

ORDINANCE NO. 257

AN ORDINANCE AMENDING ORDINANCE NO. 242, ARTICLE VII, ADDING 7.10.00 ESTABLISHMENT OF CODE ENFORCEMENT BY USE OF A SPECIAL MASTER FOR MEXICO BEACH, FLORIDA; PROVIDING FOR DEFINITIONS; PROVIDING FOR BOUNDARIES; PROVIDING FOR LEGAL COUNSEL; PROVIDING FOR JURISDICTION; PROVIDING FOR ENFORCEMENT PROCEDURES; PROVIDING FOR CONDUCT OF HEARINGS; PROVIDING FOR POWERS; PROVIDING FOR PENALTIES; PROVIDING FOR APPEAL; PROVIDING FOR NOTICES; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF MEXICO BEACH, FLORIDA:

SECTION 1. Definitions. For the purpose of this ordinance, "code enforcement officer" shall mean any authorized agent or employee of the city whose duty is to enforce and assure compliance with the codes and ordinances of the city.

SECTION 2. Territory. All territory within the legal boundaries of the City of Mexico Beach shall be embraced by the provisions of this Ordinance.

SECTION 3. Created; terms; removal.

(a) Pursuant to Chapter 162.13, Florida Statutes, there is hereby created a "Special Master" for the City of Mexico Beach, Bay County, Florida, which shall consist of one (1) primary individual and one (1) alternate appointed by the City Council of Mexico Beach. These individuals shall be residents of the City of Mexico Beach and shall serve without compensation. The Special Master shall perform the functions of a Code Enforcement Board on a case by case basis.

(b) The appointment of a Special Master and alternate shall be for a term of two (2) years. A Special Master may be re-appointed by the City Council of Mexico Beach (the "Council") for one (1) successive term. The alternate Special Master may be re-appointed consecutively by the will of the "Council", appointments to fill a vacancy of the primary Special Master shall be for the remainder of the unexpired term of office.

(c) A Special Master may be suspended and removed from office by the Council.

(d) Regular "Special Master" proceedings shall occur no less frequently than monthly and shall be scheduled for the third Tuesday of each month at 7:00 PM CST.

(e) Minutes shall be maintained of all Special Master proceedings and shall be open to the public.

(f) The office of the City Clerk shall provide clerical and administrative support to the Special Master as may be necessary for the proper performance of his/her duties.

SECTION 4. Jurisdiction.

(a) The Special Master shall have jurisdiction to hear and decide alleged violations of all codes and ordinances in force in the city, including, but not limited to:

1. City Occupational Licensing
2. Tree Protection
3. Litter
4. Junkyards
5. House Numbering
6. Set back requirements
7. Storm water requirements
8. Signage
9. Fences
10. Hazardous Waste
11. Lot clearing
12. Noise control
13. Burn control
14. Nuisances

(b) The jurisdiction of the Special Master shall not be exclusive. Any alleged violation of any of the aforesaid codes and ordinances may be pursued by appropriate remedy in court at the option of the Council.

SECTION 5. Enforcement Procedure.

(a) It shall be the duty of the code enforcement officers to issue citations and initiate enforcement proceedings of the various codes and ordinances.

(b) Except as provided in subsection (c) and (d) below, if a violation of the codes or ordinances is found, the code enforcement officers shall first notify the violator and give such person a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officers may issue a citation and may notify the Special Master and request a hearing pursuant to the procedure set forth in Section 6. Written notice of such hearing shall be mailed to such violator.

(c) If the code enforcement officer has reason to believe a violation presents a serious threat to the public health, safety, or welfare or if a repeat violation has occurred, the code enforcement officers may issue a citation immediately and may proceed directly to the hearing procedure set forth in Section 6 without first notifying the violator and giving such person time to correct the violation.

(d) In addition to the enforcement procedures set forth herein, the "Supplemental County or Municipal Code or Ordinance Enforcement Procedures" set forth in part II of Chapter 162, Florida Statutes and SS125.69, Florida Statutes, are hereby incorporated herein by reference.

SECTION 6. Conduct of Hearing.

(a) Upon scheduling of a hearing, the Special Master shall cause notice thereof to be furnished to the alleged violator. Such notice shall contain the date, time and place of the hearing and shall state the nature of the violation and reference to the appropriate code or ordinance.

