

CHAPTER 37. SPECIAL MAGISTRATE

ARTICLE I. IN GENERAL

Sec. 37.01. Establishment of Special Magistrate.

Pursuant to Chapter 162, Florida Statutes (2015), the city council hereby adopts a code enforcement system that utilizes special magistrates who shall have all the powers and authority of a code enforcement board. The city council may appoint multiple special magistrates who shall have all the powers and authority of a code enforcement board.

Sec. 37.02. Intent.

It is the intent of this chapter to promote, protect, and improve the health, safety, and welfare of the citizens of the city by appointing a special magistrate with the authority to impose administrative fines and other non-criminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in the city, where a pending or repeated violation continues to exist.

Sec. 37.03. Definitions.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

City Attorney means the attorney for the city.

City Council means the council of the city.

Code Compliance Officer means any designated employee or agent of the City whose duty it is to enforce codes and ordinances enacted by the City Council and to provide evidence of code and ordinance violations to special magistrates, including, but not limited to code inspectors, code compliance specialists, law enforcement officers and animal control officers.

Repeat violation means a violation of a provision of a code or ordinance by a person or entity who has been previously found, by the Special Magistrate, through a quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding the violations occur at different locations.

Special Magistrate means an attorney or retired judge, whose membership is in good standing with the Florida Bar, who is appointed by the City Council to preside over code compliance matters and who may be discharged by the City Council at its discretion, with or without cause.

ARTICLE II. ORGANIZATION AND PROCEDURE

Sec. 37.04. Special Magistrate.

(a) *Appointment.* The City Manager shall, upon the recommendation and advice of the City Attorney, annually recruit qualified attorneys and retired judges to serve as Special Magistrates. Upon being provided a slate of recommended attorneys and/or retired judges by the City Manager, the City Council shall appoint, by resolution, at least three Special Magistrates per year.

(b) *Qualifications.* Applicants for the Special Magistrate position must:

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- (1) Be a resident of the State of Florida;
 - (2) Be a retired Florida Judge or be an attorney whose membership with the Florida Bar is in good standing and has at least 7 years' experience; and
 - (3) Possess experience and expertise in at least one of the following disciplines and a working familiarity with the others: (i) land use matters; (ii) local government law; (iii) Americans with Disabilities and Fair Housing Act law; (iv) real estate law and (v) administrative law.
- (c) *Standards of Conduct.* The Special Magistrate holds a position of trust and should adhere to the highest standards of integrity, impartiality, and competence. At a minimum, the Special Magistrate is obligated to be honest, unbiased, to act in good faith, to be diligent and avoid any conflict of interest including the mere appearance of a conflict of interest. The Special Magistrate must disclose any facts or circumstances that may give rise to justifiable doubts as to his or her impartiality or independence.
- (d) *Term.* Each Special Magistrate shall serve a term of one year. Special Magistrates may be appointed for consecutive one year terms. Special Magistrates are subject to removal, with or without cause, from their positions at any time by the City Council in its sole discretion.
- (e) *Not City employees.* Special Magistrates shall not be considered city employees. However, subject to compliance with documentation required by the City Manager or his or her designee, a Special Magistrate may be compensated at a rate to be determined by the City Manager.
- (f) *Jurisdiction.* Special Magistrates shall have jurisdiction over all alleged violations of the provisions of the city code of ordinances except as may otherwise be specifically provided.
- (g) *Powers.* The Special Magistrate shall have the power to:
- (1) Adopt rules for the conduct of its hearings consistent with the City's quasi-judicial procedures, as applicable;
 - (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the police department of the City;
 - (3) Subpoena evidence to its hearings;
 - (4) Take testimony under oath;
 - (5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

Sec. 37.05. Enforcement procedure.

- (a) It shall be the duty of the Code Compliance Officer to initiate code compliance proceedings. The Special Magistrate shall not have the power to initiate compliance proceedings.
- (b) Except as provided in subsection (d), if a violation of any code is found, the Code Compliance Officer shall notify the violator and give a reasonable time to correct the violation. The determination of a reasonable time shall be based upon considerations of fairness, practicality, ease of correction, ability to correct, severity of the violation, nature, extent and probability

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of danger or damage to the public, and other relevant factors relating to the reasonableness of the time period prescribed. In no event, however, should the reasonable time frame exceed a maximum of thirty (30) days. Should the violation continue beyond the time specified for correction, the Code Compliance Officer shall notify the Special Magistrate and request a hearing pursuant to the procedure in section 37.06. ~~The Special Magistrate, through the clerical staff of the City Attorney's Office, shall schedule a hearing.~~ The violator shall be noticed of such hearing in accordance with ~~section 37.10~~ section 37.15.

