

**CITY OF TEMPLE TERRACE, FLORIDA
MAYOR AND CITY COUNCIL
REPORT OF WORK SESSION**

**Tuesday, January 3, 2012
Council Workroom
5:00 p.m.**

Having been duly advertised as required by law, the Mayor and City Council of the City of Temple Terrace, Florida, met in a work session, beginning at 5:00 p.m. on Tuesday, January 3, 2012, in the Council workroom in the rear of Council Chambers, to receive a presentation from the Code Compliance Department relative to proposed Code Enforcement Code Revisions.

PRESENT WERE: Mayor Joe Affronti, Council Members Robert M. Boss, Alison M. Fernandez, Ron Govin, Mary Jane Neale, and David Pogorilich, City Manager Kim Leinbach, City Attorney Mark Connolly, and City Clerk Lisa Small.

ALSO PRESENT WERE: Code Compliance Director Joe Gross, Fire Chief Keith Chapman, Assistant Fire Chief Ian Kemp, Deputy Police Chief Bernard Seeley, Housing Compliance Division Chief Andy Muzzy, Assistant City Attorney Catherine O'Dowd, and several others.

Mayor Affronti called the work session to order at 5:00 p.m.

Utilizing a PowerPoint presentation, a copy of which is part of the record, Code Compliance Director Joe Gross presented the proposed changes to the Land Development Code. He indicated the changes are essentially a rewrite of Section 25.315 and the addition of a new Section 25.335. He explained the purpose of the proposed revisions is to update the Municipal Code Enforcement Board (MCEB) Regulations, establish a Special Magistrate(s), and authorize County Court Citations.

The Code Compliance Director briefly reviewed how the current Code enforcement system works. He reviewed the MCEB is comprised of seven citizen volunteers, who meet monthly. He continued that last year the MCEB handled close to 100 cases, compared to 117 cases in 2010. He noted the cases heard by the MCEB last year represented less than 3% of the approximate 3,600 total cases. He explained the cases sent to the MCEB are the cases for which the Code Compliance Department, for whatever reason, was unable to obtain voluntary compliance. He said the Code Board currently reviews all types of violations, with the authority to issue findings of fact and Orders requiring compliance, and they establish fines, which may evolve into liens.

The Code Compliance Director explained the role of Special Magistrates, which would have the same functions and authorities of the MCEB, but instead of being seven individuals, there would be one individual serving as the Magistrate. He explained Special Magistrates are generally experienced attorneys in relevant disciplines; as the Code is currently written, the Special Magistrates would be Temple Terrace residents, although he was concerned that restriction may narrow the possible candidates. He continued the Special Magistrate can be a volunteer or a paid position, who would be appointed to a three-year term. In addition, he said that like the MCEB, the Special Magistrate would issue findings and orders, establish daily fines and/or liens, and recommend fine reductions to the City Council, but only for other Magistrates' decisions, not rehearing or reconsidering decisions made by the MCEB and vice versa.

Council Member Govin questioned why the City would want to have an attorney.

The Code Compliance responded that one of the advantages to the Special Magistrate is that the individual would have adjudication experience, such as the Special Magistrate utilized in the red light camera program. He said their understanding of law and due process and other issues involved in this arena are an advantage.

The City Attorney commented there is nothing in the law that says a Special Magistrate has to be an attorney. He explained that essentially the Special Magistrate, which is one individual, takes the place of the entire MCEB, both of which operate under Part 1 of Chapter 162, Florida Statutes, with the same power as the MCEB and operating under the same Rules of Procedure. He continued that if the ruling of a Special Magistrate is challenged, the chance of having the decision thrown out on a due process issue would be substantially lower when an attorney, who is trained in due process and evidence, is involved.

Council Member Govin questioned whether the City is having cases thrown out now because of due process issues. The City Attorney responded no, because the City is not using Special Magistrates now.

