



**AGENDA
CITY OF HAINES CITY, FLORIDA
CITY COMMISSION WORKSHOP**

September 7, 2017

6:00 PM

Mayor H.L. Roy Tyler

Vice-Mayor Morris West

Commissioner Horace West

Commissioner Don Mason

Commissioner Anne Huffman

COMMISSION CHAMBERS

620 E. Main Street, Haines City, FL 33844

Phone: 863-421-9921

Web: hainescity.com

- 1. CALL TO ORDER**
- 2. PRESENTATIONS AND DISCUSSIONS**
 - 2.A. CODE ENFORCEMENT PROCESS**

Staff Contact: Fred Reilly, City Attorney (863) 421-3650

- 3. AGENDA REVIEW**
- 4. ADJOURNMENT**

Website Address – hainescity.com

NOTICE – Pursuant to Section 286.0105 of the Florida Statutes, if any person decides to appeal any decision made by the City Commission with respect to any matter considered at this public meeting, such person will need a record of the proceedings and for such purpose, such person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.



For special accommodations, please notify the City Clerk's Office at least 72 hours in advance.
Phone: 863-421-9921



Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the City Clerk's Office.

In accordance with the Americans with Disabilities Act (ADA), persons with a disability, such as a vision, hearing or speech impairment, or persons needing other types of assistance, and who wish to attend City Commission meetings or any other board or committee meeting may contact the City Clerk's Office in writing, or may call 863-421-9921 for information regarding available aids and services.

MEMORANDUM

**TO: MAYOR ROY TYLER, VICE-MAYOR MORRIS WEST,
COMMISSIONER HORACE WEST, COMMISSIONER DON MASON,
COMMISSIONER ANNE HUFFMAN AND CITY MANAGER RICK
SLOAN**

FROM: FRED REILLY, CITY ATTORNEY

RE: CODE ENFORCEMENT PROCESS

DATE: AUGUST 29, 2017

I. PURPOSE OF MEMORANDUM.

The purpose of the presentation at the City Commission Workshop on September 7, 2017 is to brief the City Commission on the City's code enforcement process.

II. MAIN POINTS.

- A. City Commission's delegation of authority to a Special Master.
- B. Role of the Special Master- impartial hearing officer.
- C. Jurisdiction is not exclusive – see Section 2-36.
- D. Role of the Code Enforcement Officer.
- E. Enforcement procedures.
- F. Due process, hearing procedures, and appeal.
- G. Role of City Commission and ethical considerations.

ARTICLE III. - CODE ENFORCEMENT^[3]*Footnotes:*

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Cross reference— *Building codes adopted, Ch. 7; drug related public nuisances abatement board, § 8.5-17 et seq.; fire code adopted, § 10-1; occupational licenses, § 12-1 et seq.; zoning, Ch. 28.*

Sec. 2-31. - Title.

This article may be known and cited as the "Code Enforcement Ordinance of the City of Haines City, Florida."

(Ord. No. 746, § 1, 8-17-89)

Sec. 2-32. - Intent.

It is the intent of this article to promote, protect and improve the health, safety and welfare of the citizens of the City of Haines City by providing an equitable, expeditious, effective and inexpensive method of enforcing the codes of the city.

(Ord. No. 746, § 2, 8-17-89)

Sec. 2-33. - Authority.

Ordinance No. 746, as amended by Ordinance No. 05-1159, creating a special master code enforcement system is enacted pursuant to F.S. ch. 162 (2004) as supplemented, the City Charter, General and Special Laws of Florida.

(Ord. No. 746, § 3, 8-17-89; Ord. No. 05-1159, § 1, 4-7-05)

Sec. 2-34. - Definitions.

In this article, the following terms shall have the following meanings:

City commission: The governing body of the city.

Code inspector: Those authorized agents or employees of the city whose duty it is to ensure code compliance with the codes which are subject to this article.

Special master: Shall be that special magistrate appointed by the city commission from time to time as contemplated by F.S. § 162.03(2).

(Ord. No. 746, § 4, 8-17-89; Ord. No. 05-1159, § 2, 4-7-05)

Sec. 2-35. - Function.

The special master shall have the purpose of conducting hearings relating to the enforcement and violation of the occupation license, fire, building, zoning, sign and related codes in force in the City of Haines City. It is not the function of the special master to initiate enforcement proceedings or to inspect for code violations. It is intended that the special master sit as an impartial hearing officer to determine, based on evidence presented during the hearing, if a violation exists.

(Ord. No. 746, § 5, 8-17-89; Ord. No. 05-1159, § 3, 4-7-05)

Sec. 2-36. - Creation, appointment, powers, and duties of special master.

