

# ATTACHMENT 3



THE VILLAGE OF ESTERO DEPARTMENT OF  
COMMUNITY DEVELOPMENT  
CODE COMPLIANCE DEPARTMENT  
9401 CORKSCREW PALMS CIRCLE  
ESTERO, FL 33928

## REQUEST FOR VILLAGE OF ESTERO SPECIAL MAGISTRATE CODE ENFORCEMENT FINE REVIEW

This form is for applicants seeking to reduce the fine or assessed costs resulting from a Code Enforcement Order by the Village of Estero Special Magistrate. This form may only be used if the violation has been corrected. The process cannot be used to reduce liens imposed for other Code Enforcement processes (such as lot mowing, securing pools, or lot clean-up).

Submit this form by email to [knight@estero-fl.gov](mailto:knight@estero-fl.gov)

Name of Applicant:	Racetrac Petroleum, Inc.
Mailing Address:	200 Galleria Parkway SE, Suite 900
City, State, Zip:	Atlanta, GA 30339
Phone Number:	770-431-7600 Ext 4112
Email Address:	lfriedman@racetrac.com

Code Enforcement Case Number (shown on recorded Order):	17060006
Provide a copy of the recorded document OR provide an instrument number or the Official Records Book and Page numbers below.	
INSTR # or Official Records Book/Page (shown on recorded Order):	No recorded Order found
Property Address:	22350 S. Tamiami Trail, Estero, FL 33928
STRAP Number:	04-47-25-E1-53000.0010

### Relationship of Applicant to the property:

- Owner of the property or Owner's Representative
- Contract Purchaser
- Other (specify): \_\_\_\_\_

### Relationship of Applicant to the violation resulting in the Order:

- Applicant was the owner of the property at the time of violation
- Applicant acquired the property after the imposition of the fine/costs
  - Purchased property from: \_\_\_\_\_
- Seeking to purchase the property
- Other (specify): \_\_\_\_\_

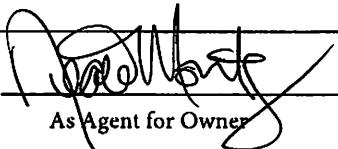
Has the Division of Code Enforcement verified the violation has been corrected? Yes  No

Who corrected the violation?  Respondent  County  
 New Owner  Unknown

The burden is on the Applicant to show why the fine/costs should be reduced.

SUMMARIZE YOUR REQUEST FOR FINE REVIEW, INCLUDING THE FACTORS TO BE CONSIDERED BY THE HEARING EXAMINER (Attach additional pages, if necessary):

SEE ATTACHED SUMMARY OF REQUEST

Applicant's Signature:   
 As Agent for Owner

Date: 11/8/19

## SUMMARY OF REQUEST

This is a request is made by RaceTrac Petroleum, Inc. (“RaceTrac”) to reduce and/or mitigate the existing fine, and to stop additional fines from accruing.

The purpose of code enforcement and the fines associated therewith is to provide an equitable, expeditious, effective, and inexpensive method of enforcing regulations. (*See* Section 162.02, F.S.) In this case, RaceTrac was not provided with adequate notice of the store signage violation and was not able to bring the property into compliance prior to the hearing before the Special Magistrate.

RaceTrac learned of the violation on November 1, 2019, when a member of the local media requested comment due to the large fine that was levied against the convenience store. Of note, the media outlet questioned if RaceTrac had even been aware a fine was levied due to the large amount in arrears. Upon learning of the alleged violation, RaceTrac immediately contacted the Village of Estero and requested a copy of all documents germane to the code enforcement action and the imposition of the lien.

The Village of Estero provided information to RaceTrac through their code enforcement officer, Stanley Knight, and through the production of public records. The production included a “Case Overview.” The “Case Overview,” as attached hereto as Exhibit A, provided RaceTrac with a chronology. The “Case Overview” indicates that a complaint was filed against RaceTrac on March 2, 2017, and a courtesy notice was issued that same date. It is unclear what the content of the courtesy notice was and where it was sent because that information was not provided with the public records production. One thing is for sure, however, RaceTrac did not receive that notice.

Section 162.12, F.S., provides that all notices must be provided to the alleged violator by certified mail, 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 local government 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 to the registered agent. The facility in question is owned by a corporation. The Florida Statutes provides that after the certified mail is not signed and received the notice can be provided by leaving the notice with the manager.

