



RULES OF PROCEDURE
FORT PIERCE SPECIAL MAGISTRATE

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RULES OF PROCEDURE
FORT PIERCE SPECIAL MAGISTRATE

Rule 1. Miscellaneous.

- A. Interpretation. These rules shall be interpreted so as to be consistent with state law and local ordinances.
- B. Definitions. Unless required otherwise by context, the following words shall have the meanings herein provided for:
 - (1) "Code" shall refer to the Code of Ordinances of the City of Fort Pierce.
 - (2) "Department" shall mean ~~the City Department presently titled the Code Enforcement Department or as such Department may be hereafter renamed.~~ either:
 - i. The Community Response Department, or as such Department may be hereafter renamed, for violations involving City Ordinances and the International Property Maintenance Code, or
 - ii. The Building Department, or as such Department may be hereafter renamed, for violations of City Ordinances, the Florida Building Code, and the International Property Maintenance Code and Floodplain Management Appeals and Variances.
 - (3) "Respondent" shall mean the individual or entity charged by the Department with a violation.
 - (4) "Special Magistrate" is the person whose office is defined in Code Section ~~2-253~~ 1-71.

Rule 2. Jurisdiction.

The Special Magistrate shall have jurisdiction over proceedings initiated by the Code ~~Enforcement~~ Response Department, ~~the Building Department, and for all matters assigned to the Special Magistrate by the City Commission for the City of Fort Pierce pursuant to the Code pursuant to Section 2-243.~~

Rule 3. Hearings of the Special Magistrate.

- A. Hearings. Hearings of the Special Magistrate shall be scheduled by the Department at a date, time, and for a place determined by the Department. The Department shall provide the Special Magistrate with reasonable notice of any such hearing.
- B. Recusal and Disqualification. Pursuant to Fla. Stat. §112.3143, the Special Magistrate shall not decide any case which would inure to the Special Magistrate's private gain or loss, or on any measure which insures to the special gain or loss of any principal by whom the Special Magistrate is retained, or to the gain or loss of a parent organization or subsidiary of a corporate principle by which the Special Magistrate is retained, or any

matter which the Special Magistrate knows may inure to the special private gain or loss of a relative or business associate. The Special Magistrate shall likewise ~~be excused where such officer's not decide any case whenever the Special Magistrate's~~ impartiality might reasonably be questioned, as provided by Canon 3E of the Code of Judicial Conduct. In the event the Special Magistrate determines there ~~to be are~~ grounds for disqualification or disqualification, the Department shall refer the case to another Special Magistrate. The Special Magistrate shall publicly state the grounds for recusal or disqualification and within 15 days thereafter submit to the Department a completed Form 8B Memorandum of Voting Conflict for County, Municipal and Other Local Public Officers.

- C. City Attorney. The City Attorney or designee shall represent the City by presenting those certain cases designated for hearing before the Special Magistrate.

Rule 64. Sunshine.

The Special Magistrate shall not discuss the merits of any pending case with any other person outside the meeting wherein the case is scheduled to be heard. But in the event the Special Magistrate is so contacted by another person, whether orally or in writing, the substance of any such communication will not be deemed prejudicial provided that the subject matter of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before ~~final any~~ action by the Special Magistrate on the matter.

Rule 75. Hearing Notices.

~~A. Violation Hearings~~ The Department shall provide notice to the Respondent of all proceedings of the Special Magistrate. ~~Initial nNotification of a violation all hearings, pursuant to Code, §2-244(b),~~ shall be in the manner set forth in Fla. Stat. §162.12. Such notice shall include this highlighted statement: "A copy of the Rules of Procedure for the Special Magistrate may be obtained upon request from the Department ~~of Community Response.~~"

~~B. Subsequent Proceedings. Notification of subsequent proceedings provided for by these rules shall be by regular mail, at least seven (7) days in advance of the hearing of the Special Magistrate.~~

Rule 86. Subpoenas.

~~A.~~ Subpoenas for testimony before the Special Magistrate may be issued by the Code Enforcement Department Clerk, upon request of the Department, or by any attorney of record on behalf of a Respondent. Every subpoena shall issue under seal of the City, ~~and~~ shall state the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. A Respondent unrepresented by counsel may request the Special Magistrate to authorize the ~~Code Enforcement~~

Department Clerk to issue a subpoena, and the Special Magistrate may do so only if satisfied that the anticipated testimony to be obtained through the subpoena is reasonably relevant to the charge.

Rule 97. Appearance By Representative.

