



AGENDA REPORT
February 12, 2019

Permission to Advertise Request for Qualifications for Special Magistrate Service

SUBJECT:

Permission to Advertise Request for Qualifications (RFQ) for Special Magistrate services for Contractor Licensing and Vested Rights cases; Appoint Selection and Negotiation Committees; and Authorize Chair to execute the resulting contract.

FISCAL IMPACT:

The cost of the contracted Special Magistrate is funded through the assessment of administrative costs for those cases involving code compliance and through vested rights application fees. Special Magistrates services are at a rate of \$125.00 per hour. Annual cost for services is estimated at \$3,500.

DEPT/OFFICE:

Central Services

REQUESTED ACTION:

It is requested that the Board of County Commissioners approve the advertisement of a RFQ for Special Magistrate services to hold hearings for unlicensed contractor and vested right cases and establish Selection and Negotiating Committees. It is further requested that the Board approve the Chair to execute resulting contract upon review by the County Attorney's Office and Risk Management.

SUMMARY EXPLANATION and BACKGROUND:

On December 18, 2018, the Board of County Commissioners authorized a one-year agreement with Stewart B. Capps to serve as primary Special Magistrate for Code Enforcement cases and alternate for Contractor Licensing and Vested Right cases. The current primary Special Magistrate for Contractor Licensing and Vested Right cases and alternate for Code Enforcement cases, Mr. Joseph Miniclier, declined to continue his existing agreement for an additional one-year period.

Staff is requesting permission to advertise a RFQ for Special Magistrate services for Contractor Licensing and Vested Right cases and alternate for Code Enforcement cases, appoint selection and negotiating committees, and authorize the Chair to execute resulting contract. The contract term is for a one year period and may be renewed annually at the discretion of the County for one year terms for no more than four additional years.

The recommended Selection/Negotiating Committees are Assistant County Manager, Planning and Development Director, and Human Resources Director, or their designee.

ATTACHMENTS:

Description

No Attachments Available



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

February 13, 2019

M E M O R A N D U M

TO: Leslie Rothering, Interim Central Services Director

RE: Item F.17., Permission to Advertise Request for Qualifications (RFQ) for Special Magistrate Service

The Board of County Commissioners, in regular session on February 12, 2019, approved the advertisement of a RFQ for Special Magistrate services to hold hearings for unlicensed contractor and vested right cases; approved establishing Selection and Negotiating Committees consisting of John Denninghoff, Assistant County Manager, Tad Calkins, Planning and Development Director, and Jerry Visco, Human Resources Director, or their designee; and authorized the Chair to execute resulting contract upon review by the County Attorney's Office and Risk Management.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

cc: Committee Members

SPECIAL MAGISTRATE CONTRACT

This is a Contract entered into this 6 day of July 2020, by and between Board Of County Commissioner Of Brevard County, a political subdivision of the State of Florida, hereinafter referred to as County and, Stewart B. Capps, hereinafter referred to as Contractor.

WHEREAS, as authorized by Florida Statute 162.03, the County has adopted Chapter 2, Article VI, Division 2 Code Enforcement Special Magistrate Code as part of the Brevard County Code of Ordinances;

WHEREAS, the County wishes to designate one or more qualified individuals to serve the function as a special magistrate to hold hearings and assess fines against persons found to have violated various county codes;

WHEREAS, use of a special magistrate provides for an equitable, expeditious, effective and less expensive procedure for enforcing codes and ordinances;

WHEREAS, the person designated herein as Special Magistrate meets the qualifications as set forth in County Ordinance Chapter 2 Article VI;

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, the County and Contractor hereby agree as follows:

1. TERM. The Special Magistrate hereby agrees to perform the services of a Special Magistrate to the Brevard County Board of County Commissioners for a period of one (1) year. This Contract shall commence on July 6, 2020 and will terminate one year later, July 5, 2021 unless extended by Contract of both parties.

2. RENEWAL. This Contract may be renewed annually at the discretion of the County for one-year terms, for no more than 4 additional years, on the same terms and conditions

contained herein unless otherwise modified by contract of the parties at the time of renewal.