An affidavit of non-compliance was issued by the Village on May 24, 2017. The documentation provided to RaceTrac through its public records request includes a document which indicates that the notice was *not deliverable* as addressed. A copy of the May 24<sup>th</sup>, 2017 returned document is attached hereto as Exhibit “B.” Again, RaceTrac did not have notice of yet another critical document.

Another “Notice of Violation” was issued on June 7, 2017, but the Case Overview does not indicate if it was sent or where it was sent. Once again, RaceTrac did not receive notice of this violation.

A notice of hearing was allegedly issued on June 26, 2017. The public records request documentation includes a returned document dated June 28, 2017, which indicates that it was

returned to the Village of Estero because there is no “receptacle” and the USPS was “unable to forward.” A copy of the returned envelope is attached hereto as Exhibit “C.”

An affidavit of non-compliance was allegedly issued on August 14, 2017. The public records request documentation contains documentation from the USPS which confirms that the notice sent to RaceTrac was undeliverable at the address used by the Village. The postmark on the undeliverable letter is dated August 23<sup>rd</sup>, 2017. A copy of the document is attached hereto as Exhibit “D.”

It appears that some form of documentation was sent to a post office box that is not identified as an address for RaceTrac. The receipt was signed for by what appears to be a Mr. Russell. A copy of the document is attached hereto as Exhibit “E.”

A Final Order was issued by the Hearing Officer in March of 2018. The final order states that RaceTrac received proper notice. RaceTrac did not receive proper notice in accordance with the Florida Statute or otherwise. The property appraiser’s website has numerous locations in Lee County owned by Racetrac Petroleum, Inc. The store in question has an address listed as PO Box 2437, Smyrna, Ga. There are several stores on the Property Appraiser’s website that use this address. There are numerous stores that use 200 Galleria Parkway, Suite 900, Atlanta, Georgia. The notices that were returned did not use either of these addresses. If one utilizes SunBiz the Atlanta, Georgia address is provided along with a list of officers.

The Village of Estero opted to use Chapter 162, F.S. when it adopted Ordinance 2015-14. Section 162.06, F.S. provides that the violator is to be given a notice and a reasonable time to correct the violation. As noted above, RaceTrac *never received notice, and was therefore not provided a reasonable time to correct the violation.* The Village of Estero should have recognized that they were not using the address provided on the property appraiser’s website, or the registered agent when the notices were returned as undeliverable.

Late last week, the Code Enforcement officer advised RaceTrac that a notice was provided to the store manager. This fact cannot be confirmed based on the documents in the file nor with the store manager. It is important to note that the store manager in this instance is not authorized to deal with legal matters.

Critically, RaceTrac has taken immediate steps to not only address, but cure the violation. In fact, RaceTrac cured the violation less than a week after being made aware of the violation. A picture is included herewith that demonstrates that the sign that was the subject of the Notice of Violation has been removed. A copy of the photograph is attached hereto as Exhibit “F.”

Due to no fault of its own, RaceTrac was not advised of the violation. **RaceTrac respectfully requests that the fine be reduced to actual administrative cost of the Village, since (1) RaceTrac was not provided with notice and an opportunity to cure, and (2) once RaceTrac was made aware of the violation, RaceTrac acted in good faith and cured the violation in less than a week’s time.**

## Case Overview

### Property/Incident Information

<b>Owner</b>	<b>Address</b>	<b>Site Address</b>
RACETRAC PETROLEUM INC	PO BOX 56607 ATLANTA, GA 30343	22350 S TAMIAMI TRL , ESTERO, FL33928

### Legal Description

### Description

Window signage exceeds allowable 30% coverage

<b>Case Status</b>	Open	<b>Case #</b>	17060006	<b>Date Next Inspection</b>	11/1/2019
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**Notes** Window signage exceeds allowable 30% coverage

Please remove the large swirl sign on the south window and any other sign that exceeds the allowable coverage