- (c) ~~The applicable Code Compliance Officer and the violator must attempt to meet face to face at a pre-hearing meeting to resolve disputes. This meeting may take the form of an informal meeting or formal mediation. Prior to the hearing, the Code Compliance Officer must provide a written certification to the Special Magistrate that he or she has attempted to resolve this dispute in good faith but was unable to. Any good faith attempts by the Code Compliance Officer and the violator, prior to the hearing, to resolve disputes may be brought to the attention of the Special Magistrate.~~
- (d) If the Code Compliance Officer has reason to believe a violation, or the condition causing a violation, presents a serious threat to the public health, safety, and welfare, or if the violation is irreparable or irreversible in nature, the Code Compliance Officer shall make a reasonable effort to notify the violator and may immediately notify the Special Magistrate and request a hearing on an expedited basis.
- (e) If the violation is corrected and then recurs, or if the violation is not corrected by the time specified for correction by the Code Compliance Officer, the case may be presented to the Special Magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state.
- (f) If a repeat violation is found, the Code Compliance Officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The Code Compliance Officer, upon notifying the violator of a repeat violation, shall notify the Special Magistrate and request a hearing. The Special Magistrate shall schedule a hearing and shall provide notice pursuant to ~~section 37.10~~ section 37.15. 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 fees upon the violator. The repeat violator may choose to waive his or her rights to this hearing and pay the costs as determined by the Special Magistrate.
- (g) If the owner of property, which is subject to a compliance proceeding before the Special Magistrate, transfers ownership of such property between the time the initial notice was served and the time of the hearing, such owner shall:
 - (1) Disclose, in writing, the existence and the 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 compliance proceeding received by the transferor.

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- (3) Disclose to the ~~prospective~~ transferee, in writing, that the new owner will be responsible for compliance with the applicable code and with orders issued in the code compliance proceeding.
- (4) File a notice with the code compliance division of the transfer of the property, with the identity and address of the new owner and all copies of the disclosures made to the new owner, within five days after the date of the transfer.

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.

- (h) Managers of rental properties may file with the Neighborhood Services Department a list of the properties they manage, along with the name and address of the person whom any courtesy notice provided should be sent. The Neighborhood Services Department may prescribe a required format for the information, so as to best accommodate the provision of courtesy notices. Whenever a notice of violation is provided to the owner or tenant of any property, the Neighborhood Services Department shall attempt to mail a courtesy copy of the notice of violation, as well as any subsequent notice of hearing pertaining to the violation, to the name and address provided by the rental property manager. Failure to mail any courtesy copy shall not, however, affect the validity of any notice of violation, hearing or other procedure or proceeding.

Sec. 37.06. Conduct of hearing.

- (a) Upon request of the Code Compliance Officer, or at such other times as may be necessary, the Special Magistrate may call duly noticed hearings. The Special Magistrate shall attempt to convene no less frequently than once every month, but may convene more or less often as the demand necessitates. Minutes shall be kept of all meetings by the Special Magistrate and all hearings and proceedings shall be open to the public. The City Council 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) The conduct of the hearing shall be governed by the City's quasi-judicial proceedings' general procedures, as applicable.
- (c) ~~Each case before the Special Magistrate shall be presented by the City Attorney of his or her designee.~~ At the hearing, the City shall be represented by the City Attorney's Office.
- (d) The Special Magistrate shall proceed to hear the cases on the agenda for that date. All testimony shall be under oath and shall be recorded. The Special Magistrate shall take testimony from the Code Compliance Officer and the alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern these proceedings.
- (e) At the conclusion of the hearings, the Special Magistrate shall issue an order containing findings of fact based on evidence of record and conclusions of law, and shall issue an order

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affording the proper relief consistent with powers granted herein. The order may include a notice that it must be complied with by a specific date and that a fine may be imposed and that, under the conditions specified in section ~~37.08(a)(1)~~ 37.09(a)(1), the cost of repairs and the cost of compliance may be included along with the fine if the order is not complied with by that date. ~~A certified copy of such order may be recorded in the public records of the county and shall constitute 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 Special Magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A Special Magistrate hearing is not required to issue such an order acknowledging compliance.~~

- ~~(f) If the city 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 any authorized lien.~~
- (f) If the Code Compliance Officer determines that a violation continues after the date for compliance specified by the Special Magistrate's Order, the Code Compliance Officer shall notify the Special Magistrate and request a hearing to determine that amount of the fine, if any, to be imposed.