3. SPECIAL MAGISTRATE SERVICES. The Special Magistrate will perform the following services

(a) Preside as Primary Contractor over hearings regarding violations of county codes including, but not limited to, codes relating to property maintenance, natural resources, environmental health, fire safety, solid waste, adult entertainment, and nuisance abatement; and preside as required, as secondary contractor over hearings regarding contractor licensing and vested rights determinations.

(b) Perform such services as provided for under the terms of this Contract pursuant to Chapter 2, Article VI, Division 2, of the Brevard County Code of Ordinances, and pursuant to any procedures as may be furnished to the Special Magistrate which are in compliance with the Special Magistrate's obligation to provide due process to the parties before the Magistrate.

(c) The Special Magistrate shall issue written orders for each case. The orders shall be on the forms provided by the County. Final orders shall include findings of fact and conclusions of law. Unless the Special Magistrate requests the Petitioner and Respondent submit proposed orders or a party(ies) request the opportunity to submit proposed orders, such written orders shall be filled out by the Special Magistrate contemporaneously with the Magistrate's announcement of the findings at the conclusion of the review of the case or hearing on the case.

(d) Convene for hearings at least once per month (provided there are cases to be heard) on a regular schedule.

(e) The County may add other types of code violations or other dispute resolution processes that are to be scheduling for a hearing and heard by the Special Magistrate.

4. SPECIAL MAGISTRATE QUALIFICATIONS. The Special Magistrate holds a Juris Doctorate degree, is a member of The Florida Bar, and has practiced law for five (5) years in the State of Florida. The Special Magistrate will notify the County of any pending investigation or discipline by the Florida Bar.

5. COMPENSATION. In consideration of the Special Magistrate performing the above referenced duties, the County shall pay the Special Magistrate at a rate of \$125.00 per hour for hearing time. The Special Magistrate shall receive a minimum of \$125.00 should the Special Magistrate have proceeded to travel to the hearing location and is informed the hearing is canceled or if the scheduled hearings/proceedings last less than an hour. The Special Magistrate shall submit such invoices, in the format agreed upon by the parties. The County shall pay the Special Magistrate under the provisions of the Florida Prompt Payment Act. The Special Magistrate shall not be compensated or otherwise paid for travel time unless approved in advance. The Special Magistrate may submit reimbursement for any necessary postage, paper, copies, etc... However, it is anticipated this would be minimal given that most documents will be exchanged electronically/digitally.

6. OBLIGATIONS OF THE COUNTY. The County shall be required to provide the following:

- (a) A tape or digital recorder, at the County's expense, together with sufficient blank tapes, etc., to record all hearings.
- (b) Administrative personnel to serve as a clerk to the Special Magistrate and to support hearings. Such administrative personnel will provide public notice of each hearing, coordinate preparation of the hearing agenda with staff (including assembling the back-up materials for each agenda item), establish (in consultation with the Special Magistrate, if needed) a schedule for finalization of each agenda, read agenda items into the record, swear-in witnesses as necessary, receive affidavits, prepare documentation (evidence log) for items submitted into evidence, record all hearings, prepare written minutes of the hearing, record the final orders issued by the Special Magistrate in the public records of Brevard County and maintain the official records of the special magistrate hearings, and to perform other administrative tasks associated with the Special Magistrate.
- (c) An attorney or member of the administrative staff who shall represent the County by presenting cases before the Special Magistrate.

7. INSURANCE. The Special Magistrate, as an appointed official acting on behalf and within the jurisdiction of the County, is included as a covered party under the County's Public Officials Liability insurance program. Said insurance coverage currently is written with limits of \$3,000,000 per claims with a \$3,000,000 aggregate.

8. PROCEDURES WORKSHOP. The Special Magistrate shall be required to attend workshop to review procedures to be held at a future date and time agreeable to the parties at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida 32940. This Workshop shall be held as soon as practical after both parties have executed this Contract. Should this Contract be renewed, the County reserves the option to require attendance at such a Workshop upon renewal, but in any event, no more than once per year. Compensation for attendance shall be as provided for on an hourly basis as provided for in Paragraph 5 above.

9. HEARING DATES. Hearings before the Special Magistrate for violations of the Brevard County Codes shall be scheduled to begin under this Contract in July 2020, and each month thereafter. The County shall work with the Special Magistrate to set a regular schedule for the hearings for the year with the intent to schedule the hearings for the same time of the month (for example, the third Thursday of each month) and to begin the same time of the day to the extent possible. Additional hearing days may be convened if the case volume requires more frequent hearings

Hearing days shall generally be held at the Brevard County Government Center located at 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida.

