

ORDINANCE NO. 4172

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, REPEALING CHAPTER 2, "ADMINISTRATION", ARTICLE IV, "CODE ENFORCEMENT", DIVISION 2, "CODE ENFORCEMENT BOARD AND SPECIAL MAGISTRATE"; CREATING CHAPTER 2, "ADMINISTRATION", ARTICLE IV, "CODE ENFORCEMENT", DIVISION 2, "CODE COMPLIANCE"; PROVIDING FOR SEVERABILITY, PRESERVATION, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Chapter 162, Part I, Florida Statutes, sets for the process the City has been utilizing for code enforcement for all properties within the City; and

WHEREAS, code enforcement liens and money judgments for code enforcement liens under Chapter 162, Part I, Florida Statutes, are not enforceable against homestead property in accordance with Section 4, Art. X of the Constitution of the State of Florida; and

WHEREAS, the diminishment in value of residential properties based upon code enforcement liens and daily running fines have resulted in encumbrances on the properties which greatly exceed the value of property and impair the ability of the homeowners to sell their homestead properties and/or obtain financing to achieve code compliance; and

WHEREAS, the City Council recognizes that the City is not required by law to reduce code enforcement fines and liens established on properties within the City; and

WHEREAS, the City Council also recognizes that a reduction process for code enforcement fines and liens is helpful in obtaining compliance; and

WHEREAS, the City Council also recognizes that allowing for more expansive lien reductions on homestead properties is necessary to assist those homeowners in voluntarily bringing their homestead properties into compliance as enforcement by foreclosure or judgment is not an option for the City against homestead properties; and

WHEREAS, the City Council in recognition of the foregoing seeks to establish a new code compliance process that recognizes the limitations of code enforcement on homestead properties and greatly encourages voluntary compliance by such homeowners; and

WHEREAS, the City Council recognizes that there is also the need to otherwise update and revise its code enforcement ordinance in order to create a more efficient code

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compliance process which encourages voluntary code compliance by all property owners;
and

WHEREAS, the City Council of the City of Riviera Beach legislatively determines and declares that creation of a new code compliance ordinance as set forth herein is in the public interest of the health, safety and general welfare of the residents and business community of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, that:

SECTION 1. LEGISLATIVE FINDINGS, INTENT AND PURPOSE. The WHEREAS clauses contained herein are legislatively determined to be true and correct and are incorporated herein and represent the legislative findings of the City Council. It is the purpose and intent of this ordinance to promote the health, safety and general welfare of the residents of the City through the development of strategies and methodologies of preserving the homestead protections of Section 4, Article X of the State Constitution and to obtain voluntary compliance with the City's code of ordinance.

SECTION 2. BOUNDARIES. That this is Ordinance shall apply to all properties located within the boundaries of the City of Riviera Beach, Florida.

SECTION 3. REPEAL OF CHAPTER 2, "ADMINISTRATION", ARTICLE VI, "CODE ENFORCEMENT", DIVISION 2, "CODE ENFORCEMENT BOARD AND SPECIAL MASTER". In order to create a community of compliance with the City's Code of Ordinances, the City Council hereby repeals Division 2, entitled "Code Enforcement Board and Special Master" under Chapter 2, Article VI of the City's Code of Ordinances as shown below.

~~Sec. 2-331. Definitions.~~

~~The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Attorney* means the city attorney for the city or the city attorney's designee. The attorney shall be the legal counsel for the code enforcement board.~~

~~*City prosecutor* means the prosecuting attorney before the board or special master.~~

~~*Code enforcement board* means the board organized in accordance with F.S. ch. 162.~~

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~~Code enforcement officer means an employee of the city whose duty it is to assure code compliance.~~

~~Special master means the person appointed by the city council pursuant to F.S. § 162.03(2).~~

~~(Code 1957, § 2-36.1; Ord. No. 2850, § 1, 3-1-00)~~

~~Cross reference(s) Definitions and rules of construction generally, § 1-2Cross reference(s).~~

~~Sec. 2-332. Creation; applicability; jurisdiction.~~

~~Pursuant to F.S. § 162.03, the city council hereby creates the code enforcement board and designates a special master for the city. The board or the special master shall have authority to hold hearings and assess fines against violators of the city's Code of Ordinances in accordance with the terms and conditions set forth herein and under F.S. ch. 162. The jurisdiction of the code enforcement board or the special master shall not be exclusive. Any alleged violation of this Code may be pursued by appropriate remedy in court at the option of the city manager.~~

