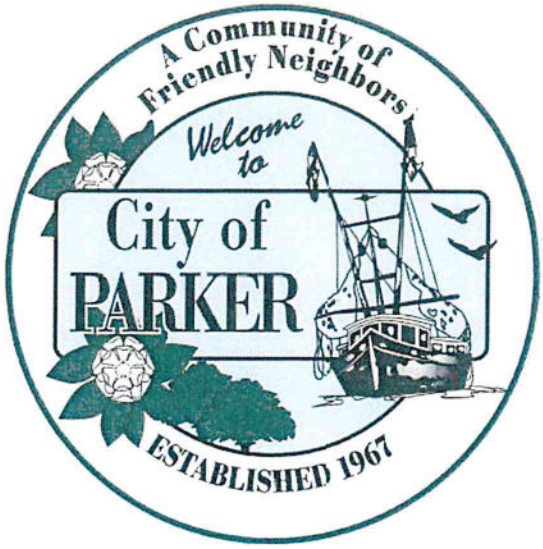


Special Magistrate Manual
City of Parker, Florida

August 1, 2023

INTRODUCTION

The City of Parker ("City" or "Parker") has elected to create a Special Magistrate system "to promote, protect, and improve the health, safety, and welfare of the citizens . . . by authorizing . . . [a Special Magistrate] with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities . . ." §162.02, F.S.

The authority for the code enforcement process is found in Chapter 162 of the Florida Statutes and the codes and ordinances of the City. The purpose of this Special Magistrate Manual is to set out the rules of procedure and to illustrate the Magistrate workflow process with accompanying portions of Code Enforcement interactions to set out the rules of procedure implementing the Codes and Ordinances of the City of Parker and the interface with City Code Enforcement, and City staff and the City Attorney.

Each Special Magistrate of the City plays a vital role in ensuring that the authority of local government to enforce minimum standards for property maintenance and development is balanced with the rights of private property owners and their right to due process, which includes their right to notice and opportunity to be heard.

The Special Magistrate hearings are quasi-judicial in nature, meaning they are similar to those found in courts in this state; however, the formal rules of evidence and procedures are relaxed. If a property owner is found guilty of a violation, the Special Magistrate may, among other things, levy a fine for the violation, establish a time frame in which the violations must be corrected and impose a penalty for failure to correct the violation(s) within the established time frame.

Chapter 162 of the Florida Statutes also provides the statutory authority for the code enforcement process and prescribes general rules of procedure for the locally established Special Magistrate and, among other things, authorizes the adoption of rules for the conduct of hearings; the issuance of subpoenas to alleged violators and witnesses to hearing; the issuance of subpoenas for evidence; the taking of testimony under oath; and Issuing orders to command whatever steps are necessary to bring a violation into compliance. Appeals of the Special Magistrate's final orders shall be to Circuit Court of the Fourteenth Judicial Circuit, in and for Bay County, Florida, pursuant to §162.11, F.S., and must be filed within thirty (30) days of the rendition of the order to be appealed.

DUTIES AND PROCEDURES OF SYSTEM

I. Administrative Duties and Hearing Details.

A. City Clerk. The City Clerk (or designee) shall provide clerical and administrative services, forms, and facilities as may be reasonably required by the Magistrate to properly perform their duties, The City Clerk (or designee) shall, among other things, be present during the proceedings, maintain a record of the proceedings, ensure notices are properly given of hearings and other proceedings and process the orders entered. Notice of all hearings shall be given to the Magistrate at least twenty-four (24) hours in advance of the hearing. Notices of all hearings shall be included in the City's calendar of events and published as directed.

B. Code Inspector. The Code Inspector, also sometimes also referred to as the Code Enforcement Officer, shall initiate all code enforcement process through the issuance of a citation and commence all unfit and unsafe proceedings with the advice of the building official.

