

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

ORDINANCE NO. 2016-19

**AN ORDINANCE OF THE VILLAGE OF WELLINGTON,
FLORIDA, AMENDING CHAPTER 2, ARTICLE IV,
AMENDING SECTION 2-198 ENTITLED "HEARINGS";
AMENDING SECTION 2-201 ENTITLED "SERVICE OF
NOTICE; METHODS"; PROVIDING FOR CONFLICT;
PROVIDING FOR CODIFICATION; PROVIDING FOR
SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, this Ordinance is enacted pursuant to Article VIII of the Florida Constitution, Chapters 162 and 166 of the *Florida Statutes*, the Charter of the Village of Wellington; and the police powers of the Village of Wellington; and

WHEREAS, the Village Council has determined that the Code of Ordinances should be revised to address the finality of code enforcement orders rendered by Wellington's Special Magistrates and that, in order to ensure finality, motions for rehearing or reconsideration of Special Magistrate final orders shall be prohibited; and

WHEREAS, the Village Council has determined that a property owner's financial ability to pay is not a proper basis for determining the amount of a fine and is not one of the factors to be considered, as set forth in Chapter 162, *Florida Statutes*; and

WHEREAS, the Village Council has also determined that the notice procedures for code enforcement violations should be updated to be consistent with the notice requirements set forth in section 162.12, *Florida Statutes*;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA:

SECTION 1: Section 2-198 of the Code of Ordinances, Village of Wellington, is hereby amended to read as follows:

Sec. 2-198. - Hearings.

(a) *Conduct.* Hearings shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. They shall, however, be conducted in accordance with accepted parliamentary procedures relative to motions, votes and decisions. Fundamental due process shall be observed and shall govern all hearings.

(b) *Minutes; provision of clerical and administrative personnel.* Minutes shall be kept of all hearings, and all hearings shall be open to the public. The code enforcement clerk shall provide clerical and administrative personnel as may be reasonably required by the special magistrate for the proper performance of its duties.

1
2 (c) *Presentation of case; recovery of costs.* Each case before the special
3 magistrate shall be presented by the village attorney, or by a member of the village
4 staff. If the village prevails in prosecuting a case before the special magistrate, it
5 shall be entitled to recover all costs incurred in prosecuting the case before the
6 special magistrate, and such costs may be included in a lien authorized by this
7 article and applicable laws.

8
9 (d) *Testimony.* The special magistrate shall proceed to hear the cases on the
10 agenda for that day. All testimony shall be under oath and shall be recorded. The
11 special magistrate shall take testimony from the code inspector and the alleged
12 violator.

13
14 (e) *Rights of parties to hearing.* Each party to the hearing shall have the right to:
15 (1) Call and examine witnesses.
16 (2) Introduce exhibits.
17 (3) Cross-examine opposing witnesses.
18 (4) Impeach witnesses.
19 (5) Rebut evidence.

20
21 (f) *Representation of alleged violator.* The alleged violator has the right to be
22 represented by an attorney at all hearings before the special magistrate.

23
24 (g) *Evidence.* All relevant evidence shall be admitted if, in the opinion of the special
25 magistrate, it is the type of evidence upon which reasonable and responsible
26 persons would normally rely in the conduct of business affairs, regardless of the
27 existence of any common law or statutory rule which might make such evidence
28 inadmissible over objections in civil actions. The special magistrate may exclude
29 irrelevant or unduly repetitious evidence. Hearsay evidence may be accepted for the
30 purpose of supplementing or explaining any direct evidence, but such hearsay
31 evidence shall not in and of itself be considered sufficient to support a finding or
32 decision unless the evidence would be admissible over objections in a civil action.

33
34 (h) *Findings of fact; issuance of orders.* At the conclusion of the hearing, special
35 magistrate shall issue findings of fact based on evidence of record and conclusions
36 of law, and shall issue an order affording the proper relief consistent with powers
37 granted in this article. The order may include a notice that it must be complied with
38 by a specified date and that a fine may be imposed and, under the conditions
39 specified in F.S. § 162.09(1), the cost of repairs may be included along with the fine
40 if the order is not complied with by such date.

41
42 (i) *Motions for rehearing or reconsideration of orders.* Motions for rehearing,
43 motions for reconsideration, or any other motion that seeks to have the special
44 magistrate overturn a previously issued order are not permitted and shall not be
45 considered by a special magistrate.

