

ORDINANCE 19-32

AN ORDINANCE OF THE CITY OF ALACHUA FLORIDA, RELATING TO THE AMENDMENT OF THE CITY'S CODE OF ORDINANCES; AMENDING SUBPART A, CHAPTER 12, CODE ENFORCEMENT, OF THE CITY OF ALACHUA CODE OF ORDINANCES; PROVIDING FOR THE TERM OF CONTRACT FOR A SPECIAL MAGISTRATE; PROVIDING THAT THE TERM "CODE ENFORCEMENT INSPECTOR" AND "CODE ENFORCEMENT OFFICER" ARE INTERCHANGEABLE; REORDERING SECTIONS; AND CLARIFYING LANGUAGE; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, the Subpart A, Chapter 12, of the City Code of Ordinances establishes regulations relating to Code Enforcement; and

WHEREAS, such regulations pertain to the Special Magistrate; and,

WHEREAS, the City finds it necessary to amend Subpart A, Chapter 12, Code Enforcement, of the City Code of Ordinances, in order to provide for a term of contract for a Special Magistrate, and to clarify language; and,

WHEREAS, the City advertised public hearings to be held before the City Commission on July 22, 2019 and August 12, 2019, and,

WHEREAS, the City Commission conducted public hearings on the proposed Amendment on July 22, 2019 and August 12, 2019; and

WHEREAS, the City Commission has determined and found the Amendment to be consistent with the City's Comprehensive Plan and LDRs; and

WHEREAS, for reasons set forth in this Ordinance that is hereby adopted and incorporated as findings of fact, that the Alachua City Commission finds and declares that the enactment of this amendment is in the furtherance of the public health, safety, morals, order, comfort, convenience, appearance, prosperity, or general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE PEOPLE OF THE CITY OF ALACHUA, FLORIDA:

Section 1. Interpretation of Recitals

The above recitals are true and correct and incorporated herein by reference.

Section 2. Findings of Fact and Conclusions of Law

The authority for the enactment of this ordinance is Chapter 163, Part 1, Florida Statutes; Section 166.021 and 166.041; and the City's Comprehensive Plan.

Section 3. Amendment to the City Code of Ordinances

The proposed Amendment to the City Code of Ordinances are attached as Exhibit "A" and are hereby incorporated herein by reference.

Section 4. Codification of and correction of Scrivener's Errors

The City Manager or designee, without public hearing, is authorized to correct any typographical errors which do not affect the intent of this ordinance. A corrected copy shall be posted in the public record.

Section 5. Ordinance to be Construed Liberally

This ordinance shall be liberally construed in order to effectively carry out the purposes hereof which are deemed to be in the best interest of the public health, safety and welfare of the citizens and residents of Alachua, Florida.

Section 6. Repealing Clause

All ordinance or parts of ordinances in conflict herewith are, to the extent of the conflict, hereby repealed.

Section 7. Severability

It is the declared intent of the City Commission of the City of Alachua that, if any section, sentence, clause, phrase, or provision of this ordinance is for any reason held or declared to be unconstitutional, void, or inoperative by any court or agency of competent jurisdiction, such holding of invalidity or unconstitutionality shall not affect the remaining provisions of this ordinance, and the remainder of the ordinance after the exclusions of such part or parts shall be deemed to be valid.

Section 8. Effective Date

This ordinance shall take effect immediately upon its adoption by the City Commission and the signature of the Mayor.

PASSED on first reading the 22nd day of July, 2019.

PASSED and **ADOPTED**, in regular session, with a quorum present and voting, by the City Commission, upon second and final reading this 12th day of August, 2019.

CITY COMMISSION OF THE
CITY OF ALACHUA, FLORIDA


Gib Coerper, Mayor
SEAL



ATTEST:


Adam Boukari, City Manager/Clerk

APPROVED AS TO FORM


Marian B. Rush, City Attorney

EXHIBIT “A”

Chapter 12 of the City Code of Ordinances is amended as follows (text that is underlined is to be added and text that is shown as ~~strike through~~ is to be removed). Except as amended herein, the remainder of Chapter 12 remains in full force and effect:

Chapter 12 - CODE ENFORCEMENT [1]

ARTICLE I. - IN GENERAL

Secs. 12-1—12-18. - Reserved.

