8  |
| Other Noise                           | 2            | 2             | 3              | 4            |  | 2.8  |
| Bee hives                             | 2            | 3             | 4              | 4            |  | 3.3  |

| <b>MULTI-FAMILY DISTRICTS PRIORITIES</b>       |   |              |               |                |              |      |
|--|---|--------------|---------------|----------------|--------------|------|
|  |   | Mayor Dierch | Comm. Kligman | Comm. Graubart | Comm. Olchyk | Mean |
| <b>Exterior Property Maintenance</b>           |   |              |               |                |              |      |
|  | Exterior Surfaces (paint or pressure clean) | 2            | 1             | 2              | 2            | 1.8  |
|  | Overgrowth of Grass                         | 2            | 1             | 1              | 3            | 1.8  |
|  | Overgrowth unto right-of-way                | 2            | 1             | 3              | 1            | 1.8  |
| <b>Interior Property Maintenance (Rentals)</b> |   |              |               |                |              |      |
|  | Housing Standards in interior of units      | 2            | 2             | 4              | 2            | 2.5  |
| <b>Other</b>                                   |   |              |               |                |              |      |
|  | Construction without permits                | 1            | 2             | 2              | 3            | 2.0  |
|  | Inadequate or inappropriate parking         | 1            | 2             | 4              | 2            | 2.3  |
|  | Barking dogs                                | 2            | 3             | 3              | 2            | 2.5  |
|  | Other Noise                                 | 2            | 4             | 4              | 4            | 3.5  |
|  | Real Estate Signs                           | 2            | 3             | 4              | 4            | 3.3  |
|  | Unpermitted use of POD storage units        | 1            | 2             | 4              | 4            | 2.8  |
|  | Short Term rentals                          | 1            | 1             | 1              | 3            | 1.5  |
| *  | Satellite Dishes                            |              | 2             |                |              |      |

\*Added by Respondent



| <b>BUSINESS DISTRICT PRIORITIES</b>  |   |              |               |                |              |      |
|--------------------------------------|---|--------------|---------------|----------------|--------------|------|
|                                      |   | Mayor Dierch | Comm. Kligman | Comm. Graubart | Comm. Olchyk | Mean |
| <b>Exterior Property Maintenance</b> |   |              |               |                |              |      |
|                                      | Exterior Surfaces (paint/cleaning)              | 1            | 1             | 1              | 1            | 1.0  |
|                                      | Roof Tops                                       | 3            | 2             | 4              | 2            | 2.8  |
| <b>Rear At Alley</b>                 |   |              |               |                |              |      |
|                                      | Dumpster maintenance                            | 1            | 1             | 2              | 1            | 1.3  |
|                                      | Alley cleanliness                               | 1            | 1             | 1              | 1            | 1.0  |
|                                      | Area used for staging equipment                 | 2            | 2             | 3              | 2            | 2.3  |
|                                      | Overgrowth of weeds (at alleys)                 | 1            | 1             | 4              | 2            | 2.0  |
| <b>Sidewalks</b>                     |   |              |               |                |              |      |
|                                      | Obstructions (chairs, mannequins, pots, signs)  | 1            | 1             | 2              | 2            | 1.5  |
|                                      | Sidewalk Café furniture/equipment/expansion     | 1            | 1             | 1              | 2            | 1.3  |
| *                                    | Signs on R-O-W                                  | 2            | 2             | 3.5            | 3            | 2.6  |
|                                      | Sweep or pressure clean                         | 1            | 1             | 3              | 2            | 1.8  |
| <b>Signs</b>                         |   |              |               |                |              |      |
|                                      | Old signs remaining from prior businesses       | 1            | 1             | 4              | 1            | 1.8  |
|                                      | Deteriorated signs                              | 1            | 1             | 4              | 3            | 2.3  |
|                                      | Window signs                                    | 1            | 1             | 4              | 3            | 2.3  |
|                                      | Electronic Signs                                | 1            | 1             | 4              | 2            | 2.0  |
|                                      | Installation without permits or approvals       | 1            | 1             | 4              | 1            | 1.8  |
| <b>Awnings</b>                       |   |              |               |                |              |      |
|                                      | Deteriorated awnings                            | 1            | 1             | 2              | 3            | 1.8  |
|                                      | Missing awning, with frame remaining            | 1            | 1             | 1              | 2            | 1.3  |
|                                      | Illegal signage                                 | 1            | 1             | 4              | 3            | 2.3  |
|                                      | Installation without permits                    | 1            | 1             | 4              | 1            | 1.8  |
| <b>Other</b>                         |   |              |               |                |              |      |
|                                      | Construction without permits                    | 1            | 2             | 4              | 1            | 2.0  |
|                                      | Noise, smoke, or other nuisance                 | 2            | 3             | 4              | 3            | 3.0  |
|                                      | Parking Lot Maintenance                         | 2            | 2             | 2              | 3            | 2.3  |
|                                      | Local Business Tax Receipt & Certificate of Use | 1            | 2             | 4              | 2            | 2.3  |
|                                      | Resort Tax delinquency                          | 1            | 1             | 4              | 2            | 2.0  |
|                                      | Interior Violations (maint/sanitary/safety)     | 1            | 2             | 1              | 1            | 1.3  |
|                                      | Grease traps                                    | 1            | 2             | 3              | 1            | 1.8  |

