

ORDINANCE NO. 04-2023

AN ORDINANCE OF THE CITY OF SEMINOLE, FLORIDA, COMBINING ARTICLE IV (CODE ENFORCEMENT) AND ARTICLE V (SPECIAL MASTER - CODE ENFORCEMENT PROCEDURE) OF CHAPTER 2 OF THE CODE OF ORDINANCES INTO ARTICLE IV (CODE ENFORCEMENT) AND RENUMBERING SAID SECTION BEGINNING WITH SEC. 2-101; BY AMENDING THE DEFINITIONS THEREOF; ELIMINATING REFERENCES TO A CODE ENFORCEMENT BOARD AND, IN LIEU THEREOF, APPOINTING A SPECIAL MAGISTRATE FOR ENFORCEMENT OF CODES AND ORDINANCES; PROVIDING FOR REVISIONS TO ARTICLE IV TO MAKE IT CONSISTENT WITH FLORIDA STATUTE CHAPTER 162; AND PROVIDING FOR CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.



WHEREAS, Article IV of Chapter 2 of the Code of Ordinances, City of Seminole, Florida, addresses code enforcement; and

WHEREAS, Article V of Chapter 2 of the Code of Ordinances for the City of Seminole, Florida, addresses special master code enforcement procedure; and

WHEREAS, the City Attorney has reviewed the current provisions of Articles IV and V of Chapter 2 and has recommended that certain revisions be made to update same; and

WHEREAS, the City Commission finds that combining and amending Articles IV and V of the Code of Ordinances as set forth in this Ordinance are in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Seminole, Florida, that:

Section 1. That Article IV (Code Enforcement) and Article V (Special Master-Code Enforcement Procedure) of Chapter 2 (Administration) of the Code of Ordinances of the City of Seminole, Florida, are hereby combined and amended to read as follows:

ARTICLE IV. CODE ENFORCEMENT

DIVISION 1. - GENERALLY

Sec. 2-106. 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 any authorized agent, law enforcement officer employed or contracted to provide police services to the city, or employee of the city whose duty it is to assure code compliance.~~

~~Repeat violation means a violation of a provision of a code or ordinance by a person whom the code enforcement board has previously found to have violated the same provision within five years prior to the violation.~~

Sec. 2-1071. Intent.

It is the intent of this article to promote, protect and improve the health, safety and welfare of the citizens of the city by creating the code enforcement ~~board, an administrative board- process and appointing a Special Magistrate~~ with authority to impose administrative fines and other noncriminal penalties and to provide an equitable, expeditious, effective and inexpensive method of enforcing the codes and ordinances in force in the city where a pending or repeated violation ~~exists continues to exist~~. The ~~code enforcement board- Special Magistrate~~ has the authority to hold hearings and assess fines against violators of the city codes and ordinances.

Sec. 2-1082. Obstructing inspector.

Whoever opposes, obstructs or resists any code inspector, the code administrator or the city council in the discharge of any duties as provided in this article, upon conviction, shall be punished as provided in section ~~1-150 1-15~~.

~~ARTICLE V. SPECIAL MASTER CODE ENFORCEMENT PROCEDURE~~

~~DIVISION 1. GENERALLY~~

Sec. 2-19203. 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 shall mean those employees or other agents of the city duly authorized and appointed by the city manager whose duty it is to assure compliance with city codes.

Codes shall mean Seminole Code of Ordinances and all codes and statutes adopted by reference within the Code of Ordinances, as now existing or as may be amended by ordinance from time to time.

~~Continuing violations are those violations which remain uncorrected beyond the prescribed time period for correction contained in the civil violation notice. For each day of continued violation after the time period for correction has run, an additional penalty in the same amount as for the original violation shall be added.~~

Repeat violation shall mean a violation of a provision of the Code of Ordinances by a person who has been previously found by the Special Magistrate or any other quasi-judicial or judicial

process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding the violations occur at different locations.

Violator shall mean the person responsible for the code violation, which, in the appropriate circumstances, shall either be the perpetrator of the violation or the owner of the real property upon which the violation occurred.

DIVISION 2. SPECIAL MASTER

Sec. 2-19304. Establishment.

There is hereby created and established the office of ~~special master~~ Special Magistrate for the purpose of providing a code enforcement process for the city. The ~~special master~~ Special Magistrate is hereby vested with all the powers now granted under F.S. Florida Statute Ch. 162, and as amended from time to time.

Sec. 2-19405. ~~Special master~~ Magistrate - Qualifications and removal.