ARTICLE II. - SPECIAL MAGISTRATE

Sec. 12-19. - 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:

Code Inspector or Code Enforcement Officer are interchangeable and means the City Manager or ~~his~~-designee whose duty it is to ensure code compliance.

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 board or any other quasi-judicial or judicial process, to have violated or have admitted violating the same provision of the City of Alachua Code of Ordinances within five years prior to the violation, notwithstanding ~~the~~-violations ~~occurred~~occurred at different locations.

Special Magistrate shall mean any Special Magistrate appointed by the City Commission to hear code enforcement violation cases.

Violator shall mean the person responsible for ~~the a~~ 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. 06-31, § 1, 12-18-2006)

State Law reference— Similar provisions, F.S. § 162.04.

Sec. 12-20. - Special Magistrate created; term and termination.

- (a) There is hereby created a Special Magistrate of the City who shall be appointed by the City Commission.

- (b) Appointments shall be made in accordance with applicable laws, ~~and~~ ordinances, ~~and at~~ the sole discretion of the City Commission.
- (c) A Special Magistrate must be a member in good standing of The Florida Bar.
- (d) The term of the Contract shall begin on the date the Agreement is approved by the City Commission and fully executed, continue through September 30 of the instant City fiscal year and automatically renew for successive two year terms unless terminated by either party upon a thirty day written notice to the other, or terminated earlier by the City Commission for misfeasance, malfeasance or nonfeasance in office.
- ~~(d) The term of office for a Special Magistrate shall be for two years, unless terminated earlier by the City Commission for misfeasance, malfeasance or nonfeasance in office.~~
- (e) Appointments to fill any vacancy shall be for the remainder of the unexpired term of office.
- (f) The amount of compensation paid to a Special Magistrate shall be determined by the City Commission, ~~and may not be changed during the term of office.~~

(Ord. No. 06-31, § 2, 12-18-2006)

Sec. 12-21. - Jurisdiction of the Special Magistrate-

The Special Magistrate shall have jurisdiction and authority to hear and decide alleged violations of the City codes and ordinances specifically including, but not limited to, this Code of Ordinances including ~~and~~ the Land Development Regulations as may be adopted from time to time, as allowed by F.S. ch. 162.

(Ord. No. 06-31, § 4, 12-18-2006)

Sec. 12-22. - Initiation of actions before the Special Magistrate.

- (a) It shall be the duty of the code ~~inspector~~ officers to initiate enforcement proceedings of the various codes and ordinances of the City. No Special Magistrate shall have the power to initiate such enforcement proceedings.
- (b) Except as provided in subsection (c) of this section, if a violation of a code or ordinance is found, the code ~~inspector~~ officer shall notify the alleged violators and give the alleged violators a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code ~~inspector~~ officer shall notify the Special Magistrate concerning the alleged violation by filing an affidavit which contains:
 - (1) The names and addresses of the alleged violators;
 - (2) The code provision involved and a short factual statement concerning the alleged violation that exists; and

(3) A request for a hearing pursuant to the provisions of section 12-23.

(c) A copy of said affidavit to the Special Magistrate shall also be sent to ~~the~~ alleged violators as provided for in section 12-29.

(d) ~~(e)~~—If a repeat violation is found, the code ~~inspector~~ officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code ~~inspector~~ officer, upon notifying the violator of a repeat violation, shall notify ~~the~~ Special Magistrate and request a hearing. The Special Magistrate through clerical staff, shall schedule a hearing and shall provide notice pursuant to section 12-29. The case may be presented to ~~the~~ Special Magistrate even if the repeat violation has been corrected prior to the hearing; and the notice shall so state. If the repeat violation has been corrected, the Special Magistrate retains the right to schedule a hearing to determine costs and impose the payment of ~~reasonable enforcement fees~~ a fine upon the repeat violator. The repeat violator may choose to waive his rights to this hearing and pay said costs and fine as determined by the ~~Special Magistrate~~ agreement with the City.

