ORDINANCE NO. 1335

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 2, ARTICLE III, DIVISION 5 OF THE CODE OF ORDINANCES, ENTITLED "CODE ENFORCEMENT BOARD," SPECIFICALLY FROM SECTION 2-96 THROUGH 2-104, TO ELIMINATE "CODE ENFORCEMENT BOARD" AND REPLACING IT WITH "SPECIAL MAGISTRATE", DEFINING THE QUALIFICATIONS, POWERS AND COMPENSATION OF THE SPECIAL MAGISTRATE; AND FURTHER REPEALING ARTICLE III, DIVISION 5.2, ENTITLED "SUPPLEMENTAL CODE ENFORCEMENT MECHANISM; SPECIAL MAGISTRATES", SECTION 2-108 ENTITLED "SPECIAL MAGISTRATES"; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, Chapter 2, Article III, Division 5 of the Code of Ordinances created the City of North Miami Code Enforcement Board as the entity empowered to enforce the City of North Miami's "City" codes and ordinances; and

WHEREAS, Chapter 162, Florida Statutes, authorizes the use of Special Magistrate(s) to enforce the City's codes and ordinances; and

WHEREAS, Special Magistrates are either retired judges or an attorney and member of the Florida Bar who is appointed by the City Council to preside over code enforcement matters; and

WHEREAS, the City currently utilizes a Special Magistrate to hear code enforcement violation and appeal cases during the morning calendar and the Code Enforcement Board to hear cases during the evening calendar; and

WHEREAS, City Administration has determined that it would be in the best interest of the City to present all code violation cases to a Special Magistrate(s) in lieu of the Code Enforcement Board, particularly with respect to legally complex cased or technical matters; and

WHEREAS, the use of a Special Magistrate for all code enforcement violation cases would provide an equitable, expeditious, and effective method of enforcement, which will

further promote, protect, and improve the public health, welfare and safety of the citizens of the City of North Miami.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. **References to Code Enforcement Board.** Any and all references to "Code Enforcement Board" are hereby replaced with "Special Magistrate".

Section 2. **Amendment of Code.** The Mayor and City Council of the City of North Miami, Florida hereby amend Chapter 2, Article III, Division 5 of the City Code of Ordinances, entitled "Code Enforcement Board," specifically from Sections 2-96 through 2-104 to eliminate the "Code Enforcement Board" and replacing it with "Special Magistrates".

Section 3. **Repeal of Section 2-108.** The Mayor and City Council of the City of North Miami, Florida hereby repeal Chapter 2, Article III, Division 5.2 of the City Code of Ordinances, entitled "Supplemental Code Enforcement Mechanism; Special Magistrates," specifically Sections 2-108, which shall read as follows:

CHAPTER 2. ADMINISTRATION

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ARTICLE III. BOARD, COMMITTEES, COMMISSIONS

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DIVISION 5. ~~CODE ENFORCEMENT BOARD~~ SPECIAL MAGISTRATES

Sec. 2-96. Appointment, terms.

(a) ~~There is hereby created and established a code enforcement board to enforce the business tax receipt, building, zoning, sign and any other codes and ordinances, which board shall consist of seven (7) members appointed by the mayor and city council for three-year terms except as set forth in this division. Members of the code enforcement board shall be residents of the city. Appointments shall be made on the basis of experience or interest in the fields of zoning and building control and in the subject matter, jurisdiction of the board, in the sole discretion of the mayor and city council. The membership of the code enforcement board shall, whenever possible, include an architect, a businessman, an engineer, a general contractor, a subcontractor and a realtor, but shall not be limited to these professions if there are no such qualified persons available. Each member of the council shall be entitled to nominate one (1) appointment. The remaining two (2) appointments shall be filled by any nominee appointment by majority vote of the council.~~ Pursuant to the constitutional home rule powers granted to municipalities by the Florida Constitution, and Chapter 166 and Section 162.22, Florida Statutes, the City creates the

position of Special Magistrate to enforce any provision of the City's Code. Special Magistrates shall be appointed by City Council.