C. Magistrate. The Magistrate shall coordinate hearing times with the City Clerk. The Magistrate may hold hearings as necessary to determine whether violations have occurred and to ensure the effectiveness of any order issued by the Magistrate.

II. ORDER OF BUSINESS

A. Initiation of Actions Before the Magistrate

1) Code enforcement actions shall be brought before the Magistrate by a Code Inspector as designated by the City. Certain actions may be brought by a Respondent such as a request for extension, rehearing, reduction of penalty. All actions before the Magistrate initiated by a Code Inspector as designated by the City shall be commenced by serving a notice of civil violation or a notice pursuant to § 26-19 of the Code. If the applicable Respondent does not comply with the notice of civil violation into compliance with City Code by the date set, the Code Inspector shall issue a Citation. If the Respondent timely files an appeal with the City Clerk, the City Clerk will open a case and designate a case number. Thereafter, the Code Inspection will file the civil violation notice and citation with the City Clerk in the appropriate case file. The City Clerk shall provide the parties with written

notice as to the time and place of the next available hearing in accordance with Chapter 26 of the Code.

2) Respondents may appear personally or through an agent or attorney.

B. Order of case.

1) Cases may be called in the order in which they appear on the agenda or as determined by the Magistrate. Any hearing may be continued or suspended by the Magistrate.

2) On the day of the hearing and once a case is called, the City Clerk shall swear in the witnesses.

3) The Magistrate may request or allow an opening statement from the parties, with the City going first.

4) The City shall put on its case first through the Code Inspector and any other witnesses for the City. After each witness testifies, the Respondent shall have an opportunity to cross-examine the witness.

5) The Respondent then presents their case and the Respondent's witnesses are subject to cross-examination by the City.

6) Any rebuttal witnesses for the City.

7) The Magistrate may request or allow a closing statement from each of the parties, with the City going first and having the final rebuttal.

8) The Magistrate rules and enters a written order.

9) The City Clerk prepares a certified copy of each written order and records those in the Official Records of Bay County, Florida.

C. Hearings

The following procedures will be observed in hearings before the Magistrate:

1) Each Respondent, the Code Inspector handling the case, and all other witnesses who will be providing testimony or offering other evidence shall be sworn. Witnesses

including but not limited to immediate neighbors, contractors or other workman who are or will be engaged to do work on the subject property, property managers of the subject property, or any person with personal knowledge and relevant information related to the alleged violation(s) and facts of the case may be allowed to testify. Any testimony related to the Respondent's character is not considered relevant information except where such testimony is offered by the Respondent, or the City in rebuttal. A "contractor" includes an architect, landscape architect, engineer or general contractor.

2) The conduct of the hearing shall be in accordance with §26.33, F.S., as may be amended or superseded.

3) Any evidence that the Magistrate may admit shall be retained by the City Clerk.

4) The Magistrate may question any party or witness or call any witness, as defined herein, to testify that the Magistrate feels is necessary to understand the factual and legal allegations of the case.

5) If Florida legal counsel is present, they shall be permitted, subject to the Magistrate's discretion, to examine and/or cross-examine witnesses and to present a brief opening statement and closing argument. Unsworn statements of a Florida attorney are not considered testimony or evidence to be considered by the Magistrate.

6) The Magistrate may, at its discretion, and at any time during the hearing, request further information from any party or witness and thereupon continue the hearing to a certain date at a regularly or specially scheduled hearing.

7) Upon presentation of all evidence, the Magistrate shall close the hearing. Notwithstanding the foregoing, the Magistrate, in his or her discretion, may re-open the hearing to additional evidence if the Magistrate deems it necessary.

8) The Magistrate may only consider that admissible evidence which is presented at the hearing.

9) Based on the evidence presented at the hearing and unless the Magistrate needs to conduct research or to consult an

outside attorney, the Magistrate shall determine whether the Respondent is or is not in violation of the cited Code(s) and shall announce same at the hearing. If the Respondent is found to be in violation, the Magistrate shall issue a final Order containing, among other things, the date of compliance, fine amount, and the Magistrate's recommendations for corrective action. If the Respondent is found not to be in violation, the Magistrate shall enter an Order to that effect and dismiss the case.