\* Respondent CG marked 3-4 and result was averaged to 3.5



## **Recommended Enforcement Priorities**

(as provided at the April 17, 2013, Workshop)

### **Business District**

1. Exterior Property Maintenance
  - a. Exterior Surfaces (paint or pressure cleaning)
  - b. Rear at Alley
  - c. Overgrowth of weeds (at alleys)
  - d. Dumpster maintenance
  - e. Alley cleanliness
  - f. Rear areas used for staging and equipment repository
  - g. Roof tops
2. Construction without permits
3. Signs
  - a. Old signs remaining from prior businesses
  - b. Deteriorated signs
  - c. Window signs
    - i. Electronic Signs
    - ii. Installation without permits or approvals
  - d. Obstructions (chairs, mannequins, pots, signs)
4. Sidewalks:
  - a. Sidewalk Café furniture and equipment and expansion
  - b. Signs on R-O-W
  - c. Sweep or pressure clean
5. Awnings
  - a. Deteriorated awnings
  - b. Missing awning, with frame remaining
  - c. Illegal signage
  - d. Installation without permits
  - e. Installed without permits
6. Noise, smoke, or other nuisance
7. Parking Lot Maintenance
8. Local Business Tax Receipt and Certificate of Use delinquency
9. Resort Tax delinquency
10. Interior Violations (maintenance, sanitary, health & safety, grease trap)

## **Recommended Enforcement Priorities** (as provided at the April 17, 2013, Workshop)

### **Multi-Family Districts**

1. Exterior Property Maintenance
  - a. Overgrowth of Grass
  - b. Exterior Surfaces (paint or pressure clean)
  - c. Overgrowth unto right-of-way
2. Construction without permits
3. Interior Property Maintenance (Rentals)
  - a. Minimum Housing Standards in interior of units
4. Inadequate or inappropriate parking
5. Barking dogs
6. Other noise
7. Improper or unpermitted use of POD type storage units
8. Short term rentals
9. Real estate signs

## **Recommended Enforcement Priorities**

(as provided at the April 17, 2013, Workshop)

### **Single Family Districts**

#### **Exterior Property Maintenance**

1. Grass overgrowth
2. Stagnant water in pools, fountains, ponds, or yards
3. Garbage Cans left out at days end
4. Trash on Curb
5. Trash on Yard
6. Exterior Surfaces of Houses
7. Trees/shrubs overhanging R-O-W
8. Roof Surfaces
9. Non-domestic animals kept (chickens, rabbits, tortoise)
10. Trees/shrubs overhanging neighboring property

#### **Zoning**

1. Sight-Triangle (corner visibility) on hedges/shrubs
2. Hedge Heights (front, rear and side yards)
3. Derelict Vehicles or parking on grass
4. Improper or unpermitted use of POD type storage units
5. Chain Link Fences
6. Fence Heights (side and rear yards)
7. Real Estate Signs
8. Garage Sale Signs
9. Political Signs
10. Boats parked in yards

