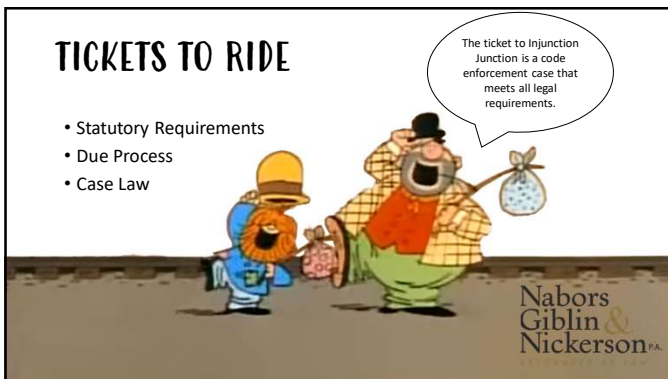




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DUE PROCESS

- Notice
- Opportunity to be Heard
- Copy of Final Order

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STATUTORY REQUIREMENTS

- Form of Notice
§ 162.12, Fla. Stat.
- Record for Appeal
§ 286.0105, Fla. Stat.
- Prosecution by Attorney or Staff
§ 162.07(2), Fla. Stat.
- Sworn & Recorded Testimony
Evidence & Due Process
§ 162.07(3), Fla. Stat.

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STATUTORY REQUIREMENTS

- 4/7 or 3/5 members required to vote
No hearing necessary for Order
Acknowledging Compliance
§ 162.07(4), Fla. Stat.
- 1st Violation Fine ≤ \$250; 2nd ≤ \$500
§ 162.09(2)(a), Fla. Stat.
- Certified Copy of the Order Recorded
§ 162.09(3), Fla. Stat.

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CASE LAW

- Massey v. Charlotte Cnty., 842 So. 2d 142 (Fla. 2d DCA 2003).
- P.R. of the Estate of Jacobson v. Att'ys Title Ins. Fund, 685 So. 2d 19 (Fla. 3d 1996).
- Cherry Comms. v. Deason, 652 So. 2d 803 (Fla. 1995).
- City of Key West v. Havlicek, 57 So. 3d 900 (Fla. 3d DCA 2011).

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FIRST STOPS

Is injunctive relief the most effective method?

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ALTERNATIVES

- Enlist Law Enforcement
- Foreclose on Lien
- Clean & Lien
- Lender

- Enlist Building Official
- ROW? Call Public Works
- Department of Health or Environmental Protection
- Community Clean Up Day
- DCF Adult Protective Services
- Tax Certificates/Tax Deed Sale

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COUNTY DEPARTMENTS

- Clean & Lien
- Public Works
- Building Official
- Human Services
- Community Clean Up Day
- Tax Certificates/Tax Deed Sale



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LAW ENFORCEMENT



- Illegal Dumping
 - § 403.413(4)(c)
 - *Cosio v. State*, 227 So. 3d 209 (Fla. 2d DCA 2017).
 - *State v. Davis*, 838 So. 2d 696 (Fla. 5th DCA 2003).
- Drug Use or Other Illegal Activity

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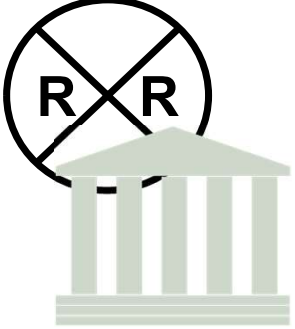
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OTHER ENTITIES

- Mortgage Lender
- Department of Health
- Department of Environmental Protection
- Department of Children and Families
Adult Protective Services



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FORECLOSE ON LIEN

- Cost of Cleanup
- Effort to Comply
- Ownership Issues

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INJUNCTION, WHAT'S YOUR FUNCTION?

- Discretionary, equitable remedy that is primarily preventative.
- Trial courts have broad discretion to enter injunctions.
- Injunctions either command acts to be done (mandatory) or prohibit acts from being done (prohibitory).

