

CITY OF ST. PETE BEACH

ORDINANCE NO. 2012- 02

AN ORDINANCE OF THE CITY OF ST. PETE BEACH, FLORIDA PROVIDING FOR AMENDMENTS TO CODE OF ORDINANCES AS THEY RELATE TO THE SPECIAL MAGISTRATE; AMENDING CHAPTER 22, ARTICLE IX OF THE CODE PROVIDING FOR SPECIAL MAGISTRATE SUPPLEMENTAL CODE ENFORCEMENT RULES AND PROCEDURES; PROVIDING FOR THE REPEAL OF ORDINANCES, OR PARTS OF ORDINANCES, IN CONFLICT HEREWITH, TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Division 22 of the City of St. Pete Beach Code of Ordinances establishes the Special Magistrate as the entity who adjudicates alleged violations of the Code of Ordinances and Land Development Code; and

WHEREAS, the amendments to this Article establish qualifications, powers and duties, rules of procedure, fines and liens, and notice requirements for the Special Magistrate; and

WHEREAS, City Commission of the City of St. Pete Beach conducted public hearings on January 10, 2012 and January 24, 2012, noticed pursuant to Florida law and conducted pursuant to Ordinance 88-36 of the City of St. Pete Beach; and

WHEREAS, the City Commission finds these text amendments to the Code of Ordinances promote, protect and improve the health, safety and welfare of the citizens of the city; and

WHEREAS, the City Commission finds these text amendments to the Code of Ordinances to be in the best interest of the citizens of the City of St. Pete Beach.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH, FLORIDA, HEREBY ORDAINS:

Section 1. The Code of Ordinances is hereby amended as illustrated in "Exhibit A".

Section 2. All ordinances or parts of ordinances, in conflict herewith are hereby repealed to the extent of any conflict with this Ordinance.

Section 3. If any portion or part of this Ordinance is declared invalid by a court of competent jurisdiction, the valid remainder hereof shall remain in full force and effect.

Section 4. This Ordinance shall become immediately upon adoption.



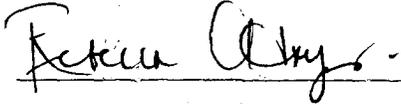
STEVE MCFARLIN, MAYOR

FIRST READING: 1/10/2012

SECOND READING/ADOPTION HEARING: 1/24/2012

PUBLISHED: 01/14/2012

I, Rebecca Haynes, City Clerk of the City of St. Pete Beach, Florida, do hereby certify that the foregoing Ordinance was duly adopted in accordance with the provisions of applicable law this 24th day of January, 2012.



Rebecca Haynes, City Clerk

"Exhibit A"

PART II - CODE OF ORDINANCES
Chapter 22 - BOARDBOARDS, COMMITTEES, COMMISSIONS, SPECIAL MAGISTRATE
ARTICLE IX. - SPECIAL MAGISTRATE SUPPLEMENTAL CODE ENFORCEMENT

~~Sec. 2-618. - Intent of article.~~

ARTICLE IX. - SPECIAL MASTER-MAGISTRATE SUPPLEMENTAL CODE ENFORCEMENT

~~Sec. 22-270. - Definitions.~~

~~Sec. 22-270. Intent of article~~

~~Sec. 22-271. - Creation, establishment, Definitions~~

~~Sec. 22-272. - Board clerk, Jurisdiction of Special Magistrates.~~

~~Sec. 22-273. - Civil offenses and penalties Board Clerk.~~

~~Sec. 22-274. - Special master qualifications and removal, Civil offenses and penalties.~~

~~Sec. 22-275. - Enforcement procedures, Code enforcement special magistrates.~~

~~Sec. 22-275.1. - Prehearing administrative enforcement costs.~~

~~Sec. 22-276. - Service of notice, Special magistrate administrative division procedures.~~

~~Sec. 22-277 Conduct of hearing by special magistrate~~

~~Sec. 22-277.8. - Contents of notice, schedule and conduct of special master hearing, Special magistrate powers and duties.~~

