

ORDINANCE NO. 2012-005

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF GADSDEN COUNTY, FLORIDA, ADOPTING, PURSUANT TO PART I, CHAPTER 162, FLORIDA STATUTES, AN ALTERNATE CODE ENFORCEMENT SYSTEM WHICH GIVES SPECIAL MAGISTRATES DESIGNATED BY THE COUNTY THE AUTHORITY TO ASSESS FINES AGAINST VIOLATORS OF COUNTY ORDINANCES; PROVIDING DEFINITIONS; PROVIDING FOR REQUIREMENTS AND POWERS OF APPOINTED SPECIAL MAGISTRATES; PROVIDING NOTICE REQUIREMENTS; PROVIDING FOR AN ENFORCEMENT PROCEDURE AND FOR THE CONDUCT OF HEARINGS; PROVIDING FOR ADMINISTRATIVE FINES AND COSTS OF REPAIR, AND FOR LIENS AGAINST PROPERTY; PROVIDING FOR APPEALS OF ENFORCEMENT ORDERS; PROVIDING A TITLE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, section 162.03, Florida Statutes, allows counties to adopt an alternate code enforcement system which gives code enforcement boards or special magistrates designated by the local governing body the authority to hold hearings and assess fines against violators of county ordinances; and

WHEREAS, the Gadsden County Board of County Commissioners finds that such an enforcement system would provide an inexpensive and expeditious means to enforce its ordinances and is therefore desirable and in the public interest.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF GADSDEN COUNTY, FLORIDA:

SECTION 1. DEFINITIONS.

In construing this section, the following words, terms, and phrases shall have the following meanings, unless the context clearly indicates a different meaning:

- (a) "Board" means the Gadsden County Board of County Commissioners.
- (b) "Code inspector" means any authorized agent or employee of the County whose duty it is to assure code compliance.
- (c) "County" means Gadsden County, Florida.
- (d) "County Attorney" means the legal counselor for the County.
- (e) "Special Magistrate" means a person appointed by the Board to hear code enforcement proceedings as set forth in this section.

- (f) "Repeat violation" means a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted to violating the same provision within five (5) years prior the violation, notwithstanding that violations occur at different locations.

SECTION 2. SPECIAL MAGISTRATE; POWERS.

- (a) The Board may appoint a Special Magistrate to hear code enforcement proceedings as set forth in this section.
- (b) The Special Magistrate shall be a resident of the County and shall have a juris doctor degree; and shall serve at the pleasure of the Board.
- (c) The Special Magistrate shall serve with compensation, and all expenses of the Special Magistrate are reimbursable up to the maximum amount provided by law.
- (d) The Special Magistrate shall have the ability to use the County's clerical and administrative staff for the conduct of his or her duties.
- (e) The Special Magistrate shall have the power to:
 - (1) Adopt rules for the conduct of its hearings;
 - (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the County Sheriff;
 - (3) Subpoena evidence to its 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.

SECTION 3. NOTICES.

- (a) All notices required by this part shall be provided to the alleged violator by:
 - (1) Certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the County by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraphs (b)(2)a. and b. and by first class mail directed to the addresses furnished to the County with a properly executed proof of mailing or affidavit confirming the first class mailing;
 - (2) Hand delivery by the Sheriff or code inspector;
 - (3) 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; or
 - (4) In the case of commercial premises, leaving the notice with the manager or other person in charge.
- (b) In addition to providing notice as set forth in subsection (a), notice may also be served by publication or posting, as follows:
 - (1) a. Such notice shall be published once during each week for four (4) consecutive weeks (four publications being sufficient) in a newspaper of general circulation in

the County. The newspaper shall meet such requirements as a prescribed by chapter 50, Florida Statutes, for legal and official advertisements.

b. Proof of publication shall be made as provided in sections 50.041 and 50.051, Florida Statutes.

- (2) a. In lieu of publication as described in paragraph (1), such notice may be posted at least ten (10) days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two (2) locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be on the bulletin board outside of the County Commission Chambers.
- b. 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 by 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 the proof of publication or posting as provided in subsection (b), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

SECTION 4. ENFORCEMENT PROCEDURE.