(b) At the hearing, the burden of proof shall be upon the code enforcement officers to show, by a preponderance of the evidence, that a violation does exist.

(c) Assuming proper notice of the hearing has been provided to the alleged violator as provided in subsection (a) above, a hearing may proceed in the absence of the alleged violator.

(d) All testimony shall be under oath and shall be recorded. The Special Master shall take testimony from the code enforcement officer and alleged violator and from such other witnesses as may be called by the respective sides.

(e) Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern such proceedings.

(f) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the state.

(g) Any attorney representing the City of Mexico Beach may inquire of any witness before the Special Master. The alleged violator, or his attorney, and the attorney representing the City shall be permitted to inquire of any witness before the Special Master and shall be permitted to present brief opening and closing statements.

(h) At the conclusion of the hearing, the Special Master shall issue findings of fact based on evidence in the record and conclusions of law, and shall issue an order affording the proper relief consistent with the powers granted by Chapter 162, Florida Statutes, and by this Ordinance. The order shall be stated orally at the meeting and shall be reduced to writing and mailed to the alleged violator within ten (10) days after the hearing.

SECTION 7. Powers.

(a) The Special Master shall have the power conferred by Chapter 162, Florida Statutes, including the power to:

- (1) Adopt rules for the conduct of its hearings;
- (2) Subpoena alleged violators and witnesses to its hearings;
- (3) Subpoena records, surveys, plats, and other documentary evidence;
- (4) Take testimony under oath;
- (5) Establish and levy fines pursuant to Section 8; and
- (6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

(b) Subpoenas shall be served by the Bay County Sheriff.

SECTION 8. Penalties.

(a) The Special Master, upon notification by the code enforcement officer that a previous order of the Special Master has not been complied with by the time set, or upon finding that a repeat violation has been committed, may order (i) in the case of a first violation, the violator to pay a fine in an amount not to exceed two hundred fifty dollars (\$250) for each day the violation continues past the date set by the Special Master's

order for compliance for a first violation, or (ii) in the case of a repeat violation as defined in SS162.04(5), Florida Statutes, a fine in an amount not to exceed five hundred (\$500) for each day the violation continues past the date of notice to the violator of the repeat violation.

(b) A certified copy of an order imposing a fine may be recorded in the public records of Bay County and, thereafter, shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator in Mexico Beach; and 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 judgment of a court except for enforcement purposes. If, after six (6) months from the filing of any such lien, the lien remains unpaid, the Special Master may authorize the city attorney to foreclose on the lien. Nothing in this section shall abridge the constitutional or statutory protection extended to homestead property.

(b) No lien provided by this ordinance shall continue for a period longer than five (5) years after the certified copy of an order imposing a fine has been recorded unless, within that time, an action to foreclose on the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be effective against creditors or subsequent purchase for valuable consideration without notice, unless a notice of lis pendens is recorded.

SECTION 9. Appeal.

(a) An aggrieved party, may appeal the final order of the Special Master to the Council. Any such appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

(b) The Council may limit the review to the record created before the Special Master or, if it deems desirable, receive additional evidence and testimony. The Council may, based upon their review of the facts and the law, uphold or reverse the findings of fact and conclusions of law of the Special Master.

(c) An aggrieved party may appeal the final administrative order of the Council to the Circuit Court.

(d) Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Special Master and the Council.

(e) The Special Master shall, by rule, establish reasonable charges to be paid by the appealing party for preparation of the record to be appealed.

SECTION 10. Legal Counsel.

If necessary, the Council shall provide Legal Counsel to the Special Master.

SECTION 11. Notices.

All notices required by this Ordinance shall be by certified mail, return receipt requested or, when mail would not be effective, by hand delivery by the code enforcement officer.

SECTION 12. Effective Date. This Ordinance shall take effect as provided by law.

INTRODUCED at a regular meeting of the City Council on December 10, 1991, and ADOPTED at a regular meeting on January 14, 1992.

CITY OF MEXICO BEACH, FLORIDA

Tom Hudson

Tom Hudson
Mayor/Councilman

ATTEST:

Patricia L. Hutchinson
City Clerk