

ORDINANCE 2022-02

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FERNANDINA BEACH, FLORIDA, BY AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE VI, CODE ENFORCEMENT AND SPECIAL MAGISTRATE, BY REPEALING THE SECTIONS IN ARTICLE VI IN THEIR ENTIRETY, RETITLING THE ARTICLE "CODE ENFORCEMENT" AND NUMBERING WITH NEW SEQUENCE OF SECTION NUMBERS; AMENDING CHAPTER 2 BY CREATING SECTION 360, INTENT; CREATING SECTION 361, DEFINITIONS; CREATING SECTION 362, APPOINTMENT OF SPECIAL MAGISTRATE; CREATING SECTION 363, JURISDICTION OF SPECIAL MAGISTRATE; CREATING SECTION 364, POWERS AND DUTIES; CREATING SECTION 365, NOTICE OF VIOLATION/NOTICE OF HEARING; RESERVING SECTIONS 2-366-2-367; CREATING SECTION 368, CONDUCT OF HEARINGS; CREATING SECTION 369, PENALTIES FOR VIOLATION, LIENS; CREATING SECTION 370, APPEALS OF SPECIAL MAGISTRATE DECISIONS; RESERVING SECTIONS 371-410; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City has a duty to enforce code violations to maintain the health, safety and welfare of its citizens; and

WHEREAS, the City Commission enacted Ordinance 2002-09 to create a Code Enforcement and Appeals Board to determine violations of City ordinances and assess fines and fees for violators that do not correct violations; and

WHEREAS, the City Commission enacted Ordinances 2006-19 and 2007-06 to add appeals of decisions made by the Building Official and Fire Marshal, respectively, to the Code Enforcement and Appeals Board list of duties; and

WHEREAS, the City Commission desires to change the process by which Code Enforcement cases are heard by utilizing a Special Magistrate system of hearing and enforcement instead of the Code Enforcement Board.

NOW, THEREFORE, THE CITY OF FERNANDINA BEACH, FLORIDA, HEREBY ENACTS:

SECTION 1. It is proposed that Chapter 2, Article IV, of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby repealed in its entirety as follows:

**~~DIVISION 1. -- CODE ENFORCEMENT~~**

**Sec. 2-381. – Establishment.**

There is hereby established a board to be called the code enforcement and appeals board.

**Sec. 2-382. – Definitions.**

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

*Authority having jurisdiction (AHJ)* means the duly appointed fire chief or fire marshal of the city.

*Board* has the same meaning as enforcement board below.

*Building official* means the building official of the city, as the enforcement officer of the Standard Unsafe Building Abatement Code.

*City attorney* means the Charter Officer and Legal Counselor for the City of Fernandina Beach.

*City commission* means the legislative body of the City of Fernandina Beach.

*City Code and City Ordinances* means the Code of Ordinances of the City of Fernandina Beach, as amended from time to time, and city ordinances enacted by the city commission to be codified into the Code of Ordinances of the City of Fernandina Beach.

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

*Enforcement board or code enforcement board* means the city code enforcement and appeals board.

*Fire codes* means the Florida Specific edition of NFPA 101, the Life Safety Code, and the Florida specific edition of NFPA 1, the Uniform Fire Code, as adopted within chapter 69A-60, Florida Administrative Code, of the Florida Fire Prevention Code, all as adopted by the state fire marshal and the city commission pursuant to law.

*Fire marshal* means the same as the authority having jurisdiction (AHJ), and the terms may be used interchangeably for the purposes of this article.

*Local governing body or city* means the City of Fernandina Beach.

*Local governing attorney* means the city attorney or any attorney designated by the city commission to represent the code enforcement and appeals board.

*Member* means a regular member of the enforcement board, or an alternate member when the alternate member has been seated due to the absence or disqualification of the regular member.

*Person* means an individual, firm association, organization, partnership, company, corporation, or any other business entity, trust, whether government or private.

*Repeat violation* means a violation of a provision of a code or ordinance by a person who has been previously found by the special magistrate(s), 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.

*Special magistrate*: any special magistrate appointed by the city commission to hear code enforcement violation cases and/or appeal cases.

*Standard Building Code* means the Standard Building Code by the South Building Congress International, Inc. in the version as adopted by the city commission.