10. SCHEDULING CONFLICTS/CONFLICTS OF INTEREST.

(a). If the Special Magistrate has knowledge of any scheduling conflicts for any scheduled hearing, the Special Magistrate shall contact the Clerk to the Special Magistrate within the County's Central Services Department at (321) 637-5492 so that such conflicts may be resolved.

(b) Should the Special Magistrate become aware of any conflict of interest resulting from past representation a party or witness, the Special Magistrate shall contact the Clerk to the Special Magistrate as provided for above.

(c) The Special Magistrate agrees that during the term of this Contract, and any renewal or extension, the Special Magistrate will not represent any party in a matter that could come before a Special Magistrate as a result of a violation of Brevard County Code of Ordinances.

11. NON-ASSIGNMENT. The Special Magistrate shall not enter into any agreements with third parties to delegate any or all of the responsibilities, duties, or rights herein set forth.

12. INDEPENDENT CONTRACTOR STATUS. The Special Magistrate shall perform the conditions of this Contract as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. The Special Magistrate shall be responsible for any and all federal, state and local required deductions and/or taxes on the compensation paid under this contract.

13. CONFLICTS OF INTEREST. Should the Special Magistrate determine that he/she has a conflict of interest or for any reason feels it would be inappropriate for him/her to hear and deliberate on any given individual's alleged violation or petition, he/she will immediately inform the Clerk to the Special Magistrate within the County's Central Services Department of such conflict so that arrangements to retain another Special Magistrate for that alleged violation or petition hearing can be made.

14. PUBLIC RECORDS. The County or any of its duly authorized representatives reserves the right to audit the records of the Contractor related to this Contract at any time during the prosecution of the work included herein and for a period of three (3) years after final payment is made.

Both parties understand that Brevard County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes. "Public Records" are defined "all documents,

papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency” Fla. Stat. 119.011(12).

Pursuant to Florida Statute Chapter 119, generally, and 119.0701 specifically, if records created by the County or the Contractor related to the performance of the services under this Contract do not fall under a specific exemption under Florida or federal law, the records - whether created or maintained by the Contractor or the County - must be provided to anyone making a public records request. It will be the Contractor’s duty to identify any information in records created by the Contractor which it deems is exempt under Florida or federal law and identify the statute number which requires the information be held exempt.

A request to inspect or copy public records relating to this Contract must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Contractor of the request, and the Contractor must provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 and Brevard County Board Policy.

Should any person or entity make a public records request of the County which requires or would require the County to allow inspection or provide copies of records which the Contractor maintains are exempt under the Public Records Law or otherwise confidential, it shall be the Contractor’s obligation to provide the County within a reasonable time of notification by the County to the Contractor of the records request, of the specific exemption or confidentiality provision to allow the County to comply with the requirements of Florida Statute 119.07(1)(e) and (f). Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Contractor to the County which the Contractor maintains are exempt or confidential from such inspection/production as a public record, the Contractor shall hire and compensate

attorney(s) who shall represent the interests of the County as well as the Contractor in defending such action. The Contractor shall also pay any costs to defend such action and shall pay any costs and attorney's fees which may be awarded pursuant to Fla. Stat. 119.12.

Should the Contractor fail to provide the public records to the County within a reasonable time, the Contractor is subject to penalties under s. 119.10.

The Contractor shall ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the County.

Upon completion of the Contract, the Contractor shall transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (321) 633-2086.

15. TERMINATION. Either party hereto may terminate this Contract upon thirty (30) days written notice. Notwithstanding the previous sentence, the Special Magistrate shall

serve at the pleasure of the County Commission and may be removed from service at any time, with or without cause, by a majority vote of a quorum of the County Commission.

16. NOTICE. Notice under this Contract shall be given as follows:

To the Special Magistrate by delivering written notice to

Stewart B. Capps
325 Fifth Avenue, #208
Indialantic, FL 32903

To the County by delivering written notice to

Central Services Department Director
2725 Judge Fran Jamieson Way
Building C, Suite C303
Viera, Florida 32940.

