



Code Enforcement Board Nuisance Abatement Board

AGENDA

Board of County Commission Chambers
Collier County Government Center
3299 Tamiami Trail East, 3rd Floor
Naples, FL 34112

September 22, 2022

12:00 PM

Robert Kaufman, Chair
Kathleen Elrod, Member
Danny Blanco, Member
Chloe Bowman, Member
Sue Curley, Member
John Fuentes, Member
Lee Rubenstein, Member
Tarik N. Ayasun, Alternate
Zully Ruiz, Alternate

Notice: Respondents may be limited to twenty (20) minutes for case presentation unless additional time is granted by the Board. Persons wishing to speak on any agenda item will receive up to five (5) minutes unless the time is adjusted by the Chairman.

All parties participating in the public hearing are asked to observe Roberts Rules of Order and speak one at a time so that the court reporter can record all statements being made.

Any person who decides to appeal a decision of this Board will need a record of the proceedings pertaining thereto, and therefore may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Neither Collier County nor the Code Enforcement Board shall be responsible for providing this record.

I. PLEDGE OF ALLEGIANCE

II. ROLL CALL

III. APPROVAL OF MINUTES

IV. APPROVAL OF AGENDA

V. PUBLIC HEARINGS/MOTIONS

A. MOTIONS

MOTION FOR CONTINUANCE

MOTION FOR EXTENSION OF TIME

MOTION FOR RE-HEARING

B. STIPULATIONS (NON-CONTESTED CASES AND PRESENT AT THE HEARING)

C. EMERGENCY CASES

D. HEARINGS

VI. OLD BUSINESS

A. MOTION FOR REDUCTION/ABATEMENT OF FINES/LIENS

B. MOTION FOR IMPOSITION OF FINES/LIENS

C. MOTION TO RESCIND PREVIOUSLY ISSUED ORDER

D. MOTION TO AMEND PREVIOUSLY ISSUED ORDER

VII. NEW BUSINESS

VIII. CONSENT AGENDA

A. REQUEST TO FORWARD CASES TO COUNTY ATTORNEY'S OFFICE

IX. REPORTS

9.1. CEB AND SPECIAL MAGISTRATE RULES AND REGULATIONS WORKSHOP

X. COMMENTS

XI. ADJOURN

XII. NUISANCE ABATEMENT BOARD

A. HEARINGS

XIII. NEXT MEETING DATE

XIV. ADJOURN

**Code Enforcement****SCHEDULED****CODE ENFORCEMENT ACTION ITEM (ID # 23320)**

Meeting: 09/22/22 12:00 PM

Department: Code Enforcement Board and Special Magistrate

Category: Code Enforcement Meeting Item

Prepared By: Helen Buchillon

Initiator: Michael Ossorio

Sponsors:

DOC ID: 23320

**CEB AND SPECIAL MAGISTRATE RULES AND
REGULATIONS WORKSHOP**

**COLLIER COUNTY
CODE ENFORCEMENT BOARD**

RULES AND REGULATIONS

ARTICLE I

Name

The name of this Board shall be the Collier County Code Enforcement Board.

ARTICLE II

Jurisdiction

The Board has jurisdiction over those matters which are set forth in all ordinances of Collier County, Florida.

ARTICLE III

Officers and Their Duties

Section 1. The officers shall consist of a Chair and Vice-Chair, both of whom shall be permanent members. There shall also be a Secretary to the Board who shall be an employee of Collier County, Florida.

Section 2. The Chair shall preside at all meetings and hearings of the Board and shall have the duties normally conferred by parliamentary usage of such officers.

Section 3. The Chair shall have the privilege of discussing all matters before the Board and shall have the same voting rights as all Board members.

Section 4. The Vice-Chair shall act in the absence of the Chair.

Section 5. The full board and alternates may participate in the election process and vote, although the alternates may not serve as officers.

ARTICLE IV

Election of Officers

Section 1. Nomination of the Chair and Vice-Chair shall be made from the floor at the annual organization meeting in March of each year, and the election shall be held immediately thereafter.

Section 2. A candidate receiving a majority vote shall be declared elected and shall serve a term of one (1) year, or until a successor shall take office.

Section 3. Vacancies in the position of Chair or Vice-Chair shall be filled immediately by regular election procedures.

Section 4. The Chair or Vice-Chair may be removed by a super majority of the board with or without cause.

ARTICLE V

Board

Section 1. The Code Enforcement Board shall consist of seven (7) members and two (2) alternates. An alternate shall be designated to fill any regular member vacancy at any meeting with full voting rights.

Section 2. Regular Meetings. Regular meetings of the Code Enforcement Board shall be held on the fourth Thursday, and/or at other times as needed, and determined by the Board, in the Collier County Commission Chambers or public venue as available. The chambers will be open to the public at 8:30 A.M. The board may begin the public portion of the meeting at 9:00 A.M.

Section 3. Special Meetings. Special meetings of the Board may be convened by the Chair upon giving notice thereof to each other member of the Board or by written notice signed by at least three (3) members of the Code Enforcement Board.

Section 4. Notices.

a. Notice of a Special Board meeting shall be given to all Board members at least forty-eight (48) hours in advance of the meeting. At any meeting, the Board may set a future meeting date.

Section 5. Attendance.

a. Members shall notify the Chair or Secretary to the Board if they cannot attend a meeting.

b. If a member misses two (2) successive board meetings without a satisfactory excuse, he/she may forfeit his/her appointment.

c. Attendance shall be in person and may not occur through any form of electronic medium.

Section 6. Quorum. A quorum of the Board shall consist of four (4) members and an affirmative vote of a majority of those present and voting shall be necessary to pass any motion or adopt any order. For example, if four members are present, an affirmative vote of three of those members present shall be sufficient to take Board action.

