

ORDINANCE 2024-04

AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA, AMENDING DIVISION 2 (ENFORCEMENT BY SPECIAL MAGISTRATE) OF ARTICLE VII (CODE ENFORCEMENT) OF THE CODE OF ORDINANCES OF THE CITY OF MADEIRA BEACH TO REFLECT THE CHANGES THAT HAVE BEEN ADOPTED IN CHAPTER 162, FLORIDA STATUTES; DELETING SECTION 2-380 (PRIORITY OF LIENS) AND RENUMBERING SUBSEQUENT SECTIONS; PROVIDING FOR CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Attorney has reviewed the current provisions of Division 2 (Enforcement by Special Magistrate) of Article VII (Code Enforcement) of the Code of Ordinances for the City of Madeira Beach and has recommended that certain provisions be amended to reflect the changes that have been adopted in Chapter 162, Florida Statutes; and

WHEREAS, the recommendations of the City Attorney have been found meritorious by the Board of Commissioners; and

WHEREAS, the Board of Commissioners has received input from the public at two public hearings.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, IN SESSION DULY AND REGULARLY ASSEMBLED:

Section 1. That Division 2 (Enforcement by Special Magistrate) of Article VII (Code Enforcement) of Chapter 2 (Administration) of the Code of Ordinances of the City of Madeira Beach, Florida, is hereby amended and shall read as follows:

DIVISION 2. ENFORCEMENT BY SPECIAL MAGISTRATE

Sec. 2-370. Intent.

The intent of this division is to create an alternative local government code

enforcement system in order to promote, protect, and improve the health, safety, and welfare of the citizens of the city by providing for an equitable, expeditious, effective and efficient method of enforcing any codes or ordinances where pending or repeated violation continues to exist in the city.

Sec. 2-371. Definitions.

The definitions in this section are applicable to this division and have the following meanings:

~~Code inspector/~~Code enforcement officer means any authorized agent or employee of the municipality whose duty it is to assure code compliance.

Repeat violation means a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding the violations occur at different locations.

Sec. 2-372. Civil offenses and penalties: special magistrate.

The violation of any city ordinance shall constitute a civil offense punishable by civil penalty in the amount described in section 2-378. Accordingly, there is hereby created and established a code enforcement position to be filled by a special magistrate to enforce the ordinances and codes of the city.

Sec. 2-373. Qualification of special magistrate and removal.

- (a) A special magistrate shall possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability.

Appointments shall be made by the city manager or his designee on the basis

of experience or interest in code enforcement. Such appointment shall be submitted to the ~~city commission~~ Board of Commissioners for ratification by the board of commissioners.

- (b) Appointments shall be made for a term not more than one year. The special magistrate may be reappointed at the discretion of the city manager, subject to ratification by the ~~city commission~~ Board of Commissioners. There shall be no limit on the number of reappointments that shall be given to the special magistrate; provided, however, that a determination as to removal or reappointment must be made for each special magistrate at the end of each of his one-year terms. The city manager shall have the authority to remove the special magistrate with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.
- (c) The special magistrate shall not be a city employee. The special magistrate shall be compensated at a rate to be determined by ~~administrative order~~ the city manager, subject to ratification by the Board of Commissioners.
- (d) The city attorney shall serve as general counsel to the code enforcement officer. If an appeal is taken pursuant to section 2-~~384380~~, the city attorney shall represent the city at such proceedings.

Sec. 2-374. Jurisdiction.

The city appointed special magistrate shall have jurisdiction to hear and decide alleged violations of any code of ordinances in force in the city including amendments to such codes and ordinances. The special magistrate shall have the jurisdiction and authority to determine the amount of reasonable expenses incurred by the city as a result

of orders issued pursuant to the authority of section 2-378.

Sec. 2-375. Enforcement procedure.

(a) It shall be the duty of ~~a-the~~ code enforcement officer to initiate enforcement proceedings of the various codes and ordinances. The special magistrate shall not have the power to initiate such enforcement proceedings. The code enforcement officer may not initiate enforcement proceedings for a potential violation of a duly enacted code or ordinance by way of an anonymous complaint. A person who reports a potential violation of a code or an ordinance must provide his or her name and address to the city before an enforcement proceeding may occur. This subparagraph does not apply if the code enforcement officer has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.