- (a) It shall be the duty of the code inspector to initiate enforcement proceedings of the County's various codes.
- (b) Except as provided in subsections (c) and (d), if a violation of the codes is found, the code inspector shall notify the violator and give him or her a reasonable time to correct the violation. The amount of time to correct the violation shall be based on the particular violation, but shall not be less than five (5) nor more than thirty (30) days from the date of the notice. Should the violation continue beyond the time specified for the correction, the code inspector shall notify the Special Magistrate and request a hearing. The Special Magistrate, through its clerical staff, shall schedule a hearing and written notice of such hearing shall be hand delivered or mailed as provided in section 3. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the Special Magistrate even if the violation has been corrected prior the Special Magistrate hearing, and the notice shall so state.
- (c) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the Special Magistrate and request a hearing. The Special Magistrate, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to section three (3). The case may be presented to the Special Magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the Special Magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The

repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the Special Magistrate.

- (d) 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 shall make a reasonable effort to notify the violator and may immediately notify the Special Magistrate and request a hearing.
- (e) If the owner of the property that is subject to an enforcement proceeding before the Special Magistrate or the circuit or county court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:
 - (1) Disclose, in writing, the existence and nature of the proceeding to the prospective transferee.
 - (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.
 - (3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
 - (4) File a notice with the code inspector of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five (5) days after the date of the transfer.
 - (5) A failure to make the disclosures described in subsections (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

SECTION 5. CONDUCT OF HEARING.

- (a) Upon request of the code inspector, the Special Magistrate may call a hearing. Minutes shall be kept of all hearings, and all hearings and proceedings shall be open to the public. The County shall provide clerical and administrative personnel as may be reasonably required by the Special Magistrate for the proper performance of his or her duties.
- (b) Each case before a Special Magistrate shall be presented by the County Attorney or by a member of the County's administrative staff. If the County prevails in prosecuting a case before the Special Magistrate, it shall be entitled to recover all costs incurred in prosecuting the case before the Special Magistrate and such costs may be included in the lien authorized under section six (6).
- (c) The Special Magistrate shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The Special Magistrate shall take testimony from the code inspector and the alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- (d) At the conclusion of the hearing, the Special Magistrate shall issue findings of fact, based on evidence of record, and conclusions of law, and shall issue an order affording the proper relief consistent with the powers granted herein. The order may include a notice

that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in section six (6), the cost of repair may be included along with the fine if the order is not complied with by said date. A certified copy of the order may be recorded in the public records of the County and shall constitute notice to any subsequent purchasers, successors in interest, or assigns and the findings therein and 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 Special Magistrate 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 6. ADMINISTRATIVE FINES; COST OF REPAIR; LIENS; DURATION.

- (a) A Special Magistrate, upon notification by the code inspector that an order of the Special Magistrate has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the Special Magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is one that presents a serious threat to the public health, safety, and welfare or if it is irreparable or irreversible in nature, the Special Magistrate shall notify the Board, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the County to make further repairs or to maintain the property and does not create any liability against the County for any damages to the property if such repairs were completed in good faith. If a finding of a violation or repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a Special Magistrate finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in paragraph (b).
- (b) A fine imposed pursuant to this section:
- (1) Shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (a). However, if a Special Magistrate finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.
 - (2) In determining the amount of the fine, if any, the Special Magistrate shall consider the following factors:
 - i. The gravity of the violation;
 - ii. Any actions taken by the violator to correct the violation; and
 - iii. Any previous violations committed by the violator.
 - (3) A Special Magistrate may reduce a fine imposed pursuant to this section.
- (c) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall 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 shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the County, and the County may execute a satisfaction or release of lien entered pursuant to this section. After three (3) months from the filing of any such lien which remains unpaid, the Special Magistrate may authorize the County Attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under section 4, Article X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under section 4(a), Article X of the State Constitution.

