ORDINANCE 2016-07

AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, AMENDING CHAPTER 2 ADMINISTRATION, ARTICLE III BOARDS, COMMITTEES, COMMISSIONS, DIVISION 2 CODE ENFORCEMENT BOARD TO ADD SPECIAL MAGISTRATE, REVISE CITATION PROCEDURES, AND ADD LANDGUAGE CONCERNING ELECTION OF THE CODE ENFORCEMNT BOARD CHAIRMAN; PROVIDING FOR APPLICABILITY; PROVIDING DEFINITIONS; PROVIDING FOR SPECIAL MAGISTRATES; PROVIDING ENFORCEMENT PROCEDURES; PROVIDING FOR CONDUCT OF HEARING; PROVIDING POWERS OF SPECIAL MAGISTRATES; PROVIDING FOR ADMINISTRATIVE FINES, COSTS OF REPAIRS, AND LIENS; PROVIDING FOR DURATION OF LIEN; PROVIDING FOR APPEALS; PROVIDING FOR NOTICES; PROVIDING FOR SUPPLEMENTAL ENFORCEMENT PROVISIONS; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Greenacres currently uses a Code Enforcement Board consisting of resident volunteers who sit in judgment of other residents and business owners for alleged violations of the City's Code of Ordinances as authorized in Section 162, Florida Statutes; and

WHEREAS, the growth of the City has resulted in a need for a more prompt and efficient manner of dealing with Code Enforcement violations; and

WHEREAS, Florida Statutes authorizes the use of a Special Magistrate as an alternative to a Code Enforcement Board, with a neutral individual who is experienced in local government law and code enforcement matters sitting in judgment of any allegation; and

WHEREAS, the City Council desires to adopt the alternate code enforcement system that gives Special Magistrates the authority to hold hearings and assess fines for violations of the City's Code of Ordinances; and

WHEREAS, the City Council has determined that it is in the best interest of the City to enact an Ordinance adopting such alternate code enforcement system to provide an equitable, expeditious, effective, and inexpensive method of enforcing codes and Ordinances in force in the City of Greenacres.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREENACRES, FLORIDA, AS FOLLOWS:

Section 1. Chapter 2, Article III is hereby amended as follows:

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DIVISION 1. - GENERALLY

Secs. 2-46—2-~~6~~49. - Reserved.

DIVISION 2. - CODE ENFORCEMENT BOARD AND SPECIAL MAGISTRATE

Sec. 2-50. - Applicability.

The code enforcement board and special magistrate shall have jurisdiction to enforce the code as defined in Sec. 2-51, except as otherwise provided by statute, city charter or other law. References in this chapter to an enforcement board, except for Sec. 2-70 and Sec. 2-71, shall include a Special Magistrate if the context permits. The code enforcement board shall have the authority to hold hearings, assess and or reduce fines against violators of the code.

Sec. 2-51. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Citation means a civil violation notice issued to a violator in accordance with the provisions of this article.

Code means collectively the City Code of Ordinances, and applicable sections of the county code and the Florida Building Code, as made applicable to the city pursuant to the city code.

Code Enforcement Inspector/Officer means any authorized agent or employee of the city, including deputies of the Palm Beach County Sheriff's Department, whose duty it is to ensure compliance with the code. The terms inspector and officer may be used interchangeably and wherever used shall include the use of the other.

Continuing Violation means a violation which remains uncorrected beyond the time period for correction contained in either the citation or the final order of the special magistrate, whichever is applicable.

Repeat Violation means a violation of a provision of the code by a person who has been previously found through the code enforcement board or special magistrate to have violated or has admitted to violating the same provision of the code within 5 years prior to the violation even if the violations occur at different locations.

Special Magistrate means a person appointed pursuant to Sec. 2-54 of this code.

Uncorrectable Violation means a violation which is irreparable or irreversible in nature and which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition or circumstance.

Violator means that person responsible for a violation of the code or the owner/owners of property were a violation of the code exists or any combination thereof.

Sec. 2-52 - Civil offenses and penalties.

A violation of any city ordinance or code section listed in section 2-65 shall constitute a civil offense and may be punishable by civil penalty in the amount prescribed in section 2-65 and as modified by section 2-61 or by any other method allowed by this article or Florida Statutes.

Sec. 2-53. - Authority to initiate enforcement proceedings.

Code enforcement inspectors and officers shall have the authority to initiate code enforcement proceedings as provided in sections 2-56 and 2-72, code enforcement boards and special magistrates shall not have such authority.

Sec. 2-54. - Qualifications of special magistrates; appointment and removal; compensation.

(a) The city attorney shall nominate one or more individuals to serve as special magistrates as needed on the basis of experience in local government law or code enforcement. Such nomination shall be submitted to the council for ratification and final appointment by resolution of the City Council.
(b) Special magistrates shall possess outstanding reputations for civic pride, interest, integrity, responsibility and business or professional ability.
(c) Appointments shall be made for a term of two years. Special magistrates may be reappointed or removed at the discretion of the council.
(d) Special magistrates shall not be city employees, but shall be compensated at a rate to be determined at the time of appointment or reappointment.