- A. Statement. The respondent may be represented at any proceeding subject to these rules, provided that the representative of such Respondent files with the Department a written statement of representation, at or before the time of representation. The statement shall state that the Respondent authorized the representative to speak on behalf of the Respondent and shall include the representative's address, ~~and~~ phone number, and email address.
- B. Time. The statement of representation should be filed with the Department no later than one week before the representative's first appearance. In the event the statement is filed less than one week immediately preceding the date of the representative's first appearance, the Department may, in its sole discretion, continue or postpone the proceeding to a new date certain upon learning of the representation.

Rule 108. Continuances.

In the event there are circumstances constituting good cause for postponement of a hearing, the Respondent may file a written request for continuance or postponement with the Department. The request must be made within a reasonable time following the date the Respondent became aware of the circumstances which form the basis of the request and such request must specify the justifying circumstances with particularity. In the event the Department agrees with the request it shall reschedule the hearing. In the event the Department disagrees, it shall immediately contact the Special Magistrate to whom the case is assigned, who will promptly schedule a hearing to be attended by the Special Magistrate, the ~~Code Enforcement Department~~ Department Clerk, counsel for the Department, the Respondent, and a representative of the Department. After hearing both sides, the Special Magistrate shall determine whether there is good cause for the postponement, and whether such good cause outweighs the public interest, in determining if the hearing is to proceed as originally scheduled. The request will then be either granted or denied.

Rule 119. Order of Business.

- A. Cases will be called in the order in which they appear on the agenda, except that the Special Magistrate may take cases out of order as appropriate.
- B. The outline for the regular meeting or hearing agenda shall be as follows:
 - (1) Call to Order
 - (2) Pledge of Allegiance
 - (3) Administrative Business
 - i. Administration of Oath to ~~Departmental~~ Witnesses

- ii. Identification of Cases in Compliance, Dismissed, or Continued
- iii. ~~Request for Tabling or Continuance~~
- (4) Public Hearings
 - i. ~~Cases Tabled from Previous Meetings Citations~~
 - ii. ~~New Cases Violation Cases~~
 - iii. ~~Rehearings Other Cases~~
- (5) ~~Request for Reduction in Penalty/Extension of Compliance Date~~ Old or Unfinished Business
 - i. Requests for Rehearings
 - ii. Requests for Reduction in Penalty
 - iii. Requests for Extension of Compliance Date
- ~~(6) Requests for Rehearings~~
- ~~(7) Old or Unfinished Business~~
- (8) (6) New Business
- (9) (7) Next Meeting Date
- ~~(10) (8) Adjournment~~

Rule 102. Violation Hearings.

- A. ~~Minutes. Minutes shall be kept of all meetings by the Department of all violation hearings and a~~ All hearings and proceedings shall be open to the public.
- B. Initial Examination of Respondent. When a case is called, the respondent shall come forward and the Special Magistrate shall ask whether the charge is contested. ~~If the charge is uncontested the Special Magistrate shall next ask whether the time recommended by the code enforcement officer for compliance is reasonable. If the respondent agrees that the recommended time is reasonably sufficient, the Special Magistrate shall immediately rule.~~
- C. ~~For Citations: When Recommended Time for Compliance Contested. In the event the respondent agrees with the charge, but requests additional time for compliance beyond what is otherwise recommended by the Department, the Special Magistrate shall allow the respondent to give reasons in support of the request and shall then allow the Department to present its point of view.~~
 - i. Additional Examination of Respondent. If the charge is uncontested, the Special Magistrate shall next ask whether the penalty recommended by the Department is agreed to by the Respondent.
 - ii. When the Charge and Penalty are Uncontested. If the Respondent contests neither the charge nor the penalty recommendation, the Special Magistrate shall immediately rule.

- iii. When the Charge is Uncontested, but the Penalty is Contested. If the Respondent does not contest the charge but does contest the penalty recommended by the Department, the Special Magistrate shall allow the Respondent to give reasons in support of the request and shall then allow the Department to present its point of view. The Special Magistrate shall then rule.
- iv. When the Charge is Contested. If the Respondent contests the charge, the Special Magistrate shall call upon the Department to present evidence in support of the charge. The Respondent may next present evidence in opposition to the charge. Both sides shall have a right of cross-examination. Formal rules of evidence shall not apply, but fundamental due process shall be observed. Each side may present witnesses, as necessary, and the either the Department or the Respondent. The Special Magistrate may, in an exercise of reasonable discretion, continue a hearing in the interest of justice, should there be a determination that further information is necessary from either party, whereupon there shall be declared a date certain for continuation of the proceeding. The Special Magistrate may act to exclude irrelevant, immaterial, or unduly repetitious evidence, but all other evidence of a type commonly relied upon by reasonably Respondent may be represented by counsel. The Special Magistrate may question any witness or call any witness believed necessary. Any member of the public having direct knowledge of the facts of the case and desiring to testify may be recognized by the Special Magistrate as appropriate but is encouraged to first discuss such testimonial contribution with the party on whose behalf it is tendered, 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 the State of Florida. Upon presentation of all evidence, the hearing shall be closed.
- v. Disposition of Charge. The Special Magistrate shall rule following the hearing. The Special Magistrate shall orally issue findings of fact based on record evidence and conclusions of law and shall issue an order, affording the proper relief consistent with the powers provided by state law and the Code. The Special Magistrate's order shall be reduced to writing and mailed to the Respondent, and the Department Clerk may cause a copy thereof to be recorded in the Public Records of the county. The time by which the Respondent is to pay the penalty begins to run when the order is mailed.
- vi. Prehearing Stipulation. The Department and Respondent may enter into a written stipulation prior to the hearing whereby there is agreement that the Respondent is in violation, the penalty to be paid, and the time in which the penalty is to be paid. Such written stipulation shall be filed with the Department Clerk whereupon an order of violation shall be entered thereon and signed by the Special Magistrate