Sec. 37.07. Evidence and Burden of Proof.

- (a) All evidence shall be admitted at Special Magistrate hearings if, in the opinion of the Special Magistrate, it is the type of evidence upon which reasonable and responsible persons would normally rely on the conduct of business, regardless of the existence of any common-law or statutory rule which might make such evidence inadmissible over objections in civil actions. The Special Magistrate may exclude irrelevant or unduly repetitious evidence.
- (b) Hearsay evidence may be accepted for the purpose of supplementing or explaining any direct evidence, but such hearsay evidence shall not in and of itself be considered sufficient to support a finding or decision unless the evidence would be admissible over objections in a civil action.
- (c) Each party to the hearing shall have the right to:
- (1) Call and examine witnesses;
 - (2) Introduce Exhibits;
 - (3) Cross-examine opposing witnesses;
 - (4) Impeach witnesses; and
 - (5) Rebut evidence.
- (d) At a Special Magistrate hearing, the burden of proof shall be upon the City to show by a preponderance of the evidence that a violation did occur or does exist or has been repeated, or that the violation continued after the date for compliance specified in a previous Special

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Magistrate Order. If proper notice of hearing has been given to the violator consistent with this chapter, a hearing may proceed in the absence of the violator.

Sec. 37.08. Administrative fines; liens.

- ~~(a) (1) The Special Magistrate, upon notification by the Code Compliance Officer that a previous order of the Special Magistrate has not been complied with by the set time, or 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 Compliance Officer. In addition, if the violation is a violation described in section 37.05(d), the Special Magistrate shall notify the City Council, which may make all reasonable repairs required to bring the property into compliance and charge the violator with the reasonable cost of the repairs and cost of compliance along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the city to make further repairs or to maintain the property and does not create any liability against the city for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this section, a hearing shall not be necessary for issuance of the order imposing the fine. The city, having a population greater than 50,000, determines that a fine imposed pursuant to this section shall not exceed \$1,000.00 per day for a first violation and shall not exceed \$5,000.00 per day for a repeat violation, and in addition, may include all cost of repairs and all costs incurred for enforcement of the Code. However, if the Special Magistrate finds the violation to be irreparable or irreversible in nature, it may order the violator to pay a fine not to exceed \$15,000.00 per violation.~~
- ~~(2) In determining the amount of the fine, if any, pursuant to this section, the Special Magistrate shall consider the following factors:~~
- ~~a. The gravity of the violation;~~
 - ~~b. Any actions taken by the violator to correct the violation; and~~
 - ~~c. Any previous violations committed by the violator.~~
- ~~(3) a. The Special Magistrate may reduce a fine imposed pursuant to this section.~~
- ~~b. The Special Magistrate may modify or partially release liens according to the following application guidelines.~~
- ~~1. Application for modification must be made by the violator or owner of the violating property.~~
 - ~~2. Payment in the amount of \$350.00 must be made with the application.~~
 - ~~3. The violation must be cured, and no other violation may be present.~~
 - ~~4. Partial release of lien against a non-offending property will be decided by the Special Magistrate upon application and in the event granted, shall include a provision that~~

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administrative and hard costs attributed to the offending property be paid by the applicant.