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INJUNCTION NEEDED?

- Compel Zoning Compliance
- Compel Repair or Demolition
- Abatement necessary, but does not rise to the level of "serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature," § 162.06(4), Fla. Stat., such that the County may make repairs under § 162.09(1), Fla. Stat.

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TEMPORARY INJUNCTION

- Temporary injunctions function to keep the parties in the same position pending final judgment.
- Temporary injunctions prevent irreparable harm to one party by preserving the status quo pending final determination, final outcome, or final hearing.
- Temporary injunctions are extraordinary relief and are granted sparingly.

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TEMPORARY INJUNCTION: PLEADING

A pleading seeking an injunction must be filed before a court may enter an injunction.

- Every fact supporting issuance of an injunction must be clearly, definitely, and unequivocally alleged. *Polk Cnty. v. Mitchell*, 931 So. 2d 922 (Fla. 2d DCA 2006).
- Vague allegations of opinion or conclusions are insufficient. *Id.*

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TEMPORARY INJUNCTION: ELEMENTS

A temporary injunction *may* be granted only if the movant establishes:

1. irreparable harm, or a likelihood of irreparable harm, if the injunction is not granted;
2. unavailability of an adequate remedy at law;
3. a clear legal right to the requested relief;
4. substantial likelihood of success on the merits; and
5. considerations of public interest or public policy support the entry of the injunction, or that issuance of the injunction will not harm or disserve the public interest.

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IRREPARABLE HARM

Irreparable harm is a material injury that continues for the remainder of the case and cannot be corrected on appeal.

- Fla. Gas Transmission Co., LLC, v. City of Tallahassee, 230 So. 3d 912 (Fla. 1st DCA 2017).

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ADEQUATE REMEDY AT LAW

When a County seeks injunctive relief to enforce its ordinances, irreparable injury is presumed and other adequate remedies at law are ignored.

- Metro. Dade Cnty. v. O'Brien, 660 So. 2d 364, 365 (Fla. 3d DCA 1995)
- Manatee Cnty. v. 1187 Upper James of Fla., LLC, 104 So. 3d 1118, 1121 (Fla. 2d DCA 2012).

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CLEAR RIGHT TO INJUNCTIVE RELIEF

County must demonstrate continuing violation of law, code, or ordinance.

- See Nipper v. Walton Cnty., 208 So. 3d 331, 333 (Fla. 1st DCA 2017)
Ware v. Polk Cnty., 918 So. 2d 977 (Fla. 2d DCA 2005).

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SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

A substantial likelihood of success on the merits is shown if good reasons for anticipating that result are demonstrated.

City of Jacksonville v. Naegele Outdoor Advert., 634 So. 2d 750 (Fla. 1st DCA 1994).

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INJURY TO COUNTY OUTWEIGHS HARM TO DEFENDANT

A county has the power to enforce compliance with its ordinances.

"[A]n injunction merely requiring compliance with binding laws cannot be said to unduly harm [a citizen] or to be a disservice to the public."

Polk Cnty. v. Mitchell, 931 So. 2d 922, 926 (Fla. 2d DCA 2006).

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TEMPORARY INJUNCTION SERVES THE PUBLIC INTEREST

Both a county and its citizens have a clear public interest in compliance with the county's code.

Miami-Dade Cnty. v. Fernandez, 905 So. 2d 213, 216 (Fla. 3d DCA 2005).

"[T]he public has an interest in seeing that a county's ordinances...are observed."

Ware v. Polk Cnty., 918 So. 2d 977, 980 (Fla. 2d DCA 2005).

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BOND

- Fla. R. Civ. P. 1.610(b) typically requires the moving party post a bond to cover costs and damages should the adverse party be wrongfully enjoined.
- But, when a county seeks injunctive relief to ensure compliance with its ordinances, the Court should dispense with the bond requirement. Fla. R. Civ. P. 1.610(b).

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NOTICE

Under Rule 1.610(a)(1), a temporary injunction may be granted without written or oral notice to the adverse party if:

1. it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; AND
2. the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.

