

ORDINANCE NO. 909

**AN ORDINANCE PROVIDING FOR THE AMENDMENT TO THE CITY'S CODE OF ORDINANCES BY REPEALING AND REPLACING ORDINANCE 881, IN PART, TO DELETE CHAPTER 18 "LAND DEVELOPMENT CODE", ARTICLE IV "CODE ENFORCEMENT" AND AMENDING CHAPTER 18 "LAND DEVELOPMENT CODE", ARTICLE III "ADMINISTRATION AND ENFORCEMENT" TO REPLACE SECTIONS 18-18 THROUGH 18-23 FROM ARTICLE IV OF CHAPTER 18 TO ARTICLE III, TO AMEND CHAPTER 18 "LAND DEVELOPMENT CODE" ARTICLES V THROUGH XVII TO CONFORM NUMBERING TO ARTICLES IV THROUGH XVI, TO AMEND CHAPTER 11 "RESERVED" TO CREATE A NEW CHAPTER 11 ENTITLED "CODE ENFORCEMENT" AND PROVISIONS THEREIN; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS, MOTIONS, RESOLUTIONS, AND ORDINANCES; SEVERABILITY; AND FOR SETTING AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of DeFuniak Springs, Florida has determined it to be in the best interests of the City to amend the City Code to provide for a more effective and comprehensive solution to code enforcement, and;

**WHEREAS**, the City Council has determined that it is appropriate that the City engage a Special Magistrate to preside over code enforcement proceedings, and that the use of a code enforcement board would be inefficient and ineffective to address the needs of the City and to protect the rights of the public, and;

**WHEREAS**, the City Council hereby intends to provide for amendments to the City Code to provide for such code enforcement procedures,

**NOW THEREFORE**, be it ordained by the City Council of the City of DeFuniak Springs, Florida, that City's Code of Ordinances is hereby amended by repealing and replacing Ordinance 881, in part, to delete Chapter 18 "Land Development Code", Article IV "Code Enforcement" and amending Chapter 18 "Land Development Code", Article III "Administration and Enforcement" to replace Sections 18-18 through 18-23 from Article IV of Chapter 18 to Article III, to amend Chapter 11 "Reserved" to create a new Chapter 11 entitled "Code Enforcement" as follows:

1.) Henceforth, Chapter 11 shall be entitled "Code Enforcement", and shall read, in its entirety, as follows:

**ARTICLE I – ENFORCEMENT.**

**Section 11-1 - Purpose and Intent.** The City shall enforce provisions of this Code and other ordinances according to the procedures set forth below. These procedures are in addition and supplemental to other means provided by law for obtaining compliance with local codes, and nothing herein shall prohibit the City from enforcing its codes by means other than as prescribed

in this section including, but not limited to, an action before the Special Magistrate, an action before the City Council, a stop work order, or demolition. This section shall not require action on behalf of the City, but rather shall serve to set forth the policies and procedures to used when action is taken.

**Section 11-2: Complaints.** Code violation complaints may be filed with the code enforcement officer by telephone, email, written correspondence, or in person; and complainants shall include the name(s), mailing address, phone number and other valid contact information of the complainant. Receipt of a complaint shall be deemed to be the date upon which code enforcement commences. Upon receipt, the code enforcement officer shall take immediate action in a timely manner as set forth herein or by other duly adopted policy of the City.

**Section 11-3. Notices, generally.** All notices required to be provided by this Article to the alleged violator shall be made pursuant to Florida Statutes.

**Section 11-4. Code Enforcement Officers.**

(a) The City Manager may designate code enforcement officers who shall have the powers and authority to enforce the codes and ordinances of the City. All such designees shall possess sufficient training and qualifications to hold the position of code enforcement officer, as established by the City Manager.

(b) Any law enforcement officer or code enforcement officer is hereby empowered to issue citations under the procedures set forth in this section to any person or entity when, based upon personal investigation, the officer has reasonable cause to believe that the person or entity has committed or is committing a violation of a duly enacted ordinance.

**Section 11-5. Notice of Violation.**

(a) Prior to issuing a citation, a code enforcement officer shall provide, by hand delivery or certified mail (return receipt requested), a written notice to the person or entity who has committed or is committing the violation, or to the property owner of the property that is in violation or where a violation is occurring.

(b) The Notice of Violation shall set forth the nature of the violation and establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than thirty (30) calendar days. A code enforcement officer, however, does not have to provide the violator with a reasonable time period to correct the violation prior to issuing a citation, and may immediately issue a citation provided in the following subpart, if the code

enforcement officer has found a repeat violation or has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or if the violation is irreparable or irreversible in nature.

