

## **ORDINANCE NO. 5-19-68**

**AN ORDINANCE OF THE CITY OF ATLANTIC BEACH,  
COUNTY OF DUVAL, STATE OF FLORIDA, AMENDING  
DIVISION 2 OF ARTICLE V, BOARDS AND  
COMMISSIONS, OF CHAPTER 2, ADMINISTRATION, OF  
THE CITY'S CODE OF ORDINANCES, TO DISSOLVE THE  
CODE ENFORCEMENT BOARD AND ESTABLISH  
PROVISIONS FOR CODE ENFORCEMENT SPECIAL  
MAGISTRATE(S); AMENDING DIVISION 3 OF ARTICLE  
V, BOARDS AND COMMISSIONS, OF CHAPTER 2,  
ADMINISTRATION, OF THE CITY'S CODE OF  
ORDINANCES, TO DISSOLVE THE NUISANCE CONTROL  
BOARD AND DELETE ALL OF SAID DIVISION 3;  
FURTHER AMENDING SECTIONS 6-121, 7-27, 13-167 AND  
169, 22-74, 23-48 AND 51 AND 24-267 AND 272 OF THE CODE  
OF ORDINANCES TO DELETE ALL REFERENCES TO A  
CODE ENFORCEMENT BOARD AND REPLACE WITH  
SPECIAL MAGISTRATE; PROVIDING FOR CONFLICT;  
PROVIDING FOR SEVERABILITY; PROVIDING AN  
EFFECTIVE DATE.**

**WHEREAS**, the Section 162.03, Florida Statutes, authorizes municipalities to create administrative boards, including a special magistrate, to hear alleged violations of municipal codes and impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force, where pending or repeated violation continues to exist; and

**WHEREAS**, the City Commission has considered this Ordinance after proper public notice and hearings and receiving comments from staff and the public.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION ON  
BEHALF OF THE PEOPLE OF THE CITY OF ATLANTIC BEACH, FLORIDA:**

**SECTION 1.** Division 2, Code Enforcement Board. Article V, Boards and Commissions, of Chapter 2, Administration, of the Code of Ordinances is hereby amended as shown in Exhibit A, attached hereto and made a part hereof.

**SECTION 2.** Division 3, Nuisance Control Board. Article V, Boards and Commissions, of Chapter 2, Administration, of the Code of Ordinances is hereby deleted in its entirety as shown in Exhibit A attached hereto and made a part hereof.

**SECTION 3.** Other Amendments to Code of Ordinances. Sections 6-121, 7-27, 13-167 and 169, 22-74, 23-48 and 51, and 24-267 and 272 of the Code of Ordinances are hereby amended to delete references to a code enforcement board and replace with references to special magistrate(s).

**SECTION 4. Conflict.** All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the City or any of its officials and in conflict with this Ordinance are repealed to the extent inconsistent herewith.

**SECTION5. Severability.** If a Court of competent jurisdiction at any time finds any provision of this Ordinance to be unlawful, illegal, or unenforceable, the offending provision shall be deemed severable and removed from the remaining provisions of this Ordinance which shall remain in full force and intact.

**SECTION 6. Effective Date.** This ordinance shall take effect upon final reading and approval.

PASSED by the City Commission on first reading this \_\_\_\_ day of \_\_\_\_\_, 2019.

PASSED by the City Commission on second and final reading this \_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF ATLANTIC BEACH

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Ellen Glasser, Mayor

Attest:

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Donna L. Bartle, City Clerk

Approved as to form and correctness:

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Brenna M. Durden, City Attorney

## **EXHIBIT A TO ORDINANCE NO. 5-19-68**

### **ARTICLE V. - BOARDS AND COMMISSIONS**

#### **DIVISION 2. - CODE ENFORCEMENT BOARD SPECIAL MAGISTRATE**

##### **Sec. 2-141. - Intent of Article.**

It is the intent of this article to promote, protect, and improve the health, safety, and welfare of the citizens of the city by authorizing the creation of one or more code enforcement special magistrates (“special magistrate”) with authority to hear and impose administrative fines and other non-criminal penalties to provide an equitable and expeditious method of enforcing certain codes and ordinances in force in the city, where a pending or repeated violation continues to exist.

##### **Sec. 2-142 – Created; membership; terms. Code enforcement board dissolved; references revised.**

- (a) There is hereby created a code enforcement board of the city, which shall consist of seven (7) board members and one (1) alternate member, who shall serve on the board in the absence of board members, to be appointed by the mayor and approved by the city commission. All board members and the alternate member of the board shall be residents of the city and shall serve without compensation. Board members may serve a maximum of three (3) consecutive terms. Service as an alternate member, however, shall not preclude service thereafter as a board member for a maximum of three (3) consecutive terms.
- (b) The membership of the code enforcement board shall, whenever possible, include persons in the following fields:
  - (1) An architect;
  - (2) A businessperson;
  - (3) An engineer;
  - (4) A general contractor;
  - (5) A realtor;
  - (6) A subcontractor;
  - (7) A person with zoning and building experience.
- (c) The initial appointments to the code enforcement board shall be as follows:
  - (1) Two (2) members shall be appointed for a term of one (1) year.
  - (2) Three (3) members shall be appointed for a term of two (2) years;
  - (3) Two (2) members shall be appointed for a term of three (3) years.