5. ~~The prior modifications and releases issued by the Special Magistrate (and previously existing code enforcement board) are hereby approved and ratified.~~

~~(4) A certified copy of an order imposing a fine or a fine plus repair and administrative costs shall be recorded in the public records of St. Lucie County 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, and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. 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 personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any lien, which remains unpaid, the Special Magistrate may authorize the City Attorney to foreclose the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. 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. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under Article X, Section 4 of the State Constitution. A lien arising from a fine imposed pursuant to this section runs in favor of the city council and the city council may execute a release of any lien pursuant to this section.~~

~~(5) The City of Port St. Lucie City Manager or his designee shall have the authority to assign liens to a private third party for collection at its discretion, provided its contract with said third party provides the following:~~

~~a. The city shall retain the power to decide which liens to assign;~~

~~b. The city shall retain the power to decide what collection techniques are permissible and to prohibit use of any technique it finds objectionable;~~

~~c. The city shall retain the power to take back any assigned debt or lien; and~~

~~d. The city shall retain the power to terminate the contract for any or no reason.~~

~~(b) No lien provided under this chapter shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless, within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien or a money judgment, the prevailing party is entitled to recover all costs, including reasonable attorney fees. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers of valuable consideration without notice, unless a notice of lis pendens is recorded. The city council shall be entitled to collect all costs incurred in recording and satisfying a valid lien.~~

Sec. 37.09. Appeals.

~~An aggrieved party, including the City, wishing to appeal any final administrative order of the Special Magistrate to the Nineteenth Judicial Circuit of Florida must do so within thirty (30)~~

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days of the final administrative order which forms the subject of the appeal. 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. Upon filing of any appeal with the Circuit Court, the aggrieved party shall immediately file a copy of the Notice of Appeal with the City Clerk.

Sec. 37.10. Notices.

(a) ~~All notices required by this chapter shall be provided as follows:~~

- ~~(1) Certified mail, return receipt requested to the owner of the property in question at the address listed in the St. Lucie County's Property Appraiser's database. The City may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described herein.~~
- ~~(2) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;~~
- ~~(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), at the option of the City, notice may also be served by publication or posting, as follows:~~

- ~~(1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in St. Lucie County. Proof of publication shall be made by the publisher or Code Enforcement Officer so designated.~~
- ~~(2) In lieu of publication as described in paragraph (1), such notice may be posted at least ten days prior to the hearing or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist, and the other shall be at the Port St. Lucie City Hall for such notices. 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 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). Evidence that an attempt has been made to hand deliver or mail notice, as provided in subsection (a), or 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 as to whether or not the alleged violator actually received such notice.~~

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~~(e) Notices of Hearing:~~

~~(1) All Notices of Hearing before the Special Magistrate shall contain the following:~~

- ~~(a) The name of the Code Compliance Officer who initiated the request for the hearing;~~
- ~~(b) A factual description of the alleged violation of Code;~~
- ~~(c) The date of the alleged violation;~~
- ~~(d) The section of Code allegedly violated;~~
- ~~(e) Information on where to receive a copy of the Official City File;~~
- ~~(f) The place, date and time of the hearing;~~
- ~~(g) The right of the violator to be represented by counsel;~~
- ~~(h) The right of the violator to present witnesses and evidence consistent with the City's quasi-judicial proceedings, as applicable;~~
- ~~(i) A disclosure that failure to attend the hearing may result in a fine being assessed against the violator;~~
- ~~(j) Notice that requests for continuances will not be considered if not received by the Special Magistrate at least five (5) business days prior to the hearing.~~

~~Sec. 37.11. Authority to Adopt Special Magistrate Rules and Regulations.~~

~~The City Council may adopt by resolution such Special Magistrate rules and regulations not inconsistent with Florida Statutes Chapter 162 which the City Council finds necessary to carry out the provisions of this section.~~

~~Secs. 37.12—37.19. Reserved.~~

Sec. 37.08. Waiver of hearing procedure; stipulation and agreed order.

- (a) In the event that a violator agrees with the violation(s) contained in the notice of violation, the violator shall have the option, in lieu of a hearing, to enter into a joint stipulation with the Code Compliance Officer wherein the violator:
 - (1) Admits legal responsibility for the violation(s);
 - (2) Agrees to a date by which the violation(s) must be corrected;
 - (3) Voluntarily waives their right to appear at a hearing before the Special Magistrate; and
 - (4) Agrees to the entry of a Special Magistrate order approving the joint stipulation.
- (b) The joint stipulation must be in writing on a form provided by the Code Compliance Officer. The stipulation shall indicate that the violator has the right to consult with and/or be represented by an attorney, is not required to enter into the stipulation and has the right, instead, to have a hearing before the Special Magistrate at which time the violator can present defenses, facts and arguments.

