

ORDINANCE NO. 2007- 09

AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, REPEALING ORDINANCE NO. 2001-1, WHICH PROVIDES FOR THE TOWN'S CODE ENFORCEMENT SYSTEM, AND REPLACING THIS SYSTEM WITH A REVISED SYSTEM THAT ALSO PROVIDES FOR THE IMPLEMENTATION OF ALTERNATE CODE ENFORCEMENT PROCEDURES PURSUANT TO SECTIONS 162.03, 162.21, 162.23, AND 162.30 FLORIDA STATUTES; DESIGNATING THE TOWN'S LAW ENFORCEMENT OFFICERS AS "CODE OFFICERS" AND AUTHORIZING THE TOWN'S LAW ENFORCEMENT OFFICERS TO ENFORCE ALL OF THE PROVISIONS OF THE TOWN'S UNIFIED LAND DEVELOPMENT CODE AND CODE OF ORDINANCES; AUTHORIZING THE TOWN'S CODE OFFICERS TO ISSUE NOTICES TO APPEAR AND/OR CITATIONS; PROVIDING FOR THE COLLECTION AND RECOVERY OF CIVIL PENALTIES; PROVIDING FOR AN APPELLATE PROCEDURE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Southwest Ranches ("Town") in an effort to provide an additional procedure to enforce the Town's Unified Land Development Code and Code of Ordinances (hereinafter collectively the "Town's Code"), seeks to formally increase the authority granted to the Town's law enforcement officers and Special Magistrate; and

WHEREAS, the Town specifically desires to implement a system where the law enforcement officer can issue a citation for a violation of the Town's Code and the Special Magistrate can impose an immediate fine and can lien for the violation; and

WHEREAS, the Town desires to incorporate and to implement the relevant provisions of Chapter 162, Florida Statutes, as amended from time to time, and as referenced herein; and

WHEREAS, the Town Council finds that providing the law enforcement officers and Special Magistrate with this additional authority is in the best interest of the health, safety, and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1: Recitals Adopted. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance.

Section 2: Ordinance No. 2001-1 shall be repealed in its entirety and shall be replaced with a revised system that also incorporates alternate code enforcement procedures pursuant to Section 162.03, 162.21, 162.23, and 162.30 Florida Statutes as may be amended from time to time, as set forth below:

Creation of Code Enforcement System

(A) The Town of Southwest Ranches, in furtherance of Chapter 162, Florida Statutes, as may be amended from time to time, hereby adopts an alternate code enforcement system that gives a Special Magistrate the authority to hold hearings and assess fines against violators of the Town's codes and ordinances.

(B) The Town, by this Ordinance, hereby adopts Chapter 162, Florida Statutes, in its entirety, as may be amended from time to time.

Intent

It is the intent of this Ordinance to promote, protect, and improve the health, safety, and welfare of the citizens of the Town, by authorizing the creation of the position of Special Magistrate for code enforcement proceedings with the authority to impose administrative fines and other non-criminal penalties, to provide for an equitable, expeditious, effective and an inexpensive method of enforcing any codes and ordinance in force in the Town where a pending or repeat violation exists.

Jurisdiction

(A) The jurisdiction of the Special Magistrate to hear code enforcement violation matters shall be limited to hearing those matters occurring within the municipal boundaries of the Town of Southwest Ranches.

Definitions

"Town."	The Town of Southwest Ranches.
"Town Attorney."	The Town Attorney, Deputy Town Attorney of the Town or their authorized representative.
"Town Council."	The legislative body of the Town.

"Town Administrator."	The individual or management firm serving as the chief administrative officer of the Town.
"Code Officer."	Any employee, agent, or corporation designated by the Town, whose duties are to insure compliance in and for the Town's Codes or Ordinances and to present code violations before the Special Magistrate.
"Notices."	Notices shall be provided as set forth in F.S. Chapter 162, as may be amended from time to time.
"Owner."	The person, persons, entity, or combination thereof, reflected as the property owner in the most recently certified real property ad valorem tax rolls of the county. Additionally, in cases of multiple or joint ownership, notice to one owner shall be considered for purposes herein as notice to all multiple or joint owners. Ownership may also be established in accordance with Section 162.06, Florida Statutes, as may be amended from time to time.
"Town Code."	Hereinafter referred to as "Code", "Unified Land Development Code" or "Ordinances", which words may be used interchangeably, shall mean the ordinances of the Town as described under the section entitled "Jurisdiction".
"Repeat Violations."	A violation of a provision of a code or ordinance by a person whom the Special Magistrate has previously found to have violated the same provision within five (5) years prior to the violation.
"Special Magistrate."	The Town's Special Magistrate appointed by the Town Council to hear code enforcement violation cases.
"Violator."	The person, persons, entity, or combination thereof, responsible for the ordinance or code violation which, in the appropriate circumstances, shall be the perpetrator of the violation, the owner of the real property or personal property, or the person, person, entity, or combination thereof, legally responsible for the property upon which the violation occurred.

