

# **Brevard County Rules of Special Magistrate Hearings**

## **1. Conduct Of Hearing**

A. The Special Magistrate shall hear violations of the Brevard County Code of Ordinances (hereinafter referred to as "the Code"). Minutes shall be kept of all Special Magistrate hearings by the Clerk to the Special Magistrate. All hearings and proceedings shall be properly noticed and open to the public. Any person whose interests may be affected by the matter before the Special Magistrate shall be given an opportunity to be heard.

B. The Special Magistrate shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The Special Magistrate shall take testimony from the Code Inspector(s), Respondent(s) and other witnesses requested by either party. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. As a quasi-judicial proceeding and not a criminal proceeding, the County must prove its case by a preponderance of the evidence. This means the County has only the burden of submitting competent substantial evidence that the Respondent has violated the cited code. The County's competent substantial evidence must merely outweigh the Respondent's evidence for the Special Magistrate to find the Respondent has violated the cited code.

C. At the conclusion of the hearing, the Special Magistrate shall issue findings of fact, based on evidence of record, and conclusions of law, and shall issue an order affording the proper relief consistent with the powers granted by the Florida Statutes. The order may include a notice that the violation must be complied with by a specified date and that a fine may be imposed for the failure to comply by that date. Additionally, where provided and authorized in the Brevard County Code, the Special Magistrate may authorize the County to repair the violation and the cost of repairs may also be included along with the fine. A certified copy of such order shall be recorded in the public records of the 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 Respondent 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 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 acknowledging compliance.

D. If the County prevails in enforcing the case before the Special Magistrate, it shall be entitled to recover all costs incurred in enforcing the case before the Special Magistrate and in any appeals from the Special Magistrate's order.

E. (1) Unless unique circumstances apply, the Special Magistrate shall first hear cases where the Respondent has indicated that he/she wishes to acknowledge non-compliance and the only issue to be determined is time to cure the violation and any fine to be assessed. The County has the option to waive the prosecution costs portion from the entire enforcement costs of the case.

(2) After the Special Magistrate hears the violations described in E (1) then the Special Magistrate shall hear cases requesting extension of compliance dates, reduction of fines or recommendations of reduction of liens. The Respondent must be in compliance for the Special Magistrate to consider a reduction in the fine or recommendation for reduction of the lien.

(3) After all uncontested hearings are heard by the Special Magistrate, the Special Magistrate shall hear contested cases, which were properly noticed for that agenda.

(4) After all contested hearings are heard by the Special Magistrate, the Special Magistrate shall hear cases where the Respondent has failed to appear and which were properly noticed for that agenda.

F. The Respondent may retain an attorney to represent him/her in the Special Magistrate proceedings. To minimize expense to those Respondents who choose to be represented by counsel, the Special Magistrate will generally allow those cases to be heard first in each category of Section E.

G. To secure an accurate record for appeal purposes, a verbatim record may be required, either party may cause the proceedings to be recorded by a certified court reporter or other certified recording instrument at the expense of the party requesting the recording.

H. The Special Magistrate will generally render a decision immediately following the presentation of evidence. However, the Special Magistrate may request written memorandums of law or written argument. Unless otherwise provided, such written memorandums of arguments shall be due at the beginning of the next hearing with a copy of the writing delivered to the other party one (1) day prior to the hearing. The Special Magistrate will generally render an opinion by the next hearing date after the submittal of written memorandum of law or argument.

## **2. Evidence**

A. All relevant evidence shall be admitted at Special Magistrate hearings if, in the opinion of the Special Magistrate, it is the type of evidence upon which reasonable and responsible persons would normally rely in the conduct of business affairs, regardless of the existence of any common-law or statutory rule which might make such evidence inadmissible over objections in civil actions. The Special Magistrate may exclude irrelevant or unduly repetitious evidence.

B. Hearsay evidence may be accepted for the purpose of supplementing or explaining any direct evidence, but such hearsay evidence shall not, in and of itself, be considered sufficient to support a finding or decision unless the evidence would be admissible over objections in a civil action.

C. Each party to the hearing shall have the right to:

1. Call and examine witnesses;
2. Introduce exhibits;
3. Cross-examine opposing witnesses; 4. Impeach witnesses;

4. Submit rebuttal evidence
5. Have subpoenas issued on his/her behalf by the Special Magistrate

D. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinary, leading questions should be permitted on cross-examination when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be leading questions.

E. The County is subject to Chapter 119 of Florida Statutes, the Florida Public Records Law. The Respondent may request to inspect non-exempt documents. The Respondent may request copies of documents including the case files pursuant to a public records request and the statutory rate for those copies may be charged.

F. Evidence shall be labeled for recording purposes. The County's exhibits shall be labeled "County Exhibit" (A through Z). The Respondent's exhibits shall be labeled "Respondent's Exhibit" (A through Z). The Clerk to the Special Magistrate shall supply Respondent with proper evidence labels.

### **3. Request to Plea Non-Compliance Without a Hearing**

A. Respondent may request to plea non-compliance without appearing at the hearing. The Respondent must acknowledge and submit in a notarized written form (Affidavit of Stipulation) that the following is true and correct:

1. He/She is in violation of the Code;
2. He/She agrees to a reasonable time to cure the violation;
3. He/She agrees to the assessment of a fine;
4. He/She agrees to the enforcement cost, which the County will waive the prosecution costs thereof upon execution of said stipulation.

B. The Respondent should request the form and submit the Affidavit of Stipulation from Code Enforcement at least two (2) days before the scheduled hearing. Code Enforcement must agree to accept the stipulation.

### **4. Extension of Compliance**

A. The Respondent may request that the Special Magistrate grant an extension of time to Respondent to cure the violation. The Special Magistrate may weigh factors such as illness, legal hardships, diligence, etc. in determining whether to grant an extension. The Respondent shall submit his/her request to Code Enforcement.