*Standard Unsafe Building Abatement Code* means the Standard Unsafe Building Abatement Code by the South Building Congress International, Inc. in the version as adopted by the city commission.

**Sec. 2-383. — Membership; term of office; officers.**

- (a) ~~*Appointment of members.* The city commission shall appoint seven regular members and two alternate members to the code enforcement and appeals board.~~
- (b) ~~*Eligibility for membership.* The following conditions for eligibility for appointment to the board shall apply:~~
- (1) ~~*Place of residence.* Each member shall reside in the city.~~
  - (2) ~~*City employees and members of city commission.* No member of the city commission or employee of the city shall be eligible of membership on the board.~~
  - (3) ~~*Qualifications.* The membership of the code enforcement and appeals board shall, whenever possible, include persons in the following fields:~~
    - a. ~~An architect;~~
    - b. ~~A business person;~~
    - c. ~~An engineer;~~
    - d. ~~A general contractor;~~
    - e. ~~A realtor;~~
    - f. ~~A subcontractor; and~~
    - g. ~~A person with zoning and/or building experience.~~
- (c) ~~*Term of office.* The terms of the members shall be for three years, except that, in the appointment of the first members of the code enforcement and appeals board after July 18, 2006 two members shall be appointed for a term of one year, three members shall be appointed for a term of two years, and two members shall be appointed for a term of three years.~~
- (d) ~~*Reappointment.* A member may be reappointed upon approval of the city commission for a term of three years.~~

- (e) ~~*Vacancy.* An appointment to fill any vacancy on an enforcement board shall be for the remainder of the unexpired term of office.~~
- (f) ~~*Officers.* The members shall elect, by majority vote, a chair and vice chair from among the members. The chair, or, in the absence of the chair, the vice chair, may administer oaths and compel the attendance of witnesses.~~
- (g) ~~*Secretary.* The code inspector shall serve as secretary to the board and shall make a detailed record of all its proceedings, which shall set forth the reasons for its decisions, the vote of each member, the absence of each member and any failure of a member to vote. The secretary shall keep minutes of all meetings and shall maintain all the records of the board. All approved minutes shall be submitted to the office of the city clerk.~~

**Sec. 2-384. — Vacancies.**

~~Vacancies on the code enforcement and appeals board shall be filled for an unexpired term in the manner in which original appointments are required to be made.~~

**Sec. 2-385. — Compensation of members.**

~~All members of the code enforcement and appeals board shall serve without compensation, but may be reimbursed for actual expenses incurred in connection with their official duties as set forth in F.S. Chapter 112.~~

**Sec. 2-386. — Removal of members.**

~~A member of the code enforcement and appeals board shall be automatically removed from the board and the member's seat declared vacant under any of the following conditions:~~

- (1) ~~If the member moves outside the city.~~
- (2) ~~If a member has three absences at the board's regular meetings in one calendar year.~~

**Sec. 2-387. — Jurisdiction; powers and duties.**

- (a) ~~The code enforcement and appeals board shall have the jurisdiction and authority to hear and decide alleged violations of the following:~~
  - (1) ~~City of Fernandina Beach Code of Ordinances;~~
  - (2) ~~State, county and local laws and ordinances whose intent is to promote the health, welfare and safety of the citizens of the city.~~
- (b) ~~The jurisdiction of the code enforcement and appeals board shall not be exclusive. Any alleged violation of any of the provisions in subsection (a) may be pursued by appropriate remedy in court at the option of the administrative official whose responsibility it is to enforce that respective code or ordinance.~~
- (c) ~~The code enforcement and appeals board shall have the powers as set forth in F.S. section 162.08 as may be amended from time to time.~~
- (d) ~~Additional powers and duties:~~
  - (1) ~~The code enforcement and appeals board shall also hear issues relating unsafe housing, pursuant to the Standard Unsafe Building Abatement Code as those cases may be brought forth by the Building Official;~~

- (2) ~~The code enforcement and appeals board shall also hear appeals from decisions and interpretations of the building official and consider variance of technical codes, as set forth in the Standard Building Code.~~
- (3) ~~The code enforcement and appeals board shall also hear appeals from decisions of the fire marshal and shall provide reasonable interpretation of the provision of the fire codes, as set forth in NFPA 1, Uniform Fire Code, section 1.10.~~
  - a. ~~In its rulings, the board shall ensure that the intent of the fire code is complied with and public safety is secure.~~