Section 7. Voting.

a. Voting shall be by voice vote, or show of hands, if necessary, and may be recorded by individual (or group).

ARTICLE VI

Order of Business

1. Pledge of Allegiance
2. Roll Call
3. Approval of Agenda
4. Approval of Minutes
5. Public Hearings/Motions
 - A. Motions
 - B. Stipulations (Non Contested Cases who are present at the hearing)
 - C. Hearings
 - a. Contested Cases by Respondents who are present at the hearing
 - b. Cases of Respondent not present at the hearing
 - D. Motion for Reduction/Abatement of Fines/Liens
 - E. Motion for Imposition of Fines/Liens
6. Old Business
7. New Business
8. Consent Agenda
 - A. Request to Forward Cases to County Attorney's Office
9. Reports
10. Comments
11. Next Meeting Date
12. Adjourn

The order of business may be suspended by a vote of the majority of those members present.

ARTICLE VII

Initiation of Actions Before the Board

Section 1. All actions before the Board shall be initiated by a Code Enforcement Investigator filing an Affidavit of Violation, which shall include a statement of the facts and circumstances of the alleged violation and shall identify the code or ordinance, which has been violated with the Secretary to the Board. No member of the Board may initiate action before the Board.

Section 2. The Secretary to the Board shall assign a file number to each case and schedule a hearing.

Section 3. The Secretary to the Board shall send out a Notice of Hearing along with a Statement of Violation and a copy of the Rules and Regulations to the alleged violator by either certified mail return receipt requested, hand delivery upon a party, posting on the property and at the courthouse, or in any manner authorized as provided by the Ordinance establishing the Code Enforcement Board. The Secretary to the Board shall provide Notice to the Code Enforcement Investigator and the alleged violator as herein provided at least ten (10) days prior to the hearing at which the alleged violator's case will be presented to the Board. A copy of said Notice shall be sent to the attorney for the Board, the supervisor of the Code Enforcement Investigator involved, and the Code Enforcement Investigator involved.

Section 4. The Notice of Hearing shall inform the alleged violator that he or she is permitted to provide an answer/response packet of information to the Secretary to the Board for distribution to the Board Members prior to the Board Hearing. The Code Enforcement Investigator shall submit the charging packet of information detailing the alleged violation(s) to the Secretary of the Board at least fifteen (15) business days prior to the Board Hearing. In order to have the information submitted to the Board Members, the alleged violator should submit fifteen (15) copies of his or her information to the Secretary to the Board five (5) business days prior to the scheduled hearing. The Secretary to the Board shall distribute the packet to the Board Members not later than three (3) days prior to the hearing. The Code Enforcement Investigators charging packet shall be delivered to the alleged violator along with the Notice of Hearing. The Secretary to the Board shall not deliver the charging packet to the Board Members until he or she receives the alleged violator's answer/response packet or until the deadline by which the alleged violator's packet of information must be received by the Secretary to the Board has passed. If the alleged violator timely delivers his or her evidentiary packet to the Secretary to the Board, the Secretary to the Board shall deliver all packets together.

Section 5. In emergency situations, the timelines set forth in this paragraph can be abbreviated or set aside to address the alleged violation in order to avoid further damage to the health, safety and welfare of the citizens of Collier County, Florida.

ARTICLE VIII

Prehearing Procedures

Section 1. Pre-hearing meetings between parties.

The alleged violator and Code Enforcement Investigator are encouraged to have a prehearing conference prior to the scheduled hearing. At the prehearing conference the following may occur:

- a. The Respondent/alleged violator may be asked if he/she wishes to contest the violations. If so, the case shall be placed on the agenda as stated in Article VI.
- b. The parties may stipulate to an agreed Order, to be approved by the Board.
- c. The parties may stipulate to any facts, exhibits or other evidence to be introduced into the record, which are not in dispute.
- d. The names and addresses of witnesses to be called may be exchanged.

Any facts or evidence stipulated to shall be presented to the Board Members along with any prehearing evidentiary packets or agreements either party intends to provide to the Board Members.

Section 2. Prehearing Motions.

Any motion for any reason to be filed by the alleged violator or the Code Enforcement Investigator shall be delivered to the Board's Attorney or the Board's Secretary and the opposing party, or their counsel, if applicable, at least five (5) business days prior to the hearing. The person filing the motion shall provide the Board's Secretary with fifteen (15) copies of the motion. The Board's Attorney will then distribute the motions to the Board Members. The Board may waive the requirements set forth in this paragraph under exceptional circumstances.

ARTICLE IX

Hearings

Formal rules of evidence shall not apply, but fundamental due process shall be observed. The Board is without jurisdiction to hear any statement, argument or evidence alleging that any provision of the county's ordinances is unenforceable due to conflict with the Constitutions of the United States or State of Florida, Florida Statutes, administrative agency regulations, other county ordinances, or court decisions. The following procedures will be observed at hearings before the Board:

- a. In a non-contested case the only evidence heard shall be the statement of the violation and any stipulated agreement, unless additional information is requested from the Board.
- b. Where notice of hearing has been provided in accordance with Florida Statutes, Section 162.12, a hearing may proceed in the absence of the Respondent.