B. Code Enforcement may waive any objection without hearing or schedule the matter for hearing.

### **5. Continuances of Hearings**

A. The Respondent may request Code Enforcement to remove his/her case from the current agenda to the next agenda. The request should be in writing and state reasons for the

requested removal. Except in special circumstances, the request should be submitted no less than five (5) business days before the hearing.

B. If Code Enforcement objects to the request, or the Respondent has requested more than one (1) continuance, then Code Enforcement shall forward the request to the Special Magistrate through the Clerk to the Special Magistrate. Code Enforcement may also submit a memorandum opposing the request for a continuance. A copy of said objection and any memorandum shall be sent to the Respondent. The Special Magistrate shall, within a reasonable time, rule on the request for continuance and provide copies of his ruling to each party, through the Clerk to the Special Magistrate.

C. If Code Enforcement removes the item from the agenda, notification informing the Respondent of the removal should be provided in writing five (5) business days before the hearing. If the Code Enforcement Officer cannot make contact with the Respondent, (preferably via facsimile, hand service) then notification for the removal of the agenda item should follow the same procedure as notification of the initial hearing.

## **6. Subpoenas**

A. If either the County or the Respondent desires to issue a subpoena, the party should submit a proposed subpoena to the Special Magistrate through the Clerk to the Special Magistrate at least three (3) days prior to the hearing.

B. The requesting party shall submit in written memorandum form, the relevance of the subpoenaed witness and disclose the memorandum immediately to the other party, including Code Enforcement.

C. The Clerk shall keep on file a sample subpoena and memorandum, and provide same upon request, to assist pro-se Respondents in the subpoena process.

D. The requesting party shall bear the cost of service of the subpoena and retaining the services of a process server or Deputy Sheriff.

E. The opposing party shall have one (1) business days to object to the requested subpoena.

F. If the witness fails to comply with the subpoena, then:

(1) If the subpoena is served on a party or a party's employee, the Special Magistrate may strike pleadings or otherwise sanction the non-responsive party.

(2) If the subpoena is served on a third party, the party seeking the subpoena shall bear the cost of seeking the appropriate relief through the courts.

## **7. Motion for Re-hearing**

A new hearing may be granted if the Special Magistrate finds sufficient grounds to re-hear the matter. A motion for a re-hearing must be filed with the Clerk to the Special Magistrate not later than ten (10) days after the date the Order is signed by the Special Magistrate. The Motion should state grounds for the re-hearing. (NOTE: A Motion for Re-hearing does not toll the time for filing of a Notice of Appeal.)

## **8. Appeal**

An aggrieved party, including Brevard County, may appeal a final administrative order of the Special Magistrate to the 18th Circuit Court for Brevard County. Any such appeal must be filed within thirty (30) days of the date of the Order.

## **9. Acknowledgment of Compliance**

Hearings are not required for Code Enforcement to request an acknowledgment of compliance. If Respondent believes he/she is in compliance and Code Enforcement does not agree, then Respondent may request a hearing through Code Enforcement. This procedure is not a re-hearing on the original violation. This procedure is to determine if Respondent's repairs constitute compliance. Evidence may be presented. The Special Magistrate may assess additional costs for abuse of this section.

## **10. Reduction of Fines**

If the fine has not yet been imposed as a lien on the Respondent's property, a Respondent may request a hearing to request a reduction of a fine. Requests for reduction should not be heard until the property is in full compliance with Brevard County Codes.

## **11. Imposition of Lien**

After more than thirty (30) days, the County may request that the accumulated fines be imposed upon all of Respondent's non-exempt real property and personal property located in Brevard County. The only issues to be determined are the compliance date, whether compliance has been achieved, and whether Respondent has paid the fine before imposing the lien. Respondent may request a hearing for reduction of the fines, and that issue may be placed on the same agenda.

## **12. Reduction of Lien**

After a lien has been imposed on the Respondent's real property and the property is in compliance with Brevard County Code, the Respondent may make a request for a reduction before the Board of County Commissioners. The process is as follows:

1. The Respondent requests Code Enforcement to place a request for a recommendation for reduction hearing on the agenda for the Special Magistrate.
2. The Special Magistrate holds a hearing and makes a recommendation on the matter to the Board of County Commissioners. The Special Magistrate will make written findings to support his/her recommendation to the Board of County Commissioners.
3. a) Unless Code Enforcement has an objection, the recommendations will be placed as a Consent Item on the Board of County Commissioner's Agenda, requesting approval of the recommendation. Any Board member may pull the item from the Consent Agenda for discussion. If Code Enforcement objects to the recommendation by the Special Magistrate, the

item will be placed as a discussion item on the Agenda. If the item is heard as a discussion item, then the Board may reject, alter (higher or lower) or accept the Special Magistrate's recommendation. Respondent should attend the Board of County Commission meeting to be heard on the recommendation.

b) The Respondent may fill out a speaker card before the Consent Items are passed and the Respondent may request that the item be pulled for discussion from the Consent Agenda. The Respondent may also request the Board of County Commissioners to further reduce the amount of the lien. The Board may reject, alter (higher or lower) or accept the recommendation of the Special Magistrate.

### **13. Written Form of Motions**

Realizing that most Respondents will appear pro se (without an attorney), motions only need to be in letter form, and state the Special Magistrate case number on the requested action. No motion will be denied based on technical non-compliance with legal format. The original motion should be filed with the Clerk to the Special Magistrate and copies of the motions delivered to all opposing parties at the same time of filing. Samples of motions will be kept on file with the Clerk to the Special Magistrate.

### **14. Contact Information**

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