(b) Except as provided in subsections (c) and (d), if a violation of the Code is found, ~~a-the~~ code enforcement officer shall notify the violator and give him a reasonable time to correct the violation. Should the violation continue past the time specified for correction, ~~a-the~~ code enforcement officer shall notify the special magistrate and request a hearing. The special magistrate, through his clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in section 2-~~382381~~ to ~~such-said~~ violator. At the option of the special magistrate, notice may additionally be served by publication or posting as provided in section 2-~~382381~~. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by ~~a-the~~ code enforcement officer, the case may

be presented to the special magistrate even if the violations has been corrected prior to the special magistrate hearing, and the notice shall so state.

- (c) If a repeat violation is found, ~~a~~the code enforcement officer shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. ~~A~~The code enforcement officer, upon notifying the violator of a repeat violation, shall notify the special magistrate and request a hearing. The special magistrate, through his clerical staff, shall schedule a hearing and shall provide notice as provided in section 2-~~382~~381. The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the code enforcement 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 rights to this hearing and pay such costs as determined by the special magistrate.
- (d) If ~~a~~the code enforcement officer 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 violations is irreparable or irreversible in nature, ~~a~~the code enforcement officer shall make a reasonable effort to notify the violator and may immediately notify the special magistrate and request a hearing.

(e) If the owner of property that is subject to an enforcement proceeding before the special magistrate 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 officer 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.

A 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.

Sec. 2-376. Conduct of hearing.

(a) Upon request of ~~a~~the code enforcement officer, or at such other times as may be necessary, the special magistrate may call a code enforcement hearing.

- (b) Minutes shall be kept of all hearings held by the special magistrate and all hearings and proceedings shall be open to the public. The board of commissioners shall provide clerical and administrative personnel as may be reasonably required by the special magistrate for the proper performance of his duties.
- (c) Each case before the special magistrate shall be presented by the city attorney or by a member of the city administration. If the city administration prevails in prosecuting a case before the special magistrate, it shall be entitled to recover all costs incurred in prosecuting the case before the special magistrate and such costs may be included in the lien authorized in subsection 2-378(e).
- (d) The 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 special magistrate shall take testimony from ~~a~~the code enforcement officer, alleged violator, and any witnesses. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern all proceedings.
- (e) The special magistrate shall issue findings of fact, based on evidence of record, and conclusions of law. In order to make a finding upholding the code enforcement officer's decision, the special magistrate must find that the preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant section of the Code as charged. At the conclusion of the hearing, the special magistrate shall issue an order affording the proper relief consistent with powers granted by this division. The

order may include a notice that it must be complied with by a specified date and that a fine may be imposed and under the conditions specified in subsection 2-378(a), the cost of repairs may be included along with the fine if the order is not complied with by such date.

- (f) A certified copy of such order may be recorded in the public records of ~~the~~ Pinellas 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.
- (g) If an order is recorded in the public records pursuant to subsection (f) and the order is complied with by the date specified in the order, the code enforcement officer shall issue an affidavit of compliance acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

Sec. 2-377. Powers of the special magistrate.

The special magistrate shall have the power to:

- (1) Adopt rules for the conduct of hearings.
- (2) Subpoena alleged violators and witnesses to hearings. Subpoenas may be served by the designated law enforcement agency of the city.
- (3) Subpoena evidence to a hearing.
- (4) Take testimony under oath.

- (5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

Sec. 2-378. Administrative fines; cost of repair; liens.

- (a) The special magistrate, upon notification by ~~a~~the code enforcement officer that an order of the 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 by the special magistrate 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~~enforcement officer. In addition, if the violation is a violation as described in subsection 2-375(d), the special magistrate shall notify the city administration 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 with this section. Making such repairs does not create a continuing obligation on the part of the city to make further repairs or to maintain the property and does not create any liability against the city for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this subsection, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a special magistrate finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in

subsection (b).

- (b) A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 per day for a repeat violation, and in addition, may include all costs of repairs pursuant to subsection (a). However, if a special magistrate finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.
- (c) In determining the amount of the fine, if any, the special magistrate shall consider the following factors:
 - (1) The gravity of the violation;
 - (2) Any actions taken by the violator to correct the violation; and
 - (3) Any previous violations committed by the violator.
- (d) The special magistrate may reduce a fine imposed pursuant to this section.
- (e) A certified copy of an order imposing a fine or a fine plus repair costs may be recorded in the public records of ~~the Pinellas Ce~~ounty 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. 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 execution and levy against the personal property of the violator, 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 ~~violations-violator~~ comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed

pursuant to this division, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city and the city 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 special magistrate may authorize the city attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this division may be foreclosed on real property which is homestead under Section 4, Article X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under Section 4(a), Article X of the State Constitution.