Establishment of a Special Magistrate(s)

(A) The Town hereby establishes a Special Magistrate(s) who may conduct code enforcement hearings. The Special Magistrate(s) shall be selected by the Town Attorney and approved by the Town Council. The Special Magistrate(s) shall be, at a minimum, a ten (10) year practitioner of municipal law, and shall be a member in good standing with the Florida Bar and engaged in the practice of law in Broward County. The Special Magistrate shall be bound by the Code of Judicial Conduct, as may be amended from time to time.

(B) The rules and regulations as found in F.S., Ch. 162, as may be amended from time to time, shall be adopted by the Special Magistrate. The Special Magistrate may adopt additional rules and regulations as are consistent with the provisions of F.S., Ch. 162, as may be amended from time to time, which the Special Magistrate finds necessary to carry out the provisions of the ordinance.

(C) The Special Magistrate(s) are hereby authorized to conduct administrative hearings, as may be required, due to the enactment of the supplemental code enforcement procedures.

Code Prosecutor Duties

(A) The Town Attorney shall represent the interests of the Town and act as Code Prosecutor.

(B) The Code Prosecutor shall have prosecutorial discretion, including but not limited to the right to negotiate a plea with the violator, and to present that plea to the Special Magistrate for approval, to recommend the disposition of a case to the Special Magistrate, and to decline to prosecute a case, similar to the discretion exercised by the State Attorney in criminal cases.

(C) The Code Prosecutor shall determine in its sole discretion matters which may result in the filing of Circuit Court actions, including but not limited to, foreclosures.

Code Officer & Duties

(A) The Code Officers have the primary duty to enforce various ordinances and codes within its Jurisdiction and may initiate enforcement proceedings before the Special Magistrate.

(B) If a violation of an ordinance or code is found, the Code Officer shall give written notification to the alleged violator of the violation in accordance with F.S., Ch. 162, as may be amended from time to time, in light of the nature of the violation, to correct the violation. Should the violation continue beyond the time specified for

correction, or if the violation was corrected and recurs or if the violation is a repeat violation, the Code Officer shall set a hearing and shall notify the alleged violator of the hearing.

Conduct of Hearings

(A) The Town shall serve a notice of hearing to the violator in accordance with the provisions of this Ordinance and Section 162, Florida Statutes, as may be amended from time to time.

(B) If a matter is brought to hearing, and if a violation is found, in addition to any other penalty imposed, the Violator may be assessed reasonable costs as may be set forth in the Town's Code Enforcement Cost Recovery Resolution, as may be amended from time to time. Said Administrative costs shall be in accordance with F.S., Ch. 162, as may be amended from time to time.

(C) The conduct of the hearing shall be consistent with F.S., Ch. 162, as may be amended from time to time.

(D) The rules of evidence shall be liberally applied. Hearsay evidence may be accepted for the purpose of supplementing or explaining any direct evidence, but hearsay evidence, shall not, in of itself, be considered sufficient to support a finding or decision unless the evidence would be admissible over objections in a civil action.

(E) The alleged Violator shall have the right to be represented by an attorney; however, the alleged Violator or their attorney shall provide written notice to the Town Attorney that an attorney is representing the violator's interest at least five working days prior to the scheduled date of the hearing.

(F) All testimony before the Special Magistrate shall be under oath and shall be recorded. The alleged Violator or the Town may cause the proceedings to recorded by a certified court reporter or other certified recording instrument; however, the Town shall be under no obligation to provide a certified court reporter or other certified recording instrument, but rather, the Town may use a recording device of its choice to satisfy its obligation to record the meeting. The Town shall be under no obligation to provide a transcript of the hearing, but shall create action minutes.

(G) The burden of proof shall be with the Code Officer to show by the greater weight of the evidence that a code violation exists and that the alleged Violator committed or was responsible for maintaining the violation.

(H) The Special Magistrate may, for good cause shown, postpone or continue a hearing.

(I) At the conclusion of the hearing, the Special Magistrate shall issue findings of fact, based on the evidence presented, and conclusions of law and shall issue, if a violation is found, an order to include, but not limited to, a specified compliance date and a fine amount to be imposed if the order is not complied by the specified date. In determining the amount of the fine, if any, the Special Magistrate shall consider the following factors set forth in F.S. Ch 162.09 (2)(b), as may be amended from time to time:

- (1) The gravity of the violation;
- (2) Any actions taken by the violator to correct the violation; and
- (3) Any previous violations committed by the violator.