#### **Other**

1. Construction without permits
2. Barking dogs
3. Other Noise
4. Garage Sales (unpermitted)



## Town of Surfside Commission Communication

### Agenda Item #

**Agenda Date:** October 8, 2013

**Subject:** Matrix Comparing: "Notice of Violation" vs. "Civil Citation"

### Background:

At the August 13, 2013, Town Commission meeting the Administration was directed to provide a comparison of the Civil Citation procedures currently being used by the Code Compliance Division (pursuant to Town Code) and other enforcement alternatives that may be available to the Town. On September 17, 2013, a detailed report was provided to the Commission outlining the differences between the Civil Citation process and an alternative Notice of Violation process, along with several other enforcement options available in the Town Code. At that time, staff was directed to provide a matrix detailing the comparative timelines for each. Additionally, a request to provide recommended fine schedules, maximum compliance periods, and other available enforcement alternatives in the event of continued non-compliance.

Attached hereto is a matrix (Exhibit "A") comparing the two processes. Also attached are recommendations on fine schedules and compliance periods (Exhibit "B"). Additionally, the more comprehensive report, with recommendations, provided to the Mayor and Town Commission on September 17, 2013, is also attached (Exhibit "C"). Below are some additional, more punitive alternatives that may be considered in the event of continued non-compliance.

### Additional Enforcement Alternatives:

Town Code Section 15-17 also provides that in addition to the powers and authority given to the code compliance officers and special magistrates, the Town may, in its discretion, exercise any powers given to municipalities or their special masters by the



Florida Constitution and Florida Statutes. Alternatively, the Town may be able to enforce compliance for any code violation, including issues of health, safety and welfare, through other available legal means. These may include foreclosing on liens, filing to seek injunctive relief in a court of competent jurisdiction, or utilizing the procedures set forth in section 15-19 (summarized below). The Town Attorney should be consulted on these processes.

Section 15-19, provides that the Town may abate a code violation when: 1) voluntary correction by the property owner could not be attained; or 2) a courtesy notice of violation to the property owner has been issued pursuant to Chapter 15 of the Town Code, and the required compliance has not been completed by the date specified; or 3) the violation is considered a public nuisance and subject to summary abatement.

### Analysis

As previously recommended in prior reports, with the limited staff and resources available to the Code Compliance Division it is considered that the Civil Citation process is by far the most effective and efficient manner in which to address code violations in the Town.

The Notice of Violation process requires a tremendous amount of work by the code officers, on the front end with little impact to the alleged violators. The only “teeth” the process provides rests with a Special Magistrate’s decision at a hearing, which historically occurs only after additional time to comply has been granted. This puts the Officer in a position to do multiple inspections, generate multiple notices, and prepare for hearings, which may all be moot if a violator complies after receiving multiple extensions of time with all the costs, including staff time and resources, borne strictly by the Town.

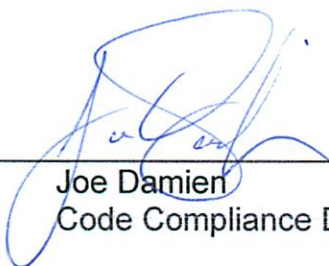
Some of the questions that need to be addressed as we move forward are:

- How much time should be allowed for compliance?
- Should violators be required to pay a fine for non-compliance, after a reasonable compliance period is provided?
- How much of a fine should be imposed for failure to comply?
- Should that fine run on a daily basis until compliance is attained?
- What course of action should be taken if a violator does not comply after a reasonable amount of time for compliance has been granted?
- Should liens be imposed for failure to comply and pay fines?

The response to these questions should serve to facilitate the discussion at the November Special Commission Meeting to address Code Compliance priorities initially discussed at the April 17, 2013, Workshop, and facilitate the discussion as to which process is ultimately considered as a primary enforcement tool.

Conclusion:

The Town Commission will hold a meeting in November 2013, specifically to address Code Compliance priorities. Staff recommends that no interim changes be made in code enforcement procedures prior to this meeting.



