

# ARTICLE 10

## ENFORCEMENT

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# ARTICLE 10

## ENFORCEMENT

### CHAPTER A GENERAL

The provisions of this Code shall be enforced by: (1) the Code Enforcement Special Master pursuant to the authority granted by F.S. § 162.01 et seq., as may be amended; (2) the Environmental Control Hearing Board (ECHB) pursuant to the PBC Environmental Control Act, Chapter 77-616, Special Acts, Laws of Florida; (3) the Groundwater and Natural Resources Protection Board (GNRPB), an alternate code enforcement board created pursuant to the authority granted by F.S. § 162.03(2) et seq., as may be amended; (4) the Board of County Commissioners (BCC) through its authority to enjoin and restrain any person violating the Code; or (5) PBC through the prosecution of violations in the name of the State of Florida pursuant to the authority granted by F. S. § 125.69 as may be amended. The powers of each are described in Art. 2.G, Decision Making Bodies.

### CHAPTER B ENFORCEMENT BY CODE ENFORCEMENT SPECIAL MASTERS

The Code Enforcement Special Master, (herein after also referred to as Special Masters) shall have the jurisdiction and authority to hear and decide alleged violations of the Codes and Ordinances enacted by PBC including, but not limited to the following codes: building, electrical, fire, gas, landscape, plumbing, sign, zoning and any other similar type codes which may be passed by PBC in the future which regulate aesthetics, construction, safety, or location of any structure on real property in PBC. Further, any violation(s) of this Code may be prosecuted pursuant to the following standards and procedures.

#### Section 1 Procedure

Alleged violation of any PBC Codes or Ordinances as described herein may be filed with the Code Enforcement Division by citizens or those administrative officials who have the responsibility of enforcing the various Codes or Ordinances.

##### A. Issuance of Notice of Violation

Except as set forth in Art. 10.B.1.B, Repeat Violation, and Art. 10.B.1.C, Public Health, Safety and Welfare Violations, if a violation(s) of a Code or Ordinance is believed to exist, the Code Enforcement Division shall specify a reasonable time to correct the violation(s). Should the violation(s) continue beyond the time specified for correction, the Code Enforcement Division shall give notice to the alleged violator that a Code Enforcement hearing will be conducted concerning the alleged violation(s) as noticed. The notice shall state the time and place of the hearing, as well as the violation(s) which is alleged to exist. If the violation is corrected and then repeated or if the violation is not corrected by the time specified for correction by the code inspector, the case may be brought for hearing even if the violation has been corrected prior to hearing, and the notice of violation shall so state. If the code enforcement officer 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 officer shall make a reasonable effort to notify the violator and may immediately notify the Special Master and request a hearing.

##### B. Repeat Violation

If a repeat violation is identified, the code inspector shall notify the violator but is not required to give the violator reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, may request a hearing. The Code Enforcement Division shall give notice to the alleged violator as set forth in Art. 10.B.1.A, Issuance of Notice of Violation. The case may be brought for hearing even if the repeat violation has been corrected prior to hearing, and the notice shall so state. For the purposes of this Chapter, the term "repeat violation" shall mean a violation of a provision of a Code or Ordinance by a person who has been found through a Code Enforcement Special Master or any other quasi-judicial or judicial process within the prior five years to have violated or who has admitted violating the same provision notwithstanding the violations occur at different locations.

##### C. Public Health, Safety and Welfare Violations

If the Code Enforcement Officer 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 Enforcement Officer shall make reasonable effort to notify the violator and may immediately request a code enforcement hearing.

#### **D. Persons Charged with Violations**

Persons charged with such violation(s) may include:

1. The owner, agent, lessee, tenant, contractor, or any other person using the land, building, or premises where such violation has been committed or shall exist.
2. Any person who knowingly commits, takes part or assists in such violation.
3. Any person who maintains any land, building, or premises in which such violation shall exist.

#### **E. Transfer of Property**

If the owner of the property which is subject to a code enforcement proceeding transfers ownership of such property between the time the notice of violation was served and the time of the hearing, such owner shall:

1. Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.
2. Deliver to the prospective transferee a copy of the notices and other materials relating to the code enforcement proceeding received by the transferor.
3. 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.
4. File a notice of the transfer of the property with the Code Enforcement Division with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days of the date of the transfer.