- (1) The ~~special master~~ Special Magistrate shall be a person licensed to practice law in the state State of Florida. Appointments shall be made by the city manager on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the city council for ratification.
- (2) The city manager shall appoint one or more ~~special masters~~ Special Magistrates as are deemed necessary, with such appointments being subject to ratification by the city council. The city manager shall have authority to remove a ~~special master~~ Special Magistrate with or without cause.
- (3) A ~~special master~~ Special Magistrate shall not be a city employees, but shall be compensated at a rate to be determined by ~~administrative action~~ the city manager.

Sec. 2-19506. Powers of the ~~special master~~ Special Magistrate.

The ~~special master~~ Special Magistrate shall have the power to:

- (1) Adopt procedures for the conduct of hearings;
- (2) Subpoena alleged violators and witnesses for hearings; ~~subpoenas. Subpoenas may~~ Subpoenas may be served by the ~~city police department or by any employee designated by the city manager;~~ Pinellas County Sheriff's Office or by an authorized process server;
- (3) Subpoena documentary and tangible evidence for hearings;
- (4) Take testimony under oath;
- (5) Assess and order the payment of civil penalties;

- (6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance; and,
- (7) Award costs incurred by the city ~~as part of code enforcement in prosecuting~~ cases heard ~~before the special magistrate by the~~ Special Magistrate, when such case results in the imposition of an order finding a violation by the ~~special magistrate~~ Special Magistrate. ~~Upon request of the city at the time the special magistrate imposes an administrative fine costs shall be eligible for award to the city by the special magistrate. Eligible costs for award include: costs associated with mailing and posting notices for the case; copying costs for the case at \$0.15/page; and, city costs associated with recording administrative fines as liens.~~

~~DIVISION 3. CLERK~~

~~Sec. 2-19607. Clerk.~~

The city manager shall appoint a city employee to be the code enforcement clerk, who shall perform the functions assigned to the clerk as set forth in this article.

~~DIVISION 42. - ENFORCEMENT PROCEDURES~~

~~Sec. 2-19708. Initiation by inspector.~~

- (1) The code inspector has the duty of enforcing the various codes and initiating enforcement proceedings before the ~~special master~~ Special Magistrate.
- (2) ~~The code inspector may not initiate enforcement proceedings for a potential code violation by way of an anonymous complaint. A person who reports a potential code violation must provide his or her name and address to the city before an enforcement proceeding may occur. This requirement does not apply if the code inspector has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.~~
- ~~(2) The code inspector is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance.~~

~~Sec. 2-19809. Report of violations.~~

- (a) Except as provided in ~~[subsections]~~ subparagraphs (c) and (d) below, if a violation of the codes is found, the code inspector shall notify the violator of the violation and give the violator a reasonable time, in light of the nature of the violation, to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall request that the clerk set a hearing and notify the violator of the hearing as provided herein. The clerk shall schedule a hearing, and written notice of such hearing shall be

~~served on-hand delivered~~ or mailed as provided in Sec. 2-114 to the violator. If the violation is corrected and ~~is then repeated then recurs~~ or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the ~~special master~~ Special Magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state.

- (b) If a repeat violation is found, the code inspector shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall have the clerk set a hearing and notify the violator as provided in Sec. 2-114. The notice shall state that the case may be presented to the ~~special master~~ Special Magistrate even if the violation has been corrected prior to the board hearing. 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.
- (c) If the code 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 inspector shall make a reasonable effort to notify the violator and may immediately notify the Special Magistrate and request that the special master set an immediate a hearing on the violation.
- (d) If the owner of property which is subject to an enforcement proceeding before ~~a the special master~~ Special Magistrate contracts to transfer or does transfer ownership of such property between the time the initial notice was served and the time of the hearing, such owner shall:
 - (1) Disclose, in writing, the existence and the nature of the enforcement proceeding to the buyer;
 - (2) Deliver to the buyer a copy of the notice of violation, ~~and~~ the notice of hearing and other materials relating to the Special Magistrate proceeding;
 - (3) Disclose, in writing, to the buyer that he/she will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding; and
 - (4) Within five days after the date of the transfer of title, file a notice of title transfer with the code enforcement official, with the identity and address of the new owner and copies of the disclosures made to the new owner.

A failure to make the disclosures described in subparagraphs (d)(1), (d)(2), (d)(3) and (d)(4) above before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided with a reasonable period of time to correct the violation before ~~a the~~ hearing is held.

Sec. 2-199. Citation; notice to appear.

~~A citation or notice to appear issued by a code inspector shall be on such form as approved by the code administrator and shall comply with the requirements for citations or notices to appear as found in F.S. §§ 162.21, 633.052, 553.80 and/or other applicable statutes and as required by the county court.~~

Sec. 2-~~200~~110. Hearing procedures.