~~(Code 1957, § 2-36.2; Ord. No. 2850, § 1, 3-1-00)~~

~~Sec. 2-333. Organization; qualifications of members; terms of office; officers.~~

~~(a) The city council shall appoint a seven-member code enforcement board and two alternate members to serve on the board in the absence of board members. The members shall have the following qualifications and terms of office:~~

~~(1) Members of the enforcement board shall be residents of the city. Appointments shall be made in accordance with applicable law and ordinances on the basis of experience and interest in the subject matter jurisdiction of the code enforcement board.~~

~~(2) The membership of the board shall, whenever possible, consist of:~~

~~a. An architect.~~

~~b. A businessman.~~

~~c. An engineer.~~

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~~d.—A general contractor.~~

~~e.—A subcontractor.~~

~~f.—A realtor or broker.~~

~~(3) No member of the enforcement board may be an employee of the city.~~

~~(b) In order that terms of office of all members will not expire at the same time, the initial appointments to the enforcement board shall be as follows:~~

~~(1) Two members shall be appointed for terms of one year.~~

~~(2) Three members shall be appointed for terms of two years.~~

~~(3) Two members shall be appointed for terms of three years.~~

~~Thereafter, all appointments shall be made for terms of three years. Any member may be reappointed from term to term upon the approval of the city council.~~

~~(c) Appointments to fill any vacancy on the enforcement board shall be for the remainder of the unexpired term of office. Any member who fails to attend two out of three successive meetings without cause and without prior approval of the chairperson or the acting chairperson shall automatically forfeit his appointment and the city council shall promptly fill such vacancy.~~

~~(d) Each member of the board shall vote on every motion; however, in the event of a conflict of interest as defined in F.S. § 112-311 et seq., Code of Ethics for Public Officers and Employees, such member shall not vote or participate in the discussion of such matter and thereafter, within 15 days after the vote occurs, shall file a disclosure of voting conflict, form 4 with the city clerk, and such disclosure is to be incorporated into the minutes of that meeting.~~

~~(e) The members of the enforcement board shall elect a chairperson. The presence of four or more members shall constitute a quorum of the enforcement board. Members shall serve without compensation, but may be reimbursed for such travel expenses, mileage expenses, and per diem expenses as may be authorized by the city council.~~

~~(f) The members shall serve in accordance with the Code of Ordinances and may be removed or suspended for cause as provided in such ordinance for the removal of members of the board.~~

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~~(Code 1957, § 2-36.3)~~

~~Sec. 2-333.1. Special master; appointment; term; qualifications.~~

~~(a) There is hereby established a special master who shall be designated by the City Council of the City of Riviera Beach.~~

~~(b) The special master may be appointed for a term not to exceed two years.~~

~~(c) The special master shall be an attorney and a member of the Florida Bar.~~

~~(d) The special master may be removed from office by the city council with 30 days written notice.~~

~~(e) The special master shall preside over code enforcement matters once a month, or more often if necessary.~~

~~(f) Minutes shall be maintained at all hearings presided over by the special master; all hearings shall be open to the public. The city shall provide clerical and administrative personnel as may be required by the special master for the proper performance of the special master's duties.~~

~~(g) The city prosecutor shall represent the city by presenting cases before the special master.~~

~~(Ord. No. 2850, § 1, 3-1-00)~~

~~Sec. 2-334. Powers.~~

~~The enforcement board and the special master shall jointly 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 city's police department or by code enforcement.~~

~~(3) Subpoena evidence.~~

~~(4) Take testimony under oath.~~

~~(5) Admit material into evidence.~~

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

~~(Code 1957, § 2-36.4; Ord. No. 2850, § 1, 3-1-00)~~

~~Sec. 2-334.1. Assignment of cases.~~

~~Cases shall be assigned to the code enforcement board or to the special master by the city manager or the city manager's designee.~~

~~(Ord. No. 2850, § 1, 3-1-00)~~

~~Sec. 2-335. Enforcement procedures.~~

~~(a) It shall be the duty of the code enforcement officer to initiate enforcement procedures of the various codes; however, no member of the board nor the special master shall have the power to initiate such enforcement proceedings.~~

~~(b) Except as provided in subsection (c) and (d) of this section, if a violation of the codes is found, the code enforcement officer shall notify the violator and give such violator a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction in the notice of violation, the code enforcement officer shall notify the enforcement board or special master and request a hearing. Written notice of hearing before the board or special master shall be hand delivered or mailed to such violator as provided herein.~~

