

## **ORDINANCE NO. 451**

**AN ORDINANCE AMENDING ORDINANCE NO. 242 SECTION 7.10.00  
ESTABLISHMENT OF CODE ENFORCEMENT BY USE OF A SPECIAL MASTER;  
REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT;  
PROVIDING PENALTIES FOR VIOLATIONS; AND PROVIDING AN EFFECTIVE  
DATE.**

Whereas the City Council has determined that it is in the best interest of the City that this Ordinance be enacted; therefore:

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

**SECTION 1.** The following Code is hereby adopted as an essential part of the City of Mexico Beach Code of Ordinances.

(A) There is created the Special Master of the City also known as the Code Enforcement Hearing Official. The Special Master and Alternate Special Master shall have all the powers conferred by Chapter 162, Florida Statutes.

(B) The Special Master shall be a full time resident of the City, shall be appointed for a term of two (2) years, but may be reappointed by the City Council if no other applicant applies. The Special Master and Alternate Special Master shall work without compensation while conducting their duties.

(C) An Alternate Special Master shall be appointed by the City Council and shall meet the same requirements set forth in (B) above. The Alternate Special Master shall fill any vacancy due to absence of the Special Master including any temporary basis due to un-foreseen circumstances. The Alternate Special Master shall fill a vacancy due to removal or permanent absence of the Special Master and shall fulfill the rest of the term left from the previous Special Master.

(D) The Special Master and Alternate Special Master shall work at the will of the City Council and may be suspended or removed from office.

(E) Special Master Hearings shall be held monthly if needed at a reasonable time and place within the City where an official hearing may be conducted. The City shall post notice of this hearing five days prior to the hearing if possible. The posting of this hearing shall be at the City of Mexico Beach City Hall.

(F) The minutes of all meetings shall be maintained by clerical staff provided by the City.

(G) The City shall provide the Special Master with the legal services and advice of the City Attorney for the purposes of the hearing and procedures if requested.

**SECTION 2.** Definitions:

(A) Code Enforcement Officer: means any authorized employee of the City whose duty it is to enforce any and all the Codes within the City. An authorized employee is one approved by the City Administrator.

(B) Special Master: A person appointed by the City Council to hear information regarding Code violations. The Special Master should determine a finding of fact in these cases.

(C) Florida Statute Chapter 162: A Statute pertaining to standard guidelines in regard to Code Enforcement procedure.

(D) Notice of Violation: A Notice given to someone stating the first date of the known alleged violation, case number, address of alleged violation, code violated, time for correction, a suggested remedy, and a penalty notice. A copy of the Code violated and a copy of the penalty should accompany this. This Notice shall have a stated time for compliance and shall be no fewer than 5 days and no more than 30 days.

(E) Affidavit of Non-Compliance: An attested form where the Code Enforcement Officer states the facts and date of noncompliance. This form should contain the case number, alleged violator's name, Code Enforcement Officer's name, first date of known alleged violation, address of alleged violation, date of legal service and how served, date for correction, and an attestation by the Code Enforcement Officer that they inspected the property and it was still in violation.

(F) Notice to Appear: This is a written Order issued by a Code Enforcement Officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. This notice shall contain the alleged violator's name, a directive to appear, the location they must appear at, and the date of appearance, the time to appear, and the purpose for their appearance.

(G) Lawful Notice or Service: as described in Chapter 162.12 F.S.

**SECTION 3.** Jurisdiction and Powers:

(A) Jurisdiction: The Special Master shall have jurisdiction to hear any code enforcement case within the City that pertains to any City Code violations.

(B) The Jurisdiction of the Special Master is not exclusive and any alleged violation of the City Code of Ordinances may be pursued by appropriate remedy in the Court of the

Fourteenth Judicial Circuit of Bay County. This may be accomplished by issuance of a Notice to Appear.

(1) The Special Master shall have the power to adopt rules for conduct of the hearings; subpoena alleged violators and witnesses to the hearings; subpoena all records or information needed; take testimony under oath; levy fines; issue orders having the force of law to command whatever steps necessary to bring a violation into compliance.

(2) All subpoenas shall require legal service by the Bay County Sheriffs Office.

(E) The Special Master may also apply any and all methods or penalties described in Section 6 of this Ordinance.

**SECTION 4.** Enforcement procedures prior to hearing:

(A) Code Enforcement Officers should give lawful notice by issuance of a Notice of Violation to the alleged offender in regard to the alleged violation. This notification should state the name of the alleged violator, the date, the case number, the location, the alleged violation, the time period to bring the violation into compliance, and the penalty.

(B) The Code Enforcement Officer should issue a citation if compliance is not met within the time period stated within the Notice of Violation. The alleged violator shall have thirty days from the date of receiving the citation to either pay or appeal said citation.

(1) Exception: If the alleged violator contacts the Code Enforcement Officer prior to the last day of the stated date upon the Notice of Violation then the officer may use desecration as allowed in Section 4 (E).

(C) The Code Enforcement Officer should attempt to revisit the location within 31 days after the citation has been issued. If the alleged violation still exists then the officer should either:

(1) Issue another citation and follow the same process or;

(2) File an Affidavit of Non-Compliance.