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c. The Secretary to the Board shall read the statement of violation against the Respondent/alleged violator.

d. The Respondent/alleged violator shall state his/her full legal name. The Board may ask for the mailing address and physical residence.

e. If the Respondent/alleged violator is not present and is represented by a person other than an attorney, the Respondent may submit a notarized letter to the Chair of the Board granting that individual permission to represent him/her at the hearing. The individual must also testify at the hearing, under oath, to represent the Respondent and capacity of their representation.

f. Presentations of a case may be limited to twenty (20) minutes per party, including testimony of all witnesses. If the Respondent believes that additional time is required, he/she may notify the Board Secretary prior to the scheduled hearing. The Board shall determine if additional time shall be allowed.

g. Any evidence which is sought to be introduced by a party during the party's presentation is admitted at the discretion of the Board and may be objected to by the opposing side. If necessary the Board may grant a recess or continuance to examine said evidence.

h. All persons testifying before the Board shall do so under oath.

i. Each side may be permitted to make brief opening statements, if requested. The County shall present its case and Respondent/alleged violator shall present his/her case. Both parties shall have an opportunity to cross-examine any person testifying.

j. Any person who can provide relevant evidence to support that a violation has or has not occurred and wishes to testify should notify the Board Secretary prior to commencement of the public hearing. Testimony may be limited to no more than five (5) minutes unless extended by a majority vote of the Board.

k. The Board or its attorney may question any witness(es) or call any witness(es) as necessary.

l. The right of the parties to present rebuttal evidence is discretionary with the Board.

m. Upon completion of all the evidence, each side may be permitted to make brief closing arguments and the Chair shall close the hearing.

n. The Board shall deliberate in open session before the public and determine whether the County has proven by competent substantial evidence that a violation has occurred. If the Board determines that a violation has occurred, it shall then deliberate and determine what corrective action and potential fines shall be appropriate. If the Board does not find that a violation has occurred, the charges shall be dismissed.

o. The Board, upon finding a Respondent in violation, shall issue an oral Order to Comply, setting a date certain for compliance. The Order shall contain Findings of Fact and

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Conclusions of Law and state the corrective action granted by the Board. The Board may include in such Order a fine to take effect the day following the specified compliance date in case of non-compliance. In determining the amount of the fine, if any, the Board shall consider the following factors: (1) the gravity of the violation; (2) any actions taken by the violator to correct the violation; (3) any previous violations committed by the violator; and (4) any other relevant factors. Such fine shall not exceed One Thousand Dollars (\$1,000.00) for each day the violation continues past the specified compliance date and Five Thousand Dollars (\$5,000.00) for repeat violations for each day the violation continues past the specified compliance date. In addition, the Respondent/violator shall be ordered to pay any operational and/or prosecution costs incurred. Said Order shall be reduced to writing and be mailed to the Respondent/violator within ten (10) days.

p. In the event the violation is a violation described in Section 162.06(4), Fla. Stat., the Board shall notify the County Manager, which may make all reasonable repairs required to bring the property into compliance and charge the violator with the reasonable costs of repairs along with the fine and any operational or prosecutorial costs.

q. A party may motion a rehearing of the Board's Order, based only on the ground that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law, which was fundamental to the decision of the Board. The written Motion for Rehearing shall specify the precise reasons thereof. A Motion for Rehearing shall be in writing and sent to the Secretary to the Board within ten (10) days of the date the Order is received by the party, but in no event more than twenty (20) days from the date of mailing of the Order. The Order of the Board shall be stayed and the time for taking an appeal tolled until the Motion for Rehearing has been disposed of and the decision received by the parties; provided, however, that in no event shall the Order be stayed for a period longer than twenty (20) days from date of the mailing of the rehearing decision.

r. The Board shall make a determination as to whether or not to rehear the matter and its decision shall be made at a public meeting, reduced to writing and mailed to the interested parties within 10 days after the decision is made. If the Board determines that it will grant a rehearing, it may: (1) Schedule a hearing where the parties will be given the opportunity of presenting evidence or argument limited by the Board to the specific reasons for which the rehearing was granted; or (2) Modify or reverse its prior Order, without receiving further evidence, providing that the change is based on a finding that the prior decision of the Board resulted from a ruling on a question of law which the Board has been informed was an erroneous ruling.

s. Any aggrieved party may appeal a final Order of the Board to the Circuit Court within thirty (30) days of the execution of the Order appealed. An appeal shall not be a hearing *de novo* (a new hearing), but shall be limited to appellate review of the record created. Filing an Appeal shall not stay the Board's Order.

ARTICLE X

Reduction or Abatement of Fines Prior to Imposition of Fine

Section 1. A Motion for Reduction or Abatement of Fines may be in the form of a written request. The Motion should contain the following information: (a) name, and address of named Respondent; (b) names of all owners of the property which is the subject of the violation; (c) physical address of subject property; (d) nature of violation; (e) description of abatement of violation and date of abatement; (In the event that the violation cannot be abated by Respondent, the Respondent shall include in the Motion for Reduction/Abatement of Fines a detailed description of the efforts undertaken for abatement and an explanation as to why the violation cannot be abated, and provide support documentation to that effect); (f) mitigating factors which Respondent believes warrants a reduction or abatement of fines; (g) and other factors that may be considered by the Board; (h) signature of Respondent; and (i) all supporting documentation. The Respondent should provide the Secretary to the Board a copy of the Motion for Reduction/Abatement of Fines, attaching all supporting documentation. A Motion for Reduction/Abatement of Fines may be made after a violation has been abated and all operational costs and County Abatement costs, if applicable, have been paid or in the event a violation cannot be abated, after a diligent attempt to abate the violation in accordance with the Board's Order has been made. Under no circumstances may a Motion for Reduction/Abatement of Fines be made after the Board has authorized foreclosure by the County Attorney's Office.

Section 2. Upon proper filing of a Motion, the Secretary to the Board shall set the Motion on the next available agenda of the Code Enforcement Board. The failure of the respondent to comply with the requirements set forth above may be grounds for dismissal of the Motion by the Code Enforcement Board. Such dismissal shall be without prejudice to the Respondent to file another motion accordance with these Rules.

