



AGENDA REPORT
August 20, 2019

**Public Hearing, Re: Code Amendment to Chapter 2, Article VI, Division 2,
Code Enforcement Special Magistrate**

SUBJECT:

Public Hearing, Re: Code Amendment to Chapter 2, Article VI, Division 2, Code Enforcement Special Magistrate.

FISCAL IMPACT:

FY 18/19: \$3,433.00 savings
FY 19/20: \$8,240.00 savings

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to amend Chapter 2, Article VI, Division 2, entitled Code Enforcement Special Magistrate.

SUMMARY EXPLANATION and BACKGROUND:

On February 26, 2019, the Board of County Commissioners (BOCC) voted to have staff explore options to streamline the Special Magistrate fine reduction process for code enforcement cases by authorizing the Special Magistrate to make the final determination for reduction requests. On May 7, 2019, the BOCC granted legislative intent and permission to advertise amendments to Chapter 2, Article VI, Division 2, entitled Code Enforcement Special Magistrate. The proposed code amendment:

- Authorizes the Special Magistrate to vacate orders, reduce fines, and lien amounts to the actual cost incurred by the County involving code violations.
- Establishes mitigating criteria and aggravating circumstances relating to fine reductions.
 - Mitigating factors:
 - The violation caused by circumstances beyond the control of the violator, such as a weather event;
 - The violation has a limited impact on the surrounding community due to its nature or location;
 - 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 occurred;
 - The violator has violated the Code, at most, only once in the last five (5)

- years and said violation did not pose a threat to the community;
- 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;
- The property has a homestead exemption.
- Aggravating factors:
 - The violator is a repeat offender of the same provision of the Code;
 - The violator has created an unsafe condition that threatens public health, safety, and/or welfare;
 - The violation has a high impact on the surrounding community;
 - The length of time it took for the violator to bring the property into compliance; or
 - The subsequent purchaser had or should have had actual and/or constructive knowledge of the fine(s) and/or lien(s).
- Clarifies and aligns the code provisions with Florida Statute revisions and current practices.

The attached staff report provides data regarding fine reduction requests, compliance and code enforcement process summary. While the Special Magistrate currently has the ability to reduce fines and costs prior to lien imposition, only the BOCC can reduce fines once a lien has been imposed. The proposed code change, allowing the Special Magistrate to consider reduction requests with and without lien imposition, has the potential to save \$8,240 annually in staff time, streamline the BOCC agendas, and increase the service level for Respondents by reducing the amount of time to obtain a reduction by at least 45 days.

Additionally, while examining the process under the February 26, 2019, BOCC direction, staff discovered a number of other code enforcement process areas that could possibly be simplified to increase the already high voluntary compliance rate of 92%. These enhancements have been incorporated into this code amendment.

CLERK TO THE BOARD INSTRUCTIONS:

If adopted, please return a certified copy of the ordinance to Planning and Development.

ATTACHMENTS:

Description

- **Staff Report**
- **Strike Through and Underlined Copy**
- **Clean Copy**



Planning & Development Department

2725 Judge Fran Jamieson Way
Building A, Room 115
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

Staff Report

TO: Board of County Commissioners

THRU: Frank Abbate, County Manager
John Denninghoff, P.E., Assistant County Manager

FROM: Tad Calkins, Director, Planning and Development Department

DATE: August 12, 2019

SUBJECT: Amendments to Chapter 2, Article VI, Division 2,
entitled Code Enforcement Special Magistrate

Introduction: On February 26, 2019, the Board of County Commissioners (BOCC) unanimously voted to have staff explore options to streamline the Special Magistrate fine reduction process for code enforcement cases by authorizing the Special Magistrate to make the final determination for reduction requests. The BOCC discussed staff having already represented the County's interests during the Special Magistrate's hearing, expending significant time preparing and reviewing the case, and taking testimony under oath. The BOCC also indicated a desire to avoid having to potentially render decisions without all the information, with cases being reheard at the commission level. On May 7, 2019, the BOCC granted legislative intent and permission to advertise amendments to Chapter 2, Article VI, Division 2, entitled Code Enforcement Special Magistrate.

Process Background: It has been more than 14 years since the code enforcement process and fine structure have been substantially reviewed and updated. Code Enforcement is not proactive; Code Enforcement only responds to actual complaints that are received, the primary goal being voluntary compliance. Of the average 2,400 cases per year, Code Enforcement's current success rate is 92% in attaining voluntary compliance.

