

SpecialMagistrate Ordinance

First Reading This ordinance is scheduled for first reading at the St. Petersburg City Council on October 21, 2004 at the 3:00 p.m. Council meeting. The ordinance provides for a SpecialMagistrate to handle some of the hearing functions that are currently handled by the Citys Code Enforcement Board.

Background The Code Enforcement Board is responsible to hear testimony from the City and property owners about code violations involving privately owned property. Meetings are held once each month. The Board evaluates evidence and testimony to determine whether violations exist, decides how much compliance time to allow, and also orders per diem fines which become liens against property for failure to comply by the ordered deadline. This Board also subsequently hears the same cases to consider lien certification when the property owner fails to comply by the Boards previously ordered compliance date. These lien certification cases are an opportunity for property owners to appear again and request additional time without penalty to correct violations. The Board is also responsible for hearing requests for reconsideration of liens already certified at previous hearings.

Why the SpecialMagistrate? In recent months, the Code Enforcement Board agenda has increased dramatically and hearings that once lasted 8 hours or less are now running much longer. The heavy Board agendas are tedious and difficult for the citizens who have to wait for their cases to be heard, as well as for the Board members and staff. The ordinance is proposed in order to improve service to citizens, to maintain meaningful due process, and to keep the costs of operating the code enforcement program as low as possible.

State Statute authorizes the City to have a Code Enforcement Board, a Special Magistrate, or both. This is the first time that the City has really felt the need to have both the Board and a Magistrate, and local ordinance must be amended in order to do so. Once the local ordinance is adopted, the SpecialMagistrate will relieve the Code Enforcement Board of some responsibilities.

How will this work? The Codes Compliance Assistance Department will still take the full agenda of evidentiary cases (first hearing) to the Code Enforcement Board. Once an order of the Board is issued providing a time frame for compliance, if the property owner is unable to comply, then prior to imposition of a penalty lien, the owner will have an opportunity to be heard by the SpecialMagistrate and can request more time to comply. The Special Magistrate will have the power to defer lien certification so that the property owner can correct violations without penalty, but will also have the power to certify liens against property for failure to correct violations. Further, the

SpecialMagistrate will make decisions about whether liens certified a previous hearings should be reconsidered, reduced or released entirely. Code Enforcement Board meetings are generally held on the fourth Wednesday each month and the SpecialMagistrate hearings are expected to be conducted once each month on the Tuesday just prior to the regular monthly Board meeting.

The draft ordinance appears below.

Prepared October 11, 2004

ORD NANCE NO . _____

AN ORD NANCE OF THE CTY OF ST . PETERSBURG , FLORIDA ,
RELATING TO CODE ENFORCEMENT ; AMENDING ARTICLE I OF
CHAPTER 9 , CTY CODE ; DEFNING TERMS ; PROVIDNG FOR ONE OR
MORE SPECIAL MAGISTRATES HAVNG POWER AND AUTHORITY AS
SET FORTH HEREIN ; PROVIDNG FOR NOTICE AND AN
OPPORTUNITY TO BE HEARD BEFORE CERTAIN ACTIONS MAY BE
TAKEN BY THE CODE ENFORCEMENT BOARD OR A SPECIAL
Magistrate ; PROVIDNG FOR SEVERABILITY ; AND PROVIDNG AN
EFFECTIVE DATE .

THE CTY OF ST . PETERSBURG , FLORIDA , DOES ORDAN :

Section 1 . Sections 9-21 through 9-31 of the St. Petersburg City Code
are hereby amended, Section 9-21 is renumbered as Section 9-20 , and
subsequent sections are renumbered to perm it the addition of a new Section
9-24 , to read as follows :

CHAPTER 9 . CODE ENFORCEMENT
ARTICLE II . MUNICIPAL CODE ENFORCEMENT BOARD

Sec. 9-20 9-21 . Definitions .

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

Code Inspector means those authorized agents or employees of the City
whose duty it is to ensure compliance with the codes or ordinances which are
subject to this article .

Enforcement Board or Board means the City Code Enforcement Board
created pursuant to this article .

Repeat violation means violation of provisions of a code or ordinance by a
person whom the Code Enforcement Board or SpecialMagistrate has previously
found to have violated the same provision on the same premises within five
years prior to the violation .

SpecialMagistrate means an officer appointed as provided in this Article
who shall have the status and authority of the Board to the extent prescribed
herein .

Sec. 9-21 9-22 . Creation and membership of Code Enforcement Board .

There is hereby created pursuant to F.S. ch. 162 , pt. I [162 .01 et seq.] within the City, a Code Enforcement Board which shall be composed of seven members, all of whom shall be residents of the City.

Sec. 9-22 9-23 . Function, appointment of members, term of office, forfeiture of appointment, removal of members.

(a) The Code Enforcement Board shall have the purpose of conducting hearings relating to the enforcement of any codes or ordinance presently in force in the City.