without necessity for any further proceedings as otherwise provided by this Rule. The stipulation shall include this certification:

I certify that I am the person charged with the violation described in this stipulation or am authorized to act on behalf of such person (copy of written authorization attached). I have carefully read the stipulation, or its contents were explained to me, and I fully understand what it says, or any questions were answered to my satisfaction. I enter into this stipulation freely and voluntarily, without coercion or duress. I understand that I have a right to a hearing and voluntarily waive such right. I realize that I have a right to be represented by an attorney or was able to consult with an attorney and waive that right also. I will contact the Department as soon as I am in compliance so that such compliance may be verified.

Name

- D. ~~For Violation Cases: When Case Contested. If the respondent contests the charge, the Special Magistrate shall immediately administer the oath to the respondent and shall then call upon the Department to present evidence in support of the charge. The respondent may next present evidence in opposition to the charge. Both sides shall have a right of cross-examination. Formal rules of evidence shall not apply but fundamental due process shall be observed. Each side may present witnesses as necessary and the respondent may be represented by counsel. The Special Magistrate may question any witness or call any witness believed necessary. Any member of the public having direct knowledge of the facts of the case and desiring to testify may be recognized by the Special Magistrate as appropriate, but is encouraged to first discuss such testimonial contribution with the party on whose behalf it is tendered, either the Department or the respondent. The Special Magistrate may, in an exercise of reasonable discretion, continue a hearing in the interest of justice should there be determination that further information is necessary from either party, whereupon there shall be declared a date certain for continuation of the proceeding. The Special Magistrate may act to exclude irrelevant, immaterial or unduly repetitious evidence 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 the State of Florida. Upon presentation of all evidence, the hearing shall be closed.~~
- i. *Additional Examination of Respondent. If the charge is uncontested, the Special Magistrate shall next ask whether the time recommended by the Department for compliance and daily fine amount is agreed to by the Respondent.*
 - ii. *When Charge and Compliance Requirements Uncontested. In the event the Respondent agrees with the charge and the compliance requirements recommended by the Department, the Special Magistrate shall immediately rule.*

- iii. When Charge Uncontested, but Compliance Requirements Contested. In the event the Respondent agrees with the charge but does not agree with the compliance requirements recommended by the Department, the Special Magistrate shall allow the Respondent to give reasons in support of the request and shall then allow the Department to present its point of view. The Special Magistrate shall then rule.
- iv. When Charge Contested. If the Respondent contests the charge, the Special Magistrate shall call upon the Department to present evidence in support of the charge. The Respondent may next present evidence in opposition to the charge. Both sides shall have a right of cross-examination. Formal rules of evidence shall not apply, but fundamental due process shall be observed. Each side may present witnesses, as necessary, and the Respondent may be represented by counsel. The Special Magistrate may question any witness or call any witness believed necessary. Any member of the public having direct knowledge of the facts of the case and desiring to testify may be recognized by the Special Magistrate as appropriate but is encouraged to first discuss such testimonial contribution with the party on whose behalf it is tendered, either the Department or the Respondent. The Special Magistrate may, in an exercise of reasonable discretion, continue a hearing in the interest of justice, should there be a determination that further information is necessary from either party, whereupon there shall be declared a date certain for continuation of the proceeding. The Special Magistrate may act to exclude irrelevant, immaterial, or unduly repetitious evidence, 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 the State of Florida. Upon presentation of all evidence, the hearing shall be closed.
- v. Disposition of Charge. A ruling shall be made following the hearing. The Special Magistrate shall orally issue findings of fact based on record evidence and conclusions of law and shall issue an order, affording the proper relief consistent with the powers provided by state law and the Code. The Special Magistrate's order shall be reduced to writing and mailed to the Respondent, and the Department Clerk may cause a copy thereof to be recorded in the Public Records of the county. The period after which there must be compliance with the Special Magistrate's order begins to run when the order is mailed.
- vi. Prehearing Stipulation. The Department and Respondent may enter into a written stipulation prior to the hearing whereby there is agreement that the Respondent is in violation, the time permitted for compliance, and the daily fine amount in the event Respondent fails to comply within the agreed upon time. Such written stipulation shall be filed with the Department Clerk whereupon an order of violation shall be entered thereon and signed by the Special Magistrate without necessity for

any further proceedings as otherwise provided by this Rule. The stipulation shall include this certification:

I certify that I am the person charged with the violation described in this stipulation or am authorized to act on behalf of such person (copy of written authorization attached). I have carefully read the stipulation, or its contents were explained to me, and I fully understand what it says, or any questions were answered to my satisfaction. I enter into this stipulation freely and voluntarily, without coercion or duress. I understand that I have a right to a hearing and voluntarily waive such right. I realize that I have a right to be represented by an attorney or was able to consult with an attorney and waive that right also. I will contact the Department as soon as I am in compliance so that such compliance may be verified.

Name

~~E. Disposition of Charge. — A ruling shall be made following the hearing. The Special Magistrate shall orally issue findings of fact, based on record evidence, and conclusions of law, and shall issue an order, affording the proper relief consistent with the powers provided by State law and the Code of Ordinances. The Special Magistrate’s order shall be reduced to writing and mailed to the respondent and the Code Enforcement Clerk may cause a copy thereof to be recorded in the Public Records of the county. The period after which there must be compliance with the Special Magistrate’s order begins to run when the order is mailed.~~

~~F. Prehearing Stipulation. The Department and respondent may enter into a written stipulation prior to the hearing, whereby there is agreement that the respondent is in violation and where they further agree as to the time for compliance and the daily fine in the event respondent fails to comply. Such written stipulation shall be filed with the Code Enforcement Clerk whereupon an order of violation shall be entered thereon and signed by the Special Magistrate without necessity for any further proceedings as otherwise provided by this Rule. The stipulation shall include this certification:~~

~~*I certify that I am the person charged with the violation described in this stipulation or am authorized to act on behalf of such person (copy of written authorization attached). I have carefully read the stipulation, or its contents were explained to me, and I fully understand what it says or any questions were answered to my satisfaction. I enter into this stipulation freely and voluntarily, without coercion or duress. I understand that I have a right to a hearing and voluntarily waive such right. I realize that I have a right to be represented by an attorney, or was able to consult with an attorney and waive that right also. I will contact the Code Enforcement Officer as soon as I am in compliance so that such compliance may be verified.*~~

Name

~~G. Videotape. Proceedings may be videotaped for any reason provided, however, that reasonable advance notification of such videotaping is first provided to all parties so that the Special Magistrate may establish guidelines necessary for limiting any obtrusive effects of the videotaping.~~

Rule 113. Rehearings.

- A. As of Right. Within ten (10) days of the date the Special Magistrate's written order is mailed to the **R**espondent, the **R**espondent may file with the Department a written request for rehearing. The request shall include a description of new evidence or circumstances not presented or considered at the original hearing. The request should also state why any such new information was not presented at the original hearing. The Department shall schedule the request for hearing by the Special Magistrate at the next regular meeting, with notice to the **R**espondent. No such request shall stay the terms of any order, except as otherwise provided for in these rules.
- B. Discretionary. There is no right to reconsideration of any ruling by the Special Magistrate if such request is not timely made pursuant to Rule 131(a). But at the sole discretion of the Special Magistrate, a request for reconsideration may be considered at any time, within one year following the period provided by Rule 131(a) above, upon a finding that there is good cause, in the interest of justice, to excuse untimeliness of the request. In the event a request for reconsideration is granted, the matter shall be reset for the next regular hearing or meeting, for a reconsideration of the original issues.

Rule 124. Appeals and Stays.

- A. Appeals. Either the Department or **R**espondent may appeal a ruling or order of the Special Magistrate to the Circuit Court. An appeal must be filed within thirty (30) days of the date the written order is entered. The scope of review shall be limited to the record made in the hearing and shall not be a trial de novo.
- B. Stays. An appeal does not automatically stay enforcement of the order. A stay may be requested when an appeal is filed. It shall be submitted in writing to the Department which shall schedule it for hearing before the Special Magistrate with its recommendation, upon notice to the **R**espondent. If the **R**espondent believes that potential prejudice may accrue by delaying resolution of the request until the Special Magistrate's regular meeting, the respondent may additionally request an emergency hearing which the Department shall immediately transmit to the Special Magistrate who may schedule a hearing within forty-eight (48) hours to be attended by the Special Magistrate, the **Code** Enforcement Clerk, the Department's attorney, the **R**espondent and a representative of the Department. After hearing both sides, the Special Magistrate

shall temporarily either grant or a deny the request, until able to act upon the request for stay at its regular meeting.