17. ATTORNEY'S FEES/NON JURY TRIAL: In the event of any legal action to enforce the terms of this Contract each party shall bear its own attorney's fees and costs. Any trial to enforce or interpret the terms of this contract shall be non-jury.

18. GOVERNING LAW: This Contract, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida.

19. VENUE: Venue for any legal action brought by any party to this Contract to interpret, construe or enforce this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida.

20. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY):

(a)The Contractor:

(1) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the contract; and

(2) shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract; and

(3) agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the COUNTY consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program.

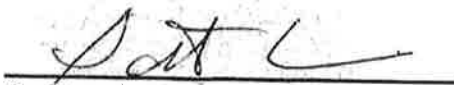
(b) Compliance with the terms of this section is made an express condition of this Contract and the COUNTY may treat a failure to comply as a material breach of this Contract.

(c) A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the contractor hires or employs a person who is not eligible for employment.

(d) Nothing in this section may be construed to allow intentional discrimination of any class protected by law.


IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

ATTEST:



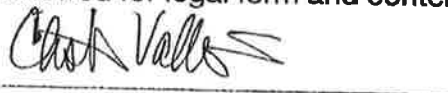
Scott Ellis
Clerk of the Circuit Court

**BOARD OF COUNTY
COMISSIONERS OF BREVARD
COUNTY, FLORIDA**

BY: 

Bryan A. Lober, Chair
(As approved by the Board on February 12,
2019)

Reviewed for legal form and content:



Assistant County Attorney

SPECIAL MAGISTRATE



Stewart B. Capps

ARTICLE VI. - BOARDS, COMMISSIONS AND AUTHORITIES^[7]

Footnotes:

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Cross reference— Valkaria Airport advisory board, § 18-61 et seq.; contractor's licensing board, § 22-501 et seq.; art in public places advisory committee, § 34-41; health facilities authority, § 54-36 et seq.; historical commission, § 58-36 et seq.; planning and zoning board, § 62-181 et seq.; board of adjustment, § 62-211 et seq.; library system board, § 70-36 et seq.; personnel council, § 82-6; Country Acres Parental Home advisory board, § 90-41 et seq.; affordable housing council, § 90-71.

Special act references— Special acts pertaining to Brevard Economic Development Council, § 202-176 et seq.; special acts pertaining to water and navigation control authority, § 202-201 et seq.; special acts pertaining to technological research and development authority, § 202-241 et seq.; solid waste advisory committee, § 252-127.

DIVISION 1. - GENERALLY

Secs. 2-156—2-165. - Reserved.

DIVISION 2. - CODE ENFORCEMENT SPECIAL MAGISTRATE^[8]

Footnotes:

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Editor's note— Ord. No. 2004-28, § 1, adopted July 27, 2004, amended division 2 in its entirety to read as herein set out. Formerly, division 2 pertained to the code enforcement board and derived from the Code of 1979, §§ 15½-27—15½-40; Ord. No. 95-01, §§ 1—5, 7, 11, adopted January 24, 1995; Ord. No. 96-08, §§ 1—12, adopted March 5, 1996; Ord. No. 2000-16, § 1, adopted March 14, 2000.

Sec. 2-166. - Short title.

This division may be cited as the Brevard County Code Enforcement Special Magistrate Ordinance.

(Ord. No. 2004-28, § 1, 7-27-04)

Sec. 2-167. - Definitions.

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

Board or board of county commissioners means the governing body of the county.

Code inspector or code officer means those employees or other agents of the county authorized by the county manager whose duty it is to enforce county codes and to present code violations to the special magistrate.

County attorney means the county attorney, assistant county attorney or any attorney designated by the county attorney.

Evidence includes, but is not limited to, testimony, public records, surveys, plats and all other documentary evidence deemed relevant by the special magistrate.

Nominally assessed property means any property assessed by the county property appraiser for a value of \$1,000.00 or less.

Person means any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, or any other entity whatsoever, or any combination of such, jointly or severally.

Recurring violation means a violation previously cited with a notice of violation and then cured before being presented to the special magistrate for a hearing within five years prior to the current violation.

Repeat violation means a violation of a provision of a code or ordinance by a person whom the special magistrate has previously found to have violated the same provision within five years prior to the current violation.

