

ORDINANCE NO. 5-2017

AN ORDINANCE OF THE TOWN OF BRINY BREEZES, FLORIDA, AMENDING THE TOWN CODE TO ADD A NEW SECTION ENTITLED CODE ENFORCEMENT SYSTEM; CREATING THE POSITIONS AND AUTHORIZING THE USE OF A CODE ENFORCEMENT BOARD AND A SPECIAL MAGISTRATE; PROVIDING FOR ENFORCEMENT PROCEDURES; PROVIDING FOR HEARINGS; PROVIDING FOR FINES, COSTS OF REPAIRS, AND LIENS; PROVIDING FOR APPEALS; PROVIDING FOR NOTICES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Briny Breezes is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and,

WHEREAS, the Town Council deems it necessary and advisable to amend the Town Code to create and provide for the use of a Code Enforcement Board and a Special Magistrate for code enforcement proceedings pursuant to the requirements of Chapter 162, Florida Statutes.

NOW THEREFORE,
BE IT ORDAINED BY THE MAYOR AND ALDERMEN OF THE TOWN OF BRINY BREEZES, FLORIDA:

Section 1. The Town of Briny Breezes hereby finds that the recitations contained in the preamble hereof are true and correct and the same are incorporated herein by reference as legislative findings of fact.

Section 2. **Purpose and Intent.** This Ordinance is intended to create a Code Enforcement Board and a Special Magistrate system for enforcement of the Town Code.

Section 3. **Amendment.** That the Code of Ordinances, Town of Briny Breezes, Florida, is hereby amended to add new section 154 entitled "Code Enforcement", which shall provide as follows:

(Additions are indicated by underlining and deletions are indicated by ~~strike through~~.)

CODE ENFORCEMENT SYSTEM

Section 1: Statement of Intent

It is the intent of this part to promote, protect, and improve the health, safety, and welfare of the citizens of the Town of Briny Breezes by authorizing the creation of an administrative board and the appointment of a special magistrate with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in the Town, where a pending or repeated violation continues to exist.

Section 2: Adoption of Code Enforcement System

Pursuant to F.S. §162.03, the Town of Briny Breezes hereby adopts an alternate code enforcement system described herein for the enforcement of the Town's municipal codes, ordinances, and regulations. The civil penalties assessed or collected pursuant to this article shall be in addition to, and not in lieu of, any other civil or administrative remedies the Town may have pursuant to the law.

A special magistrate shall have the same status as the Code Enforcement Board (hereinafter CEB) under the Statutes and the Town's code.

Section 3: Definition of Terms and Phrases

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Local governing body" means the governing body of the Town of Briny Breezes, however designated.

(2) "Code inspector" means any authorized agent or employee of the Town of Briny Breezes whose duty it is to assure code compliance.

(3) "Local governing body attorney" means the legal counselor for the Town.

(4) "Enforcement board" means the Town of Briny Breezes Code Enforcement Board.

(5) "Repeat violation" means a violation of a provision of a code or ordinance by a person who has been previously found through the Town's Code Enforcement Board or special magistrate, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations.

Section 4: Composition and Organization of Code Enforcement Board

(1) The Town Council shall appoint the members of the CEB and legal counsel for the CEB. The CEB shall consist of five (5) members and two (2) alternate members. Members of the CEB shall be residents of the Town of Briny Breezes. Appointments shall be made in accordance with applicable law and ordinances on the basis of experience or interest in the

subject matter jurisdiction of the CEB in the sole discretion of the Town Council. The membership of the CEB shall, whenever possible, include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.

(2) The initial appointments of the CEB members shall be as follows:

1. One member appointed for a term of 1 year.
2. Two members appointed for a term of 2 years each.
3. Two members appointed for a term of 3 years each.

Alternates shall serve for a term of 3 years, until they resign, or until they are removed or replaced by the Town Council, whichever comes first.

(3) Thereafter, all appointments to the CEB shall be made for a term of 3 years.

(4) A member may be reappointed upon approval of the Town Council. An appointment to fill any vacancy on the CEB shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chair, the CEB shall declare the member's office vacant, and the Town Council shall promptly fill such vacancy.

