

PROCEDURES FOR CODE ENFORCEMENT HEARINGS BEFORE SPECIAL MAGISTRATE ATLANTIC BEACH, FLORIDA

○ GOVERNING LAW & LEGAL STANDARDS

Florida Statutes Chapter 162 and the Atlantic Beach Code of Ordinances will usually provide the governing law. It is the alleged violator's responsibility to know the law. This document is a general summary of the applicable rules and laws.

The Special Magistrate will make decisions based on the preponderance of the evidence. In other words, the special magistrate determines, based on the evidence presented at the hearing, whether it is more likely than not that a violation occurred. The City bears the burden of proving a violation occurred.

○ THE HEARING

The hearing is conducted in front of a Special Magistrate. Fla. Stat. § 162.07 and Atlantic Beach Code § 2-148 govern the conduct of the hearing. This document does not change any part of the law and ordinances. At the hearing, the Special Magistrate functions somewhat like a judge functions at a trial. The Special Magistrate will control the order of proceedings, question witnesses, and generally run the hearing.

○ PARTIES

Atlantic Beach and the cited party or alleged violator – usually the property owner or tenant – are the parties. Parties may be represented by attorneys or parties may appear for themselves without an attorney.

○ THE CONDUCT OF THE HEARING

The hearing will begin by the Special Magistrate determining who is present for the hearing and their interests in the proceedings, i.e. owner, tenant, neighbor, etc.

○ *Presentation of Evidence and Statements at the Hearing*

1. All witnesses and parties offering testimony will be sworn in. Any party may make a brief opening statement.
2. The code enforcement officers who investigated the matter will present the evidence they developed and testify about their findings and, including the presentation of photographs, reports, and other documents. The alleged violator will have an opportunity to examine all documents presented at the hearing. The alleged violator will also have an opportunity to ask questions of the code enforcement officers. In general, the code enforcement officer will need to establish the alleged violator received notice, what part of the code has been violated, and the facts and circumstances constituting the violation.
3. Witnesses with personal knowledge about the alleged violation, any harm caused by the violation, or other knowledge the special magistrate deems pertinent may testify. People who are merely generally interested in the proceedings or who only have opinions about how the matter should be handled are not witnesses and may not testify. All witnesses must be sworn in and give testimony under oath.
4. The Special Magistrate will take testimony from the code enforcement officer and the cited party. The alleged violator and the city may also present witnesses as necessary. The alleged violator will have an opportunity to ask questions of witnesses for the city, and the city will have an opportunity to ask questions of the alleged violator and any witnesses.
5. Any party may make a brief final statement.

○ **EVIDENCE**

The Florida Rules of Evidence will serve as a general guide as to what kinds of evidence may be presented, what kinds of questions can be asked, and how evidence will be evaluated. The Special Magistrate may exclude any evidence and impose reasonable limits on the kinds of questions that can be asked, how long witnesses may be questioned, and how long presentations may last.

Parties and witnesses who plan on presenting documents or exhibits at the hearing should bring at least three copies of all documents or exhibits with them to the hearing. The Special Magistrate and the City will each keep one copy. The Special Magistrate may refuse to consider any documents or exhibits if there are not sufficient copies.

○ **THE DECISION & FINES**

The Special Magistrate will announce a decision at hearing and issue a written order after the hearing.

If you are found in violation, you will be ordered to comply with the Code within a certain time. If you do not comply within that time, you may be fined up to \$250 for a first violation and up to \$500 for repeat violations. Each day that passes beyond the time set for compliance can incur a separate fine. Fines can become very expensive quickly if you do not comply on time. In addition to fines, the City may make any repairs it determines are necessary and charge you for the cost of repairs and recover all costs incurred in prosecuting the violation. If a violation is irreparable or irreversible, you may be immediately fined up to \$5,000.

○ **REHEARINGS & APPEALS**

Any party may request a rehearing by filing a request with the city clerk with 10 days of the execution of the written order. Code § 2-148(c) governs rehearings and contains specific requirements that must be met. In general, rehearings can be held due to new, material evidence being found that was not introduced at the hearing.

The alleged violator may appeal the Special Magistrate's decision by filing an appeal in the Circuit Court for Duval County, Florida within 30 days of the execution of the Special Magistrate's order. A copy of the appeal should also be filed with the Clerk of Atlantic Beach. The alleged violator is responsible for knowing and following the laws that govern appeals.