

ORDINANCE NO. 970

AN ORDINANCE OF THE CITY OF CHIPLEY, FLORIDA, AMENDING ARTICLE II, CHAPTER 1 OF THE CODE OF ORDINANCES REGARDING CODE ENFORCEMENT; ESTABLISHING THE AUTHORITY OF A SPECIAL MAGISTRATE TO HEAR MATTERS INVOLVING VIOLATIONS OF CITY CODE; PROVIDING FOR JURISDICTION OF THE SPECIAL MAGISTRATE; PROVIDING FOR QUALIFICATIONS FOR OFFICE; PROVIDING FOR POWERS AND AUTHORITY OF THE SPECIAL MAGISTRATE; PROVIDING FOR TERMS OF APPOINTMENT TO OFFICE; PROVIDING FOR LEGAL REPRESENTATION; PROVIDING FOR ADDITIONAL DUTIES OF THE CODE ENFORCEMENT OFFICER; PROVIDING FOR RULES OF PROCEDURE FOR HEARINGS BEFORE THE SPECIAL MAGISTRATE; PROVIDING FOR APPELLATE REVIEW OF THE ORDERS OF THE SPECIAL MAGISTRATE; PROVIDING FOR METHODS FOR ESTABLISHING LIENS AGAINST REAL PROPERTY AND COLLECTION OF JUDGMENTS; PROVIDING FOR FINES AND PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Chipley is authorized pursuant to Chapter 162, Florida Statutes, to adopt rules and regulations regarding the enforcement of municipal codes; and

WHEREAS, the City Council of the City of Chipley, Florida, has determined that it is in the best interest of all of the citizens and residents of the City that the provisions of Chapter 1 of the Code of the City of Chipley, relating to code enforcement, be amended by enacting additional regulations regarding the establishment of a special magistrate to hear matters involving alleged violations of the City Code.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF CHIPLEY, FLORIDA:

Section 1. Chapter 1 of the Code of the City of Chipley is hereby amended, to provide as follows (additions are shown by underline and deletions are shown by ~~strikethrough~~) by adding definitions:

Sec. 1-40. Code Enforcement Special Magistrates.

- (a) Establishment and Purpose. It is the intent of this section to establish a special magistrate with the authority to impose administrative fines and other noncriminal penalties to promote, protect, and improve the health, safety, morals, and welfare of the city and to provide an equitable, expeditious, effective and an inexpensive method of enforcing the City Code and city ordinances where a pending or repeated violation exists or continues to exist. This part of this chapter has been enacted pursuant to the authority of chapter 162, Florida Statutes, and other applicable law.

- (b) Jurisdiction. The city special magistrates shall have jurisdiction to hear and decide cases in which violations are alleged of any provisions of the City Code and city ordinances except as specifically excluded herein. The jurisdiction of the special magistrates shall not be exclusive. Any alleged violation of the City Code or city ordinances may be pursued by any appropriate remedy in a court of competent jurisdiction at the option of the city council or administrative official whose responsibility it is to enforce the City Code or city ordinances.
- (c) Qualifications. Special magistrates shall be appointed by the city council and shall be an attorney duly licensed to practice law in the state of Florida. The city may utilize the services of one or more special magistrates to conduct hearings concerning the City Code and city ordinances.
- (d) Power and Authority. Special magistrates shall have the power to:
- a. Adopt rules for the conduct of hearings;
 - b. Subpoena (via service by the Chipley Police Department or other lawful process server) alleged violators and witnesses to its hearings;
 - c. Subpoena (via service by the Chipley Police Department or other lawful process server) evidence to its hearings;
 - d. Administer oaths and take testimony under oath;
 - e. Issue orders having the force of law finding a violation of the City Code or city ordinances and commanding whatever steps are necessary to bring the violation into compliance; and
 - f. Enter orders finding compliance or noncompliance.
- (e) Terms of Appointment. Special magistrates shall serve for terms established by the City Council. Special magistrates shall be subject to removal, with or without cause, from their positions at any time during their term, by the City Council. Special magistrates shall not be considered to be city employees, although they may receive compensation for their services and also may be reimbursed for such travel, mileage and per diem expenses as may be authorized.
- (f) Legal Representation. The city attorney shall act as legal counsel to the code enforcement officer as he or she presents cases to the special magistrate or shall present the case for the code enforcement officer.
- (g) Duties of Code Enforcement Officer. It shall be the duty of the code enforcement officer to initiate enforcement proceedings of the City Code and city ordinances through the special magistrate process. The special magistrate shall not have the power to initiate such enforcement proceedings. Any violations presented to the special magistrate shall be administered by the code enforcement officer.
- a. In the case of a first-time violation of the City Code or a city ordinance, the code enforcement officer shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officer shall request a hearing before the special magistrate and provide notice to the alleged violator. All notices required by this

section shall be provided to the alleged violator in accordance with the provisions of section 162.12, Florida Statutes.