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

~~(d) If a repeat violation is found, the code enforcement officer shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, shall notify the enforcement board or special master and request a hearing. The code enforcement board or special master, through its clerical staff, shall schedule a hearing and shall provide notice of such hearing as provided herein. The case may be presented to the enforcement board or special master even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. A repeat violation is defined as a violation of the provisions of the Code of Ordinances by a person who has been previously found to have violated the same provision within five years prior to this violation.~~

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~~(e) If the owner of property which is subject to an enforcement proceeding before the enforcement board, special master, or court transfers ownership of such property between the time the initial pleading or notice of violation was served and the time of the hearing, such owner shall:~~

~~(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.~~

~~(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.~~

~~(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.~~

~~(4) File a notice with the court or with code enforcement of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.~~

~~(Code 1957, § 2-36.5; Ord. No. 2850, § 1, 3-1-00)~~

~~Sec. 2-336. Conduct of hearings.~~

~~(a) The chairperson of the enforcement board may schedule hearings of the enforcement board, and hearings may also be scheduled by written notice signed by at least three members of the enforcement board. The special master, through clerical staff, shall schedule hearings as provided herein. Minutes shall be kept of all hearings, and all hearings shall be open to the public.~~

~~(b) The city manager shall designate a department to provide such clerical and administrative personnel as may be reasonably required by the enforcement board or special master for the proper performance of their duties, to keep all records of the board or special master, and to collect fines when assessed.~~

~~(c) Each case before the enforcement board or special master shall be presented by the city prosecutor or by a member of the administrative staff of the city.~~

~~(d) The enforcement board or special master shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board or special master shall take testimony from the code enforcement officer, the alleged violator and all other material witnesses. Physical evidence may be admitted into evidence by the board or special master. Formal rules of evidence shall not apply; however, fundamental due process shall be observed and govern such~~

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~~proceedings. Enforcement board members or the special master may ask questions of any witness testifying at the hearing or call any witness deemed necessary to provide a full and fair hearing of the case.~~

~~At the hearing the burden of proof shall be upon the city to show by competent, substantial evidence that a violation did occur, or does exist, or has been repeated. If proper notice of hearing has been given to the violator, either as actual notice or as provided herein, a hearing may proceed in the absence of the violator.~~

~~(e) At the conclusion of the hearings, the enforcement board or special master shall issue findings of fact based on evidence of record and conclusions of law, and shall issue a written order affording the relief consistent with powers granted herein. In the case of the enforcement board, the findings and conclusions shall be by motion approved by a majority of those present and voting, except that at least four members of the enforcement board must vote for the action to be official. The order issued by the enforcement board or by the special master shall be stated orally at the hearing, and shall be reduced to writing and sent by certified mail to the violator within ten working days after the hearing. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by such date.~~

~~(f) 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 purchaser, successor 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 or special master shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue an order acknowledging compliance.~~

~~(Code 1957, § 2-36.6; Ord. No. 2850, § 1, 3-1-00)~~

~~Sec. 2-337. Appeal.~~

~~An aggrieved party, including the city, may appeal a ruling or written order of the enforcement board or special master by certiorari to the circuit court of the 15th Judicial Circuit in and for the county. An appeal shall be filed within 30 days of the execution of the written order to be appealed.~~

~~(Code 1957, § 2-36.7; Ord. No. 2850, § 1, 3-1-00)~~

~~Sec. 2-338. Administrative fines; liens.~~

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~~(a) The code enforcement board or special master, upon notification by the code enforcement officer that an order of the enforcement board or special master 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 enforcement board or special master for compliance or, in the case of a repeat violation, for each day the repeat violation continues past the date of notice of the violator of the repeat violation. If a finding of a violation or a repeat violation has been made as provided herein, a hearing shall not be necessary for issuance of the order imposing the fine.~~

~~(b) A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 per day for a repeat violation. In determining the amount of the fine, if any, the enforcement board or special master 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 violation committed by the violator.~~

~~(c) The enforcement board or special master may reduce a fine imposed pursuant to this section.~~

~~(d) A certified copy of an order 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. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine pursuant to this section runs in favor of the city and the city may execute a satisfaction or release of lien entered pursuant to this section. After three months from the filing of any such lien which remains unpaid, the enforcement board or special master may authorize the city attorney to foreclose on the lien. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under section 4, article X of the state constitution.~~

~~(e) No lien provided under the Local Government Code Enforcement Boards Act shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the~~

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~~lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorneys' fee, that incurs in the foreclosure. The continuation of the lien affected 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.~~