Section 3 Upon the proper filing of a Motion for Reduction/Abatement of Fines, the Board may consider the following factors; (a) the gravity of the violation; (b) actions taken by the Respondent to correct the violation; (c) whether there were previous violations committed by the violator; (d) the cost upon the violator to correct the violation; (e) the reasonable time necessary to correct the violation; (f) the value of the real estate compared to the amount of fine/lien; (g) any hardship the fine/lien would cause on the Respondent; (h) the time and cost incurred by Code Enforcement to have the violation corrected and (i) any other equitable factors which would make the requested mitigation appropriate.

Section 4 The Respondent shall have the burden of proof to show why a fine/lien should be reduced or abated. The hearing shall be conducted according to Article IX of these Rules, where applicable.

Section 5. The Board will not re-hear a motion for reduction of fines once a decision has been reached on a previous motion for reduction of fines.

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Section 6. The Board's decision to grant or deny mitigation of an Order Imposing Fine/Lien shall be reduced to writing and a certified copy of an Order imposing a fine shall 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 property or personal property owned by the violator. Any aggrieved party may appeal a final order to the Circuit Court within (30) days of the execution of the Order appealed. An appeal shall not be a hearing *de novo* (new hearing), but shall be limited to appellate review of the record created. Filing an Appeal shall not stay the Board's Order.

ARTICLE XI

Imposition of Fines

Section 1. After an Order has been issued by the Board and a date of compliance has been set, the Code Enforcement Investigator shall make a re-inspection to determine compliance or non-compliance with the Order of the Board.

Section 2. The Code Enforcement Investigator shall file an Affidavit of Compliance or Non-Compliance with the Secretary to the Board. A copy of said Affidavit may be sent to the violator by regular U.S. mail and recorded in the Public Records of Collier County, Florida. The Secretary to the Board shall report the status of the said affidavit at the next scheduled Board meeting.

Section 3. Upon Motion for Imposition of Fines being filed by the County, the Board shall set the Motion for hearing with proper notice to the Respondent. Any Motion for Abatement/Reduction of Fines shall be set on the same date for hearing of the County's Motion when received in a timely manner. This hearing shall not be a trial *de novo* or a new hearing on the original case. The County may present evidence on the period of non-compliance, the amount of daily fines and the total amount of fine requested to be imposed, as well as any operational costs incurred or to be imposed. Respondent may be given the opportunity to present any written Motion for Abatement/Reduction of Fines and any testimony in support thereof. Respondent may also, at the discretion of the Board, be given the opportunity to present testimony regarding efforts made toward compliance and abatement, which may be considered as mitigation circumstances. In rebuttal, the County may be given the opportunity to present testimony regarding aggravating circumstances.

Section 4. The Board shall determine the amount of fines applicable to be imposed. In determining the amount of the fines, if any, the Board shall consider the following factors; (1) the gravity of the violation; (2) any actions taken by the violator to correct the violation; (3) any previous violations committed by the violator; and (4) any other relevant factors. Such fine shall not exceed One Thousand Dollars (\$1,000.00) for each day the violation continues past the specified compliance date and Five Thousand Dollars (\$5,000.00) for repeat violations for each day the violation continues past the specified compliance date. In addition, the Respondent/violator may be ordered to pay any operational and/or prosecution costs incurred. In the event that the violation(s) has/have not been abated at the time of the hearing on the Motion for Imposition of Fines, the Board may determine if

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daily fines shall continue to accrue or if a stay is appropriate. The Board's determination to impose operational costs and/or fines, shall be reduced to writing and a copy of the Order Imposing Fine/Lien shall be mailed to the violator by regular U.S. mail or served upon the violator as specified by the Ordinance and recorded in the Public Records of Collier County, Florida.

Section 5. A certified copy of an Order of Imposition of Fines shall 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 property 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 sheriff's of this State, including levy against personal property, but shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part 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 the ordinance, whichever comes first. After three (3) months from the filing of any such lien, which remains unpaid, the Board may authorize the attorney representing the Board of County Commissioners to foreclose on the lien. No lien created pursuant to this ordinance may be foreclosed on real property, which is homesteaded under Section 4, Article X of the Florida Constitution.

Section 6. No lien imposed pursuant to this article shall continue for a period longer than twenty (20) years after the certified copy of an Order of Imposition of Fine/Lien 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 incurred in the foreclosure.

ARTICLE XII

Miscellaneous

Section 1. These Rules and regulations may be revised and adopted consistent with the state statutes and county ordinances during a regular meeting by the affirmative vote of a majority of the full Board, including alternates, provided notice of a proposed change is given to the Board at a preceding regular meeting.

Section 2. No Board member shall knowingly discuss any case with any alleged violator or with each other or with any other interested party prior to the final resolution of the case by the Board.

Section 3. In the event that a violation is occurring on property under multiple ownership and/or in which there is a tenant and there is potential that the other property owner(s)' or tenant(s)' interest will be affected by the Board's decision, the Code Enforcement Investigator may include the property owner and/or tenant as Respondent to the case.

Section 4. Intervention by non-parties may be permitted if the non-party has been found by the Board to be an affected party.

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Section 5. The Board, at its discretion, may ask for periodic reports from County Staff as to the status of cases.

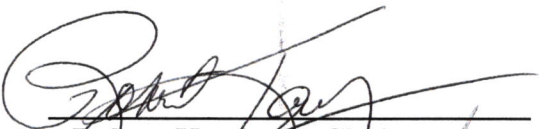
Section 6. In the event of a conflict between these Rules and regulations and the provisions of any ordinance(s) or statute(s) applicable to the Code Enforcement Board, the provisions of the ordinance(s) or statute(s) shall prevail.

