

ORDINANCE NO. 386

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF JUPITER ISLAND, MARTIN COUNTY, FLORIDA, AMENDING DIVISION 1 OF CHAPTER 2, ARTICLE VI OF THE CODE OF ORDINANCES OF THE TOWN OF JUPITER ISLAND, FLORIDA; ENTITLED "CODE ENFORCEMENT BOARD"; AMENDING APPENDIX "A" OF THE CODE ENTITLED LAND DEVELOPMENT REGULATIONS AT ARTICLE XII, ENTITLED "ENFORCEMENT"; CREATING A CODE ENFORCEMENT PROCESS PURSUANT TO CHAPTER 162, FLORIDA STATUTES; PROVIDING FOR THE USE OF A SPECIAL MAGISTRATE TO CONSIDER CODE ENFORCEMENT CASES AND AUTHORIZING THE SPECIAL MAGISTRATE TO IMPOSE FINES PURSUANT TO ORDERS FINDING VIOLATIONS OF THE TOWN'S CODES AND ITS LAND DEVELOPMENT REGULATIONS AND ANY CONDITIONS IMPOSED AS PART OF AN APPROVED DEVELOPMENT APPLICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission is vested with home rule authority pursuant to the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, pursuant to Fla. Stat. § 162.02, the Florida Legislature authorized the creation of a code enforcement process for the purposes of enforcing codes and imposing fines upon property owners who do not timely comply with cited code violations; and

WHEREAS, pursuant to Fla. Stat. § 162.03, municipalities may create a code enforcement system that gives a special magistrate designated by the municipality the authority to hold hearings and assess fines against violators for violations of the municipality's codes and ordinances; and

WHEREAS, by the adoption of this ordinance, it is the intent of the Town Commission to promote, protect, and improve the health, safety, and welfare of the residents and property owners of the Town.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF JUPITER ISLAND, MARTIN COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Whereas clauses are incorporated herein as the legislative findings of the Town Commission.

Section 2. Chapter 2, Article VI Division 1, entitled "Code Enforcement Board" of the Code of Ordinances of Jupiter Island is hereby amended, as follows:

Sec. 2-126. Declaration of legislative intent.

It is the intent of this division to promote, protect and improve the health, safety and welfare of the citizens of the town by providing an equitable, expeditious, effective and inexpensive method of enforcing the hereinafter described codes of the town. Toward this end the Town Commission has determined that the replacement of a Code Enforcement Board with a Town Magistrate is appropriate and necessary.

DIVISION 1. CODE ENFORCEMENT BOARD / SPECIAL MAGISTRATE

Sec. 2-127. Definitions.

The following words, terms or phrases, when used in this division, shall have the meaning as indicated below:

Code inspector or code enforcement officer means the building official, code enforcement officer and public safety officers or other employees of the town who have been authorized to ensure code compliance.

Decision or final order means a written final order rendered by a special magistrate and subject to appeal.

Inspection warrants. The term "inspection warrant" shall have the same definition as contained within F.S. § 933.20 through 933.30, i.e., the term "inspection warrant" means an order in writing, signed by a person competent to issue search warrants pursuant to F.S. § 933.01, and directed to a state or local official, authorizing an inspection relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, or land development regulations.

Magistrate means a lawyer who has been admitted to and remains in good standing by the Florida Bar and who is certified in City, County and Local Government law appointed by the commission to hear matters involving alleged violations of the Town's codes and land development regulations.

Repeat violation means a violation of a code or ordinance by a person who was previously found through a code enforcement board or magistrate to have violated or who has admitted violating the same code provision within five years prior to the violation, notwithstanding the violations occurring at different locations.

Respondent; alleged violator means those persons, including property or business owners and/or tenants, who have been issued a notice of violation.

Violator means a person who has been ordered to correct a violation.

Sec. 2-128. Organization.

The Town Commission may elect to organize a code enforcement board in accordance with F.S. § 162.05, as it may be amended from time to time at any time. Alternatively, the Town Commission may choose to appoint one or more special magistrates to enforce the codes, land development regulations and approvals of development, including any conditions thereof.

Sec. 2-129. Special magistrates.