A failure to make the disclosure described in Art. 10.B.1.E, Transfer of Property, before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the hearing 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.

### **Section 2 Hearings**

#### **A. Convene Hearing**

Upon request of the Code Enforcement Officer, or at such other times as may be necessary, a hearing before the Special Master may be convened. Minutes shall be kept of all Code Enforcement hearings, and all hearings shall be open to the public.

#### **B. Burden of Proof**

At the hearing, the burden of proof shall be upon the Code Enforcement Division to show by a preponderance of the evidence that a violation(s) does exist.

#### **C. Absence of Alleged Violator**

Where proper notice of the hearing has been provided to the alleged violator as provided for herein, a hearing may proceed even in the absence of the alleged violator. Proper notice shall be assumed where a notice of violation has been mailed to the alleged violator by certified mail and the alleged violator, his or her agent, or other person in the household or business has accepted the notice of violation, or where a Code Enforcement Officer, under oath testifies that he/she did hand deliver the notice to the alleged violator, or as otherwise provided in Art. 10.B.6, Notices.

#### **D. Testimony**

All testimony shall be under oath and shall be recorded. The formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern the proceedings. Upon determination of the Special Master, irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the State of Florida. Any part of the evidence may be received in written form.

#### **E. Witnesses**

The Special Master may inquire of or question any witness present at the hearing. The alleged violator (hereinafter also referred to as respondent), his/her attorney, Code Enforcement Officers or attorney representing the Division shall be permitted to inquire of or question any witness present at the hearing. The Special Master may consider testimony presented by Code Enforcement Officers, the respondent or any other witnesses.

#### **F. Decision**

At the conclusion of the hearing, the Special Master shall orally render his or her decision (order) based on evidence entered into the record. The decision shall then be transmitted to the respondent in the form of a written order including findings of fact, and conclusions of law consistent with the record. The order shall be transmitted by mail to the respondent within ten days after the hearing. The order may include a

notice that it must be complied with by a specified date and that a fine and costs may be imposed and, under the circumstances set forth in Art. 10.B.1.C, Public Health, Safety and Welfare Violations, the cost of repairs or other corrective action 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 PBC 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 paragraph and the order is complied with by the date specified in the order, the Special Master 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.

#### **G. Powers**

Special Master shall have the power to:

1. Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by a Sheriff or other authorized persons consistent with Rule 1.410(d), Florida Rules of Civil Procedure upon request by the Special Master.
2. Subpoena records, surveys, plats and other documentary materials.
3. Take testimony under oath.
4. Issue orders having the full force and effect of law to command whatever steps are necessary to bring a violation into compliance.
5. Assess fines, Lien Property and assessment costs pursuant to Art. 10.B.3, Administrative Fines, Costs, Liens; Costs; Liens of this Article, including costs relating to the prosecution of cases before the Special Master in those cases where the governing body prevails.

### **Section 3 Administrative Fines; Costs; Liens**

#### **A. Assessing Fines**

The Special Master, upon notification by the code inspector that a Code Enforcement Order has not been complied with within 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 for compliance set forth in the order, 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 Enforcement Officer. In addition, if the violation is a violation described in Art. 10.B.1.C, Public Health, Safety and Welfare Violations, the Special Master shall notify the BCC, which may make all reasonable repairs or other corrective actions which are required to bring the property into compliance and charge the violator with the reasonable costs of the repairs or other corrective actions along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local government body for 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.

#### **B. Recovery of Costs**

If PBC prevails in prosecuting a case before the Special Master, it shall be entitled to recover all costs incurred. Whether and to what extent such costs are imposed shall be within the discretion of the Special Master but shall not exceed the costs incurred.

#### **C. Amount of Fines**

A fine imposed pursuant to this Section shall not exceed \$1,000 per day for a first violation and shall not exceed \$5,000 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to Art. 10.B.3.A, Assessing Fines. If, after due notice and hearing, the Special Master finds a violation to be irreparable or irreversible in nature, he or she may impose a fine not to exceed \$15,000 per violation or as otherwise authorizes by Florida State Statute. In determining the amount of fine, if any, the Special Master shall consider the following factors:

1. the gravity of the violation;
2. any actions taken by the violator to correct the violation; and
3. any previous violations committed by the violator.

