

ORDINANCE No. 06-08

AN ORDINANCE AMENDING REGULATIONS IN CHAPTERS 1, 2, 10, AND 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 1 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "GENERAL PROVISIONS"; ADOPTING AMENDMENTS TO CHAPTER 2 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "ADMINISTRATION"; ADOPTING AMENDMENTS TO CHAPTER 10 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "DEVELOPMENT ORDERS AND ENGINEERING STANDARDS"; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES"; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 1 OF THE LAND DEVELOPMENT CODE. Chapter 1 of the Town of Fort Myers Beach land development code is titled "GENERAL PROVISIONS." Chapter 1 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 1:

- Sec. 1-2. Rules of construction and definitions.
- Sec. 1-5. General penalty; continuing violations.
- Sec. 1-6. Enforcement of land development code.
- Sec. 1-16. Misrepresentation(s) by applicant.

SECTION 3. ADOPTION OF AMENDMENTS TO CHAPTER 2 OF THE LAND DEVELOPMENT CODE. Chapter 2 of the Town of Fort Myers Beach land development code is titled "ADMINISTRATION." Chapter 2 is hereby amended as shown in Exhibit B. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 2:

Article I. In General

Sec. 2-2. Compliance agreements.

Article IV. Impact Fees

Sec. 2-306. Computation of amount.

Article V. Code Enforcement

Division 1. Generally

Sec. 2-420. Intent.

Division 2. Special Master Magistrate

Sec. 2-421. Creation of position of special master magistrate.

Sec. 2-422. Applicability.

Sec. 2-423. Definitions.

Sec. 2-424. Enforcement procedure.

Sec. 2-425. Conduct of hearing.

Sec. 2-426. Powers of the code enforcement special master magistrate.

Sec. 2-427. Penalties Administrative fines, costs, and liens.

Sec. 2-428. Request for rehearing and appeals.

Sec. 2-429. Notices.

Division 3. Citations

Sec. 2-430. Citation procedures; penalties.

Sec. 2-431. Conflict.

SECTION 5. ADOPTION OF AMENDMENTS TO CHAPTER 10 OF THE LAND

DEVELOPMENT CODE. Chapter 10 of the Town of Fort Myers Beach land development code is titled "DEVELOPMENT ORDERS AND ENGINEERING STANDARDS." Chapter 10 is hereby amended to replace the term "special master" where it appears three times in Sec. 10-112 with the term "special magistrate." This ordinance amends the following section of Chapter 10:

Article II. Development Orders and Plats

Division 2. Development Orders

Sec. 10-112. Appeals.

SECTION 6. ADOPTION OF AMENDMENTS TO CHAPTER 34 OF THE LAND

DEVELOPMENT CODE. Chapter 34 of the Town of Fort Myers Beach land development code is titled "ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES." Chapter 34 is hereby amended to replace the term "special master" where it appears in the sections listed below with the term "special magistrate." This ordinance amends the following section of Chapter 34:

Article II. Zoning Procedures

Division 2. Town Council

Sec. 34-84. General procedures for actions on specific zoning applications.

Sec. 34-94. Special master magistrate proceedings under the Florida land use and environmental dispute resolution act (F.S. § 70.51)

Article IV. Supplemental Regulations

Division 12. Drug Paraphernalia

Sec. 34-1552. Determination of paraphernalia.

Division 32-A. Short-Term Rentals

Sec. 34-2394. Enforcement and penalties.

SECTION 7. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 8. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____; upon being put to a vote, the result was as follows:

Mayor Garr Reynolds _____
Vice-Mayor Don Massucco _____
Dennis Boback _____
Charles Meador, Jr. _____
Bill Shenko, Jr. _____

DULY PASSED AND ENACTED this ____th day of _____, 2006.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Rachel Lambert, Acting Town Clerk

By: _____
Garr Reynolds, Mayor

Approved as to form by:

Anne Dalton, Town Attorney

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 1 — GENERAL PROVISIONS

Sec. 1-2. Rules of construction and definitions.

(a) *[this subsection unchanged]*

(b) *[this subsection unchanged]*

(c) The following words, terms and phrases, when used in this code, will have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

.....