**Sec. 2-387.1. Appeals of decisions of the building official relating to the Standard Building Code.**

- (a) ~~The owner of a building, structure or service system, or his duly authorized agent, may appeal a decision of the building official to the code enforcement and appeals board whenever any one of the following conditions are claimed to exist:~~
  - (1) ~~The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.~~
  - (2) ~~The provisions of this code do not apply to this specific case.~~
  - (3) ~~That an equally good or more desirable form of installation can be employed in any specific case.~~
  - (4) ~~The true intent and meaning of this code or any of the regulations there under have been misconstrued or incorrectly interpreted.~~
- (b) ~~Notice of appeal. Notice of appeal shall be in writing and filed within 30 calendar days after the decision is rendered by the building official. Appeals may be in a form as provided by the community development department, or such other written document which will adequately explain the issue being appealed.~~
- (c) ~~Unsafe or dangerous building or service systems. In the case of a building, structure or service system which, in the opinion of the building official, is unsafe, unsanitary or dangerous, the building official may, in his order, limit the time for such appeals to a shorter period.~~

**Sec. 2-387.2. Variances to the Standard Building Code.**

- (a) ~~*Variances.* The code enforcement and appeals board, when so appealed to and after a hearing, may vary the application of any provision of this code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this or the technical codes or public interest, and also finds all of the following:~~
  - (1) ~~That special conditions and circumstances exist which are peculiar to the building, structure, or service system involved and which are not applicable to others.~~
  - (2) ~~That the special conditions and circumstances do not result from the action or inaction of the applicant.~~
  - (3) ~~That granting the variance requested will not confer on the applicant any special privilege that is denied by the technical code to other buildings, structures or services system.~~
  - (4) ~~That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.~~

(5) ~~That the grant of the variance will be in harmony with the general intent and purpose of the technical code and will not be detrimental to the public health, safety and general welfare.~~

(b) ~~*Conditions of the variance.* In granting the variance, the board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the board may prescribe appropriate conditions and safeguards in conformity with the technical code. Violation of the conditions of a variance shall be deemed a violation of the technical code.~~

**Sec. 2.387.3. ~~Appeals and interpretations of decisions of the fire marshal.~~**

(a) ~~The code enforcement and appeals board shall meet as required to interpret the provisions of the fire code, and to consider and rule on any properly filed appeal from a decision of the AHJ.~~

(b) ~~Any person shall be permitted to appeal a decision of the AHJ to the board when it is claimed that any one or more of the following conditions exist:~~

(1) ~~The true intent of the codes or ordinances described in the fire code has been incorrectly interpreted.~~

(2) ~~The provisions of the fire code or ordinances do not fully apply.~~

(3) ~~A decision is unreasonable or arbitrary as it applies to alternatives or new materials.~~

(c) ~~An appeal shall be submitted to the AHJ in writing within 30 calendar days of notification of violation outlining the fire code provision from which relief is sought and the remedy proposed.~~

(1) ~~All documentation supporting an appeal shall be given to the AHJ, and submitted to the board for review, along with materials prepared by the AHJ.~~

(d) ~~The board shall give a minimum of five days' notice of the hearing date, and shall meet on an appeal within 30 calendar days of the filing of the appeal.~~

(e) ~~All meetings of the board shall be public, and shall be conducted in the manner provided for other matters coming before the board.~~

(f) ~~As required by NFPA 1, Uniform Fire Code, section 1.10.6, a minimum quorum of four members shall be required to hear matters involving the fire code, and a majority vote shall be required to vary the application of any provision of the fire code, or in modifying an order of the AHJ.~~

**Sec. 2-388. ~~Quorum and voting.~~**

(a) ~~For the purpose of transacting business at any meeting or hearing, a majority of the board members shall constitute a quorum. Approval of actions requires an affirmative vote of a majority of the members. For variance and appeal hearings, the quorum requirement is five members.~~

(b) ~~In the event that regular members are unable to attend a meeting, the alternate members shall vote.~~