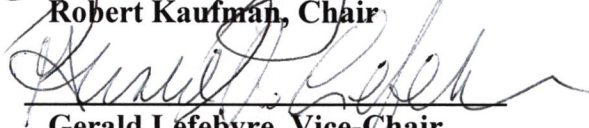
Section 7. Any case in which there has been a hearing by the Board prior to the adoption of these Rules and Regulations shall be governed by the previously adopted rules and regulations in effect at the time of the hearing.

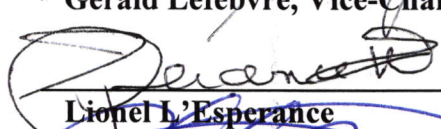
THESE RULES AND REGULATIONS, As Amended, ARE HEREBY APPROVED this

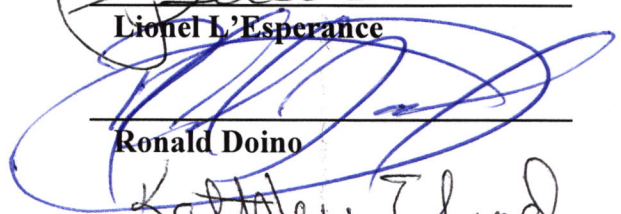
24th day of May, 2018.

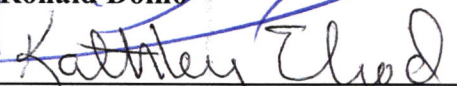
COLLIER COUNTY CODE ENFORCEMENT BOARD


Robert Kaufman, Chair

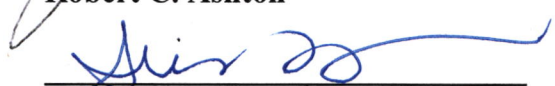

Gerald Lefebvre, Vice-Chair

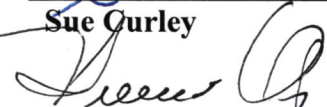

Lionel L'Esperance

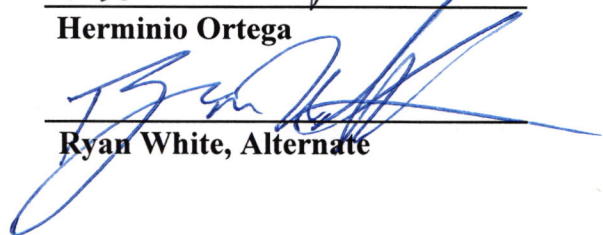

Ronald Doino


Kathleen Elrod, Alternate


Robert C. Ashton


Sue Curley


Herminio Ortega


Ryan White, Alternate

COLLIER COUNTY SPECIAL MAGISTRATE

RULES AND REGULATIONS

ARTICLE I

Name

The name of this Governing Authority shall be the Collier County Special Magistrate.

ARTICLE II

Jurisdiction

The Special Magistrate has jurisdiction over those matters which are set forth in all ordinances of Collier County, Florida.

ARTICLE III

Meeting Requirements

Section 1. Regular Meetings. Regular meetings of the Special Magistrate shall be held at least once monthly, and as required, in the Collier County Commission Chambers, and/or at other times and places as needed, and determined by the Special Magistrate. The Chambers will be open to the public at 8:15 a.m. Pre-hearing conference proceedings will begin at 8:30 a.m. with hearings commencing at 9:00 a.m.

Section 2. Records. All records of regular and special meetings or hearing shall be open to the public.

Section 3. Procedure. Parliamentary procedure in Special Magistrate meetings shall be governed by the Rules and Regulations contained herein.

ARTICLE IV

Order of Business

Section 1. The Order of Business to be followed at meetings of the Special Magistrate is as follows:

- I. **CALL TO ORDER**-Special Magistrate Brenda Garretson presiding
 - A. Hearing Rules and Regulations

- II. APPROVAL OF AGENDA
- III. APPROVAL OF MINUTES
- IV. MOTIONS
 - A. Motions for Continuance
 - B. Motions for Extension of Time
- V. STIPULATIONS
- VI. PUBLIC HEARINGS
- VII. NEW BUSINESS
 - A. Motions for Reduction/Abatement of Fines
 - B. Motions for Imposition of Fines and Lien
- VIII. OLD BUSINESS
 - A. Motions to Amend Previously Issued Order
 - B. Motions to Rescind Previously Issued Order
- IX. CONSENT AGENDA
 - A. Request to Forward Cases to County Attorney's Office as Referenced in Submitted Executive Summary
 - B. Request for Special Magistrate to Impose Nuisance Abatement Liens on Cases Referenced in Submitted Executive Summary
- X. REPORTS
- XI. NEXT MEETING DATE
- XII. ADJOURNMENT

Section 2. The order of business may be amended, supplemented or suspended by decision of the Special Magistrate.

ARTICLE V

Initiation of Actions before the Special Magistrate

Section 1. Actions before the Special Magistrate shall be initiated by the filing of a document with the Office of the Special Magistrate by a Code Enforcement Investigator, Sheriff's Deputy, Domestic Animal Services Officer, or other County Official with the powers to issue

citations, which document shall include a statement of the facts and circumstances of the alleged violation and shall identify the code or ordinance that has been violated. This charging document may take the form of a Notice of Violation or of a citation. The Special Magistrate may also initiate action based on evidence presented at a hearing.

Section 2. If the action is initiated pursuant to the issuance of a citation, the alleged violator may pay a fine in the amount set forth on the citation and/or correct the violation, or may request a hearing before the Special Magistrate.