Applicant means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity, or their duly authorized representative(s), conducting activities under this code.

Director means the town manager or any person to whom the town manager has delegated the authority to administer any portion of this code, or that person's designee.

.....

[no further changes to this subsection]

Sec. 1-5. General penalty; continuing violations.

(a) *[this subsection unchanged]*

(b) *[this subsection unchanged]*

(c) *[this subsection unchanged]*

(d) In addition to the criminal penalties and enforcement procedures provided in this code, the violation of any provision of this code may be:

- (1) restricted by injunction, including a mandatory injunction;
- (2) enforced by action of the code enforcement special magistrate master, in accordance with §§ 2-421–2-429;

(3) enforced by citation, in accordance with §§ 2-430; and

(4) otherwise abated in any manner provided by law, including other equitable or civil relief.

Any such suit or action may be instituted and maintained by the town council, by any citizen of the town, or by any person affected by the violation of this code.

Sec. 1-6. Enforcement of land development code.

(a) Enforcement of the provisions of this code is the responsibility of the town manager unless otherwise provided by this code. ~~When so authorized by interlocal agreement, the director of the Lee County department of community development and his designees shall administer and enforce these provisions~~ Whenever the town council contracts with another governmental entity or entities and/or third party vendor(s) to provide services related to administration and enforcement of specific portions of this code, such other entity or entities will administer and enforce such specific portion(s) on behalf of the Town of Fort Myers Beach.

(b) Except where otherwise provided by this code, the director will town manager, or other party if authorized by interlocal agreement, shall have the discretion using accepted rules of statutory construction to interpret and apply these provisions, using accepted rules of statutory construction.

Sec. 1-16. Misrepresentation(s) by applicant.

The town may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation in the application or plans upon which the permit or approval was based.

EXHIBIT B

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 2 — ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2-2. Compliance agreements.

(a) **Authority.** The director town manager has the authority to enter into compliance agreements to facilitate compliance with the terms and conditions of this code. However, the town manager is under no obligation to enter into such an compliance agreement.

(b) **Purpose.** The purpose of a compliance agreement is to provide an alternative means to reach compliance with the terms of this code in the event a violation is discovered.

(c) **Timeframe for entry. Procedure:** Compliance agreements may only be entered into prior to the violator's receipt of a notice of hearing of code enforcement action before the ~~code enforcement~~ special magistrate master.

(d) **Procedure.** The compliance agreement must be in writing, signed by all parties, and executed in recordable form, after review and approval by the town attorney. At a minimum, the agreement must specifically set forth the terms and obligations necessary ~~to abate the violation:~~ for the violator to comply with the code, indicate that the violator must pay all costs incurred in enforcing the agreement, and provide a specific time frame for the violator to comply. The agreement must also provide a specific abatement time frame. The town may, at its option, record the compliance agreement in the public records. ~~If a copy of the agreement is recorded, the town will record a satisfaction or release of the agreement once the violation is deemed abated.~~ The violator parties must comply with all terms of the agreement, within the stated time frame, before for the violation will be deemed abated. ~~In the event~~

~~the parties fail to comply with the terms of the agreement, the town may pursue code enforcement action. If the town pursues code enforcement action subsequent to the execution of the compliance agreement, the terms of the agreement will have no further effect on the parties and will not be binding on the special master.~~

(e) **Recording in Public Records.** The town may, at its option, record the compliance agreement in the public records of Lee County. Upon fulfillment of its terms, the town will record a satisfaction or release of the agreement, if recorded. The violator must pay all costs of recording the original agreement and any satisfaction or release thereof.

(f) ~~(d)~~ **Enforcement.** If the violator fails to comply with the compliance agreement, the Town may (i) pursue code enforcement action, in which case the compliance agreement will automatically deemed to be null and void, will have no further effect on the parties, and will not be binding on the special magistrate; or (ii) enforce the terms and conditions of the a compliance agreement may be enforced in a court of competent jurisdiction by injunction or an action for specific performance, in the town's sole discretion. In the event the parties execute but do not perform all obligations under an agreement, the town may pursue code enforcement special master action in accordance with article V. The special magistrate master is not responsible for the enforcement of compliance agreement obligations.