Council Member Govin commented that was his point if the current system is not entirely broken. He questioned whether the City Attorney would like to work for free or did he know if many attorneys would like to work for free. The City Attorney responded he did not know, adding that there is an attorney presently serving as an unpaid volunteer on the MCEB.

Council Member Pogorilich questioned whether the Special Magistrate would take the place of the current MCEB. The Code Compliance Director responded negatively, that they are not suggesting they dismantle the MCEB and use Special Magistrates; the Special Magistrates would augment the MCEB.

Council Member Pogorilich questioned why the City needs a Special Magistrate.

The Code Compliance Director responded it is an advantage when the case involves more technical Codes, and the individual serving as Special Magistrate has expertise in that area. He explained that while the administration is bringing to Council the supplemental enforcement procedures, which is the citation program, they were trying to bring the entire Code up-to-date with all of the available enforcement options. He noted that currently, if there was a reason they wanted to have a Special Magistrate now, the current Code would not allow that option.

Council Member Pogorilich surmised the administration is not necessarily suggesting they implement the Special Magistrate option, just revising the Code to include the option. The Code Compliance Director responded they are suggesting the City ease into the use of a Special Magistrate as a supplementary option, and not to entirely drop the MCEB.

The City Attorney clarified that the City has looked at what Tampa is doing in the area of Code enforcement, and patterned the proposed ordinance off Tampa's ordinance, which is to utilize all of the available enforcement methods provided in Chapter 162, Florida Statutes, including a Code enforcement board, special magistrates, and a citation system. He continued that utilizing all of the available methods gives their Code Compliance Department a variety of different ways to handle specific circumstances.

Council Member Pogorilich questioned how the determination would work as to which cases would be heard by the MCEB or Special Magistrate.

The Code Compliance Director responded that the nature of the violation might lend itself in one direction or the other. He cited as an example the rental housing codes, explaining that as much as those cases appear to be clearly in violation, it has been difficult when the cases reach the MCEB and are met with different perspectives. He continued that with one individual, a Special Magistrate, who was familiar with those regulations, it might be easier to make those decisions.

Council Member Pogorilich questioned who would be making the decision as to where a case would be heard and surmised if it was a rental housing case, it would go to the Special Magistrate, to which the Code Compliance Director responded affirmatively. The Code Compliance Director stated that there would be certain cases that would be routed to the Special Magistrate, but it would not foreclose the ability of the MCEB to hear a rental case. He continued that with citations, there are certain Codes that if they are heard there, they would not be heard anywhere else.

The City Manager interjected that a lot of the determination as to where the case would be heard would be dictated by the complexity of the case, along with standardization and the administration of fines, etc.

Council Member Pogorilich commented that it seems they are adding another layer that may or may not be necessary. He explained he wasn't aware of the MCEB having had issues with making decisions on rental cases.

The Code Compliance Director continued with the presentation, stating that the Special Magistrate was not intended to replace the MCEB, but eventually he suggested the MCEB could convene every other month, with the Special Magistrate meeting in the alternate month, on the same date, location, and televised format as the MCEB. He suggested the kind of cases they envision the Special Magistrate would handle would be those related to the Minimum Housing Code, rental housing permits, and work performed without permits.

The Code Compliance Director highlighted other proposed Section 25.315 revisions, noting that repeat violations would be handled identically, mandatory disclosure of violations required of sellers upon transfer of property, inspection report challenge opportunity and rehearing available for new evidence, to ensure due process. Lastly, he said the revisions provide for the Special Magistrate to set aside or remand provisions when necessary, such as in the case of bankruptcy filings.

The Code Compliance Director stated the other major component to the proposed changes to Code Enforcement is the opportunity to issue citations, which is called Supplemental Enforcement in the Statutes. He commented that certain types of cases simply do not lend themselves well to the MCEB, such as watering violations.