#### **D. Modification of Fines**

The Special Master may reduce a fines imposed pursuant to this Section in accordance with the procedures and conditions set forth in a resolution adopted by the BCC. The Special Master may authorize the Code Enforcement Division to propose a Consent Order which sets forth agreed terms for

payment of any fine. The Special Master may in his or her discretion adopt such Consent Order in lieu of execution or foreclosure as set forth in Art. 10.B.3.F, Foreclosure.

**E. Lien**

A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records in the Office of the Clerk of the Circuit Court in and for PBC, Florida. Once recorded, the certified copy of an order shall constitute a lien against the land on which the violation(s) exists and upon any other real or personal property owned by the violator; and it 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 Section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien, filed pursuant to this Section, whichever comes first. Once recorded, the lien shall be superior to any mortgages, liens, or other instruments recorded subsequent to the filing of the code enforcement lien.

**F. Foreclosure**

After three months from the filing of any such lien which remains unpaid, PBC may foreclose the lien in the same manner as mortgage liens are foreclosed. Such lien shall bear interest at the rate allowable by law from the date of compliance set forth in the recorded order acknowledging compliance. The local government body shall be entitled to collect all costs incurred in recording and satisfying a valid lien. No lien created pursuant to the provisions of this Ordinance may be foreclosed on real property which is a homestead under Art. X, Sec. 4, of the Florida Constitution.

**Section 4 Other Legal Remedies**

**A. Legal Remedies**

In addition to the criminal penalties and enforcement procedures provided herein the BCC may institute any lawful civil action or proceeding to prevent, restrain or abate:

1. the unlawful construction, erection, reconstruction, alteration, rehabilitation, expansion, maintenance or use of any building or structure; or
2. the occupancy of such building, structure, land or water; or
3. the illegal act, conduct, business, or use of, in or about such premises.

**B. Administrative Remedies**

**1. Cease and Desist Orders**

The Executive Director of PZB shall have the authority to issue cease and desist orders in the form of written official notices given to the owner of the subject building, property, or premises, or to his agent, lessee, tenant, contractor, or to any person using the land, building or premises where such violation has been committed or shall exist.

**Section 5 Appeal**

Any aggrieved party may appeal an order of the Special Master, including PBC, to the Circuit Court of PBC. Such appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Special Master. Any appeal filed pursuant to this Article shall be considered timely if it was filed within 30 days of the execution of the order to be appealed. PBC may assess a reasonable charge for the preparation of the record to be paid by the petitioner in accordance with F. S. § 119.07.

**Section 6 Notices**

All notices required by this ordinance shall be by certified mail, return receipt requested, or by hand delivery by a Code Enforcement Officer. Notice may also be provided by publication, posting, or any other method consistent with the provisions of F.S. § 162, as may be amended from time to time. Notice placed shall contain at a minimum, the date, and time of the scheduled meeting of the Special Master during which time the alleged violator is required to appear; the name and address of the alleged violator; the address or legal description of the property wherein the alleged violation(s) has occurred; and those codes or provisions of a code for which the alleged violator has been cited.

**CHAPTER C GROUNDWATER AND NATURAL RESOURCES PROTECTION BOARD**

ERM may refer alleged violations of Art. 14, Environmental Standards, or Art. 4.B.10, Excavation Uses, of this Code to the Groundwater and Natural Resources Protection Board (GNRPB) for prosecution pursuant to the following standards and procedures. **[Ord. 2017-007]**

## Section 1 Procedures

### A. Warning of Violation

If an alleged violation is found, the Director of ERM shall notify the alleged property owner or violator and give the alleged property owner or violator reasonable time to correct the violation.

### B. Issuance of Violation Citation

Should the violation continue beyond the time specified for correction, or irreparable or irreversible harm has occurred, or the violation presents a serious threat to the public health, safety, and welfare, the Director of ERM shall make a reasonable effort to notify the violator and may immediately notice the GNRPB and request a hearing.