ARTICLE IV. IMPACT FEES

Sec. 2-306. Computation of amount.

(a) At the option of the feepayer, the amount of the impact fees may be determined by the schedule set forth in this section.

(b) [no changes to this subsection]

(c) [no changes to this subsection]

(d) [no changes to this subsection]

(e) [no changes to this subsection]

(f) [no changes to this subsection]

(g) [no changes to this subsection]

FORT MYERS BEACH IMPACT FEE SCHEDULE

LAND USE TYPE	Impact Fees (rounded to nearest dollar) ¹							
	Transportation	Parks		Fire Protection	Schools ²			
		Regional	Community					
Residential:								
Single-family residence	\$2,971	<u>\$631</u>	\$461	<u>\$788</u>	\$655	\$485	<u>\$4,309</u>	\$2,232
Multiple-family building (per dwelling unit)	\$2,059	<u>\$518</u>	\$341	<u>\$591</u>	\$485	\$306	<u>\$1,704</u>	\$691
Timeshare unit	\$2,237	<u>\$518</u>	\$341	<u>\$591</u>	\$485	\$306		\$0
Hotel/motel room	\$2,237	<u>\$318</u>	\$230	<u>\$363</u>	\$327	\$495		\$0
Assisted living facility (per dwelling unit) (see § 34-1415 for density equivalents)	\$1,017		\$0		\$0	\$306		\$0
Commercial (fee per 1,000 sq. ft. except as noted):								
Retail store or shopping center	\$5,063		\$0		\$0	\$621		\$0
Bank	\$8,038		\$0		\$0	\$621		\$0
Car wash, self-service (fee per stall)	\$1,683		\$0		\$0	\$621		\$0
Convenience store with gas pumps	\$11,250		\$0		\$0	\$621		\$0
Movie theater	\$7,427		\$0		\$0	\$621		\$0
Restaurant, fast food	\$12,763		\$0		\$0	\$621		\$0
Restaurant, standard	\$6,504		\$0		\$0	\$621		\$0
Office (fee per 1,000 square feet):								
General office	\$2,336		\$0		\$0	\$291		\$0
Medical office	\$7,716		\$0		\$0	\$291		\$0
Institutional (fee per 1,000 square feet):								
Church	\$1,467		\$0		\$0	\$621		\$0
Day care center	\$4,107		\$0		\$0	\$621		\$0
Elementary/secondary school (private)	\$643		\$0		\$0	\$621		\$0
Warehouse (fee per 1,000 square feet):	\$1,461		\$0		\$0	\$78		\$0

¹ In addition to the impact fees listed, an additional 3 percent administrative charge will be levied in accordance with § 2-310(e).

² School impact fees are collected in accordance with Lee County Ordinance No. 05-25 ~~01-21~~, effective January 1, 2006. ~~December 1, 2001~~.

**ARTICLE V.
CODE ENFORCEMENT**

DIVISION 1. GENERALLY

Sec. 2-420. Intent and purpose.

(a) The intent and purpose of this article is to promote, protect, and improve the health, safety, and welfare of the citizens of the town Fort Myers Beach by creating the position of code enforcement special magistrate master and granting him/her the power and authority to hold hearings and to impose administrative fines; including costs of prosecution; and other noncriminal penalties, in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing any code, ordinance, or regulation in effect within the town, where a violation or repeated violation exists.

(b) The means of code enforcement described in this article are in addition to those described in § 1-5 of this code and as otherwise allowed by law or equity.

- (1) Division 2 of this article describes the use of a special master magistrate for code enforcement.
- (2) Division 3 of this article describes the use of civil citations to enforce town codes.

**DIVISION 2.
SPECIAL MASTER MAGISTRATE**

Sec. 2-421. Creation of position of special master magistrate.

~~For the purpose of enforcing codes and regulations of the Town of Fort Myers Beach, The position of special master magistrate is hereby created pursuant to F.S. ch. 162 for the intent and purpose set forth in this code, of enforcing codes and regulations of the Town of Fort Myers Beach. Special magistrate will include the officer(s) appointed by the town council, including but not limited to any special magistrates pro tempore, with the power set forth in § 2-420 and § 2-426.~~

Sec. 2-422. Applicability.