Thereafter, each term shall be for a period of three (3) years.
- (d) Any member may be reappointed from term to term upon approval of the city commission.  
The code enforcement board is hereby dissolved effective June 1, 2019; provided, all prior administrative actions, orders and liens imposed by such code enforcement board shall remain in full force and effect. No cases shall be referred to the code enforcement board on and after May 15, 2019. All cases remaining pending before the code enforcement board as of May 15, 2019 shall be transferred to the special magistrate. All references to the code enforcement board occurring elsewhere within this Code, or within any other codes, ordinances and

resolutions of the City Commission shall hereafter be deemed to refer to the special magistrate appointed under the authority of this article.

**Sec. 2-1432. Special Magistrate appointment; qualifications; term. Removal; filling vacancies.**

Members of the code enforcement board may be removed from office by the city commission for cause upon written charges and after public hearing. Any member who fails to attend two (2) of three (3) successive meetings without cause and without prior approval of the chair shall have his/her office declared vacant by the code enforcement board, and the city commission shall promptly fill such vacancy. Vacancies shall be filled by appointment by the mayor and approval of the city commission for the unexpired terms affected.

- (a) The City Commission shall by resolution appoint a special magistrate or special magistrates, as needed.
- (b) The special magistrate or special magistrates shall have the jurisdiction and authority granted by this Division.
- (c) Appointment of the special magistrate or special magistrates shall be made on the basis of experience and interest in the subject matter, in the sole discretion of the City Commission.
- (d) Any special magistrate appointed hereunder must be a member in good standing of the Florida Bar for at least five (5) years prior to appointment.
- (e) The appointment of a special magistrate shall be made for a term of one (1) year, with the City Commission reserving the right to terminate the term prior to its natural end, in writing, with no less than thirty (30) days' notice, upon resolution of the City Commission. The term may be extended upon resolution of the City Commission for a term not to exceed one (1) year. No term limits shall be established herein for any appointed special magistrate. If the special magistrate wishes to terminate the term prior to its natural end, the special magistrate shall notify the City, in writing, no less than sixty (60) days in advance.

**Sec. 2-1443. – Special magistrate compensation. Meetings; election of officers; quorum.**

- (a) At the first meeting of the code enforcement board, the members of the board shall elect a chairman and a vice chairman to preside in the absence of the chairman. The presence of four (4) or more members shall constitute a quorum necessary to take action.
- (b) Special meetings of the board may be convened by the chairman upon the giving of notice thereof to each other member of the board. Unless waived by a majority of the board, notice of a special meeting shall be given at least twenty four (24) hours prior thereto.

The special magistrate shall receive such compensation as determined by the City Commission. Such compensation shall be set forth in the resolution appointing the special magistrate.

**Sec. 2-1454. - Minutes of hearings; clerical and administrative personnel.**

Minutes shall be maintained of all hearings held by the code enforcement board special magistrate, and all hearings shall be recorded and open to the public. The eCity eCommission shall provide clerical and administrative personnel as may be reasonably required by the board special magistrate for the proper performance of its duties.

## **Sec. 2-146-5. - City attorney.**

The city attorney—shall represent the city by presenting cases before the ~~board special magistrate; but in no case shall the city attorney serve in both capacities.~~ Each case before the ~~board special magistrate~~ shall be presented by either the city attorney or by a member of the administrative staff of the municipality.

## **Sec. 2-147-6. - Jurisdiction.**

- (a) The ~~code enforcement board~~ special magistrate(s) shall have the jurisdiction and authority to hear and decide alleged violations of the following:
  - (1) City of Atlantic Beach Code of Ordinances, ~~per pursuant to~~ Chapter 162, Florida Statutes ~~and the provisions of this Code, each as may be amended; and, except as provided in section 2.146.1 below.~~
  - (2) State of Florida Building Code, administration section of Chapter 553, {Florida Statutes}, as adopted by the State of Florida and by the city;
  - (3) International Property Maintenance Code as adopted by the city;
  - (4) All other local codes and ordinances as allowed by Chapter 162, Part 1, Florida Statutes, Local Government Code Enforcement Boards, as it may be amended from time to time.
- (b) The jurisdiction of the ~~code enforcement board~~ special magistrate shall not be exclusive. Any alleged violation of any of the provisions of subsection (a) 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.

## **Sec. 2-146.1. Jurisdiction of special magistrate.**

- (a) ~~A special magistrate or special magistrates shall be appointed and removed by the city manager subject to the approval of the commission and shall have the jurisdiction and authority to hear and decide alleged violations of the section 4-10, dangerous dogs, section 4-11, classification of dogs as dangerous; certification of registration; notice and hearing requirements; confinement of animal; exemption; appeals; unlawful acts. Appointment of the special magistrate shall be made on the basis of experience and interest in the subject matter. A special magistrate must be a member in good standing of the Florida Bar.~~
- (b) ~~The special magistrate shall receive such compensation as determined by the commission.~~
- (c) ~~The special magistrate shall have the power to:~~
  - (1) Adopt rules for the conduct of the hearings.
  - (2) Subpoena alleged violators and witnesses to hearings.
  - (3) Subpoena evidence.
  - (4) Take testimony under oath.
- (d) ~~The special magistrate may impose fines to cover all costs incurred by the city in enforcing its codes. Criteria that the special magistrate may consider include, but is not limited to, the follows:~~
  - (1) The gravity of the incident giving rise to the dangerous dog declaration.
  - (2) Any previous animal control violations.
  - (3) Any actions taken by the dog owner to prevent or correct aggressive behavior.
  - (4) The complexity and resources required to complete the investigation.
  - (5) The cost and outcome of the hearing.

