

Alachua County
Board of County Commissioners

Ordinance 2018-11

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA; AMENDING CHAPTER 24 OF THE ALACHUA COUNTY CODE OF ORDINANCES RELATING TO CODE ENFORCEMENT DEFINITIONS AND THE MAILING OF ORDERS FROM THE CODES ENFORCEMENT BOARD; ADDING ARTICLE III OF CHAPTER 24 OF THE ALACHUA COUNTY CODE; CREATING PUBLIC OFFICES OF CODES ENFORCEMENT SPECIAL MAGISTRATES IN ADDITION TO, AND AS AN ALTERNATIVE TO, THE EXISTING CODES ENFORCEMENT BOARD; PROVIDING MINIMUM QUALIFICATIONS AND REQUIREMENTS FOR APPOINTMENT OF SPECIAL MAGISTRATES; ESTABLISHING ADMINISTRATIVE AND CLERICAL SUPPORT FOR SPECIAL MAGISTRATES; ESTABLISHING ENFORCEMENT PROCEDURES AND JURISDICTION FOR SPECIAL MAGISTRATES; PROVIDING STANDARDS FOR CONDUCT OF HEARINGS; ESTABLISHING POWERS OF SPECIAL MAGISTRATES; ESTABLISHING STANDARDS FOR NOTICES OF VIOLATIONS AND HEARINGS; PROVIDING PROCESS FOR APPEALING DECISIONS OF A SPECIAL MAGISTRATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; ALLOWING FOR MODIFICATION OF THE LANGUAGE OF THE ORDINANCE DUE TO CONSIDERATIONS ARISING AT A PUBLIC HEARING; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, section 162.03, Florida Statutes, provides that charter counties may adopt a code enforcement system utilizing both a codes enforcement board and special magistrate; and

WHEREAS, Alachua County currently utilizes the Codes Enforcement Board to hear alleged violations of the County's code; and

39 WHEREAS, the positions of Special Magistrates are established for the purpose
40 of providing a supplemental code enforcement process for Alachua County that does not
41 eliminate the Codes Enforcement Board; and

42 WHEREAS, the definitions applicable to codes enforcement violations, whether
43 before a special magistrate or codes enforcement board, shall be the same; and
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45 WHEREAS, Special Magistrates are hereby vested with all powers now granted
46 under chapter 162, Florida Statutes, and the Alachua County Code as amended from time
47 to time; and

48 WHEREAS, the intent of this Ordinance is to promote, protect and improve the
49 health, safety and welfare of the citizens of Alachua County by establishing Special
50 Magistrates with the authority to impose administrative fines and other noncriminal
51 penalties and to provide an equitable, expeditious, and effective method of enforcing the
52 County's codes and ordinances.
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54 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
55 ALACHUA COUNTY, FLORIDA:

56 SECTION 1. The Board of County Commissioners finds and declares that all
57 statements in the preamble of the ordinance are true and correct.

58 SECTION 2. Chapter 24 is renamed "Codes Enforcement."
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SECTION 3. Chapter 24, Article I, section 24.01, of Alachua County Code is amended as follows:

Article I. – Generally

Sec. 24.01. – Definitions.

~~For the purposes of this chapter, the term:~~

~~(a) *Codes inspector* shall mean any authorized agent or employee of the county whose duty it is to assure compliance with the codes and ordinances of the county.~~

~~(b) *Repeat violation* shall mean a violation of a provision of a code or ordinance of the county by a person who has previously been found through a code enforcement board 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 that the violations may have occurred at different locations.~~

The terms of this Chapter shall be defined pursuant to section 162.04, Florida Statutes, as amended.

SECTION 4. Chapter 24, Article I, section 24.07(i), of Alachua County Code is amended as follows:

Article I. – Generally

Sec. 24.07. – Conduct of Hearing

- (i) At the conclusion of the hearing, the codes enforcement board shall issue findings of fact based on evidence in the record and conclusions of law, and shall issue an order affording the proper relief consistent with the powers granted by F.S. ch. 162, and by this chapter. The order shall be stated orally at the meeting and shall be reduced to writing and mailed to the alleged violator within ~~ten~~ 15 days after the hearing. The finding shall be by motion, approved by a majority of those present and voting; provided, however, that at least four members of the board must vote in order for the action to be official. 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 said date. A certified copy of such order may be recorded in the public records of the county and shall constitute a 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 subsection and the order is complied with by the date specified in the order, the codes enforcement board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

SECTION 5. Chapter 24, Article III, of Alachua County Code is created as

follows:

Article III. - Special Magistrates

Sec. 24.17. Special Magistrates.