### Documents Issued

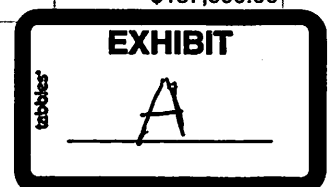
<u>Date Issue</u>	<u>Document Type</u>
3/2/2017	Complaint
3/2/2017	Courtesy Notice
5/24/2017	Affidavit of Non-Compliance
6/7/2017	Notice of Violation
6/26/2017	Notice of Hearing
8/14/2017	Affidavit of Non-Compliance
9/25/2017	Affidavit of Non-Compliance
10/19/2017	Affidavit of Non-Compliance
3/23/2018	Final Order
3/23/2018	Order of Imposition/Liens
11/1/2019	Affidavit of Non-Compliance

### Violations

Ordinance/Regulation	Section	Description	Date Complied
CHAPTER 30 - SIGNS	Section 30-6. - Permitted signs.	Window signs. Window signs which identify or advertise activities, services, goods or products available within the building, and which collectively cover 30 percent or less of the window glass surface area. Lettering on windows and signs required by federal or state laws or regulations of agencies thereof, business information signs, and business affiliation signs are excluded from the computation of the sign area limitations and restrictions	Not in Compliance - Reinspection Date: 11/1/2019

### Fines

Fine Type	Section	Fine Type	Date Complied	Total Fine
Individual Violation	Section 30-6. - Permitted signs.	Individual Violation		\$187,500.00



### Case Overview

Admin Fixed		Admin Fixed		\$331.50
			<b>Total Fines</b>	<b>\$187,831.50</b>

### Payments

<u>Date</u>	<u>Payment Type Name</u>	<u>Amount</u>
	<b>Total Payments</b>	<b>\$0.00</b>
	<b>Fees Outstanding</b>	<b>\$187,831.50</b>

The Village of Estero  
Code Compliance Dept  
9401 Corkscrew Palms Circle  
Estero, FL 33928

FT MEMERS  
FL 339  
25 MAY '17  
PM 11

RACETRAC  
22350 S TAMIAHI TRL  
ESTERO, FL 33928

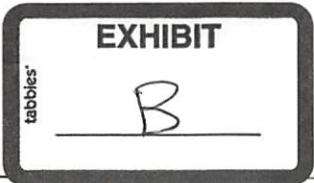


NIXIE 339 7E 1 0005/30/17

RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD

BC: 33928627501 \*0775-05630-25-37

U7F  
33928627501



The Village of Estero  
Code Compliance Dept  
9401 Corkscrew Palms Circle  
Estero, FL 33928

**CERTIFIED MAIL®**



7015 1730 0000 5310 7383

RECEIVED  
JUN 30 2017  
VILLAGE OF ESTERO  
NMR

UNITED STATES POSTAGE  
PITNEY BOWES  
02 1P \$006.650  
0001977713 JUN 26 2017  
MAILED FROM ZIP CODE 33928



Race Trac  
22350 South Tamiami Trail  
Estero, FL 33928  
Code Case: 170

NIXIE 339 SE 1 0006/28/17  
RETURN TO SENDER  
NO POSTAL RECEIPTABLE  
UNABLE TO FORWARD  
BC: 33928627501 \*0975-02200-27-37

NMR  
33928627501

tabbles®  
EXHIBIT  
C

Village of Estero  
Compliance Dept  
Corkscrew Palms Circle  
Estero, FL 33928

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FL 339  
23 AUG 17  
PM 5 L



SEP 11 2017  
VILLAGE OF ESTERO

RACETRAC PETROLEUM, INC  
22350 S TAMiami TRAIL  
ESTERO, FL 33928

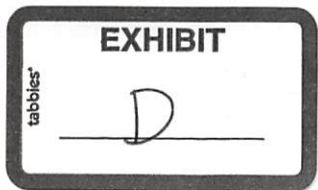
NIXIE 339 DE 1 0208/31/17

RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD

RF: 33928627501 \*7574-00747-31-24

33928-4404  
33928-4404

9314089925453204





**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Racetrac Petroleum Inc  
P.O. Box 50607  
Atlanta GA 30343*

*Case: 1760001*



9590 9403 0486 5173 2646 03

2. Article Number (Transfer from service label)

7015 1730 0000 5310 7376

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*Fred D. Rusell*  Agent  Addressee

B. Received by (Printed Name)

*Fred D. Rusell*

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Registered Mail
- Registered Mail Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

**EXHIBIT**

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E



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**EXHIBIT**  
    F