(b) Appointments to the Code Enforcement Board shall be made by the City Council, and appointment of the membership shall be made on the basis of experience or interest in the subject matter jurisdiction of the respective Code Enforcement Board. The membership shall, whenever possible, consist of an architect, a businessman, an engineer, a general contractor, a realtor and a subcontractor.

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Sec. 9-23 9-24 . Chair, quorum , compensation of members.

(a) The members of the Code Enforcement Board shall elect one of the members to be Chair. The person so elected shall function as Chair for a one-year term .

(b) Four or more members of the Board present at any meeting shall constitute a quorum in order for the Board to conduct its business.

(c) Members of the Board shall serve without compensation .

Sec. 9-24 . Special Magistrates; appointment, qualifications.

(a) The City Council may appoint one or more Special Magistrates who shall have the authority to hold hearings, assess fines against violators of the codes and ordinances of the City, reduce fines in whole or in part, and otherwise exercise the powers of a municipal code enforcement board as provided in F.S. ch. 162 , pt. I as and to the extent provided in this article.

(b) A Special Magistrate shall be a resident of the City who is qualified to be appointed as a member of the Board. A former member of the Board

who is ineligible for reappointment to the Board because of term limits but who is otherwise qualified for appointment shall be eligible for appointment as a SpecialMagistrate.

(c) A SpecialMagistrate shall be appointed to a term of three (3) years and may be reappointed, except that a SpecialMagistrate shall be subject to the term limits set forth in Section 2-296.

(d) A SpecialMagistrate shall serve without compensation but may be reimbursed for expenses to the same extent that a Board member may be reimbursed.

(e) Regular hearings before a SpecialMagistrate shall be held monthly. Regular and special hearings may be held as often as necessary. All hearings shall be open to the public.

(f) Minutes and records of hearings before a SpecialMagistrate shall be kept and maintained by the City in the manner and to the extent required by law. The City shall provide necessary and reasonable clerical and administrative support to enable a SpecialMagistrate to perform his or her duties. A SpecialMagistrate shall not be authorized to hire or use the services of any person except those provided by the City to assist him or her in the performance of his or her duties.

(g) A SpecialMagistrate shall be subject to removal for cause as provided by the ordinances of the City for the removal of a member of the Board, except that a failure to attend one hearing for which notice has been given without cause and without the prior approval of the Chair of the Board shall be grounds for removal.

Sec. 9-25. Presentation of cases.

The City Attorney or assistant shall not present cases before the Code Enforcement Board or SpecialMagistrate. A member of the administrative staff of the City shall present cases before the Board and SpecialMagistrate.

Sec. 9-26. Enforcement procedure.

Except where the Code Inspector charged with enforcing a particular section of a code or ordinance has reason to believe that a code violation presents a serious threat to the public health, safety or welfare, the code enforcement procedure under this article shall be as follows:

(1) It shall be the duty of the Code Inspector to initiate enforcement proceedings with respect to each technical code.

(2) Where the Code Inspector finds or is made aware of a code violation, the Code Inspector shall notify the violator and such notice of violation shall provide a reasonable time within which to correct the violation. Should the violation continue beyond the time specified in the correction notice, the Code Inspector shall notify the Code Enforcement Board and request a hearing pursuant to Section 9-27 and Section 9-28. Notice of such hearing request shall be provided to the violator in the manner provided by Section 9-31.

"Reasonable time" is defined as the time that would be required by a prudent person acting diligently to correct the violation, taking into consideration the scope of the work required, the necessity to obtain any required permit or other approval by a government agency, and delays that may reasonably be expected to be encountered such as but not necessarily limited to the weather ten days; however, where a different time period in which to correct the violation is provided for by the ordinance being enforced, that time period shall constitute reasonable time for that particular violation.

(3) If the Code Inspector has reason to believe a violation presents a serious threat to the public health, or welfare, or if the violation is irreparable or irreversible in nature, the Code Inspector shall make a reasonable effort to notify the violator and may immediately notify the Code Enforcement Board and request a hearing.

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Sec. 9-27. Hearing procedures.

(a) The Chair of the Code Enforcement Board may call Code Enforcement Board hearings and such hearings may also be called by a written notice signed by three members of the Board. The Code Enforcement Board may at any hearing set a future hearing date.

(b) Minutes shall be kept of all hearings held by the Code Enforcement Board and all such hearings shall be open to the public.

(c) The City Council shall provide clerical and administrative personnel as may be required to assist the Board in the proper performance of its duties.

(d) Cases on the agenda for a particular day shall be heard. All testimony shall be under oath and shall be recorded. The Code Enforcement Board shall take testimony from the Code Inspector, the violator and any other person familiar with the case or having knowledge about the case. The Board

shall not be bound by formal rules of evidence; however, it shall act to ensure fundamental due process in each of its hearing cases.