(D) The Code Enforcement Officer may then issue a lawful Notice to Appear to a formal hearing before the Special Master. This notice shall request that the alleged violator appear, have the date, the time, and the location of the hearing.

(1) Exception: The Code Enforcement Officer may issue a Notice to Appear to the Court of the Fourteenth Judicial Circuit in Bay County.

(E) Exceptions to Procedures:

(1) If the Code Enforcement Officer has reason to believe that the violation may present a serious threat to the public health, safety, or welfare, then the Officer may issue a citation immediately and may request a hearing by issuance of a Notice to Appear. This may be done without giving the alleged violator time to correct the violation.

(2) The Code Enforcement Officer may issue a citation immediately if it is found to be a repeat violation.

- (3) The Code Enforcement Officer may issue a citation immediately if the violation is irreparable or irreversible
- (4) The Code Enforcement Officer may use discretion in allowing the alleged violator more time for compliance but the alleged violator must give the Code Enforcement Officer a Sworn/Notarized Affidavit stating a time period that is acceptable and deemed reasonable by the Code Enforcement Officer for compliance.

**SECTION 5.** Hearing Procedures:

(A) The hearing shall be recorded if possible and minutes taken by a City clerical person.

(B) The Code Enforcement Officer and all other persons giving testimony shall be sworn in and all testimony shall be given under oath. The Code Enforcement Officer shall show a preponderance of evidence that the violation does exist. This should be accomplished by documents and photographs provided into evidence by the Code Enforcement Officer.

(C) Fundamental due process shall be observed and shall govern such procedures.

(D) The City or City Attorney may inquire any witness to give testimony. The alleged violator or their attorney may also inquire any witness to give testimony. Either side shall be permitted to give brief opening and closing statements.

(E) The Special Master shall determine the following:

(1) Was the proper notice of violation given to the alleged violator?

(2) Do the facts presented show a preponderance of evidence that the violation exists upon the alleged violator's property, or their property at the time of the violation, or are they or were they in custodial control of the property at the time of the alleged offense.

(3) Has the alleged violator made any attempt to correct the alleged violation?

(4) The Special Master shall then issue a finding of fact based upon the evidence on record and conclusions of law. The Special Master shall issue an order affording the proper relief consistent with the powers granted by Chapter 162 of the Florida Statutes and this Ordinance.

**SECTION 6.** Designation of Enforcement Methods and Penalties for Violations of Municipal Ordinances. (Chapter 162.22 F.S.)

(A) The governing body of a municipality may designate the enforcement methods and penalties to be imposed for the violation of Ordinances adopted by the municipality. These enforcement methods may include, but not limited to, the issuance of a citation, a summons, or a Notice to Appear in County Court or arrest for violation of Municipal Ordinances as

provided for in Chapter 901 F.S. Unless otherwise specifically authorized and provided for by law, a person convicted of violating a Municipal Ordinance may be sentenced to pay a fine, not to exceed \$500, and may be sentenced to a definite term of imprisonment, not to exceed 60 days, in a municipal detention facility or other facility as authorized by law.

**SECTION 7.** Administrative fines; cost of repair; liens (Chapter 162.09 F.S.)

(1) Upon notification by the Code Enforcement Officer that an Order from the Special Master 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 the Special Master 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 one which presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, then the Special Master shall notify the local governing body, which 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. Making such repairs does not create a continuing obligation on the part of the City to make further repairs or to maintain the property and does not create liability against the City for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. If after due notice and hearing, the Special Master finds a violation to be irreparable or irreversible in nature, the Special Master may order the violator to pay a fine imposed pursuant to this section and shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all cost of repairs. However if the Special Master finds the violation to be irreparable or irreversible in nature, the Special Master may impose a fine not to exceed \$5000 per violation.

(a) A fine pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all cost of repairs pursuant to subsection (1). However, if the Special Master finds the violation to be irreparable or irreversible in nature, The Special Master may impose a fine not to exceed \$5000 per violation.

(2) A certified copy of an Order imposing a fine, or a fine plus repair cost, 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 part 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 local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section. After 3 months of the filing of any such lien which remains unpaid, the Special Master may authorize the governing body attorney to 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 part may be foreclosed on real property which is a homestead under s. 4, Art. 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 s. 4(a), Art. X of the State Constitution.

**SECTION 8.** Appeals:

An aggrieved party, including the City of Mexico Beach, may appeal a final Administrative Order of the Special Master to the Fourteenth Judicial Circuit of Bay County. 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. An appeal shall be filed within 30 days of the execution of the Order to be appealed.

**All Authorized City Officials as determined by the City Administrator shall enforce these adopted codes.**

**SECTION 9.** All Ordinances or parts of Ordinances thereof in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 10.** Violation: any person or persons violating this Ordinance are subject to the maximum penalties as prescribed by law.

**SECTION 11.** This ordinance shall become effective immediately upon passage.

INTRODUCED at a regular meeting of the City Council on the 12<sup>th</sup> day of August 2003, and ADOPTED by the City Council on the 9<sup>th</sup> day of September 2003.