

## **SPECIAL MAGISTRATE CODE COMPLIANCE PROCEDURES**

### ***I. Definitions***

- A. "Agenda" means the list of cases scheduled to be heard by a Special Magistrate.
- B. "Attorney" means a person admitted to practice law in the State of Florida, and who is a member in good standing with the Florida Bar.
- C. "City" means the City of Key Colony Beach, Florida. When the context indicates the party prosecuting the case on behalf of the City, the term refers to either the City Attorney, the Inspector, or both, as the context or circumstances may warrant.
- D. "City Attorney" means the office of the City Attorney, the City Attorney, or an attorney representing the City, as the context or circumstances warrant.
- E. "Clerk" means the Clerk assigned to coordinate cases to be heard by the Special Magistrate for Code Compliance, City of Key Colony Beach.
- F. "Code" means the City of Key Colony Beach Code of ordinances, and the South Florida Building Code, Monroe Edition, or any other Code incorporated within the foregoing Codes, when the context so indicates. The term also includes any ordinance of Monroe County, or law of the State of Florida, which the City of Key Colony Beach has authority to enforce by the code compliance procedure.
- G. "Compliance date" means the date upon which a Respondent is required to bring the subject property into compliance with respect to one or more violations.
- H. "Counsel" means an attorney.
- I. "Department" refers to the Division or Department or other Agency of the City of Key Colony Beach, having the authority to enforce or prosecute Code violations.
- J. "Division" refers to the Division or Department or other Agency of the City of Key Colony Beach, having the authority to enforce or prosecute Code violations.
- K. "Inspector" means an authorized agent or employee of the City whose duty includes inspecting for, and reporting, violations of the Code.

- L. "Judicial Notice" is the acceptance or recognition of a fact or matter as being true or as having been established, without the necessity of independent proof. Laws, matters of common knowledge, and records of the Special Magistrate are typical subjects of "judicial notice".
- M. "Notice of Hearing" means any paper served on a respondent, when the paper includes notice that a hearing will be held on a specific date, at a specific time and at a specific location. The term includes Orders which contain a provision continuing a hearing to, or setting a hearing on, a particular date.
- N. "Owner" means the person or persons reflected as the property owner in the most recently certified real property ad valorem tax rolls of Monroe County, or other official documentation contained within the public records of the City of Key Colony Beach or Monroe County. Additionally, in the case of multiple or joint ownership, notice to one owner shall be considered as notice to all multiple or joint owners.
- O. "Penalty Hearing" means a hearing at which evidence may or may not be taken, but at which a Special Magistrate may assess a fine or penalty.
- P. "Property" means the property on which, or with respect to which, a violation occurs.
- Q. "Recurring Violation" means a violation of a provision of the Code or an ordinance which:
  - (1) was previously cited against a respondent, and (2) was corrected (or otherwise brought into compliance) without an Order being entered reciting the existence of the violation, and (3) the same violation was allowed to again occur on the same property by the same respondent.
- R. "Repeat Violation" means a violation of a provision of the Code or of an ordinance by a person who has been previously found through Special Magistrate or County Judge to have violated, or who has admitted violating the same provision within five (5) years prior to the violation, notwithstanding that the violations occur at different locations.
- S. "Representative" means any person, other than an attorney, who appears on behalf of a respondent.
- T. "Respondent" see definition of "Owner".
- U. "Special Magistrate" means a Special Magistrate of Code Compliance, duly appointed by the Key Colony Beach City Commission.

- V. "Tax Roll Address" means the address of the property owner, as reflected in the latest copy of the Monroe County Real Property Ad Valorem Tax Roll, for the property which is the subject of a violation.
- W. "Violation Hearing" means an evidentiary hearing at which a Special Magistrate may determine that a violation has occurred.
- X. "Working Day" means a day which is neither a Saturday, nor a Sunday, nor a holiday observed by the City by closing of nonessential services and departments.