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- (c) By signing the stipulation, the violator agrees to the entry of an agreed order by the Special Magistrate approving the joint stipulation. The violator is not required to be present at the hearing. The order shall provide that the stipulation has the same effect as an order entered by the Special Magistrate following a hearing, shall include the date by which the violation(s) must be corrected, and shall state that failure to correct the violation(s) by the agreed upon date will result in a hearing before the Special Magistrate to determine whether a fine should be imposed, the amount of the fine, and the imposition of administrative costs and such other relief as may be deemed appropriate. Following the hearing, a lien may be recorded against the property and against all other real and personal property owned by the violator.

Sec. 37.09. Administrative fines; liens.

- (a) (1) The Special Magistrate, upon notification by the Code Compliance Officer that a previous order of the Special Magistrate has not been complied with by the set time, or 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 Compliance Officer. In addition, if the violation or the condition causing the violation presents a serious threat to the public health, safety and welfare, the Special Magistrate shall notify the City Council, which may make all reasonable repairs required to bring the property into compliance and charge the violator with the reasonable cost of the repairs and cost of compliance along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the city to make further repairs or to maintain the property and does not create any liability against the city for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this section, a hearing shall not be necessary for issuance of the order imposing the fine. The city, having a population greater than 50,000, determines that a fine imposed pursuant to this section shall not exceed \$1,000.00 per day for a first violation and shall not exceed \$5,000.00 per day for a repeat violation, and in addition, may include all cost of repairs and all costs incurred for enforcement of the Code. However, if the Special Magistrate finds the violation to be irreparable or irreversible in nature, it may order the violator to pay a fine not to exceed \$15,000.00 per violation.
- (2) In determining the amount of the fine, if any, pursuant to this section, the Special Magistrate shall consider the following factors:
- a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
- (3) The daily fine imposed pursuant to this section shall continue to accrue until:
- a. The violator comes into compliance;
 - b. The accrued amount reaches the maximum, if any, set at the Special Magistrate's discretion; or

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c. Judgment is rendered in a suit to foreclose on a lien filed pursuant to this section.

(4) If the city 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 any authorized lien.

(b) A certified copy of an order imposing a fine or a fine plus repair and administrative costs shall be recorded in the public records of St. Lucie County 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, and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. 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 personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any lien, which remains unpaid, the Special Magistrate may authorize the City Attorney to foreclose the lien or to sue to recover a money judgment for the amount of the lien. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under Article X, Section 4 of the State Constitution. A lien arising from a fine imposed pursuant to this section runs in favor of the city council and the city council may execute a release of any lien pursuant to this section.

Sec. 37.10. Duration of liens.

No lien provided under this chapter shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless, within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien or a money judgment, the prevailing party is entitled to recover all costs, including reasonable attorney fees. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded. The city council shall be entitled to collect all costs incurred in recording and satisfying a valid lien.

Sec. 37.11. Appeals.

An aggrieved party, including the City, wishing to appeal any final administrative order of the Special Magistrate to the Nineteenth Judicial Circuit of Florida must do so within thirty (30) days of the final administrative order which forms the subject of the appeal. 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. Upon filing of any appeal with the Circuit Court, the aggrieved party shall immediately file a copy of the Notice of Appeal with the City Clerk.

Sec. 37.12. Lien reductions.

The Special Magistrate may reduce a fine imposed pursuant to ~~this~~ section 37.09. The following criteria must be complied with prior to a lien reduction hearing being scheduled:

(a) The violations giving rise to the fine must have been corrected and not been repeated.

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- (b) An application for lien reduction must be completed in its entirety and submitted by the violator or the property owner to the lien services division along with a non-refundable application fee of \$350.00.
- (c) If the application is complete and the above criteria have been met, a lien reduction hearing shall be scheduled before a Special Magistrate. The applicant shall be notified of the hearing at least five (5) days prior to the hearing date by regular U.S. Mail to the address provided on the application, by email or by telephone. At the hearing, the applicant may present facts in support of the reduction request but may not relitigate the facts or findings that gave rise to the imposition of the original fine. The Code Compliance Officer may make recommendations regarding the amount, if any, of the lien reduction. Any administrative fees or costs assessed at a prior hearing shall not be reduced.
- (d) In determining whether a lien should be reduced and the amount of such reduction, the Special Magistrate shall consider the following factors:
- (1) The gravity of the violation;
 - (2) The actions taken by the applicant to correct the violations and the time in which it took to bring the property into compliance, and any scheduled maintenance plans to avoid future repeat violations, as appropriate;
 - (3) The accrued amount of the lien;
 - (4) Any previous or subsequent code violations;
 - (5) Any financial hardship; and
 - (6) Any other mitigating circumstance which may warrant the reduction of the lien.