~~Sec. 22-278. - Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; foreclosure.~~

~~Sec. 22-279. - Appeals, Administrative fines; costs; liens.~~

~~Sec 22-280 Other legal remedies~~

~~Sec 22-281 Appeals~~

~~Sec 22-282 Notices~~

~~Sec 22-283 Procedure to request that a fine or lien imposed pursuant to section~~

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~~Sec 22-284 Other procedures or implementing provisions~~

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~~Secs. 22-280 - 22-289. Reserved.~~

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Sec. 22-270. – Intent of Article

It is the intent of this article to promote, protect and improve the health, safety and welfare of the citizens of the city by authorizing the appointment of one or more special magistrates with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective and inexpensive method of enforcing any codes and ordinances in force in St Pete Beach where a pending or repeated violation continues to exist.

Sec. 22-271.0. - 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:-~~

As used in this article the following terms shall be defined as follows. Where necessary or reasonably implied the singular shall include the plural.

Board shall mean the ~~Board~~Board of City CommissionCity Commissioners of St Pete Beach

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~~Civil penalty shall mean the costs allowed under sections 22-275.1, 22-277 and 22-278 of the Code.~~

~~Code inspector shall mean those employees or other agents of the city duly authorized and appointed by the city manager whose duty it is to assure compliance with city codes.~~

~~Codes shall mean St. Pete Beach Code of Ordinances or Land Development Code and all codes and statutes adopted by reference within the Code of Ordinances, as now existing or as may be amended by ordinance from time to time.~~

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~~Continuing violations are those violations which remain uncorrected beyond the prescribed time period for correction contained in the civil violation notice. For each day of continued violation after the time period for correction has run, an additional penalty in the same amount as for the original violation shall be added.~~

~~Repeat violation shall mean a violation of a provision of the Code of Ordinances by a person who has been previously found to have violated the same provision within five years prior to the violation, notwithstanding the violations occur at different locations.~~

Enforcing department shall mean any administrative department or division of St. Pete Beach charged by St Pete Beach ordinance or administrative assignment to enforce any particular code or ordinance in

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force in St Pete Beach.

Person shall mean any real person, trust, corporation, estate, or other legal entity recognized by the laws of the State of Florida.

Repeat violation shall mean a violation of a provision of a code or ordinance by a person who has been previously found, through a code enforcement special magistrate 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. For the purposes of this definition, a plea of "No Contest" or "Nolo Contendere" shall be deemed an admission of a violation.

Special magistrate administrative division shall mean the department or division designated by the city manager to handle the secretarial, filing, record retention, scheduling, noticing and other coordinating and support functions related to this article.

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

(Ord. No. 99-39, § 1, 7-20-99; Ord. No. 00-33, § 1, 8-1-00)

Sec. 22-2712. - Creation, establishment, Jurisdiction of special magistrates.

There is hereby created and established the office of special ~~master~~ magistrate for the purpose of providing a supplemental code enforcement process for the city. The special ~~master~~ magistrate is hereby vested with all the powers now granted under chapter 162 F.S., and as amended from time to time.

(Ord. No. 99-39, § 1, 7-20-99)

Sec. 22-2723. - ~~Board~~ Board clerk.

The city manager shall appoint a city employee to be the code enforcement clerk, who shall perform the functions assigned to the clerk as set forth in this article.

(Ord. No. 99-39, § 1, 7-20-99)

Sec. 22-2734. - Civil offenses and penalties.

(a) The violation of any provision of any ordinances or codes shall constitute a civil offense punishable by civil penalty as follows:

- (1) Not in excess of \$250.00 per day for a first violation;
- (2) Not in excess of \$500.00 per day for a repeat violation;
- (3) An assessment of the cost of repairs incurred by the city where the violation was in the nature

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of a violation described in F.S. 162.06(4); and

(4) In the instance where the special master ~~magistrate~~ finds that the violation is irreparable or irreversible in nature, the special master ~~magistrate~~ may impose a fine not to exceed \$5,000.00 per violation.