(e) At the conclusion of each hearing the Code Enforcement Board shall issue findings of fact and conclusions of law, based on the evidence of record, and its order shall provide relief consistent with Section 9-28. The findings shall be by motion approved by a majority of those present and voting. In order for a finding to be official at least four members of the Code Enforcement Board must vote. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by such date.

Sec. 9-28. Powers of Code Enforcement Board and Special Magistrate.

(a) The Code Enforcement Board shall have the power to:

(1) Adopt rules for the conduct of the hearings it holds pursuant to Section 9-27.

(2) Subpoena alleged violators and witnesses to its hearings. Such subpoenas may be served by the County Sheriff or City's Police Department.

(3) Subpoena evidence, records, surveys, plats and other material

(4) Take testimony under oath.

(5) Issue orders following a hearing, which orders shall have the force of law and which orders shall set forth the steps necessary to be accomplished in order to bring a violation into compliance with the technical code that has been violated.

(b) A Special Magistrate shall have the power to conduct a hearing and take testimony under oath in any case in which the Board has previously (1) found that one or more violations of the codes or ordinances of the City exist, (2) entered an order requiring compliance by a specified date, and (3) provided that a fine may be imposed for each day thereafter that the violation continues past the date set for compliance. A Special Magistrate shall not hear or decide a case that does not meet these requirements. In each such case, following the hearing, the Special Magistrate may impose a fine at the daily rate set by the Board or at a lesser daily rate for each day that the violation is found by the Special Magistrate to continue past the date set for compliance, and may certify a lien securing such fine, as provided in section 9-29. The Special Magistrate may, in the alternative, defer the imposition of a fine and may defer

certification of a lien securing such fine for a reasonable time necessary to correct the violation.

Sec. 9-29. Fine, lien and foreclosure.

(a) Upon being notified by the Code Inspector that a previous order of the Code Enforcement Board finding a violation to exist and ordering correction of the violation within a time certain has not been complied with within the time established in such order, the Code Enforcement Board or SpecialMagistrate may, after giving the violator notice and an opportunity to be heard, order the violator to pay a fine to the City not to exceed \$250.00 for each day that the violation continues past the date set for compliance and \$500.00 per day for repeat violations. Notice of the hearing at which the imposition of a fine and certification of a lien will be considered shall be provided to the violator in the manner provided by Section 9-31. If a finding of a violation or a repeat violation has been made as provided in this article, a further hearing shall not be necessary for issuance of the order imposing the fine.

(1) In determining the amount of the fine, if any, the Board and Special Magistrate shall consider the following factors:

- 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.

(2) The Board or a SpecialMagistrate may reduce a fine imposed pursuant to this section.

(b) A ~~certified~~ copy of an order by the Board or a SpecialMagistrate imposing the fine provided for herein may be recorded in the public records of the County, and thereafter such order shall constitute a lien against the land on which the violation existed and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this State, including levy against the personal property, but shall not be deemed otherwise to be a judgment of a court except for enforcement purposes. The Board or a Special Magistrate may release a lien imposed pursuant to this section.

(c) Three months from the filing of any such lien which remains unpaid, the Code Enforcement Board or a SpecialMagistrate may authorize the City

Attorney to foreclose on such lien in the manner provided by statute for the foreclosure of other municipal liens or sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this Article may be foreclosed on real property which is a homestead under Section 4, Article X, of the Florida Constitution.

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Sec. 9-30. Appeal

Any aggrieved party including the City may appeal a ruling or order of the Code Enforcement Board or Special Magistrate to the circuit court of the County as provided by Section 162.11, F.S. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the Board. The appeal provided for herein shall be filed within 30 days of the execution of the order to be appealed.

Sec. 9-31. Notices.

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(b) In addition to providing notice as set forth in subsection (a) of this section, at the option of the Code Enforcement Board or Special Magistrate, notice may also be served by publication. Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Pine Hills County the County where the Code Enforcement Board is located.

Section 2. Effective Date. In the event this ordinance is not vetoed by the Mayor in accordance with the City Charter, it shall become effective upon the fifth business day after adoption unless the Mayor notifies the City Council through written notice filed with the City Clerk that the Mayor will not veto the ordinance, in which case the ordinance shall take effect immediately upon filing such written notice with the City Clerk. In the event this ordinance is vetoed by the Mayor in accordance with the City Charter, it shall not become effective unless and until the City Council overrides the veto in accordance with the City Charter, in which case it shall become effective immediately upon a successful vote to override the veto.

Section 3. Severability. The provisions of this ordinance shall be deemed to be severable. If any provision of this ordinance is deemed unconstitutional or otherwise invalid, such determination shall not affect the validity of any other provision of this ordinance.

Section 4 . As used herein, language in struck-through type is language in the City Code to be deleted, and underlined language is language to be added to the City Code. Ellipses (* * *) indicate the location of language in the City Code which is not amended by this ordinance.

REVIEWED AND APPROVED AS TO
FORM AND CORRECTNESS:

DEPARTMENT:

City Attorney/Designee