

**PROCEDURAL RULES
OF THE
HILLSBOROUGH COUNTY
CODE ENFORCEMENT SPECIAL MAGISTRATE**



Amended July 27, 2009

Article I. Name & Rules Citation.

Section 1. **Name.** The name of this Body shall be Hillsborough County Code Enforcement Special Magistrate and its procedures are governed by Chapter 162, Ordinance 05-5 of Hillsborough County as amended, and all other applicable county ordinances and regulations.

Section 2. **Rules Citation.** These rules will be cited as the "Rules and Procedures of the Hillsborough County Code Enforcement Special Magistrate" and abbreviated as "Rules."

Article II. Definitions.

Section 1. Unless stated to the contrary, the following words shall have the meanings stated below:

- a) "Code" shall refer to the ordinances, laws, and regulations of Hillsborough County.
- b) "Magistrate" shall refer to the Code Enforcement Special Magistrate of Hillsborough County.
- c) "Secretary" shall refer to the Citizen Boards Support section of the Communications Department.

Article III. Magistrate Attorney.

The Hillsborough County Attorney, or the Attorney's designee, shall serve as the attorney for and legal advisor to the Magistrate.

Article IV. Meetings.

Formatted: Font: Times New Roman

Section 1. **Scheduling of Meetings.** Regular meetings shall be held in the County Commission Boardroom as scheduling permits. The Magistrate may set, by motion, additional meetings and locations as required. Special meetings may be called by the Magistrate.

Section 2. **Notice.** At least 24 hours advance notice and the nature and purpose of the Special Meeting shall be furnished to the public, Magistrate, appropriate County Departments and the Magistrate Attorney.

Section 3. **Order and Abstention.**

- a) Orders on the disposition of cases shall be announced by the Magistrate.
- b) Pursuant to the Code of Ethics for Public Officers and Employees, adopted by the Legislature as Part III of Chapter 112, Florida Statutes, the Magistrate may not decide upon any measure inuring to the Magistrate's special private gain or loss, or knowingly vote upon any measure inuring to the special gain or loss of any principal (other than an Agency) by whom they are retained. Where such a conflict situation arises, the matter shall be forwarded to the Code Enforcement Board for disposition.

Section 4. **Attendance.**

If the Magistrate fails to attend two (2) of three (3) successive meetings without cause, the office shall be declared vacant and the vacancy shall be filled by appointment by the Board of County Commissioners. The Secretary will be responsible for providing an attendance record.

Section 5. No Code Enforcement Special Magistrate shall have the power to initiate code enforcement proceedings of the various codes, pursuant to Hillsborough County Ordinance 05-5, Section 7(2) and Florida Statute 162.06(1). This prohibition does not preclude a magistrate from reporting an alleged violation to the Code Enforcement Department in their private capacity as a citizen.

Article V. **Conduct of Meetings.**

Section 1. **Procedural Rules.** Generally accepted parliamentary procedures shall prevail.

Section 2. Minutes. The Magistrate may request any corrections to the minutes.

Section 3. Whenever possible, cases heard by the Magistrate shall remain with the Magistrate and not be scheduled for the Board.

Article VI. Notice of Violation and Hearing.

Section 1. Notice of Violation. It shall be the duty of the appropriate departments, or other agencies which may have jurisdiction provided under the Code, to serve notice upon any person or entity, that such person is allegedly violating one or more ordinances of the county. Said notice shall specifically delineate the section of Code alleged to have been violated; the specific nature of the alleged violation, and set a time period in which the alleged violation is to be corrected.

Section 2. Notice of Hearing. In the event that the alleged violation cited in Article VI, Section 1 is not corrected or eliminated within the time period set forth in the notice of violation, then the enforcing department of agency may file an Affidavit of Violation with the Citizen Boards Support Section. The Citizen Boards Support Section shall service a notice with the Affidavit of Violation attached, upon the alleged violator prior to the Magistrate hearing.

Section 3. Service. Service shall be accomplished pursuant to the Code.

Article VII. Hearings.