(e) ~~(d)~~—If the Code ~~Inspector~~ Officer has reason to believe a violation presents a serious threat to the public health, safety and welfare, the code ~~inspector~~ officer, without notifying the alleged violator, shall proceed directly to request a hearing by the Special Magistrate without the requirement to give the alleged violators a reasonable time to correct the violation.

(Ord. No. 06-31, § 5, 12-18-2006)

State Law reference— Similar provisions, F.S. § 162.06.

Sec. 12-23. - Scheduling of hearing by Special Magistrate.

(a) Upon receipt of a request for hearing by the code ~~inspector~~ officers, the Special Magistrate shall set the case for a hearing ~~to be held at a subsequent meeting~~.

(b) After a case is set for hearing, the Special Magistrate shall be empowered to issue subpoenas as requested by either or both the a code ~~inspector~~ officer, ~~and/or~~ alleged violator ~~or and~~ as may be ~~otherwise~~ determined by the Special Magistrate. The subpoenas may be sent to the City Police Department to be served or by any other means authorized by law.

(Ord. No. 06-31, § 6, 12-18-2006)

State Law reference— Similar provisions, F.S. §§ 162.07, 162.08.

Sec. 12-24. - Hearings; procedure.

(a) The Special Magistrate may call hearings and ~~The Special Magistrate~~ may, at any hearing, set a future hearing date.

- (b) ~~The Special Magistrate may hold a hearing at least once every two months, but may hold a hearing~~ Hearings may be held more or less often as the demand necessitates, ~~in the discretion of the Special Magistrate. The decision to hold a hearing more often or cancel shall be made by the Special Magistrate.~~
- (c) Minutes shall be kept of all hearings held by the Special Magistrate. All such hearings and proceedings shall be open to the public.
- (d) The City Manager shall provide clerical and administrative personnel as may be required to assist the Special Magistrate in the proper performance of ~~his~~ duties.
- (e) Each case before the Special Magistrate shall be presented by a member of the City administrative staff.
- (f) The City shall be represented by the City Attorney or by a member of City staff.
- (g) The Special Magistrate shall proceed to hear the cases on the agenda for that particular day. All testimony shall be under oath and shall be recorded. The Special Magistrate shall proceed to hear cases in a quasi-judicial hearing as set forth in the Land Development Regulations, and shall take testimony from the code ~~inspector~~ officer, the violator and any other person familiar with the case or having personal knowledge about the case. The Special Magistrate shall not be bound by formal rules of evidence; however, ~~he~~ shall act to ensure fundamental due process in each case.
- (h) If the City prevails in prosecuting the case before the Special Magistrate, it shall be entitled to recover all costs incurred in prosecuting the case and the costs shall be included in any lien under section 12-27.
- (i) At the conclusion of the hearing, the Special Magistrate shall issue findings of fact, based on the evidence of record and conclusions of law and shall issue an order affording the proper relief consistent with section 12-25.

(Ord. No. 06-31, § 7, 12-18-2006)

State Law reference— Similar provisions, F.S. § 162.07.

Sec. 12-25. - Powers of Special Magistrate.

The Special Magistrate shall have the power to:

- (a) ~~(1)~~—Adopt rules for the conduct of its meetings and hearings.
- (b) ~~(2)~~—Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the City Police Department or by any other means authorized by law.
- (c) ~~(3)~~—Subpoena records, surveys, plats and other documentary materials and evidence.

- (d) ~~(4)~~—Take testimony under oath.
- (e) ~~(5)~~—Issue orders having the force and effect of law which can command whatever steps are necessary to bring a violation into compliance and to establish deadlines by which such violations shall be brought into compliance.
- (f) ~~(6)~~—Levy fines pursuant to section 12-27.

(Ord. No. 06-31, § 8, 12-18-2006)

State Law reference— Similar provisions, F.S. § 162.08 and .09.

Sec. 12-26. - Enforcement.

- (a) After an order to correct a violation has been issued and the date for compliance ordered by the Special Magistrate has passed, the code inspector~~officer~~ shall make an inspection to determine if the alleged violation has been corrected.
- (b) The code inspector~~officer~~ shall then issue an Affidavit of Compliance or noncompliance, which shall be filed with the Special Magistrate. A copy of said affidavit shall be sent to the violators in the same manner as provided for notices in section 12-29.
- (c) If the violators have not complied with the order of the Special Magistrate, the Special Magistrate shall be authorized to impose such penalties as provided for in section 12-27.
- (d) The Special Magistrate shall hold such additional hearings as deemed necessary to ensure compliance.