This article is applicable to the incorporated area of the Town of Fort Myers Beach.

Sec. 2-423. Definitions.

For the purposes of this article, the following words and phrases will shall have the meanings respectively ascribed to them by this section unless the context clearly indicates otherwise:

Clerk means the Town Clerk or his/her designee.

Code or codes means any ordinance or ordinances of the Town of Fort Myers Beach, as the same exist and as they may have been amended on the effective date of this article, and as the same may be amended from time to time.

Code enforcement officer inspector means an ordinance enforcement specialist or any authorized designated agent or employee of the town of Fort Myers Beach whose duty it is to assure enforce codes and ordinances enacted by the town, compliance. The term "code enforcement officer" will be construed to include the duties and authority of code inspectors as set forth in Florida law. Whenever the town council contracts with Lee County another governmental entity and/or third-party vendor to provide code enforcement services, Lee County the code inspectors enforcement officers for such other entity or vendor will shall serve as Fort Myers Beach town code enforcement officers, inspectors.

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

Special master means the officer appointed by the town council, including any deputy special master or special masters pro tempore, to hear matters concerning compliance with codes and ordinances.

Sec. 2-424. Enforcement procedure.

(a) **Initiation of proceedings.** It will be the duty of the code enforcement officer inspector to initiate code enforcement proceedings.

(b) **Initial violation.** Except as provided in §§ (c), and (d), and (e) of this section, if a code inspector finds a violation of any town code, ordinance, or regulations is found, the code enforcement officer will give the violator a notice indicating the type of violation found and the manner in which it may be corrected must be given to the violator. The notice must also and providing a reasonable time in which to correct the violation. If the violation continues beyond the time provided on the notice for compliance correction or abatement, the code enforcement officer inspector may notify the special magistrate and request a hearing before the special master. The special magistrate, through the clerk, will schedule a hearing, and written notice of such hearing will be and provided written notice of the hearing to the violator: as set forth in § 2-429 below. If the violation is corrected and then recurs, or if the violation is not corrected by the time specified for correction by the code enforcement officer, the case may be presented to the special magistrate even if the violation has been corrected prior to the special magistrate hearing, and the notice will so state. A case may be presented to the special master even if the violation has been corrected prior to the hearing, provided the violation was not corrected within the specified time period or the violation was corrected and reoccurred and the notice indicates the possibility of these consequences.

(c) **Repeat violation.** If a repeat violation is found, the code enforcement officer will inspector must notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, will notify the special magistrate and request a hearing. The special magistrate, through the clerk, will schedule a hearing and provide notice as set forth in § 2-429, of the type of violation and the manner in which it can be abated, but the violator is not entitled to a reasonable time in which to correct the violation. Once the violator has been notified of the repeat violation, the code inspector may request a hearing before the special master and provide written notice of the hearing to the violator. The case may be presented to the special master

magistrate even if the repeat violation is corrected prior to the hearing, provided, and the notice will so state, indicates the possibility of these consequences. If the repeat violation has been corrected, the special magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the special magistrate.

(d) **Immediate hearing.** Notwithstanding anything else contained in this article, if the code enforcement officer 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 enforcement officer inspector, after making will make a reasonable effort to notify the alleged violator; and may immediately notify the special magistrate and request an immediate hearing before the special master. The clerk will serve the alleged violator with notice of hearing. In addition, the special magistrate will notify the town, which may make all reasonable repairs which are required to bring the property into compliance. Making such repairs does not create a continuing obligation on the part of the town to make further repairs or to maintain the property and does not create any liability against the town for any damages to the property if such repairs were completed in good faith. The costs of such repairs will be borne by the owner and/or violator, as applicable.

(e) **Transfer of subject property.** If the owner of property that is subject to any enforcement proceeding before a special magistrate or court transfers ownership of such property between the time the initial pleading or notice, as applicable, was served and the time of the hearing, such owner must:

- (1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee; and
- (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor; and
- (3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the

applicable code and with orders issued in the code enforcement proceeding; and

- (4) File a notice with the code enforcement officer regarding the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosures described in subsections (1), (2), and (3) above before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding will not be dismissed, but the new owner will be provided a reasonable period of time to correct the violation before the hearing is held.