**Sec. 2-148-7. - Procedure; enforcement and hearings.**

(a) *Enforcement procedures.*

- (1) For the purpose of this division, "code officer" means any authorized agent or employee of the City of Atlantic Beach whose duty it is to insure compliance with the code and ordinances of the city.
- (2) It shall be the duty of the code officer to initiate enforcement proceedings of the various codes and ordinances. ~~No member of the board~~ Special magistrate shall not have the power to initiate such enforcement proceedings.
- (3) Except as provided in subsections (4) and (5) below, if a violation of the codes or ordinances is found, the code inspector shall first notify the violator and give him/her reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code officer shall notify the ~~board~~ special magistrate and request a hearing. ~~The board~~ special magistrate or their clerical staff shall schedule a hearing and notice of such hearing shall be provided to said violator pursuant to subsection (d) or this section. If the violation is corrected and then recurs, or if the violation is not corrected by the time specified for correction by the code officer, the case may be presented to the ~~board~~ special magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state.
- (4) If the code 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 officer shall make a reasonable effort to notify the violator and may immediately notify the ~~board~~ special magistrate and request a hearing.
- (5) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the ~~board~~ special magistrate and request a hearing. ~~The board~~ special magistrate, through their clerical staff, shall schedule a hearing and shall provide notice pursuant to subsection (d) of this section. The case may be presented to the ~~board~~ special magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. "Repeat violation" means a violation of a provision of a code or ordinance by a person who has been previously found through a ~~code enforcement board~~ special magistrate or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision with five (5) years prior to the violation, notwithstanding the violations occur at different locations.
- (6) If the owner of property to which is subject to an enforcement proceeding before the ~~board~~ special magistrate, or a court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:
  - a. Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.
  - b. Deliver to the prospective transferee a copy of the pleadings, notice, and other material relating to the code enforcement proceeding received by the transferor.
  - c. Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceedings.

d. File a notice with the code officer or clerical staff of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, with five (5) days after the date of the transfer.

A failure to make the disclosures described in paragraphs a., b., and c. 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.~~

(b) *Hearing process.*

- (1) Administrative support staff for the ~~board~~ special magistrate shall establish annually a schedule of periodic meetings. In addition, upon request of the code officer, or at such other times as may be necessary, the ~~chair of the board~~ special magistrate may call a hearing ~~of the board~~.
- (2) Upon scheduling of a hearing, the ~~board~~ special magistrate shall cause notice therefore to be furnished to the alleged violator by such methods as described in subsection (d) of this section. Said notice of hearing shall contain the date, time and place of the hearing and shall include the sworn statement of the code inspector setting forth the nature of the violation and reference to the appropriate code or ordinance.
- (3) Assuming proper notice of the hearing has been provided to the alleged violator as provided in subsection (2) above, a hearing may proceed in the absence of the alleged violator.
- (4) At the hearing, the burden of proof shall be upon the city to show, by a preponderance of evidence that a violation does exist.
- (5) All testimony shall be under oath and shall be recorded; the ~~board~~ special magistrate shall take testimony from the city and alleged violator, and from such other witnesses as may be called by the respective parties.
- (6) Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern said proceedings.
- (7) 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 accordance with State of Florida Rules of Evidence.
- (8) ~~Any member of the board~~ The special magistrate, or attorney appointed to serve as counsel to the board, may inquire of any witness before the ~~board~~ special magistrate. The alleged violator, or the violator's attorney or representative, and the city shall be permitted to inquire of any witness appearing before the board special magistrate and shall be permitted to present brief opening and closing statements.
- (9) At the conclusion of the hearing, the ~~board~~ special magistrate shall issue findings of fact, based on the evidence of record, and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted by Chapter 162, Florida Statutes, the ~~ordinance~~ City's Code of Ordinances and any other law or ordinance granting authority to the ~~code enforcement board~~ special magistrate. ~~In a board hearing, the finding shall be by motion approved by the majority of those members present and voting; except that at least four (4) members of the board must cast a vote in order for the action to be official.~~ The order may include a notice that it must be complied with by a specified date and that a fine will be imposed should the compliance not be achieved and, under the conditions specified in subsection 2-150149(b) of this division,

~~and~~ any such costs incurred in ~~the~~ prosecuting this case may be included, along with the fine if the order is not complied with by said date. The order shall be reduced to writing and mailed by certified mail, return receipt requested, to the alleged violator with fifteen (15) working days after the hearing. A certified copy of such order may be recorded in the public records of Duval 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~~ board special magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order showing compliance.

(10) The city shall present each case before ~~the~~ board special magistrate. If the city prevails in prosecuting a case before ~~the~~ board special magistrate, it shall be entitled to recover all costs incurred in prosecuting the case, including without limitation, attorneys' fees and costs.

(c) *Rehearing.*

(1) An aggrieved party, including the City of Atlantic Beach, may request a rehearing of the initial order of ~~the~~ board special magistrate. Any such rehearing request shall be filed with the City Clerk's Office within ten (10) days of the execution of the order to be appealed. Consideration of a request for rehearing shall be scheduled by the administrative staff for the next available hearing date by the special magistrate entity that issued the order. Notice of the hearing date shall be provided by the administrative staff via first class mail to the entity that files the request for rehearing.

(2) 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~~ allegedly have changed the ~~code enforcement board~~ special magistrate's decision and could not with reasonable diligence have been discovered before and produced at the initial hearing; and
- b. Given this evidence, a description of how the order issued is contrary to the law and evidence.

(3) A request for a 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~~ rehearing be denied.