Sec. 2-55. - Powers of special magistrates.

Special magistrates shall have the power to:
(1) Adopt rules for the conduct of hearings.
(2) Subpoena violators and witnesses for hearings; subpoenas shall be served by any employee of the city or member of the Palm Beach County Sheriff's Department.
(3) Subpoena evidence to hearings.
(4) Take testimony under oath.
(5) Assess and order the payment of civil penalties as provided in this article.
(6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Sec. 2-56. - Code enforcement citation procedures.

(a) Except as provided herein, a code enforcement officer, who finds a violation of the code shall have the discretion to issue a citation to the violator stating that the violator has committed a violation of the code. The citation shall specify a reasonable time period within which the violator must correct the violation. This determination shall be based on considerations of fairness; practicability; ease of correction; ability to correct; severity of violation; nature, extent and probability of danger or damage to the public; and other relevant factors relating to the reasonableness of the time period prescribed.
(b) A code enforcement officer shall have the discretion to issue a written warning prior to issuing a citation. The written warning shall state that the violator has committed a violation of the code and shall specify a reasonable time period within which the violator must correct the

violation. If upon personal investigation, the code enforcement officer finds that the violator has not corrected the violation within the time period specified in the warning, the code enforcement officer shall issue a citation to the violator.

(c) If a code enforcement officer has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare, or if the violation is an uncorrectable violation, the code enforcement officer shall make a reasonable effort to notify the violator, may immediately request a hearing and may take other action pursuant to subsection 2-61(f).

(d) If, upon personal investigation, a code enforcement officer finds that the violator has failed to pay the civil penalty and correct the violation within the time period specified in the citation, or to timely request an administrative hearing before a special magistrate, the code enforcement officer shall report such failure to the special magistrate in accordance with subsection 2-59(c). The code enforcement officer has the discretion to extend the time period for correction of the violation in the original citation by amending the citation. The amended citation is not required to be issued to the violator.

Sec. 2-57. - Service of citation.

(a) Service of a citation to the violator shall be effected either by:

(1) Hand delivery to the violator; or

(2) Leaving the citation at the violator's usual place of residence with any person residing therein who is 15 years of age or older and informing such person of the contents of the citation; or

(3) Certified mail, return receipt requested, to the violator's usual place of residence or the mailing address listed on the records of the Palm Beach County Property Appraiser; or

(4) By posting the citation in a conspicuous place on the premises or real property upon which the violation was observed or on the personal property which is the subject of the violation. The posting of the citation shall be deemed proper service, and the time for compliance stated in the notice shall commence with the date of such posting.

(b) If the owner of property which is subject to an enforcement proceeding before the special magistrate transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3) 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 proceeding.

(4) File a notice with the code enforcement official 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, within five (5) days after the date of the transfer. A failure to make the disclosures described in subsections (1), (2) and (3) 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.

Sec. 2-58. - Contents of citation

The form of the citation shall contain but not be limited to the following:

(1) The date and time issued.

(2) The name and address of the person to whom the citation is issued.

(3) A brief description of the nature of the violation including location, date and time the violation was committed.

(4) Time within which the violation must be corrected.

(5) The number or section of the Code or ordinance violated.

(6) The name of the code enforcement officer and division or department, if applicable, issuing the citation.

(7) The due date and procedure for the person to follow in order to pay the civil penalty or to contest the citation.

(8) The applicable civil penalty if a person elects to contest the citation.

(9) The applicable civil penalty if a person elects not to contest the citation.

(10) A notice that if a person fails to pay the civil penalty within the time allowed, or fails to request an administrative hearing within 20 calendar days after service of the civil violation or fails to appear in court to contest the citation, it shall constitute a waiver of the violator's right to an administrative hearing before the special magistrate, and that such waiver shall constitute an admission of violation.

(11) Notice that the filing of a request for an administrative hearing will stop the accrual of continuing violation penalties.
(12) A statement that the violator may be liable for the reasonable administrative hearing costs if found guilty.
(13) Notice that each day of continued violation after the time period for correction has run shall be deemed a continuing violation subject to additional penalty in the same amount, without the need for additional notices of violation.

Sec. 2-59. - Rights of violators; payment of fine; right to appeal; failure to pay and correct or to appeal.

(a) A violator who has been served with a citation shall elect either to:
  (1) Pay the civil penalty in the manner indicated on the notice, and correct the violation within the time specified on the notice; or
  (2) Request an administrative hearing before a special magistrate to appeal the decision of the code enforcement officer which resulted in the issuance of the citation.
(b) Appeal of the citation to the special magistrate shall be accomplished by filing a request in writing to the address indicated on the citation, not later than 20 calendar days after the service of the citation.
(c) If the named violator, after notice, fails to pay the civil penalty and correct the violation (within the time specified), or to timely request an administrative hearing before a special magistrate, the special magistrate shall be informed of such failure by report from the code enforcement officer. Such report shall be by affidavit of the code enforcement officer. Failure of the named violator to appeal the decision of the code enforcement officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special magistrate. A waiver of the right to administrative hearing shall be treated as an admission of the violation, and the special magistrate may enter an order assessing penalties and costs accordingly.