- (d) No lien provided under this section 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 is commenced under this section in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including reasonable attorneys' fees, incurred in the action. The Board shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien affected by the commencement of the action shall not be good against the creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

SECTION 7. APPEALS.

An aggrieved party, including the County, may appeal a final administrative order of a 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 thirty (30) days of the execution of the order to be appealed.

SECTION 8. PROVISIONS SUPPLEMENTAL.

The provisions of this section shall provide an additional or supplemental means of obtaining compliance with the County's codes. Nothing herein shall prohibit the County from enforcing its codes by any other means as provided by law.

SECTION 9. TITLE.

The title of this ordinance shall be: "Special Magistrate Alternate Code Enforcement System."

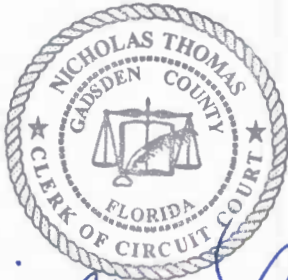
SECTION 10. SEVERABILITY.

In accordance with Section 1-9 of the Gadsden County Code of Ordinances, the sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance and all provisions are severable so that if any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid by a valid judgment of a court of competent jurisdiction, such judgment shall not affect the validity of any other section, subsection, sentence, clause and phrase of this Ordinance, for the Board of County Commissioners declares that it is its intent that it would have enacted this Ordinance without such invalid or unconstitutional provision(s).

SECTION 11. EFFECTIVE DATE; FILING WITH THE DEPARTMENT OF STATE.

This ordinance shall take effect upon filing with the Department of State.

DULY PASSED AND ADOPTED BY a vote of 5 to 0 on the 4th day of September, 2012.



Nicholas Thomas

Nicholas Thomas
Clerk of the Circuit Court

BOARD OF COUNTY
COMMISSIONERS OF GADSDEN
COUNTY, FLORIDA

By: *Sherrie D. Taylor*
SHERRIE D. TAYLOR, Chairperson

NOTICE OF INTENT

NOTICE IS HEREBY GIVEN to all concerned that the Board of County Commissioners of Gadsden County, Florida, intends, at its regularly scheduled meeting, at the Gadsden County Governmental Complex, 9-B East Jefferson Street, Quincy, Florida, at 6:00 p.m. on the 4th day of September, 2012, to consider adoption of an ordinance entitled:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF GADSDEN COUNTY, FLORIDA, ADOPTING, PURSUANT TO PART I, CHAPTER 162, FLORIDA STATUTES, AN ALTERNATE CODE ENFORCEMENT SYSTEM WHICH GIVES SPECIAL MAGISTRATES DESIGNATED BY THE COUNTY THE AUTHORITY TO ASSESS FINES AGAINST VIOLATORS OF COUNTY ORDINANCES; PROVIDING DEFINITIONS; PROVIDING FOR REQUIREMENTS AND POWERS OF APPOINTED SPECIAL MAGISTRATES; PROVIDING NOTICE REQUIREMENTS; PROVIDING FOR AN ENFORCEMENT PROCEDURE AND FOR THE CONDUCT OF HEARINGS; PROVIDING FOR ADMINISTRATIVE FINES AND COSTS OF REPAIR, AND FOR LIENS AGAINST PROPERTY; PROVIDING FOR APPEALS OF ENFORCEMENT ORDERS; PROVIDING A TITLE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

INTERESTED PARTIES MAY APPEAR AT THE MEETING AND BE HEARD WITH RESPECT TO THE PROPOSED ORDINANCE. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF COUNTY COMMISSIONERS WITH RESPECT TO THIS MATTER, HE WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, HE MAY NEED TO ASSURE THAT A VERBATIM RECORDING OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

The proposed ordinance is available for public inspection at the Office of the Clerk, Gadsden County Courthouse, 10 E. Jefferson St., Quincy, Florida.



BOARD OF COUNTY COMMISSIONERS OF
GADSDEN COUNTY, FLORIDA

By: Merril Strangher for
Nicholas Thomas, Clerk

Published one time
August 23, 2012
Gadsden County Times
Havana Herald
Twin City News