(4) If the request for rehearing is granted, ~~the~~ code enforcement board special magistrate shall schedule the case for consideration at a future hearing, to be heard *de novo*.

(d) *Notice requirements.*

(1) All notices required by this ~~part~~ Division 2 shall be provided to the alleged violator by:

- a. Certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the city code enforcement staff or administrative staff of ~~the~~ code enforcement board city or the special magistrate by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraphs (d)(2)d. and e. below, and by first class mail directed to the addresses furnished to the City of Atlantic

Beach with a properly executed proof of mailing or affidavit confirming the first class mailing; or

- b. Hand delivery by the sheriff or other law enforcement officer, code officer, or other person designated by the City of Atlantic Beach; or
- c. Leaving at the violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person of the contents of the notice; or
- d. In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in section 2-1487(d)(1) of this ~~Division~~, at the option of the ~~board~~ special magistrate, notice may also be served by First-Class Mail and either publication or posting, as follows:

- a. Such notice shall be published once during each week for four (4) consecutive weeks (four (4) publications being sufficient) in a newspaper of general circulation in Atlantic Beach. The newspaper shall meet such requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements.
- b. Proof of publication shall be made as provided in F.S. § 50.041 and § 50.051.
- c. ~~Proof of publication shall be made as provided in F.S. § 50.041 and § 50.051.d~~
- d. 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.
- e. Notice by publication or posting may run concurrently with, or may follow, ~~and any attempt or attempts to provide notice by hand delivery or by mail as required by subsection (d) of this section.~~
- f. Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (d)(1) of this section, together with proof of publication or posting as provided in subsection (d)(2) of this section, shall be sufficient to show that the notice requirements of this division ~~have been met, shall be sufficient to show that the notice requirements of this division have been met,~~ without regard to whether or not the alleged violator actually received such notice.

#### **Sec. 2-149.8. - Powers.**

The ~~board~~ special magistrate shall have the power to:

- (1) Adopt rules for the conduct of ~~their~~ code enforcement hearings.
- (2) Subpoena alleged violators and witnesses to ~~their~~ code enforcement hearings.
- (3) Subpoena ~~records, surveys, plats and other documentary evidence to its hearings~~ evidence.
- (4) Take testimony under oath.
- (5) Issue orders having the force and effect of law, commanding whatever steps are necessary to bring a violation into compliance.
- (6) ~~Establish and~~ Levy fines pursuant to subsection 2-150149(b).

#### **Sec. 2-150.49. - Administrative fines; cost of repairs; contests; liens; money judgments.**

- (a) The ~~board~~ special magistrate, upon notification by the code officer that an order of the ~~board~~ special magistrate 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 the section for each day the violation continues past the date set by the ~~board~~

special magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the violation is a violation described in subsection 2-148-7(b)(9) of this ~~Division~~. ~~The board special magistrate shall notify the city commission, which may also authorize the making of City Manager or his designee to make~~ all reasonable repairs which are required to bring the violations into compliance and charge the violator with the reasonable cost of the repairs up to twenty thousand dollars (\$20,000), along with the fine imposed pursuant to the section. Repairs exceeding twenty thousand dollars (\$20,000) within a one year period shall require approval by the City Commission. Making such repairs does not create a continuing obligation on the part of the city to make further repairs 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 the issuance of the order imposing the fine. A fine imposed pursuant to the section shall not exceed five hundred dollars (\$500.00) per day for a first violation and shall not exceed two hundred fifty dollars (\$250.00) per day for a repeat violation, and, in addition, may include all costs incurred in the enforcing this ~~ordained ordinance~~ and all costs of repairs pursuant to this section. If after due notice and hearing, the ~~board special magistrate~~ finds a violation to be irreparable or irreversible in nature, it may order the ~~violation~~ [violator] to pay a fine not to exceed five thousand dollars (\$5,000.00) per violation.

- (b) In determining the amount of the fine, if any, the ~~board special magistrate~~ shall consider the following factors:
  - (1) The gravity of the violation;
  - (2) Any actions taken by the violator to correct the violation; and
  - (3) Any previous violations committed by the violator.
- (c) When considering alleged violations of Section 4-10, Dangerous Dogs, or Section 4-11, Classification of Dogs as Dangerous, the ~~special magistrate~~ may impose fines to cover all costs incurred by the city in enforcing its codes. Criteria that the ~~special magistrate~~ may consider include, but are not limited to, the following:
  - (1) The gravity of the incident giving rise to the dangerous dog declaration;
  - (2) Any previous animal control violations by the violator;
  - (3) Any actions taken by the dog owner to prevent or correct aggressive behavior;
  - (4) The complexity and resources required to complete the investigation; and
  - (5) The cost and outcome of the hearing.
- (ed) The ~~board special magistrate~~ may reduce a fine imposed pursuant to this section at any time.
- (ee) Notice of finding by the code officer of noncompliance with the prior order of the ~~board special magistrate~~ shall be mailed to the violator. The violator may contest in writing the findings of the code officer. Such contest must be postmarked within ten (10) days of the postmark date on the noncompliance notice and mailed to the administrative staff as designated by the ~~board special magistrate~~. Upon receipt of a contest letter, the ~~administrative support staff for the board special magistrate~~ shall provide notice to the violator of the contest hearing date and time. If the violator, after filing the written contest, fails to attend the ~~next noticed meeting noticed contest hearing~~, the violator's contest shall be considered withdrawn by the ~~board special magistrate~~. Any review of a contest ~~heard hearing~~ under this section shall be constrained to whether the code officer's finding of

noncompliance ~~are~~ is supported by the evidence presented that the violation as 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 code officer or the city attorney, the board special magistrate~~ shall either dismiss the case or uphold the finding of the code officer.

