

ORDINANCE NO. 04-28

AN ORDINANCE OF BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE VI, DIVISION 2; OF THE CODE OF ORDINANCES, CONCERNING CODE ENFORCEMENT PROCEDURES, SPECIFICALLY AMENDING SECTION 2-166, SHORT TITLE; SECTION 2-167, DEFINITIONS; SECTION 2-168, AUTHORITY AND INTENT; SECTION 2-169, SPECIAL MAGISTRATE; ESTABLISHMENT; QUALIFICATIONS; SECTION 2-170, POWERS; SECTION 2-171, LEGAL COUNSEL; SECTION 2-172, JURISDICTION; SECTION 2-173, ENFORCEMENT PROCEDURES; SECTION 2-174, CONDUCT OF THE HEARING; SECTION 2-175, ENFORCEMENT COSTS; SECTION 2-176, ADMINISTRATIVE FINES; COST OF REPAIRS; LIENS; SECTION 2-177, DURATION OF LIEN; SECTION 2-178, APPEALS; SECTION 2-179, NOTICES, AND SECTION 2-180, PROVISIONS DEEMED SUPPLEMENTAL; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 2, Article VI, Division 2, Code of Ordinances, provides for the establishment of a Code Enforcement Board and a Special Master to conduct code enforcement hearings; and

WHEREAS, Chapter 2, Article VI, Division 2, Code of Ordinances, establishes the procedures for the enforcement of Brevard County Code of Ordinances; and

WHEREAS, the Brevard County Board of County Commissioners has determined that the procedures set forth in Chapter 2, Article VI, Division 2 do not take full advantage of the enforcement mechanisms authorized by Chapter 162, Florida Statutes, and Florida law; and

WHEREAS, the Brevard County Board of County Commissioners has made policy decisions regarding code enforcement that should be codified in Chapter 2, Article VI, Division 2; and

WHEREAS, the Brevard County Board of County Commissioners has further determined that it is in the best interest of the County to provide for more effective code enforcement procedures as authorized by Chapter 162, Florida Statutes, and Florida law.

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

SECTION 1. Chapter 2 Article VI, Division 2 is hereby amended to read as follows:

DIVISION 2. CODE ENFORCEMENT SPECIAL MAGISTRATE

Sec. 2-166. Short title.

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

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 Brevard 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 mean 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 Brevard 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 *violation* 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.

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.

Sec. 2-169. Special Magistrate; Establishment; Qualifications

(a) There is hereby established a code enforcement Special Magistrate of Brevard County, Florida, appointed pursuant to Chapter 162, Florida Statutes, 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 Brevard 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.

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.

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.

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 the Code of Ordinances 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 or Ordinances. 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.

Sec. 2-173. Enforcement procedure.

- (a) The code inspectors have the primary duty of enforcing the various codes 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 of the violation and give the respondent 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 and notify the respondent of the hearing pursuant F. S. Sec.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 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 F. S. Sec.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 a hearing before the special magistrate.

(e) Code enforcement will accept and investigate complaints; from both named and anonymous sources. However, if after two complaints have been filed against a person and/or property and no violations have been identified within a one year period, 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 5 days after the date of the transfer.

(5) 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.

Sec. 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 section 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, any 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.

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.

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 section 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..

(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 may authorize the county attorney to foreclose on the lien.

(3) No lien created pursuant to the provisions of this division may be foreclosed on real property which is a homestead under Fla. Const. art. X, ' 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 Brevard 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.

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.

Sec. 2-178. Appeals.

- (a) An aggrieved party, including the board of county commissioners, may appeal a final administrative order of the special master magistrate to the circuit court of the Eighteenth Judicial Court in and for Brevard County, Florida.
- (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.

Sec. 2-179. Notices.

- (a) All notices required by this division shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the 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.
- (b) 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 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 subsection (b)(1), such notice may be posted for at least ten days in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the front door of the courthouse in 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).

(c) 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), 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.

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.

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid unconstitutional provision shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate purpose and intent of this ordinance.

SECTION 4. Area Encompassed. This ordinance shall take effect within the unincorporated area of Brevard County, Florida.

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

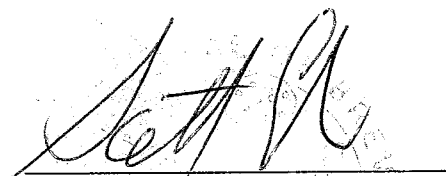
SECTION 6. Effective date. This Ordinance shall become effective as provided by law. A certified copy of the ordinance shall be filed with the Secretary of State, State

of Florida, within ten (10) days of enactment.

DONE, ORDERED AND ADOPTED in Regular Session, this 27 day of July, 2004.

ATTEST

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



SCOTT ELLIS, CLERK



NANCY HIGGS, CHAIR

(As approved by the Board on 7-27-04)

Officially filed with
The Secretary of State
August 4, 2004