A hearing before the ~~special master~~ Special Magistrate shall be conducted as follows:

- (1) The ~~special master~~ Special Magistrate shall conduct hearings on a regularly scheduled monthly basis or more frequently upon request of the city manager. No hearing shall be set sooner than ten days from the date the notice of code violation is served.
- (2) All hearings before the ~~special master~~ Special Magistrate shall be open to the public. All testimony shall be under oath. Assuming proper notice has been provided to the violator, a hearing may proceed in the absence of the named violator.
- (3) The proceedings at the hearing shall be recorded ~~electronically or by a stenographer and if recorded by a stenographer may be transcribed at the expense of the party requesting the transcript.~~ and minutes shall be kept of all hearings before the Special Magistrate. If a person decides to appeal any decision made by the Special Magistrate, he or she will need a record of the proceedings and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
- (4) The city manager, shall provide clerical and/or administrative support personnel for the ~~special master~~ Special Magistrate to facilitate the proper performance of ~~clerical and special master~~ the Special Magistrate's duties.
- (5) Each case before ~~a special master~~ the Special Magistrate shall be presented by the code inspector or representative of the office issuing the violation.
- (6) The hearing shall not be conducted in accordance with the formal rules of evidence but fundamental due process shall be observed and shall govern the proceedings. Any relevant evidence shall be admitted if the ~~special master~~ Special Magistrate finds it competent and reliable regardless of the existence of any common law or statutory rule to the contrary.
- (7) All testimony at the hearing shall be under oath. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues.
- (8) ~~The~~ At the conclusion of the hearing the special master Special Magistrate shall ~~make issue~~ findings of fact, based on the evidence in the record, ~~alone and may~~ state

conclusions of law and issue an order affording the proper relief consistent with the powers granted herein. . ~~In order to make a finding upholding the code inspectors determination that a violation exists, the special master shall find that a preponderance of the evidence indicates that the violator was legally responsible for the violation of the relevant section of the ordinances or codes as cited and that a violation did or does in fact exist.~~

~~(9) The prescribed time for correction of the violation given to the named violator and contained in the code violation notice shall be presumed to have been a reasonable time for correction. Upon presentation of relevant evidence by the named violator that the time for correction was not reasonable, the special master may find that the time given for correction was insufficient, and the penalty for a continuing violation may be calculated from a date determined by the special master to be the reasonable date for correction.~~

~~(109)~~ If the named violator is found guilty of the violation, he/she may be held liable for the costs of the enforcement proceeding and such costs shall be included in the lien authorized by law.

~~(110)~~ The fact-finding determination of the ~~special master~~ Special Magistrate shall describe whether the alleged violation did in fact occur and, if so, whether the person named in the ~~civil violation~~ notice of violation is legally responsible for that violation. ~~The special master shall either affirm or reverse the determination of the code inspector as to the responsibility of the named violator for the correction of the ordinance or code violation. The special master may modify the determination of the code inspector as to the time for correction contained in the code violation notice. If the special master reverses the determination of the code inspector and finds the named violator not responsible for the alleged violation in the code violation notice, the named violator shall not be liable for the payment of any civil penalty, absent a successful appeal by the city of the special master's decision. If the decision of the special master~~ Special Magistrate ~~is to affirm the code inspector's determination of~~ finds a violation, then any of the following may be included in the order:

- a. Amount of civil penalty;
- b. Administrative costs of hearing; and
- c. Date by which the violation shall be corrected, ~~to prevent resumption of continuing violation penalties.~~

~~(12) A special master shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized city and county board of appropriate jurisdiction for administrative interpretation of the legal provision(s) on which the alleged violation was based. Upon exhaustion of the administrative review and finalization of the administrative order by such board, the special master may exercise all powers granted herein. The special master shall not, however, exercise any jurisdiction over alleged code violations where a named~~

~~violator has properly filed a request for administrative interpretation and review by such city or county board until such time for review has lapsed.~~

~~(13) The special master shall be bound by the interpretations and decisions of the authorized city or county boards of appropriate jurisdiction concerning their administrative interpretations. In the event that the authorized board finds that the cited violation of the ordinance or code has not been properly interpreted, that provision upon which the violation is based, shall prohibit the hearing officer from proceeding with the enforcement of the alleged violation.~~

Sec. 2-~~201~~111. Fines and penalties.

(a) The violation of any provision of any ordinances or codes shall constitute a civil offense punishable by civil penalty as follows:

(1) Not in excess of \$250.00 per day for a first violation;

(2) Not in excess of \$500.00 per day for a repeat violation;

(3) An assessment of the cost of repairs incurred by the city where the violation was in the nature of a violation described in F.S. § 162.06(4);

(4) In the instance where the ~~special master~~ Special Magistrate finds that the violation is irreparable or irreversible in nature, the ~~special master~~ Special Magistrate may impose a fine not to exceed \$5,000.00 per violation;

(5) City costs; ~~and,~~

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

(1) The gravity of the violation;

(2) Any actions taken by the violator to correct the violation; and

(3) Any previous violations committed by the violator.