(a) Special magistrates shall be appointed by the town commission based upon the recommendation of the town attorney. Special magistrates must have been licensed to practice law in the state for a minimum of five years, be in good standing with the Florida Bar and be certified by the Florida Bar in City and County and Local Government law. More than one special magistrate may be appointed.

(b) A special magistrate shall have the duties, responsibilities and powers, and shall carry out the functions and procedures as set forth in F.S. ch. 162, as amended, from time to time. These duties, responsibilities and powers may include, but are not limited to, the adoption of reasonable rules and procedures for the conduct of hearings; the authority to subpoena alleged violators or witnesses and evidence to its hearings; holding of hearings and taking of testimony under oath and receiving evidence; assessing of fines and costs against violators, including, but not limited to, attorney's fees incurred by the town for services by the town attorney and magistrate; issuing orders having the force of law commanding whatever relief or steps are necessary to bring a violation into compliance; granting, denying or modifying extensions of time for compliance; hearing and recommending to the commission requests for abatement or reduction of fines; authorizing liens to be recorded against property owned by violators.

(c) The Town hereby specifically designates to the special magistrate the authority of F.S. § 162.09(3), concerning the satisfaction and release of code enforcement liens which have been previously recorded in the public records.

Sec. 2.130. Authority of code enforcement officer.

(a) Any code enforcement officer, as defined herein, is authorized and empowered to issue notices of violation and notices of hearing, for alleged violations of the town's codes and ordinances, land development regulations, and development approvals, including any conditions thereof, whenever there is a reasonable belief that a violation has been committed.

(b) If a code enforcement officer has reason to believe a violation or the condition causing a violation presents a serious threat to the public health, safety and welfare or if the violation is irreparable or irreversible in nature, the code enforcement officer shall make a reasonable effort to notify the violator and may immediately notify the magistrate and request a hearing.

Sec. 2-131. Jurisdiction.

(a) Any code enforcement board created by the commission pursuant to Fla., Stat. § 162.05, and the special magistrate appointed by the commission shall have the jurisdiction and authority to hear and decide alleged violations of the codes and ordinances enacted by the town, including, but not limited to the following codes and regulations: building, electrical, fire, gas, landscape, plumbing, signs, zoning, noise, land development regulations, approvals of development applications, including any conditions imposed as part of the approval of a development application; and any other similar type codes which may be adopted by the town in the future, which regulate aesthetics, height, floor area, setbacks, including water front setbacks, construction, safety, use of property or location of any structure on real property in the town. In addition, the code enforcement board or special magistrate may enforce a property owner's failure to comply with conditions of a development approval.

(b) The provisions of this article are supplemental and shall not prohibit the town from enforcing its codes by other legal means.

Sec. 2-132. Procedure; hearings.

- (a) An alleged violation of any of those codes or ordinances of the town, as described hereinabove, may be filed with the town by citizens or a code enforcement officer as defined herein to enforce the various codes or ordinances of the town. If a violation of a code or ordinance is believed to exist, the code enforcement officer shall specify in the Notice of Violation a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officer shall give notice to the alleged violator that a violation hearing will be conducted concerning the alleged violation. The notice shall state the time and place of the hearing, and the specific code sections of the code which are alleged to have been violated.
- (b) At the hearing, the burden of proof shall be upon the town to show by a preponderance of the evidence that a violation exists.
- (c) Where proper notice of the hearing has been provided to the alleged violator, as provided for herein, a hearing may proceed, even in the absence of the alleged violator.
- (d) Proper notice is presumed where a notice of violation has been mailed to the last known address of the alleged violator, or the mailing address of the property alleged to be in violation, by certified mail, and the alleged violator, his agent, or any other person in the household or business, has accepted the certified mail notice of violation, or refuses to accept it, or where a code enforcement officer testifies that the notice was hand-delivered to the alleged violator or an adult resident of a household.
- (e) All testimony shall be under oath and shall be recorded. The formal rules of evidence shall not apply, but fundamental due process should be observed and govern the proceedings. Upon determination of the magistrate, irrelevant, immaterial or unduly repetitious evidence may 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 court of the state. Any part of the evidence may be received in written form.