Code Enforcement affords Respondents every opportunity to resolve the violation with as little inconvenience and cost as possible. Much of the Code Enforcement Officer's role is compliance through education, while providing an understanding of options for resolution. Three or four opportunities are currently offered to the Respondent to comply cases without County-imposed costs: 1) through verbal agreement (for non-health/safety violations) at initial investigation and prior to Notice of Violation (NOV) issuance, 2) through courtesy letter (pilot program currently only for overgrowth cases) 3) after NOV issuance but before follow-up inspections, and 4) after Notice of Hearing issuance but prior to hearing date. Before hearing, the case is reviewed by at least four code enforcement staff members and an Assistant County Attorney to ensure proper notice and supporting evidence. Further, after Hearing, the Respondent can cure the violation prior to fine accrual, paying hearing costs of \$350 for uncontested cases or \$550 for contested cases and actual staff costs, which have not been raised since at least 2000. Fining does not begin

until after the Special Magistrate ordered compliance period. By this time, the Respondent has had an average of 112 days and multiple opportunities to cure the violation. Fines start at \$25/day, which is low-average compared to more than a dozen surrounding municipalities.

Fine Reduction Improvement:

The Special Magistrate currently has the ability to reduce fines and costs prior to lien imposition. The BOCC only hears fine reduction requests with a recorded lien. Staff projects 40 such cases per year without policy and code modification. Each request for reduction requires approximately five hours of staff time between hearing and BOCC agenda, at an average cost of \$206/BOCC fine reduction request. Providing the Special Magistrate final determination for both imposed and non-imposed cases would streamline the process for the Respondent, as the Magistrate is already familiar with the case and circumstances, and eliminate unnecessary staff cost of roughly \$8,240 per year. Lastly, an average 45 days would be removed from the fine reduction timeline as a BOCC Hearing would no longer be required, allowing property owners an expedited reduction determination and resolution of code enforcement action.

Other Potential Improvements:

While examining the process under the February 26, 2019 BOCC direction, staff discovered a number of other code enforcement process areas that could possibly be streamlined to increase the already high voluntary compliance rate of 92%. These include:

- Codification of Special Magistrate Rules with minor modifications. Currently, the Special Magistrate rules exist independent of the code, leading to occasional process confusion.
- Expansion of the courtesy letter pilot program. Courtesy letters have resulted in a 45% case reduction for overgrowth cases. Staff would like to expand this program to include other common case types.
- Examination of fining, hearing and administrative costs. A review of more than a dozen surrounding municipalities has revealed that Brevard County's fines are low, typically \$25/day, when compared with an average \$37/fine. Daily fines were between \$25-\$100.
- Potential aggravating and mitigating criteria have been proposed to assist the Special Magistrate in determining fines and reductions. More than 80% of surrounding municipalities have a code board, Special Magistrate, or city attorney determine fine reductions.
- Align current code with Florida Statutes. Certified mail is currently statutorily required for Notices of Hearing and would continue to be provided. Courthouse postings are inefficient and not statutorily required. Viera Government Center postings could fulfill statutory requirements.



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

August 21, 2019

Honorable Scott Ellis
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2019-18, which was filed in this office on August 21, 2019.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb



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

August 21, 2019

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director

RE: Item H.5., Ordinance for Code Amendment to Chapter 2, Article VI, Division 2, Code Enforcement Special Magistrate

The Board of County Commissioners, in regular session on August 20, 2019, adopted Ordinance No. 19-18, amending Chapter 2, Article VI, Division 2, entitled Code Enforcement Special Magistrate. Enclosed is certified copy of the Ordinance.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

Encls. (1)

ORDINANCE NO. 2019-18

AN ORDINANCE AMENDING CHAPTER 2, "ADMINISTRATION", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; SPECIFICALLY AMENDING ARTICLE VI, DIVISION 2, RELATING TO THE "CODE ENFORCEMENT SPECIAL MAGISTRATE"; AMENDING SECTION 2-170, "POWERS", AUTHORIZING THE SPECIAL MAGISTRATE TO VACATE ORDERS AND REDUCE ANY FINES NOT TO GO BELOW ACTUAL COSTS INCURRED BY THE COUNTY; AMENDING SECTION 2-173, "ENFORCEMENT PROCEDURE"; AMENDING SECTION 2-174, "CONDUCT OF HEARING", TO INCLUDE GENERAL TERMS GOVERNING THE SPECIAL MAGISTRATE HEARING AMENDING SECTION 2-176, "ADMINISTRATIVE FINES; COST OF REPAIRS; LIENS", ALLOWING THE SPECIAL MAGISTRATE TO CONSIDER AGGRAVATING AND MITIGATING WHEN ASSESSING A FINE; AMENDING SECTION 2-176 TO REQUIRE ALL VIOLATIONS ON A SPECIFIC PROPERTY BE COMPLIED BEFORE A FINE IS REDUCED; AMENDING SECTION 2-178, "APPEALS", TO INCLUDE LANGUAGE OUTLINING THE PROCEDURE FOR REHEARING; AMENDING SECTION 2-179, "NOTICES", TO ACCOUNT FOR NOTICES AND POSTINGS IN ACCORDANCE WITH CHAPTER 162, FLORIDA STATUTES; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR INCLUSION IN THE CODE.