(f) *No Stay.* A request for an interpretation from the director as set forth in § 2-1, § 34-90, or § 34-265 of this code, or any appeal of such interpretation to the town council, will not act to stay any enforcement proceeding under this code unless specifically ordered by the special magistrate.

Sec. 2-425. Conduct of hearing.

(a) *Scheduling of hearings.* A regular time and place will be designated by the special master magistrate for code enforcement proceedings before the special magistrate. The frequency of these hearings will be based upon the number of cases to be heard. If necessary, The special master magistrate may also set a special hearing to take place on a day or at a time not regularly set aside for code enforcement proceedings, upon request of the code enforcement officer or at such other times as may be necessary. The code enforcement officer inspector is responsible for scheduling cases to be heard by the special master magistrate. Minutes will be kept of all hearings. All code enforcement proceedings and hearings will be open to the public, but no public input will be taken.

(b) *Prosecution of the case.* Each case on the code enforcement docket will be presented to the special master magistrate by the town attorney or by the director or his designee. If the town prevails in prosecuting a case before the special master magistrate, it will be entitled to recover all costs incurred in prosecuting the case. Such costs may be included in the lien authorized under this code and under F.S. 162.07 and 162.09(3). For purposes of this section, the issuance of an order finding

violation will be evidence that the town has prevailed in prosecuting the case.

(c) *Hearing testimony.* The special master magistrate will proceed to hear the cases on the docket for that day. All testimony will be under oath and recorded. The special magistrate will have the power to take testimony may be taken from the code enforcement officer inspector and the alleged violator. Formal rules of evidence will not apply, but fundamental due process will apply is to be observed and will govern the proceedings.

(d) *Special master magistrate order.* At Within 15 days after the conclusion of each the hearing, the special master magistrate will issue a written order containing findings of fact based on evidence of record and conclusions of law based on evidence of record, the actions necessary to abate any violation; the fine to be imposed if the violation is, or has not been, abated; and will issue an order affording the proper relief consistent with powers granted under this code and Florida law. Such order may include a notice that the order must be complied with by a specific date and that a fine may be imposed, and An award of the costs of prosecution due and owing to the town may also be imposed. The special master magistrate has the discretion to grant additional time for abatement of the violation. The date for abatement will be set out in the written order. If the violation is of the type described in § 2-424(d), the cost of repairs incurred by the town pursuant to § 2-427(a) may be included as part of along with the administrative fine and imposition of costs of prosecution if the order is not complied with by said date.

(e) *Recording the order.* A certified copy copies of the orders may be recorded in the public records of Lee County and will constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property; and the findings in the recorded order therein are binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order has been recorded in the public records pursuant to this subsection, and the order is complied with by the date specified in the order, then after receiving proof the violation is abated; the special master magistrate will issue an order acknowledging abatement compliance that must also will be recorded in the public records. A hearing is not required to issue an

order acknowledging abatement compliance. Failure of a violator to pay the costs of prosecution assessed against him/her by the date specified in the order finding violation may also result in the recording of the order in the public records of Lee County, and will constitute a lien on the subject property and all other properties of the violator. Nothing in this section will be construed to waive the violator's obligations under § 2-424(e) or other provisions of this code.

Sec. 2-426. Powers of the code enforcement special master magistrate.

The code enforcement special master magistrate has the power and authority to:

- (1) Adopt rules for the conduct of code enforcement hearings.
- (2) Subpoena alleged violators and witnesses to code enforcement hearings. Subpoenas may be served by the sheriff of the county.
- (3) Subpoena evidence to code enforcement hearings.
- (4) Hold hearings.
- (5) ~~(4)~~ Take testimony under oath.
- (6) ~~(5)~~ Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance, including but not limited to the imposition of administrative fines, costs of prosecution, and other noncriminal penalties.

Sec. 2-427. Penalties Administrative fines, costs, and liens.