### C. Notice Content

The Notice of Hearing shall contain a statement of the time, place and nature of the hearing before the GNRPB.

#### 1. Notice Delivery

- a. All notices required herein shall be provided to the alleged violator by:
  - 1) Hand delivery; or
  - 2) Certified mail (return receipt requested). If such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to PBC by such owner and is returned as unclaimed or refused, notice may be provided by posting as described below or by first class mail directed to the addresses furnished to PBC with a properly executed proof of mailing or affidavit confirming the first class mailing; or
    - a) Leave the notice at the alleged property owner's or violator's usual place of residence with any person residing therein who is above 15 years of age and informed of the contents of the notice; or
    - b) In case of commercial premises, leaving the notice with the manager or other person in charge.
  - 3) In addition to providing notice as set forth in Art. 10.C.1, Procedures, at the option of the GNRPB, notice may also be served by publication or posting, as follows.
    - a) In lieu of notice as described in Art. 10.C.1, Procedures, notice may be posted at least ten 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 at the front door of the courthouse in PBC.
    - b) 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.
  - 4) Evidence that an attempt has been made to hand deliver or mail notice as provided in Art. 10.C.1, Procedures, together with proof of posting as provided in Art. 10.C.1, Procedures, shall be sufficient to show that the notice requirements of this Article have been met, without regard to whether or not the alleged violator actually received such notice.

## Section 2 Correction of Violation

If the alleged violation is corrected and then recurs, or if the violation is not correct by the time specified for correction, the Director of ERM may issue a Violation Citation and a Notice of Hearing to the alleged property owner or violator and schedule a hearing. The GRNPB may hear the alleged violation in this instance, even if it has been corrected prior to the GRNPB hearing and every notice shall so state.

## Section 3 Transfer of Property

If the owner of property which is subject to a code enforcement proceeding transfers ownership of such property between the time the notice of violation 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 notices and other materials relating to the GNRPB 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 GNRPB proceeding.
- D. File a notice with the Department of ERM 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 five days of the transfer.

A failure to make the disclosures described in paragraphs above before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the hearing 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.

#### **Section 4 Hearings**

Alleged violations of any of the Sections described herein may be filed with the GNRPB by citizens or those officials who have the responsibility of enforcing such Sections.

- A. The GNRPB shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. Each case before the GNRPB shall be presented by the Director of ERM. The GNRPB shall take testimony from PBC staff, if relevant, the alleged violator or property owner, and other relevant testimony. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings. Upon determination of the chairperson, irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the State of Florida. The burden of proof shall be upon the Director of ERM to show by a preponderance of the evidence that a violation does exist.
- B. Any member of the GNRPB, or the attorney representing the GNRPB, may inquire of or question any witness before the GNRPB. Any member of the GNRPB, an alleged violator (hereinafter also referred to as respondent) his/her attorney, or Code Officers shall be permitted to inquire of any witness before the GNRPB. The GNRPB may consider testimony presented by ERM, the respondent or any other witnesses.
- C. At the conclusion of the hearing, the GNRPB shall orally render its decision (order) based on evidence entered into the record. The decision shall be by motion approved by the affirmative vote of those members present and voting, except that at least four members of the GNRPB must vote for the action to be official. The GNRPB's decision shall then be transmitted to the respondent in the form of a written order including finding of facts, and conclusions of law consistent with the record. The order shall be transmitted by certified mail or hand delivery to the respondent within ten days after the hearing. The order may include a notice that it must be complied with by a specified date and that a fine and costs may be imposed and under the circumstances set forth in Art. 10.C.5, Administrative Fines Costs Liens. The cost of repairs or other corrective action 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 PBC and shall constitute a 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 paragraph and the order is complied with by the date specified in the order, the GNRPB 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.

If PBC prevails in prosecuting a case before the GNRPB, it shall be entitled to recover all costs incurred. Whether and to what extent such costs are imposed shall be within the discretion of the GNRPB but shall not exceed the costs incurred.