Rule 135. Extensions of Compliance Date.

- A. Extension by Department. The Department may, within its discretion, give a Respondent additional time, not exceeding ninety (90) days, to comply with the Special Magistrate's order.
- B. Requests for Extension. A Respondent in violation may request an additional extension of time within which to comply with an order of the Special Magistrate. The Respondent must request the extension in writing, addressed to the Department, prior to the date originally set in the order for compliance. The Department shall then forward the request, with its recommendation to the Special Magistrate for decision at the next regularly scheduled meeting, with notice to the Respondent. Consideration of such request shall be limited to extenuating details preventing compliance as originally ordered, such as financial or health circumstances. The Special Magistrate shall not consider any substantive matters involving the case itself, which shall only be considered in the context of a rehearing pursuant to these rules.

Rule 146. Imposition of Lien.

- A. In the event the Department finds that the Respondent does not timely comply, either within the time originally ordered or as extended pursuant to these rules, the Department shall ~~send notice to the respondent by regular mail. The written notification shall state that respondent is found non-compliant and that a lien shall be filed within twenty (20) days and shall have the effect provided by Fla. Stat. § 162.09 or as the same may be renumbered. The notice shall further state that if respondent disagrees with the finding of non-compliance or the amount of the fine, a written request for a Massey hearing may be filed with the Department within such twenty (20) day period of time. prepare an Affidavit detailing and documenting the non-compliance of the Special Magistrate's Order. The Department shall send written notification to the Respondent by regular mail of the finding of non-compliance along with a copy of the Affidavit. The written notification of the finding of non-compliance shall inform the Respondent of the non-compliance due to the continued violation of the Special Magistrate's Order and that a lien shall be filed twenty (20) days from the date of the written notice unless a written request for a hearing to contest the finding of non-compliance or the fine amount is received by the Department within that twenty (20) days.~~ If a hearing is requested, the lien shall not be filed in the public record unless or until the Special Magistrate finds that the respondent is or was non-compliant and reconsiders the amount of the fine.
- B. If a hearing is not requested, the Special Magistrate shall assess the fine and enter a lien on the property after considering the Affidavit detailing and documenting the non-compliance. The Special Magistrate's order assessing the fine and imposing the lien shall be reduced to

writing and mailed to the Respondent regular mail. The Department Clerk may cause a copy of the order to be recorded in the Public Records of the county.

- C. If a hearing is requested, the Department shall schedule a hearing with notice to the respondent. The Special Magistrate shall determine whether respondent timely complied. If there is or was non-compliance, the Special Magistrate shall also reconsider the amount of the fine, adjusting it upward or downward as appropriate, based upon consideration of the following criteria:

- (1) The gravity of the violation;
- (2) Any action taken by respondent to correct the violation; and
- (3) Any previous violations committed by the violator.

After hearing both sides, the Special Magistrate shall determine whether respondent is in compliance and, if non-compliant, stating when the respondent became non-compliant and setting forth the amount of the fine and directing that a lien be filed in such amount. In the event the Special Magistrate reduces the amount of the fine otherwise to be given lien status, any such reduction may be expressly conditioned upon actual payment by the violator of the reduced amount by a specified date. The order shall be reduced to writing and mailed to the respondent.

Rule 157. Requests for Reduction of Liens.

- ~~A. A respondent may request a reduction of a lien otherwise imposed by the City to the Department, after the original violation is in compliance and the Department has issued an affidavit of compliance. No such request shall be made until after the date originally set for compliance has passed and the property is already under penalty. Any request for reduction of lien shall be made in writing to the Department and shall state reasons why a reduction of the Lien should be considered. The request should include a description of any supporting documentation which should be considered in furtherance of such request. All requests to reduce a lien imposed by the City must meet the following requirements:~~

- ~~(1) For liens imposed pursuant to Fla. Stat. § 162.09, a Respondent may request a reduction of the lien only after the original violation is in compliance and the Department has issued an Affidavit of Compliance.~~
- ~~(2) The request must be in writing in a form provided by the Department.~~
- ~~(3) The request must be made by the owner. If the request is made by any other interested party, written proof of permission to act on behalf of the owner must be provided.~~
- ~~(4) A copy of the deed, showing title transfer to the current owner, must be provided.~~