Respondent or violator means a person responsible for the code violation, which includes the perpetrator and/or the owner of the real property upon which the violation occurred, who has been issued a notice of violation and/or has been ordered to correct a violation consistent with this division.

Special magistrate means a person authorized to hold hearings and assess fines against violators of the county codes and ordinances. The term special magistrate includes the term special master.

(Ord. No. 2004-28, § 1, 7-27-04)

Sec. 2-168. - Authority and intent.

- (a) This division is enacted by the board of county commissioners, upon authorization to create a code enforcement special magistrate pursuant to F.S. ch. 162.
- (b) It is the intent of this division to promote, protect and improve the health, safety and welfare of the citizens of the county by creating an administrative hearing officer with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective and inexpensive method of enforcing the codes and ordinances in force in the county, where a pending or repeated violation continues to exist.

(Ord. No. 2004-28, § 1, 7-27-04)

Sec. 2-169. - Special magistrate; establishment; qualifications.

- (a) There is hereby established a code enforcement special magistrate of the county, appointed pursuant to F.S. Ch. 162, who shall be designated by the board of county commissioners as its hearing officer for code enforcement matters.
- (b) To be eligible for service as a special magistrate, a person must:
 - (1) Be a member in good standing with the Florida Bar for a minimum of five years.
 - (2) Engaged in the practice of law in the county.
- (c) Eligible candidates for special magistrate shall be reviewed by a selection committee appointed by the county manager. The selection committee shall make recommendations to the board of county commissioners for the appointment of special magistrates.
- (d) Special magistrates shall be appointed by the board of county commissioners. The board of county commissioners may appoint up to two alternate special magistrates to serve due to legal conflict of interests or in the absence of the special magistrate.
- (e) The special magistrate shall serve at the pleasure of the board of county commissioners and may be removed from service at any time, with or without cause, by a majority of the board of county commissioners.
- (f) The special magistrate shall be compensated at a rate to be determined by the board of county commissioners.
- (g) In the event that a legal conflict of interests prevents the special magistrate and any alternate special magistrate from hearing a case, the county manager may contract with any current special magistrate of another jurisdiction to hear the case.

(Ord. No. 2004-28, § 1, 7-27-04)

Sec. 2-170. - Powers.

The code enforcement special magistrate shall have the power to:

- (1) Adopt rules for the conduct of the hearings. Such rules shall be written and distributed with any notices of hearings.

- (2) Subpoena alleged violators, witnesses and evidence to its hearings. Subpoenas may be served by the sheriff or any deputy sheriff of the county.
- (3) Take testimony under oath.
- (4) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
- (5) Reduce fines that have accrued or been imposed pursuant to this division. However, in no case shall the special magistrate reduce the fine and/or costs to below the actual costs incurred by the county.
- (6) Vacate or amend orders when necessary.

(Ord. No. 2004-28, § 1, 7-27-04; Ord. No. 2019-18, § 1, 8-20-19)

Sec. 2-171. - Legal counsel.

The county attorney shall represent the county and code enforcement officers before the special magistrate. The county attorney shall present the county's cases at all hearings and shall have prosecutorial discretion including, but not limited to, the right to negotiate a settlement with a respondent and present that settlement to the special magistrate for approval, to recommend the disposition of a case to the special magistrate, and to decline to prosecute a case, similar to the discretion exercised by the state attorney in criminal cases.

(Ord. No. 2004-28, § 1, 7-27-04)

Sec. 2-172. - Jurisdiction.

- (a) The code enforcement special magistrate shall have jurisdiction and authority to hear and decide alleged violations of the codes and ordinances in force in the county, including any amendments to such codes and ordinances except as otherwise provided in this Code or by law.
- (b) The jurisdiction of the code enforcement special magistrate shall not be exclusive. The board of county commissioners may appoint one or more special magistrates to hear any, or all code violations. The jurisdiction of the special magistrate shall be addition to, and not in lieu of, any other procedures or remedies available to the county to enforce its code. Any alleged violation of county codes and ordinances may be pursued by appropriate remedy in court, or as may otherwise be provided by law.
- (c) After final determination of the existence of a violation, the special magistrate retains jurisdiction to adjust fines, order reasonable repairs and assess the cost of repairs.

(Ord. No. 2004-28, § 1, 7-27-04)

Sec. 2-173. - Enforcement procedure.