Section 3. The Office of the Special Magistrate shall assign a case number to each case and schedule a hearing.

Section 4. The Office of the Special Magistrate shall send out a Notice of Hearing along with a copy of the Rules and Regulations to the alleged violator by either certified mail, return receipt requested, hand delivery upon a party, posting on the property and at the courthouse, or in any manner authorized as provided by the Ordinance establishing the Special Magistrate. The Office of the Special Magistrate shall provide Notice to the issuing officer and the alleged violator as herein provided at least ten (10) days prior to the hearing at which the alleged violator's case will be presented to the Special Magistrate.

Section 5. The Notice of Hearing shall inform the alleged violator that he or she is permitted to provide an answer/response packet of information to the Office of the Special Magistrate for distribution to the Special Magistrate at the Hearing. In order to have the information submitted to the Special Magistrate, the alleged violator shall submit three (3) copies of his or her information the Office of the Special Magistrate three (3) business days prior to the scheduled hearing.

Section 6. At the discretion of the Special Magistrate, the timelines set forth in this Article can be abbreviated or set aside by the Special Magistrate to address the alleged violation in order to avoid damage to the health, safety and welfare of the citizens of Collier County, Florida, or in the interest of justice.

ARTICLE VI

Pre-hearing Procedures

Section 1. Pre-hearing conference between parties.

The Respondent/ alleged violator and Code Enforcement Investigator or other issuing officer are required to have a pre-hearing conference prior to the scheduled hearing. At the pre-hearing conference the following may occur:

- a. The Respondent/ alleged violator may be asked if he/she wishes to contest the violation(s). If so, the case shall proceed on the agenda as stated in Article IV.
- b. In lieu of a hearing, the parties may stipulate to an agreed Order by signing a written Stipulation, subject to the approval of the Special Magistrate.

- c. If proceeding to hearing, the parties may stipulate to any facts, exhibits or other evidence to be introduced into the record, which are not in dispute.
- d. The names and addresses of witnesses to be called may be exchanged. Any facts or evidence stipulated to shall be presented to the Special Magistrate along with any pre-hearing packets, agreements or stipulations either party intends to provide to the Special Magistrate.

Section 2. Pre-hearing Motions.

Any motion for any reason to be filed by the Respondent/alleged violator or the Issuing Officer shall be delivered to the Office of the Special Magistrate and the opposing party, or their counsel, if applicable, at least five (5) business days prior to the hearing. The person filing the motion shall provide the Office of the Special Magistrate with three (3) copies of the motion. The Secretary to the Special Magistrate will then distribute the motions to the Special Magistrate at the hearing. The Special Magistrate may waive the requirements set forth in the paragraph under exceptional circumstances.

ARTICLE VII

Hearings

Section 1. Due Process.

Formal rules of evidence shall not apply, but fundamental due process shall be observed. The Special Magistrate is without jurisdiction to hear any statement, argument or evidence alleging that any provision of the county's ordinances is unenforceable due to conflict with the Constitutions of the United States or State of Florida, Florida Statutes, administrative agency regulations, other county ordinances, or court decisions.

Section 2. Procedures.

The following procedures will be observed at hearings before the Special Magistrate:

- a. Where notice of hearing has been provided in accordance with Florida Statutes, Section 162.12, and Collier County Ordinance # 2007-44, as amended, a hearing may proceed in the absence of the Respondent/alleged violator.
- b. The Special Magistrate shall announce the case before hearing testimony.
- c. The Respondent/alleged violator shall state his/her full legal name, mailing address and physical residence.
- d. If the Respondent/alleged violator is not present and is represented by a person other than an attorney, the Respondent/alleged violator shall provide to the Special Magistrate proof that the individual appearing has permission to represent him/her at the hearing.
- e. Presentations of a case may be limited to ten (10) minutes per party, including testimony of all witnesses. If the Respondent/alleged violator believes that additional time is required, he/she shall notify the Secretary to the Special Magistrate prior to the scheduled hearing.

f. In those cases initiated by citation in which the Respondent/alleged violator had requested the hearing, the Respondent/alleged violator shall proceed first with the presentation of his/her evidence in opposition to the facts alleged in the citation.

g. In those cases initiated by a Notice of Violation, the County shall proceed first with the presentation of its evidence to prove that a violation has occurred.

h. Any evidence which is sought to be introduced by a party during the party's presentation is admitted at the discretion of the Special Magistrate and may be objected to by the opposing side. If necessary the Special Magistrate may grant a recess or continuance to examine said evidence.

i. All persons testifying before the Special Magistrate shall do so under sworn oath.

j. Each side may be permitted to make brief opening statements, if requested. The County shall present its case and Respondent/alleged violator shall present his/her case in the order outlined herein above at Article VII, Paragraphs f. and g. Both parties shall have an opportunity to cross-examine any person testifying for the opposing party.

k. Any person who can provide relevant evidence regarding an alleged violation, and wishes to testify, should notify the Secretary of the Special Magistrate prior to commencement of the public hearing. Testimony may be limited to no more than five (5) minutes unless extended by the Special Magistrate.

l. The Special Magistrate may question any witness (es) or call any witness (es) as necessary.

m. The right of the parties to present rebuttal evidence is discretionary with the Special Magistrate.

n. Upon completion of all the evidence, each side may be permitted to make brief closing arguments and the Special Magistrate shall close the hearing.

o. The Special Magistrate shall determine whether the County has proven by competent substantial evidence that a violation has occurred. If the determination is made that a violation has occurred, the Special Magistrate shall then decide what corrective action and potential fines shall be appropriate. If the Special Magistrate does not find that a violation has occurred, the charge shall be dismissed.

p. The Special Magistrate, upon finding a Respondent in violation, shall issue an oral Order to Comply, setting a date certain for compliance. The Order shall contain Findings of Fact and Conclusions of Law and state the corrective action ordered by the Special Magistrate, and the deadline date for compliance. The Special Magistrate may include in such Order a fine amount which will begin to accrue in the event of non-compliance by the date set for compliance. In determining the amount of the fine, if any, the Special Magistrate shall consider the following factors:

- 1) The gravity of the violation;
- 2) Any potential health, safety and welfare issues;

- 3) Any actions taken by the violator to correct the violation;
- 4) Any previous violations committed by the violator; and
- 5) Any other relevant factors.