(a) ***Order by special magistrate, imposing fine/lien:*** The special master magistrate, upon sworn notification by the code enforcement officer inspector that an order of the special magistrate has not been complied with by the set time or upon finding that a repeat violation has been committed, a code enforcement violation has not been abated; may order the violator to pay a fine ~~not to exceed \$250 in an amount specified in this section~~ for each day the violation continues past the date set by the special magistrate for abatement; 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 enforcement officer; or may order abatement. In addition, if the violation is a violation described in § 2-424(d) above, the special magistrate will notify the town which may take the actions set forth

with specificity in § 2-424(d). If an order requiring abatement has been issued by the special master, If a finding of a violation or a repeat violation has been made by the special magistrate as provided in this code, a hearing is will not be necessary for prior to issuance of an order imposing the imposition of a fine. However, if a dispute arises as to whether the violator has complied abatement has occurred, the special master magistrate may grant a request for hearing if the request is made by the violator respondent in writing, setting forth the reasons for dispute, either on the date set for abatement or within and received by the town or special magistrate no later than ten days thereafter; following the date specified in the order for compliance. If such hearing is held, testimony will be limited to the issue of compliance with the special magistrate's previous order and no new evidence as to whether a violation occurred will be allowed. For a repeat violation, the special master may order the violator to pay a fine not to exceed \$500 per day per violation from the date the repeat violation was noticed to the violator by the code inspector. If the violation is of the type described in § 2-424(d), the special master magistrate must notify the town manager, who may make all reasonable repairs required to bring the property into compliance and may charge the violator with the reasonable cost of those repairs made by the town, along with the fine imposed under this section.

(b) ***Penalties: Administrative fine***

- (1) A fine imposed under this section ~~will can~~ not exceed \$250.00 per day for the first violation or \$500.00 per day for a repeat violation. However, if the special master magistrate finds a violation is irreparable or irreversible in nature, a fine ~~of up to not to exceed \$5,000 per violation per day can may~~ be imposed. Further, the fine may include The special magistrate may assess the cost of all repairs incurred by the town in accordance with subsection (a) hereof of this section as an additional component of the fine as well as the costs of prosecuting the case before the special master magistrate. For purposes of this article, prosecution costs of include, but are not limited to, recording costs, inspection costs, appearances by the code enforcement officer(s) inspector at hearings, preparation costs, photography costs, attorney fees, and similar items.

- (2) The following factors will be considered by the special ~~master~~ magistrate in determining the amount of the fine or the amount of mitigation necessary, if any: to be imposed:
- a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
- (3) The special ~~master~~ magistrate may mitigate reduce the fine imposed under this section and is authorized to mitigate any such fine at a hearing specifically noticed for such purpose.

(c) **Creation of a lien.** A certified copy of an order imposing ~~fin~~ es a fine or a fine plus repair costs, and/or assessing the costs of prosecution, may be recorded in the public records and thereafter will constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order will not be deemed to be a court judgment except for enforcement purposes. A fine imposed under this article will continue to accrue until (i) the violator has complied with the order rendered by the special magistrate the violation is abated or until (ii) judgment is rendered in a suit to foreclose the lien, whichever occurs first. A lien arising from a fine imposed under this section runs in favor of the Town of Fort Myers Beach, and the town manager may execute a satisfaction or release of lien entered in accordance with this section. ~~A release or satisfaction of lien may be executed by the mayor on behalf of the entire council.~~ The special ~~master~~ magistrate may authorize the town attorney to foreclose on a lien which remains unpaid for a period of three or more months after filing thereof or sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created under this article may be foreclosed on real property which is a homestead under section 4, article X of the state constitution. The money judgment provisions of this section will not apply to real or personal property which is covered under section 4(a), article X of the state constitution.