- (a) The code inspectors have the primary duty of enforcing the various code and ordinances and initiating enforcement proceedings before the special magistrate. No special magistrate shall have the power to initiate such enforcement proceedings.
- (b) Except as provided in subsections (c) and (d), if a violation of the codes or ordinances is found, the code inspector shall notify the violator of the violation and give the violator a reasonable time, in light of the nature of the violation, to correct the violation. Should the violation continue beyond the time specified for correction, a hearing before the special magistrate shall be set and notice of the hearing will be provided to the respondent by hand delivery or mailed in accordance with F.S. § 162.12. If the violation is a recurring violation or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the code enforcement special magistrate even if the violation has been corrected prior to the special magistrate hearing, and the notice shall so state.
- (c) 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 request a hearing and notice of such hearing shall be made in accordance with F.S. § 162.12. The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the special magistrate hearing, and the notice shall so state. If the repeat violation has been corrected, the 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 special magistrate. Fines associated with a finding that a repeat violation exists shall be calculated from the date of first observation to the date of compliance.

- (d) 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 set the matter for hearing before the special magistrate.
- (e) Code enforcement will accept and investigate complaints from both named and anonymous sources according to the respective policy decision of each commissioner for his or her district. However, if two complaints have been filed against a person and/or property within a one-year period and no violations have been identified or verified, then the county manager may require any subsequent complaint against that person and/or property be written and under oath and/or otherwise limit further investigation.
- (f) If the owner of property that is subject to an enforcement proceeding before the 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:
 - (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 pleadings, 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 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 five days after the date of the transfer.
 - (5) Failure to make the disclosures described in paragraphs (1), (2), and (3) 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. Nothing herein shall prevent the county from continuing to prosecute the pending code enforcement proceeding to its conclusion against either the previous owner and/or the new owner.

(Ord. No. 2004-28, § 1, 7-27-04; Ord. No. 2019-18, § 1, 8-20-19)

Sec. 2-174. - Conduct of hearing.

The following procedure shall provide general guidance for the conduct of code enforcement special magistrate hearings. Such rules may be modified and/or amended to ensure the orderly conduct of such hearings:

- (1) The special magistrate shall have regularly scheduled meetings to conduct hearings. The county manager, or designee, or the special magistrate may also call special meetings. Upon request of the code inspector, the special magistrate may conduct a hearing. Hearings shall be conducted in accordance with written rules of procedures adopted by the special magistrate, which may be amended from time to time.
- (2) The board of county commissioners shall provide clerical and administrative personnel as may be reasonably required by code enforcement special magistrate for the proper performance of its duties.

- (3) The special magistrate shall hear the cases on the agenda for that day pertaining to violations of the Code. Unless unique circumstances apply, the special magistrate shall first hear cases where the violator has indicated that he/she wishes to acknowledge non-compliance and the only issue to be determined is time to cure the violation and any fine to be assessed.
- (4) Minutes shall be kept of all hearings.
- (5) Such hearings shall be noticed and open to the public. Any person whose interests may be affected by the matter before the special magistrate shall be given an opportunity to be heard.
- (6) Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Irrelevant, immaterial and unduly repetitious evidence shall 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 this state.
- (7) All testimony to be considered by the special magistrate must be under oath. The special magistrate may inquire of any witness before the code enforcement special magistrate. The alleged violator, or his/her attorney, and the county attorney shall be permitted to inquire of any witness before the code enforcement special magistrate and to present brief opening and closing statements.
- (8) Both the county and the violator shall be given an opportunity to present their respective cases, including, but not limited to, witnesses; photographic evidence; sworn affidavits; previous citations; and other types of information that will be used to support or disprove the existence of the alleged violation(s). Each party to the hearing shall have the right to call and examine witnesses; introduce exhibits; cross-examine and impeach witnesses; submit rebuttal evidence; and, have subpoenas issued on his/her behalf by the special magistrate at least three days prior to the hearing. The violator may retain an attorney to represent himself/herself at the hearing. To minimize expense to those respondents who choose to hire counsel, the special magistrate will take such cases in a manner to ensure efficiency.
- (9) Evidence shall be labeled for recording purposes to ensure exhibits from the county and the violator has been marked for identification. The county is subject to F.S. ch. 119. The alleged violator may request to inspect non-exempt documents and shall have the opportunity to review exhibits prior to their being entered into evidence.
- (10) The special magistrate will generally render a decision immediately following the presentation of evidence at the conclusion of the hearing. However, the special magistrate may request written memoranda of law or written arguments from the sides. Upon reaching a decision, the code enforcement special magistrate shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted by this division. The order by the code enforcement special magistrate may include a notice that it must be complied with by a specified date, and that a fine may be imposed, as provided in this division, and, under the conditions specified in subsection 2-176(a), the cost of repairs may be included along with the fine if the order is not complied with by such date.
- (11) A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successor 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 or interest or assigns.
- (12) 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 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.
- (13) A respondent may request to plea non-compliance without appearing at the hearing. The respondent must acknowledge and submit a notarized written form called an affidavit of stipulation at least two business days prior to the scheduled hearing that the following is true and correct:

- a. He/she is in violation of the section(s) of the Code;
 - b. He/she agrees to a reasonable time to cure the violation;
 - c. He/she agrees to the assessment of a fine;
 - d. He/she agrees to the enforcement cost, which the county may waive upon execution of said stipulation based on the facts and circumstances of the case.
- (14) The special magistrate may grant an extension of time for the violator to bring the alleged violations into compliance or continue cases set for hearing upon request of the violator. The county may waive any objection without hearing or, if, based on the facts and circumstances of the case, code enforcement objects to the extension or continuance, the matter may be scheduled for hearing.
- (15) Costs may be calculated and set by the county manager, or designee.

(Ord. No. 2004-28, § 1, 7-27-04; Ord. No. 2019-18, § 1, 8-20-19)

Sec. 2-175. - Enforcement costs.

If the county prevails in enforcing a case before the special magistrate, it shall be entitled to recover all costs incurred in enforcing the case before the special magistrate, and in any appeals from the special magistrate's order. Such costs include but not limited to: investigative costs, administrative costs and prosecution costs.

(Ord. No. 2004-28, § 1, 7-27-04)

Sec. 2-176. - Administrative fines; cost of repairs; liens.

- (a) The code enforcement special magistrate, upon notification by the code inspector that an order of the code enforcement 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 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 past the date of notice to the violator of the repeat violation. In addition, if the violation is a violation described in subsection 2-173(d), the special magistrate shall notify the board of county commissioners, 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. If a finding of a violation or a repeat violation has been made, a hearing shall not be necessary for issuance of the order imposing the fine.
- (b) The amount of a fine shall be determined as follows:
 - (1) A fine imposed pursuant to this section shall not exceed \$1,000.00 per day for a first violation, and shall not exceed \$5,000.00 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (a). However, if the special magistrate finds the violation to be irreparable or irreversible in nature, the special magistrate may impose a fine not to exceed \$15,000.00 per violation.
 - (2) In determining the amount of the fine, if any, the code enforcement board or special magistrate shall consider the following factors:
 - a. The gravity of the violation.
 - b. Any actions taken by the violator to correct the violation.
 - c. Any previous violations committed by the violator.

- (3) The special magistrate shall be authorized to consider aggravating and mitigating factors when determining the amount of fines and administrative costs associated with Code violations. Such factors include, but are in no way limited to, the following:

a. *Mitigating factors.*

1. The violation was caused by circumstances beyond the control of the violator, such as a weather event;
2. The violation has a limited impact on the surrounding community due to its nature or location;
3. The amount the fine has accrued to in comparison to the nature of the violation and the value of the property in which the violation has occurred;
4. The violator has violated the Code, at most, only once in the last five years and said violation did not pose a threat to the community;
5. The violator does not have the ability to address the violations due to health issues; inability to enter the property; lack of legal authority; and/or financial reasons;
6. The length of time it took for the violator to bring the property into compliance; or
7. The property has a homestead exemption.

b. *Aggravating factors.*

1. The violator is a repeat offender of the same provision of the Code;
2. The violator has created an unsafe condition that threatens public health, safety, and/or welfare;
3. The violation has a high impact on the surrounding community;
4. The length of time it took for the violator to bring the property into compliance; or
5. The subsequent purchaser had or should have had actual and/or constructive knowledge of the fine(s) and/or lien(s).