Sec. 37.13. Partial release of lien.

- (a) The Special Magistrate may partially release a non-offending property from a lien on an offending property that attaches to the non-offending property pursuant to section 37.09(b) of this chapter and section 162.09(3), Florida Statutes. The following procedures shall apply:
- (1) An application for a partial release must be submitted by the violator or the property owner to the city's lien services division.
 - (2) A non-refundable payment in the amount of \$350.00 must be made with the application.
- (b) If the request is granted by the Special Magistrate:
- (1) The non-offending property will be released from the lien, but the lien will remain in effect and continue to encumber the property in violation and any other properties subject to the lien pursuant to law.
 - (2) If a partial release is granted, the order shall include a provision that administrative and hard costs attributed to the offending property must be paid by the applicant before the partial release is recorded.
 - (3) The lien services division shall record the partial release of lien in the official records of St. Lucie County.

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Sec. 37.14. Release of unenforceable liens.

(a) A code compliance lien shall be released when it has been deemed in writing by the City Attorney or his or her designee to be legally unenforceable for any of the following reasons:

- (1) The lien is more than twenty (20) years old; except that such lien shall not be released if and action to foreclose the lien has been filed by the city;
- (2) A superior lien was foreclosed by order of the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida and the foreclosure resulted in a sale; however, a release shall not be recorded until the city's share of surplus funds, if any, arising from the sale have been paid to the city;
- (3) After a bankruptcy court grants a motion to value and determine the secured status of the city's lien and rules that the lien shall be deemed void upon entry of discharge; however, the lien shall not be released unless and until the order of discharge is entered;
- (4) The property encumbered by the lien is currently owned by the city;
- (5) The case giving rise to the lien was brought to the Special Magistrate in error or the lien was recorded in error;
- (6) The owner of the property who was given notice of the hearing transferred ownership of the property prior to the hearing without providing to the transferee the disclosures required by Section 37.05(g)(1), (2) and (3).
- (7) Any other reason as determined by the City Attorney that establishes the lien is legally unenforceable.

Sec. 37.15. Notices.

(a) All notices required by this chapter shall be provided as follows:

- (1) Certified mail, return receipt requested to the owner of the property in question at the address listed in the St. Lucie County's Property Appraiser's database. The City may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described herein.
- (2) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;
- (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.

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(b) In addition to providing notice as set forth in subsection (a), at the option of the City, notice may also be served by publication or posting, as follows:

- (1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in St. Lucie County. Proof of publication shall be made by the publisher or Code Enforcement Officer so designated.
- (2) In lieu of publication as described in paragraph (1), such notice may be posted at least ten days prior to the hearing or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist, and the other shall be at the Port St. Lucie City Hall for such notices. 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 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). Evidence that an attempt has been made to hand deliver or mail notice, as provided in subsection (a), or 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 as to whether or not the alleged violator actually received such notice.

(c) Notices of Hearing:

- (1) All Notices of Hearing before the Special Magistrate shall contain the following:
 - (a) The name of the Code Compliance Officer who initiated the request for the hearing;
 - (b) A factual description of the alleged violation of Code;
 - (c) The date of the alleged violation;
 - (d) The section of Code allegedly violated;
 - (e) Information on where to receive a copy of the Official City File;
 - (f) The place, date and time of the hearing;
 - (g) The right of the violator to be represented by counsel;
 - (h) The right of the violator to present witnesses and evidence consistent with the City's quasi-judicial proceedings, as applicable;
 - (i) A disclosure that failure to attend the hearing may result in a fine being assessed against the violator;
 - (j) Notice that requests for continuances will not be considered if not received by the Special Magistrate at least five (5) business days prior to the hearing.

Sec. 37.16. Assignment of liens.