(b) Civil penalties assessed pursuant to this article are due and payable to the city upon the order of the special ~~master~~ ~~magistrate~~.

(Ord. No. 99-39, § 1, 7-20-99)

Sec. 22-2745. ~~Special master qualifications and removal.~~ Code enforcement special magistrates.

~~(a) *Creation and appointment.* Code enforcement hearings pursuant to this article shall be conducted by designated special magistrates. Application for special magistrate positions shall be directed to the city manager pursuant to a notice published in a newspaper of general circulation. The city manager shall select a pool of candidates from the applications on the basis of experience and qualifications. The ~~Board~~ ~~board~~ shall appoint special magistrates to conduct hearings from the pool of candidates selected by the city manager.~~

~~(a)(b) The special master shall be a person licensed to practice law in the state. Appointments shall be made by the city manager on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the city commission for ratification.~~

Qualifications. Special magistrates shall have the following minimum qualifications:

- (1) Graduation from a law school accredited by the America Bar Association;
- (2) Demonstrated knowledge of administrative laws, land use law, and local government regulation and procedures;
- (3) Current membership, in good standing, of the Florida Bar Association; and
- (4) Any other such qualification that may be established by resolution of the ~~board~~Board;

In the event the city manager does not receive a sufficient number of applications from qualified members of the Florida Bar, the ~~board~~Board may select attorneys who are not members of the Florida Bar as candidates for special magistrate. Among those applicants, the ~~Board~~Board and city manager shall give preference to those attorneys who have prior experience in a judiciary capacity or as a hearing officer, mediator, or special magistrate. No attorney who has been disciplined by the Florida Bar Association or a bar association of any other jurisdiction shall be appointed as a special magistrate.

~~(b)(c) — Term. The city manager shall appoint as many special masters as are deemed necessary. Appointments shall be made for a term of one year. Any special master may be reappointed at the discretion of the city manager, subject to ratification by the city commission. There shall be no limit on the number of reappointment that may be given to any individual special master; provided however, that a determination as to removal or reappointment must be made for each special master at the end of each~~

~~of his/her one-year terms. The city manager shall have authority to remove a special master with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.~~

Special magistrates shall serve a term of one year from the date of appointment by the ~~board~~Board. Special magistrates may be reappointed at the discretion of the ~~Board~~Board. There shall be no limit on the number of terms a person may serve as a special magistrate.

~~(e)(d) A special master shall not be city employees but shall be compensated at a rate to be determined by administrative order.~~

Removal. At any time during a term, the ~~board~~Board shall have the authority to remove a special magistrate, with or without cause.

(e) Vacancy. If any special magistrate resigns or is removed prior to expiration of his or her term or the ~~Board board~~ determines that the special magistrate should not be reappointed, the ~~Board board~~ shall appoint a special magistrate from the pool of candidates previously selected by the ~~board~~Board to fill the vacancy within 30 days.

(f) Meetings and hearings.

(1) Scheduling. The special magistrate administrative division shall be responsible for scheduling meetings of special magistrates. In the case of an alleged violation as set forth in subsection 22-276 (3) of this Code, a hearing may be called as soon as possible.

(2) Location. The location of the meetings shall be in St. Pete Beach, Florida.

(3) Operating procedures. All cases brought before special magistrates shall be presented by either a designated code enforcement officer, building official or an attorney representing the department responsible for enforcing the particular code for which the violation is alleged.

(4) Meetings open to the public. All meetings and public hearings shall be open to the public.

(g) Compensation. The compensation for special magistrate services may be authorized as specified by ~~in the appointing board~~ resolution adopted by the Board. Travel reimbursement is limited to expenses incurred only for travel outside Pinellas County necessary to fulfill the responsibilities as a special magistrate. Travel reimbursement shall be made only when sufficient funds have been budgeted and are available, and upon prior approval by the ~~Board, board~~. No other expenses shall be reimbursable except documented long distance telephone calls to city staff to fulfill the responsibilities as a special magistrate.

