



CITY OF GULFPORT CITY COUNCIL AGENDA MEMORANDUM

FROM: James E. O'Reilly, City Manager

DATE: October 4, 2011

AGENDA ITEM: 6-c

ORDINANCE: 2011-21

SUBJECT: Special Magistrate

BACKGROUND:

The purpose of this workshop item is to discuss with City Council, staff's proposal for the City of Gulfport to implement and utilize a Code Enforcement Special Magistrate by amending Chapter 12 of the City of Gulfport Code of Ordinances.

At present, the process is one where the City of Gulfport utilizes the Pinellas County Court as the venue for the prosecution of Local Ordinance Violations/Notice To Appear with the associated assessment of the Pinellas County Court Uniform Fine Schedule.

The historic context of utilizing the Pinellas County Court was set forth via previous actions of past City Councils:

- Ordinance No. 97-17; adopted on August 5, 1997 amended the City of Gulfport Code of Ordinances, by repealing the former Article IV, sections 2-26 thru 2-36 of the Code.
- The former Article IV of the City's Code of Ordinances pertained to the establishment of the City's Municipal Code Enforcement Board. The Code Enforcement Board referenced in the former Article IV was derived from Ordinance No. 81-02, adopted on April 21, 1981. To staff's knowledge or available records the Code Enforcement Board was never convened.
- Prior to the April 1981 action – the City of Gulfport had utilized a Local Municipal Court/Judge process to hear local ordinance violations and other similar municipal infractions, such as traffic offenses within the City of Gulfport.

ANALYSIS:

The City of Gulfport Code of Ordinances presently provides for the abatement of nuisances and to adjudicate cases involving violations of the City Code by court action.

Florida Statutes Section 162.03.2 authorizes a municipality to adopt an alternative Code Enforcement system and use a "Special Magistrate" in the same role and for the same purpose as a City's Code Enforcement Board as provided for by state statute.

Special Magistrate:

A Special Magistrate would be designated by the City Council to hold hearings and assess fines against violators of the City Code of Ordinances. The Special Magistrate would act as a judge to hear Code Enforcement cases in a Quasi-Judicial setting. The Special Magistrate is a compensated position, which would employ via contract a qualified attorney, who would not be an employee of the City.

The powers of enforcement boards and special magistrates are set forth in Section 162.08 of the Florida Statutes.

1. Adopt rules for the conduct of its hearing.
2. Subpoena alleged violators and witnesses to its hearings.
3. Subpoena evidence to its hearings.
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.

The Special Magistrate process would replace the City's use of the County Court Local Ordinance Violation calendar – in matters related to Code Enforcement and nuisance abatement. A number of jurisdictions have adopted this procedure and have found it to be a very effective and efficient means of adjudicating Code Enforcement cases. Staff is familiar with other local jurisdictions that have adopted the Special Magistrate process for Code Enforcement, including the Cities of Seminole and St. Pete Beach.

Due to the Quasi-judicial nature of the Code Enforcement proceedings, this process is anticipated to increase operational efficiency of the process. If City Council concurs with this procedural change; the City Attorney has provide a draft ordinance amending Chapter 12 of the City of Gulfport Code of Ordinances, for City Council's review. If this Ordinance is acceptable it will be prepared for public hearing and inclusion in the comprehensive Code Enforcement review presently being undertaken

FINANCIAL IMPACT:

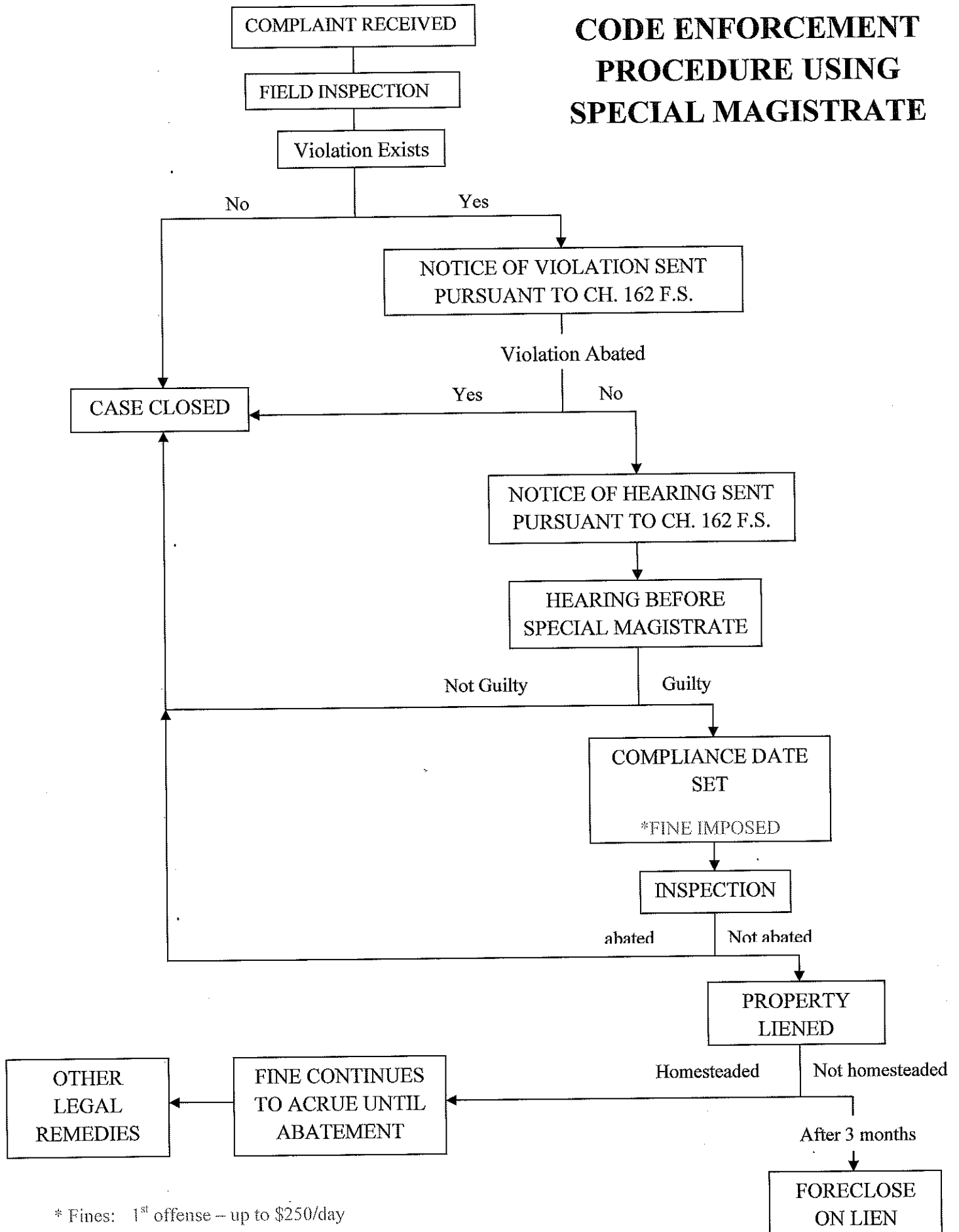
A Special Magistrate (an Attorney) would be retained to act as a Hearing Officer for Code Enforcement/Nuisances Abatement efforts. Special Magistrate annual cost is estimated to be \$8,400.00 initially, based upon \$150.00 per hour. Staff Assistant at \$28,000.00 to provide clerical assistance if determined to be needed.

A percentage of the expenses incurred would be offset by additional Code Enforcement fines assessed, in concert with expanded - expedited resolutions and compliance.

MOTON:

A motion to approve/deny an Ordinance; amending Chapter 12 of the City of Gulfport Code of Ordinances on first reading to establish a Special Magistrate would be appropriate.