The special magistrate shall issue findings of fact identifying which factors were considered when determining whether a fine and/or lien reduction is appropriate and to what amount based on the facts and circumstances of each case.

- (c) A certified copy of an order imposing a fine may be recorded in the public records of the county 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.

- (1) Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment, except for enforcement purposes. A fine imposed pursuant to this division 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 occurs first.
- (2) A lien arising from a fine imposed pursuant to this section runs in favor of the county and the county may execute a satisfaction or release of lien entered pursuant to this section. After three months from the filing of any such lien which remains unpaid, the board of county commissioners and the special magistrate may authorize the county attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest.
- (3) No lien created pursuant to the provisions of this division may be foreclosed on real property which is a homestead under Florida Const. art. X, sect. 4.
- (4) Any time before commencement of a foreclosure action or assignment of the lien to a third party, a respondent may request the board of county commissioners to reduce the amount of the lien.

Before hearing the request, the special magistrate shall conduct a hearing and forward a recommendation to the board of county commissioners.

- (5) If the code violation concerns real property, the maximum amount of the lien, including interest, shall be no more than 35 percent of the assessed value of a subject property as determined by the county property appraiser at the time of the imposition of the lien, excluding property owned as common areas by homeowner and condominium associations and other nominally assessed properties.
- (d) The special magistrate may consider requests to reduce a fine that has accrued as a result of a violation of the Code before or after it has been imposed as a lien. A violator may seek to have a fine reduced on the property in which the violation occurred only after that specific property has been brought into compliance. The special magistrate shall refer to the factors outlined in subsection 2-176(b)(3) of the Code, as well as other relevant information, to ensure the circumstances of each case are taken into account when determining if and how a fine should be reduced.

(Ord. No. 2004-28, § 1, 7-27-04; Ord. No. 2019-18, § 1, 8-20-19)

Sec. 2-177. - Duration of lien.

No lien provided under this division shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The county shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(Ord. No. 2004-28, § 1, 7-27-04)

Sec. 2-178. - Motion for rehearing; appeals.

- (a) An aggrieved party, including the board of county commissioners, may appeal a final administrative order of the special magistrate to the circuit court of the eighteenth judicial circuit in and for the county.
- (b) Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the special magistrate.
- (c) An appeal shall be filed within 30 days of the execution of the order to be appealed.
- (d) The board of county commissioners may, by resolution, establish reasonable charges for the preparation of the record on appeal from the final administrative order of the code enforcement special magistrate, to be paid by the appellant.
- (e) A new hearing may be granted if the special magistrate finds sufficient grounds to rehear the matter. A motion for a rehearing must be filed with the clerk to the special magistrate not later than ten days after the date the order is signed by the special magistrate. The motion should state the grounds for the rehearing. A motion for rehearing does not toll the time for filing a notice of appeal.

(Ord. No. 2004-28, § 1, 7-27-04; Ord. No. 2019-18, § 1, 8-20-19)

Sec. 2-179. - Notices.

- (a) All notices required by this division shall be provided to the alleged violator by certified mail, return receipt requested to the address listed on the county property appraiser's records; by hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the board; or by leaving the notice at the violator's usual place of residence with some person residing therein who is above 15 years of age and informing such person of the contents of the notice; or, in the case of commercial premises, leaving notice with the manager or other person in charge.

- (b) 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 this section.
- (c) In addition to providing notice as set forth in subsection (a), notice may also be served by publication or posting as follows:
 - (1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.
 - (2) In lieu of publication as described in paragraph (1) above, such notice may be posted for 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 main county government center located at 2725 Judge Fran Jamieson Way, Viera, Florida, 32940. 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.
 - (3) 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 (a).
- (d) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection (c), shall be sufficient to show that the notice requirements of this division have been met, without regard to whether or not the alleged violator actually received notice.

(Ord. No. 2004-28, § 1, 7-27-04; Ord. No. 2019-18, § 1, 8-20-19)

Sec. 2-180. - Provisions deemed supplemental.

It is the legislative intent of this division to provide an additional or supplemental means of obtaining compliance with county codes and ordinances. Nothing contained in this division shall prohibit the county from enforcing its codes and ordinances by any other means provided by law.

(Ord. No. 2004-28, § 1, 7-27-04)

Secs. 2-181—2-190. - Reserved.