(h) Conflict of interest provisions. The following conflict of interest provisions shall apply to the special magistrates: failure on the part of a special magistrate to comply with the provisions of this section shall constitute grounds for removal by the ~~board~~Board or the city manager:

(1) Upon appointment, each special magistrate shall comply with the disclosure requirements imposed by Florida law, including F.S. §§ 112.313 and 112.3145.

(2) Additionally, each special magistrate shall comply with the voting requirements imposed by

Florida law, including F.S. §§ 286.012 and 112.3143.

(3) For a period of one year from the date of termination of office as a special magistrate, such person is hereby expressly prohibited from acting as agent or attorney in any proceedings, petition or other matter before a St. Pete Beach special magistrate.

(4) No person who is or may become a party to a hearing before a special magistrate shall communicate ex parte with any special magistrate concerning that violation. 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 subject of the alleged violation.

(5) A special magistrate shall not communicate ex parte on his own volition with any party, representative of a party, or interceding person concerning an alleged violation; however, the special magistrate may consider a request regarding the scheduling or continuance of hearings when such request is made in writing.

(Ord. No. 99-39, § 1, 7-20-99)

Sec. 22-2756. - Enforcement procedures. Special magistrate administrative division procedures.

~~(a) The code inspector has the duty of enforcing the various codes and initiating enforcement proceedings before the special master.~~

~~(b) Except as provided in (c) and (d) below, if a violation of the codes is found, the code inspector shall notify the violator of the violation and give the violator a reasonable time, in light of the nature of the violation, to correct the violation. Should the violation continue beyond the time specified for correction, the code officer shall request that the clerk set a hearing and notify the violator of the hearing as provided herein. The clerk shall schedule a hearing, and written notice of such hearing shall be served on the violator. If the violation is corrected and is then repeated 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 master even if the violation has been corrected prior to the hearing, and the notice shall so state.~~

~~(c) If a repeat violation is found, the code inspector shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall have the clerk set a hearing and notify the violator. The notice shall state that the case may be presented to the special master even if the violation has been corrected prior to the board 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 request that the special master set an immediate hearing on the violation.~~

~~(e) If the owner of property which is subject to an enforcement proceeding before a special master contracts to transfer or does transfer ownership of such property between the time the notice was served and the time of the hearing, such owner shall:~~

- ~~(1) Disclose the existence and the nature of the enforcement proceeding to the buyer;~~
- ~~(2) Deliver to the buyer a copy of the notice of violation and the notice of hearing;~~
- ~~(3) Disclose to the buyer that he/she will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding;~~
- ~~(4) Within five days after the date of the transfer of title, file a notice of title transfer with the code enforcement official, with the identity and address of the new owner and copies of the disclosures made to the new owner.~~

~~If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided with a reasonable period of time to correct the violation before a hearing.~~

Alleged violations of any of those codes or ordinances of City of St. Pete Beach as described herein may be filed with the special magistrate administrative division by those administrative officials, having the responsibility of enforcing the various codes or ordinances in force in St. Pete Beach.

(1) Except as set forth in subsections (3) and (4) below, if a violation of a code or ordinance is believed to exist, the enforcing department shall specify a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the special magistrate administrative division shall give notice to the alleged violator that a code enforcement hearing will be conducted concerning the alleged violation as noticed. The notice shall state the time and place of the hearing, as well as the violation alleged to exist. If the violation is corrected and then repeated, or if the violation is not corrected by the time specified for correction by the code inspector, the case may be brought for hearing even if the violation has been corrected prior to hearing, and the notice of violation shall so state.

(2) Persons or entities who may be held responsible under this article for violation(s) of St Pete Beach Code(s) include:

a. The owner, agent, lessee, tenant, contractor, or any other person or legal entity using the land, building, or premises where such violation has been committed or shall exist.

b. Any person or legal entity who knowingly commits, takes part or assists in such violation.

c. Any person or legal entity who maintains any land, building, or premises in which such violation shall exist.

3. If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, may request a hearing. The special magistrate administrative division shall give notice to the alleged violator as set forth in subsection (1) above. The case may be brought for hearing, and a fine may be imposed by the special magistrate, even if the repeat violation has been corrected prior to hearing, and the notice shall so state.