(I) If a violation is found the Violator shall have the sole responsibility to notify the Code Officer that the violation has been corrected and to request a re-inspection.

Establishing Fine & Lien

(A) The establishment of a fine and lien shall be consistent with and pursuant to F.S., Ch. 162, as may be amended from time to time.

(B) A certified copy of an order imposing a fine 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 may be enforced in the same manner as a court judgment by the sheriffs if this state, including levee against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes.

(C) A fine imposed shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien, whichever occurs first.

Alternate Code Enforcement Procedures

(A) The Town hereby adopts alternate code enforcement procedures pursuant to Section 162.03, 162.21, 162.23, and 162.30, Florida Statutes, as may be amended from time to time, that provide authority to Code Officers to issue citations and notices to appear at a hearing conducted by a county court, and for Code Officers to issue citations for administrative hearings to be heard by designated Special Magistrate(s) and assess fines against violators of the respective codes and ordinances within the Town of Southwest Ranches.

(B) Notices to Appear:

(1) If a Code Officer, based upon personal investigation, has reasonable cause to believe that a person has violated a code or ordinance, the Code Officer shall provide written notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable period of time within which the person must correct the violation. Such time period shall be based on considerations of fairness, practicality, ease of correction, nature, extent and probability of danger or damage to the public or property, and any other relevant factor relating to the reasonableness of the time period to correct the violation. In accordance with F.S., Ch. 162.23(2), as may be amended from time to time, such time period shall be no fewer than five (5) days and no more than thirty (30) days, unless it is a Repeat Violation or the Code Officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare or that the Violator is engaged in violations of an itinerant or transient nature, or if the violation is irreparable or irreversible.

(2) If, upon personal investigation, a Code Officer finds that the person has not corrected the violation within the designated time period, the Code Officer may issue a notice to appear to the person who has committed the alleged violation. The notice to appear shall require the alleged violator to appear at a county court hearing. If a person issued a notice to appear refuses to sign such a notice, the Code Officer has no authority to arrest such person; however, nothing precludes the Code Officer from requesting the assistance of a law enforcement officer. In accordance with F.S., Ch. 162.21(3)(c), as may be amended from time to time, the notice to appear form shall contain, but not be limited to the following:

- (a) Date and time of issuance;
- (b) Name and address of the person to whom the citation is issued;
- (c) The date and time the civil infraction was committed;
- (d) The facts constituting reasonable cause;
- (e) The number or section of the code or ordinance violated;
- (f) The name and authority of the code enforcement officer;
- (g) The procedure for the person to follow in order to pay the civil penalty or to contest the citation;
- (h) The applicable civil penalty if the person elects to contest the citation;
- (i) The applicable civil penalty if the person elects not to contest the citation; and
- (j) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

(C) Citations

(1) The Code Officer shall have the authority to initiate enforcement proceedings by issuing citations that may require an appearance of the violator at a county court hearing or an administrative hearing before a Special Magistrate.

(2) A Code Officer who finds a violation of a code or ordinance shall have the authority to serve a notice of violation to the Violator. Prior to issuing a citation, the Code Officer shall provide a written notice to the person in violation that the person has committed a violation of a code or ordinance and establish a reasonable period of time for the person to correct the violation. In accordance with F.S., Ch. 162.21(b), as may be amended from time to time, such time period shall be reasonable shall be no more than thirty (30) days. In making a determination of reasonableness the Code Officer shall consider whether it is a Repeat Violation, whether the violation presents a serious threat to the public health, safety, or welfare, whether the Violator is engaged in violations of an itinerant or transient nature, and whether the violation is irreparable or irreversible. If, upon personal investigation, the Code Officer finds that the person has not corrected the violation within the designated time period, the Code Officer may issue a citation to the person who has committed the violation.

(3) The citation form shall include, but not be limited to the following:

- (a) Date and time of issuance;
- (b) Name and address of the person to whom the citation is issued;
- (c) The date and time the civil infraction was committed;
- (d) The facts constituting reasonable cause;
- (e) The number or section of the code or ordinance violated;
- (f) The name and authority of the code enforcement officer;
- (g) The procedure for the person to follow in order to pay the civil penalty or to contest the citation;
- (h) The applicable civil penalty if the person elects to contest the citation;
- (i) The applicable civil penalty if the person elects not to contest the citation; and
- (j) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.
- (k) Notice that the person may be liable for reasonable costs of the hearing should the violator be found guilty of the violation.

