



City of North Port

ORDINANCE NO. 2015-46

**AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA
ADOPTING DIVISION 1, CHAPTER 2, ARTICLE IV, HEARING
OFFICERS OF THE CODE OF THE CITY OF NORTH PORT; SECTION
2-110 OFFICE ESTABLISHED; SECTION 2-111 APPOINTMENT;
PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE
DATE**

WHEREAS, the applicability of the state's "Local Government Code Enforcement Boards Act" is expressed at Chapter 162.03, Florida Statutes, which states in relevant part:

- (1) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided herein.
- (2) A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter....

WHEREAS, the purpose of Chapter 162 is not to mandate the means through which a local government body may administer or enforce its codes.

WHEREAS, § 162.13 Florida Statutes provides, "It is the legislative intent of §§162.01-162.12 to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in §§162.01-162.12 shall prohibit a local governing body from enforcing its codes by any other means.

WHEREAS, §162.21(8) Florida Statutes provides:

“The provisions of this section are additional and supplemental means of enforcing county or municipal codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. Nothing contained in this section shall prohibit a county or municipality from enforcing its codes or ordinances by any other means.”

WHEREAS, Florida Courts that have squarely addressed the issue have eliminated any ambiguity that may have existed regarding the applicability of the Act, holding that Chapter 162:

Clearly and explicitly confers authority upon the County to adopt, by ordinance, a completely alternative code enforcement system...the legislature did not limit the County’s alternative system to the exact procedures set forth in Parts I or II of Chapter 162. Nor did the legislature preclude the County from combining any features of these parts. Verdi v Metropolitan Dade County, 684 So. 2d 870, 873 (Fla. 3d DCA 1996), rev. denied, 695 So.2d 703 (Fla. 1997); *see also* Metropolitan Dade County v Hernandez, 708 So.2d 1008 (Fla. 3d DCA 1998).

WHEREAS, the following neighboring jurisdictions utilize a single office to enforce codes, to hear and decide administrative appeals, and to hear and grant variances: Lee County (§34-141 Lee County, Land Development Code), City of Sarasota (§2-306 Sarasota City Code and §III-1101 Sarasota Zoning Code)

WHEREAS, the City Commission desires to create and establish an Office of the Hearing Officer that will merge the functions of the Hearing Officer f/n/a Special Magistrate provided in Chapter 2, Article IX of the Code of the City of North Port, and the Zoning Hearing Officer provided in Section 1-32 of the Unified Land Development Code into one office.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA:

SECTION 1 – HEARING OFFICER

1.01 - Division 1 of Chapter 2 of Article IV, HEARING OFFICERS is hereby created as:

Division 1. – HEARING OFFICERS

SECTION 2 – OFFICE ESTABLISHED

2.01. – Division 1. Chapter 2, Article IV, Section 2-110 of the Code of the City of North Port is hereby created as:

Sec. 2-110. Office established.

The Office of Hearing Officer is hereby created and established, in accord with the provisions of this Code. The Hearing Officer has the powers set forth in this division, as well as the powers and authority set forth in Chapter 2, Article IX of the Code of the City of North Port and Section 1-32 of the Unified Land Development Code.

- (a) Hearing Officers shall have the jurisdiction and authority to hear and decide any other matters, as the city commission shall determine is appropriate
- (b) The jurisdiction of the hearing officers shall not be exclusive; and nothing contained in this division shall prevent the city from taking such other lawful action, including but not limited to resort to equitable action, as is necessary to enforce any provision of this code or the Land Development Code. The jurisdiction of any board of the city shall not be construed to limit the powers of those boards so as to prevent them from exercising their authority on matters of common jurisdiction with the ~~magistrate~~ hearing officer.

SECTION 3 – APPOINTMENT

2.01 - Division 1. Chapter 2, Article 1, Section 2-111 of the Code of the City of North Port is hereby created as:

Sec. 2-111. - Appointment

- (a) The City Commission may appoint one or more hearing officers. Hearing officers shall serve at the pleasure of the city commission or as otherwise provided in the code or by contract. ~~shall be an attorney who possesses an outstanding reputation for civic pride, interest, responsibility, and business or professional ability. Appointment shall be made by the city commission on the basis of experience or interest in the fields of zoning, building control, and code compliance. Hearing officers presiding over Chapter 2, Article IX hearings shall possess the qualifications specified in that article. Hearing officers presiding over Section 1-32 of the Unified Land Development Code hearings shall possess the qualifications specified in that section. Hearing officers presiding over both types of hearings shall possess the~~

qualifications provided in Chapter 2, Article IX, and Section 1-32 of the Unified Land Development Code.

Hearing officers appointed to preside over any other matters shall possess the qualifications as the city commission determines is appropriate.

- (b) The hearing officer shall not be a city employee, but may be compensated at a rate established by resolution of the city commission based upon recommendation of the city manager and city attorney. In addition, the ~~magistrate~~ hearing officer may be reimbursed for such travel, mileage, and per diem as may be authorized by the city commission.

SECTION 3 SEVERABILITY:

- 3.01 If any section, subsection, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not fully affect the validity of the remaining portions thereof.

SECTION 13 CONFLICTS:

- 13.01 In the event of any conflict between the provisions of this Ordinance and any other ordinance, resolution, or portions thereof, the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 14 EFFECTIVE DATE:

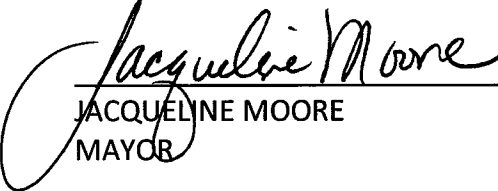
- 14.01 This Ordinance shall take effect immediately upon its adoption by the Commission of the City of North Port, Florida.

READ BY TITLE ONLY in public session on this 26th day of October, 2015.

PASSED AND ADOPTED on the second and final reading held in public session this 9th

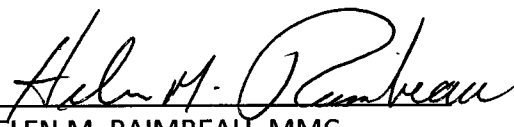
day of November, 2015.

CITY OF NORTH PORT, FLORIDA



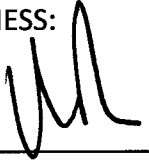
JACQUELINE MOORE
MAYOR

ATTEST:



HELEN M. RAIMBEAU, MMC
CITY CLERK

APPROVED AS TO FORM AND
CORRECTNESS:



MARK MORIARTY
CITY ATTORNEY