(ef) Following the failure of the violator to file a contest within the time permitted under the above section, or the upholding of the finding of the code officer by the ~~board special magistrate~~, a certified copy of an order imposing a fine, or a fine plus ~~repair~~ costs, may be recorded in the public records of Duval County, Florida, and thereafter, shall constitute a lien against the land upon which the violation exists and upon any other real or personal property owned by the violator. 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 otherwise ~~to as~~ a court judgment except for the enforcement purposes.

(fg) 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 Atlantic Beach and the ~~board special magistrate~~ may execute a satisfaction or release of lien entered pursuant to this section. After three (3) months ~~for from~~ the filing of any such liens ~~with which~~ remains unpaid, the ~~board special magistrate~~ may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provision of this section may be foreclosed on real property which is a homestead under Section 4, Article X of the Florida State Constitution. The money judgment provision of this section shall not apply to real property or personal property which is covered under Section 4(a), Article X of the Florida Constitution.

#### **Sec. 2-151-4. - Duration of lien.**

(a) No lien provided by this division shall continue for a period longer than twenty (20) years after the certified copy of an order imposing the 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 fees 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 affected by the commencement of the action to foreclose shall not be good against the creditors or subsequent purchasers for valuable consideration with notice, unless a notice of lis pendens is recorded.

(b) In circumstances where the City of Atlantic Beach's interest in a property has been foreclosed and the property has been sold at a foreclosure sale, the city's lien is not satisfied, but removed from the subject property by a final judgment issued by the court. Upon request, the city will prepare and record a partial release of lien to release the subject property from the code enforcement lien upon payment of fees for costs and services charged to the requesting party.

#### **Sec. 2-152-4. - Appeal.**

- (a) An aggrieved party, including the city commission, may appeal a final administrative order of the ~~board~~ special magistrate to the circuit court. Any such appeal shall be filed within thirty (30) days of the execution of the order to be appealed.
- (b) Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the ~~board~~ special magistrate.
- (c) The ~~board~~ special magistrate shall, by rule, establish reasonable charges for the preparation of the record to be paid by the appealing party.

**Secs. 2-153-2—2-160. Reserved.**

**DIVISION 3. NUISANCE CONTROL BOARD**

**See. 2-161. ~~Created~~.**

~~Pursuant to F.S. § 893.138, an administrative board to be known as the “public nuisance control board” is hereby created. The word “board” when used in this division shall be construed to mean the said “public nuisance control board.”~~

**See. 2-162. ~~Membership~~.**

~~The members of the code enforcement board shall constitute the members of the public nuisance control board.~~

**See. 2-163—2-166. Reserved.**

**See. 2-167. ~~Complaints; hearings; declaration of public nuisance.~~**

- (a) ~~The board shall hear complaints regarding certain nuisances as described herein. Any place or premises that has been used: ON more than two (2) occasions within a six month period, as the site of a violation of F.S. § 796.07 prostitution; on more than two (2) occasions within a six month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance; on more than one (1) occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one (1) occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance under F.S. § 893; by a criminal gang for the purpose of conducting criminal gang activity as defined by F.S. § 874.03; on more than two (2) occasions within a six month period, as the site of a violation of F.S. § 812.019 relating to dealing in stolen property; may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.~~
- (b) ~~Any employee, officer or resident of the city may bring a complaint before the board after giving not less than three (3) days' written notice of such complaint to the owner of the place or premises at his last known address. Any such complaint shall be filed with the code enforcement officer.~~
- (c) ~~The board shall conduct a hearing during which the owner of the premises shall have an opportunity to present evidence in his defense. Such evidence shall include any action taken by the owner to abate the nuisance and the time frame, after notice to him, within which such action was taken. After considering all evidence, including evidence of the general reputation of the place or premises, the board may declare the place or premises to be a public nuisance as described herein.~~

(d) If the board declares a place or premises to be a public nuisance, it may enter an order immediately prohibiting:

- (1) The maintaining of the nuisance;
- (2) The operating or maintaining of the place or premises; or
- (3) The conduct, operation or maintenance of any business or activity on the premises which is conducive to such nuisance. Any such order entered shall expire after one (1) year or at such earlier time as stated in the order.

**Sec. 2-168. Permanent injunctions.**

The city may bring a complaint under F.S. § 60.05 seeking a permanent injunction against any nuisance described herein.

**Sect. 2-169. Restrictions.**

This division does not restrict the right of any person to proceed under F.S. § 60.05 against any public nuisance.

**Secs. 2-170 – 2-225. Reserved.**

**Sec. 6-121. - Amendments.**

The following sections of the IPMC [International Property Maintenance Code] are hereby revised as follows:

- (a) *Section 101.1 Title.* Insert: "The City of Atlantic Beach."
- (b) *Section 102.3 Application of other codes.* Amend to delete International Building Code, International Fuel Gas Code, International Mechanical Code and the ICC Electrical Code and replace with "State of Florida Building Codes and the National Electrical Code."
- (c) *Section 103 Title.* Amend to read: "Building Department and Code Enforcement Division."
- (d) *Section 103.1 General.* Amend to read: "The building department and code enforcement division shall be designated to enforce the provisions of this code."
- (e) *Section 103.5 Fees.* Delete this section.
- (f) *Section 110.1 General.* Delete "for a period of two years" and replace with "6 months."
- (g) *Section 110.3 Failure to comply.* Add sentence to state: "All administrative costs to the City of Atlantic Beach shall be considered when determining total cost of demolition."
- (h) *Section 111.1 Application for appeal.* Amend to read: "Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Code Enforcement Adjustments and Appeals Board, provided that a written application of appeal is filed within 20 days after the day of the decision, notice or order was served."