(4) 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 reasonable effort to notify the violator and may immediately request a code enforcement hearing.

(5) If the owner of property which is subject to a code enforcement proceeding transfers ownership of such property between the time the notice of violation was served and the time of the hearing, such owner shall:

a. Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

b. Deliver to the prospective transferee a copy of the notices and other materials relating to the code enforcement proceeding received by the transferor.

c. 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.

d. File a notice with the special magistrate administrative division of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

A failure to make the disclosures described in subsections a., b. and c. before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the hearing 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.

(Ord. No. 99-39, § 1, 7-20-99)

Sec. 22-275.1.7 - Prehearing administrative enforcement costs. Conduct of hearing by special magistrate.

If a violation cited under subsection 22-275(b) is corrected before a section 22-277 special master hearing, the violator shall pay the enforcement costs incurred by the city. The individual enforcement cost that may be assessed are specified in appendix A, 22-275.1. The code inspector shall prepare an order specifying the enforcement costs incurred by the city in the enforcement of its codes, and he shall serve a copy of the order on the violator in accord with the requirements of section 22-276.

(a) Upon request of the code inspector or at such other times as may be necessary, a hearing before the special magistrate may be convened. Minutes shall be kept of all code enforcement hearings, and all hearings shall be open to the public. The special magistrate administrative division shall provide all clerical and administrative support reasonably necessary to conduct these hearings.

(b) Where proper notice of the hearing has been provided to the alleged violator pursuant to section 22-282, a hearing may proceed even in the absence of the alleged violator.

(c) At such hearing, the burden of proof shall be upon the code enforcement division to show by a preponderance of the evidence that a violation exists, or in the case of a repeat violation, existed on the date that the code inspector gave notice to the violator of a repeat violation pursuant to subsection 22-276 (3).

(d) All testimony shall be under oath and shall be recorded. The formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern the proceedings. Upon determination of the special magistrate, irrelevant, immaterial or unduly repetitious evidence may 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 Florida. Any part of the evidence may be received in written form.

(e) The special magistrate may inquire of or question any witness present at the hearing. The alleged violator (hereinafter also referred to as respondent), respondent's attorney, code enforcement officers, or an attorney representing the division shall be permitted to inquire of or question any witness present at the hearing. The special magistrate may consider testimony presented by code enforcement officers, the respondent or any other witnesses.

(f) At the conclusion of the hearing, the special magistrate shall render his or her decision (order) based on evidence entered into the record. The decision shall then be transmitted to the respondent in the form of a written order including findings of fact, and conclusions of law consistent with the record. The order shall be transmitted by mail to the respondent within ten days after the hearing. The order may include a notice that it must be complied with by a specified date and that a fine and costs may be imposed and, under the circumstances set forth in subsection 22-276 (3), the cost of repairs or other corrective action may be included along with the fine if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of 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. If an order is recorded in the public records pursuant to this paragraph 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.

(g) If St Pete Beach prevails in prosecuting a case before the special magistrate, it shall be entitled to recover all costs incurred. Whether and to what extent such costs are imposed shall be within the discretion of the special magistrate but shall not exceed the actual costs incurred.

(Ord. No. 00-33, § 1, 8-1-00)

Sec. 22-2768. - Service of notice- Special magistrate powers and duties.

All notices required by this article shall be served as required by F.S. 162.12, and as amended from time to time.

Special magistrates shall have the following powers and duties to:

- (1) Hold hearings pursuant to section 22-277
- (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by a sheriff or other authorized persons consistent with Rule 1.410(d) Florida Rules of Civil Procedure, upon request, by the special magistrate.
- (3) Subpoena records, surveys, plats and other documentary materials.
- (4) Take testimony under oath.
- (5) Make findings of fact and conclusions of law as are necessary to enforce the provisions of the St. Pete Beach ~~Pinellas County~~ Code of Ordinances and Land Development Code and issue orders having the full force and effect of law to command whatever steps are necessary to bring a violation into compliance.
- (6) Assess fines pursuant to section 22-279 of this article, including costs relating to the prosecution of cases before the special magistrate in those cases where the governing body prevails.
- (7) Lien property pursuant to section 22-279 of this article.
- (8) Assess costs pursuant to section 22-279~~3~~ of this article.
- (9) Assess costs pursuant to subsection 22-279(1) of this article.