10) The order may set forth required remedial action to achieve compliance, with some specified time within which compliance must result, and should include notice that the Magistrate may order a fine to be imposed upon the violator for each day noncompliance continues beyond the ordered compliance date. If the Code Inspector later notifies the Magistrate by affidavit that the order has not been complied with, the Magistrate may then issue one or more subsequent orders (with or without a hearing) that may include setting a per day fine amount, retroactive from the originally required compliance date.

D. Stipulations

The following procedures will be observed for stipulations:

1) The parties may enter into a stipulation to be presented to the Magistrate that may include but not be limited to any facts, law or punishment. The Magistrate will decide to accept, reject or, with the agreement of the parties, to modify the stipulation.

2) Each stipulation must be signed by all parties (or their respective Florida attorney or someone holding an unrevoked power of attorney).

3) During its review of the stipulation, the Magistrate may consult with counsel as necessary.

E. Enforcement of Orders

After an order with a scheduled date of compliance has been issued by the Magistrate, it shall be the responsibility of the Respondent to correct the violation(s) and to ensure that an inspection is requested of the Code Inspector prior to the compliance date, so that compliance may be verified. In addition, after an order with a scheduled date for compliance

has been entered by the Magistrate, the Code Inspector shall make an inspection to determine if the violation has been timely corrected. Whenever possible, such inspection should occur within seven (7) days of the date of a request for a compliance inspection by a Respondent, or, when no such request is made by a Respondent, within ten (10) days after the ordered date for compliance.

After the inspection, the Code Inspector should then issue an Affidavit of Non-Compliance or Compliance (as the case may be), which said Affidavit shall then be filed in the case file. The Code Inspector shall mail a copy of said Affidavit to the affected Respondent and to the Magistrate. If the Code Inspector issues an Affidavit of Non-Compliance, the Magistrate may, with or without further hearing, enter a subsequent order imposing an additional fine and determining that all fines may be the basis for a lien and a non-ad valorem assessment on the affected property.

The City Clerk shall serve a copy of the Affidavit of Non-Compliance and a copy of the order imposing a fine/lien on the Respondent. The Respondent shall have thirty (30) days from the rendition of the Magistrate's order of non-compliance, if no hearing was previously held on the subject, to request a hearing on that determination only. If the Respondent choses to challenge the finding of non-compliance, the Respondent must deliver or cause to be delivered a request using a form similar to the Request for Compliance Hearing Form, along with any supporting documentation to the City Clerk no later than thirty (30) days from rendition of the order. The Magistrate will hear such challenges using the same process as other matters at an upcoming hearing.

In the event that a nuisance involving the existence of an unfit or unsafe structure, the Code Inspector shall determine the owner of record of the real property upon which the nuisance is located and shall send a notice of condemnation and a notice of hearing before the Magistrate to such party. In addition, the notice or condemnation and the notice of hearing shall be given to the lessee or occupants, if any other than the record title owner, and persons of having a record interest in the property; i.e., an interest recorded in the Official Records of Bay County, Florida, including but not limited to any mortgagee, contract purchaser, agent with a power of attorney, or person claiming an interest under a lis pendens and the like. The Code Inspector may seek the assistance of the City attorney to determine the parties for notice. At the hearing

on whether the demolition should be carried out, the Magistrate may issue any supplemental orders including but not limited to affirming, reversing, or modifying the decision to demolish the improvement. A copy of the order shall be served on all persons or entities discussed in this paragraph.

In cases challenging an Affidavit of Non-Compliance not involving an unfit or unsafe structure, the Magistrate may enter, upon competent evidence, an order finding the Respondent to be in compliance with the prior order and vacating the fine for non-compliance.