Such fine shall not exceed One Thousand Dollars (\$1,000.00) for each day the violation continues past the specified compliance date and Five Thousand Dollars (\$5,000.00) for repeat violations for each day the violation continues past the specified compliance date. In addition, the Respondent/violator may be ordered to pay any operational and/or administrative costs incurred by the County. Said Order shall be reduced to writing and mailed to the Respondent/violator within ten (10) days.

q. In the event the violation is a violation described in Section 162.06(4), Fla. Stat., the Special Magistrate shall notify the local governing body, which may make all reasonable repairs required to bring the property into compliance and charge the violator the reasonable costs of repairs along with the fine and any operational or administrative costs.

r. A party may move for a rehearing of the Special Magistrate Order, based only on the ground that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law, which was fundamental to the decision of the Special Magistrate. The written Motion for Rehearing shall specify the precise reasons thereof. A Motion for Rehearing shall be in writing and sent to the Office of the Special Magistrate within ten (10) days of the date the Order is received by the party, but in no event more than twenty (20) days from the date of mailing of the Order. The Order of the Special Magistrate shall be stayed and the time for taking an appeal tolled until the Motion for Rehearing has been disposed of and the decision received by the parties; provided, however, that in no event shall the Order be stayed for a period longer than twenty (20) days from the date of the mailing of the rehearing decision.

s. The Special Magistrate shall make a determination as to whether or not to rehear the matter and the decision shall be announced at a public meeting, reduced to writing and mailed to the interested parties within 10 days after the decision is made. If the Special Magistrate determines that a rehearing will be granted, the Special Magistrate may: (1) Schedule a hearing where the parties will be given the opportunity of presenting evidence or argument limited by the Special magistrate to the specific reasons for which the rehearing was granted; or (2) Modify or reverse its prior Order, without receiving further evidence, providing that the change is based on a finding that the prior decision of the Special Magistrate resulted from a ruling on a question of law which the Special Magistrate has been informed was an erroneous ruling.

t. Any aggrieved party may appeal a final Order of the Special Magistrate to the Circuit Court within thirty (30) days of the execution of the Order appealed. An appeal shall not be a hearing *de novo* (a new hearing), but shall be limited to appellate review of the record created. Filing an Appeal will not automatically stay the Special Magistrate's Order. A written Motion for Stay must be submitted to the Special Magistrate with a copy to the opposing party. The party filing the appeal will be responsible for obtaining and paying for the transcript of the proceedings.

ARTICLE VIII

Reduction or Abatement of Fines Prior to Imposition of Fine

Section 1. A motion for Reduction or Abatement of Fines shall be in the form of a written request. The Motion should contain the following information:

- a. Name, and address of named Respondent;
- b. Names of all owners of the property which is the subject of the violation;
- c. Physical address of subject property;
- d. Nature of violation;
- e. Description of abatement of violation and date of abatement;
- f. Mitigating factors that Respondent believes warrants a reduction or abatement of fines;
- g. Any other factors the Respondent may wish to have considered by the Special Magistrate
- h. Signature of Respondent; and
- i. All supporting documentation

In the event the abatement could not be accomplished, the violation was not completely abated, or the violation was not abated in a timely manner in accordance with the Order of the Special Magistrate, the Respondent shall include in the Motion for Reduction/Abatement of Fines a detailed description of the efforts undertaken for abatement, the details of any diligent attempt to abate the violation, an explanation as to why the violation was not timely abated or cannot be abated, and supporting documentation of the contents of the Motion.

The Respondent should provide the Office of the Special Magistrate three (3) copies of the Motion for Reduction/Abatement of Fines, attaching all supporting documentation. A Motion for Reduction/Abatement of Fines may be made after a violation had been abated. Under no circumstances may a Motion for Reduction/Abatement of Fines be made after the Special Magistrate has authorized foreclosure by the County Attorney's Office.

Section 2. Upon proper filing of a Motion for Reduction/Abatement of Fines, the Office of the Special Magistrate shall set the Motion on the next available agenda of the Special Magistrate. The failure of the Respondent to comply with the requirements set forth above may be grounds for dismissal of the Motion by the Special Magistrate. Such dismissal shall be without prejudice to the Respondent to file another request in accordance with these Rules.

Section 3. Upon the proper filing of a Motion for Reduction/Abatement of Fines, the Special Magistrate may consider the following factors:

- a. The gravity of the violation;
- b. Actions taken by the Respondent to correct the violation;

- c. Whether there were previous violations committed by the violator;
- d. The cost upon the violator to correct the violation;
- e. The reasonable time necessary to correct the violation;
- f. The value of the real estate compared to the amount of the fine/lien;
- g. Any hardship the fine/lien would cause on the Respondent;
- h. The time and cost incurred by Code Enforcement to have the violation corrected;
- i. Any other equitable factors which would make the requested mitigation appropriate.

Section 4. The Respondent shall have the burden of proof to show why a fine/lien should be reduced or abated. The hearing shall be conducted according to Article VII of these Rules, where applicable.