Sec. 2-60. - Scheduling and conduct of hearing.

(a) Upon receipt of a named violator's timely request for an administrative hearing, the city manager or designee shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as practicable.
(b) The city manager or designee shall send a notice of hearing by first class mail, or any other method reasonably calculated to effect

delivery, to the named violator at his last known address. The notice of hearing shall include, but not be limited to, the following:

(1) Name of the code enforcement officer who issued the citation.
(2) Factual description of the alleged violation.
(3) Date of the alleged violation.
(4) Section of the code allegedly violated.
(5) Place, date and time of the hearing.
(6) Notice of the right of the violator to be represented by an attorney.
(7) Right of the violator to present evidence and witnesses, and to cross examine witnesses.
(8) Notice that failure of the violator to attend the hearing may result in additional civil penalty and administrative hearing costs being assessed.
(9) Notice that requests for continuances will not be considered if not received in writing by the special magistrate at least ten calendar days prior to the date set for the hearing.

(c) The city manager or designee shall call hearings on a monthly basis or upon the request of the code enforcement officer.

(d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the special magistrate or designee at least ten calendar days prior to the date set forth the hearing.

(e) All hearings of the special magistrate shall be open to the public. All testimony shall be under oath. Assuming proper notice, a hearing may proceed in the absence of the named violator.

(f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(g) The city clerk shall provide clerical and administrative personnel as may be reasonably required by each special magistrate for the proper performance of his or her duties.

(h) Each case before a special magistrate shall be presented by the city manager or designee.

(i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings. Any relevant evidence shall be admitted if the special magistrate finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

(j) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called that witness to testify; and to offer rebuttal of the evidence.

(k) The special magistrate shall make findings of fact and conclusions of law based on evidence of record. In order to make a finding upholding the code enforcement officer's decision, the special magistrate must find that a preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant section of the code.

(l) The time for correction given by the code enforcement officer to the named violator and contained in the citation is rebuttably presumed to have been a reasonable time for correction. Upon presentation of relevant evidence by the named violator that the time for correction was not reasonable, the special magistrate has the discretion to determine the reasonableness of the time for correction and alter it accordingly. The special magistrate may not make a determination that the time given for correction in the citation was unreasonable unless the time given for correction has not yet run at the time the special magistrate makes his or her decision. If the special magistrate determines that the time given for correction was insufficient, the penalty for a continuing violation shall be calculated from the date determined by the special magistrate to be a reasonable date for correction.

(m) If the named violator is found guilty of the violation, he may be held liable for the reasonable cost of the administrative hearing, at the discretion of the special magistrate.

(n) The fact-finding determination of the special magistrate shall be limited to whether the violation alleged did occur, and, if so, whether the person named in the citation may be held responsible for that violation. Based upon this fact-finding determination, the special magistrate shall either affirm or reverse the decision of the code enforcement officer. The special magistrate may also modify the decision of the code enforcement officer as to the time for correction contained in the citation, subject to the provisions of subsection (l) of this section. If the special magistrate reverses the decision of the code enforcement officer and finds the named violator not responsible for the code violation alleged in the citation, the named violator shall not be liable for the payment of any civil penalty, absent reversal of the special magistrate's findings pursuant to section 2-63.

(o) A decision of the special magistrate affirming the decision of the code enforcement officer shall include the following elements:

(1) Amount of civil penalty.

(2) Administrative costs of hearing.

(3) Date by which the violation must be corrected to prevent resumption of continuing violation penalties, if applicable.

(p) A special magistrate shall postpone a hearing if the named violator, prior to the scheduled hearing date, files with the duly authorized city board of appropriate jurisdiction, if any, an administrative

appeal concerning the interpretation or application of the code provisions upon which the alleged violation was based. However, once an issue has been determined by a special magistrate in a specific case, that issue may not be further reviewed by a city board in that specific case.

(q) Upon exhaustion of a timely filed administrative appeal and finalization of the administrative order by the duly authorized city board of appropriate jurisdiction, the special magistrate may exercise all powers given to him or her by this article. The special magistrate shall not, however, exercise any jurisdiction over such alleged code violations until the time allowed for court appeal of the ruling of such board has lapsed or until such further appeal has been exhausted.

(r) The special magistrate shall be bound by the interpretations and decisions of duly authorized city boards concerning the provisions of the code within their respective jurisdictions. If such a board decides that an alleged violation of the code is not in accordance with such board's interpretation of the code provision on which the violation is based, the special magistrate shall not be empowered to proceed with the enforcement of the violation.

