

**ORDINANCE NO. 2023-10**

**AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 2, ADMINISTRATION, ARTICLE VI, CODE ENFORCEMENT, DIVISION I, GENERALLY, BY AMENDING SECTION 2-301, DEFINITIONS, SECTION 2-302 SPECIAL MAGISTRATE; AMENDING DIVISION 2, CODE ENFORCEMENT BOARD; DELETING SECTION 2-321, ESTABLISHED; MEMBERSHIP, SECTION 2-322, APPOINTMENT, QUALIFICATIONS AND TERM MEMBERS; VACANCIES; REMOVAL OF MEMBERS, AND SECTION 2-323, CHAIR; QUORUM; COMPENSATION OF MEMBERS; AMENDING SECTION 2-324, FUNCTION AND JURISDICTION, AND SECTION 2-325, POWERS; DELETING SECTION 2-326, LEGAL COUNSEL; AMENDING SECTION 2-327, ENFORCEMENT PROCEDURE, SECTION 2-328, HEARINGS, SECTION 2-329, IMPOSITION OF FINE; AMOUNT OF FINE; FINE AND COSTS TO CONSTITUTE LIEN, SECTION 2-330, APPEAL OF CODE ENFORCEMENT ORDERS, AND SECTION 2-332, PROVISIONS OF DIVISION SUPPLEMENTAL; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, in 2020, the Venice City Council enacted supplemental code enforcement procedures to allow for the issuance of citations for certain violations of the City Code of Ordinances; and

**WHEREAS**, at the same time the Venice City Council created the position of Code Enforcement Special Magistrate, filled by a licensed attorney, to handle citations that were appealed or unpaid and the Special Magistrate was provided concurrent jurisdiction with the City Code Enforcement Board to hear code enforcement cases; and

**WHEREAS**, due to staff resolution of the majority of code enforcement cases, the Code Enforcement Board has rarely met the past few years while the Special Magistrate has been more routinely called upon to handle citations and other matters; and

**WHEREAS**, dissolving the Code Enforcement Board and allowing the Special Magistrate to handle all code enforcement matters is consistent with the approach now taken by many local governments and allows for a more efficient use of city and volunteer resources; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA** as follows:

**SECTION 1.** The above whereas clauses are ratified and confirmed as true and correct.

**SECTION 2.** Chapter 2, Administration, Article VI, Code Enforcement, Division 1, Generally, is hereby amended to read as follows:

## ARTICLE VI. – CODE ENFORCEMENT

### DIVISION 1. - GENERALLY

#### Sec. 2-301. – 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:

~~Code enforcement board means the city code enforcement board created pursuant to this article.~~

*Code enforcement officer* means those authorized agents or employees of the city whose duty it is to ensure compliance with this Code.

*Repeat violation* means a violation of a provision of this Code or an ordinance by a person whom the special magistrate ~~code enforcement board~~ has previously found to have violated the same provision within five years prior to the violation.

*Special magistrate.* A person authorized to hold quasi-judicial hearings and assess fines for violations of the city Code in accordance with this chapter and any such other authority as may be conferred by F.S. ch. 162, or any other law.

#### Sec. 2-302. – Special magistrate.

- (a) The city council may appoint one special magistrate and up to two alternate special magistrates to serve in the event of legal conflicts of interest or absences. ~~The special magistrate shall have the same status, jurisdiction, and authority as the code enforcement board. All references to the code enforcement board in this Code shall apply to the special magistrate, except that no legal counsel shall be appointed to advise the special magistrate.~~
- (b) through (e) no change.
- (f) The following conflict of interest provisions shall apply to the special magistrate:
  - (1) through (5) no change.
  - (6) In the event a legal conflict of interest prevents the special magistrate from hearing a case, the city manager may direct that the case be heard by an alternate special magistrate previously designated by the city council, ~~or in the alternative the case may be referred to the city's code enforcement board.~~
- (g) The special magistrate shall have the authority to establish procedures for the presentation of cases and the establishment of fines in accordance with this chapter and F.S. ch. 162. ~~A city code enforcement officer, or a designee as requested by the city manager, shall prosecute all cases before the special magistrate.~~
- (h) No change.