(c) ~~A member shall abstain from voting on a particular issue or shall be disqualified by majority vote of the remaining members present, if any of the following circumstances apply:~~

(1) ~~The member has a direct financial interest in the outcome of the matter;~~

(2) ~~The matter at issue involves the members own official conduct;~~

(3) ~~Participation in the matter might violate the letter or spirit of a member's code of professional responsibility;~~

(4) ~~The member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.~~

~~(d) A regular member absent during the presentation of evidence in a hearing may not participate in the deliberations or vote regarding the matter of the hearing.~~

~~(e) An alternate who has been present and has heard all evidence presented may participate in all deliberations, but may not make a motion or vote on the issue. If a regular member is absent or a regular member abstains or is disqualified from a vote the alternates are authorized to and shall vote as a regular member, in accordance with their designation as alternate number 1 and alternate number 2, in that order.~~

~~(f) For variances from the building code, the affirmative vote by five members shall be required.~~

~~(g) For appeals from decisions of the building official, the affirmative vote by five members shall be required.~~

**Sec. 2-389. ~~Rights of disqualified member.~~**

~~(a) An abstaining or disqualified member of a hearing body or board shall not be counted for purposes of forming a quorum.~~

~~(b) A board member who takes a position on the issue based upon personal interest may do so only by abstaining from voting on the proposal, vacating the seat on the hearing body or board, physically joining the audience, and making full disclosure of his/her status and position at the time of addressing the hearing body or board.~~

**Sec. 2-390. ~~Enforcement procedures.~~**

~~Enforcement procedures shall be as set forth in F.S. section 162.06 as may be amended from time to time.~~

**Sec. 2-391. ~~Conduct of hearing.~~**

~~(a) The board's conduct of hearing shall be as set forth in F.S. section 162.07 as may be amended from time to time.~~

~~(b) The board shall adopt rules for the conduct of its hearings and shall file said rules with the city clerk.~~

~~(c) The board shall meet at the call of the chair, at the request of three members of the board, and at such other times as the board may determine.~~

**Sec. 2-392. ~~Administrative fines; costs of repair; liens.~~**

~~Administrative fines, costs of repair and liens shall be as set forth in F.S. section 162.09 as may be amended from time to time.~~

**Sec. 2-393. ~~Duration of lien.~~**

~~The duration of liens shall be as set forth in F.S. section 162.10 as may be amended from time to time.~~

**Sec. 2-394. ~~Legal representation.~~**

~~The city commission shall appoint legal counsel to represent the code enforcement board. The legal counsel to the code enforcement board shall not also represent the city by presenting cases before the board. Each case before the board shall be presented by either an independent attorney or by a member of the administrative staff of the city.~~

**Sec. 2-395. – Appeals.**

An aggrieved party, including the city, may appeal a final administrative order of an enforcement board to the circuit court. Such appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board. An appeal shall be filed within 30 days of the execution of the order to be appealed.

**DIVISION 2. – SPECIAL MAGISTRATE**

**Sec. 2-396. – Jurisdiction.**

- (a) ~~All civil infractions of provisions of the Code of Ordinances or the Land Development Code of the City of Fernandina Beach, as amended and city ordinances duly adopted by the City of Fernandina Beach may be enforced by any of the remedies as set forth in this article, including code enforcement board or special magistrate, or as otherwise provided by law.~~
- (b) ~~The special magistrate or magistrates shall have jurisdiction to hear and decide appeals originating from the issuance of citations by code enforcement officers due to violations of the Code of Ordinances and Land Development Code of the City of Fernandina Beach.~~
- (c) ~~Any alleged violation of the aforesaid Code of Ordinances or Land Development Code may also be enforced in a court of competent jurisdiction.~~

**Sec. 2-397. – Appointment, qualifications and removal.**

- (a) ~~The special magistrate shall be appointed by the city commission and shall serve with compensation as established by the city commission upon appointment. The city may utilize the services of one or more special magistrates to conduct hearings concerning the City Code and city ordinances.~~
- (b) ~~The special magistrate shall be an attorney licensed to practice law in the state of Florida, be a member in good standing of the Florida Bar Association and possess a minimum of five years prior legal experience.~~
- (c) ~~Special magistrates shall serve for terms established by the city commission. Special magistrates shall be subject to removal, with or without cause, from their positions at any time during their term, by the city commission.~~