- (a) There is hereby created within the city pursuant to F.S. § 162.03(2) an alternate code enforcement system which gives a special master and alternate special master designated by the city commission the authority to conduct hearings and impose and authorize the collection of fines and costs against pending or repeat violators of city codes and ordinances. The special master and alternate special master shall have the same purpose, power, status and procedural requirements of the code enforcement board repealed by Ord. No. 05-1159, enacted on April 7, 2005.
- (b) The special master shall be an attorney who resides in Polk County, or has a place of business located in Polk County, who possesses an outstanding reputation for civic pride, interest, responsibility, and business or professional ability. The appointment shall be made by the city commission on the basis of experience or interest in the fields of zoning, building control and code enforcement. The city clerk shall process all applications for appointment as special master or alternate special master.
- (c) The special master and alternate special master shall serve at the pleasure of the city commission, and shall not be deemed a city employee.
- (d) The special master and alternate special master shall be compensated for performing said service.
- (e) The alternate special master shall satisfy the same appointment requirements, possess the same powers as the special master and shall perform special master duties whenever the special master is unavailable due to illness, conflict of interest or otherwise.
- (f) The city shall provide such clerical, administrative personnel and legal services deemed reasonably necessary to support the special master activities and assist in the proper performance of duties. The special master shall not be authorized to engage, hire, or use any person, except those provided by the city to assist in the performance of duties.
- (g) The special master and alternate special master shall have the jurisdiction and authority to hear and decide any other code enforcement matters the city commission shall determine is appropriate.
- (h) The special master and alternate special master shall have the jurisdiction and authority to affirm or modify penalties imposed by the code enforcement board whose jurisdiction was repealed effective this date, April 7, 2005.
- (i)

The special master and alternate special master shall have the jurisdiction and authority to determine the amount of reasonable expenses incurred by the city as a result of orders issued pursuant to the authority granted herein.

- (j) The jurisdiction of the code enforcement special master and alternate special master shall not be exclusive. Any alleged violation of any code and ordinance may be pursued by appropriate remedy in court at the option of the administrative official whose responsibility it is to enforce that respective code or ordinance and nothing shall prevent the city from taking such other lawful action, including but not limited to resorting to equitable action, as is necessary to enforce the provisions of respective city codes or ordinances.

(Ord. No. 746, § 6, 8-17-89; Ord. No. 05-1159, § 4, 4-7-05)

Sec. 2-37. - Rehearing of code enforcement special master action.

- (a) Either the code enforcement officer or the violator may request a rehearing of the decision of the special master or alternate special master. A request for rehearing shall be made in writing, and shall be delivered to the city clerk within ten (10) days of the date that the order of the special master or alternate special master is mailed pursuant to Florida Statutes, Chapter 162. A request for rehearing shall be based only on the grounds that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law, which was fundamental to the decision of the special master or alternate special master. The written request for rehearing shall specify the precise reasons therefore.
- (b) The special master or alternate special master shall make a determination as to whether to rehear the matter. If the special master or alternate special master determines a rehearing should be granted, the special master or alternate special master may:
- (1) Schedule a hearing where the parties will be given the opportunity to present limited evidence or argument as to the special reasons for which the rehearing was granted; or
 - (2) Modify or reverse the prior order, without receiving further evidence, providing the change is based on a finding the prior decision of the special master or alternate special master resulted from a ruling on a question of law which the special master or alternate has determined to be an erroneous ruling.
- (c) Until the request for rehearing has been denied or otherwise disposed of, the order of the special master or alternate special master shall be stayed, and the time for taking an appeal, pursuant to section 2-43 shall not commence to run until the date upon which the special master or alternate special master has finally disposed of the request for rehearing by denying the same or otherwise.

(Ord. No. 05-1159, §§ 7, 11, 4-7-05)

Sec. 2-38. - Code enforcement special magistrates to serve as local hearing officers.

- (a) *Designation of local hearing officers.* Effective July 1, 2013, the city's code enforcement special magistrates are designated to serve as local hearing officers, as set forth at Section 4 of Chapter 2013-160, Laws of Florida.
- (b) *Authorization to the city manager.* The city manager is authorized to use code enforcement staff to implement the authorizations contained in Chapter 2013-160, Laws of Florida, and to have the code enforcement staff members serve as the clerk to the local hearing officer.

(Res. No. 13-1043B, §§ 2, 3, 6-20-13)

Editor's note— Ord. No. 05-1159, § 5, adopted April 7, 2005, repealed former §§ 2-37, 2-38 in their entirety which pertained to the former code enforcement board and derived from Ord. No. 746, §§ 7, 8, adopted August 17, 1989. Res. No. 13-1043B, adopted June 20, 2013, did not specifically amend the Code and has been included herein as a new § 2-38 at the discretion of the editor.

