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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

ORDINANCE NO.: 2010- 10

AN ORDINANCE TO AMEND PROVISIONS OF THE HERNANDO COUNTY CODE OF ORDINANCES RELATING TO THE HERNANDO COUNTY SPECIAL MASTER; CREATING A NEW CODE SECTION CREATING AN OPTIONAL CODE COMPLIANCE MONTH; AMENDING CODE SECTION 2-49 TO CLARIFYING CIVIL PENALTY PROVISIONS; AMENDING CODE SECTION 2-54 TO REMOVE REFERENCES TO SUBPOENAS; CREATING A NEW CODE SECTION DELINEATING THE SUBPOENA POWERS OF THE SPECIAL MASTER, ATTORNEYS AND PARTIES; PROVIDING FOR SEVERABILITY AND INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, FLORIDA:

Section 1. A new section to be included in Hernando County Code Chapter 2, Article III, is hereby created to read as follows:

OPTIONAL COMPLIANCE MONTH

- A. The legislative intent of the Board of County Commissioners in adopting this Ordinance is to create a mechanism by which Hernando County may provide property owners with a financial incentive to bring properties with outstanding code enforcement liens into compliance.
- B. On or before April 1 of each year, the Board may adopt an enabling resolution implementing the provisions of Subpart (C) of this Ordinance for the month of May of that fiscal year. The provisions of Subpart (C) shall not be effective in the absence of the adoption of an enabling resolution by the Board of County Commissioners.
- C. Implementation of "Compliance Month" in May of any given year.
 - 1. Any individual who owns property that has been liened by Hernando County for a Code Enforcement violation, and said lien having either been established by an Order of the Special Master or a lien having been recorded in the Official Records of Hernando County, may make application for a reduction and satisfaction of fifty per cent (50%) of

1 each qualifying lien.

- 2
- 3 a. The application for each individual recorded document
4 requires a non-refundable application and handling fee in the
5 amount of thirty and 00/100 dollars (\$30.00) payable to
6 Hernando County Board of County Commissioners, c/o Code
7 Enforcement Department.
8
- 9 b. The County Administrator, or his or her designee, shall deny any
10 application of lien reduction if any of the following conditions exist:
11
- 12 i. The property owner has not brought the applicable property
13 into compliance with the requirements of the Hernando
14 County Code.
15
- 16 ii. The property owner owns any other parcels of property that
17 are not in compliance with the Hernando County Code at the
18 time of the application.
19
- 20 iii. The amount of money that Hernando County had previously
21 expended in enforcing the Hernando County Code with regard
22 to the applicable property exceeds the amount of the
23 applicable lien(s).
24
- 25 iv. The applicant is not the individual or owner of the property
26 that has been liened.
27
- 28 v. The property owner has previously had a lien reduced
29 pursuant to this Ordinance.
30
- 31 c. If rejected by the County Administrator or his or her designee, the
32 applicant will receive a notice by U.S. Regular Mail at the address
33 listed on the application stating that their application has been denied.
34
- 35 d. If approved by County Administrator or his or her designee, the
36 applicant will receive a notice by U.S. Regular Mail, to be sent to the
37 address listed on the application, stating the date and time that their
38 application will be presented to the Board of County Commissioners
39 for action. The applicant may elect to be present when the application

1 is presented to the Board of County Commissioners, however, such
2 appearance is not required. The Board of County Commissioners'
3 consideration of a request for lien reduction is quasi-legislative in
4 nature and will not constitute a public hearing.

5
6 e. The applicant will be noticed by U.S. Regular mail of the Board of
7 County Commissioner's decision. The Board's denial of a request for
8 lien reduction is final.

9
10 f. Within ten (10) days of the approval of an application for lien
11 reduction by the Board of County Commissioners, the applicant must
12 remit to the Hernando County Code Enforcement Department the full
13 amount of the reduced lien, together the full amount of the initial
14 recording fees for the lien and the recording fees for the satisfaction
15 of lien. The Board of County Commissioners shall not issue a
16 satisfaction of any lien unless these conditions precedent have been
17 satisfied.

18
19 **SECTION 2.** Section 2-49, Hernando County Code of Ordinances, is hereby amended to
20 read as follows, with underlined matter added and struck-through matter deleted:

21
22 Sec. 2-49. Civil offenses and penalties.