(Ord. No. 99-39, § 1, 7-20-99)

Sec. 22-277~~9~~. - Contents of notice, schedule and conduct of special master hearing. Administrative fines; costs; liens.

- ~~(a) The notice of hearing shall include the following:~~
- ~~(1) Name of the inspector who issued the notice;~~
 - ~~(2) Factual description of alleged violation;~~
 - ~~(3) Date of alleged violation;~~
 - ~~(4) Section of the code allegedly violated;~~
 - ~~(5) Place, date and time of the hearing;~~
 - ~~(6) Right of violator to be represented by an attorney;~~
 - ~~(7) Right of violator to present witnesses and evidence;~~
 - ~~(8) Notice that failure of violator to attend hearing may result in civil penalty being assessed; and~~

- ~~(9) Notice that requests for continuances will not be considered if not received in writing by the code inspector at least ten calendar days prior to the date set for hearing.~~
- ~~(b) The special master shall conduct hearings on a regularly scheduled monthly basis or more frequently upon request of the city manager. No hearing shall be set sooner than 20 days from the date the notice of code violation is served.~~
- ~~(c) All hearings before the special master shall be open to the public. All testimony shall be under oath. Assuming proper notice, a hearing may proceed in the absence of the named violator.~~
- ~~(d) The proceedings at the hearing shall be recorded electronically or by a stenographer and if recorded by a stenographer may be transcribed at the expense of the party requesting the transcript.~~
- ~~(e) The city manager shall provide clerical and/or administrative support personnel for the special master to facilitate the proper performance of clerical and special master duties.~~
- ~~(f) Each case before a special master shall be presented by the inspector or representative of the department issuing the violation.~~
- ~~(g) The hearing shall not be conducted in accordance with the formal rules of evidence. Any relevant evidence shall be admitted if the special master finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.~~
- ~~(h) All testimony at the hearing shall be under oath. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues.~~
- ~~(i) The special master shall make findings of fact based on the evidence in the record alone and may state conclusions of law. In order to make a finding upholding the code inspector's determination that a violation exists, the special master shall find that a preponderance of the evidence indicates that a violator was legally responsible for the violation of the relevant section of the ordinances or codes as cited, and that a violation did or does in fact exist.~~
- ~~(j) The prescribed time for correction of the violation given to the named violator and contained in the code violation notice shall be presumed to have been a reasonable time for correction. Upon presentation of relevant evidence by the named violator that the time for correction was not reasonable, the special master may find that the time given for correction was insufficient, and the penalty for a continuing violation may be calculated from a date determined by the special master to be the reasonable date for correction.~~
- ~~(k) If the named violator is found guilty of the violation, he/she may be held liable for the costs of the enforcement proceeding and such costs shall be included in the lien authorized by law.~~
- ~~(l) The fact-finding determination of the special master shall describe whether the alleged violation did in fact occur and, if so, whether the person named in the civil violation notice is legally responsible for that violation. The special master shall either affirm or reverse the determination of the code inspector as to the responsibility of the named violator for the correction of the ordinance or code violation. The special master may modify the determination of the code enforcement officer as to the~~

~~Pate Beach, Florida, Code of Ordinances~~

~~time for correction contained in the code violation notice. If the special master reverses the determination of the code inspector and finds the named violator not responsible for the alleged violation in the code violation notice, the named violator shall not be liable for the payment of any civil penalty, absent a successful appeal by the city of the special master's decision. If the decision of the special master is to affirm the code inspector's determination of violation, then any of the following may be included in the order:-~~

~~(1) Amount of civil penalty;~~

~~(2) Prehearing and hearing administrative enforcement costs; and~~

~~(3) Date by which the violation shall be corrected to prevent resumption of continuing violation penalties.~~