- (f) The special magistrate or a code enforcement officer, may inquire of or question any witness at the hearing. The special magistrate or a code enforcement officer, an alleged violator, his attorney, and/or code inspectors, shall be permitted to inquire of, or question, or cross examine any witness at the hearing.
- (g) At the conclusion of the hearing, the special magistrate may orally render an order to be entered based on evidence from the hearing. A written final order shall be executed by the special magistrate and shall then be transmitted to the violator and shall include such findings of facts and conclusions of law as the magistrate deems to be consistent with the record of the proceedings. The order shall be transmitted by certified mail within 15 days of the magistrate's execution of the order.

Sec. 2-133. Administrative fines; liens.

- (a) Whenever one of the orders of the special magistrate has not been complied with by the time set for compliance, for each day thereafter during which each violation continues past the date set for compliance, the special magistrate may impose a fine that shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation by the same violator. If the enforcement board or the special magistrate finds the violation to be irreparable or irreversible in nature, a fine may be imposed, not to exceed \$5,000.00 per violation. In determining the amount of a fine, the enforcement board or special magistrate shall consider the following factors:
 - (1) The gravity of the violation;
 - (2) Any actions and the time taken by the violator to correct the violation;
 - (3) Any previous violations committed by the violator;
 - (4) Other factors pertaining to the violator or violation which the magistrate deems relevant.
- (b) The town may record a certified copy of an order imposing a fine in the public records of the county. Once recorded, the certified copy of an order shall constitute a lien against the land on which the violation exists, and upon any other real or personal property owned by the violator. The lien may be enforced in a foreclosure action or an action for a money judgement.
- (c) Upon the recordation of a code enforcement lien, it shall be superior to any mortgages, liens or other instruments recorded subsequent to the filing of the code enforcement lien.
- (d) After six months from the filing of any such lien which remains unpaid, and with the permission of the town commission, the town may foreclose the lien in the same manner as mortgage liens are foreclosed. Such lien shall be superior to all other liens, except liens for taxes, and shall bear interest at the rate of ten percent per annum from the date recorded.
- (e) No lien created pursuant to the provisions of this article may be foreclosed on real property which is a homestead under Article X, Section 4 of the state constitution.

Sec. 2-134. Appeal.

- (a) Any aggrieved party, including the town commission, may appeal an order of the enforcement board or the special magistrate in accordance with F.S. § 162.11.
- (b) The timely filing of an appeal shall not stay the accrual of any fines ordered to be paid until final disposition of the appeal.

Sec. 2-135. Notices.

All notices required by this division shall be served consistent with the provisions of F.S. § 162.12.

Sec. 2-136. Action for money judgements.

Actions for money judgments as authorized by Fla. Stat. § 162.125 may be pursued concurrent with, or independent of an action to foreclose a code enforcement lien.

Secs. 2-137 – 2-139. Reserved.

Section 3. Chapter 2, Article XII, Division 2 entitled “Violations and Penalties” of Appendix A to the Code of Ordinances of Jupiter Island is hereby amended as follows:

Sec. 1.00 Purpose

Sec. 2-00. Violations and Penalties.

A. Failure to comply with any of the provisions of these land development regulations shall constitute a violation. Each day such violation continues shall be considered a separate violation.

B. Failure to comply with any conditions and/or safeguard established in connection with a grant of development approval, including, but not limited to subdivisions, rezonings, special exception, approvals using alternative development standards, variance, impact review, increase in floor area, including the installation and continued maintenance of landscape buffers shall constitute a violation. Each day such violation continues shall be considered a separate violation.

C. The owner or tenant of the building, structure, premises, or part thereof and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found in violation.

D. It is a violation of these land development regulations for any person to destroy, move, remove or deface or obscure any sign or notice erected or posted by town officials pursuant to the requirements of the land development regulations.

E. A violator found in violation of any land development regulations shall comply with any order entered by the town’s special magistrate.

F. Noting herein shall prevent the town from taking any lawful action in a court of law necessary to prevent or remedy any violation of, or failure to comply with the regulations contained in these land development regulations.

Sec. 2-01. Removal of structures and signs.

A. *Grounds for removal of towers and antennas.* The following shall be grounds for a court of competent jurisdiction or the code enforcement magistrate to order removal of a tower and/or antenna at the expense of the owner of the lot on which the structure is located:

1. Failure to bring towers and antennas into compliance with applicable regulations within the time set forth in article IV, section 3.12(D)(1) or (2).
2. Failure to remove an abandoned tower or antenna within 90 days of receipt of written notice from the town.