~~(Code 1957, § 2-36.8; Ord. No. 2850, § 1, 3-1-00)~~

~~Sec. 2-339. Notices.~~

~~(a) All notices shall be provided to the alleged violator by:~~

~~(1) Certified mail, return receipt requested, provided 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 city by such owner and is returned as unclaimed or refused, notice may be provided by posting as described below, and by first class mail directed to the addresses furnished to the city with a properly executed proof of mailing or affidavit confirming the first class mailing;~~

~~(2) Hand delivery by the code enforcement officer or police officer;~~

~~(3) Leaving the notice at the violator's usual place of residence with any person residing therein who is over the age of 15 and informing such person of the contents of the notice; or~~

~~(4) 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), at the option of code enforcement board or the special master, notice may also be served by posting as follows:~~

~~(1) Notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other shall be at city hall.~~

~~(2) Notice by posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a).~~

~~(3) Evidence that an attempt has been made to hand deliver or mail as provided in subsection (a), together with proof of posting as provided in this section, shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.~~

~~(Ord. No. 2850, § 1, 3-1-00)~~

SECTION 4. CREATION OF CHAPTER 2, “ADMINISTRATION”, ARTICLE VI, “CODE ENFORCEMENT”, DIVISION 2, “CODE COMPLIANCE”. In order to create a community of compliance with the City’s Code of Ordinances, the City Council hereby creates Division 2, entitled “Code Compliance” under Chapter 2, Article VI of the City’s Code of Ordinances, which shall read as follows:

Sec. 2-331. – Intent, applicability and jurisdiction.

(a) It is the intent of this division to promote, protect and improve the health, safety and welfare of the citizens of the city by authorizing the appointment of one (1) or more special magistrates with authority to impose administrative fines and other noncriminal penalties, to provide an equitable, expeditious, effective and inexpensive method of obtaining compliance with the city’s codes and ordinances, and obtaining enforcement where a pending or repeated violation continues to exist.

(b) This article creates the city’s code compliance process consistent with the Chapter 162, Part I, the Local Government Code Enforcement Boards Act, as set forth in sections 162.01 – 162.13, Florida Statutes (as amended from time to time). The city hereby authorizes its special magistrate(s) to hold hearings and assess fines against violators of the city’s code of ordinances in accordance with the terms and conditions set forth herein and in the Local Government Code Enforcement Boards Act.

(c) The jurisdiction of the city’s special magistrate(s) shall not be exclusive. Any alleged violation of the city’s code of ordinances may be pursued by appropriate remedy in court or other appropriate venue at the option of the city.

(d) The city council reserves the right to establish a code compliance board consistent with the Local Government Code Enforcement Boards Act.

Sec. 2-332. – Special Magistrate Appointed.

(a) The city council may appoint one (1) or more special magistrates who shall have the authority to hold hearings and assess fines against violators of the ordinances of the city, as provided in Chapter 162, Part I, Florida Statutes, and in this article. The special magistrate shall serve in an *ex officio* capacity if the appointed special magistrate serves

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other local governments as a special magistrate. Such service to other local governments does not create duties inconsistent with serving as special magistrate to the city.

(b) A special magistrate shall be an attorney admitted to the Florida Bar who possesses experience in zoning and land use law, building regulations, code enforcement, and/or administrative law.

(c) A special magistrate shall not be a city employee, but shall enter into an agreement to provide professional services at a rate established by the city.

(d) The city shall provide necessary and reasonable clerical and administrative support to enable a special magistrate to perform his or her duties. A special magistrate shall not be authorized to hire or use the services of any person except those provided by the city to assist him or her in the performance of his or her duties.

Sec. 2-333. - Definitions.

Except as otherwise clarified herein, the terms used in this division shall have the same definition as set forth in Chapter 162, Part I, Florida Statutes:

(a) *Special magistrate* means an attorney admitted to the Florida Bar who possesses experience in zoning and land use law, building regulations, code enforcement and/or administrative law, and has been appointed by the city council to hold hearings and assess fines against violators of the city ordinances.

(b) *Code compliance administrator* means the city employee or his or her designee having the responsibility for providing administrative support for special magistrates, accepting applications, giving notices, presenting cases and otherwise supporting the code compliance program.

(c) *Code officer* means any authorized agent or employee of the city whose duty it is to assure code compliance.