## **II. General**

- A. Copies of notices, Orders and other communications other than the initial service of Notice of the Violation Hearing, may be personally served on respondent, but otherwise shall be mailed to respondent at the tax roll address unless:
  - 1) The City determines a different address should be used, and the address used satisfies requirements of due process and notice;
  - 2) The respondent was served at an address different from the tax roll address, in which case the address of service may be used if it satisfies the requirements of due process and notice;
  - 3) Respondent shall have specified in writing another address to which items should be sent, the specified address shall be used.
- B. Hearings may not commence prior to the time specified in the Notice of Hearing, unless all parties are present and do not object.
- C. Agendas are maintained by, and compiled by, the Clerk.
- D. Under every proceeding by or before the Special Magistrate, fundamental due process shall be observed.
- E. All copies of notices, motions, Order, pleadings, and other papers which are furnished to the City or required to be served upon the City shall be sent to or served on the Clerk for the Special Magistrate, unless the City Attorney shall request otherwise.
- F. In all proceedings in which the city may have the right under federal or state statutory or case law, or by contract, to seek reimbursement for attorney's fees, charges, or other costs incurred by the city attorney's office personnel, the city attorney shall actively pursue obtaining a judgment in favor of the city for such fees, charges, and costs. The basic

hourly rates for services rendered by city attorney's office attorneys and staff for which reimbursement is sought shall be established in accordance with the hourly rates in the city attorney's contract.

### **III. Violation Hearing**

#### **Notice:**

- A. **Required Notice.** The Clerk shall provide the respondent with at least seven (7) business days' written notice of the hearing.
- B. **Notice to Reflect Violations.** The notice shall either recite the nature of the violation and the code section or ordinance violated or reflect that a copy of the Notice of Violation is attached.
- C. **Other Notice Requirements.** The notice shall contain, or have attached, the following statement:

"If you wish to be represented by an attorney, you or your attorney should provide written notification to the Clerk at least three (3) business days before the scheduled hearing date, giving the name, address and phone number of your attorney. Failure to do so may result in your case not being called for hearing on the date or time scheduled."
- D. **Abatement and Repair.** The notice shall contain a statement that if a violation is found and determined to present a serious threat to the health, safety, and welfare of the community, an Order abating or repairing the violation by City forces may be made with charges to the property owner.
- E. **Notice to Contain Possibility of Fine.** The notice shall contain an admonition that a fine may be imposed at the Violation Hearing, or may be deferred to a Penalty Hearing, and shall recite the maximum fines which may be imposed.
- F. **Recurring Violations.** If the alleged violation is a recurring violation, the Notice of Hearing must recite that the alleged violation is a recurring violation, and if the property is again brought into compliance before the hearing, the Special Magistrate shall make a determination that future findings of the same violation shall make said violations eligible to be fined in the amount of repeat violations.
- G. **Service.** The initial Notice of Violation Hearing shall be served:
  - 1) by hand delivery to the respondent; or

- 2) by leaving the notice at the respondent's usual place of residence with a person residing therein who is above 15 years of age, and informing that person of the contents of the notice; or
- 3) by Certified Mail, with evidence of delivery; or
- 4) by publication, as provided in Chapter 162, Florida Statutes, provided a copy shall also be mailed to respondent by U.S. First Class Mail; or
- 5) by posting as provided in Chapter 162; or
- 6) by any other method allowed by law.

H. ***Individuals Authorized to Serve Process.*** Unless otherwise provided, service by delivery or substitute service may be accomplished by:

- 1) any Sheriff or other Law Enforcement officer; or
- 2) any Inspector; or
- 3) any duly licensed and authorized process server.

I. ***Subpoenas.***

The Department or the respondent or the attorney for either may request that witnesses be subpoenaed or that records, or other tangible items be subpoenaed for the Hearing.

- 1) Subpoenas shall be prepared by the Clerk for issuance by the Special Magistrate. The Special Magistrate may require a showing of good cause as a condition before a Subpoena will be issued.
- 2) Subpoenas may be served by Key Colony Beach Police officers, or by any other party authorized by law to serve subpoenas.
- 3) An Affidavit of Service shall be completed for each subpoena served and shall be retained in the Clerk's files.
- 4) Respondent shall pay to the City a fee of \$25.00 for each subpoena to be served or to be attempted to be served on behalf of the respondent, and shall furnish the Clerk a pre-stamped, pre-addressed envelope if respondent wishes a copy of the Affidavit of Service, or a note that service was not obtained.