23
24 (a) The violation of any provision of any ordinances or codes shall constitute a
25 civil offense punishable by civil penalty as follows:

26
27 (1) Not in excess of one thousand dollars (\$1,000.00) per day for a first
28 violation;

29
30 (2) Not in excess of five thousand dollars (\$5,000.00) per day for a repeat
31 violation;

32
33 (3) An assessment of the cost of repairs incurred by the county where the
34 violation was in the nature of a violation described in section
35 162.06(4), Florida Statutes; and

36
37 (4) In the instance where the special master finds that the violation is
38 irreparable or irreversible in nature, the special master may impose a
39 fine not to exceed fifteen thousand dollars (\$15,000.00) per violation.

1 **(b)** In determining the amount of the fine, if any, the Special Master shall
2 consider the following factors:

3
4 **(1)** The gravity of the violation;

5
6 **(2)** Any actions taken by the violator to correct the violation; and

7
8 **(3).** Any previous violations committed by the violator.

9
10 **(c)** In every order assessing a civil penalty against a defendant, the Special Master shall
11 include an assessment for all costs incurred by Hernando County in prosecuting the
12 violation, including but not limited to, the cost of certified mail, the cost of serving
13 notices, the cost of serving subpoenas, attorneys' fees, the cost of staff time, and the
14 cost of recording the order in the Official Records of Hernando County.

15
16 ~~(b)~~**(d)** Civil penalties assessed pursuant to this article are due and payable to the
17 county upon the order of the special master.

18
19 **SECTION 3.** Section 2-54, Hernando County Code of Ordinances, is hereby amended to
20 read as follows, with underlined matter added and struck-through matter deleted:

21
22 Sec. 2-54. Contents of notice, schedule and conduct of special master hearing.

23
24 **(a)** The notice of hearing shall include the following:

25 **(1)** Name of the officer who issued the notice;

26 **(2)** Factual description of alleged violation;

27 **(3)** Date of alleged violation;

28 **(4)** Section of the code allegedly violated;

29 **(5)** Place, date and time of the hearing;

30 **(6)** Right of violator to be represented by an attorney;

31 **(7)** Right of violator to present witnesses and evidence;

- 1 (8) Notice that failure of violator to attend hearing may result in civil
2 penalty being assessed; and
3
4 (9) Notice that requests for continuances will not be considered if not
5 received in writing by the code officer at least ten (10) calendar days
6 prior to the date set for hearing.
7
8 (b) The special master shall conduct hearings on a regularly scheduled monthly
9 basis or more frequently upon request of the county administrator. No hearing
10 shall be set sooner than twenty (20) days from the date the notice of code
11 violation is served.
12
13 (c) All hearings before the special master shall be open to the public. All
14 testimony shall be under oath. Assuming proper notice, a hearing may
15 proceed in the absence of the named violator.
16
17 (d) The proceedings at the hearing shall be recorded electronically or by a
18 stenographer and if recorded by a stenographer may be transcribed at the
19 expense of the party requesting the transcript.
20
21 (e) The county administrator, shall provide clerical and/or administrative support
22 personnel for the special master to facilitate the proper performance of
23 clerical and special master duties.
24
25 (f) Each case before a special master shall be presented by the officer or
26 representative of the department issuing the violation.
27
28 (g) The hearing shall not be conducted in accordance with the formal rules of evidence.
29 Any relevant evidence shall be admitted if the special master finds it competent and
30 reliable, regardless of the existence of any common law or statutory rule to the
31 contrary.
32
33 (h) All testimony at the hearing shall be under oath. Each party shall have the
34 right to call and examine witnesses, to introduce exhibits; to cross-examine
35 opposing witnesses on any matter relevant to the issues.
36
37 (i) The special master shall make findings of fact based on the evidence in the
38 record alone and may state conclusions of law. In order to make a finding
39 upholding the code officers determination that a violation exists, the special

1 master shall find that a preponderance of the evidence indicates that the
2 violator was legally responsible for the violation of the relevant section of the
3 ordinances or codes as cited, and that a violation did or does in fact exist.
4

5 (j) The prescribed time for correction of the violation given to the named
6 violator and contained in the code violation notice shall be presumed to have
7 been a reasonable time for correction. Upon presentation of relevant evidence
8 by the named violator that the time for correction was not reasonable, the
9 special master may find that the time given for correction was insufficient,
10 and the penalty for a continuing violation may be calculated from a date
11 determined by the special master to be the reasonable date for correction.
12

13 (k) If the named violator is found guilty of the violation, he/she may be held
14 liable for the costs of the enforcement proceeding and such costs shall be
15 included in the lien authorized by law.
16