(Ord. No. 06-31, § 9, 12-18-2006)

Sec. 12-27. - Fines; cost of repairs; liens.

- (a) The Special Magistrate may order a violator to pay a fine pursuant to F.S. ch. 162. A fine imposed for a first time violation shall not exceed \$250.00 per day, and not to exceed \$500.00 for a repeat violation for each day that any violation continues past the date set for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector~~officer~~. If the violation is a violation as described in section 12-22(d), the Special Magistrate shall notify the City Commission, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with all costs of repairs as allowed under F.S. ch. 162. Making such repairs does not create a continuing obligation on the part of the City Commission to make further repairs or to maintain the property and does not create any liability against the City Commission for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this article, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing,

the Special Magistrate finds a violation to be irreparable or irreversible in nature, the Special Magistrate may order the violator to pay a fine as specified in subsection (b) of this section.

- (b) If the Special Magistrate finds the violation to be irreparable or irreversible in nature, a fine may be imposed not to exceed \$5,000.00 per violation.
- (c) In determining the amount of the fine, if any, the Special Magistrate shall consider the following factors:
 - (1) The gravity of the violation;
 - (2) Any actions taken by the violator to correct the violation; and
 - (3) Any previous violations committed by the violator.
- (d) A certified copy of an order for 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 for the County and once recorded, shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order 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 article shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit 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 authorize the Mayor to execute a satisfaction or release of lien entered pursuant to this section.
- (e) ~~(d)~~—After three months from the filing of any such lien which remains unpaid, the City Commission may institute an action to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under Fla. Const. art. X, § 4. The money judgment provisions of this section shall not apply to real property or personal property which is covered Fla. Const. art. X, § 4(a).

(Ord. No. 06-31, § 10, 12-18-2006)

State Law reference— Similar provisions, F.S. § 162.09.

Sec. 12-28. - Right of appeal.

An aggrieved party may appeal a ruling or order of the Special Magistrate by certiorari proceedings filed in the Circuit Court of the County. The petition for writ of certiorari must be filed within 30 days after the hearing at which the order was announced. The scope of review shall be limited to the record made before the Special Magistrate and shall not be a trial de novo. The Special Magistrate shall by rule establish reasonable charges for the preparation of the record to be paid by the petitioner.

(Ord. No. 06-31, § 11, 12-18-2006)

State Law reference— Similar provisions, F.S. § 162.11

Sec. 12-29. - 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 section 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 the City by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subsections (b)(2)a and b of this section and by first class mail directed to the addresses furnished to the City with a properly executed proof of mailing or affidavit confirming the first class mailing;
- (2) Hand delivery by the code ~~inspector~~officer or other agent of the City;
- (3) Leaving the notice at the violator's usual place of residence with any person residing therein who is over 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) of this section, at the option of the Special Magistrate, notice may also be served by publication or posting, as follows:

(1) ~~R~~RRequirements of publication.

- 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 the County is located. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements.
- b. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

(2) In lieu of publication.

- a. In lieu of publication as described in subsection (b)(1)a of this section, 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 the City Hall.

- b. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(3) Notice by publication or posting may run concurrently with, or may follow, an attempt to provide notice by hand delivery or by mail as required under subsection (b)(1) of this section.

- (c) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (b)(1) of this section, together with proof of publication or posting as provided in subsection (b)(2) of this section, 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.

(Ord. No. 06-31, § 12, 12-18-2006)

State Law reference— Similar provisions, F.S. § 162.12.

Sec. 12-30. - Consistent with State law.

The provisions of this Chapter are intended to be consistent with F.S. ch. 162. Any provisions of F.S. ch. 162 not specifically stated above are incorporated herein to the extent applicable. Should any provisions of this Chapter conflict with F.S. ch. 162, the provisions of F.S. ch. 162, as amended from time to time, shall prevail.