CODE ENFORCEMENT PROCEDURE USING SPECIAL MAGISTRATE



* Fines: 1st offense – up to \$250/day

2nd offense – up to \$500/day

**CITY OF GULFPORT, FLORIDA
ORDINANCE NO. 2011-21**

AN ORDINANCE OF THE CITY OF GULFPORT, FLORIDA, AMENDING CHAPTER 12, HEALTH AND SANITATION, BY ESTABLISHING ARTICLE III, SPECIAL MASTER SUPPLEMENTAL CODE ENFORCEMENT; SEC. 12-14, DEFINITIONS; SEC. 12-15, CREATION, ESTABLISHMENT; SEC. 12-16, BOARD CLERK; SEC. 12-17, CIVIL OFFENSES AND PENALTIES; SEC. 12-18, SPECIAL MASTER QUALIFICATIONS AND REMOVAL; SEC. 12-19, ENFORCEMENT PROCEDURES; SEC. 12-20, PREHEARING ADMINISTRATIVE ENFORCEMENT COSTS; SEC. 12-21, SERVICE OF NOTICE; SEC. 12-22, CONTENTS OF NOTICE, SCHEDULE AND CONDUCT OF SPECIAL MASTER HEARING; SEC. 12-23, RECOVERY OF UNPAID CIVIL PENALTIES; UNPAID PENALTY TO CONSTITUTE A LIEN; FORECLOSURE; SEC. 12-24, APPEALS; SEC. 12-25, RESERVED; PROVIDING FOR THE REPEAL OF ORDINANCES, OR PARTS OF ORDINANCES, IN CONFLICT HERewith, TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Gulfport desires to establish alternative enforcement procedures for code enforcement for the City of Gulfport; and

WHEREAS, the City Council for the City of Gulfport has determined that it is in the best interest of the City of Gulfport to establish a Special Master as a supplemental process for code enforcement for the City of Gulfport.

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

Section 1. The Code of Ordinances of the City of Gulfport is hereby amended as follows:

Sec. 12-14. - 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:

Civil penalty shall mean the costs allowed under sections 12-20, 12-22, and 12-23 of the Code.

Code inspector/officer shall mean those employees or other agents of the city duly authorized and appointed by the city manager whose duty it is to assure compliance with city codes.

Codes shall mean City of Gulfport Code of Ordinances and all codes and statutes adopted by reference within the Code of Ordinances, as now existing or as may be amended by ordinance from time to time.

Continuing violations are those violations which remain uncorrected beyond the prescribed time period for correction contained in the civil violation notice. For each day of continued violation after the time period for correction has run, an additional penalty in the same amount as for the original violation shall be added.

Repeat violation shall mean a violation of a provision of the Code of Ordinances by a person who has been previously found to have violated or has admitted violating the same provision within five (5) years prior to the violation, notwithstanding the violations occur at different locations.

Violator shall mean the person responsible for the code violation, which, in the appropriate circumstances, shall either be the perpetrator of the violation or the owner of the real property upon which the violation occurred.

Sec. 12-15. - Creation, establishment.

There is hereby created and established the office of special master for the purpose of providing a supplemental code enforcement process for the city. The special master is hereby vested with all the powers now granted under chapter 162 F.S., and as amended from time to time.

Sec. 12-16. - Clerk.

The city manager shall appoint a city employee to be the code enforcement clerk, who shall perform the functions assigned to the clerk as set forth in this article.

Sec. 12-17. - Civil offenses and penalties.

- (a) The violation of any provision of any ordinances or codes shall constitute a civil offense punishable by civil penalty as follows:
 - (1) Not in excess of \$250.00 per day for a first violation;
 - (2) Not in excess of \$500.00 per day for a repeat violation;
 - (3) An assessment of the cost of repairs, including administrative costs, incurred by the city where the violation was in the nature of a violation described in F.S. 162.06(4); and
 - (4) In the instance where the special master finds that the violation is irreparable or irreversible in nature, the special master may impose a fine not to exceed \$5,000.00 per violation.

- (b) Civil penalties assessed pursuant to this article are due and payable to the city upon the order of the special master.

Sec. 12-18. - Special master qualifications and removal.

- (a) The special master shall be a person licensed to practice law in the state of Florida. Appointments shall be made by the city manager on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the city council for ratification.
- (b) The city manager shall appoint as many special masters as are deemed necessary. Appointments shall be made for a term of one year. Any special master may be reappointed at the discretion of the city manager, subject to ratification by the city council. There shall be no limit on the number of reappointment that may be given to any individual special master; provided however, that a determination as to removal or reappointment must be made for each special master at the end of each of his/her one-year terms. The city manager shall have authority to remove a special master with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.
- (c) A special master shall not be city employees but shall be compensated at a rate to be determined by administrative order.