(d) *Repeat violation* means a violation of a provision of an ordinance by a person who has been previously found through a code enforcement board, special magistrate or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations. All repeat violations shall be subject to an administrative fee which reasonable represents the costs to the city for original and repeat enforcement of its code of ordinances. The administrative fee shall be set by resolution and shall be included in a lien authorized under this division.

Sec. 2-334. - Compliance procedure.

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(a) *Generally.* It shall be the duty of the code officer to initiate enforcement proceedings of the various codes; no special magistrate shall have the power to initiate such proceedings.

(b) *Notification of violation; hearing; written notice of hearing.* Except as provided in subsections (c) and (d), if a violation of the codes is found, the code officer shall notify the violator and give him or her a reasonable time to correct the violation. The notice may also include the notice of hearing should the violation continue beyond the time specified for correction; or, code compliance may issue a separate notice of hearing should the violation continue beyond the time specified for correction. The written notice of violation and notice of hearing shall be served as provided in this article to the violator. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code officer, the case may be presented to the special magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state.

(c) *Repeat violations.* If a repeat violation is found, the code officer shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. This notice may include a notice of hearing if an upcoming hearing date is known. The code officer, upon notifying the violator of a repeat violation, shall notify a special magistrate and request a hearing. The code officer shall schedule a hearing and shall provide notice pursuant to this article to the violator (unless already provided). The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state.

(d) *When code officer may immediately notify a special magistrate.* If the code officer has reason to believe a violation presents a serious threat to the public health, safety or welfare or if the violation is irreparable or irreversible in nature, the code officer shall make a reasonable effort to notify the violator and may immediately notify a special magistrate and request a hearing. The original notice to the violator may include the notice of hearing if an upcoming hearing date is known.

Sec. 2-335. - Conduct of hearing.

(a) *Manner of calling hearing; open to public.* Upon request of the code officer, or at such other times as may be necessary, a special magistrate may call a hearing. All hearings and proceedings shall be open to the public.

(b) *Presenting cases.* Each case before a special magistrate shall be presented by the city attorney or designee or by the code compliance administrator.

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(c) *Testimony; rules of evidence.* The special magistrate shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The special magistrate shall take testimony from the code officer, alleged violator and such other witnesses as may be necessary in the special magistrate's determination. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) *Findings of fact; order of compliance.*

(1) At the conclusion of the hearing, the 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 herein. The order may include a notice that it must be complied with by a specified date, and that if the order is not complied with by said date, the following may be imposed: a daily accruing fine and the assessment of the costs of repair (if applicable). A certified copy of such order may be recorded in the official 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, subsequent purchasers, successors in interest, or assigns. If an order is recorded in the official records pursuant to this subsection and the order is complied with by the date specified in the order, the special magistrate shall issue an order acknowledging compliance that shall be recorded in the official records. A hearing is not required to issue such an order acknowledging compliance.

(2) Further, if a violation is found, the violator shall be given twenty (20) days within which to request a hearing to challenge the fine amount imposed by the order. If such a hearing is not timely requested and if the violation is not corrected by the time established in the order and/or all administrative costs are not timely paid, the city may record a certified copy of the order in the official records of the county and thereafter the order shall constitute a lien under section 162.09, Florida Statutes. The hearing to challenge the fine amount imposed by the order shall be requested in writing to the code compliance administrator and shall be limited to a consideration of only those new findings necessary to impose a fine. The violator shall bear the burden of proof at such hearing to show cause why the fine imposed in the order is not appropriate. If a request for hearing to challenge the fine amount is timely received by the code compliance administrator, a hearing will be set and notice of the hearing date and time shall be sent by regular U.S. mail to the address provided on the written request for the hearing. All orders entered by the special magistrate at this hearing which impose a fine and/or administrative costs may be recorded in the official records of the county by the city and thereafter the orders shall constitute a lien under section 162.09, Florida Statutes.

(3) If fines accrue under the order by the Special Magistrate prior to the order becoming a lien, the Special Magistrate may reduce the fines consistent with this article for the reduction of liens.

Sec. 2-336. - Waiver of hearing procedure; stipulation and agreed order.

(a) In the event that a violator agrees with the violation(s) contained on the notice of violation(s), but needs more time to correct the violations, the violator shall have the option to enter into a voluntary stipulation wherein the violator agrees to the violation(s) and waives the violator's right to all further hearings before the special magistrate. The violator shall then have additional time as agreed to between the violator and the code officer to correct the violations before any fine begins to accrue.