**Secs. 2-303—2-3230. - Reserved.**

**SECTION 3.** Chapter 2, Administration, Article VI, Code Enforcement, Division 2, Code Enforcement Board, is hereby amended to read as follows:

**DIVISION 2. – ENFORCEMENT PROCEDURES ~~CODE ENFORCEMENT BOARD~~**

**~~Sec. 2-321. Established; membership.~~**

~~There is hereby created within the city a code enforcement board, which shall be composed of five members, all of whom shall be residents of the city. The current seven member board shall be reduced to five members through attrition. If a member resigns, the member's seat shall not be filled until such time as the number of members totals five.~~

**~~Sec. 2-322. Appointment, qualifications and term of members; vacancies; removal of members.~~**

- ~~(a) Appointments to the code enforcement board shall be made by the mayor with advice and consent of the city council. The members shall be residents of the city and shall, whenever possible, include an architect, a businessperson, an engineer, a general contractor, a realtor and a subcontractor.~~
- ~~(b) Appointments shall be for terms of three years. Members may be reappointed upon the concurrence of the city council. Appointment to fill any vacancy of the board shall be for the remainder of the unexpired term of office.~~
- ~~(c) If any member of the board fails to attend two out of three successive meetings without cause and without prior approval of the chair of the board, the board shall declare the member's office vacant and the city council shall promptly fill such vacancy.~~
- ~~(d) Members serve at the pleasure of city council and may be removed by city council at any time with or without cause.~~

**~~Sec. 2-323. Chair; quorum; compensation of members.~~**

- ~~(a) Annually, the members shall elect one of the members to be chair. The person so elected shall function as the chair for a one-year term. The chair shall be a voting member.~~
- ~~(b) Four or more members of the board present at any meeting shall constitute a quorum in order for the board to conduct its business, until the board is comprised of five members at which time three or more members of the board present at any meeting shall constitute a quorum.~~
- ~~(c) Members of the board shall serve without compensation.~~

**Sec. 2-324. - AuthorityFunction and jurisdiction.**

~~The code enforcement board and special magistrate shall have the purpose of conducting hearings relating to the enforcement of this Code. The code enforcement board and special magistrate shall have the authority and jurisdiction to conduct hearings to consider and enter enforcement orders and civil fines relating to any provision of this Code, including any future amendments. The proceedings before the code enforcement board and special magistrate shall be civil in nature and, notwithstanding any other provisions of this Code, there shall be no criminal penalty for any conduct which is made the subject of code enforcement board proceedings.~~

**Sec. 2-325. - Powers.**

~~The code enforcement board and special magistrate shall have the power to:~~

- (1) Adopt rules for the conduct of the hearings ~~it holds~~ pursuant to section 2-328.
- (2) through (5) no change.
- (6) ~~The special magistrate shall additionally have the power to H~~hear and determine parking citation appeals as provided in section 70-37 of this Code.

**Sec. 2-326. - ReservedLegal counsel.**

~~The city attorney or assistants shall represent the code enforcement board, and may prosecute cases before the special magistrate.~~

**Sec. 2-327. - Notice of violation; opportunity to correctEnforcement procedure.**

- (a) No change.
- (b) If the violation continues beyond the time specified in the correction notice, a code enforcement officer, shall cause a hearing to be scheduled, and written notice of such hearing shall be hand delivered or sent certified mail, return receipt requested, to the violator. Notice may additionally be served by publication or posting as provided in section 2-331. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by a code enforcement officer, the case may be presented to the ~~board or~~ special magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state.
- (c) If a repeat violation is found, a code enforcement officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. A code enforcement officer, upon notifying the violator of a repeat violation, shall cause a hearing to be scheduled and shall provide notice pursuant to section 2-331. The case may be presented to the ~~board~~

~~or~~ special magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the ~~code enforcement board and~~ special magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his rights to this hearing and pay the costs as determined by the ~~code enforcement board or~~ special magistrate.

(d) No change.

### **Sec. 2-328. - Hearings.**

- (a) *Calling of hearings.* Upon request of a code enforcement officer, or at such other times as may be necessary, hearings or meetings of the ~~code enforcement board or~~ special magistrate may be scheduled and called ~~by the chair of the code enforcement board, by written notice signed by three members of the code enforcement board, or by any of the clerical staff of the code enforcement board or~~ special magistrate. The ~~code enforcement board or~~ special magistrate may at any hearing set a future hearing date.
- (b) *Minutes; hearings to be public; recording of testimony.* Minutes shall be kept of all hearings held by the ~~code enforcement board and~~ special magistrate, and all such hearings shall be open to the public. All testimony shall be under oath.
- (c) *Clerical and administrative personnel.* The city council shall provide clerical and administrative personnel as may be required to assist the ~~board and~~ special magistrate in the proper performance of its duties.
- (d) *Prosecution.* ~~Each case before the code enforcement board shall be presented by a code enforcement officer, his or her assistant, a member of the city staff, or a special attorney hired by the city.~~ Cases before the special magistrate may be prosecuted by a code enforcement officer, his or her assistant, a member of the city staff, a special attorney hired by the city as provided, or by the city attorney or assistants as needed. If the city prevails in prosecuting a case before the ~~board or~~ special magistrate, the city shall be entitled to recover all costs incurred in prosecuting the case before the ~~board or~~ special magistrate, and such costs may be included in the lien authorized under section 2-329.
- (e) *Conduct of hearing.* Cases placed on the agenda for a particular day shall be heard unless continued for good cause shown. All testimony shall be under oath and shall be recorded. The ~~code enforcement board or~~ special magistrate shall take testimony from a code enforcement officer, the alleged violator and other persons having knowledge about the case. The ~~board or~~ special magistrate shall not be bound by formal rules of evidence, but fundamental due process shall be observed and shall govern the proceedings.
- (f) *Action by ~~board or~~ special magistrate.* At the conclusion of each hearing the ~~code enforcement board or~~ special magistrate shall issue findings of fact, based on evidence of record, and conclusions of law, and shall issue an order affording the proper relief consistent