- (i) *Section 302.4 Weeds.* In the first sentence, delete "(jurisdiction to insert height in inches)" and substitute "12 inches."
- (j) *Section 304.14 Insect Screens.* In the first sentence, delete "[date] to [date]" and substitute "March 1 to December 1."
- (k) *Section 602.3 Heat Supply.* In the first sentence, delete "[date] to [date]" and substitute "November 1 to March 31."
- (l) *Section 602.4 Occupiable workspaces.* In the first sentence, delete "[date] to [date]" and substitute "November 1 to March 31."

**Sec. 7-27. - Penalties and other remedies for violations.**

- (a) Failure to comply with any provision of this article or any lawful order of the fire official shall constitute a misdemeanor of the second degree, punishable by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for not more than ten (10) days, or by both a fine and imprisonment. Each day that a violation continues shall be a separate offense, in accordance with F.S. § 633.171, as it currently exists or subsequently amended.
- (b) The city may use any appropriate actions or proceeding at law or in equity for the enforcement of this chapter, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or mandamus or other appropriate forms of remedy or relief.
- (c) The city may enforce this chapter using the proceedings set forth in Chapter 2, Administration, Article V, Division 2, ~~Code Enforcement Board~~ Special Magistrate, of the City Code of Ordinances, as prescribed in F.S. Ch. 162 and the City's Code of Ordinances.

**Sec 13-167. - Violations.**

The city manager, or his designee, may refer any violation of this article to the Attorney General's Office for enforcement per F.S. § 812.175, and to the city's code enforcement officer for prosecution pursuant to Chapter 2, Article V, Division 2 of the Code of Ordinances, before the city's code enforcement board.

**Sec. 13-169. - Civil fines.**

Violations of this article may result in a notice of violation from the Attorney General, civil fines imposed by the Attorney General not to exceed five thousand dollars (\$5,000.00) per F.S. § 812.175, and any fines and costs imposed by the ~~city's code enforcement board~~ special magistrate, as authorized by F.S. § 162.01, et seq-ff.

**Sec. 22-74. - Installation of toilet facilities required; connection of facilities to public sewer.**

- (a) The owners of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes, and situated within the city are hereby required at the owner's expense to install suitable toilet facilities therein.

(b) The owners of all properties described in (a) above shall connect their toilet facilities to public sewer, provided the public sewer is within one hundred (100) feet or thirty and five-tenths (30.5) meters of the property line, as follows:

- (1) If new construction, then immediately.
- (2) If currently under an assessment for installation of public sewer lines (whether already paid off or still paying), connection shall be made within one (1) year after expiration of the assessment. (Assessments in Ocean Grove expire December, 2006, on Beach Avenue in May, 2010, and in Marsh Oaks (f/k/a Section H) in November, 2011.)
- (3) If not currently under an assessment for installation of public sewer lines, connection shall be made within five (5) years of the effective date of this section.
- (4) If failure of an OSDS occurs, then immediately. Failure of an OSDS is defined in section 22-90-(b), copy attached.

(c) The owners of all properties described in (a) above where public sewer is not currently available, but becomes available in the future, shall connect their toilet facilities to public sewer as follows:

- (1) Within ninety (90) days after date of official notice from the city to do so. Official notice shall be complete upon mailing said notice to the property owner at the property address and at his or her last known address, if any.
- (2) If failure of an OSDS occurs, and public sewer is available, then immediately. Failure of an OSDS is defined in section 22-90(b), copy attached.

(d) Failure of any property owner to connect to public sewer as required shall be unlawful and subject to all penalties, including, but not limited to, the following:

- (1) General penalty as provided in section 1-11, copy attached;
- (2) Prosecution pursuant to Chapter 2, Article V, Division 2 of the Code of Ordinances before the code enforcement board;
- (3) Billing for appropriate services retroactive to the date connection should have been made. The amount of any such billing shall be in accordance with city practice, in at least the amount of minimum billing for the appropriate services.

(e) The city may, from time to time, offer financial assistance and incentives to property owners to encourage a more rapid conversion from an OSDS to public sewer. Any financial assistance and incentives shall be as set forth in a resolution duly adopted by the city commission.

#### **Sec. 23-48. - Stop work order.**

(a) *Authority to stop work.* The city manager or designee of the city manager shall have the authority to immediately issue a stop work order in any of the following circumstances:

- (1) Whenever land is being cleared without an approved permit or in a manner inconsistent with the approved permit;
- (2) Upon the failure of the permittee, or failure of the property owner if no permit exists, to take immediate corrective action when there is an apparent danger to life or property;
- (3) Whenever ongoing noncompliant work is not immediately and permanently stopped upon receipt of a written or oral notice of violation;
- (4) Whenever protection measures have not been implemented or maintained and danger to regulated trees or regulated vegetation exists or appears imminent;

- (5) Whenever remedial work required by notice of violation pursuant to subsection (a) of this section is not completed in the time period specified; or
- (6) Upon failure to post or have the approved permit and plans available onsite.