46

1
2 **SECTION 2:** Section 2-201 of the Code of Ordinances, Village of Wellington, is
3 hereby amended to read as follows:

4
5 Sec. 2-201. - Service of notice; methods.

6
7 (a) All notices required by this part must be provided to the alleged violator by:

8
9 | (1) Certified mail, ~~return receipt requested,~~ to the address listed in the tax
10 collector's office for tax notices or to the address listed in the county property
11 appraiser's database. The local government may also provide an additional
12 notice to any other address it may find for the property owner. For property
13 owned by a corporation, notices may be provided by certified mail to the
14 registered agent of the corporation. If the only notice provided was~~any notice~~
15 sent by certified mail and was ~~is~~ not signed as received within 30 days after the
16 postmarked date of mailing, additional notice may be provided by posting as
17 described in subsection (b);

18
19 (2) Hand delivery by the sheriff or other law enforcement officer, code inspector,
20 or other person designated by the local governing body;

21
22 (3) Leaving the notice at the violator's usual place of residence with any person
23 residing therein who is above 15 years of age and informing such person of the
24 contents of the notice; or

25
26 (4) In the case of commercial premises, leaving the notice with the manager or
27 other person in charge.

28
29 | (b) In addition to providing notice as set forth in subsection (a), ~~at the option of the~~
30 ~~special magistrate,~~ notice may also be served as provided in F.S. §162.12(2) by
31 publication or posting, as follows:

32
33 (1) Such notice shall be published once during each week for four consecutive
34 weeks (four publications being sufficient) in a newspaper of general circulation in
35 the county where the special magistrate is located. The newspaper shall meet
36 such requirements as are prescribed under chapter 50 of the Florida Statutes for
37 legal and official advertisements.

38
39 (2) Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

40
41 | (3) In lieu of publication as described in paragraph (ab(1)), such notice may be
42 posted at least ten days prior to the hearing, or prior to the expiration of any
43 deadline contained in the notice, in at least two locations, one of which shall be
44 the property upon which the violation is alleged to exist and the other of which
45 shall be in a conspicuous place at the village municipal complex.

46

1 (4) Proof of posting shall be by affidavit of the person posting the notice, which
2 affidavit shall include a copy of the notice posted and the date and places of its
3 posting.
4

5 (5) Notice by publication or posting may run concurrently with, or may follow, an
6 attempt or attempts to provide notice by hand delivery or by mail as required
7 under subsection (1).
8

9 (6) Evidence that an attempt has been made to hand deliver or mail notice as
10 provided in subsection (a), together with proof of publication or posting as
11 provided in subsection (b), shall be sufficient to show that the notice
12 requirements of this part have been met, without regard to whether or not the
13 alleged violator actually received such notice.
14

15 **SECTION 3.** Should any section, paragraph, sentence, clause, or phrase of this
16 Ordinance conflict with any section, paragraph, clause or phrase of any prior
17 Wellington Ordinance, Resolution, or Municipal Code provision; then in that event
18 the provisions of this Ordinance shall prevail to the extent of such conflict.
19

20 **SECTION 4:** Should any section, paragraph, sentence, clause, or phrase of this
21 Ordinance be declared by a court of competent jurisdiction to be invalid, such decision
22 shall not affect the validity of this Ordinance as a whole or any portion or part
23 thereof, other than the part so declared to be invalid.
24

25 **SECTION 5:** This Ordinance shall become effective immediately upon adoption
26 of the Wellington Council following second reading.
27

28 **PASSED** this 13th day of October, 2016 upon first reading.
29

30 **PASSED AND ADOPTED** this 8th day of November, 2016 on second and final
31 reading.
32

33 **WELLINGTON**

	FOR	AGAINST
34 BY: _____	_____	_____
35 Anne Gerwig, Mayor		
36 _____	_____	_____
37 John McGovern, Vice Mayor		
38 _____	_____	_____
39 Michael Drahos, Councilman		
40 _____	_____	_____
41 Michael Napoleone, Councilman		
42 _____	_____	_____
43 Tanya Siskind, Councilwoman		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

ATTEST:

BY: _____
Rachel R. Callovi, Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____
Laurie S. Cohen, Village Attorney