(c) A code enforcement officer or law enforcement officer shall issue a Notice of Violation in a form prescribed by the City and shall contain the following:

- i. The date and time of issuance;
- ii. The name and address of the person to whom the notice is issued;
- iii. The date and time the violation was committed;
- iv. The facts constituting reasonable cause to believe the violation has been committed;
- v. The number or section of the code or ordinance violated;
- vi. The time period within which, and the specific date by which, the violation must be corrected;
- vii. The name and authority of the code enforcement officer or law enforcement officer issuing the notice; and
- viii. A statement advising the person that if the violation remains uncorrected by the date specified in the notice, a Citation will be issued requiring the violator to pay a civil penalty of up to five hundred dollars (\$500.00) per violation.

(d) Remedial actions which may be required in a Notice of Violation may include any steps deemed by the code enforcement officer to be reasonably necessary to accomplish the intent and purpose of this Code and to prevent or correct any significant adverse impacts from the violation. When there is an immediate threat to the public health, welfare, or safety, or when there is a history of repeat violations, the code enforcement officer shall issue an immediate Citation and/or Stop Work Order as appropriate.

**Section 11-6. Issuance of Citation.**

(a) If upon personal investigation, a code enforcement officer finds that a person who has been served with a Notice of Violation has not corrected the violation within the time period specified in the notice, or if the violation found by a code enforcement officer is a repeat violation or a violation which is reasonably believed to present a serious threat to the public health, safety or welfare, or to be irreparable or irreversible in nature, a code enforcement officer may issue a Citation to the person who has committed or is committing the violation, and/or to

the property owner of the property that is in violation or where a violation is occurring.

(b) The Citation shall be issued in a form prescribed by the City and shall contain the following:

- i. The date and time of issuance;
- ii. The name and address of the person to whom the citation is being issued;
- iii. The date and time the violation was committed;
- iv. The facts constituting reasonable cause to believe the violation was committed;
- v. The number or section of the code of ordinance violated;
- vi. The date of issuance of a Notice of Violation, or if no Notice of Violation was issued prior to the issuance of a Citation, a statement reflecting the facts supporting a reasonable belief that the violation presents a serious threat to the public health, safety or welfare, or is irreparable or irreversible in nature;
- vii. The name and authority of the code enforcement officer or law enforcement officer issuing the notice;
- viii. A conspicuous statement advising the violator that failing to pay the civil penalty within the time allowed, or failing to appear before the Special Magistrate to contest the Citation, the violator shall be deemed to have waived any right to contest the Citation and that, in such case, judgement may be entered against the violator for an amount up to the maximum civil penalty; and
- ix. A statement indicating the means of service of a copy of the Citation upon the alleged violator.

(c) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer or law enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in Florida Statutes.<sup>1</sup>

(d) A copy of the Citation shall be provided to the alleged violator by either hand-delivery by the issuing officer, or delivery by certified mail (return receipt requested).

(e) After issuing the Citation to an alleged violator, a code or law enforcement officer shall deposit the original citation and one (1) copy of the Citation with the county court.

(f) Upon a finding of a violation at a contested hearing, or if an alleged violator fails to pay the civil fine within the time allowed, or fails to appear before the Special Magistrate to

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<sup>1</sup> At the time of adoption of this Ordinance, the City specifically references and cites to §§775.081, 775.082, 775.083

contest the Citation at the scheduled date and time , the alleged violator shall be deemed to have waived any right to contest the Citation and the Special Magistrate may enter an additional civil fine or a judgment against the alleged violator for an amount up to five hundred dollars (\$500.00) per day per violation.

**Section 11-7. Enforcement Procedure.**

(a) It shall be the duty of the code enforcement officer to initiate enforcement proceedings of the various codes and ordinances, and the Special Magistrate shall not have the power to initiate such enforcement proceedings.

(b) If a violation of the codes or ordinances is found the code enforcement officer shall notify the violator and provide a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officer shall notify the Special Magistrate clerical staff to establish a hearing date. Written notice of such hearing shall be hand delivered, mailed, or posted as provided in Section 11-3 to said violator.

(c) If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code enforcement officer, the case may be presented to the Special Magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state.

(d) If a repeat violation is found, the code enforcement officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, shall notify the Special Magistrate clerical staff to establish a hearing date. A hearing date and time shall be scheduled, and notice shall be provided pursuant to Section 11-3. The clerical staff shall notify the violator of the scheduled date and time of the hearing. The case may be presented to the Special Magistrate even if the repeat violation has been corrected prior to the Special Magistrate hearing and the notice shall so state.

(e) If the code enforcement officer has reason to believe a violation or the condition causing the 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 reasonable effort to notify the violator and may immediately notify the Special Magistrate clerical staff to establish a hearing date. The Special Magistrate clerical staff shall schedule a

hearing and shall provide notice pursuant to Section 11-3.

