

Special Magistrate for the City of Haines City

CITY OF HAINES CITY,

Petitioner,

Vs.

Violation No.: 36968

ELIA ESTHER FIGUEROA LICIAGA

Respondent(s)

NOTICE OF RE-HEARING

**NOTICE: A FINE AND COSTS MAY BE IMPOSED AT THIS HEARING
PLEASE GOVERN YOURSELF ACCORDINGLY**

Pursuant to Section 2.40 of the Code of Ordinances and Section 162.06 Florida Statutes, you are hereby called upon to take notice that a Public Hearing will be conducted in the above-styled cause, by the Special Magistrate, on **WEDNESDAY, FEBRUARY 26, 2025 at 8:45 a.m.** or as soon after as may be heard, in the Commission Chambers, City Hall, 620 E. Main St. Haines City, Florida. The Special Magistrate will receive testimony and evidence at said Public Hearing and shall make such findings of fact and conclusions of law as are supported by the testimony and evidence pertaining to the matters alleged in the attached Affidavit of Violation(s) and may issue a Final Order affording the proper relief. A certified copy of the Final 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, upon any subsequent purchasers, successors in interest, or assigns. If you fail to appear at the Hearing, the Special Magistrate may base any findings solely on the testimony and evidence presented by The Code Compliance Officer. Please govern yourself accordingly.

DATED: this 01/09/2025

SPECIAL MAGISTRATE OF THE
CITY OF HAINES CITY, FLORIDA

BY:


Michelle Escribano Code Enforcement Clerk

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Notice of Hearing has been furnished by Certified Mail/Personal Service to Respondents, *ELIA ESTHER FIGUEROA LICIAGA, 1562 FINNIGAN CIR. HAINES CITY, FL. 33844.*

Return Receipt Number: 9489009000276582291573

BY:


Michelle Escribano Code Enforcement Clerk

IF A PERSON DESIRES TO APPEAL ANY DECISION WITH RESPECT TO ANY MATTER CONSIDERED AT THESE PROCEEDINGS, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND THAT, FOR THIS PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

Special Magistrate for the City of Haines City

CITY OF HAINES CITY,
Petitioner,

Violation No.: 36968

ELIA ESTHER FIGUEROA LICIAGA
Respondent(s)

STATE OF FLORIDA
COUNTY OF POLK


AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared DAVID JIMENEZ, Code Officer for the City of Haines City, Florida, who after being duly sworn, deposes and states:

1. That ELIA ESTHER FIGUEROA LICIAGA, of 1562 FINNIGAN CIR. HAINES CITY, FL. 33844 hereinafter referred to as "RESPONDENT".
2. That the Respondent violated LDR Section 11.4.2 (D) PARKING OF CERTAIN VEHICLES WITHIN THE CITY.
3. That a hearing was held on December 18, 2024 and the Magistrate dismissed the case.
4. That the city requested a re-hearing pursuant to Haines City Code of Ordinances Section 2-37 and the Magistrate granted the re-hearing.
5. The order for the re-hearing is attached as Exhibit "A".
6. That a true copy of the Notice of Hearing to be served upon the RESPONDENT in conjunction with this Affidavit of Violation is attached hereto.

AFFIRMATION UNDER OATH

The foregoing instrument was sworn to (or affirmed), subscribed, and acknowledged before me **by means of physical presence or online notarization**, this 9 day of January, 2025, by David Jimenez, who is personally known to me or has produced _____ (type of identification) as identification.



DAVID JIMENEZ
as the Code Officer for Haines City

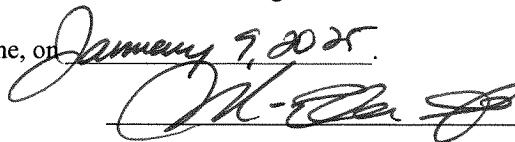
1-9-25

Date

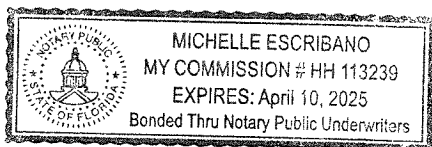
STATE OF FLORIDA
COUNTY OF POLK

BEFORE ME the undersigned authority personally appeared David Jimenez, who is personally known to me and after being first duly sworn, deposes and says that affiant is the Code Inspector for the City of Haines City, and that the above Affidavit is true and correct to the best of affiant's knowledge and belief.

SWORN TO AND SUBSCRIBED before me, on January 9, 2025.