Section 5. The Special Magistrate will not re-hear a motion for reduction of fines once a decision has been reached on a previous motion for reduction of fines.

Section 6. The Special Magistrate's decision to grant or deny mitigation of an Order Imposing Fine/Lien shall be reduced to writing and a certified copy of an Order imposing a fine shall 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 property or personal property owned by the violator in Collier County, Florida. Any aggrieved party may appeal a final Order of the Special Magistrate to the Circuit Court within thirty (30) days of the execution of the Order appealed. An appeal shall not be a hearing *de novo* (a new hearing), but shall be limited to appellate review of the record created. Filing an Appeal will not automatically stay the Special Magistrate's Order. A written Motion for Stay must be submitted to the Special Magistrate with a copy to the opposing party. The party filing the appeal will be responsible for obtaining and paying for the transcript of the proceedings.

ARTICLE IX

Imposition of Fines

Section 1. Upon the date for compliance in a written Order of the Special Magistrate, the Code Enforcement Investigator shall make a re-inspection to determine compliance or non-compliance with the Order of the Special Magistrate.

Section 2. The Code Enforcement Investigator shall file an Affidavit of Compliance or Non-Compliance with the Secretary to the Special Magistrate. A copy of said Affidavit may be sent to the violator by regular U.S. mail and recorded in the Public Records of Collier County, Florida.

Section 3. Upon a Motion for Imposition of Fines being filed by the County, the Office of the Special Magistrate shall set the Motion for hearing before the Special Magistrate with proper notice to the Respondent/violator. Any pending Motion for Abatement/Reduction of Fines shall be set on the same date for hearing of the County's Motion, when received in a timely manner. This hearing shall not be a trial *de novo* or a new hearing on the original case. The

County may present evidence of the period of non-compliance, the amount of daily fines and the total amount of fine requested to be imposed, as well as any operational costs incurred or to be imposed. Respondent may be given the opportunity to present any written Motion for Abatement/Reduction of Fines and any testimony in support thereof. Respondent/violator may also, at the discretion of the Special Magistrate, be given the opportunity to present testimony regarding efforts made toward compliance and abatement, which may be considered as mitigating circumstances. In rebuttal, the County may be given the opportunity to present testimony regarding aggravating circumstances.

Section 4. The Special Magistrate shall determine the amount of fines as applicable to be imposed. In determining the amount of the fines, if any, the Special Magistrate shall consider the following factors:

- a) The gravity of the violation;
- b) Any actions taken by the violator to correct the violation
- c) Any previous violations committed by the Respondent/violator; and
- d) Any other relevant factors

The daily fine amount to be assessed upon non-compliance shall be as designated in the Order of the Special Magistrate in which Respondent was ordered to comply. In addition, the Respondent/violator may be ordered to pay any operational and/or administrative costs incurred. In the event the violation(s) has/have not been abated at the time of the hearing on the Motion for Imposition of fines, the Special Magistrate may determine if daily fines shall continue to accrue or if a stay is appropriate. The Special Magistrate's determination to impose operational costs and/or fines shall be reduced to writing and a copy of the Order Imposing Fine/Lien shall be mailed to the violator by regular U.S. mail or served upon the violator as specified by the Ordinance.

Section 5. A certified copy of an Order of Imposition of Fines shall be recorded in the public records of Collier County, Florida, and thereafter shall constitute a lien against the land on which the violation exists and upon any other real property or personal property owned by the violator and located in Collier County, Florida. 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 personal property, but shall not be deemed to be a court judgment except for enforcement purposes. In the event the violation(s) has/have not been abated at the time of the hearing on the Motion for Imposition of Fines, the Special Magistrate may determine if daily fines shall continue to accrue or if a stay is appropriate. A fine imposed pursuant to the party 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 the ordinance, whichever comes first. After ninety (90) days from the filing of any such lien, which remains unpaid, the Special Magistrate may authorize the attorney representing the Board of County Commissioners to foreclose on the lien. No lien created pursuant to this ordinance may be foreclosed on real property, which is homestead under Section 4, Article X of the Florida Constitution.

Section 6. No lien imposed pursuant to this article shall continue for a period longer than twenty (20) years after the certified copy of an Order of Imposition of Fine/Lien 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, incurred by that party in the foreclosure action.

ARTICLE X

Miscellaneous

Section 1. These Rules and Regulations may be revised and adopted consistent with state statutes and county ordinances during a regular meeting.

Section 2. The Special Magistrate shall not knowingly discuss any case with any alleged violator or with any other interested party prior to the final resolution of the case.

Section 3. In the event a violation is occurring on property under multiple ownership and/or in which there is a tenant and there is the potential that the other property owner(s)' or tenant(s)' interest will be affected by the Special Magistrate's decision, the Code Enforcement Investigator may include the property owner and/or tenant as Respondent to the case.

Section 4. Intervention by non-parties may be permitted if the non-party has been found by the Special Magistrate to be a person affected by the outcome of the case.

Section 5. The Special Magistrate has discretion to ask for periodic reports from County staff as to the status of cases.

Section 6. In the event of a conflict between these Rules and Regulations and the provisions of any ordinance(s) or statute(s) applicable to the Special Magistrate, the provisions of the ordinance(s) or statute(s) shall prevail.

Section 7. Any case in which there has been a hearing by the Special Magistrate prior to the adoption of these Rules and Regulations shall be governed by the previously adopted rules and regulations in effect at the time of the hearing.

THESE RULES AND REGULATIONS, As Amended, ARE HEREBY APPROVED this
4th day of November, 2016.

COLLIER COUNTY SPECIAL MAGISTRATE



 The Honorable Brenda C. Garretson
 Special Magistrate