17 (l) The fact-finding determination of the special master shall describe whether
18 the alleged violation did in fact occur and, if so, whether the person named
19 in the civil violation notice is legally responsible for that violation. The
20 special master shall either affirm or reverse the determination of the code
21 officer as to the responsibility of the named violator for the correction of the
22 ordinance or code violation. The special master may modify the
23 determination of the code enforcement officer as to the time for correction
24 contained in the code violation notice. If the special master reverses the
25 determination of the code officer and finds the named violator not responsible
26 for the alleged violation in the code violation notice, the named violator shall
27 not be liable for the payment of any civil penalty, absent a successful appeal
28 by the county of the special master's decision. If the decision of the special
29 master is to affirm the code officer's determination of violation, then any of
30 the following may be included in the order:
31

32 (1) Amount of civil penalty;

33 (2) Prehearing and hearing administrative enforcement costs; and

34 (3) Date by which the violation shall be corrected to prevent resumption of
35 continuing violation penalties.
36
37
38
39

- 1 (m) The special master shall have the power to:
2
3 (1) Adopt procedures for the conduct of hearings;
4
5 (2) ~~Subpoena alleged violators and witnesses for hearings; subpoenas~~
6 ~~may be served by a duly sworn law enforcement officer or by any~~
7 ~~employee designated by the county administrator;~~
8
9 (3) ~~Subpoena documentary and tangible evidence for hearings;~~
10
11 ~~(4)~~ (2) Take testimony under oath; and
12
13 ~~(5)~~ (3) Assess and order the payment of civil penalties.
14
15 ~~(6)~~ (4) Issue orders having the force of law to command whatever steps are
16 necessary to bring a violation into compliance.
17
18 (n) A special master shall not conduct a hearing if the named violator, prior to
19 the scheduled hearing date, files with a duly authorized county and county
20 board of appropriate jurisdiction for administrative interpretation of the legal
21 provision(s) on which the alleged violation was based. Upon exhaustion of
22 the administrative review and finalization of the administrative order by such
23 board, the special master may exercise all powers granted herein. The special
24 master shall not, however, exercise any jurisdiction over alleged code
25 violations where a named violator has properly filed a request for
26 administrative interpretation and review by such county or county board until
27 such time for review has lapsed.
28
29 (o) The special master shall be bound by the interpretations and decisions of the
30 authorized county or county boards of appropriate jurisdiction concerning
31 their administrative interpretations. In the event that the authorized board
32 finds that the cited violation of the ordinance or code has not been properly
33 interpreted, the special master shall be prohibited from proceeding with the
34 enforcement of the alleged violation.
35
36

1 **SECTION 4.** A new section, to be included within Article III of Chapter 2 of the Hernando
2 County Code, is created to read as follows:

3
4 Subpoenas

5
6 (a) Subpoena Generally. Subpoenas for testimony before the Special Master and
7 subpoenas duces tecum may be issued by the Special Master or by any attorney of
8 record in an action.

9
10 (b) Content of Subpoenas. Every subpoena for testimony before the Special Master
11 shall be issued pursuant to subpart (a) above and state the title of the action and shall
12 command each person to whom it is directed to attend and give testimony at a time
13 and place specified in it.

14
15 (c) Service. A subpoena may be served by any person authorized by law to serve
16 process, by any employee designated by the county administrator, or by any other
17 person who is not a party and who is not less than 18 years of age. Service of a
18 subpoena upon a person named therein shall be made as provided by law. Proof of
19 such service shall be made by affidavit of the person making service if not served by
20 an officer authorized by law to do so.

21
22 (d) Compliance. In the case of a refusal to obey a subpoena issued to any person, the
23 issuing party may make application to the County Court of Hernando County which
24 shall have jurisdiction to order the witness to appear before the Special Master and
25 to produce evidence if so ordered, or to give testimony touching on the matter in
26 question.

27
28 **SECTION 5. Severability.** It is declared to be the intent of the Board of County
29 Commissioners that if any section, subsection, clause, sentence, phrase, or provision of this
30 ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the
31 validity of the remaining portions of this ordinance.

32
33 **SECTION 6. Inclusion in the Code.** It is the intention of the Board of County
34 Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this
35 Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida.
36 To this end, any section or subsection of this Ordinance may be renumbered or relettered to
37 accomplish such intention, and the word "ordinance" may be changed to "section, "article", or other
38 appropriate designation.
39

1 **SECTION 7. Effective date.** This ordinance shall take effect immediately upon receipt of
2 official acknowledgment from the office of the Secretary of State of Florida that this ordinance has
3 been filed with said office.
4

5 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO
6 COUNTY in Regular Session this 24 day of March 2010.



11 Attest: Karen Nicolai
12 KAREN NICOLAI
13 Clerk

BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA

14 By: John Druzbeck
15 JOHN DRUZBICK
16 Chairman

19 Approved as to Form and Legal Sufficiency

20
21
22
23 By: [Signature]