

ORDINANCE NO. 2009-05

AN ORDINANCE OF THE CITY OF OAK HILL, VOLUSIA COUNTY, FLORIDA; REPEALING CHAPTER 2 (ADMINISTRATION); ARTICLE V (BOARDS AND COMMISSIONS); DIVISION 2 (CITIZEN CODE ENFORCEMENT BOARD) OF THE CITY OF OAK HILL CODE OF ORDINANCES; CREATING A NEW DIVISION 2 (CODE ENFORCEMENT) TO PROVIDE FOR A SPECIAL MAGISTRATE PROCEDURE FOR CODE ENFORCEMENT; PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Oak Hill currently uses a code enforcement board that is established and operates pursuant to Florida Statute Chapter 162 and the City's Code of Ordinances.

WHEREAS, the City Commission believes that it is in the best interest of the City to use a special magistrate instead of a code enforcement board for the enforcement of alleged Code violations in the City.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF OAK HILL, FLORIDA:

Section 1. The City Commission of the City of Oak Hill hereby repeals Chapter 2 (Administration, Article V (Boards and Commissions), Division 2 (Citizen Code Enforcement Board) of the City of Oak Hill Code of Ordinances and creates a new Division 2 (Code Enforcement) to read as follows:

Sec. 2-204. Definitions.

The following words, terms and phrases, as used in this article, shall have the meanings respectively ascribed to them in this section, unless the context clearly indicates otherwise:

City attorney means the city attorney or any assistant city attorney of the city.

City means City of Oak Hill, Florida.

Code means the Code of Ordinances, the Land Development Code, and all other ordinances of the City of Oak Hill.

Code enforcement officer shall mean the city manager/administrator, assistant city manager, chief building official, code enforcement supervisor, code enforcement officer, fire safety inspector, director of public works, and any other person designated in writing by the city manager/administrator.

Law enforcement officer shall mean any person who is elected, appointed, or employed full-time by a municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of penal, criminal, traffic, or highway laws of the state.

Person means any natural person, corporation, partnership, or other entity.

Repeat violation means a violation of a provision of a code or ordinance by a person who has previously been found to have violated the same provision within five (5) years prior to the violation.

Sec. 2-205. Declaration of legislative intent.

(a) It is the intent of this article to promote, protect, and improve the health, safety and welfare of the citizens of the city by providing an equitable, expeditious, effective and inexpensive method of enforcing the various codes of the city.

(b) Further, the provisions of this article are intended to provide an additional and supplemental means of enforcing the various codes of the city, and nothing contained herein shall prohibit the city from enforcing its codes or ordinances by any other means.

Sec. 2-206. Special masters.

(a) The city hereby establishes a special master/citation code enforcement system for the enforcement of its various codes. In order to avoid any potential conflict of interest, it is preferably for a special master not be a resident of the city, own real property in the city or own a business with a location in the city. This requirement can be waived by the city commission. Special masters shall be an active or retired lawyer. One (1) or more special masters shall be appointed by the city commission based upon the joint recommendation of the city attorney and city manager/administrator. The city manager/administrator shall have the authority to appoint a temporary special master in the event of a conflict or other temporary absence of the appointed special master. Special masters shall serve at the pleasure of the city commission and may be removed at anytime with or without cause by the city commission. Special masters shall be compensated based on budgetary appropriations and approved by the city administrator.

(b) A special master shall have the power to:

- (1) Adopt rules for the conduct of hearings.
- (2) Special masters shall have the authority to hold hearings and assess fines against violators of the various codes of the city.

- (3) Subpoena alleged violators and witnesses to the hearings. Subpoenas may be served by any law enforcement officer of the city or as otherwise permitted by law.
- (4) Subpoena evidence to the hearings.
- (5) Take testimony under oath.
- (6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance with city codes or ordinances. However, any orders that require that city to expend money or directs city employees to perform work, ie. Demolition or repair of a structure must be approved by the city administrator or city commission.

Sec. 2-207. Enforcement procedure.

(a) It shall be the duty of the code enforcement officer to investigate complaints of violations of city codes and to initiate enforcement proceedings relative thereto. Special masters shall not have any independent authority to conduct their own investigation of such complaints or to initiate enforcement proceedings.

(b) Except as provided in subsections (d), and (e) of this section, if a violation of a code is found, the code enforcement officer shall notify the violator in writing and advise him or her of the nature of the violation and shall give the violator a reasonable time to correct the violation. However, a "fire safety inspector" as that term is defined in F.S. § 633.052, shall provide the violator a minimum time period of forty-five (45) days to correct the violation, except for major structural changes, which may be corrected within an extended adequate period of time. A Life Safety Code violation as per National Fire Prevention Codes may be ordered to comply in less than forty-five (45) days. In the event the violation continues to exist beyond the time specified for correction, the code enforcement officer shall issue a citation to the violator in accordance with the requirements of section 2-208.