Sec. 2-39. - Enforcement procedures.

Except where the code inspector charged with enforcing a particular code has reason to believe that a code violation presents serious threat to the public health, safety and welfare, the code enforcement procedure under this article shall be as follows:

- (1) It shall be the duty of the code inspector to initiate enforcement proceedings with respect to each code; the special master shall not have the power to initiate enforcement proceedings.
- (2) Where the code inspector finds a code violation, he shall provide in writing a reasonable time within which to correct the violation. Should the violation continue beyond the time specified in the correction notice, then the code inspector may file an affidavit of violation with the special master. The special master or its clerk shall assign a case number and mail a copy of affidavit of violation and notification of the date, time and place of the hearing to the violator. Reasonable time shall be ten days; however, where a different time period in which to correct the violation is provided for by the ordinance being enforced, that time period shall constitute reasonable time for that particular violation or in cases of more complexity a greater time period may be granted by the board or its clerk.
- (3) If the code inspector has reason to believe a violation presents a serious threat to the public health, safety or welfare, the code inspector may proceed to request an emergency hearing before the special master, notifying the violator, if practical, by any available means. But failure to give notice shall not invalidate emergency action.

(Ord. No. 746, § 9, 8-17-89; Ord. No. 05-1159, § 6, 4-7-05)

Sec. 2-40. - Additional powers.

The special master shall have the power to:

- (1) Adopt rules for the conduct of its meetings and hearings.
- (2) Serve respondents and subpoena witnesses to hearings. Subpoenas may be served by the city police department.
- (3) Subpoena records, surveys, plats and other documents or materials for its hearings.
- (4) Take testimony under oath.
- (5) Issue orders having the force and effect of law which can command whatever steps are necessary to bring a violation into compliance, such decision to be made at the hearing and reduced to writing and mailed to the respondent(s) within ten (10) days thereafter.
- (6) Establish fines.
- (7) Issue emergency orders when a violation presents a serious threat to the public health, safety or welfare.

(Ord. No. 746, § 10, 8-17-89; Ord. No. 05-1159, § 7, 4-7-05)

Sec. 2-41. - Hearing procedures.

- (a) Each case before the code enforcement special master or alternate special master shall be initiated and presented by a member of the city code enforcement staff. The burden of proof shall be upon the city code enforcement staff to show, by a preponderance of the evidence, a violation does exist. In the event multiple violations are alleged, the respondent shall not be entitled to separate hearings thereon, unless ordered by the special master or alternate special master.
- (b) The city attorney shall act as the attorney for the code enforcement special master and alternate.
- (c) All hearings shall be held in a designated city facility accessible to the general public.
- (d) All hearings before the special master or alternate special master shall be conducted so as to ensure fundamental due process.
- (e) The case on behalf of the city shall be presented first, and the respondent or his duly designated representative, shall then be provided an opportunity to present his case.
- (f) The special master or alternate special master shall take testimony from any witness having knowledge concerning a hearing on a case. All testimony shall be under oath. The special master or alternate special master shall have the power to administer on oath to any witness. Upon direction of the special master or alternate, each party shall be permitted the opportunity to inquire of any hearing witness.
- (g) The special master or alternate special master shall not be bound by formal rules of evidence. 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 a court of law within the state.
- (h)

As soon as practicable after the conclusion of the hearing, the special master or alternate special master 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 powers granted herein and consistent with F.S. ch. 162.

- (i) The special master or alternate special master shall be bound by the interpretations and decisions of duly authorized boards of the city concerning the provisions of the codes, ordinances and regulations within their respective jurisdictions.
- (j) The special master or alternate special master shall have powers consistent with F.S. ch. 162 to adopt rules for the conduct of its hearings; subpoena to its hearings alleged violators, witnesses and evidence; take testimony; and issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

(Ord. No. 746, § 11, 8-17-89; Ord. No. 05-1159, § 8, 4-7-05)

Sec. 2-42. - Administrative fines; costs of repair; liens.

- (a) The special master, upon notification by the code inspector that an order of the special master 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 master 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 a violation described in F.S. § 162.06(4), the special master shall notify the city commission, 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. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine.
- (b) (1) A fine imposed pursuant to this section shall not exceed two hundred fifty dollars (\$250.00) per day for a first violation and shall not exceed five hundred dollars (\$500.00) per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection 12(a) hereof.
- (2) In determining the amount of the fine, if any, the enforcement board 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 special master may reduce a fine imposed pursuant to this section.
- (c) A certified copy of an order imposing a fine 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 may be enforced in the

same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the City of Haines City, and the local city commission 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 enforcement board may authorize the city attorney to foreclose on the lien. No lien created pursuant the provisions of this part may be foreclosed on real property which is a homestead under Section 4, Art. X of the State Constitution.