(D) Options of persons issued a citation:

(1) Citation issued to appear in County Court:

(a) The person who has been served with a citation to appear in county court shall either correct the violation and pay the civil penalty in the manner indicated on the citation; or

(b) Appear on the designated court date and contest the citation before a county judge. Failure to appear in county court on the designated court date shall be deemed a waiver of the rights of the person to contest the citation and may result in the imposition of a fine against the violator for an amount up to the maximum civil penalty.

(2) Citation issued to appear before a Special Magistrate:

(a) The person who has been served with a citation to appear before a Special Magistrate shall either correct the violation and pay the civil penalty in the manner indicated on the citation; or

(b) Request an administrative hearing before a Special Magistrate to appeal the decision of the Code Officer. Said appeal shall be filed not later than ten (10) calendar days after the service of the citation.

(c) Failure of the violator to appeal the decision of the code enforcement officer within the ten (10) calendar days shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing may result in the imposition of a fine against the violator for an amount up to the maximum civil penalty.

Schedule of Civil Penalties

The Town shall set its schedule of civil penalties in a Civil Penalties Resolution, as may be amended from time to time.

Collection and Recovery of Civil Penalties

(A) The Town Administrator, or his designee, shall provide the appropriate guidelines and procedures for the administration, collection, record keeping, reporting and accountability of fines assessed under this Ordinance.

(B) The Town may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.

(C) If the Special Magistrate finds that a violation exists and assesses the fine, or if the Violator does not contest the citation as provided under this Ordinance, and the Violator fails to pay the applicable fine, the Special Magistrate may enter an order imposing the fines previously set. A certified copy of the order imposing a civil penalty may be recorded in the public records and thereafter shall constitute a lien against the real or personal property of the Violator. Upon petition to the Circuit Court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state,

including a levy against personal property, but not be deemed to be a court judgment except for enforcement purposes.

Appeals

(A) A party may seek a rehearing of the case by filing a written motion for rehearing within ten (10) calendar days of rendition of the decision by the Special Magistrate. The motion for rehearing shall set forth issues which were overlooked or omitted at the hearing but shall not consist of re-argument of the case. The motion shall be filed at the Town Hall with the Special Magistrate Clerk, Code Enforcement Division. The party filing the motion is responsible for forwarding a copy of the motion to the other party. The Special Magistrate Clerk shall immediately forward the motion for rehearing to the Special Magistrate and within ten (10) days of receipt of the motion, the Special Magistrate may enter an order on the motion for rehearing or schedule a hearing on the motion. If the motion for rehearing is granted, the case shall be set for rehearing as soon as possible thereafter.

(B) A party may appeal a decision of a Special Magistrate by certiorari to the Seventeenth Judicial Circuit within thirty (30) days of the date of the rendition of the decision of the Special Magistrate as provided by the Florida Rules of Appellate Procedure, as may be amended from time to time.

Section 3: The Town hereby designates its law enforcement officers to be Code Officers and authorizes its law enforcement officers to enforce all of the provision of the Town's Unified Land Development Code and Code of Ordinances.

Section 4: Inclusion. It is the intention of the Town Council that the provisions of this Ordinance shall be codified and shall become and be made a part of the Town of Southwest Ranches Code and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 5: Conflicts. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 6: Severability. If any word, phrase, clause, sentence or section of this Ordinance is, for any reason, held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

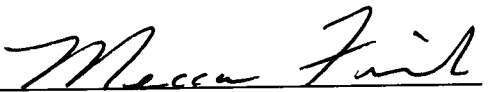
Section 7: Effective Date. This Ordinance shall be effective immediately upon its adoption.

PASSED ON FIRST READING this 14th day of June, 2007 on a motion made by Council Member Steve Breitkreuz and seconded by Vice Mayor Don Maines.

PASSED AND ADOPTED ON SECOND READING this 12th day of July, 2007, on a motion made by Vice Mayor Don Maines and seconded by Council Member Steve Breitkreuz.

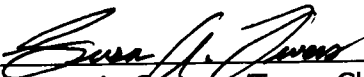
Fink	<u>Y</u>
Maines	<u>Y</u>
Breitkreuz	<u>Y</u>
Knight	<u>ABSENT</u>
Nelson	<u>Y</u>

Ayes	<u>4</u>
Nays	<u>0</u>
Absent	<u>1</u>
Abstaining	<u>0</u>



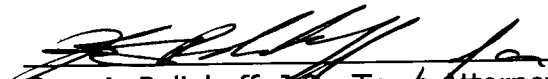
Mecca Fink, Mayor

Attest:



Susan A. Owens, Town Clerk

Approved as to Form and Correctness:



Gary A. Poliakoff, J.D., Town Attorney
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