(b) *Content and scope of stop work order.* The stop work order shall specify the circumstances that have resulted in issuance of the order. It shall also direct that all work be stopped other than such remedial work as is deemed necessary to bring the violation into compliance, or it may specify the cessation of specific work by functional nature, such as land clearing, regulated tree or regulated vegetation removal, grading, roadway construction, building erection or utility construction. The order may apply to the entire project or to geographical portions of the project that may be individually specified.

(c) *Failure to comply after notice of violation and stop work order.* If the person(s) in violation fails to complete the required remedial action within the prescribed time, or continues any development activity in violation of a stop work order, the administrator may ~~refer such matter to the code enforcement board or may initiate any other code~~ enforcement action pursuant to Chapter 2, Article V, Division 2 of the Code of Ordinances, or other remedies as authorized by law.

#### **Sec. 23-51. - Penalties.**

- (a) *General provisions.* Any person(s) violating a provision of this chapter shall be punishable according to the law or in accordance with the findings of the duly appointed ~~code enforcement board, special magistrate.~~  
  - (1) Violations of this chapter are considered irreparable and irreversible in nature.
  - (2) Each day any violation continues shall constitute a separate offense.
  - (3) Each regulated tree removed from a site in violation of these regulations shall constitute a separate offense.
  - (4) Each acre or fraction thereof, of land cleared in violation of these regulations shall constitute a separate offense.
  - (5) Person(s) charged with violations of this chapter may include:
    - a. The owner, agent, lessor, lessee, contractor or any other person(s) using the land, building or premises where such violation exists.
    - b. Any person(s) who maintains any land, building or premises upon which a violation exists.
    - c. Any person(s) who knowingly commits, takes part, or assists in such violation.
- (b) *Building permits.* No building permit shall be issued for a site unless and until a required tree or vegetation removal permit has been issued, or while any violation of this chapter exists on the subject site.
- (c) *Injunction.* Any affected person(s) may seek an injunction against any violation of the provisions of this chapter and recover from the violator such damages as he or she may suffer including, but not limited to, damage to property as a result of development or failure to maintain, in violation of the terms of this chapter.
- (d) *Sanctions for failure to obtain a permit.*  
  - (1) Regulated trees or regulated vegetation removed in violation of this chapter shall require an after-the-fact permit, the fee for which shall be two (2) times the normal established application fee specified in section 23-26. In addition, as a condition of the

permit, the applicant shall immediately complete all remedial work as necessary to stabilize the site and mitigate all damage to the site and adjacent properties.

(2) Regulated trees removed in violation of this chapter shall be assessed at two (2) times the normal established rate of mitigation specified in section 23-33.

(3) If a lot, parcel, site or portion thereof, has been cleared such that the administrator is unable to determine with reasonable certainty the number and size of regulated trees and/or regulated vegetation removed in violation of this chapter, analysis of aerial photography or other such accepted scientific methodology shall be used to make a determination as to the loss of canopy and/or land cover for the purpose of assessing mitigation. A civil fine of five dollars (\$5.00) per square foot of canopy or land cover lost shall be assessed by the administrator, and shall be payable to the tree fund within seven (7) days of such assessment. No further work or development shall proceed until the city is in receipt of any such assessed fine.

(4) Any person(s) exhibiting a documented history of chronic or repeated violations of this chapter shall, upon third offense, be reported to the Florida Department of Business and Professional Regulation, as well as any other authority governing licensing, registration or certification of individuals or businesses.

#### **Sec. 24-267. - Requirements within wellhead protection areas.**

The following requirements apply to all Floridan Aquifer wells, including private wells, within the boundary of a wellhead protection area.

(a) All Floridan and Hawthorne wells may be inspected by the City or their consultants at any time after the effective date of this ordinance. The City shall prioritize re-inspections for wells that, in its opinion, pose the greatest threat to the Floridan Aquifer.

(b) Floridan Aquifer wells that do not have positive piezometric pressure shall have a backflow prevention device in compliance with local plumbing code and Department of Environmental Protection rules.

(c) Within one year after the effective date of this chapter, all Private Floridan wells within a Wellhead Protection Area shall be configured with a sanitary seal on the wellhead and a concrete pad around the outside of the well casing to prevent leakage of surface water into the well. Each well shall be finished with a concrete pad a minimum of five (5) feet by five (5) feet and at least three (3) inches thick. The pad shall be finished above ground surface to allow surface water to drain away from the wellhead. The surrounding ground surface should be sloped away from the wellhead, if possible, to further prevent surface water from collecting at the wellhead.

(d) Floridan Aquifer wells shall be drilled, maintained and repaired according to the standards of Chapters 62-524 and 40C-3, Florida Administrative Code.

(e) The city shall notify the owner of any well that is not found to be in compliance with the requirements of this section of the violation. Any private well not properly constructed or maintained to reasonably prevent contamination from any other aquifer to the Floridan Aquifer shall be abandoned, repaired or replaced. The cost of abandonment, repair or replacement shall be the responsibility of the well owner and/or the owner of the property on which the well is located. All private faulty wells found to be out of compliance shall have ninety (90) days to either perform those repairs necessary to bring the private well

into compliance with this section or to properly abandon the well pursuant to the appropriate standards and procedures. Copies of inspection reports from the St. Johns River Water Management District confirming that the well has been properly abandoned, repaired or replaced shall be submitted to the city. If the work is not inspected by the St. Johns River Water Management District, the city or their consultant shall inspect the well to confirm that it has been properly abandoned, repaired or replaced at the cost of the owner, and the abandonment, repair or replacement shall be entered into a database of well-related information maintained by the city. Failure to properly repair or abandon a private faulty well, pursuant to the requirements of this section, shall be referred to the ~~code enforcement board~~ result in code enforcement action pursuant to Chapter 2, Article V, Division 2 of the Code of Ordinances.

