

Code Enforcement Board, repeat violations

Number: AGO 91-06

Date: January 03, 1996

Subject:
Code Enforcement Board, repeat violations

Mr. Bernard A. Heeke
Town Attorney for Lake Clarke Shores

RE: LOCAL GOVERNMENT CODE ENFORCEMENT BOARD–MUNICIPALITIES–code enforcement board must conduct a hearing and determine that violation has occurred before a repeat violation may be charged. s. 162.06, F.S.

QUESTION:

Must the code enforcement board hear a matter and make a determination that a violation has occurred before a repeat violation may be charged pursuant to s. 162.06(3), F.S.?

SUMMARY:

Before a person may be charged with a repeat violation, there must have been a previous determination by the code enforcement board that the person has violated the same provision of the code or ordinance.

This office has previously addressed the extent to which the provisions in Part I, ch. 162, F.S., the "Local Government Code Enforcement Boards Act," govern the procedures for enforcement of local codes and ordinances.[1] Pursuant to the enforcement procedures prescribed in s. 162.06, F.S.:

"(2) Except as provided in subsections (3) and (4), if a violation of the codes is found, the code inspector shall notify the violator and give him a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify an enforcement board and request a hearing. . . . If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(3) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify an enforcement board and request a hearing. . . . The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state."

Thus, as was concluded in AGO 89-16, even if a violation is corrected at the time a hearing is

scheduled, the code enforcement board is authorized to hold a hearing if the violation continued past the date set by the code inspector for compliance. This applies equally in the case of a repeat violation.

Section 162.04(5), F.S., defines "[r]epeat violation: to mean "a violation of a provision of a code or ordinance by a person *whom the code enforcement board has previously found to have violated the same provision within 5 years prior to the violation.* (e.s.) By definition, therefore, the code enforcement board would have to make a finding that a code provision has been violated before a "repeat violation" may be charged.[2]

Accordingly, a code enforcement board must conduct a hearing and make a determination that a violation of a code provision has occurred before there may be a "repeat violation."

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] See AGO's 89-16, 85-33 and 84-55.

[2] See *Alsop v. Pierce*, 19 So.2d 799, 805 (Fla. 1944) (when the controlling law directs how a thing shall be done, it is, in effect, a prohibition against its being done in any other way).