- b. If a repeat violation is found, the code enforcement officer shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, shall request a hearing. The code enforcement officer shall schedule a hearing before the special magistrate and shall provide notice to the violator. The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the special magistrate hearing and the notice shall so state.
- c. If a code enforcement officer has reason to believe a violation presents a serious threat to the public health, safety, morals, or welfare, or if the violation is irreparable or irreversible in nature, the code enforcement officer shall make a reasonable effort to notify the violator and may immediately request a hearing thereon.
- d. The code enforcement officer shall coordinate the calling of hearings by the special magistrate. The city shall provide a hearing room and clerical staff as may be reasonably required by the special magistrate to conduct hearings and perform his or her duties. All hearings by the special magistrate shall be open to the public and minutes shall be kept of all hearings.
- e. Each case before the special magistrate shall be presented by the code enforcement officer with the assistance of the city attorney or by the city attorney as the case may be.

(h) Rules of Procedure for hearings:

- a. All relevant evidence shall be admitted. The special magistrate may exclude irrelevant or unduly repetitious evidence.
- b. Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence.
- c. The general public shall not be entitled to present evidence although members of the general public who have relevant evidence to offer may be called as witnesses by either party.
- d. The alleged violator has the right, at his or her own expense, to be represented by an attorney at any hearing.
- e. All testimony before the special magistrate shall be under oath and shall be recorded.
- f. The alleged violator or the city may cause a verbatim record of the proceedings to be made.

- g. The burden of proof shall be with the code enforcement officer and/or city attorney to show by the greater weight of evidence that a code violation exists and that the alleged violator committed, allowed, or was responsible for maintaining the violation.
 - h. If notice has been provided to the violator of the public hearing pursuant to this section (which shall be as required by chapter 162, Florida Statutes), the hearing may be conducted and an order rendered in the absence of the alleged violator.
 - i. At the conclusion of the hearing, the special magistrate shall issue an order setting forth findings of fact, based on evidence of record, and issue conclusions of law, and shall render relief in the order affording the proper relief consistent with powers granted in this section. A written order shall be issued within a reasonable period of time subsequent to the hearing. 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 that date.
- (i) Appeals. An aggrieved party, including the city, may appeal a final administrative order of the special magistrate to the 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. An appeal shall be filed within 30 days of the execution of the order to be appealed.
- (j) Recording of Order.
- a. A certified copy of an order imposing the fine provided for herein may be recorded in the public records of Washington County or any other county, and thereafter such order shall constitute a lien against the property on which the violation exists or, if the violator does not own the land involved in the violation, upon any other real or personal property owned by the violator and may be enforced in the same manner as a court judgment by the sheriffs of this state including levy against personal property, but shall not be deemed otherwise to be a judgment of a court except for enforcement purposes.
 - b. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of the state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. After three months from the filing of any such lien which remains unpaid, the city council may authorize the city attorney to foreclose on the lien.
 - c. When an order is recorded in the public records pursuant to this section and the order is complied with by the dates specified in the order, the special magistrate shall issue an order acknowledging compliance that shall be recorded in the public records.

(k) Fines and Penalties.

- a. A fine imposed pursuant to this section shall not exceed \$250.00 per day per violation for a first violation and shall not exceed \$500.00 per day per violation for a repeat violation. In formulating the provisions of the order, the special magistrate should be consistent in the imposition of fines, paying special attention to the gravity of the violation, any actions and the timeliness of actions taken by a violator to correct the violation and any previous violations committed by the violator. The special magistrate shall include in the order establishing a fine that the violator shall pay all costs of the proceedings incurred by the city.
 - b. The fine imposed pursuant to this section by the special magistrate shall be final and may be appealed only to the circuit court in accordance with the controlling provisions of law. The violator may make arrangements through the city administrator to pay the fine in monthly payments; provided, however, if the violator fails to timely perform under the agreement, the city shall have and maintain all enforcement rights relative to the fine imposed as reduced by payments that have been made.
- (l) Notwithstanding any provision in this section to the contrary, the city shall adhere to the procedures set forth in the Local Government Code Enforcement Boards Act in conducting its code enforcement activities.

Secs. 1-40—1-66. Reserved.

Secs. 1-41—1-66. Reserved.

Section 2. If any section or portion of a section of this ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to impair the validity, force, or effect of any other section or part of this ordinance.

Section 3. That all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed and revoked. The provisions of the Code of Ordinances of the City of Chipley shall be amended to include the foregoing, with the Chapter and Section number as indicated above.

Section 4. That this ordinance shall become effective immediately upon its passage and adoption.

INTRODUCED on first reading at a regular meeting of the City Council on the 12th day of October, 2021, and PASSED on second reading at a regular meeting of the City Council on the 29th day of November, 2021.

CITY OF CHIPLEY, FLORIDA

ATTEST:

Patrice A. Tanner
By the City Clerk, Patrice A. Tanner

Tracy L. Andrews
By its Mayor, Tracy L. Andrews

APPROVED AS TO FORM:

Michelle Blankenship Jordan
Michelle Blankenship Jordan
City Attorney