**Section 11-8. Violation as a civil infraction; maximum civil penalty(s).**

(a) A code or ordinance violation, for which a Citation may be issued pursuant to this ordinance, shall be deemed to be a civil infraction.

(b) The maximum civil penalty for such a civil infraction shall not exceed five hundred dollars (\$500.00) per violation plus all applicable costs of Special Magistrate hearing, or subsequent prosecution and court costs.

(c) Each violation of a code or ordinance shall be a separate civil infraction. Each day such violation shall continue shall be deemed to constitute a separate civil infraction.

**Section 11-9. Uniform Fine Schedule, Schedule of Civil Penalties.** The City shall adopt, by resolution, a Uniform Fine Schedule and Schedule of Civil Penalties, and the amounts of fines and penalties set forth herein shall be considered duly adopted and incorporated to this section by this reference and may be amended by the City at any time. The adoption of such a resolution, and subsequent amendments thereto, shall not necessitate the amendment of this ordinance to be deemed effective.

**Section 11-10. Contestation of Citation.** Any Citation issued pursuant to this article may be contested by seeking a hearing before the Special Magistrate as provided for herein, or before the County Court of Walton County when Florida law provides for such a hearing.

**Sections 11-11 through 11.20. Reserved.**

**ARTICLE II – HEARING PROCEDURES, SPECIAL MAGISTRATE.**

**Section 11-21. Purpose and Jurisdiction.** The purpose of this section is to create a code enforcement process and special magistrate with authority to impose administrative fines and other non-criminal penalties to provide an equitable, expeditious, effective and inexpensive method of enforcing the codes and ordinances, where a pending or repeated violation continues to exist, including but not limited to local business tax receipts, business regulation, garbage and rubbish collection and disposal, health and sanitation, sewer and water, fire, building, unsafe building abatement, construction permits, planning and zoning, sign codes, white sands regulations, stormwater management and landscaping, which jurisdiction shall vest in the special magistrate.

**Section 11-22. Establishment and Authority.** Pursuant to Chapter 162 of Florida Statutes, the City Council establishes a position of one or more Special Magistrate(s), to be appointed by the City Council, and said Special Magistrate(s) are hereby authorized to enforce the provisions of the city code of ordinances, land development code or ordinances not yet codified.

**Section 11-23. Definitions.**

For the purpose of this section the following terms, phrases, words, abbreviations and their derivations shall have the following meaning herein given. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" be always mandatory and not merely directory. Words not defined shall be given their common and ordinary meaning, or for those so included, the meaning found in elsewhere in the Municipal Code. To the extent that any definition or interpretation under this section shall be contradictory to, or otherwise inconsistent with, any other definition or interpretation elsewhere in the Municipal Code, these definitions shall be deemed controlling during any code enforcement proceeding or appeal therefrom, except where the definition or interpretation elsewhere in the Municipal Code is found to more specific and directly applicable to a specific matter of code enforcement.

“City” means the City of DeFuniak Springs, Florida.

“City Council” means the governing body of the City of DeFuniak Springs, Florida.

“City Attorney” means the legal counselor for the City of DeFuniak Springs, Florida.

“Code Inspector” or “Code Enforcement Officer” means any authorized agent or employee of the City of DeFuniak Springs whose duty is to assure code compliance. A code inspector shall not make physical arrests, bear arms or take any person into custody; and except for fire inspectors, shall be exempt from requirements relating to the special risk class of the Florida Retirement System, bonding, and the criminal justice standards and training commission, as defined and required by general law. This provision shall not be construed to limit the authority of any sworn law enforcement of the DeFuniak Springs Police Department who possess independent legal authority to make arrests, bear arms, or otherwise take persons into custody.

“Repeat Violation(s)” mean violation(s) of a provision of a code or ordinance by a person

who the special magistrate has previously found to have violated the same provision within five (5) years prior to the violation(s) presently alleged.

“Special Magistrate” shall mean a person, appointed by the City, who is thereby authorized to conduct and preside over quasi-judicial hearings, and to assess fines against violators of the City code of ordinances, and such other authority as may be conferred by Chapter 162 of Florida Statutes, or any other law, and shall also include any alternate special magistrate(s) appointed by the City.

**Section 11-24. Role of Legal Counsel.** The City Attorney shall represent the City, when requested to do so, in matters before the Special Magistrate, and shall thereafter represent the City in any related appeals of rulings. This Article is created with the intent that the code enforcement officer shall act as the prosecutor in any contested proceeding, and the City Attorney shall not be required to act in such a capacity unless deemed necessary by the City, but shall be available on request to provide counsel in such matters to the City and its officers. Additionally, when certain matters are deemed to require legal action above and beyond standard code enforcement procedures outlined herein, the City Attorney shall be tasked with representing the City to obtain resolution of such matters.