- (d) Duration of lien. No lien provided under the local government code enforcement boards act 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 to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall no be good against creditors of subsequent purchasers of valuable consideration without notice, unless a notice of lis pendens is recorded.

(Ord. No. 746, § 12, 8-17-89; Ord. No. 881, § 1, 4-5-95; Ord. No. 05-1159, § 9, 4-7-05)

Sec. 2-43. - Appeal.

Any aggrieved party, including the city, may appeal a ruling or order of the special master to the circuit court of Polk County. The appeal provided for herein shall be filed within thirty (30) days of the order to be appealed. The record shall be presented to the court on appeal.

(Ord. No. 746, § 13, 8-17-89; Ord. No. 05-1159, § 10, 4-7-05)

Sec. 2-44. - Notices.

All notices required to be provided by this article shall be by certified mail, return receipt requested, or, where mail would not be effective, by hand delivery by the code inspector or city police, except emergency hearings or action which may be by any available means, if practical.

(Ord. No. 746, § 14, 8-17-89)

Sec. 2-44.5. - Citations and penalties.

- (a) A police officer, code inspector or public safety aide (in this section, such an individual is referred to as a "code officer") is authorized to issue a citation to a person when, based upon personal investigation, the code officer has reasonable cause to believe that the person has committed a civil infraction in

violation of a duly enacted code or ordinance.

- (b) Prior to issuing a citation a code officer shall (i) provide notice to the person that the person has committed a violation of a code or ordinance, and (ii) establish a reasonable time period within which the person must correct the violation. Such time period will be no more than thirty (30) days. If, upon personal investigation, a code officer finds that the person has not corrected the violation within the time period, a code officer may issue a citation to the person who has committed the violation.

If a repeat violation is found or if the code 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 officer does not have to provide the person with a reasonable time period to correct the violation and may immediately issue a citation.

- (c) A citation issued by a code officer will either be personally served by the code officer to the individual or mailed by first class. The refusal of a person to sign the citation shall not affect the validity of the citation. The citation will contain:

- (1) The date and time of issuance.
- (2) The name and address of the person to whom the citation 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 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 before the city's special master 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) Upon receipt of the citation, the person must either pay the fine to the city within fifteen (15) days from the issue date, or, within the specified time period, contest the fine by filing a request for hearing. Any person that receives a citation may contest the citation by filing a written request for hearing and providing the written request to the clerk for the city's code enforcement division within fifteen (15) days from the citation issue date. Upon the filing of a request for hearing, the city will proceed with scheduling and holding a hearing on the matter before the city's special master. A failure to file a timely request for hearing will waive the right to a hearing before the special master.

- (e) A violation of a code or an ordinance enforced pursuant to such section is a civil infraction. The maximum civil penalty shall not exceed five hundred dollars (\$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 (five hundred dollars (\$500.00)).

(f) The civil penalty provided for the disposition of a citation issued pursuant to this section except for on-street parking shall be as follows:

Number of Violations Within Any 12-Month Period	Amount of Fine if Not Contested	Amount of Fine if Contested	Amount of Fine if Found Not Guilty
First offense	\$ 50.00	\$ 90.00	No fine
Second offense	150.00	240.00	No fine
Third offense	225.00	315.00	No fine
Subsequent offenses	450.00	500.00	No fine

(g) The civil penalty provided for the disposition of a citation issued pursuant to this section for on-street parking shall be as follows:

Number of Violations Within Any 12-Month Period	Restricted Parking
First offense	\$ 25.00
Second offense	75.00
Third offense	112.00
Subsequent offenses	225.00

Attachment: Code Enforcement Provisions Haines City, FL Code of Ordinances 08292017 (Code Enforcement Process)

- (h) 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 master from enforcing a code or ordinance by any other means.
- (i) An order of the special master containing findings of fact and conclusions of law that a violation of the City Code has occurred shall be a final administrative order as provided in F.S. § 162.11. Any appeal taken from the order must be filed within 30 days of the execution of the order as provided in F.S. § 162.11. An order imposing fine, entered for failure to comply with an order of the code officer, shall be considered a final administrative order for the purposes of an appeal. Failure to file an appeal within the thirty-day period shall render the order of the special master conclusive, binding and final.
- (j) Any person who willfully refuses to sign and accept a citation issued by a code officer shall be guilty of a misdemeanor of the second degree, punishable as provided in sections F.S. § 775.082 or § 775.083.
- (Ord. No. 10-1379, § 2, 12-2-10)