The Magistrate's orders are deemed rendered when signed and filed with the City Clerk of the City. An appeal of any order shall be filed with the Circuit Court of the Fourteenth Judicial Circuit, in and for Bay County, Florida within thirty (30) days of the rendition of said order, else there shall be no jurisdiction for the appeal.

F. Requests for Reduction of Fine

1) The Magistrate shall have continuing jurisdiction over all matters that have come before the Magistrate. In lieu of an appeal of the rendition of the underlying order, in the event that a Respondent has not paid the fine in the underlying order, the Respondent may file a request for the reduction of a fine ("Request") within thirty (30) days of the rendition of the order containing the fine in question using a format substantially similar to the Request for Reduction of Fine form promulgated hereby. Failure to file a request for the reduction of a fine within thirty (30) days of the rendition of the order containing the fine in question shall be an absolute bar to further consideration by the Magistrate. Also, the Magistrate shall not consider a request for the reduction of a fine until the property is in compliance as provided in the prior order and a Code Inspector has issued an Affidavit of Compliance. If the Respondent has paid the fine amount in part or in full, he or she is barred from seeking a reduction of the fine and the Magistrate may not consider the Request.

2) The Respondent must submit a written request on an appropriate form with supporting documentation to the City Clerk at least five (5) calendar days prior the request being heard. The Respondent's request should include, in detail, any financial, health, or other extenuating

circumstances that precluded compliance within the prescribed time period, which the Respondent wishes the Magistrate to consider in evaluating the request by completing this form, the Respondents' statements are under oath. The sworn request may subject the Respondent to penalties of perjury. The Code Inspector or his or her designee may submit written comments in response to the Respondent's Request or submit testimony or evidence at the hearing. Failure to file the form containing all of the required information may subject the Request for a reduction in the fine to be summarily denied.

3) At the hearing on the Request, the burden of proof and persuasion shall be on the requesting party; i.e., the Respondent. At the hearing, the Magistrate shall consider the Request, any testimony or evidence from or in support of the Respondent, and the City's comments/argument. In connection with the hearing, the Magistrate may grant the Request as presented, deny the Request, or approve a modification of the requested relief.

4) Testimony and additional evidence from the Respondent and/or the City and any interested party(ies) at the hearing may be limited in time duration. Any testimony or evidence concerning the initial adjudication of the violation(s) or the determination of a fine shall only be considered to the extent that it is relevant to circumstances that the Respondent claims preclude compliance within the prescribed time period or the amount of the fine. The Magistrate shall not consider whether the Respondent violated the City Code itself or that a fine was imposed in the original order.

5) The Magistrate shall consider each Request separately for each case. The Magistrate's decision will be based upon the testimony and documentary evidence; however, the strict rules of evidence under the Florida Rules of Civil Procedure shall not apply. The Respondent shall be served a copy of the written order of the Magistrate upon its rendition.

6) Appeals of the Magistrate's decision must be filed with the Circuit Court of the Fourteenth Judicial Circuit, in and for Bay County, Florida within thirty (30) days of the rendition of said order. If the Respondent has exercised his or her right to appeal the Magistrates Order by filing a Notice of Appeal in the Circuit Court of the Fourteenth

Judicial Circuit pursuant to § 162.11, Florida Statutes, the Magistrate does not have jurisdiction to review the Request. The Respondent may file a motion with the Circuit Court requesting the Court to relinquish jurisdiction to the Magistrate and the Court must grant such motion before the Magistrate can consider the Request.

