

ARTICLE III. BOARDS, COMMITTEES, COMMISSIONS*

***Cross references:** Fair housing board, § 8-34; library board, § 15-251; boards, committees, commissions, § 21-46 et seq.; board of adjustment, § 21-51 et seq.; planning commission, § 21-77 et seq.

DIVISION 1. GENERALLY

Secs. 2-46--2-60. Reserved.

DIVISION 2. CODE ENFORCEMENT SPECIAL MASTER*

***Editor's note:** Ord. No. O-04-13, § 1(Exh. A), adopted May 24, 2004, amended division 2 in its entirety to read as herein set out. Formerly, division 2 pertained to the code enforcement board and derived from the Code of 1959, §§ 2-33, 2-34(a), 2-35, and 2-40.

State law references: Code enforcement, F.S. Ch. 162.

Sec. 2-61. Created; purpose; powers.

(a) There is hereby created pursuant to F.S. ch. 162.03(2) an alternate code enforcement system which gives a special master and alternate special master designated by the city commission the authority to conduct hearings and impose and authorize the collection of fines and costs against pending or repeat violators of city codes and ordinances. The special master and alternate special master shall have the same purpose, power, status and procedural requirements of the code enforcement board repealed May 24, 2004 by Ordinance No. O-04-13 and as referenced in F.S. ch. 162, excluding § 162.05.

(b) The special master shall be an attorney who resides in the city, or has a place of business located in the city, who possesses an outstanding reputation for civic pride, interest, responsibility, and business or professional ability. The appointment shall be made by the city commission on the basis of experience or interest in the fields of zoning, building control and code enforcement. The city clerk shall process all applications for appointment as special master or alternate special master.

(c) The special master and alternate special master shall serve at the pleasure of the city commission, and shall not be deemed a city employee.

(d) The special master and alternate special master shall be compensated for performing said service.

(e) The alternate special master shall satisfy the same appointment requirements, possess the same powers as the special master and shall perform special master duties whenever the special master is unavailable due to illness, conflict of interest or otherwise.

(f) The city shall provide such clerical, administrative personnel and legal services deemed reasonably necessary to support the special master activities and assist in the proper performance of duties. The special master shall not be authorized to engage, hire, or use any person, except those provided by the city to assist in the performance of duties.

(Ord. No. O-04-13, § 1(Exh. A), 5-24-04)

Exhibit "A"

Sec. 2-62. Statutory provisions adopted.

The provisions of F.S. ch. 162, excluding § 162.05, regarding code enforcement are hereby adopted by the city by reference.

(Ord. No. O-04-13, § 1(Exh. A), 5-24-04)

Sec. 2-63. Jurisdiction.

(a) The code enforcement special magistrate and alternate shall have the jurisdiction and authority to hear and decide alleged violations of the following codes and ordinances of the city:

TABLE INSET:

	Code	As cited (Winter Haven Code of Ordinances)
(1)	Sign	Section 21-676 et seq.
(2)	Alcoholic beverages	Chapter 3
(3)	Animals	Chapter 4
(4)	Pawnbrokers, junk and secondhand dealers	Section 9-151 et seq.
(5)	Marine activities, structures and waterways	Chapter 10
(6)	Buildings and building regulations	Chapter 5
(7)	Standard fire prevention code	Chapter 6
(8)	Litter	Section 12-56 et seq.
(9)	Fair housing	Section 8-26 et seq.
(10)	Business tax regulations	Chapter 9
(11)	Streets and sidewalks	Chapter 15
(12)	Development regulations	Chapter 16
(13)	Zoning regulations	Chapter 21
(14)	Solid waste	Chapter 14
(15)	Lakeshore protection	Chapter 10-81 et seq.
(16)	Nuisances	Chapter 12
(17)	Unified land development code	Chapter 21

(b) The special magistrate and alternate shall have the jurisdiction and authority to hear and decide any other code enforcement matters the city commission shall determine is appropriate.

(c) The special magistrate and alternate special magistrate shall have the jurisdiction and authority to affirm or modify penalties imposed by the code enforcement board whose jurisdiction was repealed effective May 24, 2004 by Ordinance No. O-04-13.

(d) The special magistrate and alternate special magistrate shall have the jurisdiction and authority to determine the amount of reasonable expenses incurred by the city as a result of orders issued pursuant to the authority granted herein.