The Code Compliance Director explained that under the current Code, it would take four watering violations before anything can happen – first, a warning is issued; second, a Notice of Violation is issued, with a deadline for compliance; third, if found still watering, the case would go to the MCEB Agenda; and fourth, after the Hearing and the Order is issued, the violators would have to be found watering again in order to bring them back as a repeat violation. He summarized it is a very cumbersome and very time-consuming process, as compared to the citation process, which would require only two violations.

The Code Compliance Director indicated other violations that would be appropriately handled through the Citation process include illegal signs and soliciting by non-City respondents, and transitory violations, such as yard parking and commercial vehicles, which are “cat and mouse” under the MCEB process. He commented that sometimes the prospect of coming before the Municipal Code Enforcement Board, an immediate fine, or facing a judge in County Court deters some respondents who continually exhaust the City’s code enforcement resources.

The Code Compliance Director briefly explained the Citation process begins with an initial warning, which, if unresolved or repeated, results in issuance of a ticket. He said the fines, which are in classes, range from \$75 to \$450; the initial classes chosen to adopt for a smooth transition for the Court system, judges, and clerks, are the classes already in place by the City of Tampa. He continued they would see how that works over the first six months of the program and make sure Tampa’s fine classifications are compatible with the City of Temple Terrace. He explained they did not want to impose a whole new fine schedule and confuse everyone. He noted there is a \$15 add-on to the amount of the ticket for the filing fee and state assessments, with payment required within 30 days. He continued that hearings are conducted monthly on the third Friday, and there is a \$40 Court cost for the non-prevailing party.

Council Member Pogorilich questioned what would happen if the violator doesn’t pay the fine. The Code Compliance Director responded if the violator doesn’t pay the fine it would be rendered as a civil judgment. He gave an example of how the system worked in Pasco County, which differs somewhat from Hillsborough County. Council Member Pogorilich questioned whether the City would still have lien rights. Responding affirmatively, the City Attorney said the Court’s ruling would be rendered ultimately as a judgment, which would be recorded in the public records and become a lien, on which the City could foreclose in the same manner as MCEB liens. He continued that as stated earlier by the Code Compliance Director, he believed just having the citation, with the idea that in order to resolve it, the violator would have to go to County Court, is in itself a deterrent.

Council Member Pogorilich questioned whether this process would make it easier to collect or if it was about the same, and if it was a faster process and whether it would cost the City less.

The City Attorney responded that as far as the City’s ability to collect on the lien, he really didn’t know. Relative to the County court citations, he mentioned that they have been in contact with Sal Territo, Chief Assistant City Attorney for the City of Tampa, to see if one of their attorneys could cover the relatively few Temple Terrace cases at a certain dollar amount per case, because Tampa has a large caseload and they would already be at County court to prosecute Tampa’s cases. He noted that could be a win-win situation.

The Code Compliance Director explained the citation process, wherein the officer serves a warning to the respondent; if the violation persists, the officer issues a citation to the respondent. He noted that the Code Compliance Department's relationship with the public would change slightly in this interaction, explaining that currently the Department issues the violation and the MCEB establishes the Order and the fine is directly related to the MCEB; whereas, in the case of citations, it would be the Code Compliance officers handing out the citations. He said this would be a more direct approach than what they have now for certain types of violations. He continued that currently a courier from the County comes to the City three times per week on behalf of the Police Department, and it is his understanding that the Code Compliance Department could utilize this same courier to deliver the Code enforcement cases to the County Clerk's office on a timely basis, so that the cases would be on record when someone comes to pay their citation. He explained that otherwise it would be burdensome if a Code Compliance Officer had to deliver the case to the Court every time a citation was written. He noted the citation can be paid or contested, and the payment can be made in person at one of four locations in Hillsborough County or it can be mailed.

The Code Compliance Director displayed the citation forms currently in use by the City of Tampa, and in order to streamline and standardize the process, the City would adopt similar forms featuring the City's logo and codes. He briefly reviewed the fine schedule being proposed for now, which includes a \$75 fine for Class I violations, \$150 for Class II violations, and \$300 for Class III violations. He reviewed examples of violations for each of the classes, noting that at this point they have not suggested a Class IV fine, which carries a \$450 fine, since they have no violations at this time that seem to fit that category.