J. ***Purpose.*** The Special Magistrate will hear and shall consider the testimony and the other evidence presented. Following presentation of testimony and other evidence, the Special Magistrate may render a decision and enter such Orders as shall be appropriate and just.

**K. *Calling of Cases on Agenda.***

- 1) The cases *on* the agenda shall be called at the direction of the Special Magistrate, and cases may not necessarily be called in the Order in which the cases appear on the agenda.
- 2) Cases involving attorneys may be specially set at the discretion of the Special Magistrate.

**L. *Procedure***

Hearings will be generally conducted as follows:

- 1) Opening statements (about what each side expects the evidence to show) may be permitted by the Special Magistrate but are not required. When permitted, the City Attorney or the Inspector explains what the City expects to show, and the respondent or the respondent's attorney explains what the respondent plans to show.
- 2) Case in chief: The City is expected to present its case, and the respondent may cross-examine the city's witnesses. "Cross-examine" means to ask questions of the witness, and does not mean to argue with the witness, nor to explain why you may disagree with the witness.
- 3) Defense: Respondent may put on its defense to the alleged violation(s), and the City may cross-examine the Respondent's witnesses.
- 4) Rebuttal: The Special Magistrate may permit the City to rebut the respondent's case and to present additional evidence; and the Special Magistrate may, under special circumstances, permit the respondent to respond to the City's rebuttal evidence and to present additional evidence.
- 5) Closing arguments and recommendations: The Special Magistrate may permit the City to summarize its case, argue issues of fact and law, and make a recommendation as to the disposition of the case. The Special Magistrate may, and if the City is permitted to make closing argument, the Special Magistrate shall, permit the respondent or its attorney to summarize its case, argue issues of fact and law, and make a recommendation as to the disposition of the case.
- 6) Disposition by the Special Magistrate: The Special Magistrate may, at his or her discretion and depending upon the relevant circumstances, take a case under advisement and enter an Order at a later date and time.

**M. Rules.**

- 1) The Special Magistrate may, at any time, interject questions, either as to the facts or as to matters of law and procedure.
- 2) Parties may object to questions whether posed by the other party or by the Special Magistrate.
- 3) The Special Magistrate may permit deviations from these hearing procedures, if he deems it appropriate, provided he may never deny a respondent an opportunity to be heard before ruling against the respondent.

**N. Evidence.**

While the Florida Evidence Code does not apply to Code Compliance hearings, basic principles of objections and exclusion of evidence may be followed when evidence offered lacks probative value.

- 1) In general, evidence which is relevant will be admitted if, in the opinion of the Special Magistrate, it is the type of evidence upon which reasonable and responsible person would normally rely in the conduct of everyday business and other affairs. Relevant evidence is evidence which tends to prove or disprove a matter in issue.
- 2) Irrelevant, repetitious, and other evidence which lacks probative value may be excluded.
- 3) Hearsay evidence, while admissible, will normally be accepted for the purpose of supplementing or explaining direct evidence, but hearsay evidence is not normally considered sufficient to support a finding or decision unless such evidence would be admissible as *an* exception to the Hearsay Rule under the Florida Evidence Code.
  - a) Proceeding in Absentia - If written notice of the Hearing has been duly served upon a respondent, the Special Magistrate may, upon review of the file, conduct the hearing in absentia, and may render Orders in the same manner as if the respondent were present and standing mute.
  - b) At the conclusion of the presentation of each case, the Special Magistrate may make such findings of fact and conclusions of law as may be appropriate and issue an Order which may dismiss the case, reach a decision in accordance with the purpose of the Hearing, continue the case to a date certain or indefinitely until reset, or provide for such other action as may be appropriate and proper.

c) Standard of Proof - The standard of proof which will be used is the greater weight of the evidence.

d) Recurring Violations - If the alleged violation is a recurring violation, the City shall present evidence at the violation hearing to support the allegation that the violation is a recurring violation. The Special Magistrate may take "judicial notice" of matters in previous cases and other City files.

e) Repeat Violations - if the alleged violation is a repeat violation, the City shall present evidence at the penalty hearing to support the allegation that the violation is a repeat violation. The Special Magistrate may take "judicial notice" of matters in previous cases and other City files.

f) Dismissals - The City Attorney or the assigned Inspector may at any time move to dismiss a case. The Special Magistrate may make an appropriate inquiry prior to exercising discretion to grant a Motion to Dismiss.

g) Stipulations:

1. At any time prior to a case being called, a respondent may enter into a stipulation with the City agreeing to any matter, including but not limited to the following:

a. That the respondent has, in fact, committed a violation, or that a violation has occurred on respondent's property.

b. That the violation shall be corrected on or before a specific date, subject to approval by the Special Magistrate.

c. That the penalty for allowing the violation to continue beyond the specified date shall be fixed at a given amount, subject to approval by the Special Magistrate.