**Sec. 2-398. – Powers of special magistrate.**

- (a) ~~Special magistrate shall have the power to:~~
  - (1) ~~Adopt rules for the conduct of hearings;~~
  - (2) ~~Subpoena alleged violators and witnesses to hearings;~~
    - i. ~~Subpoenas may be served by the city police department;~~
  - (3) ~~Subpoena evidence to hearings;~~
  - (4) ~~Administer oaths and take testimony under oath;~~
  - (5) ~~Enter orders finding a violation or non-violation.~~

**Sec. 2-399. – Special magistrate enforcement and appeal procedure.**

- (a) ~~It shall be the duty of the alleged violator to initiate an appeal of a citation due to a violation of the City Code or Land Development Code through the special magistrate process. The special magistrate shall not have the power to initiate such appeal proceedings.~~



- ~~(b) In the case of a first-time violation of the City Code or Land Development Code, the code enforcement officer shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officer may issue a citation to the person who has committed the violation.~~
- ~~(c) If a repeat violation is found, the code enforcement officer shall notify the violator, but is not required to give the violator a reasonable time to correct the violation before issuing a citation.~~
- ~~(d) If a code enforcement officer or law enforcement officer has reason to believe a violation presents a serious threat to public health, safety, or welfare, or if the violation is irreparable or irreversible in nature, the code enforcement officer need not provide the person with a reasonable time period to correct the violation and may immediately issue a citation.~~
- ~~(e) A violator who has been served with a citation shall elect either to:
  - ~~(1) Pay the civil fine in the manner indicated on the citation; or~~
  - ~~(2) File a written request for a hearing before the special magistrate to appeal the decision of the code inspector or law enforcement officer that resulted in the issuance of the citation. The written request shall be submitted to the community development department no later than ten days after service of the citation, and shall be accompanied by a \$75.00 appeal fee. The fee may be returned to the violator if the special magistrate rules in favor of the violator. All disputes regarding proper notice of the violation and timeliness of the appeal shall be heard by the special magistrate prior to any hearing on the merits of the violation itself.~~~~
- ~~(f) The procedures for appeal of the citation to the special magistrate shall be as set forth in this division. A courtesy mail notice shall be promptly provided to the complainant of any hearing regarding the notice of violation, and the complainant may testify at such hearings; provided, however, that non-transmission of the courtesy notice to the complainant shall not in any way invalidate, affect, or impair any of the further proceedings, actions, or determinations in the case. Failure to give such notice shall not be a cause for continuance or cancellation of any scheduled hearing of the matter. Only two continuances, for no longer than 20 days each, shall be granted by the special magistrate for any administrative hearing unless the alleged offender, at a hearing on a motion for continuance, establishes by testimony, and/or other evidence, that good cause exists for a further continuance. If the special magistrate finds that a violation has occurred and the appeal denied, the applicable penalty set forth in the citation and applicable city ordinance plus administrative costs and attorney's fees shall be imposed.~~
- ~~(g) Failure of the named violator to appeal the decision of the code inspector or law enforcement officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special magistrate. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties shall be assessed accordingly.~~

**Sec. 2-400. – Conduct of special magistrate hearings.**

- ~~(a) The city shall provide a hearing room and clerical staff as may be reasonably required by the special magistrate to conduct hearings and perform his or her duties. All hearings by the special magistrate shall be open to the public and minutes shall be kept of all hearings.~~
- ~~(b) Each case before the special magistrate shall be presented by either the code enforcement officer with the assistance of the city attorney, or designee.~~
- ~~(c) All relevant evidence shall be admitted. The special magistrate may exclude irrelevant or unduly repetitious evidence.~~

- ~~(d) Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence. The general public shall not be entitled to present evidence although members of the general public who have relevant evidence to offer may be called as witnesses by either party.~~
- ~~(e) The alleged violator has the right, at his or her own expense, to be represented by an attorney at any hearing.~~
- ~~(f) All testimony before the special magistrate shall be under oath and shall be recorded. The alleged violator or the city may cause the proceedings to be recorded by a certified court reporter or other certified recording instrument; however, the city shall be under no obligation to provide a certified court reporter or other certified recording instrument, but, rather the city may use a recording device of its choice to satisfy its obligation to the record the meeting.~~
- ~~(g) The burden of proof shall be with the code enforcement officer and/or city attorney to show by the greater weight of evidence, that a code violation exists and that the alleged violator committed, allowed, or was responsible for the violation.~~
- ~~(h) If notice has been provided to the violator of the public hearing, the hearing may be conducted and an order rendered in the absence of the alleged violator.~~