In response to Mayor Affronti's question as to whether those are the same dollar amounts for the various violations that are currently in place, the Code Compliance Director explained what is currently in place now in which the fines vary on a case-by-case basis with no consistency, as compared to the proposed citation process, which would be more uniform.

The City Attorney clarified that a few years ago the MCEB had a workshop in which they came up with a schedule of appropriate fines for certain types of violations. He explained that there is nothing in the law that says it has to be a certain amount; certain types of violations can go up to \$250 per day, which leaves the MCEB with quite a bit of discretion in what the daily accumulation of fine will be, whereas under the citation system there would be amounts established for each of the classes.

Council Member Govin commented the citation system appears to be contrary to his feeling of Temple Terrace by going to a judicial process rather than being judged by a group of peers, which he believes has a greater amount of sensitivity. He questioned why they couldn't continue as they are and set more precise guidelines, rather than generalities, instead of having outsiders making those decisions about Temple Terrace residents. He said he was not comfortable with it, based on what has been presented, and he would prefer to see an expansion of what they currently have, but not necessarily adding a judge to it.

Council Member Fernandez asked what would happen in the example of yard parking with multiple violations, and whether they would receive multiple citations.

Council Member Pogorilich questioned tree work, which was listed as a \$75 fine. He commented the City is pretty strict on trees, and the fines currently in place well exceed \$75. The Code Compliance Director stated the \$75 fine is for things like improper pruning, or not following industry standards or best management practices. Council Member Pogorilich questioned what happens if the violator is fined \$75 for improper pruning and because of the work, the tree dies. The Code Compliance Director commented that if the damage is severe enough that he believes the tree will die, they might cite them under the irreversible provision and removal.

Council Member Neale clarified they can issue a citation, and that has nothing to do with a Special Magistrate. The Code Compliance Director responded citations go to County Court, and a Special Master is another version of the MCEB.

The Code Compliance Director pointed out that once a violation is listed as being heard by one method - citation, Special Magistrate, or MCEB - that would be the only place that type of violation would be heard. He added the list could be altered. Council Member Neale clarified there would be a standardized fine amount for each one of the citations.

The Code Compliance Director concurred and added that currently with violations heard by the MCEB, the violators are told the fine could be up to \$250 per day. Under the citation system, he said that if the violation was repeated, the fine would be doubled, and if it was repeated for a third time, the violator is required to go to Court, regardless of paying it. He noted this is consistent with other jurisdictions. He said they would be revisiting the list of citation offenses and classes at mid-year to determine whether any need to be removed or others added.

The Code Compliance Director briefly reviewed the departmental implications, which include initial printing costs for the warning and citation forms, tracking workload for the citations, hearings for contested citations within 45 to 60+ days of violation, and monthly officer court attendance for testifying if a case is being contested. He noted the potential revenue from fines is anticipated to offset the costs of the citation program.

The Code Compliance Director summarized his presentation with a Venue Summary reflecting examples of cases that could be heard under the various options.

The City Attorney clarified why they are recommending the citation program, relating that from his involvement over the years, there appears to be a "cat and mouse" game with some of the transitory violations, such as parking on the grass, which is a frequent violation. The Code Compliance Director added there is also accountability, i.e., when the violators are tenants, the tenants sometimes know the landlord is ultimately responsible when it goes before the MCEB; under a citation system, if the tenant is the violator, the tenant will receive the citation and won't be able to pass it on to the landlord. In response to Mayor Affronti's question as to how serious this problem is, the Code Compliance Officer stated yard parking is one of the most frequent violations, and it is often the same violator over and over. The Code Compliance Director reiterated the cumbersome process under the current MCEB system, indicating the citation system would alleviate some of that.