- (a) Creation. There is hereby created the Codes Enforcement Special Magistrate to hear alleged violations of the Alachua County Code of Ordinances.
- (b) Appointment. The Board of County Commissioners may appoint one or more qualified individuals to act as a Special Magistrate to hear alleged violations of the Alachua County Code of Ordinances.
- (c) Candidate qualifications. To be considered by the Board of County Commissioners for appointment or reappointment, a candidate for Special Magistrate shall have the following minimum qualifications:
 - (1) Membership, in good standing, with the Florida Bar at the time of appointment or reappointment and for the previous 5 years;
 - (2) Residence or place of business within Alachua County, Florida; and
 - (3) Reputation in the community for integrity, responsibility and professional ability.
- (d) Term. Special Magistrates shall serve for a term of three years from the date of appointment by the Board of County Commissioners. The Board of County Commissioners may reappoint Special Magistrates. There shall be no limit on the number of terms a person may serve as a Special Magistrate.
- (e) Compensation. Special Magistrates shall not be County employees, but shall be compensated as established by contract.
- (f) Removal. At any time during a term, the Board of County Commissioners shall have the authority to remove a Special Magistrate, with or without cause, upon 10 calendar days' written notice.

(g) Public officer. Special Magistrates are public officers and are, therefore, subject to the Code of Ethics for Public Officers and Employees found in chapter 112, Florida Statutes, as amended, including financial disclosure requirements.

(h) Clerical and administrative support. The Department of Growth Management, Office of Codes Enforcement shall act as the Clerk for the Special Magistrates and shall provide the same level of clerical and administrative support to the Special Magistrates as provided to the Codes Enforcement Board pursuant to section 24.03 of this Chapter, as amended, and as may be reasonably required for the Special Magistrates to properly perform their duties in accordance with chapter 162, Florida Statutes, as amended.

Sec. 24.18. Definitions. The terms of this Chapter shall be defined pursuant to section 162.04, Florida Statutes, as amended.

Sec. 24.19. County Legal Counsel before Special Magistrates. A member of the County Attorney's Office shall represent the County by providing counsel to codes inspectors presenting cases before Special Magistrates and may present codes enforcement cases to Special Magistrates, question witnesses, present evidence, make legal argument, and any other function necessary to support codes inspectors in the orderly and efficient presentation of their cases, as needed.

Sec. 24.20. Jurisdiction of Special Magistrates. Special Magistrates shall have jurisdiction and authority to hear and decide any alleged violation of the Alachua County Code of Ordinances. The jurisdiction of Special Magistrates shall be in addition to, and not in lieu of, any other procedures or remedies available to the County to enforce the Alachua County Code of Ordinances. After final determination of the existence of a violation, a Special Magistrate shall retain jurisdiction to adjust fines, order reasonable repairs and assess the cost of repairs.

Sec. 24.21. Enforcement Procedure. Enforcement of the Alachua County Code of Ordinances and initiation of enforcement procedures shall be in accordance with section 162.06, Florida Statutes, as amended, and section 24.06 of this Chapter, as amended. The County Manager, or designee, shall review, in consultation with staff, potential cases and, at his or her sole discretion, determine whether alleged violations will be heard by a Special Magistrate or Codes Enforcement Board.

Sec. 24.22. Conduct of Hearing.

(a) Hearings schedule. The County Manager, or designee, may call for hearings on an as-needed basis. When possible and necessary, multiple codes enforcement cases shall be scheduled for each hearing called before a Special Magistrate. The hearings shall be scheduled around the availability of the parties but no later than 90 calendar days after the date that the hearing is called. Once the hearing is scheduled, the County shall properly notice any

175 alleged violators of the hearing date, time, and location.