(c) The case may be presented to a special master even if the violation has been corrected prior to the hearing but after the initial time period for compliance. The special master shall have the right to levy a fine for each day the violation was in existence beginning with the date of the citation through the date the code enforcement officer confirms compliance. It is the responsibility of the violator to notify the city that the violation has been corrected. The violation will be deemed to have continued until the code enforcement officer has determined that the violation has been corrected.

(d) If a repeat violation is found, the code enforcement officer shall notify the violator in writing and advise him or her of the nature of the repeat violation, but is not required to give the violator a reasonable time to correct the repeat

violation. The code enforcement officer shall, upon notifying the violator of a repeat violation, issue a citation to the violator in accordance with the requirements of section 2-301. The case may be presented to a special master even if the repeat violation has been corrected prior to the hearing. The special master shall have the authority to levy a per day fine beginning on the day that the violation was first observed by the code enforcement officer until the violation is corrected.

(e) If a code enforcement officer has reason to believe a violation presents a serious threat to the public health, safety and welfare or if the violation is irreparable or irreversible in nature, a code enforcement officer shall make a reasonable effort to notify the violator of the same and may immediately issue a citation and schedule the matter for a hearing before a special master.

(f) Each day that a violation exists shall constitute a separate violation for the purpose of assessing a fine by a special master.

(g) All fines imposed pursuant to this article shall be paid to the city through its finance department and shall be paid by cash or check with coins only being accepted for any amounts which may require change to pay the exact amount.

Sec. 2-208. Content of citations.

(a) A citation issued by a code enforcement officer shall be in the form prescribed by the city and shall contain:

- (1) The date and time of issuance.
- (2) The name and address of the person to whom the citation is issued.
- (3) The date and time the violation was first observed.
- (4) The section of the code that has been violated and a description of the nature of the violation.
- (5) The necessary corrective action.
- (6) The maximum per day fine for each violation or repeat violation that may be levied by the special master if found in violation. That the special master has the authority to levy the per day fine starting on the date the citation was issued through the date the violation is corrected or from the day the violation was first observed by the code enforcement officer for repeat violations.
- (7) The name, work phone number and work address of the code enforcement officer. That it is the responsibility of the person to contact the city for an inspection when the violation is corrected.

The violation will be deemed to be in existence until the code enforcement officer determines that the violation has been corrected.

- (8) The date, time and place the special master hearing will be conducted.
- (9) A conspicuous statement that if the person fails to appear at the special master hearing to contest the violation, the person shall be deemed an admission that the violation exists.
- (10) A statement that the alleged violator is responsible for providing a court reporter at the hearing if the violator intends to appeal the determination of the special master.

(b) After issuing a citation to an alleged violator, the code enforcement officer shall deposit the original citation in a file for the special master, and shall deposit one (1) copy thereof with the city's finance director.

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

Sec. 2-209. Conduct of hearing.

(a) Special master hearings should be held once a month, but may be held more or less often as the demand necessitates. Minutes shall be kept of all special master hearings and all such hearings shall be open to the public. The city administrator or his designee shall provide clerical and administrative personnel as may be reasonably required for the proper performance of his or her duties. At any hearing, a special master may continue any matter to a future hearing date.

(b) Each case before a special master shall be presented by a code enforcement officer, a member of the city's administrative staff, or the city attorney, any assistant city attorney, or any special counsel. The city attorney may present the case before the special master or serve as council to the special master, but cannot perform both functions on a single case. If the city prevails in prosecuting a case before a special master, it shall be entitled to recover all costs incurred in prosecuting the said case and such costs may be added to the fine and become part of any lien authorized under section 2-210.

(c) A special master shall proceed to hear the cases on the agenda for the respective hearing. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, however, fundamental due process shall be observed and shall govern all proceedings. Both the city and the alleged violator shall have the right to subpoena witnesses to testify at the hearing.

(d) A special master shall advise the alleged violator of the section of the code of which he or she is accused of violating and the nature of the violation. A special master shall first seek to determine whether or not the alleged violator admits the violation. If the alleged violator admits the violation, the special master shall hear such testimony and evidence as he or she deems necessary to determine the extent of the violation and appropriate fine amount. If the alleged violator denies the violation, the special master shall hear first from the city and any city witnesses and evidence, and the alleged violator shall have the right to cross-examine city witnesses. At the close of the presentation of the city's case against the alleged violator, the violator shall be permitted to present his evidence, testimony of other witnesses and his own testimony in his defense. The city shall have the right to cross-examine the alleged violator and his or her witnesses. The city shall have the burden of proving the violation by a preponderance of the evidence.

(e) At the conclusion of the hearing, the special master shall issue findings of fact, conclusions of law and order imposing fine based on the evidence of record, and shall issue an order affording the proper relief consistent with the powers granted herein. If the special master finds the person in violation, the special master shall establish a per day fine amount that may begin accruing on the date the citation was issued and shall continue accruing until the violation is corrected. A certified copy of such order may be recorded in the public records of Volusia 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. Upon compliance and payment of the fine, the city shall record an order acknowledging compliance of the code violation and satisfaction of the fine. A hearing is not required for the issuance of such an order acknowledging compliance.