Mayor Affronti asked what would be different under the citation system for yard parking. The Code Compliance Director explained that instead of coming before the MCEB, the violator now has a ticket and will be paying a fine; if he puts the car out there again, it would be \$150. He reviewed warnings would be issued in all cases. He commented that if the citation program is endorsed by the Council, they will “tiptoe” into this area and not start writing tickets right away; that was not the intent of the program.

Council Member Neale questioned why so few of the cases come before the MCEB, and whether the citation would provide better enforcement. The Code Compliance Director responded that for certain types of violators it would bring matters to a head. As an example, he said the State was not happy that the City was just issuing warnings for violations to the water restrictions and said the City should be fining violators; however, there was no mechanism in the Code to allow the City to fine them – only the MCEB process.

Council Member Govin questioned what keeps the City from changing the process without involving citations. He said he does not understand why the mechanism must be changed for only approximately 120 cases per year. He expressed concern about adding lawyers, who act as Magistrates, and take away the City’s “homey” feeling. The Code Compliance Director responded that the Department’s pursuit of voluntary compliance will not change; that is always their goal. He continued that they cannot simply streamline the current system, because the law, as written in Chapter 162, does not allow the City to write a citation and have it heard by the MCEB.

The City Attorney concurred, clarifying that under Chapter 162, there are two ways to go – one is the MCEB and/or Magistrate and the other way is a citation; if they go with a citation, it requires the cases to go to county court.

Council Member Boss commented relative to the listed cases under citations, that having dealt with a lot of these cases before with law enforcement, these are transitory issues, where everyone knows they can beat the system. He continued that with solicitors they currently can only issue trespass warnings, and the citation system would be a way to get rid of these small transitory problems, since there is no way to battle them under the current system. He surmised it is not the core residents who are committing these violations.

The City Manager suggested it was a timing issue; citing as an example, when the Hillsborough River was so low they could walk across it, people were still watering their lawns, and by the time they go through the MCEB process, it is weeks later and accomplishes nothing. He said they are suggesting that they highlight those types of cases that need immediate resolution for the citation process.

Council Member Fernandez questioned whether yard parking and commercial vehicles is an area that is frustrating neighbors. The Code Compliance Director responded that can be; however, they still have to be able to verify the problem, since their requirement for evidence is still the same, but they envision the citation program would streamline the process and curtail the behavior.

Council Member Fernandez commented that one of the goals or purposes of the citation program would be to alleviate the neighbors' frustrations on some of these issues. The Code Compliance Director concurred and added that it can be seen as a deterrent. He said he appreciated the feedback that the system appears not to be broken, but they don't want the neighbors to believe they are powerless. He said they want to have the tools necessary to cure as many of the persistent violations as they can, but keep the homey feeling that Council Member Govin described.

Council Member Fernandez commented that her concern is with the rigidity of the Tampa system. She explained there may be the habitual offender for lawn parking, but questioned instances such as someone coming home for lunch in a company truck or an occasional party causing overflow parking. Council Member Pogorilich commented that the current Code allows for that. The Code Compliance Director added these are situations where the officers' judgment and discretion come into play. He assured the Council they will use good judgment and take all the factors into consideration, but there are some violators who have exhausted all reasonable factors, and the officers are now at the point of needing to give the violators an incentive.

Mayor Affronti asked whether it is imperative to have a Special Magistrate to be able to issue citations. The Code Compliance Director responded negatively, that a Special Magistrate is a different tract.

Council Member Pogorilich expressed concern that having a Special Magistrate on alternating months would slow the process down; if Council is going to go that route, he suggested having the Special Magistrate on a different day. The Code Compliance Director interjected they were trying to incorporate the process into the budget they currently have.

Regarding the three venues – MCEB, Special Magistrate, and Citations, Council Member Pogorilich questioned whether the Code Compliance Director thought the program would pay for itself. After a brief explanation of how much of the cost was a wash, it was determined the costs were likely not an issue. Council Member Pogorilich commented that with all of these programs there may not be a better collection of fines; the programs are all basically deterrents.