**Sec. 24-272. - Environmental assessment and protection of wetlands and environmentally sensitive areas.**

- (a) *Environmental assessment required.* The wetlands and the environmentally sensitive areas maps (Map A-2 and A-4) as contained within the city's comprehensive plan identify areas that are presumed to have wetlands or significant environmental features. Where a development permit is sought in such areas, an environmental assessment of the site and the potential for impacts to the presumed resource shall be provided by the applicant seeking such permit.
- (b) Where the environmental assessment determines that natural jurisdictional wetlands remaining on the site have been damaged or degraded over time through previous development, storm events, improper drainage runoff or other adverse activities, but where wetland vegetation and habitat are predominant in quantity on a proposed development site, all plans submitted for review or permitting shall demonstrate a plan for restoration, enhancement, mitigation or recovery of remaining jurisdictional wetlands. Restated, it is the express intent of the city that no net loss of jurisdictional wetlands occurs through any development action within the city.
- (c) *Buffers required from wetlands.* The following upland buffers shall be required, except for lands adjacent to isolated wetlands. Upland buffers shall be measured from the St. Johns River Water Management District or Florida Department of Environmental Protection Wetland jurisdictional line.
  - (1) For development occurring following the March 8, 2010, effective date of these amended land development regulations, a natural vegetative buffer a minimum of fifty (50) feet in width shall be required and maintained between developed areas and the tributaries, streams, or other water bodies connected to the intracoastal waterway regardless of any other regulatory agency requirement of a lesser distance. Such portions of these tributaries, streams, or other water bodies subject to this buffer requirement shall be established by the presence of a mean high water line for the applicable tributary, stream or other water body.
  - (2) A natural vegetative buffer, which is a minimum width of twenty-five (25) feet, shall be maintained between development and all other jurisdictional wetlands not described in the preceding paragraph. In cases where the minimum twenty-five-foot buffer is

demonstrated to be unreasonable or impractical, an averaged twenty-five-foot undisturbed buffer may be provided.

(d) *Exceptions to the upland buffer requirements.*

- (1) Man-made canals and stormwater facilities are not considered wetlands, although in some cases, man-made navigable canals connected to waters of the state are protected under these provisions or by regulations of state or federal agencies. Man-made canals and ponds clearly excavated in uplands are not considered wetlands and are exempt from the wetland buffer regulations.
- (2) Determinations of vested rights which may supersede the requirement for the fifty-foot upland buffer shall be made on a case-by-case basis in accordance with the land development regulations and applicable Florida law.
- (3) Single-family lots of record platted prior to January 1, 2002, shall be exempt from the fifty-foot wetland buffer requirement, but shall be subject to the twenty-five-foot upland buffer requirement as described in preceding subsection (c)(2).
- (4) Waivers from the requirement to provide and maintain an upland buffer may be requested in accordance with subsection 24-46(d) of this chapter, and where such waiver is approved, a berm or swale to retain and filter stormwater runoff from the lot shall be created.
- (5) Lots or portions of lots where a lawfully constructed bulkhead, retaining wall, revetment, or the placement of rip-rap was in existence prior to the enactment of these regulations shall be exempt from these buffer requirements.

(e) *Maintenance and permitted activities within upland buffers.* To protect water quality and wetland functions, it is crucial to limit contamination, disturbance and clearing within upland buffer areas. It is the intent of the city that required upland buffers shall be maintained in a substantially natural and undisturbed state. With the exception of facilities to provide public access for the recreational use of intracoastal related natural resources, any disturbance or clearing of required upland buffers shall be in accordance with the following provisions. Native vegetation removed or destroyed within the upland buffer is a violation of this code, and the property owner shall be responsible for the restoration of the upland buffer upon order of the ~~code enforcement board~~ special magistrate.

- (1) The following activities are expressly prohibited in any required upland buffer:
  - a. Filling, dredging or soil compaction by heavy machinery;
  - b. Dumping of any kind including brush, tree and yard waste, weeds, lawn clippings, animal or fish waste, litter and refuse of any type;
  - c. Removal of healthy native trees;
  - d. Clearing of any living native vegetation within the intertidal zone, which typically includes marsh grasses and submerged aquatic vegetation;
  - e. Installation of sod, irrigation, non-native vegetation of any type or any type of plant materials typically requiring the use of lawn pesticides and fertilizers or chemicals of any kind.
- (2) The following activities are permitted within a required upland buffer subject to obtaining a buffer alteration permit from the city:
  - a. Removal of invasive vegetation following documented verification by the designated administrative official.
  - b. Clearing of understory vegetation as defined by chapter 23 of the city's Municipal Code of Ordinances, and any such clearing shall be approved by the city and if

required, the appropriate state or federal agency prior to any form of clearing, alteration or disturbance of the required upland buffer.

- c. Minimum clearing of upland and wetland vegetation necessary to construct a properly permitted dock or other improvement to provide lawfully entitled access to navigable waters in accordance with a validly issued and unexpired permit from the City of Atlantic Beach, the Florida Department of Environmental Protection, the St. Johns River Water Management District, and other entity having jurisdiction.
- d. Activities for the owner or occupant's enjoyment including typical backyard outdoor furniture, gazebos and screen structures not exceeding one hundred (100) square feet in size without electrical or plumbing service, but not swimming pools, spas or pool houses, and provided that all other conditions of this section are met.

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