


## COMMITTEE MEMORANDUM

TO: Public Safety and Neighborhood Quality of Life Committee

FROM: Rafael A. Paz, City Attorney 

DATE: July 27, 2022

SUBJECT: **POTENTIAL MODIFICATIONS TO THE CITY OF MIAMI BEACH SPECIAL MAGISTRATE SYSTEM**

### **BACKGROUND**

On February 9, 2022, the City Commission adopted Resolution No. 2022-32045, which reappointed Chief Special Magistrate Enrique Zamora for a 3-month term commencing on February 24, 2022 and ending on May 23, 2022.<sup>1</sup> During the discussion of Resolution No. 2022-32045, certain observations and concerns were raised regarding the current Special Magistrate process. Thereafter, a referral was made to the Public Safety and Neighborhood Quality of Life Committee ("PSNQLC") directing City Staff to analyze the Special Magistrate process and present some potential modifications, for the PSNQLC's review, in order to enhance the Special Magistrate system and to make the process more effective and efficient.

Pursuant to Section 30-36 of City of Miami Beach Code of Laws and Ordinances (the "City Code"), and upon prior recommendation of the City Manager, the City Commission, by a majority vote, may appoint a Chief Special Magistrate, who shall be authorized to hold hearings and impose fines, liens, and other non-criminal penalties against violators for noncriminal violations of the City Code. Pursuant to the current system structure, the Special Magistrate hearing process begins when a party, individual, or business receives a notice of violation of the City Code. Depending upon the exact nature of the violation, the alleged violator will be served with a notice of hearing and given a hearing date, or in other cases, the alleged violator has the right to appeal the violation, which request for an appeal triggers the requirement that a hearing be held on the underlying violation. Between the time the alleged violator receives the notice of violation until the hearing date, the alleged violator is provided with the contact information for City staff should the alleged violator wish to attempt to resolve the outstanding violation(s). This would be the specific department (Code Compliance, Finance, Building, Fire, Parking Enforcement, etc.) which issued the violation, as well as the Office of the City Attorney, who prosecutes the violations.

Pursuant to the City Code, various violations may carry warnings, civil fines, and/or penalties for the suspension and/or revocation of licenses. When fines are imposed, those fines may increase in the event a violator incurs multiple violations within a certain period of time – typically twelve (12) months. If a violation carrying a fine is appealed, the eventual amount of the fine assessed is often within the discretion of the Special Magistrate. In some cases, the violation may be resolved if the violator demonstrates that he or she has come into compliance. Where an alleged

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<sup>1</sup> On May 4, 2022, the City Commission adopted Resolution No. 2022-32130 reappointing Enrique Zamora as Chief Special Magistrate for an additional 3-month term commencing on May 24, 2022 and ending on August 23, 2022.

violation comes into compliance with the violation prior to the hearing date (or extenuating circumstances warrant a mitigation of the fine), they are encouraged by the issuing department to contact staff and the Office of the City Attorney to reach a settlement and submit a proposed agreed order to the Special Magistrate. In most cases—as warranted by the circumstances—a settlement may involve an adjudication of guilt and a reduced fine. In egregious cases where an alleged violator has accrued multiple violations, the City generally declines to settle those cases or imposes a larger fine, pursuant to the City Code. See Section 30-74 of the City Code.

Once a hearing date has been assigned and a hearing has been set, all parties (including the alleged violator and the City witnesses) must be present before the Special Magistrate on the scheduled date/time. While the scheduling of an initial case hearing is a function of the City Clerk's Office, the setting of subsequent hearings are within the discretion of the Special Magistrate. In the event the Special Magistrate chooses to reschedule the case, the City clerk present and attending the hearing will provide the Special Magistrate with future available dates. Special Magistrate hearings are most frequently reset and/or delayed for the following reasons:

**(1) Attendance of Witnesses.**

When an alleged violator fails to appear at his or her hearing, and the Special Magistrate is not presented with proof that the hearing date has been received by the alleged violator, the hearing is reset by the Special Magistrate. See Section 30-78 of the City Code. However, if proof of service is shown by the City, the case moves forward and the record reflects that the alleged violator failed to appear. Aside from certain violations that are issued solely due to clerical evidence (i.e.; operating without a business tax receipt), material witnesses to a violation are required to testify in Special Magistrate hearings. Depending on the nature of the case and the individuals required to testify, some cases are reset for a date in the near future, while others may be continued for several months.