Mayor Affronti asked the Code Compliance Director what was needed from the Council. The Code Compliance Director responded the presentation was to brief the Council on proposed revisions that were headed their way for consideration. The City Manager interjected that if the Council is dead set against a Special Magistrate, the administration would like to know now so that the changes can be made to the proposed ordinances before they come before the Council.

Council Member Govin commented that the Special Magistrate and the citations don't sit well with him. In response to whether they should leave the Code enforcement program as is, he said that they should fix it without adding outside intervention to the process if that is possible. He said it hasn't been proven to him that they cannot do citations here without having to go through the Court.

The City Attorney affirmed that cannot be done; the only way to do citations is through the County court system.

Council Member Govin questioned whether the City is basically doing citations when a property is “tagged.” The City Attorney responded it is a Notice of Violation giving an opportunity to come into compliance, after which they come before the MCEB, who gives them additional time to come into compliance, which is followed by a second order that imposes a fine. He said the present system is very time-consuming, requiring weeks to actually get an order entered that imposes a fine; there is no way to “fix” what they are doing, because they have to follow a statutory formula under the system currently in place.

Council Member Govin commented they met the other day to talk about having public relations to tell people what a friendly City this is, and all of a sudden they are going to pass something that is extremely burdensome on the citizens and sounds very rigid. He said the timing doesn’t seem right.

Council Member Neale said she would have to think about the Special Magistrate, but she is definitely in favor of the citation program, because she believes it gives the Code Compliance Department a quick and easy way to enforce what they can currently enforce.

The City Attorney noted that if a citation is issued and someone challenges it, it has to go to a County court. He said the Council could opt to use a citation system and say “no, thank you” to a Special Magistrate.

Council Member Boss commented that it appears the Special Magistrate concept was to have someone with more technical knowledge to help with cases that may be appealed. Regarding the citation program, he said it is probably a small percentage of violators that this program will deter and won’t seem like an onerous, burdensome system, but it will help the frustrated neighbors and Code Compliance Officers address repeat offenders.

Council Member Pogorilich concurred with others who don’t agree a Special Magistrate is needed. Regarding the citations, he would be more in favor if he knew exactly which violations would be on the list. The Code Compliance Director distributed copies of the PowerPoint presentation that contained the current proposed list. Council Member Pogorilich stated he was not opposed to it if they were focusing on water violators and habitual yard-parkers; he would need more time to think about some of the other violations.

The City Attorney interjected that because it is a new system, they could start small, see how it goes, and if it works out well, they could always expand the list.

Council Member Pogorilich mentioned panhandling in the right-of-way was another violation that would be appropriate, but questioned where a panhandler would get the money to pay the citation. Council Member Boss said there are also professional business panhandlers that come back continually and from a law enforcement perspective, they really have nothing to use to get them out of there. Council Member Pogorilich said that if they are going to phase it in, he could support the citation system. While he shares Council Member Govin’s concerns, he served on the MCEB for awhile and understands the people they will be focusing on are not the “norm” for the City.

Council Member Fernandez concurred that they don't need a Special Magistrate right now, but questioned whether the Code should be changed to allow for that possibility in the future. She said that would be acceptable, if it was not implemented at this time. She said she does favor the citation program, because she understands how frustrated neighbors become when there is frequent yard-parking, watering violations, and problems with at-large pets and their waste. She said she would be concerned about the appearance of rigid enforcement that would change the tone of the neighborhood and wasn't sure how that would be handled.

The Code Compliance Director responded that he was blessed with a very competent staff, who understands Council's concerns; it is a balancing act.

Mayor Affronti commented that he does not favor the Special Magistrate idea, but he does support the citation program.

The City Manager summarized that staff should forget the Special Magistrate option at this juncture and will narrowly define the citation process to immediate and temporal needs.

The work session concluded at 5:55 p.m.

Submitted by,

Melissa E. Small, MMC
City Clerk