G. Requests for Extension of the Compliance Date

1) If a Respondent obtains a building or demolition permit within the prescribed period and, in good faith and with due diligence, begins work to comply with the order, but it appears that full compliance cannot be accomplished by the date ordered, a Respondent may file a *"Code Compliance Extension Request"* to the Code Inspector requesting relief from the compliance date and stating the reasons they have been unable to complete compliance. The Code Inspector may consent to the requested extension and if so, the Code Inspector will advise the Magistrate who will then enter an order extending the time of compliance without further hearing. Otherwise, a hearing shall be held to determine is an extension is necessary. In any event, no extension of compliance shall exceed 90 days from the rendition of the original order. At such hearing, the Respondent may provide testimony or evidence in support of the request and the City shall be allowed to rebut same. The Magistrate shall not consider whether the Respondent violated the City Code itself or that a fine was imposed in the original order.

2) The Respondent shall be served a copy of the written order of the Magistrate upon its rendition.

3) The Magistrate, in exceptional cases, upon written request, may extend the compliance date as merited by special hardship, unusual difficulty, or uniqueness of the situation; however, in no event shall the completion date extend beyond a maximum period of one hundred eighty (180) days.

4) If the Respondent has exercised his or her right to appeal the Magistrate's Order by filing a Notice of Appeal in the Circuit Court of the Fourteenth Judicial Circuit, in and for Bay County, Florida, pursuant to § 162.11, Florida Statutes, the Magistrate does not have jurisdiction to review the requested extension. The Respondent may file a motion with the Circuit Court requesting the Court to

relinquish jurisdiction to the Magistrate and the Court must grant such motion before the Magistrate can consider the Request.

H. Requests for Rehearing and Appeals

1) **Requests for Rehearing:** If the Respondent or the City has exercised their right to appeal the Magistrate's Final Order by filing a Notice of Appeal in the Circuit Court of the Fourteenth Judicial Circuit, in and for Bay County, Florida, pursuant to § 162.11, Florida Statutes, the Magistrate does not have jurisdiction to review a request for rehearing.

   a) The Respondent or City may request a rehearing on the Magistrate's Findings of Fact or Conclusions of Law in an order. A Request for Rehearing Form must be filed with the City Clerk within ten (10) days of the date of rendition of the order to be reheard. The Request for Rehearing must include new evidence or circumstances that were not presented at the original hearing, and state the reason(s) that this new information was not presented at the original hearing. The City may respond in writing to the request for a rehearing. The Magistrate shall review a timely request for a rehearing and hear argument of the parties at a future hearing; however, no additional evidence or testimony shall be allowed. The time period for compliance prescribed in the Magistrate's order and the time for appeal shall be tolled pending a decision of the Magistrate. The time for appeal of the original order shall run from the rendition of the order on the request for the rehearing.

   b) If the Special Magistrate grants the request for rehearing, the Respondent and the Code Enforcement Officer may present their case anew at the next available Magistrate hearing meeting or immediately, as decided by the Magistrate. Respondent shall be notified accordingly. Upon hearing the case, the Magistrates Order shall either stand, be amended, or be vacated and superseded with the new Order. The Respondent will be notified in writing of the Magistrates action on the Request for Rehearing within five (5) days of the hearing.

2) **Final Order Appeal:** The Respondent or the City may appeal a final order of the Magistrate to the Circuit Court of the Fourteenth Judicial Circuit, in and for Bay County, Florida. This appeal is governed by the provisions set forth in § 162.11, Florida Statutes, as may be amended or superseded. An appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the Magistrate. A Notice of Appeal must be filed within 30 days of the rendition of the order to be appealed. The appealing party is responsible for all filing fees charged by the Circuit Court. The appealing party shall, within fifteen (15) days of filing the Notice of Appeal identify those portions of the docket to be copied and sent to the Clerk of the Circuit Court.

I. Requests to Continue Cases

If a Respondent would like the Magistrate to continue a case that is set for hearing to the next scheduled hearing date, the Respondent or his/her representative must make this request in person at the hearing at which the case is originally scheduled to be heard. The Magistrate has the discretion to grant or deny such a request. The Magistrate's decision shall be rendered orally at the time of the request. If the Respondent's request is denied, the Magistrate will hear the case at that hearing. The Magistrate may also elect to continue a particular case to the next hearing time at any time upon its own motion.

