



### SECTION 3. COUNTY ADMINISTRATION

#### 3.21 CODE ENFORCEMENT – SPECIAL MAGISTRATE RULES OF PROCEDURE

**A. PURPOSE.** To establish rules of procedure for the Code Enforcement Special Magistrate in Seminole County, Florida.

**B. ESTABLISHMENT.** The Seminole County Code Enforcement Special Magistrate (“Special Magistrate”) is established to supplement the Code Enforcement Board and to add efficiencies to the Code Enforcement process. The procedures for the Special Magistrate are governed by Florida Statutes, Chapter 162 and all applicable county ordinances and regulations.

**C. JURISDICTION.** The Special Magistrate has jurisdiction to hear violations of all codes and ordinances of Seminole County with respect to non-residential properties or uses. The County Attorney or his/her designee, or the Sheriff or his/her designee, is authorized to assign cases to address backlogs or cases that are factually or legally complex.

**D. SELECTION OF SPECIAL MAGISTRATE.** Special Magistrates shall be appointed by the Seminole County Board of County Commissioners (the “Board”) and shall be an attorney duly licensed to practice law in the State of Florida. The Board may appoint up to three Magistrates to serve on a rotating basis, in the case of legal conflict of interest or in the absence of a Special Magistrate.

Special Magistrates serve at the pleasure of the Board and may be removed from service at any time, with or without cause.

**E. TERM.** Special Magistrates shall serve a term of one year from the date of appointment by the Board. There shall be no limit on the number of terms a person may serve as a Special Magistrate.

**F. COMPENSATION.** The Special Magistrate shall be compensated at a rate to be determined by the Board.

**G. POWERS OF SPECIAL MAGISTRATE.** The Special Magistrate shall have the power to:

- (a) Adopt rules for the conduct of its hearings;
- (b) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the Seminole County Sheriff’s Office;
- (c) Subpoena evidence to its meetings;
- (d) Take testimony under oath; and
- (e) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

**H. CONFLICT OF INTEREST.** The following conflict of interest provisions shall apply to the Special Magistrate:



(a) A Special Magistrate shall not engage in ex parte communications with any party, representative of a party, or interceding person concerning an alleged violation.

(b) No person who is or may become a party to a hearing before a Special Magistrate shall engage in ex parte communications with any Special Magistrate concerning that violation. This restriction shall extend to any person appearing or interceding on behalf of a party, whether or not such person may have a direct personal or financial interest in the property subject of the alleged violation.

(c) A Special Magistrate shall not serve in more than one office in violation of Article II, section 5(a) of the Florida Constitution.

**I. CLERK TO THE SPECIAL MAGISTRATE.** The Board of County Commissioners shall provide clerical and administrative support from the Planning and Development Division personnel as may be reasonably required by the Special Magistrate for the proper performance of its duties.

**J. MINUTES.** Minutes of the hearings shall be taken and promptly recorded by the Clerk to the Special Magistrate and all hearings and proceedings shall be properly noticed and open to the public. The Special Magistrate may request any corrections to the minutes.

**K. INITIATION OF ACTIONS BEFORE THE SPECIAL MAGISTRATE.**

(a) All actions before the Special Magistrate shall be initiated by a Code Enforcement Officer filing a Statement of Violation and Request for hearing with the Clerk to the Special Magistrate (the "Clerk"). No Special Magistrate shall have the power to initiate such enforcement proceedings.

(b) The Clerk to the Special Magistrate shall assign a complaint number. When the case is ready to be heard by the Special Magistrate, the Clerk shall set the case for a hearing.

(c) After the case is set for hearing, the Clerk shall notify the alleged violator in a manner consistent with state statutes.

**L. HEARINGS.**

(a) **Scheduling of Hearings.** The Special Magistrate may have regularly scheduled hearings in the Seminole County Services Building. Special Meetings may be called by the Planning and Development Division Manager. At least twenty-four (24) hours advance notice including the nature and purpose of all meetings shall be furnished to the public, Special Magistrate, County Manager, Code Enforcement Officer and appropriate County Departments. Notice of all meetings shall be provided to the Board of County Commissioners for inclusion on the County's schedule of meetings and events.

