

ORDINANCE No. 03-12

AN ORDINANCE AMENDING THE FORT MYERS BEACH LAND DEVELOPMENT CODE, CHAPTER 2, ADMINISTRATION; ARTICLE VII. CODE ENFORCEMENT; PROVIDING AUTHORITY; AMENDMENT; INTENT; CREATION OF POSITION OF SPECIAL MASTER; APPLICABILITY; DEFINITIONS; ENFORCEMENT PROCEDURE; CONDUCT OF HEARING; POWERS OF THE CODE ENFORCEMENT SPECIAL MASTER; PENALTIES AND LIENS; APPEALS; NOTICES; CITATION PROCEDURES AND PENALTIES; CONFLICT AND PROVIDING 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, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. Amendment. THE FORT MYERS BEACH LAND DEVELOPMENT CODE, CHAPTER 2, ADMINISTRATION; ARTICLE VII. CODE ENFORCEMENT, is hereby amended to read as follows:

ARTICLE VII. CODE ENFORCEMENT

Sec. 2-420. Intent. The intent of this article is to promote, protect and improve the health, safety and welfare of the citizens of Fort Myers Beach ~~by using Lee County's~~ by creating the position of code enforcement hearing examiner special master and granting the power 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.

Sec. 2-421. Creation of position of ~~hearing examiner~~ special master.

For the purpose of enforcing codes and regulations of the Town of Fort Myers Beach, ~~the town council may contract with Lee County through interlocal agreement for the use of the position of hearing examiner special master is hereby created pursuant to F.S. ch. 162. as created by the board of county commissioners.~~

Sec. 2-422. Applicability. This article is applicable to the incorporated areas of the Town of Fort Myers Beach.

Sec. 2-423. Definitions. [For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:]

Hearing examiner Special master means the officer appointed by the Town Council Lee County Board of County Commissioners, including any deputy ~~hearing examiner special masters~~ or hearing examiner special masters pro tempore, to hear matters concerning compliance with codes and ordinances.

Code inspector means an ordinance enforcement specialist or any authorized agent or employee of the Town of Fort Myers Beach whose duty it is to assure code compliance. Whenever the town council contracts with Lee County to provide code enforcement services, Lee County code inspectors shall serve as Fort Myers Beach code inspectors.

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 years prior to the current violation.

Sec. 2-424. Enforcement procedure.

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

(b) ***Initial violation.*** Except as provided in §§ (c) and (d) of this section, if a code inspector finds a violation of town regulations, 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 provide a reasonable time in which to correct the violation. If the violation continues beyond the time provided for correction or abatement, the code inspector may request a hearing before the ~~hearing examiner~~ special master and provide written notice of the hearing to the violator. A case may be presented to the ~~hearing examiner~~ 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 inspector must notify the violator 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 ~~hearing examiner~~ special master and provide written notice of the hearing to the violator. The case may be presented to the ~~hearing examiner~~ special master even if the repeat violation is corrected prior to the hearing provided the notice indicates the possibility of these consequences.

(d) ***Immediate hearing.*** 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, after making a reasonable effort to notify the violator, may request an immediate hearing before the ~~hearing examiner~~ special master.

Sec. 2-425. Conduct of hearing.

(a) ***Scheduling of hearings.*** A regular time and place will be designated by the ~~hearing examiner~~ special master for code enforcement proceedings. The frequency of these hearings will be based upon the number of cases to be heard. If necessary, the ~~hearing examiner~~ special master may also set a special hearing to take place on a day or at a time not regularly set aside for code enforcement proceedings. The code inspector is responsible for scheduling cases to be heard by the ~~hearing examiner~~ special master. 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 ~~hearing examiner~~ special master by the town attorney. If the town prevails in prosecuting a case before the ~~hearing examiner~~ special master, it will be entitled to recover all costs incurred in prosecuting the case. 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 ~~hearing examiner~~ special master will proceed to hear the cases on the docket for that day. All testimony will be under oath and recorded. Testimony may be taken from the code inspector and the alleged violator. Formal rules of evidence will not apply, but fundamental due process is to be observed and will govern the proceedings.