2. A stipulation for a compliance date may be disapproved if the Special Magistrate finds it to be excessively liberal or restrictive, and a penalty agreement may be disapproved if the special Magistrate finds it to be grossly excessive or grossly insufficient. The Special Magistrate may, but has no obligation, suggest a modification which will be acceptable. Upon disapproval of any portion of a stipulation, the respondent or the City may;



a. Withdraw the stipulation, preserving the right to appeal on the ground that the Special Magistrate abused his of her discretion in disapproving the stipulation.

b. Allow any remaining portion of the stipulation to stand, and either proceed to hearing on the remainder, or submit the penalty provisions to the Special Magistrate to make such decision as he deems proper.

#### **O. Orders.**

1. All Orders shall be signed by the Special Magistrate who makes the determination that the Order should be entered. If an Order is based on evidentiary matters, it must be signed by the Special Magistrate who hears the subject evidence.

2. Copies of Orders shall be furnished to respondent and to the Department.

3. In the event the Special Magistrate determines the Findings of Fact support the Conclusion of Law that a violation exists, the Final Order:

a) Shall reflect the Findings of Fact which support the Conclusions of Law that a violation exists or, for recurring violations, that a violation has occurred, was corrected, and allowed to recur.

b) May mandate that the respondent take whatever steps are necessary to correct the violation and bring the subject property into compliance by a time certain as set forth in the Final Order. The Final Order will normally specify the date for the Penalty Hearing at which the special Magistrate will determine what, if any, fine should be imposed for the violation; or a penalty may be predetermined in the Final Order without the necessity of a subsequent Penalty Hearing.

c) Should, in situations where the respondent must have a ruling that there is a violation, as a prerequisite to applying for or obtaining a variance, provide for a period of time for the respondent to apply for a variance. The Order should further provide that if a variance has been sought within or before the specified time, the compliance date will be extended until a fixed period of time following final disposition of the variance request.

d) If the violation is not a repeat violation or a violation that has been determined as a recurring violation, the Final Order may recite that a fine of up to two hundred fifty dollars (\$250.00) may be imposed for each day beyond the compliance date the violation is not corrected. In

the event the violation is a repeat violation or had been previously determined to be a recurring violation, the Final Order may recite that a fine of up to five hundred dollars (\$500.00) may be imposed for each day the repeat violation continues beyond the compliance date.

e) The preceding fine amounts shall not apply if a Key Colony Beach ordinance or code section specifically provides for a fine amount for that violation of the ordinance or code section.

f) If the fine is predetermined in the Final Order, the fine assessed for each violation shall not exceed the foregoing limitations.

g) No fine shall become effective or commence without further specific action by the special Magistrate. If the fine is predetermined in the Final Order, a separate "Order of Imposition of Fine and Claim of Lien" must nevertheless be entered, actually imposing the fine(s).

h) Re-Inspection of the violation to Determine Compliance with the Requirements Set Forth in the Final Order. After the expiration of the time limit set for compliance in the Final Order, the Inspector shall re-inspect the location where the violation occurred to determine if the Final Order has been complied with.

If compliance has occurred, within the compliance period, the Inspector shall complete an Affidavit of Compliance and submit the Affidavit to the Clerk who shall place the Affidavit into the file and close the case. A copy of the affidavit shall be mailed or delivered to the respondent. Otherwise, the Inspector shall notify the Clerk who shall insure the case remains on the Agenda for Hearing.

i) The Special Magistrate shall assess an administrative cost of \$360.00 for each case brought before the Special Magistrate where at least one violation has been found against a violator plus the cost of prosecution. The Special Magistrate, in his discretion, may reduce said administrative cost where he finds extraordinary circumstances to do so.