Section 1. Procedures. The following procedures will be observed in hearings before the Magistrate:

- a) All testifying witnesses shall be sworn.
- b) The Secretary shall call each case and summarize the Notification of Violation for each case, as directed by the Magistrate.
- c) The county department bringing the violation shall present their explanation of the violation. Presentation by the County shall be limited to ten (10) minutes unless extended by the Magistrate. Any extension given shall also be offered to the opposing party.
- d) The respondent shall be asked by the Magistrate if the respondent wishes to contest the charges. Where proper notice of the hearing has been provided the respondent, a hearing may proceed in the absence

Formatted: Font: Times New Roman

of the respondent. Presentation by the respondent shall be limited to ten (10) minutes unless extended by the Magistrate. Any extension given shall also be offered to the opposing party.

- e) The Magistrate may question any witness or call any witnesses the Magistrate feels necessary.
- f) The Magistrate may, in the Magistrate's discretion, continue a hearing at any time and may request further information from either party.
- g) If a hearing is continued, a date certain for the continued hearing shall be announced at the public hearing or a notice shall be provided to the Respondent(s) if a date is not available at the hearing.
- h) Upon completion of all the evidence, the Magistrate shall close the hearing.
- i) Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings.
- j) Irrelevant, immaterial or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the State of Florida.
- k) The Magistrate shall immediately deliberate in open session before the public. Although the public is welcome at the meetings of the Magistrate, they shall not be allowed to participate in or address the Magistrate during deliberation.
- l) The Magistrate shall orally issue an order. The order shall contain findings of fact and conclusions of law and state the affirmative relief granted by the Magistrate. The order may include a notice that the violation must come into compliance by a specified date, and that a fine may be imposed if the order is not complied with by said date. Said order shall be reduced to writing and mailed to the violator within fifteen (15) working days.
- m) The order shall have the force of law to command whatever steps are necessary to bring a violation into compliance, pursuant to Hillsborough County Ordinance 05-5, Section 6(5) and Florida Statute 162.08(5). Only the Code Enforcement Board/Special

Formatted: Font: Times New Roman

Magistrate has the authority to change or amend the order.

Article VIII. Enforcement

Section 1. **Re-inspection.** The Secretary shall cause to be issued an Affidavit of Compliance or an Affidavit of Non-Compliance by the citing department.

Section 2. **Compliance.** When the code inspector files an Affidavit of Compliance on a case with outstanding fines, the Secretary, shall so report to the Magistrate. The Secretary shall bill the violator for the fine and has the discretion to negotiate an installment plan. Final payment under a negotiated payment plan must be made within twelve (12) months of the date of the initial payment, unless otherwise ordered by the Magistrate. Cases that comply with no fines are closed by the Secretary.

Section 3. **Non-Compliance; Authority to place lien.** The Secretary is authorized to file liens on behalf of the Magistrate pursuant to the Code and Article X of these Rules.

Section 4. **Reduction of Fines.** The Magistrate will consider written requests for reduction of fines. The request must state reasons for reduction, ~~and~~ must include any supporting documentation for the Magistrate's consideration and may include a written request to address the Magistrate. The reduction request shall be scheduled to be heard at the next available and appropriate hearing.

If a reduction is granted, the reduced fine must be paid or a promise to pay agreement must be executed within thirty (30) days from the hearing date, unless otherwise specified in the Order. If payment is not made within the specified time or in accordance with a payment plan, the fine shall revert to the original amount minus any payments received. The Secretary shall notify the violator of the results of this review by mail after the Magistrate has made a decision.

Respondent(s) may petition for a reduction of fines only once under this part.

Section 5. **Requests for Extensions.** Requests for additional time to come into compliance must be in writing, stating the reasons for the extension request, circumstances that necessitate additional time for compliance, and how much time is needed. The written request will be scheduled for consideration at the next available hearing. The

Formatted: Font: Times New Roman

violator may include a written request to address the Magistrate. The extension request shall be scheduled to be heard at the next available and appropriate hearing.

Section 6. **Authorization for Foreclosure.** Cases are hereby authorized for foreclosure pursuant to Code and Fla. Stat. Chapter 162. These cases shall be transferred by the Secretary to the County Attorney's Office for enforcement activities. The County Attorney's Office may bring case settlement proposals to the Magistrate for consideration. Decisions on such cases shall be subject to the discretion of the Magistrate. Once a case has been authorized for foreclosure, it shall only return to the Magistrate through the County Attorney's Office.