- (f) If the city attorney or a member of the city administration prevails in prosecuting a case before the special magistrate, the city shall be entitled to recover all costs incurred in prosecuting the case before the special magistrate. As used in this article, the term "prevails" includes, but is not limited to, those cases in which the special magistrate finds that a violation existed at the time the citation was issued without regard to whether the violation was subsequently corrected. The fine for the violation and/or costs to repair the damages from the violation is separate and distinct from the recovery of expenses. The special magistrate may, by written order recorded in the official records of ~~the Pinellas County~~, impose a lien against the property upon which the violation occurred as well as all other real and personal property of the violator in the amount of the costs incurred by the city

in prosecuting the case.

Sec. 2-379. Duration of lien.

- (a) 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 or for a money judgment, the prevailing party is entitled to recover all costs, to include a reasonable attorney's fee that it incurs in the foreclosure. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien affected 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.
- (b) Once the city has collected on the lien or a money judgment, the ~~finance director of the city~~ city manager shall issue a satisfaction or release of lien.

Sec. 2-380. Priority of liens.

An aggrieved party, including the ~~local governing authority~~ city, may appeal a final administrative order of the special magistrate to the circuit court. 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. An appeal shall be filed within 30 days of the execution of the order to be appealed.

Sec. 2-~~382~~381. Notices.

All notices required by this division shall be provided to the alleged violator as described in Florida Statutes § 162.12, as amended from time to time.

Sec. 2-~~383~~382. Optional enforcement.

The provisions of this division shall in no way be construed to limit the power of the city to proceed in any other civil or criminal proceeding or in any other forum to obtain enforcement of its Code provisions.

Sec. 2-~~384~~383. Conflict of interest.

- (a) No person who is or may become a party or a witness to a hearing before the special magistrate shall communicate with the special magistrate concerning that violation except at the hearings provided for in this division. This restriction shall extend to any person appearing or interceding on behalf of a party, whether or not such person may have a direct, personal or financial interest in the property which is the subject of the alleged violation.
- (b) No special magistrate shall communicate with any party, witness, representative of a party, or interceding person concerning any alleged violation except at the hearings provided for in this division.
- (c) Failure on the part of special magistrate to comply with the provisions of this subsection shall constitute grounds for removal by the city manager or his designee.

Sec. 2-~~385~~384. ~~Public records searches relating to Code.~~ Title searches.

- (a) The city manager or his designee is authorized to obtain a ~~public records title~~ search for the purpose of determining whether to institute a lien foreclosure proceeding without the necessity of any action by the special magistrate whenever the unpaid amount of the code enforcement lien exceeds \$100.00.
- (b) No ~~public records title~~ search for the purpose of determining whether to institute a lien foreclosure proceeding shall be obtained where the unpaid

amount of the lien is less than \$100.00.

Sec. 2-~~386~~385. Modification of orders by special magistrate.

The special magistrate, and only the special magistrate, may modify, amend, clarify, correct, extend, or rescind orders issued by the special magistrate, including any and all requests for modifications or reductions in code enforcement fines or liens based on orders of the special magistrate, which may be considered by motion of any party to the original proceedings or successor property owner.

Section 2. For purposes of codification of any existing section of the Madeira Beach Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. Ordinances or parts of ordinances in conflict herewith to the extent that such conflict exists are hereby repealed.

Section 4. In the event a court of competent jurisdiction finds any part or provision of the Ordinance unconstitutional or unenforceable as a matter of law, the same shall be stricken and the remainder of the Ordinance shall continue in full force and effect.

Section 5. The Codifier shall codify the substantive amendments to the Code of Ordinances of the City of Madeira Beach contained in Section 1 of this Ordinance as provided for herein and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 6. Pursuant to Florida Statutes §166.041(4), this Ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, THIS _____ day of _____, 2024.

James "Jim" Rostek, Mayor

ATTEST:

Clara VanBlargan, MMC, MSM, City Clerk

APPROVED AS TO FORM:

Thomas J. Trask, City Attorney

PASSED ON FIRST READING: _____

PUBLISHED: _____

PASSED ON SECOND READING: _____