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#### **IV. Penalty Hearings.**

A Penalty Hearing shall be held if a penalty is to be considered or assessed based on non-compliance with a Final Order or if a penalty is to be considered or assessed for a repeat violation.

##### **A. Notice.**

- 1) A copy of the Final Order and, if applicable, a copy of the Notice of Hearing to Impose Fine, shall be served as provided in Section II(A), (unless the case involves a repeat violation) not fewer than seven (7) business days before the hearing.
- 2) If the case involves a repeat violation, a copy of the Notice of Hearing to impose Fine for a repeat violation shall be served as provided in Section II(A), not fewer than seven (7) business days before the hearing.

The Clerk shall send copies of the Notices of Penalty Hearings to the Department.

##### **B. Purpose.** The Special Magistrate shall consider the case to determine:

- 1) Whether there has been compliance with the Final Order or if the violation is a repeat violation and what, if any, penalty should be imposed.
- 2) If health, safety and welfare is threatened, whether city forces should repair or abate the violation found.

##### **C. Procedure.** The procedure for a Penalty Hearing shall be:

- 1) The case shall be called at the direction of the Special Magistrate.
- 2) The Clerk of the Special Magistrate shall introduce the case.
- 3) The City shall present any additional evidence which it believes may bear on the case, which may include the failure of the respondent to comply by the specified deadline, *or* which may bear on what penalty, if any, should be imposed. The City and the Inspector may argue or comment on the nature and severity of the violation, and may recommend what, if any, penalty should be imposed.
- 4) The respondent may present evidence which is believed to bear on the violation and the penalty, if any, to be imposed, and may argue or comment on the nature and severity of the violation, on what if any penalty should be imposed, and on comments by the city and Inspector.

- 5) At the conclusion of the presentations, the Special Magistrate should determine;
  - a) whether compliance has occurred;
  - b) what, if any, penalty would be imposed;
  - c) whether any changes or modifications should be made to the Final Order;
  - d) if there is sufficient grounds for the penalty hearing to be continued;
  - e) whether the violation is serious enough such that City forces should repair or abate same authorizing a lien for reasonable expenses on the property;
  - f) In emergency situations, if City forces have already repaired or abated a violation, the Special Magistrate may confirm the right of the City to have done same, authorizing a lien for reasonable expenses on the property.
- 6) The Special Magistrate shall consider all factors which bear on what a fair and just penalty should be, but must consider the following factors;
  - a) the gravity of the violation, and
  - b) any actions taken by the respondent to correct the violation, and
  - c) any previous violations committed by the respondent.

**D. Orders.**

- 1) If the Special Magistrate determines that there has been satisfactory compliance, then the Special Magistrate shall enter a finding of compliance. If he finds that a penalty is not warranted, he shall so direct, and the Clerk shall close the case with a notation to that effect.
- 2) If the Special Magistrate determines that compliance has not occurred, that compliance did not occur within the compliance period, or that the violation was a repeat violation, or that a penalty should be imposed notwithstanding subsequent compliance, the Special Magistrate may:
  - a) Issue an Order of Imposition of Fine and Claim of Lien, which Order shall be notarized; and the Clerk shall forward a copy of the Order of

Imposition of Fine and Claim of Lien to the respondent and owner, if applicable.

b) Allow an additional amount of time to remedy the violation if the Special Magistrate determines the respondent has initiated appropriate steps for compliance, or that such action is otherwise justified.

c) Continue or reset Hearing.

d) If the violation presents a threat to the public health, safety, and welfare, require the City Administration to make all reasonable repairs or abate the violation such to bring the property into compliance and charge the violator with reasonable cost of repairs along with the fine imposed. Same to be notarized and forwarded to respondent and owner as provided in Section 4(B)1 above.

e) Order such other and further relief as may be proper, within his power.

f) Do any combination of the foregoing.

3) Copies of Orders shall be served as provided *in* Section II-A.

E. Lien Documentation and Recording - The original Order shall be submitted to the Monroe County Clerk of Court, to be recorded among the Public Records of Monroe County, Florida with a copy to be retained in the file pending return of the recorded Order.