Article IX. Contest.

Section 1. Upon receipt of an Affidavit of Non-Compliance from the citing department, the Secretary shall send, by certified mail, a notice of non-compliance letter attached to a copy of the Affidavit of Non-Compliance to the Respondent(s).

Section 2. The violator may contest in writing the findings of the code inspector. Such contest must be postmarked within 10 days of the postmark date on the non-compliance notice and mailed to the administrative staff as designated by the Board or Special Magistrate. The non-compliance notice provided under Article VII shall contain the date of the next scheduled Board or Special Magistrate hearing at which time the violator may contest the findings of the code inspector. If the violator, after filing the written contest, fails to attend the next scheduled meeting, the violator's contest shall be considered withdrawn by the Board or Special Magistrate.

Section 3. Any review of a contest heard under this section shall be constrained to whether the code inspector's findings of non-compliance are supported by the evidence presented that the violation as of the date of the inspection remained uncured. At the hearing, the burden of proof shall be upon the violator to show, by a preponderance of the evidence, that a violation did not exist at the time of the inspection. Upon hearing from the violator or his attorney and the administrative staff, the Magistrate shall either dismiss the case or uphold the finding of the code inspector.

Article X. Lien.

Section 1. Following the failure of the violator to file a contest within the time

Formatted: Font: Times New Roman

permitted under the above section, or the upholding of the finding of the code inspector by the Board or Special Magistrate, a certified copy of an order imposing a fine, including any such costs incurred in prosecuting the case and any repair costs, may be recorded by the Secretary in the public records of Hillsborough County, Florida.

Article XI. Appeal.

Section 1. Pursuant to the Code, an aggrieved party may appeal a ruling or order of the Magistrate to Circuit Court. An appeal must be filed with the Secretary and a copy with the Circuit Court within thirty (30) days after execution of the Magistrate's Order. The Secretary shall time/date stamp each appeal received. Unless otherwise directed by law, the Rules of Appellate Procedure shall govern this process.

Section 2. The Magistrate adopts the costs outlined in Chapter 119, et. seq., Florida Statutes, as the reasonable charges required for the preparation of the record to be paid by the appealing party.

Article XII. Rehearings.

Section 1. Any request for rehearing of a matter must be in writing stating the reason(s) for the rehearing. The written statement must explain the error made during the initial hearing or present newly discovered evidence which was in existence during the initial hearing.

Section 2. The request for rehearing must be made within ten (10) days of the execution of the Magistrate's original order. Consideration of a request for rehearing shall be scheduled by the Secretary for the next available hearing date by the entity that issued the order.

Section 3. Pursuant to the Code, any request for rehearing must be made in writing and be based on the following grounds:

- (a) That there exists new and material evidence which, if introduced at the hearing, would probably have changed the Magistrate 's decision and could not with reasonable diligence have been discovered before and produced at the hearing; and,
- (b) Given this evidence, the order issued is contrary to the law and evidence.

Section 4. A request for rehearing shall not toll the time for the taking of an appeal nor shall it toll any fines mandated by the order in question,

should the request for rehearing be denied.

Section 5. If the request for rehearing is granted, the Magistrate shall schedule the case for consideration at a future hearing, to be heard de novo.

Article XIII. Postponement Policy

Section 1. All requests by respondents for postponement must be in writing at least five (5) working days prior to the hearing.

Section 2. All requests by respondents shall give valid reason(s) why the postponement is sought.

Section 3. All requests by the respondents shall be submitted to the Secretary which shall seek a recommendation from the department issuing the citation.

Section 4. Requests for postponement to which there is no objection by the citing department, shall be handled as a routine report without the need of the presence of the respondent.

Section 5. A postponed case shall automatically be heard at the next Magistrate meeting. Additional requests for postponement will require the respondent (or his representative) to be present to explain why additional time is necessary and if granted, shall then constitute a continuance the length of which shall be established by the Magistrate.

Article XIV. Miscellaneous

Section 1. **Rule Changes.** These rules and regulations may be amended during regular meeting by decision of the Magistrate.