Sec. 2-61. - Civil penalties and related terms construed.

(a) Penalties for violations of the provisions to be enforced by this article shall be in the amounts prescribed in the schedule of civil penalties in section 2-65; penalties for violations not set forth in section 2-65 shall be up to $250.00 per day for a first violation. The penalty for a violation relating to the failure to obtain any required development approvals, including building permits, shall be up to $250.00 per day. The penalty for an Uncorrectable Violation shall not exceed $5,000.00 per violation.

(b) For each day of a continuing violation, an additional penalty in the same amount as that prescribed for in the original violation shall be added.

(c) For a repeat violation, the amount of the civil penalty shall be in the amounts prescribed in the schedule of civil penalties in section 2-65 The amount of civil penalty due for each subsequent repeat violation shall be in the amounts prescribed in the schedule of civil penalties in section 2-65.

(d) A repeat violation which remains uncorrected beyond the time prescribed for correction in the citation shall be treated as a continuing violation, and the additional penalty for each day of continued violation shall be equal to the amount due for the first day of the repeat violation.

(e) Continuing violation penalties shall accrue from the date of correction given in the citation until the correction is made or until a request for administrative hearing is filed, whichever comes first. If the named violator requests an administrative hearing and loses such appeal, the special magistrate shall determine a reasonable time period within which correction of the violation must be made, based on the considerations set forth in subsection 2-56(a). If correction is not made within the period set by the special magistrate, continuing violation penalties shall begin to accrue again after the time for correction has run and the code enforcement officer has filed an affidavit of continuing violation. The code enforcement officer shall serve on the violator a copy of the affidavit of non-compliance and a notice of continuing violation which shall include the following:

(1) Date of issuance.

(2) A reference to the order of the special magistrate that continues to be violated.

(3) Notice of the right to request an administrative hearing before the special magistrate and instructions on how to file the request.

(4) Notice that failure to request an administrative hearing within 20 calendar days after the date of the notice of continuing violation shall constitute a waiver of the right to a hearing.

(5) Notice that the hearing is strictly limited to whether and when the violator complied with the order of the special magistrate.

(6) Notice that the violator shall be liable for the reasonable costs of the administrative hearing if the violator is unsuccessful at the hearing. At reasonable intervals, a violator may request an inspection to determine compliance with an order of the special magistrate. After such inspection, the code enforcement officer may issue an affidavit of non-compliance and notice of continuing violation or an affidavit of compliance, in recordable form, as appropriate.

(f) If, pursuant to a finding by the special magistrate, the violation is a violation described in subsection 2-56(c), the City may, at its discretion, make all reasonable repairs that are required to bring the property into compliance and charge against the violator the cost of the repairs separately from the fines imposed pursuant to this section. The city shall have a separate lien for the repairs upon the property in such amount until paid, which lien shall be prior to all other liens on such property, except taxes. Such lien, when delinquent for more than three months, may be foreclosed in the manner provided for the foreclosure of mortgages on real property. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or 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.

(g) Civil penalties assessed pursuant to this article are due and payable to the city on the last day of the period allowed for the filing of an appeal from the special magistrate's decision, or, if a proper appeal is made, when the appeal has been finally decided adversely to the named violator.

Sec. 2-62. - Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; foreclosure; lien reduction.

(a) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.

(b) A certified copy of an order imposing a civil penalty shall be recorded in the public records and thereafter shall constitute a lien against the property on which the violation exists and upon any other real or personal property owned by the violator; upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A civil penalty imposed pursuant to this article shall continue to accrue until the violator complies or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this article, whichever occurs first. After three months from the date of filing of any such lien which remains unpaid, the city may foreclose or otherwise execute on the lien. Alternatively, the city may sue to recover a monetary judgment for the amount of the lien plus accrued interest. Upon payment of the civil penalty or notice of assessment by the violator or the successor(s), assign(s) or heir(s) of the violator, the city clerk is authorized to execute and record in the public records of Palm Beach County the appropriate release of lien document.

(c) No lien provided under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on a lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party may recover interest and all costs, including a reasonable attorney's fee, incurred in the foreclosure. The continuation of the lien effected by the commencement of the action shall be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(d) The violator, or the violator's successors or assigns, who has an ownership interest in the property encumbered by a lien for civil

penalties, may file a request for a reduction of the civil penalty before the special magistrate only after a compliance inspection is completed during which a code enforcement officer finds that all violations were corrected, unless good cause is shown as determined by the Building Official. Upon receipt of a written request for reduction of civil penalty, and either the determination of good cause by the Building Official or the filing of an affidavit of partial compliance by the code enforcement officer which sets forth that all outstanding violations of the special magistrate's order have been corrected, except for payment of any outstanding civil penalties, the city manager, or designee, shall set the matter for penalty reduction hearing by the special magistrate. However, if the city attorney has commenced action to obtain compliance with the order of the special magistrate, including but not limited to an action for injunctive relief, foreclosure, or money judgment, no hearing shall be held for a reduction of civil penalty.