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Joe Damien  
Code Compliance Director



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Michael Crotty  
Town Manager

**Notice of Violation vs. Civil Citation Timeline Comparison**

| STEPS | DAYS ELAPSED | NOTICE OF VIOLATION PROCEDURE  | DAYS REQUIRED | DAYS ELAPSED | CIVIL CITATION PROCEDURE   | DAYS REQUIRED |
|-------|--------------|--|---------------|--------------|--|---------------|
| 1     | 1            | A violation is witnessed by an Officer   | 1             | 1            | A violation is witnessed by an Officer, and initial Notice is issued (posted)  | 1             |
| 2     | 2            | An NOV is generated and sent via Certified Mail  | 1             | 31           | The initial Notice allows for a compliance period (not to exceed 30 days)  | 30            |
| 3     | 7            | Time for mail to travel and be received  | 5             | 32           | Reinspect after the compliance period expires  | 1             |
| 4     | 37           | Compliance Time (maximum allowed by Code)  | 30            | 33           | If no compliance a Civil Citation (CVN) is issued and sent via Certified Mail (may be hand delivered, or posted on the Property and at Town Hall). No additional time to comply is required. | 1             |
| 5     | 38           | Reinspect after the compliance period expires  | 1             | 38           | Time for mail to travel and be received (20 day appeal period begins*)   | 5             |
| 6     | 40           | If no compliance, prepare for Special Magistrate Hearing.  | 2             | 53           | Currently the Town has provided for additional time in the CVN (Not Required by Code)  | 15            |
| 7     | 42           | A Notice to Appear is generated and sent via Certified Mail to Violator  | 2             | 54           | Reinspect after the compliance period expires  | 1             |
| 8     | 47           | Time for mail to travel and be received  | 5             | 58           | 20 day appeal period expires* and fines begin to accrue.   | 4             |
| 9     | 48           | Reinspect day before hearing   | 1             | 59           | Reinspect after the compliance period expires  | 1             |
| 10    | 78           | Time lapsed between request for hearing and actual hearing date (best case scenario)   | 30            | 61           | If no compliance attained, fine begins to accrue. Affidavit of non-compliance has to be generated and sent to Special Master Clerk.  | 2             |
| 11    | 78           | Reinspect after the compliance period expires  |               | 63           | Notice of Intent to lien (20 days after their receipt of Notice) must be sent to Violator certified mail.  | 2             |
| 12    | 79           | Hearing is held. Magistrate generally allows for additional time for compliance. If not complied fine may ensue.   | 1             | 68           | Time for mail to travel and be received  | 5             |
| 13    | 109          | Additional time that was granted for compliance.   | 30            | 88           | Required 20 day period after Intent to Lien is received by Violator.   | 20            |
| 14    | 110          | Reinspection to confirm compliance   | 1             | 89           | Reinspect for compliance   | 1             |
| 15    | 112          | If no compliance attained, fine begins to accrue. Affidavit of non-compliance has to be generated and sent to Special Master Clerk.                                  | 2             |              | We either use abatement procedures, foreclose on the lien (within 20 years), or seek other injunctive relief through the courts.   |               |
| 16    | 114          | Notice of Intent to lien (20 days after receipt of Notice) must be sent to Violator Cert.Mail  | 2             |              | If and when compliance is attained, the Respondent may request a mitigation hearing.   |               |
| 17    | 119          | Time for mail to travel and be received  | 5             |              | Fines would need to be paid to the Town before any release of lien should be granted.  |               |
| 18    | 139          | Required 20 period after Intent to Lien is received by Violator.   | 20            |              |  |               |
| 19    | 140          | Reinspect to confirm compliance status   | 1             |              |  |               |
| 20    | 141          | If non-compliance continues, the fine will continue to accrue and the lien remains and the Town may request second Special Magistrate Hearing to increase the fines. | 1             |              |  |               |
| 21    | 143          | A Notice to Appear is generated and sent via Certified Mail to Violator  | 2             |              |  |               |
| 22    | 144          | Reinspect day prior to hearing   | 1             |              |  |               |
| 23    | 174          | Time lapsed between request for hearing and actual second hearing date   | 30            |              |  |               |
| 24    | 175          | Second Hearing is held. Magistrate generally may allow for additional time for compliance, may increase daily fine.  | 1             |              |  |               |
|       |              | We either use abatement procedures, foreclose on the lien (within 20 years), or seek other injunctive relief through the courts.                                     |               |              |  |               |
|       |              | If and when compliance is attained, the Respondent may request a mitigation hearing.   |               |              |  |               |
|       |              | Fines (as may be mitigated) would need to be paid to the Town before any release of lien should be granted.  |               |              |  |               |