(b) ~~Terms shall be for three (3) years. Any member may be reappointed for successive terms by the mayor and city council. Appointments to fill a vacancy shall be for the remainder of the unexpired term of office.~~ No more than three (3) special magistrates shall be appointed for service for any one (1) period.

(c) ~~If any member fails to attend two (2) out of three (3) successive meetings without cause and without prior notice and approval of the chairman, the board shall declare the member's office vacant, and the mayor and city council shall promptly fill such vacancy for the remainder of the term. The city council may reappoint the person removed provided there is at least a majority vote of the council to do so.~~ A special magistrate's term of appointment shall be limited to one (1) year. A special magistrate may be reappointed by the City Council provided that said magistrate possesses the qualifications required by this division. If a special magistrate is unable to hear a case, the case may be assigned to another special magistrate.

(d) ~~Creation; composition; qualifications.~~ The City Council, at its sole discretion, may remove any special magistrate from service at any time.

~~(1) There is created and established the North Miami Code Enforcement Board consisting of seven (7) members and two (2) alternates.~~

~~(2) Each member shall be a resident of the city and shall not hold any other elected public office or city employment within the city during the term of such appointment. Any member who ceases to reside within the city limits during the term of office shall be deemed to have resigned as of the date of moving from the city. The city council shall appoint a qualified person to serve out the unexpired term of any member vacating an office by resignation or otherwise. No member or alternate shall serve if that person is obligated to the city for any recorded lien, fine, judgment or if there is an unresolved code enforcement violation which has remained unresolved for sixty (60) days or more, without an appeal being taken by violator.~~

(e) To be eligible for service as a special magistrate, a person must either:

(1) Be a retired Florida judge; or

(2) Be a member in good standing of the Florida Bar for at least five (5) years; and

(3) Have a background in Local Government.

Section 2.97. ~~Chairman; quorum; reimbursement for expenses~~ Compensation.

~~Members of the code enforcement board shall elect a chairman, who shall be a voting member, from among its members. The presence of four (4) or more members shall constitute a quorum. Members shall serve without compensation but may be reimbursed for such travel, mileage and per diem expenses as may be authorized by the mayor and city council.~~ Subject to compliance with recordkeeping and other documentation requirements of the city manager or his designee, a special magistrate shall be compensated at a rate commensurate with the level of experience and qualifications

Sec. 2-98. Powers.

The ~~code enforcement board~~ special magistrate shall have the power to:

(1) Adopt rules for the conduct of its hearings;

(2) ~~Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the police department of the city~~ Hear appeals by alleged violators from Civil Violation Tickets; affirm in whole or in part, or reverse, the charge of violation; and affirm or modify the order of corrections and fine levied in the Ticket;

(3) Subpoena ~~evidence to its hearings~~ and swear alleged violators and witnesses to its hearings. Subpoenas may be served by the police department of the city;

(4) ~~Take testimony under oath~~ Subpoena evidence to the hearing;

(5) ~~Issue orders having the force of law commanding whatever stages are necessary to bring a violation into compliance~~ Take testimony under oath;

(6) Issue orders having the force of law commanding whatever stages ~~are~~ necessary to bring a violation into compliance.

Sec. 2-99. - Enforcement procedures; hearings; selection of quasi-judicial body.

(a) It shall be the duty of the code compliance officer to initiate enforcement proceedings of the various codes. ~~No member of the code enforcement board~~ The special magistrate shall not have the power to initiate such enforcement proceedings.

(b) Except as provided in subsection (d)(1) or (2) of this section, if a violation of any code is found, the code compliance officer shall notify the violator and give him a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code compliance officer shall notify the ~~code enforcement board or~~ special magistrate and request a hearing.