#### **Section 5 Administrative Fines; Costs; Liens**

- A. Whenever one of the GNRPB's orders has not been complied with by the time set for compliance, or upon finding that a repeat violation has been committed, the GNRPB may order the violator to pay a fine in an amount specified in this Section for each day the violation continues past the date for compliance set forth in the order, 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 Art. 10.C.1.B, Issuance of Violation Citation, the GNRPB shall notify the BCC, which may make all reasonable repairs or other corrective actions which are required to bring the property into compliance and charge the violator with the reasonable costs of the repairs or other corrective actions along with the fine imposed pursuant to this Section. Making such repairs does not create a continuing obligation on the part of PBC to make further repairs or to maintain 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. A repeated violation shall mean a violation of this Ordinance by a person who, within five years prior to the



violation, has been previously found by the GNRPB to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding the violations occurred at different locations.

Persons charged with such violation(s) may include:

1. The owner, agent, lessee, tenant, contractor, or any other person using the land, building, or premises where such violation has been committed or shall exist.
  2. Any person who knowingly commits, takes part or assists in such violation.
  3. Any person who maintains any land, building, or premises in which such violation shall exist.
- B. A fine, imposed pursuant to this Section, shall not exceed \$1,000 per day for a first violation and shall not exceed \$5,000 per day for a repeat violation, and in addition, may include all costs of repairs pursuant to Art. 10.C.5.A, Whenever one of the GNRPB. For violations deemed irreparable or irreversible by the GNRPB, the GNRPB may impose a fine not to exceed \$15,000 per violation, pursuant to F. S. §162.09, as may be amended. In determining the amount of a fine, the GNRPB shall consider the following factors: (a) the gravity of the violation(s); (b) any actions taken by the violator to correct the violation(s); and (c) any previous violations committed by the violator. Notwithstanding the foregoing, penalties and fines imposed for violation of the Petroleum Storage Systems Ordinance or Petroleum Contamination Cleanup Criteria Ordinance, as either Ordinance may be amended, shall be imposed as set forth in F.S. § 403.121, as amended periodically, pursuant to the agreement approved by the Palm Beach County Board of County Commissioners (R2001-941) on June 19, 2001 and June 12, 2010 (R2010-0095). **[Ord. 2013-021]**
- C. The Director of ERM may record a certified copy of an order imposing a fine, or a fine plus repair costs, in the public records in the Office of the Clerk of the Circuit Court in and for PBC, Florida. Once recorded the certified copy of an order shall constitute a lien against the land on which the violation(s) exists, and upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment, by the Sheriff, including levy against the personal property of the violator. Once recorded the lien shall be superior to any mortgages, liens, or other instruments recorded subsequent to the filing of the GNRPB lien.
- D. After six months from the filing of any such lien which remains unpaid, PBC may foreclose the lien in the same manner as mortgage liens are foreclosed. Such lien shall be superior to all other liens except liens for taxes, and shall bear interest at the rate of ten percent per annum from the date recorded. No lien created pursuant to the provisions of this ordinance may be foreclosed on real property which is a homestead under Art. X, of the Florida Constitution.

## Section 6 Appeal

Any aggrieved party may appeal an order of the GNRPB, including PBC, to the Circuit Court of PBC, Florida. Such appeal shall not be a hearing de novo, but shall be a petition for Writ of Certiorari and the Court shall be limited to appellate review of the record created before the GNRPB. Any appeal filed pursuant to this Article shall be considered timely if it was filed within 30 days of the execution of the order to be appealed after the hearing at which the order was announced. The County may assess a reasonable charge for the preparation of the record to be paid by the petition in accordance with F. S. § 119.07.