**~~Sec. 2-401. Issuance of an order by special magistrate.~~**

- ~~(a) At the conclusion of the hearing, the special magistrate shall issue an order setting forth findings of fact based upon evidence of record, and issue conclusions of law, and shall render a decision affording the proper relief consistent with the powers granted in this division.~~
- ~~(b) The written order shall be issued within a reasonable period of time subsequent to the hearing.~~

**~~Sec. 2-402. Appeal of final order of special magistrate.~~**

~~An aggrieved party, including the city, may appeal a final administrative order of the special magistrate to the circuit court. Such appeal shall not be a hearing de novo but shall be limited to appellate review of the record before the special magistrate. An appeal shall be filed within 30 days from the date of rendition of the special magistrate's order to be appealed.~~

SECTION 2. It is hereby proposed that an Article IV, Code Enforcement, be created under Chapter 2, Administration, of the Code of Ordinances, City of Fernandina Beach, Florida.

SECTION 3. It is proposed that Chapter 2, Article IV, Section 360, of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby created to read as follows:

**Section 360. Intent**

It is the intent of this article to promote, protect, and improve the health, safety, and welfare of the citizens of the City of Fernandina Beach by authorizing the creation of one or more code enforcement special magistrates ("special magistrate") with authority to impose administrative fines and other non-criminal penalties to provide an equitable and expeditious method of enforcing certain codes and ordinances in force in the City, where a pending or repeated violation continues to exist after property owner receives notice of violation.

SECTION 4. It is proposed that Chapter 2, Article IV, Section 361, of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby created to read as follows:

## **Section 361. Definitions**

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

City Commission means the legislative body of the City of Fernandina Beach.

City Code and City Ordinances means the Code of Ordinances, the Land Development Code or lawfully-enacted ordinances not codified, of the City of Fernandina Beach as amended from time to time.

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

Costs include but are not necessarily limited to, City staff costs for code inspection, administrative fees for City staff, costs for City staff to attend hearing(s), City postal and copy costs, recording fees, attorney fees and special magistrate fees.

Person means an individual, firm association, organization, partnership, company, corporation, or any other business entity, trust, whether government or private.

Repeat violation means a violation of a provision of a code or ordinance by a person who has been previously found by the special magistrate(s), 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.

Special magistrate any special magistrate appointed by the City Commission to hear code enforcement violation cases and/or appeal cases.

Violator means the person responsible for the code violation, which, in the appropriate circumstances, is either the perpetrator of the violation or the owner of the real property upon which the violation occurred.

SECTION 5. It is proposed that Chapter 2, Article IV, Section 362, of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby created to read as follows:

### **Section 362. Appointment of Special Magistrate**

- (a) The special magistrate is appointed by the City Commission and serves with or without compensation as established by the City Commission upon appointment. The City may utilize the services of one or more special magistrates to conduct hearings concerning alleged violations of the City Code of Ordinances, lawfully-enacted ordinances not codified and/or Land Development Code. The City Clerk is responsible for assigning cases to be heard by special magistrates, if more than one magistrate is appointed by the City Commission.

- (b) The special magistrate appointed pursuant to this Article must be a graduate of an American Bar Association-accredited law school and possess a minimum of five (5) years prior legal experience working as a licensed attorney. Preference will be granted to residents of the City of Fernandina Beach who possess such qualifications.
- (c) Special magistrates serve for terms established by the City Commission. Special magistrates are subject to removal, with or without cause, at any time during their appointed term, by the City Commission.