Sec. 2-210. Administrative fines and liens.

(a) *Amount of fine.* A special master may impose a fine up to the maximum amount described in this subparagraph as provided below:

- (1) A fine imposed pursuant to this section shall not exceed two hundred fifty dollars (\$250.00) per day for the first violation and shall not exceed five hundred dollars (\$500.00) per day for a repeat violation; and, in addition thereto, may include all costs of repairs pursuant to subsection (a) of this section. However, if a special master finds the violation to be irreparable or irreversible in nature, he or she may impose a fine not to exceed five thousand dollars (\$5,000.00) per day per violation.
- (2) In determining the amount of the fine, if any, a special master 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.
- (3) Each day a violation exists shall constitute a separate violation for the purpose of assessing such fine.

(b) *Reduction of fine.* If the violation has been brought into compliance, a special master may reduce any fine imposed pursuant to this article.

(c) *Lien for unpaid fine.* A certified copy of the findings of fact, conclusions of law and order imposing fine may be recorded in the public records of Volusia County and shall thereafter constitute a lien against the land on which the violation exists 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 such order shall not be deemed to be a court judgment except for enforcement purposes. A lien arising from a fine imposed pursuant to this section runs in favor of the city and the city administrator may authorize the execution of a satisfaction and release of lien entered pursuant to this article. No lien created pursuant to the provisions of this section may be foreclosed on real property that is a homestead under Section 4, Article X of the Florida Constitution.

Sec. 2-211. Notices.

(a) All notices required by this article shall be provided to the alleged violator by certified mail, return receipt requested to the address listed in the tax assessors office for tax notices, or by hand delivery by the sheriff or other law enforcement officer, or code enforcement officer, or by leaving the notice at the violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person of the contents of the notice. In the case of commercial property, the notice may be provided to the manager or other person in charge. Further, in the event notice is provided by certified mail, return receipt requested, and acceptance of such notice is refused or is returned to the city, and additional notice is provided using the same address by regular U.S. Mail delivery and said additional notice is not returned to the city, a rebuttable presumption shall arise that the violator has received notice of the violation.

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

- (1) Such notice shall be published once during each week for four (4) consecutive weeks (four (4) publications being sufficient) in a newspaper of general circulation in Volusia County. The newspaper shall meet such requirements as are prescribed under F.S. Ch. 50,

for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

- (2) In lieu of publication as described in paragraph (b)(1), such notice may be posted for at least ten (10) days in at least two (2) locations, one (1) of which shall be the property upon which the violation is alleged to exist and the other of which shall be at City Hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall 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). Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection (b), shall be sufficient to show that the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

(c) The provisions of this section shall not apply to the enforcement, pursuant to F.S. §§ 553.79 and 553.80, as amended from time to time, of the building codes adopted pursuant to F.S. § 553.73, as they apply to construction, provided that a building permit is either not required or has been issued. For purposes of this section, "building codes" means only those codes adopted pursuant to F.S. § 553.73.

Sec. 2-212. Appeals.

Except as otherwise provided herein, an aggrieved party, including the city, may appeal a final administrative order of a special master by certiorari to the Circuit Court of Volusia County. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special master. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

Sec. 2-213. Duration of lien.

No lien provided by this article shall continue for a period longer than twenty (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, the city is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien.

Section 2. Severability. If any section, sentence, clause, phrase of the Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 3. Conflicting Ordinances. All Ordinances, or parts of Ordinances, in conflict herewith, or contrary hereto are hereby repealed to the extent of such conflict.

Section 4. Effective Date. This Ordinance shall become effective 60 days after adoption of the ordinance.

It was moved by Commissioner Marcello and seconded by Commissioner Hyatt that said Ordinance 2009-05, be passed on first reading. A roll call vote of the City Commission on said motion resulted as follows:

Mayor Lauer	<u>Yes</u>
Commissioner Hyatt, Seat #4	<u>Yes</u>
Commissioner Marcello , Seat #1	<u>Yes</u>
Vice-Mayor Cook, Seat #2	<u>No</u>
Commissioner Bittle, Seat #3	<u>Yes</u>

Passed upon first reading this 9th day of March, 2009.

It was moved by Commissioner Marcello and seconded by Commissioner Hyatt that said Ordinance 2009-05, be adopted on second reading. A roll call vote of the City Commission on said motion resulted as follows:

Mayor Lauer	<u>Yes</u>
Commissioner Hyatt, Seat #4	<u>Yes</u>
Commissioner Marcello , Seat #1	<u>Yes</u>
Vice-Mayor Cook, Seat #2	<u>Yes</u>
Commissioner Bittle, Seat #3	<u>Yes</u>

Passed and adopted upon second and final reading this 23rd day of March, 2009.

Darla Lauer, Mayor

ATTEST:

Virginia Haas
City Clerk

Approved as to form and legality for the use and reliance of the City of Oak Hill, Florida, only.

Scott E. Simpson, City Attorney