B. *Grounds for removal of signs.* The following shall be grounds for the administrative official to immediately remove a sign at the expense of the owner of the lot on which the sign is located, or the owner of the sign, if it is not placed within a lot:

1. Placement of signs in the public right-of-way without approval.
2. Signs constructed, located, or maintained in a manner that creates an immediate danger to the public health or safety.

Sec. 2.02. Administrative revocation of permits.

A. The administrative official may revoke a development permit if at any time it shall appear to the administrative official that:

1. The property for which an approval was granted is not in compliance with the plans upon which the approval relied; or
2. Work is being done upon the premises which does not comply with existing ordinances or codes; or
3. The premises have been occupied or furniture or personal effects have been moved in before a certificate of occupancy is issued.

B. After a development permit has been revoked, the administrative official may condition the approval of a new development permit upon an indemnity bond in favor of the town with sufficient surety to ensure compliance with these land development regulations and all other applicable laws and codes, and in a sum sufficient to cover the cost of removing the building or structure if it does not so comply.

Sec. 2.03. Administrative stop-work orders.

A. If the town's administrative official determines that development is being undertaken in a manner that is inconsistent with a development approval, the administrative official may issue a stop-work order to prohibit the continuation of further work on the site except that which is required to ~~correct~~ correct a violation or preserve the public safety.

B. The stop-work order may be issued in conjunction with a notice of violation.

C. If the stop-work order is issued in conjunction with a notice of violation, the administrative official may request a hearing of the code enforcement magistrate.

- D. The stop-work order shall remain effective:
1. Until the administrative official verifies that full compliance with these land development regulations has been accomplished; or
 2. Until a hearing before a court, or code enforcement magistrate; or
 3. Until such other reasonable time established by the administrative official or code enforcement magistrate; whichever period is the shortest.

Sec. 2.04. Stay of development approvals.

Upon the entry of an order of violation by the code enforcement magistrate, no further development approvals shall be processed or granted regarding the property which is the subject of the violation, except for permits necessary to correct the violation, or to preserve the public's safety until the violation is corrected and any fines which have been imposed are paid.

Sec. 3.00. Compliance of violations

Any person may file a complaint with the town if there is any reason to believe a violation of these regulations exists. All such complaints must be in writing and shall be filed with the administrative official charged with investigating the complaints of violations of these land development regulations.

Sec. 3.01. Procedures for abatement of violations.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of these land development regulations, the town commission, may institute any appropriate legal action or proceedings to prevent such unlawful erection, it deems necessary to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use about such premises.

Section 4. Severability.

If any provision of this ordinance or the adoption thereof is held invalid, such invalidity shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this ordinance are hereby declared severable.

Section 5. Codification.

This ordinance shall be codified and made a part of the official Code of Ordinances of Jupiter Island.

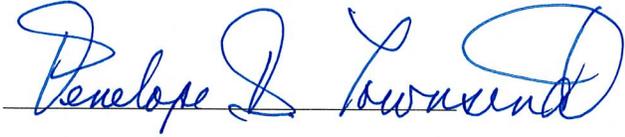
Section 6. Effective Date.

This ordinance shall take effect immediately upon execution.

PASSED UPON FIRST READING ON THE 12th DAY OF JULY 2023. PASSED AND ADOPTED UPON SECOND READING ON THE 16th DAY OF AUGUST 2023.

(SEAL)

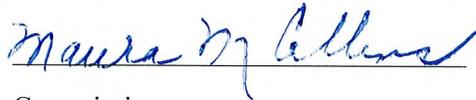
TOWN OF JUPITER ISLAND, FLORIDA



Mayor



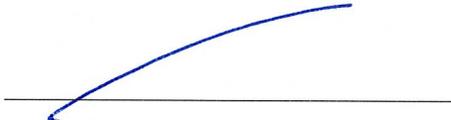
Vice Mayor



Commissioner

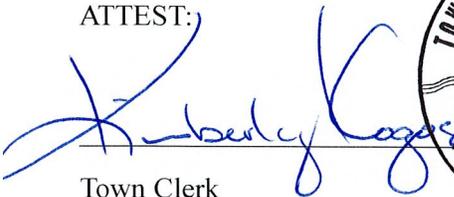


Commissioner



Commissioner

ATTEST:



Town Clerk



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