(e) At the hearing, the fact-finding determination of the special magistrate shall be limited to evidence establishing:

(1) Good cause for a reduction of the civil penalty;

(2) The amount of the reduction; and

(3) Any equitable considerations raised by the applicant or the city relating to good cause or the amount of the reduction. Said hearing shall not be an opportunity to appeal any finding of fact or conclusions of law set forth in any prior order of the special magistrate or any administrative determination of the city.

(f) The special magistrate may reduce a civil penalty once the applicant has otherwise complied with an order of the special magistrate based on a showing of good cause, but in no event shall the civil penalty be reduced below the costs incurred by the city in its prosecution of violations, including but not limited to, any attorney's fees and staff time. In no event, however, shall any administrative fees previously ordered by the special magistrate be waived or reduced.

(g) In determining good cause, and the amount of the reduction, if any, the special magistrate shall consider:

(1) The gravity of the violation.

(2) Any actions taken by the violator or applicant to correct the violation.

(3) Any previous, or other outstanding violations whether committed by the violator, or pertaining to the property to which the lien attaches, unless an order finding a violation is under appeal at the time of the determination.

(4) Whether the violation is irreparable or irreversible in nature.

(5) Whether the violator's failure to timely comply with an order of the code enforcement officer or the special magistrate is

due to an inability to comply based on factors beyond the control of the violator.

(h) Upon a finding of good cause, the special magistrate has the discretion to grant or deny the request for a reduction of civil penalty according to the following guidelines, provided the reduction is to an amount that is not less than the costs incurred by the city:

(1) If compliance occurs within three months of the date for compliance set forth in the order of the special magistrate; a maximum reduction of 95 percent of the total civil penalty (the original civil penalty plus the continuing civil penalty amounts);

(2) If compliance occurs more than three months but less than 12 months from the compliance date, a maximum reduction of 75 percent of the total civil penalty amount;

(3) If compliance occurs from 12 months to 18 months of the compliance date; a maximum reduction of 50 percent of the total civil penalty amount; and

(4) If compliance occurs more than 18 months after the compliance date, a maximum reduction of 25 percent of the total civil penalty amount.

(i) The special magistrate has the authority where there is a demonstrated showing of financial hardship or other good cause to reduce the civil penalty below the civil penalty reduction guidelines. The special magistrate shall exercise this authority with great caution and only in documented and exceptional circumstances. A violator alleging financial hardship or good cause has the burden of presenting evidence of inability to pay the civil penalty or of good cause.

(j) If a civil penalty is reduced, the order of the special magistrate shall provide that, if the violator fails to pay the reduced civil penalty by the date ordered by the special magistrate, then the original amount of the civil penalty shall be automatically reinstated. The special magistrate may impose conditions on the granting of a request for reduction of the civil penalty and may allow additional hearings upon request if necessary to establish compliance with said conditions before an order reducing the civil penalty is entered.

(k) A certified copy of the order reducing the civil penalty shall not be recorded in the public records unless the terms of the order reducing the civil penalty are fully complied with and the order shall so provide.

(l) Upon receipt of timely payment in full of the amount of the reduced civil penalty, and the recording costs, the city clerk, or designee, shall record a copy of the order reducing the civil penalty and a satisfaction of lien.

(m) A reduction of civil penalty may only be granted once as to any violation of an order of the special magistrate unless evidence of good cause is shown as determined by the special magistrate.

Sec. 2-63. - Appeal of special magistrate's order.

(a) An aggrieved party, including the city, may appeal a final order imposing fines or assessing continuing fines of a special magistrate to the circuit court. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the special magistrate. An appeal shall be filed within 30 calendar days of the issuance of the order sought to be overturned. Failure to make such appeal within the prescribed 30-day period shall render the findings of the special magistrate conclusive, binding and final.

(b) Unless the findings of the special magistrate are overturned in a proceeding held pursuant to subsection (a) of this section, findings of the special magistrate shall be admissible in any proceeding to collect unpaid penalties.

(c) No aggrieved party other than the city may apply to the court for relief unless such party has first exhausted the remedies provided for in this article and has taken all available steps provided in this article. It is the intention of the city that all steps provided by this article shall be taken before any application is made to the court for relief; and no application shall be made by any aggrieved party other than the city to a court for relief except from an order imposing fines or assessing continuing fines issued by a special magistrate pursuant to this article. It is the intention of the city that, notwithstanding anything in this article to the contrary, the city shall retain all rights and remedies otherwise available to it to secure compliance with or prevent violations of the code. For purposes of an appeal, the city clerk shall make available, for public inspection and copying, the record upon which each final order of a special magistrate is based. The city clerk shall make a reasonable charge commensurate with the cost for the preparation of the official record on appeal and transmittal thereof to the circuit court and for making certified copies of any record or portion thereof.