## Compliance Periods & Fines Prior to Enforcement of Daily Penalty for Commonly Occuring Violations (for Discussion)

| ISSUE  | COMPLIANCE<br>PERIOD BEFORE<br>PENALTY | PENALTY<br>PER DAY |
|--|--|--------------------|
| Grass Overgrowth***                                | 5 Days                                 | \$100              |
| Hedges in R-O-W                                    | 30 days                                | \$25               |
| Exterior Maintenance                               | 5 Days                                 | \$25               |
| Exterior paint                                     | 30 days                                | \$25               |
| Alley cleanliness                                  | 1 day                                  | \$100              |
| Dumpster overflow                                  | 1 day                                  | \$100              |
| Awning Violations                                  | 15 days                                | \$25               |
| Window signs (Temporary)                           | 1 day                                  | \$25               |
| Parapet Signs                                      | 15 days                                | \$25               |
| Real Estate  | 5 days                                 | \$25               |
| Political Signs                                    | 1 Day                                  | \$25               |
| Construction Without Permit*                       |  | \$250              |
| Stagnant Water/Unkempt<br>Pools and Water Features | 7 days                                 | \$100              |
| Barking Dogs                                       | Immediate (after warning)              | \$100              |
| Unleashed Dogs*                                    | Immediate                              | \$50               |
| Unremoved Dog Feces*                               | Immediate                              | \$100              |
| Littering*   | Immediate                              | \$100              |
| Noise (in general)                                 | Immediate (after warning)              | \$100              |
|  |  |                    |

\* One time penalty for immediate violation

| ** Maximum penalty provided by<br>Town Code and/or State Statute | First<br>Offense | Repeat<br>Offense |
|--|------------------|-------------------|
|  | \$250.00         | \$500.00          |

\*\*\* Depending on the season grass may reach overgrowth height within 10-15 days of cutting. By the time we respond action must be swift or overgrowth will reach levels that are costing the Town well above that which we are permitted to collect \$125.





## Town of Surfside Commission Communication

**Agenda Item #**

**Agenda Date:** September 17, 2013

**Subject:** Comparison of Code Compliance Processes: "Notice of Violation" vs. "Civil Citation" for Enforcement of Town Codes

### **Background:**

Several members of the Town Commission have recently expressed concerns over the rate and pace at which civil penalties (fines) accrue on Civil Citations that have been issued by the Code Compliance Division. At the August 13, 2013, Town Commission meeting the Mayor and Town Commission directed the Administration to provide a comparison of the Civil Citation procedures currently being used by the Code Compliance Division (pursuant to Town Code) and alternatives that may be available to the Town based on Florida Statutes, and or other Town Code provisions.

Below is a summary of the comparison between enforcement methods currently contained in the Town Code and Florida Statutes that are, or may be available to the Town.

### **Statutory Authority**

Chapter 162 of the Florida Statutes provides municipalities the authority to create administrative boards that may be granted the authority to impose administrative fines and other noncriminal penalties and to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist. The intent of the Chapter is to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of the state.

**A municipality may, at its option, create or abolish by ordinance local government code enforcement boards (or special magistrates). A municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board.**

### **Florida Statutes Chapter 162: Parts I and II**

**The Florida Statutes provides municipalities and counties two approaches for the enforcement of local ordinances, as well as allowing municipalities to create alternative enforcement methods. The two statutorily provided methods are: 1) under Part I of Chapter 162; and 2) under Part II of Chapter 162.**

**Part I provides for Notice of Violation (NOV) and Part II provides for a Civil Citation/Civil Violation Notice (CVN). One of the key differences is that under the NOV the daily fine is imposed by a Special Magistrate at a hearing (the Officer issuing the Notice does not determine the amount of the fine), while under the Civil Citation process the officer determines the amount of the fine, which begins accruing after the compliance period expires on the CVN expires.**