(c) The ~~board or~~ special magistrate ~~, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or posted or mailed as provided in F.S. § 162.12, to the violator. At the option of the code enforcement board or special magistrate, notice may be served by publication as provided in F.S. § 162.12. The violator shall elect either the code enforcement board or a special magistrate as the quasi-judicial body to adjudicate the code violation and submit same to the city no later than five (5) business days from the date the hearing notice was issued. In the event the violator fails to submit a selection by the time specified above, the city shall select a quasi-judicial body to adjudicate the violator's case. The city's decision shall be final and shall not be subject to appeal.~~ shall conduct hearings on a regularly scheduled monthly basis or more frequently upon request of the city manager or the city manager's designee. Written notice of such hearing shall be hand delivered or posted or mailed as provided in F.S. § 162.12, to the violator. At the option of the special magistrate, notice may be served by publication as provided in F.S. § 162.12.

Definition. A recurring violation is "a violation of a provision of the Code or an ordinance which:

(1) Was previously cited against a respondent;

(2) Was corrected (or otherwise brought into compliance) without an order being entered reciting the existence of the violation; and

(3) The same violation was allowed to again occur on the same property by the same respondent.~~"~~ Generally speaking, a recurring violation is a violation which recurs or one that is not corrected by the time specified for correction by the code inspector. And if the code inspector has reason to believe a recurring violation has occurred, the code inspector shall notify the violator and give the violator a reasonable time to correct the violation. Where the inspector alleges a recurring violation, the city shall present evidence at the violation hearing to support the allegation that the violation is a recurring violation. The special magistrate ~~or code enforcement board~~ may take "judicial notice" of matters in previous cases and in other city files.

Notice/fines. If the alleged violation is a recurring violation, the notice of hearing must recite that the alleged violation is a recurring violation, and if the property is again brought into compliance before the hearing, the special magistrate ~~or code enforcement board~~ shall make a determination that future findings of the same violation shall make said violations eligible to be "fined" in the amount of repeat violations. The notice of hearing is in addition to the notice that the code inspector shall provide to the violator.

Evidence. If the alleged violation is a recurring violation, the city shall present evidence at the violation hearing to support the allegation that the violation is a recurring violation. The special magistrate ~~or code enforcement board~~ may take "judicial notice" of matters in previous cases and other city files. Moreover, the special magistrate ~~or code enforcement board~~ has discretion to enter a "recurring order," which order(s) appears in substantially the same form as attached hereto in "Composite Exhibit A."*

(d) ~~[~~Notification of violator; request for hearing; repeat violations; etc.~~]~~

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

(2) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the ~~enforcement board~~ special magistrate and request a hearing. ~~The code enforcement board~~ The special magistrate, through ~~its clerical~~ city staff, shall schedule a hearing and shall provide notice pursuant to F.S. 162.12. The case may be presented to the ~~code enforcement board~~ special magistrate even if the repeat violation has been corrected prior, to the ~~board~~ hearing, and the notice shall so state. The term "repeat violation" means a violation of a provision of a code or ordinance by a person whom the ~~code enforcement board or~~ special magistrate, has previously found to have violated the same provision within five (5) years prior to the violation.

(e) A code compliance officer is defined as any authorized agent or employee of the city whose duty it is to ensure code compliance. Such term may be used interchangeably with code inspector or enforcement officer.

(f) None of the provisions contained in this division shall be considered exclusive. The code enforcement official or code compliance officer shall have the option to use any method provided by the Code of Ordinances or law to enforce the provisions of the various city codes. Nothing contained in this division shall prohibit the city council from enforcing its codes by any other means.

Sec. 2-100. - Hearings.

(a) Upon request of the code compliance officer, or at such other times as may be necessary, the ~~chairman of the board may call hearings of the code enforcement board. Hearings may also be called by written notice signed by at least three (3) members of the board. The board, at any hearing, may set a future hearing date. The board shall convene no less frequently than once every two (2) months but may meet more often as the demand necessitates~~ special magistrate may call hearings. Minutes shall be kept of all hearings and all hearings and proceedings shall be open to the public. The city council shall provide clerical and administrative personnel as may be reasonably required for the proper performance of the ~~board's~~ special magistrate's duties.