F. Satisfaction of Liens - The total fine and/or cost of repairs shall be computed from the date set forth in the Final Order, as subsequently imposed by the Special Magistrate in his Order of Imposition of fine and claim of Lien, through the date on which compliance has been determined to have occurred.

1) Upon payment of the fine, and/or costs of repairs, as calculated above, or upon other termination or satisfactory disposition of the fine, the Clerk shall have a Satisfaction, or Release, of Lien recorded in the Public Records of Monroe County, Florida.

2) Payment may be made by any means acceptable to the City. Payments are received subject to clearance, and the Satisfaction or Release of Lien will not be recorded until cleared funds are verified by the City.

G. Foreclosing Lien - The Special Magistrate may request that the City foreclose upon any Claim of Lien pursuant to Chapter 162, Florida Statutes.

## **V. Applications for Relief**

### **A. Reconsideration Hearing.**

- 1) **Application.** A signed application for relief from any Order imposing a fine by a Special Magistrate or by a prior Code Enforcement Board including an Order of Imposition of Fine and Claim of Lien may be filed with the Clerk for the Special Magistrate. In order for the Clerk to process an application for relief, all the violations in the original case must be in compliance and the application must include:
  - a) Name and address of applicant. If represented by an attorney, the name and address of the attorney must also be given, and the attorney must either file a Notice of Appearance, or must sign the application.
  - b) Address or brief legal description, or both, of the property on which the violation occurred.
  - c) Sufficient information (which should include nature of violation, date or approximate date on which violation occurred, date, or approximate date on which finding of violation was made or on which penalty was imposed, and file number) for the Clerk to identify the file. A copy of the Order should be attached.
  - d) A brief explanation of the relief sought, and why such relief should be granted.
- 2) **Initial Consideration.** The Clerk shall refer the application to the Special Magistrate. The Special Magistrate may either summarily deny the application, or may refer the application to the City for response, in which case the copy of the application shall be sent to City Attorney and to the Department, which may, within ten (10) calendar days of the referral, file a response, mailing a copy of the response to the attorney for the applicant, or to the applicant if there is no attorney. Normally if an application is incomplete, relief will be summarily denied (without prejudice, meaning it can be refiled or amended).
- 3) **Hearing.** After expiration of the response time, or upon filing the response, the Special Magistrate may consider the application and the City's response. The Clerk shall notify the attorney for the applicant, or the applicant if there is no attorney, by U.S. First Class Mail, and the City, both not less than seven (7) business days prior to the scheduled hearing.
- 4) **Determination.** The Special Magistrate shall enter an Order denying or granting the requested relief, or such relief as the Special Magistrate may deem proper, and may direct such action as may be appropriate to effect the

ordered relief. If relief is denied because the property is not currently in compliance, such denial shall be without prejudice to refile the application. Copies of the Order shall be without prejudice to refile the application. Copies of the Order shall be furnished both to the City and to the respondent, and may be served by U.S. First Class mail.

- 5) **Appeal.** Relief under this section is strictly discretionary by the Special Magistrate, and the Special Magistrate's disposition might not be deemed appealable.

**B. Expedited Reconsideration Request.**

- 1) Relief under this section may only be considered for properties with a real estate closing scheduled for prior to the next available Special Magistrate hearing.
- 2) An application shall be completed as indicated in A(1) above.
- 3) The City Attorney with the concurrence of the Mayor and City Administrator may negotiate a reconsideration amount to the applicant.
- 4) The reconsideration Order shall be transmitted to the Special Magistrate for review and shall be subject to his/her approval.

**~~C. Settlement of Code Enforcement and Other Liens.~~**

~~The city attorney shall have the authority to compromise or settle any code enforcement lien or other lien imposed in favor of the city that has been imposed pursuant to law. Such settlement or compromise shall be upon such terms and conditions, and in such amount, as the city attorney deems just and appropriate under the particular circumstances. If a settlement or compromise is agreed to by the person or entity legally obligated to pay the lien, the city attorney may execute, on behalf of the city, any document that may be required for recording in the public records of the county to satisfy or release the lien as imposed. If no agreement can be reached, the matter shall be placed by the city attorney on the Special Magistrate agenda for reconsideration.~~

