



## *Town of Fort Myers Beach*

### *Code Enforcement - Conduct of Hearing*

In addition to the authority listed under LDC Sec. 2-426, the Special Magistrate is expected to conduct fair and orderly hearings, to issue findings and orders within 15 days after conclusion of the hearing, and to not exceed their authority or address issues beyond the scope of those presented to him/her.

#### **EVIDENCE**

The Special Magistrate shall consider only evidence which he/she determines to be relevant to proving the existence of a code violation, or, in the case of compliance, only consider evidence which he/she determines to be relevant to the existence and/or correction of a public nuisance or repeat violations.

Upon a party's objection or upon his/her own motion, the Special Magistrate may exclude evidence that is irrelevant or unduly repetitious. The Special Magistrate shall not impose formal rules of discovery or evidence; however, the Special Magistrate may require the parties to informally exchange documentation or evidence.

#### **PRE-HEARING CONFERENCE**

The Special Magistrate may conduct a pre-hearing conference to deal with such matters as exploration of a settlement, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proposed evidence, and other such matters as will promote an orderly and efficient hearing.

#### **CONTINUANCES**

The Special Magistrate has the authority to continue the hearing, for good cause, either on his/her own initiative or at the request of both parties. The Special Magistrate shall not have the authority to grant a continuance if the Town (by the Town Manager, or designee) objects. Requests for continuances must be in writing and served no later than five (5) calendar days prior to the scheduled hearing, absent an emergency (as approved by the Town Manager, or designee). Any continuance shall not stop the accrual of amounts determined to be due and owing on the properties for violations or liens. It is the intent of this policy not to allow unwarranted and expensive delays and to respect the Special Magistrate's time and schedule.

#### **LEGAL REPRESENTATION**

Both the Town and the respondent whose actions are the subject of the hearing are entitled to representation by legal counsel. If the respondent whose property or actions are the subject of the hearing are to be represented by an attorney, written notification of the attorney's name, address, email, and telephone number must be provided to the Town at least seven (7) calendar days prior to the hearing. The respondent's attorney shall contact the Town Attorney concerning procedural or substantive issues to be addressed at the hearing.



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#### **FAILURE TO APPEAR AT HEARING**

Failure of the respondent, or his/her attorney to appear, or send a representative to the hearing, shall be deemed a waiver of the right to a hearing, provided that proper notice of the hearing (as determined by the Special Magistrate) has been given by the Town. In this event, the Special Magistrate shall issue an order stating that the hearing is waived and decided in the Town's favor. Written declaration, signed under penalty of perjury may be accepted by the Special Magistrate in lieu of personal appearance and testimony.

#### **MITIGATION**

Only the Town Council may consider and mitigate, waive, or suspend a fine or lien at a public Town Council meeting.

#### **PRE-HEARING SETTLEMENTS**

At their discretion, the Town may enter into settlement agreements with respondents at any pre-hearing conference to obtain code compliance and resolve the notice of violation or citation.