

COUNCIL AGENDA STATEMENT



Meeting Date: January 12, 2021

To: Honorable Mayor and Council Members

Through: George Garrett, City Manager

From: Code Compliance Department

Subject: Code Compliance Report - December 2020
Consideration of Form of Adjudication

On July 11, 2017 Council passed Resolution 2017-03 establishing a Special Magistrate to replace the Code Compliance Board. A contract with our special magistrate was approved on June 12, 2018 by Resolution 2018-62.

The first Code Hearing with the Special Magistrate was on August 15, 2018. Since the appointment of the Special Magistrate the Code Department has been able to streamline several processes to utilize staff time more efficiently.

The following is a break down comparing the Code Compliance Board vs. the Special Magistrate attendance at the hearings.

CODE COMPLIANCE BOARD (COMPOSED OF 7 MEMBERS)

* During the months of Sept., Oct., Nov., and Dec. 2017 there were no board meetings due to

YEAR	SCHEDULED HEARINGS	ATTENDED HEARINGS PER 7 MEMBER BOARD	ABSENT/MISSED MEETINGS PER 7 MEMBER BOARD	CANCELLED HEARINGS
2016	12	5 4 4 4 5 7 3	2 4 4 4 3 2 5	5
*2017	12	3 3 4 4 3 5 0	2 2 1 1 2 1 5	4

Hurricane Irma.

* June 2018 the Code Board was dissolved. There were no hearings scheduled during the months of January-July as Council was in the process of appointing a Special Magistrate to conduct the code hearings.

CODE COMPLIANCE SPECIAL MAGISTRATE

YEAR	SCHEDULED HEARINGS	ATTENDED HEARINGS	CANCELLED HEARINGS
2018	12	4	1
2019	12	9	3
2020	12	5	7*

* This year, seven (7) hearings had to be cancelled or continued as we were in the process of hiring new code officers as well as concerns over-in-person gatherings in City Hall related to the COVID Pandemic.

The mechanism for appeal remained the same with both the Code Compliance Board and the Special Magistrate. An appeal of a ruling must go before Circuit Court, however an appeal of the amount of a fine may go before City Council. There were no appeals to either the Circuit Court or City Council during the time period reported for the Code Compliance Board and there have been no appeals of any rulings or fines imposed by the Special Magistrate.

According to Florida Statute “the local governing body of a county or a municipality that has a population equal to or greater than 5,000 persons must appoint seven-member code enforcement boards.” Additionally, The Local Government Code Enforcement Boards Act requires that, when possible, such boards be composed of “an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.” Aside from maintaining the board demographics, lack of attendance can keep a board from achieving quorum numbers and lead to cancellation of the scheduled meeting.

Florida Statute also requires a local government to maintain separate legal counsel for its code enforcement board (“The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board, but in no case shall the local governing body attorney serve in both capacities.”). Therefore, in addition to the City attorney, a separate attorney had to be retained specifically to board meetings. This statutory mandate to employ an additional attorney as advisor to the volunteer board will essentially negate the cost savings of using a volunteer board.

Code Compliance Activity

The Code Department sent Thirteen (13) cases for Hearing before the Special Magistrate scheduled on December 19, 2020. Prior to the hearing 2 cases were withdrawn based on compliance, 7 cases were continued pending further review, 4 cases resulted in findings of violation by the Special Magistrate.

Public complaints and phone calls have increased substantially as seasonal residents and tourists have arrived in the Keys. Staff continues to work with the public on education and compliance.

Multiple cases are being reviewed for the next legal step to collect outstanding fines.

Code Cases: October and November 2020

Cases opened: 24

Cases closed: 17

Total open cases: 210*

(*A large portion of these cases remain open due to fines/fees due or are moving toward compliance via application for building permits/ active permits not yet inspected and closed out.)

Code Department staff responded to numerous Code complaints either by telephone, email, online, or in-person. A total of 24 new cases were opened. Not all complaints resulted in open cases as they were either quickly resolved, unfounded, civil in nature, or subsequent complaints on an existing Code case.