Sec. 12-19. - Enforcement procedures.

- (a) The code inspector has the duty of enforcing the various codes and initiating enforcement proceedings before the special master.
- (b) Except as provided in (c) and (d) below, if a violation of the codes is found, the code inspector shall notify the violator of the violation and give the violator a reasonable time, in light of the nature of the violation, to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall request that the clerk set a hearing and notify the violator of the hearing as provided herein. The clerk shall schedule a hearing, and written notice of such hearing shall be served on the violator. If the violation is corrected and is then repeated or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the special master even if the violation has been corrected prior to the hearing, 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 have the clerk set a hearing and notify the violator. The notice shall state that the case may be presented to the special master even if the violation has been corrected prior to the hearing.

- (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 request that the special master set an immediate hearing on the violation.
- (e) If the owner of property which is subject to an enforcement proceeding before a special master contracts to transfer or does transfer ownership of such property between the time the notice was served and the time of the hearing, such owner shall:
 - (1) Disclose, in writing, the existence and the nature of the enforcement proceeding to the buyer;
 - (2) Deliver to the buyer a copy of the notice of violation and the notice of hearing;
 - (3) Disclose to the buyer that he/she will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding
 - (4) Within five days after the date of the transfer of title, file a notice of title transfer with the code enforcement official, with the identity and address of the new owner and copies of the disclosures made to the new owner.
 - (5) If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided with a reasonable period of time to correct the violation before a hearing.

Sec. 12-20 - Prehearing administrative enforcement costs.

If a violation cited under subsection 12-19(b) is corrected before a section 12-22 special master hearing, the violator shall pay the enforcement costs incurred by the city. The code inspector shall prepare an order specifying the enforcement costs incurred by the city in the enforcement of its codes, and he shall serve a copy of the order on the violator in accord with the requirements of section 12-21. All costs shall be at least one hundred and fifty dollars (\$150.00).

Sec. 12-21. -Service of notice.

All notices required by this article shall be served as required by F.S. 162.12, and as amended from time to time.

A citation or notice to appear issued by a code inspector/officer shall be on such form as approved by the code administrator and shall comply with the requirements for citations or notices to appear as found in F.S. 162.21, 633.052, 553.80 and/or other applicable statutes and as required by the county court.

Sec. 12-22. - Contents of notice, schedule and conduct of special master hearing.

- (a) The notice of hearing shall include the following:
 - (1) Name of the inspector who issued the notice;
 - (2) Factual description of alleged violation;
 - (3) Date and time of alleged violation;
 - (4) Section of the code allegedly violated;
 - (5) Date and time of issuance;
 - (6) Place, date and time of the hearing;
 - (7) Right of violator to be represented by an attorney;
 - (8) Right of violator to present witnesses and evidence;
 - (9) Notice that failure of violator to attend hearing may result in civil penalty being assessed; and
 - (10) Notice that requests for continuances will not be considered if not received in writing by the code inspector at least ten (10) calendar days prior to the date set for hearing.
- (b) The special master shall conduct hearings on a regularly scheduled monthly basis or more frequently upon request of the city manager. No hearing shall be set sooner than ten (10) days from the date the notice of code violation is served.
- (c) All hearings before the special master 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.
- (d) The proceedings at the hearing shall be recorded electronically or by a stenographer and if recorded by a stenographer may be transcribed at the expense of the party requesting the transcript.
- (e) The city manager, shall provide clerical and/or administrative support personnel for the special master to facilitate the proper performance of clerical and special master duties.
- (f) Each case before a special master shall be presented by the inspector, representative of the department issuing the violation, or the city attorney or his/her designee.