WHEREAS, the Board of County Commissioners (the "Board") desires to remain consistent with the requirements outlined in Chapter 162, Florida Statutes, regarding code enforcement procedures; and

WHEREAS, the Board seeks to provide elevated levels of customer service, while ensuring individuals follow the Brevard County Code of Ordinances; and

WHEREAS, the Board has reviewed the recommendations of the Planning and Development Department and has considered the comments of interested citizens in public hearing in adopting these changes to Article VI, Division 2 of Chapter 2 of the Brevard County Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. The below-listed Sections of Article VI, Division 2 of Chapter 2, "Administration", of the Brevard County Code of Ordinances, are hereby amended to read as follows:

Section 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.

Officially filed with the Secretary of State on August 21, 2019.

- (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.

Section 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 Florida Statute 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 Florida Statute 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.

Section 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 Brevard County Code of Ordinances. 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 (3) 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 Chapter 119, Florida Statutes. 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 (2) 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.

Section 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

- i. The violation was caused by circumstances beyond the control of the violator, such as a weather event;
- ii. The violation has a limited impact on the surrounding community due to its nature or location;
- iii. 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;
- iv. The violator has violated the Code, at most, only once in the last five (5) years and said violation did not pose a threat to the community;
- v. 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;
- vi. The length of time it took for the violator to bring the property into compliance; or
- vii. The property has a homestead exemption.

B. Aggravating factors

- i. The violator is a repeat offender of the same provision of the Code;
- ii. The violator has created an unsafe condition that threatens public health, safety, and/or welfare;
- iii. The violation has a high impact on the surrounding community;
- iv. The length of time it took for the violator to bring the property into compliance; or
- v. 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 Brevard County 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 Section 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.

Section 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 Court 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 (10) 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.

Section 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 thirty (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 Florida Statute Chapter 50 for legal and official advertisements. Proof of publication shall be made as provided in Florida Statutes 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.

Section 2, Conflict. Unless preempted by State or Federal law, this Ordinance shall apply in unincorporated areas of the County.

Section 3, Severability. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 4, Effective Date. This Ordinance shall be effective immediately upon adoption. A certified copy of this Ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten (10) days of enactment.

Section 5, Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "Chapter", "Section", "Article", or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED, AND ADOPTED, in regular session, this 20 day of Aug., 2019.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Scott Ellis, Clerk

Kristine Isnardi, Chair
As approved by Board 8/20/19

(as approved by the Board on Aug. 20, 2019)

(SEAL)

Strike

ORDINANCE NO. 2019-____

AN ORDINANCE AMENDING CHAPTER 2, "ADMINISTRATION", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; SPECIFICALLY AMENDING ARTICLE VI, DIVISION 2, RELATING TO THE "CODE ENFORCEMENT SPECIAL MAGISTRATE"; AMENDING SECTION 2-170, "POWERS", AUTHORIZING THE SPECIAL MAGISTRATE TO VACATE ORDERS AND REDUCE ANY FINES NOT TO GO BELOW ACTUAL COSTS INCURRED BY THE COUNTY; AMENDING SECTION 2-173, "ENFORCEMENT PROCEDURE"; AMENDING SECTION 2-174, "CONDUCT OF HEARING", TO INCLUDE GENERAL TERMS GOVERNING THE SPECIAL MAGISTRATE HEARING AMENDING SECTION 2-176, "ADMINISTRATIVE FINES; COST OF REPAIRS; LIENS", ALLOWING THE SPECIAL MAGISTRATE TO CONSIDER AGGRAVATING AND MITIGATING WHEN ASSESSING A FINE; AMENDING SECTION 2-176 TO REQUIRE ALL VIOLATIONS ON A SPECIFIC PROPERTY BE COMPLIED BEFORE A FINE IS REDUCED; AMENDING SECTION 2-178, "APPEALS", TO INCLUDE LANGUAGE OUTLINING THE PROCEDURE FOR REHEARING; AMENDING SECTION 2-179, "NOTICES", TO ACCOUNT FOR NOTICES AND POSTINGS IN ACCORDANCE WITH CHAPTER 162, FLORIDA STATUTES; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR INCLUSION IN THE CODE.