~~(m) The special master shall have the power to:~~

~~(1) Adopt procedures for the conduct of hearings;~~

~~(2) Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the city police department or by any employee designated by the city manager;~~

~~(3) Subpoena documentary and tangible evidence for hearings;~~

~~(4) Take testimony under oath; and~~

~~(5) Assess and order the payment of civil penalties.~~

~~(6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.~~

~~(n) A special master shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized city and county board of appropriate jurisdiction for administrative interpretation of the legal provision(s) on which the alleged violation was based. Upon exhaustion of the administrative review and finalization of the administrative order by such board, the special master may exercise all powers granted herein. The special master shall not, however, exercise any jurisdiction over alleged code violations where a named violator has properly filed a request for administrative interpretation and review by such city or county board until such time for review has lapsed.~~

~~(o) The special master shall be bound by the interpretations and decisions of the authorized city or county boards of appropriate jurisdiction concerning their administrative interpretations. In the event that the authorized board finds that the cited violation of the ordinance or code has not been properly interpreted, that provision upon which the violation is based, shall prohibit the hearing officer from proceeding with the enforcement of the alleged violation.~~

(a) The special magistrate, upon notification by a code inspector that a code enforcement order has not been complied with within the set time, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date for compliance set forth in the order or upon notification by a code inspector that a repeat violation has occurred 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. In addition, if the violation is a violation described in subsection 22-276(4), the special magistrate shall notify the city manager, which may make all reasonable repairs or other corrective actions which are required to bring the property into compliance, or otherwise secure the property, and charge the violator with the reasonable costs of the repairs or other corrective actions along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for 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 part, a hearing shall not be necessary for issuance of the order imposing the fine. An order imposing a fine shall be sent to the property owner with a notice that the owner may request a hearing to challenge the fine amount within 20 days of the order. Orders imposing fines shall not be filed as liens until the latter of the expiration of such 20-day notice period, or the completion of such timely requested challenge. A challenge to an order imposing a fine shall be limited to a consideration of only such new findings necessary to impose an appropriate fine and create a lien.

(b) A fine imposed pursuant to this section shall not exceed \$250.00 ~~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 or other corrective action pursuant to subsection (a) of this section. If, after due notice and hearing, the special magistrate finds a violation to be irreparable or irreversible in nature, the special magistrate may impose a fine not to exceed \$45,000.00 per violation or as otherwise authorized by Florida State Statute. In determining the amount of 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.

(c) The special magistrate may, in its discretion, adopt a consent order proposed by the enforcing department setting forth agreed terms for payment of any fine in lieu of execution or foreclosure as set forth in subsection (d), below.

(d) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records in the Office of the Clerk of the Circuit Court in and for Pinellas County, Florida. Once recorded the certified copy of an order shall constitute a lien against the land on which the violation(s) exists and upon any other real or personal property owned by the violator; and it shall be enforceable 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 section 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 comes first. Once recorded the lien shall be superior to any mortgages, liens, or other instruments recorded subsequent to the filing of the code enforcement lien.

(e) After three months from the filing of any such lien which remains unpaid, the City ~~county~~ may foreclose the lien in the same manner as mortgage liens are foreclosed. Such lien shall bear interest at

the rate allowable by law from the date of compliance set forth in the recorded order acknowledging compliance. The local governing body shall be entitled to collect all costs incurred in recording and satisfying a valid lien. No lien created pursuant to the provisions of this ordinance may be foreclosed on real property that is a homestead under Article X, Section 4, of the Florida Constitution.

(Ord. No. 99-39, § 1, 7-20-99; Ord. No. 00-33, § 1, 8-1-00)

Sec. 22-27880. - Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; foreclosure.

Other legal remedies.