Notary Public, State of Florida



Printed/Typed Name: Michelle Escribano

Exhibit A

IN AND FOR THE CITY OF HAINES CITY, FLORIDA

VIOLATION NO: 36968

IN RE: 1562 FINNIGAN CIR

27-27-34-810535-001650

GRACELYN GROVE PHASE 1 PB 188 PAGES
30-35 LOT 165



CITY OF HAINES CITY, a Florida municipal corporation,
Petitioner

v.

ELIA ESTHER FIGUEROA LICIAGA
1562 FINNIGAN CIR
HAINES CITY, FL 33844-6156
Respondent(s)

ORDER ON MOTION FOR REHEARING

THIS CAUSE came before the special magistrate on the Code Enforcement officer's request for rehearing. Rehearing is governed by the Code of Ordinances § 2-37. The request was submitted on or before December 19, 2024 seeking review of the special magistrate's Order of December 18, 2024. Therefore, the request is timely.

This matter arises from a tow truck allegedly parked in front of a residence in violation of LDR § 11.4.2(D). The Respondent, Elia Figueroa, appeared at the hearing on December 18, 2024. The evidence established that there was, in fact, a tow truck parked in front of the residence on November 21, 2024 at 11:07am. The Respondent did not dispute this evidence. Ms. Figueroa admitted through an interpreter that the vehicle is never parked there overnight, and that it comes and goes during the day because her husband drives it for work. She further testified that it is parked there, at most 1-1.5 hours at a time, and is parked there when her husband stops by to eat, to pick up their children, or to change clothes if he gets wet.

The City had no evidence about how long the vehicle was parked there on November 21, 2024, or about the reason for it being parked there. Ms. Figueroa testified that on the day in question, November 21, 2024, her husband was taking a shower while the vehicle was parked there. The audio recording of the hearing reveals that the special magistrate found that there was no violation "this time" because "parking is prohibited, but stopping by to grab lunch or a quick change of clothes" is not prohibited by the ordinance. Ms. Figueroa was warned that stops should be infrequent and brief in the future.

The City requested a rehearing. In its request, the City states, "the respondent did not provide sufficient testimony to justify the parking of a commercial vehicle in a residential district, as specified in LDR Sec. 11.4.2 (D)." The City argues that that the ordinance "...does not consider work breaks or personal reasons as valid justifications for parking such vehicles in a residential area." The City further argues that "Additionally, the magistrate believed it was not the intent of the city commission to prohibit brief stops. However, there was no testimony to such believe (sic), and was just the opinion of the magistrate."

The City's request is GRANTED in part and DENIED in part as set forth below. The City's argument is well-taken, to a point. The magistrate committed an error of law which he now takes an opportunity to correct. However, the City is also incorrect about its interpretation of the ordinance.

LDR § 11.4.2(D) provides that tow trucks and the like may be parked on private (residential) property "...only in the course of making deliveries or pickups or in rendering services on the premises for the occupants." The ordinance does not prohibit stops to pick up lunch, a fresh set of clothes, or even the driver's children. The ordinance authorizes "deliveries or pickups" but does not require that those deliveries and pickups be commercial in nature. Therefore, the magistrate was mostly correct to state that "stopping by to grab lunch or a quick change of clothes" would not be prohibited.

Even so, the magistrate's decision is due to be reversed because the uncontroverted evidence presented at the hearing clearly established that the reason the truck was parked in front of the house on November 21, 2024 was because Ms. Figueroa's husband was taking a shower. Any discussion about whether picking up children or lunch is prohibited or not is beside the point and outside the scope of controversy in this matter. Clearly, taking a shower is not a permitted reason to park a tow truck at a residence, whether for a few minutes or for an hour. LDR § 11.4.2.

Therefore, the Order of December 18, 2024 is hereby VACATED.

This reversal is based on an error of law, as opposed to an error of fact. Therefore, arguably, the magistrate has the power to issue a new order without a new hearing pursuant to Code of Ordinances § 2-37(b)(2). However, because of the known language barrier, and because a new order would potentially involve assessment of fines and costs on the Respondent without an additional opportunity to be heard, the magistrate declines to enter a new order without a hearing.

Therefore, it is ORDERED that the City shall give notice to the Respondent of this Order and set this matter for the next available hearing date that permits it to give proper notice to the Respondent.

DONE AND ORDERED this 3rd day of January, 2025, at Haines City, Polk County, Florida.

ATTEST:



Michelle Escribano

Clerk to the Special Magistrate



SPECIAL MAGISTRATE

City of Haines City Special Magistrate

This ORDER may be appealed to the Special Magistrate within twenty (20) days of the date of its rendition pursuant to City Ordinance 10-1366, by filing in a timely an Application for Appeal with the Code Enforcement Clerk.

Violation No: 36968

Certified Mail Number: 9489 0090 0027 6582 2915 73