WHEREAS, the Board of County Commissioners (the "Board") desires to remain consistent with the requirements outlined in Chapter 162, Florida Statutes, regarding code enforcement procedures; and

WHEREAS, the Board seeks to provide elevated levels of customer service, while ensuring individuals follow the Brevard County Code of Ordinances; and

WHEREAS, the Board has reviewed the recommendations of the Planning and Development Department and has considered the comments of interested citizens in public hearing in adopting these changes to Article VI, Division 2 of Chapter 2 of the Brevard County Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Underline indicates additions
~~Strikethrough indicates deletions~~

Section 1. The below-listed Sections of Article VI, Division 2 of Chapter 2, "Administration", of the Brevard County Code of Ordinances, are hereby amended to read as follows:

Section 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.

Section 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 respondent violator of the violation and give the respondent 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, the code inspector shall set a hearing before the special magistrate shall be set and noticefy of the hearing will be provided to the respondent of the hearing pursuant by hand delivery or mailed in accordance with Florida Statute 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 Florida Statute 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. ~~If the code enforcement officer has reasonable belief that a repeat violation has been committed, the code inspector shall set a hearing before the special magistrate and notify the respondent of the hearing pursuant to Florida Statute 162.12 and is not required to give the person a reasonable time to correct the violation prior to setting the hearing.~~

- (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 ~~set a 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 ~~after~~ two complaints have been filed against a person and/or property within a one year period and no violations have been identified or verified, ~~within a one year period,~~ then the ~~County~~ Manager may require that 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 eCounty from continuing to prosecute the pending code enforcement proceeding to its conclusion against either the previous owner and/or the new owner.

Section 2-174, Conduct of hearing.

- a) ~~The special magistrate shall have regularly scheduled meetings to conduct hearings. The county manager 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 to written rules of procedures adopted by the special magistrate.~~
- b) ~~Minutes shall be kept of all hearings by the clerk to the special magistrate, and all hearings and proceedings shall be properly 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. The board of county commissioners shall provide clerical and administrative personnel as may be reasonably required by the code enforcement special magistrate for the proper performance of its duties.~~
- c) ~~The code enforcement special magistrate shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The code enforcement special magistrate shall take testimony from the code inspector, alleged violator, person of interest and other witnesses requested by either party.~~
- d) ~~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.~~
- e) ~~The special magistrate may inquire of any witness before the code enforcement special magistrate. The alleged violator or his 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.~~
- f) ~~At the conclusion of the hearing, 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.~~

- ~~g) A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, and subsequent purchasers, successors in interest or assigns.~~
- ~~h) 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.~~

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 the 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 Brevard County Code of Ordinances. 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 (3) 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 Chapter 119, Florida Statutes. 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 (2) 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.

Section 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 may reduce a fine imposed pursuant to this section until an order imposing the fine as a lien is recorded in the public records.~~

(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

i. The violation was caused by circumstances beyond the control of the violator, such as a weather event;

ii. The violation has a limited impact on the surrounding community due to its nature or location;

iii. 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;

iv. The violator has violated the Code, at most, only once in the last five (5) years and said violation did not pose a threat to the community;

v. 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;

vi. The length of time it took for the violator to bring the property into compliance; or

vii. The property has a homestead exemption.

B. Aggravating factors

i. The violator is a repeat offender of the same provision of the Code;

- ii. The violator has created an unsafe condition that threatens public health, safety, and/or welfare;
- iii. The violation has a high impact on the surrounding community;
- iv. The length of time it took for the violator to bring the property into compliance; or
- v. 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) Anytime 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 Brevard County 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 Section 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.

Section 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 Court 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 (10) 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.

Section 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 ~~board of county commissioners~~; 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 thirty (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), ~~at the option of the special magistrate,~~ 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 eCounty. The newspaper shall meet such requirements as are prescribed under Florida Statute eChapter 50 for legal and official advertisements. Proof of publication shall be made as provided in Florida Statutes 50.041 and 50.051.
 - (2) In lieu of publication as described in paragraph (1) above ~~subsection (b)(1),~~ 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 ~~the courthouse in the county.~~ 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 ~~(b)~~ (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.

Section 2, Conflict. Unless preempted by State or Federal law, this Ordinance shall apply in unincorporated areas of the County.

Section 3, Severability. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 4, Effective Date. This Ordinance shall be effective immediately upon adoption. A certified copy of this Ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten (10) days of enactment.

Section 5, Inclusion in Code. It is the intention of the Board that the provisions of this Ordinance shall become and be made part of the Brevard County Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "Chapter", "Section", "Article", or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED, AND ADOPTED, in regular session, this _____ day of _____, 2019.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Kristine Isnardi, Chair

(as approved by the Board on _____, 2019)

(SEAL)