

1
2 Alachua County
3 Board of County Commissioners
4

5 **Ordinance 2018-11**
6

7 **AN ORDINANCE OF THE BOARD OF COUNTY**
8 **COMMISSIONERS OF ALACHUA COUNTY, FLORIDA;**
9 **AMENDING CHAPTER 24 OF THE ALACHUA COUNTY CODE OF**
10 **ORDINANCES RELATING TO CODE ENFORCEMENT**
11 **DEFINITIONS AND THE MAILING OF ORDERS FROM THE**
12 **CODES ENFORCEMENT BOARD; ADDING ARTICLE III OF**
13 **CHAPTER 24 OF THE ALACHUA COUNTY CODE; CREATING**
14 **PUBLIC OFFICES OF CODES ENFORCEMENT SPECIAL**
15 **MAGISTRATES IN ADDITION TO, AND AS AN ALTERNATIVE**
16 **TO, THE EXISTING CODES ENFORCEMENT BOARD;**
17 **PROVIDING MINIMUM QUALIFICATIONS AND**
18 **REQUIREMENTS FOR APPOINTMENT OF SPECIAL**
19 **MAGISTRATES; ESTABLISHING ADMINISTRATIVE AND**
20 **CLERICAL SUPPORT FOR SPECIAL MAGISTRATES;**
21 **ESTABLISHING ENFORCEMENT PROCEDURES AND**
22 **JURISDICTION FOR SPECIAL MAGISTRATES; PROVIDING**
23 **STANDARDS FOR CONDUCT OF HEARINGS; ESTABLISHING**
24 **POWERS OF SPECIAL MAGISTRATES; ESTABLISHING**
25 **STANDARDS FOR NOTICES OF VIOLATIONS AND HEARINGS;**
26 **PROVIDING PROCESS FOR APPEALING DECISIONS OF A**
27 **SPECIAL MAGISTRATE; PROVIDING FOR SEVERABILITY;**
28 **PROVIDING FOR INCLUSION IN THE CODE; ALLOWING FOR**
29 **MODIFICATION OF THE LANGUAGE OF THE ORDINANCE DUE**
30 **TO CONSIDERATIONS ARISING AT A PUBLIC HEARING;**
31 **PROVIDING AN IMMEDIATE EFFECTIVE DATE.**
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33

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

37 WHEREAS, Alachua County currently utilizes the Codes Enforcement Board to
38 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

44

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.

53

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."

59

60

61 SECTION 3. Chapter 24, Article I, section 24.01, of Alachua County Code is
62 amended as follows:

63 **Article I. – Generally**

64 **Sec. 24.01. – Definitions.**

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

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

69
70 ~~(b) *Repeat violation* shall mean a violation of a provision of a code or ordinance~~
71 ~~of the county by a person who has previously been found through a code~~
72 ~~enforcement board or any other quasi-judicial or judicial process, to have~~
73 ~~violated or who has admitted violating the same provision within five years~~
74 ~~prior to the violation, notwithstanding that the violations may have occurred at~~
75 ~~different locations.~~

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

78
79 SECTION 4. Chapter 24, Article I, section 24.07(i), of Alachua County Code is
80 amended as follows:

81 **Article I. – Generally**

82 **Sec. 24.07. – Conduct of Hearing**

83 (i) At the conclusion of the hearing, the codes enforcement board shall issue
84 findings of fact based on evidence in the record and conclusions of law, and
85 shall issue an order affording the proper relief consistent with the powers
86 granted by F.S. ch. 162, and by this chapter. The order shall be stated orally at
87 the meeting and shall be reduced to writing and mailed to the alleged violator
88 within ~~ten~~ 15 days after the hearing. The finding shall be by motion, approved
89 by a majority of those present and voting; provided, however, that at least four
90 members of the board must vote in order for the action to be official. The
91 order may include a notice that it must be complied with by a specified date,
92 and that a fine may be imposed if the order is not complied with by said date.
93 A certified copy of such order may be recorded in the public records of the
94 county and shall constitute a notice to any subsequent purchasers, successors
95 in interest, or assigns, if the violation concerns real property, and the findings