~~(a) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties imposed under this supplemental code enforcement procedure.~~

~~(b) A certified copy of an order imposing a civil penalty may be recorded in the public records of the county and thereafter shall constitute a lien against the land on which the violation exists or existed; provided that if the violator does not own the land, upon any other real or personal property owned by the violator; and that it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgement except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the city may foreclose or otherwise execute on the lien.~~

In addition to the administrative penalties and enforcement procedures provided in this article, the ~~board~~Board may institute any lawful civil action or proceeding to prevent, restrain, or abate violations of codes or ordinances or through its agents issue cease and desist orders. An enforcing department shall have the authority to issue cease and desist orders in the form of written official notices given to the owner of the subject building, property, or premises, or to his agent, lessee, tenant, contractor, or to any person using the land, building or premises where such violation has been committed or shall exist. Any failure to comply with a cease and desist order issued by an enforcing department shall be regarded, during any penalty setting phase, as an exaggerating circumstance by the special magistrate should any process relative to section 22-279 result from the violation that is the subject of the cease and desist order.

(Ord. No. 99-39, § 1, 7-20-99)

Sec. 22-27981. - Appeals.

~~(a) The violator or the city may appeal an order of a special master by filing a notice of appeal with the county circuit court. Such appeal shall be filed within 30 days of the issuance of the order by the special master.~~

~~(b) In the absence of reversal of a special master's ruling by an appellate court of competent jurisdiction, the findings of the special master shall be conclusive as to a determination of responsibility for the ordinance or code violation, and such findings shall be admissible in any proceeding to collect unpaid penalties.~~

~~(e) Nothing contained in this chapter shall prohibit the city from enforcing its ordinances or codes by any other means. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filing suit for enforcement of any section of this Code.~~

Any aggrieved party, including the City of St. Pete Beach, may appeal an order of the special magistrate to a court of competent jurisdiction within 30 days of the execution of the order to be appealed. The city may assess a reasonable charge for the preparation of the record to be paid by the petitioner in accordance with F.S. § 119.07.

Section 22-282 Notices.

(a) All notices required by this article shall be provided to the alleged violator by:

(1) Certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to City of St Pete Beach government by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subsections (b) a.1. and (b)a.2. and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing;

(2) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the Board;

(3) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(4) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(b) In addition to providing notice as set forth in subsection (a), at the option of the special magistrate administrative division, notice may also be served by publication or posting, as follows:

(1) a. —Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Pinellas County. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50, for legal and official advertisements.

(2) Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

(c) b. — In lieu of publication as described in subsection a., such notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the bulletin board of the City of St Pete Beach City Hall Building.

2. —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.

(de) 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).

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 part have been met, without regard to whether or not the alleged violator actually received such notice.

Sec. 22-283 - Procedure to request that a fine or lien imposed pursuant to section 22-279 be reduced; conditions and criteria therefor.

(a) The owner of real property against which a fine or lien has been imposed pursuant to section 22-279 may apply to the special magistrate, through the city manager or his designee, for a satisfaction of such fine or lien with less than full payment thereof. No such application shall be considered by the special magistrate until the applicant has first shown that:

(1) All ad valorem property taxes, special assessments, county and city utility charges and other government and city-imposed liens against the subject real property have been paid;

(2) The applicant is not personally indebted to the city for any reason; and

(3) All city code violations have been corrected under necessary permits issued therefor.

(b) In considering an application to reduce a fine or lien imposed pursuant to section 22-279, no satisfaction thereof shall be approved by the special magistrate with less than full payment thereof, unless the special magistrate shall make a specific finding that no violation of any city ordinance exists on the subject real property.

(c) The balance of any fine or lien imposed pursuant to section 22-279 that is reduced by the special magistrate shall be paid on terms as approved by the special magistrate.

(d) If the property for which the application for a fine reduction is being considered is owned by a government or quasi-government entity, the special magistrate may reduce such fine even if the violation has not been corrected.

(Ord. No. 07-05, § 3, 1-9-07)

Sec. 22-284 - Other procedures or implementing provisions.

The ~~board~~Board may adopt any additional necessary, desirable, or advisable procedures or implementing provisions for this article by resolution.

(Ord. No. 99-39, § 1, 7-20-99)

Secs. 22-280~~5~~—22-289. - Reserved.

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