- (g) The hearing shall not be conducted in accordance with the formal rules of evidence. Any relevant evidence shall be admitted if the special master finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.
- (h) All testimony at the hearing shall be under oath. 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.
- (i) The special master shall make findings of fact based on the evidence in the record alone and may state conclusions of law. In order to make a finding upholding the code inspectors determination that a violation exists, the special master shall find that a preponderance of the evidence indicates that the violator was legally responsible for the violation of the relevant section of the ordinances or codes as cited, and that a violation did or does in fact exist.
- (j) The prescribed time for correction of the violation given to the named violator and contained in the code violation notice shall be 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 master may find that the time given for correction was insufficient, and the penalty for a continuing violation may be calculated from a date determined by the special master to be the reasonable date for correction.
- (k) If the named violator is found guilty of the violation, he/she may be held liable for all costs of the enforcement proceeding and such costs shall be included in the lien authorized by law.
- (l) The fact-finding determination of the special master shall describe whether the alleged violation did in fact occur and, if so, whether the person named in the civil violation notice is legally responsible for that violation. The special master shall either affirm or reverse the determination of the code inspector as to the responsibility of the named violator for the correction of the ordinance or code violation. The special master may modify the determination of the code enforcement officer as to the time for correction contained in the code violation notice. If the special master reverses the determination of the code inspector and finds the named violator not responsible for the alleged violation in the code violation notice, the named violator shall not be liable for the payment of any civil penalty, absent a successful appeal by the city of the special master's decision. If the decision of the special master is to affirm the code inspector's determination of violation, then any of the following may be included in the order:
 - (1) Amount of civil penalty;
 - (2) Prehearing and hearing administrative enforcement costs; and
 - (3) Date by which the violation shall be corrected to prevent resumption of continuing violation penalties.

- (m) The special master shall have the power to:
 - (1) Adopt procedures for the conduct of hearings;
 - (2) Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the city police department or by any employee designated by the city manager;
 - (3) Subpoena documentary and tangible evidence for hearings;
 - (4) Take testimony under oath; and
 - (5) Assess and order the payment of civil penalties.
 - (6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
- (n) A special master shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized city and county board of appropriate jurisdiction for administrative interpretation of the legal provision(s) on which the alleged violation was based. Upon exhaustion of the administrative review and finalization of the administrative order by such board, the special master may exercise all powers granted herein. The special master shall not, however, exercise any jurisdiction over alleged code violations where a named violator has properly filed a request for administrative interpretation and review by such city or county board until such time for review has lapsed.
- (o) The special master shall be bound by the interpretations and decisions of the authorized city or county boards of appropriate jurisdiction concerning their administrative interpretations. In the event that the authorized board finds that the cited violation of the ordinance or code has not been properly interpreted, that provision upon which the violation is based, shall prohibit the hearing officer from proceeding with the enforcement of the alleged violation.

Sec. 12-23. - Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; foreclosure.

- (a) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties imposed under this supplemental code enforcement procedure.
- (b) A certified copy of an order imposing a civil penalty may be recorded in the public records of the county and thereafter shall constitute a lien against the land on which the violation exists or existed; provided that if the violator does not own the land, upon any other real or personal property owned by the violator; and that it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three (3) months from the

filing of any such lien which remains unpaid, the city may foreclose or otherwise execute on the lien.

Sec. 12-24. - Appeals.

- (a) The violator or the city may appeal an order of a special master by filing a notice of appeal with the county circuit court. Such appeal shall be filed within 30 days of the issuance of the order by the special master.
- (b) In the absence of reversal of a special master's ruling by an appellate court of competent jurisdiction, the findings of the special master shall be conclusive as to a determination of responsibility for the ordinance or code violation, and such findings shall be admissible in any proceeding to collect unpaid penalties.
- (c) Nothing contained in this chapter shall prohibit the city from enforcing its ordinances or codes by any other means. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filing suit for enforcement of any section of this Code.

Sec. 12-25. - Reserved.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. This ordinance shall take effect immediately upon its passage and approval, consistent with all requirements of general law.

Section 4. The provisions of this ordinance shall become and be made a part of the City Code of Ordinances and the sections of this ordinance may be renumbered and codified to accomplish this end.

Section 5. If any part of this ordinance is declared invalid by a court of competent jurisdiction, such part or parts shall be severable, and the remaining part or parts shall continue to be in full force and effect.

Michael J. Yakes, Mayor

FIRST READING : _____
PUBLISHED : _____
SECOND READING/
PUBLIC HEARING : _____

I, Lesley DeMuth, City Clerk of the City of Gulfport, Florida, do hereby certify that the foregoing Ordinance was duly adopted in accordance with the provisions of law and the City Charter this _____ day of _____, 2011.

Lesley DeMuth, City Clerk