Sec. 2-64. - Article provisions are supplemental.

Nothing contained in this article shall prohibit the city from enforcing its code by any other means including, but not limited to, a summons, an arrest, a notice to appear, civil action for injunctive relief, a stop work order or demolition. The enforcement procedures outlined in this article are

cumulative to all others and shall not be deemed to be prerequisites to filing suit for the enforcement of any section of this code.

Sec. 2-65. - Violations and penalties.

(a) The following schedule of violations and penalties may be assessed by code enforcement officers and by the Special Magistrate in its review and adjudication of matters in accordance with this article.

Violation:	**First Offense**	**Second Offense**	**Third Offense**	**Fourth Offense****
County Ordinance*	$100.00	$200.00	$300.00	$300.00 - $500.00
City Code Chapter 3 Animals	$150.00	$250.00	$350.00	$335.00 - $500.00
City Code Chapter 4 Buildings	$100.00	$200.00	$300.00	$300.00 - $500.00
City Code Chapter 5 Fire Prevention	$200.00	$300.00	$400.00	$400.00 - $500.00
City Code Chapter 7 Nuisance	$100.00	$200.00	$300.00	$300.00 - $500.00
City Code Chapter 8 Licensing***	$100.00	$150.00	$200.00	$200.00 - $500.00
City Code Chapter 9 Miscellaneous	$100.00	$200.00	$250.00	$250.00 - $500.00
City Code Chapter 11 Streets, Sidewalks	$150.00	$200.00	$250.00	$250.00 - $500.00
City Code Chapter 12 Subdivisions***	$150.00	$200.00	$250.00	$250.00 - $500.00
City Code Chapter 14 Traffic	$100.00	$200.00	$300.00	$300.00 - $500.00
City Code Chapter 15 Utilities	$100.00	$200.00	$250.00	$250.00 - $500.00
City Code Chapter 16 Zoning***	$150.00	$200.00	$250.00	$250.00 - $500.00
All other applicable local, state or federal***	$150.00	$200.00	$250.00	$250.00 - $500.00

* or as specified by county ordinance.
** mandatory appearance for fourth offense.
*** or as specified by state statute or other applicable code or regulation

(b) For violations of any section of this code for which a specific penalty is not prescribed in subsection 2-65(a), a penalty shall be imposed pursuant to section 2-61.

Sec. 2-66. - Additional enforcement powers.

In addition to the powers and authority given to the special magistrate for the city pursuant to this article, the city may, in its discretion, exercise any powers given to municipalities or their special magistrate by F.S. ch. 162, as amended.

Secs. 2-67—2-69. - Reserved

Sec. 2-70. – Code Enforcement Board ~~Q~~qualifications; appointment; terms.

(a) The city council shall appoint a seven-member code enforcement board, two (2) alternate members to serve in the absence of board members and the city ~~attorney~~ appointed special magistrate shall act as legal counsel for the board.
(b) The members of the code enforcement board shall be residents of the city. Appointments shall be made by the city council on the basis of experience or interest in the subject matter jurisdiction of the code enforcement board, in the sole discretion of the city council. The membership of the code enforcement board shall, whenever possible, consist of an architect, a businessman, an engineer, a general contractor, a subcontractor and a realtor.
(c) All appointments shall be made for a term of three (3) years. Any member may be reappointed by the city council. Appointments to fill any vacancy on the code enforcement board shall be for the remainder of the unexpired term of office. When any member fails to attend two (2) out of three (3) successive meetings without cause and without prior approval of the chairman, the code enforcement board shall declare the member's office vacant. The city council shall promptly fill such vacancy. The members shall serve at the pleasure of the city council.

Sec. 2-71. - Chairman; quorum.

The members of the code enforcement board shall elect from among the members of the board a chairman, who shall be a voting member. The election shall be held annually at the beginning of the first

meeting of the calendar year. The presence of four (4) or more members shall constitute a quorum.

Sec. 2-72. - Enforcement procedure.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes. No member of the board shall have the power to initiate such enforcement proceedings.

(b) Except as provided in (c) below, if a violation of the codes under the jurisdiction of the board is found, the code inspector shall notify the violator and give the violator a reasonable time to correct the violation. If the violation continues beyond the time specified for correction, the code inspector shall notify the board and request a hearing. The board, through its clerical staff, shall schedule a hearing; and written notice of such hearing shall be hand delivered or mailed as provided in section 2-78 to the violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in section 2-78. If the violation is corrected and then recurs, or the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the board, even if the violation has been corrected prior to the board meeting, and the notice shall so state.

(c) 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 code enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to section 2-78. The case may be presented to the code enforcement board even if the repeat violation has been corrected prior to the board hearing and the notice shall so state.

(d) If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the code enforcement board and request a hearing.