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The City of Port St. Lucie City Manager or his designee shall have the authority to assign liens to a private third party for collection at its discretion, provided its contract with said third party provides the following:

- (a) The city shall retain the power to decide which liens to assign;
- (b) The city shall retain the power to decide what collection techniques are permissible and to prohibit use of any technique it finds objectionable;
- (c) The city shall retain the power to take back any assigned debt or lien; and
- (d) The city shall retain the power to terminate the contract for any or no reason.

Sec. 37.17. Authority to Adopt Special Magistrate Rules and Regulations.

The City Council may adopt by resolution such Special Magistrate rules and regulations not inconsistent with Florida Statutes Chapter 162 which the City Council finds necessary to carry out the provisions of this section.

Sec. 37.18-37.19. Reserved.

ARTICLE III. ENFORCEMENT PROCEDURES AND SCHEDULE OF PENALTIES

Sec. 37.20. Citations; notices to appear; penalties.

- (a) A Code Compliance Officer is authorized to issue a citation or notice to appear to a person when, based upon personal investigation, the Code Compliance Officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the St. Lucie County Court will hear the charge at a specified date and time. A notice to appear means a written order issued by a Code Compliance Officer in lieu of physical arrest.
- (b) Prior to issuing a citation or notice to appear, a Code Compliance Officer or other regulatory agencies as may be appropriate shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a Code Compliance Officer finds that the person has not corrected the violation within the time period, a Code Compliance Officer may issue a citation or notice to appear to the person who has committed the violation. If a repeat violation is found or if the Code Compliance Officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible, or that the violator is engaged in violation of an itinerant or transient nature within the jurisdiction while moving from place to place, a Code Compliance Officer does not have to provide the person with a reasonable time period to correct the violation and may immediately issue a citation or notice to appear.
- (c) A citation or notice to appear issued by a Code Compliance Officer shall be in a form prescribed by the City Council and shall contain:
 - (1) The date and time of issuance.

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- (2) The name and address of the person to whom the citation or notice to appear is issued.
 - (3) The date and time the civil infraction was committed.
 - (4) The facts constituting reasonable cause.
 - (5) The number or section of the code or ordinance violated.
 - (6) The name and authority of the code compliance specialist Code Compliance Officer.
 - (7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
 - (8) The applicable civil penalty if the person elects to contest the citation.
 - (9) The applicable civil penalty if the person elects not to contest the citation.
 - (10) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.
- (d) After issuing a citation or notice to appear to an alleged violator, a Code Compliance Officer shall deposit the original citation or notice to appear and one copy of the citation or notice to appear with the St. Lucie County Court.
- (e) Any person who is issued a citation by a Code Compliance Officer may contest the citation by appearing in the St. Lucie County Court at the date and time specified in the citation and advising the court that they wish to contest the citation and request a hearing on the matter. A hearing shall then take place at a time set by the court to provide the city and the person, to whom the citation was issued, an opportunity to present evidence concerning the violation to the court.
- (f) Penalties. A violation of a code or an ordinance enforced pursuant to such section is a civil infraction. The maximum civil penalty shall not exceed \$500.00. If the person who has committed the civil infraction does not contest the citation, the civil penalty shall be less than the maximum (\$500.00).
- (g) The civil penalty provided for the disposition of a citation issued pursuant to this chapter shall be as follows:

Number of Violations Within Any 12-Month Period	Amount of Fine If Not Contested	Amount of Fine If Contested
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First Offense	\$100.00	\$200.00
Second Offense	300.00	400.00
Third Offense	450.00	500.00

- (h) Any person who willfully refuses to sign and accept a citation or notice to appear issued by a Code Compliance Officer shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.083. If a person issued a notice to appear under this section refuses to sign such notice, the Code Compliance Officer has no authority to arrest such person.
- (i) The provisions of this section shall not apply to the enforcement pursuant to Sections 553.79 and 553.80, Florida Statutes, of building codes adopted pursuant to Section 553.73, Florida Statutes, as they apply to construction, provided that a building permit is either not required or has been issued by the city. For purposes of this chapter, building codes means only those codes adopted pursuant to Section 553.73, Florida Statutes.
- (j) The provisions of this section are an additional and supplemental means of enforcing a code or ordinance. Nothing contained in this section shall prohibit the Special Magistrate from enforcing a code or ordinance by any other means.

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