(b) Each case before the ~~board~~ special magistrate shall be presented by a code compliance officer or member of the administrative staff of the city. The city attorney or his designee shall serve as legal counsel to the city in the defense of appeals to the special magistrate.

(c) The ~~board~~ special magistrate shall proceed to hear the cases on the agenda for that day. The ~~board~~ special magistrate shall take testimony from the code compliance officer or staff member and alleged violator. All testimony shall be under oath and shall be recorded and may be transcribed at the expense of the violator. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any matter relevant to the issues, to impeach any witness and to rebut the evidence against the witness. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings. If the city prevails in prosecuting a case before the ~~board~~ special magistrate, the city shall be entitled to recover all costs incurred in prosecuting the case ~~before the board~~.

(d) At the conclusion of the hearing, the ~~board~~ special magistrate shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted in this division. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in section 2-101, the cost of repairs may be included along with the fine, if the order is not complied with by such date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, ~~the enforcement board shall issue~~ an order shall be issued acknowledging compliance ~~that~~ which shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

Sec. 2-101. - Fines; costs of repair.

(a) The ~~code enforcement board~~ special magistrate, upon notification by the code compliance officer that a previous order of the special magistrate has not been complied with by the set time, or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the ~~board~~ special magistrate for compliance or in the case of a repeat violation, for each day the repeat violation continues beginning with the date the repeat violation is found to have occurred by the code compliance officer. In addition, if the violation is a violation described in section 2-99 (d)(1), the ~~board~~ special magistrate shall notify the city council, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. If a finding of a violation or repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. A fine imposed pursuant to this section shall not exceed two hundred fifty dollars ($250.00) per day for a first violation and shall not exceed five hundred dollars ($500.00) per day for a repeat violation and, in addition, may include all costs of repairs pursuant to this subsection. In determining the amount of the fine, if any, the ~~code enforcement board~~ special magistrate shall consider the following factors:

(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.

(b) The ~~code enforcement board~~ special magistrate may reduce a fine imposed pursuant to this section.

Sec. 2-102. - Liens.

(a) A certified copy of an order ~~of the code enforcement board/special magistrate~~ 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; and, upon petition to the circuit court may be enforced in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property, but such order shall not be deemed otherwise to be a judgment of a court except for enforcement purposes. A fine imposed pursuant to this division shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city council and the city council or its designee, may execute a satisfaction or release of lien entered pursuant to this section. The city may also recover reasonable attorney's fees and court costs in connection with such enforcement actions. After three (3) months from the filing of any such lien which remains unpaid, the city council may authorize the city attorney to foreclose on the liens or to sue to recover a money judgment for the amount of the lien plus accrued interest and costs.

(b) No lien provided for by this section shall continue for a longer period than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to [F.S.] § 162.09(3) in a court of competent jurisdiction.

In an action to foreclose on a lien or for money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. The city council shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(c) No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under § 4, Art. X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under § 4(a), Art. X of the State Constitution.

Sec. 2-103. - Appeals.

An aggrieved party, including the city council, may appeal a final administrative order of the ~~code enforcement board or~~ special magistrate to the circuit court. An appeal shall be filed within thirty (30) days of the date of the execution of the order to be appealed. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the ~~code enforcement board or~~ special magistrate.

Sec. 2-104. - Notices.

(a) All notices required shall be provided to the alleged violator by certified mail, return receipt requested, if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the local government by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraph (b) and by first class mail directed to the addressees furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing; by hand delivery by the sheriff or other law enforcement officer, code compliance officer, or other person designated by the city council; or by leaving the notice at the violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and information such person of the contents of the notice. In the case of commercial premises, leaving the notice with the manager or other person in charge.