(5) The CEB members shall serve at the pleasure of the Town Council and may be suspended and removed by the Town Council for cause. For the purposes of this section, cause shall be as determined by the Town Council in their sole discretion. Alternate members shall act only when a regular CEB member is absent, under a disability, or disqualified from the proceedings. When an alternate CEB member is needed, the Board shall request the service of the alternates in alphabetical order until a qualifying and available alternate is found. A sitting alternate shall be counted towards a quorum.

(6) The members of the CEB shall elect a chair, who shall be a voting member, from among the members of the Board. The presence of three or more members shall constitute a quorum of the five-member CEB. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the Town Council or as are otherwise provided by law. The chair shall control the proceedings.

Section 5 Special Magistrate

Special magistrates shall be members in good standing of the Florida Bar and either a certified mediator under the rules of the Florida Supreme Court, an arbitrator qualified by a recognized arbitration association, or a former judge. Special magistrates shall be authorized to hear and decide cases involving code violations in the same manner as the CEB.

Section 6 Representation

(1) The Town Council shall designate the person to represent the Town by presenting cases before the CEB. When the CEB is in need of legal counsel, the Town Council shall

appoint an attorney to advise the CEB. The Town Attorney shall not serve in both capacities.

(2) In cases before the magistrate, the Town Council shall designate the person to represent the Town by presenting the Town's case.

Section 7 Enforcement Procedure

(1) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes. No member of the CEB or a special magistrate shall have the power to initiate such enforcement proceedings.

(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 or her a reasonable time to correct the violation. The time for correction shall be no longer than thirty (30) days. Should the violation continue beyond the time specified for correction, the code inspector shall notify the Town Clerk or the Clerk's designee and request a hearing. The CEB or special magistrate shall, through its clerical staff, schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in s. 162.12 to said violator. At the option of the CEB or the special magistrate, notice may additionally be served by publication or posting as provided in s. 162.12. 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 CEB or special magistrate even if the violation has been corrected prior to the 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 the CEB or special magistrate and request a hearing. The CEB or special magistrate, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to s. 162.12. The case may be presented to the CEB or special magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the CEB or special magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the CEB or special magistrate.

(4) If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the CEB or special magistrate and request a hearing.

(5) If the owner of property that is subject to an enforcement proceeding before the CEB, special magistrate, or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(a) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(b) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(c) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(d) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer. A failure to make the disclosures described in paragraphs (a), (b), and (c) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

(6) The time, date and place set for the CEB hearing or special magistrate hearing shall be scheduled and notice of the hearing shall be provided to the alleged violator and the code inspector by the Town Clerk or the Clerk's designee. If the code inspector has reason to believe a violation presents a serious threat to the public health, safety and welfare, or is irreparable or irreversible in nature, a special or emergency hearing may be called as provided herein.

Section 8 Conduct of Hearing

(1) Upon request of the code inspector, or at such other times as may be necessary, the chair of the CEB or the special magistrate shall call for a hearing. A hearing also may be called by written notice signed by at least two members of the five-member CEB. Minutes shall be kept of all hearings by each CEB or the special magistrate, and all hearings and proceedings shall be open to the public. The Town Council shall provide clerical and administrative personnel as may be reasonably required by the CEB or the special magistrate for the proper performance of their duties.

(2) Each case before the CEB or special magistrate shall be presented by the local governing body attorney or by a member of the administrative staff of the Town. If the Town prevails in prosecuting a case before the the CEB or special magistrate, it shall be entitled to recover all costs incurred in prosecuting the case before and such costs may be included in the lien authorized under s. 162.09(3).

(3) The CEB or special magistrate shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The CEB or special magistrate shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(4) At the conclusion of the hearing, the CEB or special magistrate shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue a written order affording the proper relief consistent with powers granted herein. In the case of a proceeding with the CEB, the finding shall be by motion approved by a majority of those members present and voting, except that at least three members of a five-member CEB must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in s. 162.09(1), the cost of repairs may be included along with the fine if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the CEB or special magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

Section 9 Powers of CEB and Special Magistrate

The CEB and the special magistrate shall have the power to:

- (1) Adopt rules for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county, the Town's police department, or a licensed process server.
- (3) Subpoena evidence to its hearings.
- (4) Take testimony under oath.
- (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Section 10 Administrative Fines; Costs of Repair; Liens

(1) A CEB or special magistrate, upon notification by the code inspector that an order of the CEB or special magistrate has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the CEB or special magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in s. 162.06(4), the CEB or special magistrate shall notify the Town Council, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the Town to make further repairs or to maintain the property and does not create any liability against the Town for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, the CEB or special magistrate finds a violation to be irreparable or

irreversible in nature, it may order the violator to pay a fine as specified in paragraph (2)(a).