- i. If the property was conveyed via Special Warranty Deed or Warranty Deed, the owner must provide proof of their attempt to have the guaranteeing party take responsibility for the debt without success.
 - (5) A statement or explanation as to why the City should consider the request for reduction. The request should include a narrative with any supporting documentation to be considered in furtherance of such request.
 - (6) There shall be established an application fee of \$250.00 for all requests to reduce a lien that must be heard by the Special Magistrate. Such fee shall be assessed by the Special Magistrate following consideration of the request and is in addition to any other administrative fees assessed. Any reduction or waiver of such fee may only be granted upon proof of sufficient cause by the Requestor.
- B. If any of the following conditions are met, the Department has the authority to process a lien reduction request and issue a Release of Lien:
- (1) The amount of settlement for a property zoned residential with less than four (4) dwelling units is \$5000 or more and is payable in less than 30 days.
 - (2) The amount of the settlement for a property either zoned residential with four (4) or more dwelling units, zoned commercial, or zoned industrial is \$10,000 or more and is payable in less than 30 days.
 - (3) The settlement is based upon the receipt of excess tax sale proceeds that have been received by the City and respectively cover the administrative costs incurred.
 - (4) The amount of settlement for requests of partial lien releases due to a spreading lien as provided for in Fla. Stat. § 162.09(3) is equal to or more than 3% of the lien to be released and the property receiving the benefit of the lien reduction is located outside the Fort Pierce city limits.
 - (5) The amount of settlement for nuisance abatement and demolition liens is equal to or greater than the hard costs for service plus 50% of the interest, penalties, and administration fees assessed by the City.

The Department shall forward the request to the Special Magistrate if additional review is required, if a hearing is specifically requested or in the best interest of the City. The Department and Requestor may enter into an agreement to settle the lien reduction. Any written agreement between the requesting party and the Department to settle the lien reduction shall constitute a waiver of hearing by the Special Magistrate by both parties.

- C. If the request does not meet the criteria outlined in Section 15(bB), the Department has determined the request requires additional review, or the requesting party chooses to not waive his or her right to a hearing, the Department shall schedule a hearing on the request before the Special Magistrate, with notice to the ~~respondent~~ Requestor. After

hearing both sides, the Special Magistrate shall make a determination that the request for reduction of the lien be denied, granted, or granted with conditions. The determination will be based upon evidence, upon consideration of the following criteria:

- (1) The gravity or seriousness of the violation;
 - (2) Any and all actions taken by the violator to correct the violations or, if the violation was not corrected by the original violator, what action was taken by any other owner or party in interest to bring the property into compliance;
 - (3) The length of time necessary to bring the property into compliance;
 - (4) The number of times the violator was previously found in violation by either the Code Enforcement Board, Special Magistrate, or other quasi-judicial or judicial process, or otherwise admitted guilt in any such proceeding;
 - (5) The number of violation notices the violator has received in the past as well as their nature and the final disposition of each such notice;
 - (6) Whether or to what extent there are extenuating factors preventing timely compliance, such as unavoidable personal hardship.
 - (7) Whether or to what extent there are pending violation proceedings on the subject property or any other property within the City owned by the respondent.
- D. If the Special Magistrate determines that the request for reduction be approved and the following conditions are met, they may order the Department, once payment is received and any other conditions are met, to issue a Release of Lien:
- (1) ~~The amount of settlement for a property zoned residential with less than four (4) dwelling units is \$3,000 or more and is payable in less than 6 months. For liens imposed pursuant to Fla. Stat. § 162.09, in a reduced amount that is no less than the amount sufficient to cover the administration costs for processing the case plus the \$250.00 application fee.~~
 - (2) ~~The amount of the settlement for a property either zoned residential with four (4) or more dwelling units, zoned commercial or zoned industrial is \$7,500 or more and is payable in less than 6 months. For nuisance abatement liens, in a reduced amount that is no less than the amount sufficient to cover the following conditions:~~
 - i. ~~The reduced amount must include the hard costs for services.~~
 - ii. ~~The reduced amount must include the \$250.00 application fee.~~
 - iii. ~~The City imposed interest and penalties may be waived in full if the Special Magistrate determines that it is in the best interest of the City.~~
 - iv. ~~The consideration of administration fees must include any outstanding hard costs to the City including, but not limited to, recording fees.~~

- v. The administration fees for liens imposed in the Requestor's name shall not be waived or reduced unless the Requestor can provide sufficient cause for such fee to be waived or reduced, and the Special Magistrate determines it is in the best interest of the City.
- vi. All other administrative fees may be waived or reduced as determined by the Special Magistrate.