~~Sec. 2-72.1. - Alternate code enforcement procedures.~~

~~(a) An employee of the city who is duly authorized by the city manager and responsible for the enforcement of such ordinances, hereinafter~~

~~referred to as a "code enforcement officer," may issue a citation to a person to appear in county court when the code enforcement officer, upon personal investigation, has reasonable cause to believe that the person has committed a civil infraction. Employees who may be designated as code enforcement officers may include but are not limited to, code inspectors, law enforcement officers and fire safety inspectors.~~

~~(b) Prior to issuing a citation, the code enforcement officer shall provide notice to the person who has committed a violation of a city ordinance and shall establish a reasonable time period, not to exceed thirty (30) days within which the person must correct the violation. If, upon personal investigation, the code enforcement officer finds that the person has not corrected the violation within the time period, the code enforcement officer may issue a citation to the person who has committed the violation. If the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, if the violation is irreparable or irreversible or if a repeat violation is found, the code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation. After issuing the citation to the alleged violator, the code enforcement officer shall deposit the original and one (1) copy of the citation with the Palm Beach County Court. Any person who willfully refuses to sign and accept a violation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree and punishable by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the Palm Beach County Jail not to exceed sixty (60) days or by both fine and imprisonment.~~

~~(c) The form of the citation shall contain the following:~~

~~(1) The date and time issued.~~
~~(2) The name and address of the person to whom the citation is issued.~~
~~(3) The date and time the civil infraction was committed.~~
~~(4) The facts constituting reasonable cause.~~
~~(5) The number or section of the Code or ordinance violated.~~
~~(6) The name and authority of the code enforcement officer.~~
~~(7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation.~~
~~(8) The applicable civil penalty if a person elects to contest the citation.~~
~~(9) The applicable civil penalty if a person elects not to contest the citation.~~
~~(10) A conspicuous statement that if a person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he shall be deemed to have waived his right~~

~~to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.~~

~~(d) A person who receives a citation from a code enforcement officer for the violation of a city ordinance, and who elects not to contest the citation, shall be subject to a civil penalty in accordance with the following schedule:~~

~~(1) For a class I violation, by a fine of fifty dollars ($50.00), plus court costs.~~

~~(2) For a class II violation, by a fine of seventy-five dollars ($75.00), plus court costs.~~

~~(3) For a class III violation, by a fine of one hundred twenty-five dollars ($125.00), plus court costs.~~

~~(4) For a class IV violation, by a fine of two hundred fifty dollars ($250.00), plus court costs.~~

~~(e) A person who receives a citation from a code enforcement officer for the violation of a city ordinance and who elects to contest the citation shall be required to appear in county court, and if found guilty, shall be subject to the civil penalties stipulated in subsection (d) above.~~

~~(f) The following chapters and provisions of the City Code shall be subject to the penalties set forth in subsection (d) above based on the class of violation provided:~~

~~Class I Violations~~
~~Chapter 3. Animals~~
~~Chapter 7. Noise violations~~
~~Chapter 14. Parking of motor vehicles, trucks and recreational vehicles on private property~~
~~Chapter 16. Fence or hedge~~
~~Chapter 16. Obstructions in visibility triangle~~
~~Class II Violations~~
~~Chapter 7. Overgrown lots/garbage and trash~~
~~Chapter 7. Dismantled/inoperative vehicles~~
~~Chapter 8. Business tax receipts~~
~~Chapter 11. Maintenance of right-of-way/sidewalk~~
~~Chapter 16. Sign code~~
~~Class III Violations~~
~~Chapter 4. Minimum housing code~~
~~Chapter 4. Failure to obtain building permit~~
~~Chapter 5. Fire prevention codes~~
~~Class IV Violations~~

~~Repeat violations. All persons who have previously been cited under this section for the same provision of the Code and have been adjudicated to be in violation.~~

~~(g) Any person who fails to pay the appropriate civil penalty within the time allowed, or who fails to appear in county court to contest the citation, shall be deemed to have waived his right to contest the citation, and judgment may be entered against the person for an amount not to exceed five hundred dollars ($500.00).~~

~~(h) The provisions of this section shall not apply to the enforcement pursuant to F.S. §§ 553.79 and 553.80, of building codes adopted pursuant to F.S. § 553.73, as they apply to construction, provided that a building permit is either not required or has been issued by the city. For the purposes of this subsection, "building codes" means only those codes adopted pursuant to F.S. § 553.73.~~

~~(i) The provisions of this section are additional and supplemental means of enforcing the city codes or ordinances. Nothing contained in this section shall prohibit the city from enforcing its codes or ordinances by any other means.~~

~~(j) In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this Code or any ordinance shall be deemed a public nuisance and may be, by the city, abated as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.~~

Sec. 2-73. - Conduct of hearing.

(a) Upon request of the code inspector or as such other times as may be necessary, the chairman of the code enforcement board may call hearings of the board and hearings may also be called by written notice signed by at least three (3) members of the board. The board at any hearing may set a future hearing date.