J. Stipulations

The parties may enter into a stipulation to be considered by the Magistrate. The stipulation may include, but shall not be limited to, conditions and deadlines for bringing the subject property into compliance, the amount of or a reduction or waiver of fines, or any other matter or conditions affecting the subject property.

The Magistrate may deny, approve, or modify the terms of the stipulation.

K. Written Motions and Pleadings

1) Miscellaneous Motions and Pleadings

a) The Magistrate may consider other motions and pleadings filed with the Magistrate by the Respondent or the City regarding a particular case at its

discretion provided it has jurisdiction to do so. The Magistrate may consult with counsel on such motions and pleadings.

b) The Respondent shall be notified in writing of the Magistrates action on all motions and pleading.

L. Condemnation.

Notice of a hearing concerning a nuisance involving an unfit or unsafe structure that may result in an order of demolition/condemnation, shall be given to the fee-simple record title owner of the property (presumably the Respondent), and persons of having a record interest in the property; i.e., an interest recorded in the Official Records of Bay County, Florida, including but not limited to any mortgagee, lessee, contract purchaser, agent with a power of attorney, or person claiming an interest under a lis pendens and the like. The Code Inspector may seek the assistance of the City attorney to determine the parties for notice. At the hearing on whether a demolition should be ordered, the Magistrate may issue any orders including but not limited to affirming, reversing, or modifying any decision to demolish a structure. A copy of the order shall be served on all persons or entities discussed in this paragraph.

M. Miscellaneous

The enabling legislation for this Manual of the Code Enforcement Magistrate of the City of Parker ("Manual") is provided in Chapter 162, Florida Statutes, and Chapter 26 of the Code of the City of Parker. This Manual may be amended or superseded, in a manner not inconsistent with the City Code, during a regular hearing by the Magistrate with the concurrence of the City Council.

All hearings of the Magistrate shall be open to the public in accordance with the provisions of the Florida "Sunshine Law" (Chapter 286, Florida Statutes).

All records of the proceedings of Magistrate are maintained by the City Clerk and shall be open to public examination, inspection and copying in accordance with the provisions of the Florida "Public Records Law" (Chapter 119, Florida Statutes).

CAPTION

Case Number:_____

AFFIDAVIT OF NON-COMPLIANCE

The undersigned Code Inspector for the City of Parker hereby states the following:

1. I am sui juris, competent to testify and have knowledge of the contents hereof either through personal knowledge or as the custodian of the City's Code Enforcement Records that are kept in the ordinary course of business with entries made at or about the time of the contents of the records.

2. Following a hearing, the Special Magistrate of the City issued an Order dated _____, 202_____, in the above styled cause ("Order").

3. That pursuant to the Order, the Respondent(s) was/were to have taken certain corrective actions by or before _____.

4. A re-inspection of the property in this case was performed on _____, and that re-inspection revealed that the corrective action ordered by the Special Magistrate HAS NOT been taken thus rendering the property IN NON-COMPLIANCE as of _____ in the following respects:

_____

_____

_____.

_____

Code Inspector

STATE OF FLORIDA
COUNTY OF BAY

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of [ ] physical presence or [ ] online notarization, on this _____ day of June, 2023, by _____, who is personally known to me or who has produced _____ as identification.

_____

NOTARY SIGNATURE

CAPTION

CASE NO._____

AFFIDAVIT OF COMPLIANCE

The undersigned Code Inspector of the City of Parker have personally examined the property at issue in this case and that is the subject of the Special Magistrate's Order dated _____, 202____ ("Order"), and find that said property is now in compliance with the Order.

_____
Code Inspector

STATE OF FLORIDA
COUNTY OF BAY

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of [ ] physical presence or [ ] online notarization, on this _____ day of _____, 2023, by _____, who is personally known to me or who has produced _____ as identification.

_____
NOTARY SIGNATURE