**Section 11-25. Special Magistrates.**

(a) Proceedings. In lieu of having the code enforcement board hear and decide code violations, one or more special magistrates shall be appointed to hear and dispose of such matters. Special magistrates shall have the same status, jurisdiction and authority as any code enforcement board recognized by Florida law.

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

i. Be an active member in good standing of the Florida Bar with a minimum of five (5) years recent experience practicing law, which experience shall include litigation and administrative hearing experience.

ii. Reside in Walton County, Florida.

iii. Not be an employee of the city or hold any office with the city government.

iv. Comply with the Code of Ethics of the State of Florida.

(c) Solicitation and appointment. Eligible candidates for special magistrate shall be



sought and the selection and appointment made by the city manager. Terms of appointment and compensation for the special magistrates shall be established pursuant to a contract approved by the City Council. The city manager may select and appoint up to two alternate special magistrates to serve in the event of legal conflict of interests or in the absence of the special magistrate, with the terms of appointment and compensation for the alternate special magistrates established pursuant to a contract approved by the City Council.

(d) Removal. The special magistrate and any alternate special magistrate shall serve at the pleasure of the city manager and may be removed from service at any time, with or without cause, by the city manager.

(e) Conflicts. In the event a legal conflict of interest prevents the special magistrate and any alternate special magistrate from hearing a case, the city manager, notwithstanding any provision herein, may contract with any current special magistrate of another Florida jurisdiction to hear that specific case.

**Section 11-26. Jurisdiction.**

Each special magistrate shall have jurisdiction to hear and decide alleged violations of the codes and ordinances in force in the City of DeFuniak Springs, including amendments to such codes and ordinances. The jurisdiction the special magistrate shall not be exclusive. Any alleged violation of any of the aforesaid codes and ordinances 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.

**Section 11-27. Conduct of hearings.** The City Council shall adopt, by resolution, procedural rules governing the conduct of hearings conducted under this section.

**Section 11-28. Powers of Special Magistrate.**

The Special Magistrate shall have the power to:

- i. Adopt rules for the conduct of its, his or her hearings.
- ii. Subpoena alleged violators and witnesses to its, his or her hearings. Subpoenas may be served by the Sheriff or any deputy sheriff of Walton County, by any police officer of the City, or by any licensed process server.
- iii. Subpoena evidence.
- iv. Take testimony under oath.
- v. Issue orders having the force of law to command whatever steps are necessary to

bring a violation into compliance.

**Section 11-29. Appeals.**

An aggrieved party, including the City Council, may appeal final administrative order of the special magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special magistrate. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed. The preparation of the record for purposes of appeal shall be paid for by the appealing party.

**Section 11-30. Provisions of chapter supplemental.**

It is the legislative intent of the City Council in enacting this chapter to provide an additional or supplemental means of obtaining compliance with city codes and ordinances. Nothing contained in this chapter shall prohibit the City of DeFuniak Springs from enforcing its codes and ordinances by any other means provided by law.

**Sections 11-31 through 11-40. Reserved.**

2.) Chapter 18 "Land Development Code", Article IV "Code Enforcement", is hereby repealed and removed from the Code of Ordinances to be replaced with the above, with the exception of existing Chapter 18 "Land Development Code", Sections 18-18 through 18-23, presently located in Article IV shall remain and shall be replaced into Chapter 18 "Land Development Code", Article III "Administration and Enforcement", retaining the same numbering and wording. Additionally, Chapter 18 "Land Development Code", Articles V through XVII shall be renumbered in their current order to be Articles IV through XVI, retaining the section numbering and wording presently in those Articles.

3.) The provisions of Ordinance 881 that repealed the former Chapter 11, in its entirety and reserved those sections, are hereby amended so that Chapter 11 is conformed as written above.

4.) **Repeal of Conflicting Provisions, Motions, and Ordinances.** The adoption of this Ordinance shall repeal and supersede any and all prior conflicting provisions of City law or policy, including those made by prior motion of the City Council, Resolution of the City Council, or Ordinance, whether specifically named herein or not.

3.) **Severability.** Any provisions of this Ordinance that is deemed to be unlawful shall be deemed severed upon such a determination with all remaining provisions continuing in full force and effect.

**THIS ORDINANCE SHALL TAKE EFFECT UPON ADOPTION.**

Adopted this 13th day of July 2020.

  
Robert "Bob" Campbell, Mayor



ATTEST:

By:   
Maryanne Schrader, City Clerk