(b) Minutes shall be kept of all hearings by the code enforcement board and all hearings shall be open to the public. The city council shall provide clerical and administrative personnel as may be reasonably required by the code enforcement board for the proper performance of its duties.

(c) Each case before the code enforcement board shall be represented by a member of the city's administrative staff. If the city prevails in prosecuting a case before the code enforcement board, the city shall be entitled to recover all costs incurred in prosecuting the case before the board.

(d) The code enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The code enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply; however, fundamental due process shall be observed and shall govern the proceedings.

(e) At the conclusion of the hearing, the board shall issue findings of fact and conclusions of law and shall issue an order affording the proper relief consistent with powers granted herein. The findings shall be by motion approved by a majority of those present and voting, except that at least four (4) members of the board must vote 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 may be imposed and, under the conditions specified in section 2-75, the cost of repairs may be included along with the fine if the order is not complied with by such date. A certified copy of such order may 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 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 code enforcement board 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.

Sec. 2-74. - Powers generally.

The code enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings.
(2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by ~~the city's department of public safety~~ <u>any employee of the City or member of the Palm Beach County Sheriff's Department.</u>
(3) Subpoena evidence to its hearing.
(4) Take testimony under oath.
(5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Sec. 2-75. - Administrative fines; costs of repair; liens.

(a) The code enforcement board upon notification by the code inspector that an order of the board 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 an amount specified in this section for each day that the violation continues past the date set by the code enforcement board for compliance or, in the case of a repeat

violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in section 2-72(d), the code enforcement board shall notify the city, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. If a finding of a violation or a repeat violation has been made as provided in this section, a hearing shall not be necessary for issuance of the order imposing the fine. A fine imposed pursuant to this section shall not exceed two hundred fifty dollars ($250.00) per day for a first violation and shall not exceed five hundred dollars ($500.00) per day for a repeat violation, and, in addition, may include all costs of repairs as set forth above.

(b) In determining the amount of the fine, the code enforcement board 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.

The code enforcement board may reduce a fine imposed pursuant to this section.

(c) A certified copy of the order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of the state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this division 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 and the city may execute a satisfaction or release of lien entered pursuant to this section.

(d) After three (3) months from the filing of any such lien which remains unpaid, the code enforcement board may authorize the city attorney to foreclose on the lien. No lien created pursuant to the provisions of this section may be foreclosed on real property which is homestead under article X, section 4 of the state constitution.

Sec. 2-76. - Duration of lien.

No lien provided for under this division shall continue for 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 fee, that it incurs in the foreclosure. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

Sec. 2-77. - Appeal.

An aggrieved party, including the city council, may appeal a ruling or order of the code enforcement board to the circuit court of the county. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the board. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

Sec. 2-78. - Notices.

(a) All notices required by this division shall be provided to the alleged violator by certified mail, return receipt requested or when mail would not be effective, by hand delivery by the code inspector, a member of the Palm Beach County Sheriff's Department or other person designated by the city council or by leaving the notice at the violator's usual place of residence with some person residing therein ~~above~~ fifteen (15) years of age or older and informing such person of the contents of the notice.

(b) In addition to providing notice as set forth in subsection (a), at the option of the code enforcement board, notice may also be served by publication or posting, as follows:

  (1) 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 the county. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

  (2) In lieu of publication as described in (b)(1) above, such notice may be posted for at least ten (10) calendar days in at least two (2) locations, one (1) of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the city's code enforcement division of the City of Greenacres' ~~Engineering and~~ Building Department.

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.

(3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1).

(c) Evidence that an attempt has been made to hand deliver or mail notice as provided in (a) above, together with proof of publication or posting as provided in (b) above, shall be sufficient to show that the notice requirements of this section have been met, without regard to whether or not the alleged violator actually received such notice.

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Section 2. Repeal of Conflicting Ordinances.

All Ordinances or parts thereof or parts of the Code conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 3. Severability.

If any section, part of a section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings of invalidity shall not affect the remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass the Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part or parts had not been included therein, or if this Ordinance or any of the provisions thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

Section 4. Inclusion in Code.

It is the intention of the City Council, entered as hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of the City of Greenacres, Florida; that the Section(s) of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that the word "Ordinance" may be changed to "Section", "Article" or another word.

Section 5. Effective Date.

The provisions of this Ordinance shall become effective on October 1, 2016.

Passed on the first reading this 16th day of May, 2016.

PASSED AND ADOPTED on the second reading this 6th day of June, 2016.

Voted

Samuel J. Ferreri
Mayor

( )
Jonathan G. Pearce
Deputy Mayor

Attest:

Denise McGrew
City Clerk

( )
Lisa Rivera
Councilwoman, District I

( )
Peter Noble
Councilman, District II

( )
Judith Dugo
Councilwoman, District III

( )
Paula Bousquet
Councilwoman, District V

Approved as to Form and Legal Sufficiency:

James D. Stokes
City Attorney