**(2) Continuance Requested.**

When the alleged violator is not prepared to move forward at the initial hearing, the violator and/or the attorney representing the violator, may request a continuance. There are also times when the City may request a continuance in those cases where the witnesses and/or issuing officer/inspector are not present to testify. Although it is within the discretion of the Special Magistrate to grant a continuance, it is common practice for the Special Magistrate to allow the alleged violator and the City one (1) continuance each. However, any further continuances are also within the discretion of the Special Magistrate. See Section 30-72 of the City Code. Alleged violators also frequently retain legal counsel (often "last minute") and, in the event a newly retained attorney appears on behalf of an alleged violator, an additional continuance may also be granted.

**(3) Progress Reports.**

Certain violations of the City Code may also be scheduled for a hearing known as a "progress report." A progress report provides the alleged violator with a future date to advise the Special Magistrate on the status of the violation. This outcome most frequently occurs in building cases involving construction and/or restoration of a physical structure. These types of hearings could be avoided in exchange for a later "compliance date" where the violator must comply with the violation or be fined. However, this may not be possible in certain cases.

## **BACKLOG**

The scheduling of Special Magistrate hearings has become severely backlogged for various reasons. Notably, the number of Special Magistrate cases has dramatically increased due to the introduction of new cases to be heard by the Special Magistrates, including 600+ Building cases that previously went before the Miami-Dade County Unsafe Structures Board. Furthermore, the request that the Special Magistrates prioritize certain categories of cases, such as life safety violations, habitual property violators, along with sidewalk café, boat charter, and short-term rental violations, has also contributed to the increased backlog. When you couple the foregoing with the months that Special Magistrate hearings were not held due to the Covid-19 pandemic, and the recurring and continuing staff shortages caused by Covid-19, this has created an unprecedented backlog of cases. As part of the Fiscal Year 2023 Operating Budget, the Office of the City Clerk has requested an additional Code Violation Clerk to assist with the accumulation of cases. It is anticipated that the approval of the requested additional Code Violation Clerk should help alleviate the accrual of unheard Special Magistrate cases.

## **ANALYSIS**

At this time, City staff has identified certain measures which may increase the efficiency and efficacy of the Special Magistrate system. This may involve increasing the frequency of hearings (on at least a temporary basis), which would need to occur during a window of time in the future to ensure that all alleged violators are provided proper notice of upcoming hearing dates. As previously indicated herein, discussions and perceptions have indicated that case outcomes are also of concern. In addition to the Special Magistrates and the City Clerk's Office scheduling hearings more efficiently, the following actions may aid in accomplishing the desired outcome:

- Expediting simplified cases, whenever possible;
- Increasing the frequency of Special Magistrate hearings (which City staff anticipates costing, at a minimum, \$1,400 per day);
- Promoting and/or hiring additional staff to assist with the processing of cases;
- Periodic meetings with the Special Magistrates to evaluate and discuss the process and case dispositions;
- Additional staff and/or resources to monitor cases and hearing outcomes;
- Reducing the amount of progress reports permitted in exchange for a later date of compliance;
- Limiting the number of continuances allowed and, for those continuances allowed, minimizing the time until the next (future) hearing.

The City has previously utilized a multi-member board to adjudicate certain violations of the City Code. This board was disbanded in 2003 by Ordinance 2003-3405 and was known as the "Nuisance Abatement Board." This board was charged with adjudicating violations of the City Code, which are defined as "nuisances" under the Florida Statutes. Fla. Stat. §§ 823.05, 823.10. These are defined as places that injure the health of the community, places of prostitution, or places of gambling. As a means to address and adjudicate violations of the City Code which occur on a much more frequent basis, the Florida Statutes provide for a municipality to appoint one or more Code Enforcement Boards. Fla. Stat. § 162.05. The Code Enforcement Board would be staffed, in accordance with Fla. Stat. 162.05, by appointed members who are City residents, and the Code Enforcement Board could be in addition to, or in lieu of, the Special Magistrates.

For such a Board not to create additional backlog, it would require that it meet weekly—and likely more often. It may be challenging to find residents who could devote that much time. The number of cases that could be scheduled per session would likely also need to be reduced to allow sufficient time for the Board to deliberate between cases. The only possible compromise may be for such a board to hear certain “routine” cases, which may lead to a reduction in cases on the Special Magistrate docket. At least on a temporary basis, the Office of the City Clerk and City Attorney would likely need additional personnel to staff such a board, although Florida law provides that while an attorney may either be counsel to an Enforcement Board or shall represent the municipality (City) by presenting cases before the Enforcement Board, in no case shall the local governing body attorney serve in both capacities.

### **CONCLUSION**

The City Attorney’s Office and City Clerk’s Office recommend the PSNQLC (and, ultimately, the City Commission) evaluate these potential modifications to the Special Magistrate system in an effort to improve the entirety of the process.