(d) **Duration of lien.** A lien established in accordance with the provisions of this article may not continue for a period longer than 20 years after the certified copy of an order imposing the fines and/or assessing the costs of prosecution has been recorded, unless within that time an action to foreclose on the lien is commenced as set forth in § 2-427(c) above in a court of competent jurisdiction. In an action to foreclose on the lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action foreclosure. The town is entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien ~~effected~~ affected by the commencement of an action will not be enforceable good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(e) **Jurisdiction over lien.** The special magistrate will retain jurisdiction over all cases in which a lien has been recorded until the lien has been released. Upon a showing of clear and convincing evidence by the violator, the special magistrate has the authority to reduce the lien amount for pay-off purposes, in the following circumstances:

- (1) The violator has come into compliance, but due to circumstances beyond his or her control resulting in extreme financial hardship, the violator cannot pay the full amount necessary to satisfy and release the lien; or
- (2) The violator has not come into compliance, but has a contract to sell the property, contingent upon release of the lien, to a contract purchaser who intends to bring the property into compliance, provided, however, that the contract-purchaser must first enter into an agreement with the town, indicating his intent to bring the property into compliance and a timetable for completing the work, and establishing security for performance. The authority to reduce fines granted to the special magistrate will be applicable to all code enforcement cases in which a lien has been placed on the property and remains unsatisfied.

Sec. 2-428. Request for rehearing and appeals.

(a) Either the town or the violator may request a rehearing of the decision of the special magistrate. A request for rehearing will be made, in writing, and will be filed with the clerk within ten business days of the special magistrate's execution of the order. A request for rehearing will be based only on the grounds that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law that was fundamental to the decision of the special magistrate. The written request for rehearing will specify the precise reasons therefor. The special magistrate will make a determination as to whether or not to rehear the matter and his/her decision will be made at a public hearing. If the special magistrate determines that he or she will grant a rehearing, he/she may:

- (1) Schedule a hearing where the parties will be given the opportunity to present evidence or argument limited to the specific reasons for which the rehearing was granted; or
- (2) Modify or reverse the prior order, without receiving further evidence, providing the change is based on a finding that the prior decision of the special magistrate resulted from a ruling on a question of law which the special magistrate has been informed was an erroneous ruling.

Until a request for rehearing has been denied or otherwise disposed of, the order of the special magistrate will be stayed and the time for taking an appeal, pursuant to this section, will not commence to run until the date upon which the special magistrate has finally disposed of the request for rehearing by denying the same, or otherwise.

(b) An aggrieved party, including the town council, may appeal a final order of the special master magistrate to the circuit court. Such an appeal will be limited to appellate review of the record created before the special master magistrate and may will not be a hearing de novo. Any appeal must be filed within 30 days of the special magistrate's execution of the order being appealed in accordance with the Florida Rules of Appellate Procedure. A copy of the notice of appeal must be provided to the special master magistrate, the town attorney, and the town manager.

Sec. 2-429. Notices.

(a) All notices required by this article will must be provided to the alleged violator by (i) certified mail, return receipt requested, subject to the provisions of § 2-429(b) below; or (ii) by hand delivery by the sheriff or other law enforcement officer, code inspector, enforcement officer, or other person designated by the director town manager; or (iii) by 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 (iv) in the case of commercial premises, leaving the notice with the manager or other person in charge.

(b) If notice is sent via certified mail, return receipt requested, to the owner of the property in question at the address listed in the Lee County Tax Collector's Office for tax notices, and at any other address provided to the town by such owner, and is returned as unclaimed or refused, notice may be provided by posting as described in subsections (c)(1) and (2) below and by first class mail directed to the addresses furnished to the town, with a properly executed proof of mailing or affidavit confirming the first class mailing.

(c) (b) In addition to provision of notice as set forth in subsection (a), notice may also be served by publication or posting, as follows:

- (1) Such notice will must be published once during each week for four consecutive weeks (four publications being sufficient) in a Lee County newspaper of general circulation. The newspaper must meet the requirements prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication must be made in accordance with F.S. §§ 50.041 and 50.051.
- (2) In lieu of publication as described in subsection (1), such notice may be posted for 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 must be the property upon which the violation is alleged to exist and the other must be at the Lee County Justice Center town hall for the Town of Fort Myers Beach. Proof of posting must be by affidavit of the person code inspector posting the notice. The affidavit must 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 or attempts to provide notice by hand delivery or by mail as required under subsection (a) ~~above~~.

(d) ~~(c)~~ Evidence that an attempt has been made to hand deliver or mail notice as provided in subsections (a) ~~and (b)~~, together with proof of publication or posting as provided in subsection ~~(b)~~ ~~(c)~~, will be sufficient to show the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

DIVISION 3. CITATIONS

Sec. 2-430. Citation procedures; penalties.