SECTION 6. It is proposed that Chapter 2, Article IV, Section 363, of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby created to read as follows:

**Section 363. Jurisdiction of Special Magistrate**

- (a) The special magistrate has the jurisdiction and authority to hear and decide alleged violations of the following:
  - (1) City of Fernandina Beach Code of Ordinances and/or Land Development Code;
  - (2) State, county and local laws and ordinances whose intent is to promote the health, welfare and safety of the citizens of the City; and
  - (3) Appeals originating from the issuance of citations by code enforcement officers due to violations of the Code of Ordinances and Land Development Code of the City of Fernandina Beach.
- (b) Any alleged violation of the aforesaid Code of Ordinances, lawfully-enacted ordinances not codified or Land Development Code may also be enforced in a court of competent jurisdiction.

SECTION 7. It is proposed that Chapter 2, Article IV, Section 364, of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby created to read as follows:

**Section 364. Powers and duties.**

The Special Magistrate has the power to:

- (a) Adopt rules for the conduct of hearings; provided, however, that the rules are uniform for all special magistrates.
- (b) Subpoena alleged violators and witnesses to public hearings;
  - (1) Subpoenas may be served by the city police department;
- (c) Subpoena evidence including but not limited to, books, paper records, documents, photographs, and electronically-stored information to hearings;
- (d) Administer oaths and take testimony under oath;
- (e) Enter orders finding a violation or non-violation;

- (f) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance, including the filing of a lien against the violator's real and personal property located in Nassau County; and
- (g) Assess fines, fees and administrative costs to be paid by the violator and/or property owner.

SECTION 8. It is proposed that Chapter 2, Article IV, Section 365, of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby created to read as follows:

**Section 365. Notice of Violation/Notice of Hearing**

- (a) It is the duty of the code inspector to initiate enforcement proceedings of the various codes and ordinances under the jurisdiction of the special magistrate and more particularly set out hereinafter; however, no special magistrate has the power to initiate such enforcement proceedings.
- (b) Except as provided in subsection (c), if a violation of a City code or ordinance is found, the code inspector will notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified by the code inspector for correction, the code inspector will notify the special magistrate in writing, specifying the alleged violations of code or ordinance then existing and request a hearing. The special magistrate, through clerical staff, will schedule a hearing, and written notice of such hearing will be hand delivered or mailed as provided in § 162.12, Florida Statutes, to the property owner and/or the violator. At the option of the special magistrate, notice may additionally be served by publication or posting as provided § 162.12, Florida Statutes. If the violation is corrected and then recurs, or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the special magistrate even if the violation has been corrected prior to the hearing, and the notice will so state.
- (c) If a repeat violation is found, the code inspector must 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, will notify the special magistrate and request a hearing. The special magistrate, through clerical staff, will schedule a hearing and provide notice pursuant to § 162.12, Florida Statutes. The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the hearing and the notice will 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.
- (d) If the code inspector has reason to believe a 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 will make a reasonable effort to notify the property owner and/or violator, and may immediately notify the special magistrate and request a hearing. The code inspector will, in their discretion, also notify the City Police Department, the Department of Health, or such other public safety agency as the code inspector deems appropriate.
- (e) If the owner of property that is subject to an enforcement proceeding before an enforcement board, 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 must:
  - (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 inspector 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 (5) days after the date of the transfer.

A failure to make the disclosures described in paragraphs (e)(1) through (e)(3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding will not be dismissed, but the new owner will be provided a reasonable period to correct the violation before the hearing is held.

SECTION 9. It is proposed that Chapter 2, Article IV, Section 368, of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby created to read as follows:

### **Section 368. Conduct of Hearings**

- (a) Upon request of the code inspector, or at such other times as may be necessary, the special magistrate may call a code enforcement hearing. Minutes are kept of all hearings by the special magistrate through clerical staff; and all hearings and proceedings are open to the public and recorded. The City will provide clerical and administrative personnel as may be reasonably required by the special magistrate for the proper performance of their duties.
- (b) Each case before the special magistrate will be presented by the City's code inspection staff or the City Attorney.
- (c) The alleged violator has the right to be represented by an attorney, however, the alleged violator or their attorney must provide written notice of such representation at least five (5) business days prior to the scheduled date of hearing to the special magistrate and the City Attorney.
- (d) The special magistrate will hear the cases on the agenda for that day. All testimony will be under oath and be recorded. The special magistrate will take testimony from the code inspector, City Attorney, alleged violator and any witnesses. Formal rules of evidence do not apply, but fundamental due process is observed and governs the proceedings. Formal discovery, including depositions, is not permitted. The violator may choose to waive his/her rights to a hearing, in writing and pay such administrative fees and costs as determined by the special magistrate.
- (e) If written notice of the code enforcement hearing has been provided to any alleged violator, the hearing may be conducted in the absence of the violator.
- (f) The special magistrate may, at his/her own discretion, postpone or continue a hearing, and any requests for a continuance by the alleged violator or the City must be made in writing to the special magistrate no fewer than three (3) business days before the hearing.
- (g) The special magistrate may issue findings of fact based on evidence of record and conclusions of law; and may issue an order affording the proper relief consistent with powers granted in this article and in Chapter 162, Florida Statutes at the conclusion of the hearing. All such findings of fact, conclusions of law, and orders will be issued not later than twenty (20) calendar days from the date of the hearing.
- (h) Notification of the special magistrate's action will be delivered by the City to the violator by regular mail within five (5) business days of the date that order is executed.

SECTION 10. It is proposed that Chapter 2, Article IV, Section 369, of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby created to read as follows:

**Section 369. Penalties for violation, liens**

- (a) The special magistrate may order the violator to pay a fine in an amount specified in this section for each day past the date set by the special magistrate at a hearing for compliance. Upon written notice to the special magistrate by a code inspector of a repeat violation and a hearing thereon, the special magistrate may order the violator to pay a fine in an amount specified in this section for each day the repeat violation continues past the date of notice by the code inspector to the violator of the repeat violation. If a special magistrate finds at a hearing that a violation or repeat violation of a City code or ordinance has occurred, the special magistrate must assess administrative fees and costs against the violator even if a fine is not ordered.
- (b) A fine imposed pursuant to this section may not exceed two hundred fifty dollars (\$250.00) per violation per day for a first violation, may not exceed five hundred dollars (\$500.00) per violation per day for a repeat violation, and may not exceed five thousand dollars (\$5,000.00) for a violation found to be irreparable or irreversible in nature.

In determining the amount of the fine, if any, the special magistrate will 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.
- (c) A certified copy of an order imposing a fine and/or administrative fees and costs may be recorded in the public records, and thereafter will 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 will not be deemed a court judgment except for enforcement purposes. A fine imposed pursuant to this section will 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. A lien arising from a fine imposed pursuant to this section runs in favor of the City, and the City Commission may execute a satisfaction or release of lien entered pursuant to this section. After three (3) months from the filing of any such lien that remains unpaid, the City may foreclose on the lien or sue to recover a money judgment for the lien plus accrued interest. No lien created pursuant to the provisions of this section may be foreclosed on real property that is a homestead under Section 4, Article X of the State Constitution. The money judgment provisions of this section do not apply to real or personal property that is covered under Section 4(a), Article X of the State Constitution.
- (d) No lien provided under this article will continue for a period longer than twenty (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 fees, that it incurs in the foreclosure. The continuation of the lien affected by the commencement of the action will not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

SECTION 11. It is proposed that Chapter 2, Article IV, Section 370, of the Code of Ordinances, City of Fernandina Beach, Florida, is hereby created to read as follows:

**Section 370. Appeals of Special Magistrate decisions**

An aggrieved party, including the City, may appeal a final administrative order of the special magistrate to the circuit court. Such an appeal will not be a hearing de novo but be limited to appellate review of the record created before the special magistrate. An appeal must be filed within thirty (30) days of the execution of the order to be appealed.

SECTION 12. It is proposed that Chapter 2, Article IV, Sections 371-410, of the Code of Ordinances, City of Fernandina Beach, Florida, are hereby created and reserved.

SECTION 13. If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof is held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application will not be affected thereby.

SECTION 14. The provisions of this Ordinance will take effect on July 1, 2022.

ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF FERNANDINA BEACH

\_\_\_\_\_  
MICHAEL A. LEDNOVICH  
Commissioner – Mayor

ATTEST:

APPROVED AS TO FORM & LEGALITY:



\_\_\_\_\_  
CAROLINE BEST  
City Clerk

\_\_\_\_\_  
TAMMI E. BACH  
City Attorney

Date of First Reading: January 18, 2022  
Date of Second Reading/Final Hearing:  
Date of Publication: