

LEGISLATIVE #

121102

1st 7/18/13
2nd 8/1/15

ORDINANCE NO. 121102

An ordinance of the City of Gainesville, Florida, amending the Gainesville Code of Ordinances by creating a special magistrate position as an alternative to the code enforcement board to enforce compliance with City Of Gainesville ordinances; amending Chapter 2, Article V, Division 8 , Code Enforcement Board to provide intent, provide minimum qualifications and requirements for appointment of special magistrates; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, at least 10 days' notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a public hearing to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

WHEREAS, the Public Hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

Section 1. The title, Sec. 2-376 and Sec. 2-378 of Chapter 2, Article V, Division 8 of the Gainesville Code of Ordinances, are hereby amended to read as set forth below.

DIVISION 8. CODE ENFORCEMENT BOARD; SPECIAL MAGISTRATE.

Sec. 2-376. Declaration of intent; authorization of board or special magistrate.

It is the intent of this division to promote, protect, and improve the health, safety, and welfare of the citizens of this city by authorizing the creation of an administrative board and provision for a special magistrate, both of whom would be vested with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious,

31 effective, and inexpensive method of enforcing any applicable codes, where a pending or
32 repeated violation continues to exist. The board and special magistrate would not exercise such
33 powers concurrently, but rather the city commission would by resolution adopted from time to
34 time, specify whether the board or the special magistrate is authorized to exercise such powers.
35 This division is specifically authorized by ~~F.S. Ch.~~ Chapter 162, Florida Statutes, known as the
36 Local Government Code Enforcement Boards Act.

37 **Sec. 2-378. - Definitions.**

38 As used in this chapter:

39 *Special Magistrate* shall mean a person authorized to hold quasi-judicial hearings and
40 assess fines against violators of the city code of ordinances and such other authority as may be
41 conferred by Chapter 162, Florida Statutes, or any other law.

42 **Section 2.** A new Sec. 2-391 titled Special Magistrates is created to read as follows:

43 **Sec. 2-391. Special Magistrates**

44 (a) *Alternative proceedings.* In lieu of having the code enforcement board hear and
45 decide code violations, the city commission may appoint one or more special magistrates
46 to hear and dispose of such matters. Special magistrates shall have the same status,
47 jurisdiction and authority as the code enforcement board. All references to the code
48 enforcement board in the Gainesville code of ordinances shall apply to the special
49 magistrate, except that no Sec. 2-384 legal counsel shall be appointed for magistrate
50 hearings.

51 (b) *Minimum qualifications.* The minimum qualifications to be eligible for service as a
52 special magistrate are as stated below. In addition, the city may specify further required
53 qualifications in its solicitation for special magistrates.

- 54 (1) Be an active member in good standing of the Florida Bar with a minimum of five
55 (5) years recent experience practicing law, which experience shall include
56 litigation and administrative hearing experience.
- 57 (2) Reside in Alachua County.
- 58 (3) Not be an employee of the city or hold any office with the city government, nor
59 hold any other elective or appointive office in the county or state while serving as
60 special magistrate.
- 61 (4) Comply with the Code of Ethics of the State of Florida.
- 62 (c) Solicitation and appointment. Eligible candidates for special magistrate shall be solicited
63 through a request for proposals, or other competitive solicitation pursuant to the city's
64 purchasing policy and procedures. The selection committee shall evaluate and make
65 recommendations to the city commission for the appointment of special magistrates.
66 Terms of appointment and compensation for the special magistrates shall be established
67 pursuant to a contract approved by the city commission. The city commission may
68 appoint up to two alternate special magistrates to serve in the event of legal conflict of
69 interests or in the absence of the special magistrate.
- 70 (d) Additional duties. The city commission may, by ordinance and contract, specify that the
71 special magistrate appointed under this section shall perform additional duties as a
72 hearing officer conducting quasi-judicial hearings on other matters concerning the city
73 code of ordinances.
- 74 (e) Removal. The special magistrate shall serve at the pleasure of the city commission and
75 may be removed from service at any time, with or without cause, by a majority vote of a
76 quorum of the city commission.

77 (f) Conflicts. In the event a legal conflict of interest prevents the special magistrate and any
 78 alternate special magistrate from hearing a case, the city manager, notwithstanding the
 79 language of sec.2-391.1(a)(2) above, may contract with any current special magistrate of
 80 another Florida jurisdiction to hear the case.

81 **Section 3.** It is the intention of the City Commission that the provisions of Sections 1
 82 and 2 shall become and be made a part of the Code of Ordinances of the City of Gainesville,
 83 Florida, and that the Sections and Paragraphs of this Ordinance may be renumbered or relettered
 84 in order to accomplish such intentions.

85 **Section 4.** If any section, sentence, clause or phrase of this ordinance is held to
 86 be invalid or unconstitutional by any court of competent jurisdiction, then said holding
 87 shall in no way affect the validity of the remaining portions of this ordinance.

88 **Section 5.** All ordinances, or parts of ordinances, in conflict herewith are to the
 89 extent of such conflict hereby repealed.

90 **Section 6.** This ordinance shall take effect immediately upon final adoption.

91 **PASSED AND ADOPTED** this ____ day of _____, 2013.

92
 93
 94
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 96 _____
 97 EDWARD B. BRADDY
 98 MAYOR

99
 100 ATTEST:

101
 102 _____
 103 KURT M. LANNON
 104 CLERK OF THE COMMISSION

105 _____
 106 NICOLLE M. SHALLEY
 107 CITY ATTORNEY

108 This Ordinance passed on first reading this ____ day of _____, 2013.

109 This Ordinance passed on second reading this ____ day of _____, 2013.