96 therein shall be binding upon the violator and, if the violation concerns real
97 property, any subsequent purchasers, successors in interest, or assigns. If an
98 order is recorded in the public records pursuant to this subsection and the
99 order is complied with by the date specified in the order, the codes
100 enforcement board shall issue an order acknowledging compliance that shall
101 be recorded in the public records. A hearing is not required to issue such an
102 order acknowledging compliance.
103

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

105 follows:

106 **Article III. - Special Magistrates**

107 **Sec. 24.17. Special Magistrates.**

108 (a) Creation. There is hereby created the Codes Enforcement Special Magistrate
109 to hear alleged violations of the Alachua County Code of Ordinances.
110

111 (b) Appointment. The Board of County Commissioners may appoint one or more
112 qualified individuals to act as a Special Magistrate to hear alleged violations
113 of the Alachua County Code of Ordinances.
114

115 (c) Candidate qualifications. To be considered by the Board of County
116 Commissioners for appointment or reappointment, a candidate for Special
117 Magistrate shall have the following minimum qualifications:

- 118 (1) Membership, in good standing, with the Florida Bar at the time of
119 appointment or reappointment and for the previous 5 years;
- 120 (2) Residence or place of business within Alachua County, Florida; and
- 121 (3) Reputation in the community for integrity, responsibility and
122 professional ability.

123 (d) Term. Special Magistrates shall serve for a term of three years from the date
124 of appointment by the Board of County Commissioners. The Board of County
125 Commissioners may reappoint Special Magistrates. There shall be no limit on
126 the number of terms a person may serve as a Special Magistrate.
127

128 (e) Compensation. Special Magistrates shall not be County employees, but shall
129 be compensated as established by contract.
130

131 (f) Removal. At any time during a term, the Board of County Commissioners
132 shall have the authority to remove a Special Magistrate, with or without cause,
133 upon 10 calendar days' written notice.
134

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

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

146 **Sec. 24.18. Definitions.** The terms of this Chapter shall be defined pursuant to section
147 162.04, Florida Statutes, as amended.

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

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

161
162 **Sec. 24.21. Enforcement Procedure.** Enforcement of the Alachua County Code of
163 Ordinances and initiation of enforcement procedures shall be in accordance with section
164 162.06, Florida Statutes, as amended, and section 24.06 of this Chapter, as amended. The
165 County Manager, or designee, shall review, in consultation with staff, potential cases and,
166 at his or her sole discretion, determine whether alleged violations will be heard by a
167 Special Magistrate or Codes Enforcement Board.

168 **Sec. 24.22. Conduct of Hearing.**

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

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

176
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.

182
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.

185
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.

190
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.

193
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.

200
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.

215
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.

220

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

227 **Sec. 24.23. Powers.** The Special Magistrates shall have all of the powers granted to the
228 Codes Enforcement Board under chapter 162, Florida Statutes, as amended, and section
229 24.08 of this Chapter, as amended.

230
231 **Sec. 24.24. Notices.** Notices required by this Article shall be provided to the alleged
232 violator in accordance with chapter 162, Florida Statutes, as amended, and section 24.11
233 of this Chapter, as amended.

234
235 **Sec. 24.25. Appeals.** An aggrieved party may appeal in accordance with chapter 162,
236 Florida Statutes, as amended.

237
238 SECTION 6. Severability. If any word, phrase, clause, paragraph, section or
239 provision of this ordinance or the application hereof to any person or circumstance is held
240 invalid or unconstitutional, such finding shall not affect the other provisions or
241 applications of the ordinance which can be given effect without the invalid or
242 unconstitutional provisions or application, and to this end the provisions of this ordinance
243 are declared severable.

244 SECTION 7. Inclusion in the Code. It is the intent of the Board of County
245 Commissioners of Alachua County, Florida, and it is hereby provided that the provisions
246 of this ordinance shall become and be made a part of the Code of Ordinances of Alachua
247 County, Florida; that the section of this ordinance may be renumbered or re-lettered to
248 accomplish such intent and that the word “ordinance” may be changed to “section”,
249 “article”, or other appropriate designation.

250 Section 8. Modification. It is the intent of the Board of County Commissioners
251 that the provisions of this ordinance may be modified as a result of considerations that

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

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

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

259

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA

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262

ATTEST:

263

BY: _____

264

Lee Pinkoson, Chair

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266

J.K. "Jess" Irby, Clerk

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269

APPROVED AS TO FORM

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271

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273

County Attorney

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(SEAL)

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