(2)(a) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if the CEB or special magistrate finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.

(b) In determining the amount of the fine, if any, the CEB or special magistrate shall consider the following factors:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation;
3. Any previous violations committed by the violator; and,
4. Any other relevant mitigating or aggravating factor as determined by the CEB or special magistrate.

(c) The CEB or special magistrate may reduce a fine imposed pursuant to this section.

(d) The CEB or special magistrate may impose additional fines to cover all costs incurred by the Town in enforcing its codes and all costs of repairs pursuant to subsection (1).

(3) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the Town and the Town may execute a satisfaction or release of lien entered pursuant to this section. After 3 months from the filing of any such lien which remains unpaid, the CEB or special magistrate may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. Said authorization shall be in writing. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under s. 4(a), Art. X of the State Constitution.

Section 11 Appeals.

An aggrieved party, including the Town, may appeal a final administrative order of the CEB or special magistrate. Such an appeal shall not be a hearing de novo but shall be

limited to appellate review of the record created before the CEB or special magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed.

Section 12 Notices

(1) All notices required by this part must be provided to the alleged violator by:

(a) Certified mail, and at the option of the Town, return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The Town may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the Town;

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

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

(2) In addition to providing notice as set forth in subsection (1), at the option of the the CEB or special magistrate or the Town, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the CEB or special magistrate is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be the Town's primary office location.

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

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

(3) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

Section 13 Provisions of Ordinance Are Supplemental

The provisions of this Ordinance are an additional or supplemental means of obtaining compliance with the Town codes. Nothing contained in this Ordinance shall prohibit the Town from enforcing its codes by any other means.

Section 14 Designation of Hearings Before Code Enforcement Board and Special Magistrate

The Town Council shall designate by Town Council Resolution the specific code violations which will be heard by the special magistrate and the specific code violations which will be heard by the Code Enforcement Board. Said Resolution may require all violations to be heard by either body.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

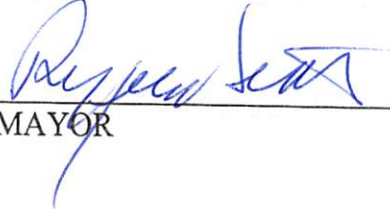
Section 5. Codification. It is the intent of the Town Council of the Town of Briny Breezes that the provisions of this ordinance shall become and be made a part of the Town of Briny Breezes Code of Ordinances, and that the sections of this ordinance may be re-numbered or re-lettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

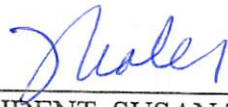
Section 6. Repeal. All prior Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 7. **Effective Date.** This ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Town Council of the Town of Briny Breezes, Florida, in special session on first reading on November 30, 2017, and in regular session on second reading on December 28, 2017.

TOWN COUNCIL OF THE TOWN OF BRINY BREEZES


MAYOR



PRESIDENT, SUSAN THALER



ALDERMAN, CHRISTINA ADAMS

(TOWN SEAL)

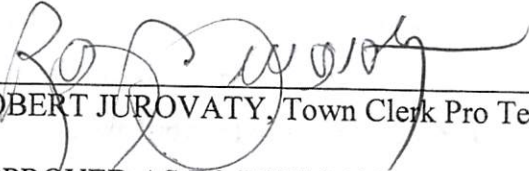



ALDERMAN, ALLEN "CHICK" BEHRINGER



ALDERMAN, ROBERT JUROVATY


ALDERMAN, JAMES McCORMICK

ATTEST:


ROBERT JUROVATY, Town Clerk Pro Tem

APPROVED AS TO FORM AND CORRECTNESS:


JOHN J.R. SKRANDEL
Attorney For Town of Briny Breezes