**VI. Appeal.**

Orders of the Special Magistrate determining the existence of a violation, determining that a violation is a repeat violation, directing corrective action, imposing a fine or penalty, or abatement or repairs by the City, are deemed to be final administrative Orders, subject to the right of an aggrieved party, including without limitation, the City or the respondent or owner, to appeal a Final Order of the Special Magistrate to the Circuit Court of the Sixteenth Judicial Circuit of Florida in and for Monroe County, Florida. An appeal must be filed within thirty (30) days of the rendition of the Order to be appealed. An Order is deemed to have been rendered when signed. An appeal of a Final Order directing corrective action shall not deprive the Special Magistrate of jurisdiction to conduct a penalty hearing or to impose a fine or penalty, or require abatement or repairs unless the Circuit Court hearing the appeal shall issue a stay Order, and a certified copy of the stay Order shall be delivered to the Clerk or to the Special Magistrate prior to the penalty hearing.

## **VII. Internal Special Magistrate Rules**

A. General. All hearings and related matters shall be conducted in accordance with the provisions and proceedings set forth in applicable City Ordinance and State Statutes.

B. Access by Public. All hearings and related proceedings of the Special Magistrate shall be open to the public.

C. Schedule. All regular hearings will be scheduled by the City. Hearings involving attorneys, relief from Final Orders, and other hearings may be specially set as may be permitted by the Special Magistrate.

D. Recording of Hearings. Hearings are recorded and any minutes or recordings may be kept by the Clerk. However, parties wishing a transcript for purposes of appeal or otherwise must supply their own Court Reporter.

E. Protocol. The proper reference to a Special Magistrate is "Sir" or "Ma'am", or by referring to the Special Magistrate by his or her name ("Mr. Smith" or "Ms. Jones"), or Mr. or Ms. Magistrate.

F. Ex parte Proceedings. Respondents, attorneys for respondents, inspectors, and the City Attorney are not normally permitted to contact the special Magistrate for the purpose of making ex parte communications (communications intended to be heard by the Special Magistrate but not by the opposing parties). Ex parte communications are permitted only in unusual circumstances when the Special Magistrate or the Clerk receives a communication which does not include a certificate or other indication that a copy had been furnished to the opposing party, a copy will normally be furnished by the Special Magistrate or Clerk to the opposing party.

### **G. *Disqualification.***

#### **1. *Permissive:***

The Special Magistrate shall promptly disclose to both the City and to the respondent any relationship he or she has or had had with the respondent, which either the City or the respondent may reasonably challenge as giving rise to prejudice for or against the City or the respondent.

If there is or was any relationship which exceeds usual business or incidental social contacts, the Special Magistrate shall afford both the City and the respondent an opportunity to disqualify him; and the case reset for the next available hearing by another Special Magistrate.



## **2. *Mandatory:***

If Special Magistrates are not satisfied that they can impartially hear and make a fair and just determination of a matter, or if they determine that they have a conflict of interest for which they should be disqualified, they shall announce the basis or nature of the basis for such prejudice, and they shall disqualify themselves. Nevertheless, upon disclosure of the relevant, upon request by both the City and the respondent, thus waiving the conflict or other impediment, the Special Magistrate may consider and determine that matter.

The City or a respondent may, not less than three (3) working days prior to the first hearing, file a verified motion to disqualify the Special Magistrate scheduled to hear that case.

a) The verified motion shall be promptly referred to the scheduled Special Magistrate, who shall promptly rule on the sufficiency, but not the merits, of the motion. If the motion is granted, another Special Magistrate shall be summoned to hear the case, and if necessary, the hearing shall be rescheduled.

b) Except as otherwise provided, the basis for disqualification shall be the same basis and procedure upon which judges would be disqualified, under Sections 38.01 - 38.10, Florida Statutes.

c) The time for filing the verified motion for disqualification may be extended by the Special Magistrate for good cause shown, but once a Special Magistrate shall have commenced a hearing on any matter requiring the presentation of evidence, even if the same shall be continued, he shall not thereafter be disqualified, except upon his own motion, nor shall he thereafter permit the filing of a disqualification motion.

3. Once a party has waived the right to disqualify the Special Magistrate, that party may not thereafter disqualify the Special Magistrate, unless the Special Magistrate shall make the findings required pursuant to F.S. 38.10.