### **Chapter 162 Part I: LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS: (ss. 162.01-162.13)**

**Under the Notice of Violation procedure:**

- 1. A violation is witnessed by an Officer**
- 2. An NOV is generated and sent via Certified Mail**
- 3. The NOV allows for a compliance period (not to exceed 30 days)**
- 4. After the compliance period expires, if compliance is not attained the matter has to be set for hearing before a Special Magistrate.**
- 5. At the hearing the Magistrate has the authority to impose a fine, or may allow additional time for compliance. The Magistrate may also set a new hearing date for a progress report, prior to considering imposition of a fine.**
- 6. If a fine is imposed, it will continue to accrue until compliance is attained, and the Magistrate's Order may provide for a Lien to be filed.**
- 7. If non-compliance continues, the fine will continue to accrue and the lien remains.**
- 8. If and when compliance is attained, the Respondent may request a mitigation hearing.**
- 9. Fines (as may be mitigated) would need to be paid to the Town before any release of lien should be granted.**

**Chapter 162 Part II: SUPPLEMENTAL COUNTY OR MUNICIPAL CODE OR ORDINANCE ENFORCEMENT PROCEDURES (ss. 162.21-162.30)**

**Under the Civil Citation procedure:**

- 1. A violation is witnessed by an Officer**
- 2. An initial Notice is issued (no fines)**
- 3. The initial Notice allows for a compliance period (not to exceed 30 days)**
- 4. After the compliance period expires, if compliance is not attained a Civil Citation (CVN) is issued and sent via Certified Mail, or hand delivered, or posted on the Property and at Town Hall. No additional time to comply is required.**
- 5. A fine may begin to accrue immediately, and continue on a daily basis, until compliance is attained.**
- 6. If the Respondent disagrees with the Officer's determination that a violation exists, the CVN provides for an appeal period of 20 days from the date of receipt of the CVN. This appeal would be brought to a Special Magistrate for a hearing.
  - a. At the hearing the Magistrate will rule on the validity of the Violation.
    - i. If valid, the Magistrate may rule and confirm the fines that have accrued and provide for a Lien to be imposed. The Magistrate may also toll the fines and allow for additional time to comply, and set a new hearing date for a progress report; or**
    - ii. If found invalid the case is dismissed.******
- 7. Fines will continue to accrue until compliance is attained.**
- 8. A notice is sent to the Respondent advising that fines are due, and that a lien will be imposed if the fines remain unpaid and the violations are not corrected.**
- 9. If the violation remains uncorrected and/or the fines are not paid a lien may be imposed.**
- 10. The lien may be foreclosed upon if no action is taken by the Respondent.**
- 11. If and when compliance is attained, the Respondent may submit a request for mitigation.**
- 12. Fines (as may be mitigated) should be paid to the Town before any release of lien should be granted.**

**Although the Town Code allows the Town discretion to use other legally permitted enforcement mechanisms, the alternative enforcement procedure that has been adopted in the Town Code, and has been historically used for enforcement, is similar to that contained in Part II, of Chapter 162 of the Florida Statutes. That is the procedure currently being used by the Code Compliance Division.**

## **Chapter 15 of the Town Code**

The Code Compliance Division substantially follows the Town Code provisions found in Chapter 15. This procedure includes an initial written notice (e.g. Courtesy Notice) with time to comply. The Notice is either posted on the property, hand delivered or sent via first class U.S. Mail. If compliance is not attained, a Civil Citation is issued, which includes: 1) an additional compliance period; 2) provides for a Special Magistrate appeal process (if the violator disagrees with the Officer's determination); 3) a civil penalty (i.e. a fine) if compliance is not attained within the additional compliance period provided. The Town currently takes an additional step that is not required by Town Code which is to set Special Magistrate hearings for non-compliant Respondents which provides a venue to address their grievances. These hearings also allow the Town to confirm and support their findings by way of a Special Magistrate Order, confirming the fines, imposing a lien, and at times support abatement action.