~~The Special Magistrate may, at its discretion, forward the request to the Commission if they feel additional review is required or in the best interest of the City.~~

- E. ~~If the Special Magistrate determines that the request for reduction be approved but the request does not meet the criteria outlined in Section (d), the determination is to deny the request, or additional review is required, they shall forward their recommendation to the City Commission for a final determination. An appeal of the Special Magistrate's decision may be made to the City Commission. Any such request for appeal must be in writing and received by the City Clerk's office no later than 30 days from the written determination of the Special Magistrate.~~
- F. ~~Any recommendation for waiver or reduction may include further recommendation that the reduction be conditioned upon payment of the reduced amount within a specified period of time. Failure to pay the reduced amount within that time period will result in the lien reverting to the original amount. There shall be established an appeal fee of \$250.00 for any requests that must be heard by the City Commission. Such fee may be imposed after consideration by the City Commission.~~
- G. ~~There shall be established an administrative fee of \$250.00 for any requests for mitigation of a code enforcement lien that must be heard by the City Commission. Such fee may be imposed after consideration by the City Commission. This fee shall not apply to special assessment reduction requests.~~
- H. ~~The Department has the authority to mitigate in part or in full only the administration fees that have been assessed by the Department for Special Assessment Liens imposed for nuisance abatement actions. The Department shall have no authority to mitigate the interest, penalties or Special Assessment liens imposed for Nuisance Abatement actions.~~

Rule 16. Foreclosure

- A. In accordance with Fla. Stat. §162.09(3), after three (3) months from the filing of a lien which remains unpaid, the City may initiate foreclosure action.
- B. The matter will be placed on the agenda of a regularly scheduled meeting for consideration by the Special Magistrate who will review the following:
 - (1) For general code enforcement liens, that proper notice has been provided to the property owner notifying them of the violations that existed and for the initial hearing as required by state statute.

- (2) For nuisance abatement or demolition liens, that proper notice has been provide to the property owner notifying them of the violations that existed, and that the property had been posted in accordance with the Code.
 - (3) The owner has been provided the opportunity to be heard at a hearing as outlined in Rule 15 and provided notice of the imposition of lien.
 - (4) The property is not currently homesteaded.
 - (5) The lien remains unpaid.
 - (6) Notice of the City’s intent to foreclose on the lien has been provided to the property owner through the use of a process server.
- C. Upon confirmation that the lien is eligible for foreclosure, the Special Magistrate shall issue an order authorizing the City Attorney to foreclose on the lien.

Rule 17. Floodplain Management Appeals and Variances.

- A. All requests for appeals and requests for variances of the City’s Floodplain Management Ordinance must meet the following requirements:
- (1) The request must be in writing on a form prescribed by the Department.
 - (2) The request must be made by a person aggrieved by the decision or determination made by the floodplain administrator in administration of the City’s Floodplain Management Ordinance.
 - (3) A statement or explanation as to why the City should consider the request for appeal or variance. The request should include a narrative with any supporting documentation to be considered in furtherance of such request.
 - (4) There shall be established an application fee of \$500.00 for all requests for appeals and variances. Such fee shall be paid at the time of submittal of the requests. Application fees shall not be reduced, waived, or refunded.
 - (5) Upon a request, a hearing shall be set before the Special Magistrate. Notice of the hearing and the procedures of the hearing shall follow the Code and the Rules of Procedure herein.

Rule 18. Amendments.

These rules maybe amended upon request of the Special Magistrate providing further that any such amendment shall not be effective unless or until subsequently ratified or approved by the City Commission.

Amendment History

~~February 3, 2003~~

~~On February 3, 2003, the City Commission adopted Resolution 03-09 which amended Rule 10 by increasing from 30 to 90 days the extension which may be granted to a respondent by the Department for compliance. Resolution 03-09 also amended Rule 12 by adding criteria to be considered by the Board in ruling upon a request for fine reduction. The Rule was finally amended to require that any motion for reduction include findings on each criterion and that the Board's recommendation include as appropriate a provision for payment of administrative costs.~~

~~May 5, 2003~~

~~On May 5, 2003, the City Commission adopted Resolution 03-30 which created Rule 15 (Imposition of Lien). Such Rule created a due process procedure to be followed before an enforcement lien is filed of record in the public records pursuant to Ch. 162, Florida Statutes. Such procedure gives violators right to request a hearing before any such lien is filed and further gives violators an opportunity to contest the amount of the lien. The Rule set out factors to be considered by the Board in determining the lien amount.~~

~~February 2, 2004~~

~~On February 2, 2004, the City Commission adopted Resolution 04-04 which amended Rule 8 (Subpoenas) and created Rule 11(g) (Violation Hearings). The amendment to Rule 8 provides that subpoenas may be issued to respondents who are unrepresented by counsel pursuant to a 11show cause¹ procedure which provides that subpoenas may be issued to such applicants upon a showing of relevance. Section 11(g) is new and sets out a procedure allowing the Department and respondents to enter into agreements regarding code violations, such agreements to be in place of a formal violation hearing.~~