~~(a) Code enforcement officer. As used in this section, "code enforcement officer" means any designated employee or agent of Lee County whose duties duty it is to enforce county codes and ordinances. Whenever the town council contracts with Lee County to provide code enforcement services, Lee County code enforcement officers shall serve as Fort Myers Beach code enforcement officers and shall have the powers as described herein.~~

~~(a) (b) Citation training. Lee County The~~ director may designate certain county employees or agents as code enforcement officers. The training and qualifications necessary to be a code enforcement officer will be determined by the director county manager or his/her designee. Employees or agents who may be designated as code enforcement officers include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or fire safety inspectors. Designation as a code enforcement officer does not provide the code enforcement officer with the power of arrest or subject the code enforcement officer to the provisions of F.S. §§ 943.085 through 943.255.

~~(b) (c)~~ **Citation issuance.**

- (1) A code enforcement officer ~~or code inspector~~ is authorized to issue a citation to a person when, based upon personal investigation, the officer ~~or inspector~~ has reasonable cause to

believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court or special magistrate, as applicable, will hear the charge.

- (2) Prior to ~~issuing~~ ~~issuance~~ a citation, a code enforcement officer ~~or code inspector~~ must provide notice to the person that a violation of a county town code or ordinance has been committed and provide a reasonable time within which the violator may correct the violations. Such time period can be no more than 30 days. If, upon personal investigation the code enforcement officer ~~or code inspector~~ finds that the person has not corrected the violation within the time period, a citation may be issued to the violator. If the code enforcement officer ~~or code inspector~~ has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible, or if a repeat violation is found, the code enforcement officer ~~or code inspector~~ is not required to provide a reasonable time in which to correct the violation and may immediately issue a citation to the person who committed the violation.

- (3) A citation issued by a code enforcement officer ~~or code inspector~~ must be in a form prescribed by the town ~~or county~~ and contain the following:
- a. The date and time of issuance.
 - b. The name and address of the person to whom the citation is issued.
 - c. The date and time the civil infraction was committed.
 - d. The facts constituting reasonable cause.
 - e. The number or section of the code or ordinance violated.
 - f. The name and authority of the code enforcement officer.
 - g. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
 - h. The applicable civil penalty if the person elects to contest the citation.
 - i. The applicable civil penalty if the person elects not to contest the citation.
 - j. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he will be

deemed to have waived his right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

(c) (d) *Deposit of original citation.* After issuing a citation to an alleged violator, the code enforcement officer ~~or code inspector~~ must deposit the original citation and one copy of the citation with the county court or special ~~master~~ magistrate if the alleged violator should so choose.

(d) (e) *Enforcement by citation.* Any code or ordinance of the Town of Fort Myers Beach may be enforced using the citation procedure. When the citation procedure is used to enforce town codes and ordinances, the following will apply:

- (1) A violation of the code or ordinance is deemed a civil infraction.
- (2) A maximum civil penalty not to exceed \$500.00 may be imposed.
- (3) A civil penalty of less than the maximum civil penalty may be imposed if the person who has committed the civil infraction does not contest the citation.
- (4) A citation may be issued by a code enforcement officer who has reasonable cause to believe that a person has committed an act in violation of a code or ordinance.
- (5) A citation may be contested in county court.
- (6) ~~Citation proceedings are necessary to enforce town codes and ordinances. Such procedures and provisions as are necessary to provide for the enforcement of a code or an ordinance under the provisions of this division.~~

(e) (f) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer will be guilty of a misdemeanor of the second degree, punishable as provided in F.S. §§ 775.082 or 775.083.

(f) (g) The provisions of this section are an additional and supplemental means of enforcing town codes and ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. Nothing in this section prohibits the town from enforcing its codes or ordinances by any other means.

Sec. 2-431. Conflict.

In the event that any provision in this article is found to be contrary to any other existing town code or ordinances covering the same subject matter, the more restrictive will apply. In the event that any provision in this article is in conflict with the procedures found in F.S. ch. 162, the provisions of the statute will prevail to the extent of such conflict.

Sec. 2-432–2-459. Reserved