(d) **~~Hearing examiner~~ Special master order.** At the conclusion of the hearing, the ~~hearing examiner~~ special master will issue a written order containing findings of fact 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 not, or has not been, abated, and an award of the costs of prosecution due and owing to the town. The ~~hearing examiner~~ special master 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 the administrative fine.

(e) **Recording the order.** Certified copies of 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. The findings in the recorded order are binding upon the violator and, if the violation concerns real property, subsequent purchasers, successors in interest, or assigns. If an order has been recorded in the public records pursuant to this subsection, then after receiving proof the violation is abated, the ~~hearing examiner~~ special master will issue an order acknowledging abatement that must also be recorded in the public records. A hearing is not required to issue an order acknowledging abatement. 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.

Sec. 2-426. Powers of the code enforcement ~~hearing examiner~~ special master.

The code enforcement ~~hearing examiner~~ special master 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) Take testimony under oath.
- (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Sec. 2-427. Penalties and liens.

(a) **Order imposing fine/lien.** The ~~hearing examiner~~ special master, upon sworn notification by the code inspector that a code enforcement violation has not been abated, may order the violator to pay a fine not to exceed \$250 for each day the violation continues past the date set for abatement. If an order requiring abatement has been issued by the ~~hearing examiner~~ special master, a hearing is not necessary for the imposition of a fine. However, if a dispute arises as to whether abatement has occurred, the ~~hearing examiner~~ special master may grant a request for hearing if the request is made by the respondent in writing setting forth the reasons for dispute, either on the date set for abatement or within ten days thereafter. For a repeat violation, the ~~hearing examiner~~ 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 ~~hearing examiner~~ special master must notify the town manager, who may make all reasonable repairs required to bring the property into compliance and charge the violator with the reasonable cost of those repairs along with the fine imposed under this section.

(b) ***Penalties.***

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

(2) The following factors will be considered by the ~~hearing examiner~~ special master in determining the fine 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 ~~hearing examiner~~ special master may mitigate the fine imposed under this section.

(c) ***Creation of a lien.*** A certified copy of an order imposing fines 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 levy against the personal property, 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 the violation is abated or until 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 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 ~~hearing examiner~~ special master may authorize the town attorney to foreclose on a lien which remains unpaid for a period of three or more months after filing. 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.

(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 fines and/or assessing the costs of prosecution 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 the lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The town is entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien affected by the commencement of an action will not be

enforceable against creditors or subsequent purchasers for valuable consideration without notice, unless a lis pendens is recorded.

Sec. 2-428. Appeals. An aggrieved party, including the town council, may appeal a final order of the ~~hearing examiner~~ special master to the circuit court. Such an appeal will be limited to appellate review of the record created before the ~~hearing examiner~~ special master and may not be a hearing de novo. Any appeal must be filed within 30 days of the 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 ~~hearing examiner~~ special master, the town attorney, and the town manager.

Sec. 2-429. Notices.

(a) All notices required by this article must be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the town manager; or 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.

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

(1) Such notice 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 in at least two locations, once 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. b. Proof of posting must be by affidavit of the 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).

(c) 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), 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.

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 duty it is to enforce 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.

(b) **Citation training.** Lee County 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 county manager or his 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.

(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 will hear the charge.

(2) Prior to issuance a citation, a code enforcement office or code inspector must provide notice to the person that a violation of a county 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.

(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 if the alleged violator should so choose.

(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.

(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.

(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 county 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.

Sec. 2-432–2-459. Reserved

SECTION 3. 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 _____ and, upon being put to a vote, the result was as follows:

Howard Rynearson	_____
Daniel Hughes	_____
Bill Thomas	_____
W. H. "Bill" Van Duzer	_____
Terry Cain	_____

DULY PASSED AND ENACTED this ___ day of December, 2003.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Marsha Segal-George, Town Clerk

By: _____
Daniel Hughes, Mayor

Approved as to form by:

Richard V.S. Roosa, Town Attorney