(e) The jurisdiction of the code enforcement special magistrate and alternate shall not be exclusive. Any alleged violation of any code and ordinance may be pursued by appropriate remedy in court at the option of the administrative official whose responsibility it is to enforce that respective code or ordinance and nothing shall prevent the city from taking such other lawful action, including but not limited to resorting to equitable action, as is necessary to enforce the provisions of respective city codes or ordinances.

(Ord. No. O-04-13, § 1(Exh. A), 5-24-04; Ord. No. O-07-28, § 1, 3-12-07)

Sec. 2-64. Enforcement procedure.

It shall be the duty of the code officer to initiate enforcement proceedings of the various codes pursuant to F.S. ch. 162.

(Ord. No. O-04-13, § 1(Exh. A), 5-24-04)

Sec. 2-65. Conduct of hearing.

(a) Each case before the code enforcement special master or alternate special master shall be initiated and presented by a member of city code enforcement staff. The burden of proof shall be upon the city code enforcement staff to show, by a preponderance of the evidence, a violation does exist. In the event multiple violations are alleged, the respondent shall not be entitled to separate hearings thereon, unless ordered by the special master or alternate special master.

(b) The city attorney shall act as the attorney for the code enforcement special master and alternate.

(c) All hearings shall be held in a designated city facility accessible to the general public.

(d) All hearings before the special master or alternate special master shall be conducted so as to ensure fundamental due process.

(e) The case on behalf of the city shall be presented first, and the respondent, or his duly designated representative, shall then be provided an opportunity to present his case.

(f) The special master or alternate special master shall take testimony from any witness having knowledge concerning a hearing on a case. All testimony shall be under oath. The special master or alternate special master shall have the power to administer an oath to any witness. Upon direction of the special master or alternate, each party shall be permitted the opportunity to inquire of any hearing witness.

(g) The special master or alternate special master shall not be bound by formal rules of evidence. 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 a court of law within the state.

(h) As soon as practicable after the conclusion of the hearing, the special master or alternate special master 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 powers granted herein and consistent with F.S. Ch. 162.

(i) The special master or alternate special master shall be bound by the interpretations and decisions of duly authorized boards of the city concerning the provisions of the codes, ordinances and regulations within their respective jurisdictions.

(j) The special master or alternate special master shall have powers consistent with F.S. ch. 162 to adopt rules for the conduct of its hearings; subpoena to its hearings alleged violations, witnesses and evidence; take testimony; and issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

(Ord. No. O-04-13, § 1(Exh. A), 5-24-04)

Sec. 2-66. Rehearing of code enforcement special master action.

(a) Either the code enforcement officer or the violator may request a rehearing of the decision of the special master or alternate special master. A request for rehearing shall be made in writing, and shall be delivered to the city clerk within ten (10) days of the date that the order of the special master or alternate special master is mailed pursuant to F.S. ch. 162. A request for rehearing shall be based only on the grounds 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 master or alternate special master. The written request for rehearing shall specify the precise reasons therefore.

(b) The special master or alternate special master shall make a determination as to whether to rehear the matter. If the special master or alternate special master determines a rehearing should be granted, the special master or alternate special master may:

- (1) Schedule a hearing where the parties will be given the opportunity to present limited evidence or argument as to the specific reasons for which the rehearing was granted; or
- (2) Modify or reverse the prior order, without receiving further evidence, providing the change is based on a finding the prior decision of the special master or alternate special master resulted from a ruling on a question of law which the special master or alternate has determined to be an erroneous ruling.

(c) Until the request for rehearing has been denied or otherwise disposed of, the order of the special master or alternate special master shall be stayed, and the time for taking an appeal, pursuant to section 2-67 shall not commence to run until the date upon which the special master or alternate special master has finally disposed of the request for rehearing by denying the same or otherwise.

(Ord. No. O-04-13, § 1(Exh. A), 5-24-04)

Sec. 2-67. Appeal.

An aggrieved party, including the city, may appeal a ruling or order of the special master or alternate special master by proceeding in the circuit court for the county in accordance with the Florida Rules of Appellate Procedure. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed. The nature of the appeal shall be from a final administrative order.

(Ord. No. O-04-13, § 1(Exh. A), 5-24-04)

State law references: Jurisdiction, F.S. §§ 162.02, 162.13

Secs. 2-68--2-80. Reserved.