(b) The stipulation must be in writing and on a form provided to the violator by the code officer. The stipulation shall indicate that the waiver of hearing is solely at the option of the violator, and that the violator has an absolute right to have a hearing before the special magistrate. The stipulation shall further contain the date that the violator must correct the violations before a fine begins to accrue, and shall state the amount of the daily fine if the violation is not corrected by the correction date.

(c) By signing the stipulation, the violator agrees to the entry of an agreed order approving the stipulation. The violator is not required to be present at the hearing at which the stipulation is reviewed by the special magistrate. The order shall provide that the stipulation shall have the same effect as an order entered by the special magistrate imposing a fine and creating a lien in the event that the violator does not correct the violations by the correction date or otherwise fails to timely and fully comply with the terms of the stipulation. The city may record the stipulation in the official records of the county if the violator does not correct the violations by the correction date or otherwise fails to timely and fully comply with the terms of the stipulation.

(d) In the event the special magistrate does not approve the stipulation, the violator shall not be prejudiced for not appearing at the hearing and shall be given additional reasonable time for compliance and shall be issued a notice of hearing to appear at the next available hearing. Said notice shall be sent by regular U.S. Mail to the address contained on the stipulation.

(e) The stipulation shall not waive the violator's right to request a lien reduction hearing if a lien is imposed as a result of the stipulation.

Sec. 2-337. - Powers of special magistrate.

A special magistrate shall have the power to:

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(a) Adopt rules for the conduct of hearings.

(b) Subpoena alleged violators and witnesses to special magistrate hearings. Subpoenas may be served by the sheriff of the county or police department of the city.

(c) Subpoena evidence to special magistrate hearings.

(d) Take testimony under oath.

(e) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Sec. 2-338. - Administrative fines; liens.

(a) Generally. A special magistrate 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 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 officer.

(b) Amount of fines.

(1) 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 incurred in accordance with this article. However, if a special magistrate finds the violation to be irreparable or irreversible in nature, the special magistrate may impose a fine not to exceed five thousand dollars (\$5,000.00) per violation.

(2) In determining the amount of the fine, if any, the special magistrate shall consider the following factors:

- a. The gravity of the violation;
- b. Any actions taken by the violator to correct the violation; and
- c. Any previous violations committed by the violator.

(c) Administrative fee related to the prosecution of code compliance cases. Costs incurred by the city in the successful prosecution of a code compliance case, including a repeat violation, may be assessed against the violator pursuant to section 162.07, Florida Statutes. The amount of these costs may be set from time to time by resolution of the city council. Such costs may be included in the lien authorized under this division.

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(d) *Fine imposed.* Unless a fine has already been converted to a lien under section 2-335, a certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the official records of the county by the city 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. Upon petition to the circuit court, such order and an order recorded under section 2-335 may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this article shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien or in a suit to recover a money judgment, pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this article runs in favor of the city, and the special magistrate and/or the city may execute a release of lien or partial release of lien as specifically authorized under this article. After three (3) months from the filing of any such lien which remains unpaid, the special magistrate may authorize the city attorney or designee to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this part may be foreclosed on real property which is homestead under Section 4, Article X of the Florida State Constitution.

Sec. 2-339. - Duration of lien.

No lien provided under this article shall continue for a period longer than twenty (20) years after the certified copy of an order imposing fine or an order recorded under section 2-335 has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including reasonable attorney fees, incurred in the foreclosure. The city 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.

Sec. 2-340. - Appeals.

An aggrieved party, including the city, may appeal a final administrative order of a special magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special magistrate. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed. The city attorney or designee is hereby authorized to defend such appeals on behalf of the city and/or special magistrate. Except for an appeal filed by the City, notice of the appeal shall be sent to the city's code compliance division.

Sec. 2-341. - Applications for lien reductions, release of liens and partial releases of liens; lien caps; waiver of hearing; amnesty; and, property improvement account.

(a) The procedures set forth in this division for lien reductions, releases of liens and partial releases are applicable to any violator whose case has been heard before the city's code compliance special magistrate or board.

(b) The code compliance administrator shall furnish the form for an application for a lien reduction, a release of lien and a partial release of lien. In order to be considered, the application form must be fully completed and submitted to the code compliance administrator with the applicable fees set by city council resolution. The application fees are non-refundable.