## Section 7 Irreparable or Irreversible Harm

- A. A tree resource is irreparably harmed when an action alters the resource as a whole so that it cannot be restored to or returned to its original or pre-disturbance condition in a reasonable time. A non-renewable resource (such as groundwater, sea turtles, etc.) is irreparably harmed when it is destroyed, removed or consumed. **[Ord. 2006-036]**
- B. A renewable resource is irreparably harmed when it is destroyed, removed or consumed without reasonable provision for the renewal of the resource. **[Ord. 2006-036]**
- C. Injury is not remote or speculative but actual or imminent. **[Ord. 2006-036]**
- D. The injury must be of a peculiar nature, (such as a specimen tree) so that a monetary award is not adequate compensation or cannot atone for the harm done. This may include damage to the surrounding habitat (worms, birds, squirrels, etc.) and /or damage to the quality of life (shade, beauty, etc.). **[Ord. 2006-036]**
- E. The damage may be incalculable. **[Ord. 2006-036]**

- F. Further judicial action (appeal/injunction) is incapable of preventing the injury. A remedy at law is not full, complete, and adequate because the resource cannot be restored. No fair and reasonable redress may be had in a court of law. **[Ord. 2006-036]**
- G. The harm must be substantial in extent, duration or magnitude. **[Ord. 2006-036]**
- H. The resource being harmed must constitute an environmental resource. **[Ord. 2006-036]**
- I. Irreparable harm will not be found where mitigation measures can substantially restore or replace the benefits provided by the resource.  
 PBC has the burden of proving irreparable harm by the preponderance of evidence - a determination that a greater amount of credible evidence supports one side of an issue more than the other. The maximum penalty the BCC can impose is \$15,000 per violation. In determining the fine, the BCC shall consider: **[Ord. 2006-036]**
  1. The gravity of the violation; **[Ord. 2006-036]**
  2. Any actions of the violator to correct the violation; and **[Ord. 2006-036]**
  3. Any previous violations committed by the violator. **[Ord. 2006-036]**

**CHAPTER D ENVIRONMENTAL CONTROL HEARING BOARD**

Any alleged violation of Art. 15.A, (Environmental Control Rule I) - Onsite sewage treatment and, or Art. 15.B, Environmental Control rule II Drinking Water Supply Systems, (Health, Sewage Treatment, or Drinking Water) may be prosecuted by the Environmental Control Hearing Board (ECHB). In addition, ERM may refer any alleged violation of Wetlands Protection to ECHB for prosecution.

**Section 1 Procedure**

**A. Warning Violation**

If an alleged violation of Art. 15.A, (Environmental Control Rule I) - Onsite sewage treatment and, or Art. 15.B, Environmental Control rule II Drinking Water Supply Systems is determined by the PBC Health Department (PBCHD), the PBC Health Director shall issue a formal notice of violation to the property owner or violator. The notice shall specify the corrective actions and a reasonable period of time to correct the violation.

**B. Show Cause**

Should the violation continue beyond the specified time for correction or if an activity was conducted without a required permit/approval or if the violation creates a health threat, the PBC Health Director shall refer the matter to the Environmental Control Office for enforcement. The Environmental Control Officer shall request the ECHB to issue a Order to Show Cause to the property owner or violator.

**C. Notice of Hearing**

If the ECHB issues a show cause order, the subject order along with the notice of hearing, shall be made in the same way as the Florida Rules of Civil Procedure provide for service of process of initial pleadings. Subsequent notices of hearing may be mailed.

**Section 2 Hearings**

**A. Procedure at Hearings**

The ECHB shall proceed to hear the cases scheduled for the day. All testimony shall be under oath and shall be recorded. Each case will be presented by the Environmental Control Officer with testimony and evidence from PBCHD staff. The property owner or violator may be represented by an attorney and the formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings.

**B. Action by ECHB**

At the conclusion of the Hearing, the ECHB shall issue findings of fact, based on evidence in the record, and conclusions of law and shall issue an order consistent with powers granted in Chapter 77-616, Special Acts, Laws of Florida. The order may include a notice of corrective action that must be completed by a specified date and the amount of fine to be paid by a specified date. The order shall have the force of law to command whatever steps are necessary to bring a violation into compliance. The findings shall be by motion approved by a majority of those present and voting, except that a quorum of at least three members shall be present for the action to be official.

**C. Notification of Action**

Notification of the ECHB action including findings of fact and conclusions of law (order) consistent with the record shall be delivered (mailed) to the ECO, petitioner, respondent, and to every person who filed an answer or who appeared as a party at the hearing mailed within 15 days of ECHB action.

### **Section 3 Administrative Fines and Liens**

#### **A. Fine**

The ECHB may order the property owner or violator to pay a fine of up to \$500/day for each violation.