with the powers granted in this division. ~~The findings and order by the code enforcement board shall be by motion approved by a majority of those members present and voting.~~ The special magistrate may reserve ruling on a matter for the issuance of a written opinion which must be issued no later than fifteen days following the date of hearing.

- (g) *Contents and recording of order.* The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, ~~under the conditions specified in subsection 2-329(a), and~~ under conditions specified in subsection 2-329(a), the cost of repairs may be included along with the fine if the order is not complied with by the specified date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest or assigns. If an order is recorded in the public records pursuant to this section and the order is complied with by the date specified in the order, ~~the code enforcement board,~~ special magistrate or code enforcement officer shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

**Sec. 2-329. - Imposition of fine; amount of fine; fine and costs to constitute lien.**

- (a) ~~The code enforcement board or~~ special magistrate, upon notification by a code enforcement officer that an order ~~of the board~~ has not been complied with by the set time, or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by ~~code enforcement or the~~ special magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues beginning with the date the repeat violation is found to have occurred by the code enforcement officer. In addition, if the violation is a violation described in subsection 2-327(d), ~~the code enforcement board or~~ special magistrate shall notify the city manager or his designee, who may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. If a finding of a violation or a repeat violation has been made as provided in this division, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, ~~the code enforcement board or~~ special magistrate finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in subsection (b) of this section.
- (b) A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 per day for a repeat violation. The order imposing a fine may also include all costs of repairs pursuant to subsection (a) of this section. In addition, after due notice and a public hearing, if ~~the code board or~~ special magistrate finds the violation to

be irreparable or irreversible in nature, the ~~code board~~ or special magistrate may impose a fine not to exceed \$5,000.00 per violation.

- (c) In determining the amount of the fine, if any, the ~~code enforcement board~~ or special magistrate shall consider the following factors:
  - (1) through (3) no change.
- (d) The ~~code enforcement board~~ or special magistrate may reduce a fine imposed pursuant to this section.
- (e) A certified copy of an order imposing a fine, or a fine plus abatement costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city. The city may execute a satisfaction or release of lien entered pursuant to this section. After three months from the filing of any such lien which remains unpaid, the ~~code enforcement board~~ or special magistrate may recommend the city foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under section 4(a), article X of the state Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under section 4(a), article X of the state Constitution.
- (f) No change.

**Sec. 2-330. - Appeal of code enforcement orders.**

An aggrieved party, including the city council, may appeal a final administrative order of the ~~code enforcement board~~ or special magistrate to the circuit court in and for the county. Such an appeal shall not be a hearing do novo, but shall be limited to appellate review of the record created during the hearing and submitted for consideration to the finder of fact. An appeal shall be filed within 30 days of the execution of the order to be appealed.

**Sec. 2-330. - Appeal of code enforcement orders. No Change.**

**Sec. 2-332. - Provisions of division supplemental.**

Nothing contained in this division shall prohibit the city from enforcing its codes by any other means. Utilization of the ~~code enforcement board~~ or special magistrate rather than or in addition

to county or circuit court prosecution shall, in each case, be optional.

**SECTION 4.** All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 5.** If any part, section, subsection or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection or other portion, or the prescribed application thereof, shall be severable and the remaining provisions of this ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

**SECTION 6.** This ordinance shall become effective immediately upon its approval and adoption, as provided by law.

**PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA THIS 25TH DAY OF APRIL 2023.**

First Reading: April 11, 2023

Final Reading: April 25, 2023

Adoption: April 25, 2023

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Nick Pachota, Mayor

ATTEST:

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Kelly Michaels, MMC, City Clerk



I, Kelly Michaels, MMC, City Clerk of the City of Venice, Florida, a municipal corporation in Sarasota County, Florida, do hereby certify that the foregoing is a full and complete, true and correct copy of an Ordinance duly adopted by the Venice City Council, at a meeting thereof duly convened and held on the 25th day of April 2023, a quorum being present.

**WITNESS** my hand and the official seal of said City this 25<sup>th</sup> day of April, 2023.

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Kelly Michaels, MMC, City Clerk

Approved as to form:

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Kelly Fernandez, City Attorney