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HEARING

No evidence other than the affidavit or verified pleading may be used to support the application for a temporary injunction, unless the non-moving party appears at the hearing or has received reasonable notice of the hearing.

Fla. R. Civ. P. 1.610(a)(2).

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HEARING

Disputed facts require an evidentiary hearing before a temporary injunction may be issued.

- The adverse party must be provided the opportunity to present evidence as to why the injunction should not be granted.
- Conversely, the trial court may not deny a movant's motion for temporary injunction without providing the moving party the opportunity to offer evidence.
- Kedac, Inc. v. Export Dev. Corp., 685 So. 2d 97 (Fla. 4th DCA 1997)

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BURDEN OF PROOF

The movant has the burden of providing competent, substantial evidence satisfying each of the required elements.

- Charlotte Cnty. v. Grant Med. Transp., Inc., 68 So. 3d 920, 922 (Fla. 2d DCA 2011).

Failure to prove one or more elements requires the court to deny injunction.

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BURDEN OF PROOF

- The affirmance of a temporary injunction on appeal determines only that a proper showing was made at the time the injunction was applied for.
Kozich v. Debrino, 837 So. 2d 1041, 1044 (Fla. 4th DCA 2002).

- If a party moves to dissolve or modify, the motion shall be heard within 5 days after the movant applies for a hearing on the motion.
Fla. R. Civ. P. 1.610(d).

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TEMPORARY INJUNCTION: ORDER

A temporary injunction must specify:

- the reasons for its entry, and
- the findings supporting the elements necessary to establish entitlement to a temporary injunction must be clear, definite, and unequivocal.

Masters Freight, Inc. v. Servco, Inc., 915 So. 2d 666 (Fla. 2d DCA 2005).

Wade v. Brown, 928 So. 2d 1260 (Fla. 4th DCA 2006).

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TEMPORARY INJUNCTION: LAW OF THE CASE

The law of the case is not established by the trial court's initial ruling.

- Empire Club v. Hernandez, 974 So. 2d 447, 449 (Fla. 2d DCA 2007).

Because a party is not required to prove his case in full at a preliminary injunction hearing, the findings of fact and conclusions of law made by the court at that hearing are not binding at the trial on the merits.

- Ladner v. Plaza Del Prado Condo. Ass'n, 423 So. 2d 927, 929 (Fla. 3d DCA 1982).

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INJUNCTION: ORDER

The order granting an injunction may be no broader than necessary to restrain the unlawful conduct.

An injunction may not enjoin all conceivable breaches of law but must, instead, be carefully tailored to remedy only the specific harms shown.

- Pediatric Pavilion v. Agency for Health Care Admin., 883 So. 2d 927 (Fla. 5th DCA 2004).

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PERMANENT INJUNCTION

- Similar standard for issuance of permanent injunctive relief.
- Notice is always required for a final or permanent injunction.

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PERMANENT INJUNCTION: ELEMENTS

- (1) Clear Legal Right to Relief
- (2) Inadequacy of Legal Remedy
- (3) Irreparable Injury if Relief is Not Granted

Liberty Couns. v. Fla. Bar Bd. of Governors, 12 So. 3d 183, 186 n. 7 (Fla. 2009)

E. Fed. Corp. v. State Office Supply Co., Inc., 646 So. 2d 737, 741 (Fla. 1st DCA 1994).

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COMMON DEFENSES

- Laches
- Selective Enforcement
- Denial of Equal Protection

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LACHES

- Laches is an omission to assert a right for an unreasonable length of time, under circumstances prejudicial to the adverse party.
- To preclude entry of an injunction, the subject party must show both length of time and that the County's delay disadvantaged them.

City of Stuart v. Green, 23 So. 2d 831 (Fla. 1945).



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SELECTIVE ENFORCEMENT

Selective enforcement must be deliberately based on an unjustifiable standard such as race, religion, or other arbitrary classification. See Polk Cnty. v. Mitchell, 931 So. 2d 922, 926 n. 4 (Fla. 2d DCA 2006).