(b) **Attendance.** The Special Magistrate shall notify the Clerk if he or she is unable to attend a meeting. If a Special Magistrate fails to attend two (2) of three (3)



successive meetings that Special Magistrate may be removed from service by the Board of County Commissioners.

(c) Procedures.

(1) All testifying witnesses shall be sworn by the Clerk.

(2) The Special Magistrate shall proceed to hear the cases on the agenda for that day. The Special Magistrate shall take testimony from the Code Enforcement Officer, alleged violator, persons of interest, any other witnesses requested by either party, and any witnesses the Special Magistrate deems necessary. Both parties will have the opportunity to cross-examine.

(3) The Special Magistrate may, in the Special Magistrate's discretion, continue a hearing at any time and may request additional information from either party.

(4) If a hearing is continued, a date certain for the continued hearing shall be announced at the public hearing or a notice shall be provided to the Respondent(s) if a date is not available at the hearing.

(5) Upon completion of all the evidence, the Special Magistrate shall close the hearing.

(6) Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceeding.

(7) The Special Magistrate shall immediately deliberate in open session before the public. Although the public is welcome at the meetings of the Special Magistrate, they shall not be allowed to participate in or address the Special Magistrate during deliberation.

(8) The Special Magistrate shall issue an oral order. The order shall contain findings of fact and conclusions of law and state the affirmative relief granted by the Special Magistrate. The order may include a notice that the violation must come into compliance by a specified date, and that a fine may be imposed if the order is not complied with by said date. If the Special Magistrate finds a repeat violation has been committed, the Special Magistrate may order the violator to pay a fine for each day the repeat violation continues past the date of notice to the violator of the repeat violation. Said order shall be reduced to writing within ten (10) working days and mailed to the violator by certified mail, return receipt requested.

(9) A certified copy of such order may be recorded in the public records of Seminole County and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this paragraph and the order is complied with by the date specified in the order, the Special Magistrate shall issue an order acknowledging compliance and that order shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.



## **M. ENFORCEMENT.**

(a) If the Special Magistrate's order has not been complied with by the date specified in the order, an Affidavit of Non-Compliance shall be issued. If the respondent wishes to challenge the Code Enforcement Officer's findings of noncompliance, a request may be made for a hearing before the Special Magistrate. This request must be made within five (5) days of receipt by the respondent of the Affidavit of Noncompliance as indicated from the return receipt, Code Enforcement Officer's service, or, (if neither of the preceding is applicable), then five (5) days after posting a copy of the Affidavit on Noncompliance on the property. Such hearing shall be constrained to the issue of whether the respondent has complied with the previous order of the Special Magistrate.

(b) At the conclusion of the hearing, if the Special Magistrate determines that the respondent has complied with the previous order within the time specified in the order, the Special Magistrate shall enter an order so stating. Such order shall be mailed to the respondent and shall be recorded if the Findings of Fact was recorded. If the Special Magistrate determines that the respondent is in compliance, but the compliance was after the date specified in the order, or if the Special Magistrate finds that the violation has not been corrected, the Special Magistrate may enter an Order Imposing a Lien which shall be mailed to the respondent by certified mail, return receipt requested or served upon the respondent by the Seminole County Sheriff's Office.

(c) In the event the respondent does not challenge the Code Enforcement Officer's finding of noncompliance, the Clerk shall place the item on the agenda of the next available meeting for entry of an Order Imposing Lien.

(d) Any Order Imposing a Lien shall be mailed to respondent by certified mail, return receipt requested, or served upon the respondent by the Seminole County Sheriff's Office.

**N. ENFORCEMENT COSTS.** If Seminole County prevails in enforcing a case before the Special Magistrate, it shall be entitled to recover all costs incurred in enforcing the case before the Special Magistrate, and such costs may be included in the lien authorized under Florida Statutes, Section 162.09(3).

**O. APPEALS.** Any aggrieved party, including the Board of County Commissioners, may appeal a final administrative order of the Special Magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the order to be appealed.

**P. MISCELLANEOUS.** All records of the Special Magistrate shall be open to public examination, inspection, and copying in accordance with Chapter 119, Florida Statutes.

**Q. AUTHORITY.** Ordinance 2011-28 adopted October 25, 2011  
Resolution 2011-R-207 adopted November 8, 2011  
Resolution 2012-R-107 adopted June 12, 2012