~~June 6, 2006~~

~~On June 6, 2006, the City Commission adopted Resolution 06-33 which provided for a comprehensive revision of the Rules of Procedure so as to add a reference therein to the Special Magistrate so as to clarify intended application of the Rules of Procedure to the Special Magistrate, where such rules were otherwise applicable to the Code Enforcement Board. In addition to adding references to the Special Magistrate, reference to the Department was changed from the "Department of Community Response" to the "Building and Code Enforcement Department". A new rule 5A was added in recognition of hearing procedures unique to the requirements of proceedings before the Special Magistrate. Rule 5A(c) was added so as to provide that the City Attorney or designee is to represent the City in proceedings before the Special Magistrate. Rule 11(h) was created so as to provide a provision for accommodation of videotaping.~~

~~February 5, 2007~~

~~On February 5, 2007, the City Commission adopted Resolution 07-06 which provided for amendment to Rule 15 and Rule 16. Two changes were made to Rule 15. First, the word "Massey" was added as a~~

~~preceding modifier to Rule 15's reference to a "hearing". This was done to make clear that the hearing required by that rule is designed to provide the due process rights deemed essential by the court in Massey v. Charlotte County, 842 So.2nd 142 (Fla. 2nd DCA 2003). A second change made to Rule 15 involved addition of a paragraph which clarifies discretion of the Board and Special Magistrate to condition any fine reduction based upon a violators payment of the reduced fine within a specified period. Rule 16 was amended to replace the word "penalty" as appearing therein with the word "lien". This was done to clarify intent that Rule 16 applies solely to liens, not fines. Once a fine is reduced to lien status, neither the Board nor the Magistrate may unilaterally reduce such lien. Instead, the Board and Special Master may only recommend reduction. The Commission itself is responsible for finally deciding whether an existing lien is to be reduced or not. A second change to Rule 16 involved addition of a sentence clarifying municipal discretion to condition any reduction in a lien upon payment of the reduced amount by the violator within a specified period of time.~~

~~November 5, 2007~~

~~On November 5, 2007, the City Commission adopted Resolution 07-49 which provided for amendment to Rule 10 and Rule 16. The amendment to Rule 10 (Order of Business) adds as an additional item of business the certification by the Chair of alternate member voting status. This addition is based upon the Commission's adoption of Ordinance K 461 that added as an additional member of the Code Enforcement Board one alternate member. Such alternate member is permitted to vote in place of any regular member of the Board who is absent and the new amendment to Rule 10 establishes the procedure whereby the Board Chair formally establishes the alternate members voting right. The second amendment to Rule 16 adds an additional criterion to be considered by the Board or Special Magistrate when considering a recommendation to the Commission for lien reductions. The new criterion allows consideration of whether there are any other currently pending violation proceedings on any property of the respondent.~~

~~May 18, 2009~~

~~On May 18, 2009, the City Commission adopted Resolution 09-32 which provided for amendment of the Rules of Procedure for the Code Enforcement Board and Special Magistrate. Such amendment involved creation of a new Rule 9 and for renumbering of the existing Rule 9 and succeeding rules. The newly created Rule 9 (Appearance by Representative) sets out procedures relating to representation of alleged code violators, including provisions relating to a representative statement of representation. The amended rule confers discretion upon the Department to postpone or reassign the case as it deems necessary upon learning of the representation. The Code Board approved the amendment at its regular meeting of February 9, 2009, and recommenced adoption thereof by the City Commission.~~

~~September 20, 2010~~

~~On September 20, 2010, the City Commission adopted Resolution 10-42 which provided for amendment of the Rules of Procedure for the Code Enforcement Board and Special Magistrate. Such amendment involved creation of Rule 13(b). The newly created Rule 13(b) provides for discretionary rehearing in certain instances and further requires a showing of good cause before a request for rehearing may be~~

~~granted as a matter of discretion. The Code Board approved the amendment at its regular meeting of July 14, 2010, and recommended adoption thereof by the City Commission.~~

~~June 16, 2014~~

~~On June 16, 2014, The City Commission adopted Resolution 14 R20 Amending Rule 17 of the Rules of Procedures for Code Enforcement Proceedings by amending the following:~~

- ~~• Item #2 adding any action taken by a party that was not the violator, i.e. the foreclosing bank or new owner.~~
- ~~• Item #4 clarifying "prior violations" and including the results of citations, which are heard by the county court.~~
- ~~• Item #5 requiring a more detailed explanation of prior violations~~

~~June 6, 2016~~

~~On June 6, 2016, the City Commission adopted Resolution No. 16 R23 providing limited authorizations for management, the Special Magistrates and the Code Enforcement Board to mitigate lien reduction requests when specific criteria are met.~~

~~January 8, 2018~~

~~On January 8, 2018, the City Commission adopted Resolution No. _____ deleting reference to the Code Enforcement Board, which was dissolved on June 5, 2017.~~