"[T]he failure [of] authorities to enforce [an] ordinance against others constitutes no defense in favor of one who is prosecuted under such ordinance." Stocks v. Lee, 198 So. 211, 212 (Fla. 1940)

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EQUAL PROTECTION

The failure to prosecute *all* offenders is no ground for a claim of equal protection. Bell v. State, 369 So. 2d 932, 934 (Fla. 1979).

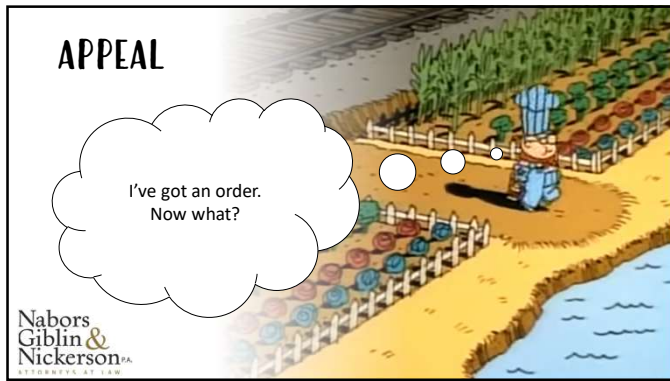
City of Miami Beach v. Lincoln Inv., Inc., 214 So. 2d 496 (Fla. 3d DCA 1968).

City of Miami v. Walker, 169 So. 2d 842 (Fla. 3d DCA 1964), *cert. denied*, 176 So. 2d 511 (Fla. 1965).

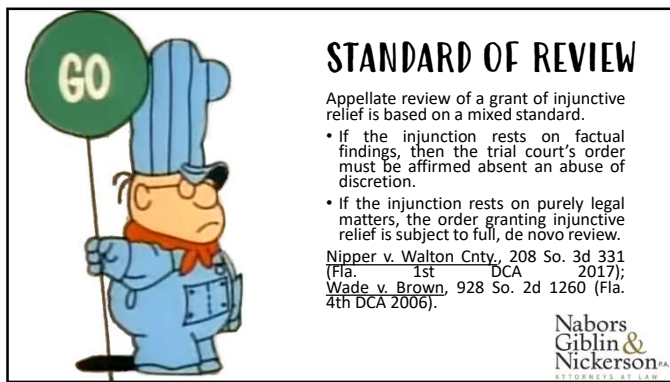


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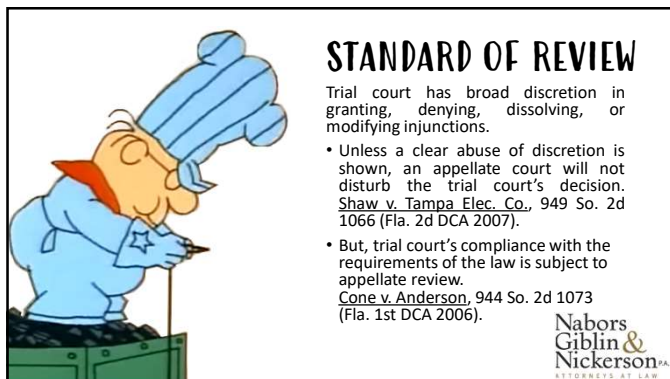
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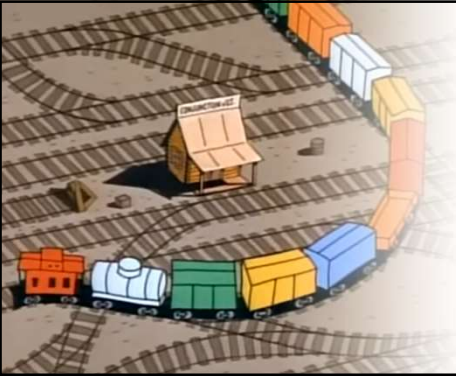
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QUESTIONS

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