Pursuant to Town Code the Special Magistrates may have sole discretion on reduction of fines on cases that have been heard by a Magistrate. However, the fines associated with these cases are not originally imposed by the Magistrate, but in accordance to the provisions of the Town Code the fines begin to accrue when the compliance period provided in the Civil Citation expires (if no appeal is filed). At the hearing, the Magistrate does confirm that a default has occurred, confirms the imposition of the fine, and further confirms that a lien may be recorded. The hearing also provides a venue wherein the respondents may have an opportunity to express themselves, if they did not timely file an appeal of the Code Officer's determination.

### **Additional Enforcement Powers**

Town Code Section 15-17 also provides that in addition to the powers and authority given to the special masters, the Town may, in its discretion, exercise any powers given to municipalities or their special masters by the Florida Constitution and Florida Statutes. Alternatively, the Town may choose to enforce compliance for any code violation, depending on issues of health, safety and welfare, through the filing of an action, seeking an injunction in a court of competent jurisdiction or utilizing the procedures set forth in section 15-19.

Section 15-19, provides that the Town may abate a code violation when: 1) voluntary correction by the property owner could not be attained; or 2) a courtesy notice of violation to the property owner has been issued pursuant to Chapter 15 of the Town Code, and the required compliance has not been completed by the date specified; or 3) the violation is considered a public nuisance and subject to summary abatement.

## Analysis

With the limited staff and resources available to the Code Compliance Division it is considered that the CVN (citation) process is by far the most effective and efficient manner in which to address code violations in the Town.

The NOV process requires a tremendous amount of work by the code officers, on the front end with little impact to the Respondents. The only "teeth" the process provides rests with a Special Magistrate's decision at a hearing, which historically occurs only after additional time to comply has been granted. This puts the Officer in a position to do multiple inspections, generate multiple notices, and prepare for hearings, which may all be moot if a violator complies after receiving multiple extensions of time with all the costs, including staff time and resources, borne strictly by the Town.

Some of the questions that need to be addressed as we move forward are:

- How much time should be allowed for compliance?
- Should violators be required to pay a fine for non-compliance, after a reasonable compliance period is provided?
- How much of a fine should be imposed for failure to comply?
- Should that fine run on a daily basis until compliance is attained?
- What course of action should be taken if a violator does not comply after a reasonable amount of time for compliance has been granted?
- Should liens be imposed for failure to comply and pay fines?

The response to these questions should serve to facilitate the discussion and provide insight as to which process is ultimately considered as a primary enforcement tool.

The Code Compliance Division will continue to strive to provide the Town's residents and business community with a well-balanced code enforcement program and compliance process through a professional, courteous, and stepped approach that focuses on education, information, arriving at mutually agreed upon solutions to compliance, and working with the affected parties in achieving voluntary compliance.

Due to the limited staff, the more direct and efficient methods that are made available to attain these goals, the more cost effective it should be for the Town.

**Budget Impact:** Costs to create and implement new processes and amend Town Code. Additional staff time to process under new NOV procedures.

**Staff Impact:** A change to an NOV process would entail employing additional staff time to implement new NOV procedures, plus a revamping of the Division's procedural processes now in place. Moreover, the Town Code may need to be amended to include the new provisions, or to specify that the additional enforcement methods are being adopted directly from the Florida Statutes.



**Conclusion:** The Town Commission will hold a meeting in November 2013, specifically addressing Code Compliance. Staff recommends that no interim changes be made in code enforcement procedures prior to this meeting. The November meeting will be a follow-up on the April 17, 2013, Workshop on code issues. Attached is a report that was provided, but deferred, at the June 11, 2013, Commission Meeting addressing code compliance priorities, including input from three Commission members on their individual code priorities. Attached to said report, is an updated compilation of priorities that includes input from a fourth Commission member. This code compliance priorities report, plus this information on enforcement options (Notice of Violation vs. Civil Citation) should serve to facilitate discussions at the November meeting. In order to have a successful code compliance program, it is essential that clear policy be provided on the enforcement priorities; the compliance process; and fines/penalties.



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Joe Damien  
Code Compliance Director



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Michael Crotty  
Town Manager