(c) *Homestead Cap:* Upon the filing of a fully completed application for a lien reduction and payment of the applicable fee, the total amount of the daily fine authorized in each lien imposed upon homestead property shall be capped at one hundred (100) percent of the current total market value of the homestead property as determined by the Palm Beach County Property Appraiser. Further, in the event of multiple liens on a homestead property, the cap on the total amount of the daily fines authorized under all liens shall be capped at two hundred (200) percent of the current total market value of the homestead property as determined by the Palm Beach County Property Appraiser. The "current total market value" shall be the Palm Beach County Property Appraiser's total market value established at the time of filing a fully completed application for a lien reduction and payment of the applicable fee. In order for the foregoing cap to apply, the property must have been claimed as homestead property with the Palm Beach County Property Appraiser at the time the city obtained the lien(s) and continued each year to be claimed through the filing of the fully completed application for a lien reduction. The code compliance administrator may consider other sworn evidence of homestead status if the property was not claimed with the Palm Beach County Property Appraiser.

(d) *Non-Homestead Cap:* Upon the filing of a fully completed application for a lien reduction and payment of the applicable fee, the total amount of the daily fine authorized in each lien imposed upon non-homestead property shall be capped at two hundred (200) percent of the current total market value of the non-homestead property as determined by the Palm Beach County Property Appraiser. Further, in the event of multiple liens on a non-homestead property, the cap on the total amount of the daily fines authorized under all liens shall be capped at three hundred (300) percent of the current total market value of the non-homestead property as determined by the Palm Beach County Property Appraiser. The "current total market value" shall be the Palm Beach County Property Appraiser's total market value established at the time of filing a fully completed application for a lien reduction and payment of the applicable fee.

(e) *Waiver of Lien Reduction Hearing:* Upon receipt of a completed application for a lien reduction and which satisfies the criteria set forth in section 2-342 below, the code compliance administrator or designee shall calculate the amount of the reduction consistent with this division. The code compliance administrator or designee shall notify the applicant of the proposed reduction amount and, if the applicant agrees with the proposed reduction amount, the applicant may enter a voluntary reduction stipulation with the code compliance administrator. The form of the voluntary reduction stipulation shall be determined by the code compliance administrator in consultation with the city attorney. A fully executed voluntary reduction stipulation may be approved by the special magistrate administratively, without a hearing. Upon payment of the reduction amount set forth in the voluntary reduction stipulation as approved by the special magistrate, the city shall execute and record a release of the lien in the official records of the county. If the applicant does not agree with the proposed reduction amount, or the special magistrate does not approve the executed voluntary reduction stipulation, the code compliance administrator or designee shall set the reduction application for a hearing before the special magistrate consistent with this division.

(f) *City Council Amnesty:* City council may from time to time by resolution approve an amnesty program to incentivize property owners to bring their properties into compliance and obtain a release of lien(s) from the city. The amnesty program may reduce the homestead and non-homestead caps set forth in this section and/or reduce the maximum lien reduction percentages set forth in section 2-342(g). The amnesty program resolution shall set forth a temporary timeframe for the amnesty program to be available to property owners by written application.

(g) *Property Improvement Account:* City council may from time to time by resolution authorize a Property Improvement Account in which a percentage of all code compliance fees, fines, liens and other charges paid to the city shall be deposited. If authorized, the Development Services Department shall establish policies and programs for utilization of the Property Improvement Account funds to assist homestead property owners and to assist those other property owners seeking to improve the overall appearance of their property and the city.

Sec. 2-342. - Lien reductions.

(a) The following criteria must be complied with prior to a lien reduction hearing before a special magistrate:

(1) The property in question must be in total compliance and an affidavit of compliance must be issued for the case(s) being considered.

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(2) The request for lien reduction application must be completed and submitted to the code compliance administrator along with the applicable fee as set by city resolution. All outstanding administrative fees, as ultimately determined by the code compliance administrator, shall also be paid at the time of application; however, the code compliance administrator may allow the outstanding administrative fees to be paid as part of a reduced lien amount.

(3) All other properties owned by the violator within the city must not have any active code compliance case(s). The applicant shall provide the city a list of all properties owned by the applicant within the city along with the application.

(b) Except as otherwise set forth herein, if the reduction application is complete and the above criteria have been met, a lien reduction hearing shall be scheduled before a special magistrate. The applicant will be notified in writing of the scheduled hearing at least five (5) days prior to the hearing date by regular U.S. Mail to the address provided on the application. In its sole discretion, the city may postpone such hearing if it wishes to pursue the collection of the lien(s) through an alternate remedy at law or in equity, and the city shall notify the applicant of such postponement in writing. If the postponement is anticipated to last longer than three (3) months, the City may in its sole discretion deny the reduction application and return any fee paid for the same.