(b) In addition to providing notice as set forth in subsection (a) of this section, at the option of the ~~code enforcement board or~~ special magistrate, notice may also be served by publication or posting as follows: Such notice shall be published once during each week for four (4) consecutive weeks (four (4) publications being sufficient) in a newspaper of general circulation in the county where the ~~code enforcement board~~ special magistrate is located. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50, for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051. In lieu of publication as described above in this section, such notice may be posted for at least ten (10) days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two (2) locations, one (1) of which shall be the property upon which the violation is alleged to exist and the other of which shall be, at the North Miami City Hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting. Notice by publication or posting may run

concurrently with or may follow attempts to provide notice by hand delivery or by mail as required under subsection (a) of this section.

(c) Actions for money judgments may be pursued only on fines levied after October 1, 2000.

(d) Evidence that an attempt has been made to hand delivery or mail notice as provided in subsection (a) of this section, together with proof of publication or posting as provided in subsection (b) of this section, shall be sufficient to show that the notice requirements of this division have been met, without regard to whether or not the alleged violator actually received such notice.

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~~DIVISION 5.2 SUPPLEMENTAL CODE ENFORCEMENT MECHANISM; SPECIAL MAGISTRATES~~

~~**Sec. 2-108. - Special magistrates.**~~

~~Pursuant to F.S. § 162.03(2), special magistrates designated and determined to be qualified by the city council shall have the authority to adjudicate ordinance violations within the subject matter jurisdiction of the code enforcement board and shall exercise the same powers of such board and follow the same procedures applicable to the board under sections 2-96 through 2-104 of this chapter, subject to the following restrictions, conditions and limitations:~~

~~(1) Special magistrate - Generally.~~

~~a. The special magistrate shall have jurisdiction of an alleged violation when assigned by the city manager or a designee.~~

~~b. Unless approved by the code enforcement board, no case shall be assigned to the special magistrate system if such case is pending for adjudication by the board, and no special magistrate shall reduce any fine set by the board. Likewise, the code enforcement board shall not reduce a fine or modify a decision of the special magistrate.~~

~~(2) Special magistrate - Qualifications.~~

~~a. To be eligible for service as a special magistrate, a person must either:~~

~~1. Be a retired Florida judge; or~~

~~2. Be a member in good standing of the Florida bar for at least five (5) years.~~

~~b. No more than three (3) special magistrates shall be appointed for service for any one (1) period.~~

~~c. A special magistrate's term of appointment shall be limited to one (1) year. A special magistrate may be reappointed by the city council provided that said magistrate possesses the qualifications required by this division. If a special magistrate is unable to hear a case, the case may be assigned to another special magistrate.~~

~~d. The city council, at its sole discretion, may remove any special magistrate from service at any time.~~

~~e. Subject to compliance with recordkeeping and other documentation requirements of the city manager or his designee, a special magistrate shall be compensated at a rate commensurate with the level of experience and qualifications.~~

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Section 4. **Repeal.** All ordinances or parts of ordinances in conflict or inconsistent are repealed.

Section 5. **Conflict.** In the event that the provisions of this Ordinance are in conflict with any other ordinance, rule or regulation, the provisions of this Ordinance shall prevail.

Section 6. **Severability.** If any word, clause, phrase, sentence, paragraph or section of this Ordinance is held to be invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other word, clause, phrase, sentence, paragraph or section of this Ordinance.

Section 7. **Codification.** The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 8 **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 3-2 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 8 day of May, 2012.

PASSED AND ADOPTED by a 3-2 vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this 22 day of May, 2012.

ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Mayor Pierre

Seconded by: Councilwoman Steril

Vote:

Mayor Andre D. Pierre	x (Yes)	____ (No)
Vice Mayor Jean Marcellus	x (Yes)	____ (No)
Councilperson Michael R. Blynn	____ (Yes)	x (No)
Councilperson Scott Galvin	____ (Yes)	x (No)
Councilperson Marie Erlande Steril	x (Yes)	____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.