#### **B. Fine Constitutes Lien**

If the fine imposed by the ECHB is not paid within the time specified in the Board Order, a certified copy of the order may be recorded in the public records of the office of the Clerk of the Circuit Court for PBC, Florida and thereafter shall constitute a lien against the land on which the violation exists.

### **Section 4 Appeal**

Any person aggrieved by any action of the ECHB may seek judicial review as provided by F. S. § 120.68. No action shall be taken to collect fines imposed for violation of this act until judgment becomes final.

## **CHAPTER E REMEDIES**

### **Section 1 Administrative Remedies for Art. 14 , and Art. 4.D, Excavation**

In order to provide an expeditious settlement that would be beneficial to the enforcement of the provisions of Art. 14, Environmental Standards and Art. 4.B.10, Excavation Uses, and be in the best interest of the citizens of PBC, the Director of ERM is authorized to enter into voluntary consent (settlement) agreements with alleged violators. Any such agreement shall be a formal written agreement between the Director of ERM on behalf of PBC and any such alleged violators, and shall be approved as to form and legal sufficiency by the County Attorney's Office.

#### **[Ord. 2017-007]**

#### **A. Conditions**

Such consent agreements may be conditioned upon a promise by the alleged violator to:

1. Restore, mitigate, or maintain sites; or
2. Remit payment of a monetary settlement not to exceed the maximum amount allowed per violation, as set forth in the applicable act, delegated authority or Code, such monies to be deposited in the PBC Pollution Recovery Trust Fund; or
3. Remit payment for compensatory damages and nonperformance penalties and costs and expenses of PBC in tracing the source of the discharge, in controlling and abating the source of the pollutants and the pollutants themselves, and in restoring the waters and property, including animal, plant and aquatic life, of PBC to their former conditions; and costs of PBC for investigation, enforcement, testing, monitoring, and litigation; such monies to be deposited in the PBC Pollution Recovery Trust Fund; or
4. Any other remedies or corrective action provided for in the applicable act, delegated authority or Code, deemed necessary and appropriate by the Director of ERM to ensure compliance with such act or Code.

### **Section 2 Agreements**

Such consent agreements shall not serve as evidence of a violation of any applicable act or Code, and shall expressly state that the alleged violator neither admits nor denies culpability for the alleged violations by entering into such agreement. In addition, prior to entering into any such consent agreement, each alleged violator shall be apprised of the right to have the matter heard in accordance with the provisions of the applicable act or Code, and that execution of the agreement is not required.

### **Section 3 Validity**

Such consent agreements shall be valid and enforceable in a court of competent jurisdiction in PBC and shall abate any enforcement proceedings available to the Director of ERM for so long as the terms and conditions of such agreement are complied with. In the event an alleged violator fails to comply with the terms and conditions set forth in the executed agreement, the Director of ERM may either:

- A. Consider the consent agreement void and pursue any remedies available for enforcement of the applicable provisions of the Code; or
- B. Initiate appropriate legal proceedings for specific performance of the consent agreement.

#### **Section 4 Civil Remedies**

The BCC or any aggrieved or interested person shall have the right to apply to the Circuit Court of PBC, to enjoin and restrain any person violating the provisions of this Code, and the Court shall, upon proof of the violation of same, have the duty to forthwith issue such temporary and permanent injunctions as are necessary to prevent the violation of same.

#### **Section 5 Criminal Remedies**

Pursuant to F. S. §125.69(1), violations of county ordinances shall be prosecuted in the same manner as misdemeanors are prosecuted. Any person violating any of the provisions of this Code or who shall fail to abide by and obey all orders and resolutions promulgated as herein provided, shall, upon conviction, be punished by a fine not to exceed \$500 or imprisonment for not more than 60 days, or both for each violation, and payment of all costs and expenses involved in prosecuting the offense. Each day that a violation continues shall constitute a separate violation.

**Amendment History: [Ord. 2003-067; January 1, 2004] [Ord. 2005-002; February 2, 2005] [Ord. 2006-036; August 29, 2006] [Ord. 2013-021; August 30, 2013] [Ord. 2017-007; March 2, 2017]**