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177 (b) Sunshine Law. Hearings before a Special Magistrate, under this article, are
178 subject to the Sunshine Law and must comply with section 286.011, Florida
179 Statutes, as amended. In addition to the requirements of the Sunshine Law, the
180 Clerk for the Special Magistrate shall prepare minutes and the record on
181 appeal.

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183 (c) Burden of proof. The County shall have the burden of proof to show by a
184 preponderance of the evidence that an alleged violation exists.

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186 (d) Evidence. All testimony shall be under oath. A Special Magistrate, the
187 County and the alleged violator may inquire of any witness. Formal rules of
188 evidence do not apply, but fundamental due process shall be observed and
189 shall govern such proceedings.

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191 (e) Absence of alleged violator. If the notice provisions of this article have been
192 met, a hearing may take place in the absence of an alleged violator.

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194 (f) Fines, costs, and liens. Special Magistrates may impose fines, cost of repairs,
195 costs of prosecution and liens consistent with section 24.09 of this Chapter, as
196 amended. Liens shall have the duration and force as provided for in chapter
197 162, Florida Statutes, as amended. Special Magistrates may reduce a fine
198 imposed pursuant to this Article and may release a lien entered pursuant to
199 this Article.

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201 (g) Orders. Every order entered by a Special Magistrate shall be in writing, and
202 shall include findings of fact based on evidence in the record and conclusions
203 of law. Every order entered by a Special Magistrate shall be filed with the
204 Clerk for the Special Magistrates. Special Magistrates shall, in every
205 proceeding, reach a decision without unreasonable or unnecessary delay.
206 Special Magistrates may make an adjudication on the alleged violation at the
207 hearing at which the last of the evidence was received, or after the hearing. In
208 all instances, a Special Magistrate shall issue an order within 15 calendar days
209 from the conclusion of the final hearing at which the last of the evidence was
210 received. The Clerk for the Special Magistrates shall mail the order to the
211 respondent within 15 calendar days from the date that the Clerk receives the
212 signed order from a Special Magistrate. A certified copy of such order may be
213 recorded in the public records of Alachua County and shall constitute notice to
214 any subsequent purchasers, successors in interest, or assigns.

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216 (h) Recusal. At any point before, during or after a proceeding, Special
217 Magistrates may recuse themselves to assure a fair proceeding free from
218 potential bias or prejudice. Special Magistrates shall not hear any case in
219 which they have a conflict of interest.

- (i) Ex parte communication. Special Magistrates should avoid ex parte communication concerning alleged violations which may come before them. If a Special Magistrate receives ex parte communication, the Special Magistrate shall reveal the source and nature of the ex parte communication on an alleged violation before hearing that alleged violation and consider any motion for recusal by a party, including the County.

Sec. 24.23. Powers. The Special Magistrates shall have all of the powers granted to the Codes Enforcement Board under chapter 162, Florida Statutes, as amended, and section 24.08 of this Chapter, as amended.

Sec. 24.24. Notices. Notices required by this Article shall be provided to the alleged violator in accordance with chapter 162, Florida Statutes, as amended, and section 24.11 of this Chapter, as amended.

Sec. 24.25. Appeals. An aggrieved party may appeal in accordance with chapter 162, Florida Statutes, as amended.

SECTION 6. Severability. If any word, phrase, clause, paragraph, section or

provision of this ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 7. Inclusion in the Code. It is the intent of the Board of County

Commissioners of Alachua County, Florida, and it is hereby provided that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Alachua County, Florida; that the section of this ordinance may be renumbered or re-lettered to accomplish such intent and that the word “ordinance” may be changed to “section”, “article”, or other appropriate designation.

Section 8. Modification. It is the intent of the Board of County Commissioners

that the provisions of this ordinance may be modified as a result of considerations that

may arise during public hearings. Such modifications shall be incorporated into the final version of the ordinance adopted by the Board and filed by the Clerk to the Board.

SECTION 9. Effective Date. This ordinance shall take effect immediately upon final adoption.

DULY ADOPTED in regular session, this _____ day of _____, 2018.

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA

ATTEST:

BY: _____
Lee Pinkoson, Chair

J.K. "Jess" Irby, Clerk

APPROVED AS TO FORM

County Attorney

(SEAL)