(bc) Civil penalties assessed pursuant to this article are due and payable to the city upon the order of the ~~special master~~ Special Magistrate.

Sec. 2-~~202~~112. Recovery of unpaid civil penalties.

(1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties imposed under this ~~supplemental~~ code enforcement procedure.

- (2) A certified copy of an order imposing a civil penalty may be recorded in the public records of the county and thereafter shall constitute a lien against the land on which the violation exists or existed and upon any other real or personal property owned by the violator; ~~provided that if the violator does not own the land, upon any other real or personal property owned by the violator~~; and that it 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, but shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed by the Special Magistrate shall continue to accrue until the violator comes into compliance or until a judgment is rendered in a suit filed pursuant to this section. After three months from the filing of any such lien which remains unpaid, the city may foreclose ~~or otherwise execute~~ on the lien or sue to recover a money judgment for the amount of the lien plus accrued interest.

Sec. 2-~~203~~113. Duration of lien.

No lien shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a 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 ~~foreclosure~~ action. The city council shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

Sec. 2-~~204~~114. Notices.

All notices required by this article shall be served as required by ~~F.S. Florida Statute~~ 162.12 and as amended from time to time.

Sec. 2-~~205~~115. Appeals.

- (a) The violator or the city may appeal an order of a ~~special master~~ Special Magistrate by filing a notice of appeal with the ~~county~~ 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. Such appeal shall be filed within 30 days of the ~~issuance~~ execution of the order ~~by the special master to be appealed~~.
- (b) In the absence of reversal of a ~~special master's~~ Special Magistrate's ruling by an appellate court of competent jurisdiction, the findings of the ~~special master~~ Special Magistrate shall be conclusive as to a determination of responsibility for the ordinance or code violation and such findings shall be admissible in any proceeding to collect unpaid penalties.
- (c) Nothing contained in this ~~chapter~~ article shall prohibit the city from enforcing its ordinances or codes by any other means. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filing suit for enforcement of any section of this Code.

Section 2. Ordinances or parts of ordinances in conflict herewith to the extent that such conflict exists are hereby repealed.

Section 3. For purposes of codification of any existing section of the Code of Ordinances, City of Seminole, herein amended, words **underlined** represent additions to original text, words **stricken** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 4. If any section, subsection, sentence, clause, provision, or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Commission would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 5. The Codifier shall codify the substantive amendments to the Code of Ordinances, City of Seminole, contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 6. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

DULY ADOPTED with a quorum present and voting this 10 day of October, 2023.

CITY OF SEMINOLE, FLORIDA

By: _____

Mayor

ATTEST: CITY CLERK

Orlando Marcuso

Business Impact Estimate

Proposed ordinance's title/reference: **Ordinance No. 04-2023**

AN ORDINANCE OF THE CITY OF SEMINOLE, FLORIDA COMBINING ARTICLE IV (CODE ENFORCEMENT) AND ARTICLE V (SPECIAL MASTER – CODE ENFORCEMENT PROCEDURE) OF CHAPTER 2 OF THE CODE OF ORDINANCES INTO ARTICLE IV (CODE ENFORCEMENT) AND RENUMBERING SAID SECTION BEGINNING WITH SEC. 2-101; BY AMENDING THE DEFINITIONS THEREOF; ELIMINATING REFERENCES TO A CODE ENFORCEMENT BOARD AND, IN LIEU THEREOF, APPOINTING A SPECIAL MAGISTRATE FOR ENFORCEMENT OF CODES AND ORDINANCES; PROVIDING FOR REVISIONS TO ARTICLE IV TO MAKE IT CONSISTENT WITH FLORIDA STATUTE CHAPTER 162; AND PROVIDING FOR CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the City is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- The proposed ordinance is required for compliance with Federal or State law or regulation;
- The proposed ordinance relates to the issuance or refinancing of debt;
- The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- The proposed ordinance is an emergency ordinance;
- The ordinance relates to procurement; or
- The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or

¹ See Section 166.041(4)(c), Florida Statutes.

d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare): **The proposed ordinance combines portions of the City's code concerning municipal code enforcement to reduce redundancy, achieve consistency with Florida Statutes, and accurately reflect the City's code enforcement processes. The ordinance serves the public purpose and welfare by clarifying the City's code to achieve clarity and predictability for the City's residents and businesses.**

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:
(a) An estimate of direct compliance costs that businesses may reasonably incur;
(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

None.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

None.

4. Additional information the governing body deems useful (if any):

The proposed ordinance is an ordinance of general applicability that applies to all persons and businesses subject to the City's code enforcement procedure.