(c) The special magistrate at a lien reduction hearing shall make one (1) of the following determinations: The lien may be reduced to a specified amount, or the request for lien reduction denied. The special magistrate shall review all the facts set forth in the application to determine if the applicant is eligible for the requested relief prior to making a decision and entering an order. The lien reduction hearing shall not be a hearing de novo of the original case, but shall be limited solely to the issue of whether the lien assessed should be reduced. The burden of proof shall be on the applicant to show cause for reducing the lien. The city attorney, code compliance administrator and/or their designee may make recommendations regarding any lien reduction. Any lien reduction made pursuant to this section is not applicable to any administrative fees or costs assessed at any prior hearing.

(d) In determining how much to reduce the outstanding lien, the special magistrate shall consider the following factors:

(1) The gravity of the violation;

(2) Any action taken by the violator to correct the violation;

(3) Any previous violations committed by the violator; and

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(4) Any other matter suggesting that the lien reduction is in the best interests of the city.

(e) In determining how much to reduce the outstanding lien, the special magistrate may also consider any documented expenses incurred to bring the property into compliance. The use of the term "documented expenses" in this section may include permit fees required to bring the property into compliance and costs associated with enhancing the overall appearance of the property; however, the documented expenses must clearly establish that the expenses were for the property at issue and were incurred prior to the time of the reduction hearing. The special magistrate may reduce the outstanding lien amount by the total amount of these documented expenses.

(f) The cost of the lien reduction application fee and any code compliance administrative fees associated with the property, as ultimately determined by the code compliance administrator, shall not be included in any lien reduction and must be paid.

(g) After applying the lien cap set forth in section 2-341 above, as applicable, and then reducing that amount by any approved documented expenses, the special magistrate shall not reduce any lien, if any remains, to less than five (5) percent of the remaining outstanding balance of the lien. If the lien is attached to a homestead property, the special magistrate may reduce the lien to not less than three (3) percent of the remaining outstanding balance of the lien.

(h) Upon full compliance with the special magistrate's order reducing the lien, the city shall prepare a release of lien and record the release of lien in the official records of the county.

(i) If a respondent fails to timely and fully pay the reduced lien amount, the lien shall automatically revert back to the original, pre-reduced amount and the special magistrate's order reducing the lien shall not be recorded.

Sec. 2-343. – Lien Release.

(a) In addition to the reduction of liens described above, the city shall be authorized to execute a release of a code compliance lien which has been deemed in writing by the city attorney to be legally unenforceable or uncollectible as described below:

(1) The statute of limitations relating to the lien has otherwise expired;

(2) The lien was properly foreclosed by order of an appropriate court with jurisdiction;

(3) The lien was properly discharged in a bankruptcy proceeding by order of a bankruptcy court;

(4) The property encumbered by the lien is currently owned by the city; and/or,

(5) Any other reason as determined by the city attorney that establishes the legal unenforceability or uncollectibility of a lien.

(b) An application for a release of lien shall be submitted to the code compliance administrator along with the application fee to cover the city's costs for the processing the application and recording costs.

(c) If issued, the city shall record the release of lien in the official records for the county.

Sec. 2-344. – Partial Release of Liens.

An applicant may request a partial release of lien where the lien on the property inside the city's boundaries attaches to another property located inside or outside the city's boundaries pursuant to section 162.09, Florida Statutes. The following procedures shall apply to such request:

(a) The applicant shall complete an application for such partial release and pay all applicable application fees as set by city resolution.

(b) The property for which the partial release is requested must be free of all outstanding debts (including taxes) due to the city.

(c) All property owned by the applicant in whole or in part that is located in the city, including the property for which the lien originated, must be in compliance with all city ordinances prior to the granting of the partial release of lien. If the applicant's property within the city is not in compliance, the applicant may provide the city with a performance bond to guarantee compliance within a set timeframe not to exceed 120 days. The form of the performance bond shall be approved by the city attorney and the amount of the bond shall be ten (10) percent of the total lien amount, or five thousand dollars (\$5,000.00), whichever is greater. When determining the total amount of the lien, the cap on liens set forth above in section 2-341 shall be applicable.

(d) Upon the applicant's payment of five (5) percent of the total lien amount, or one thousand dollars (\$1,000.00), whichever is greater, the code compliance administrator shall notify the city attorney of the partial release of lien application and payment of the applicable fees. When determining the total amount of the lien, the cap on liens set forth above in section 2-341 shall be applicable.

(e) Upon notice from the code compliance administrator, the city attorney or designee shall prepare the partial release of lien for execution by the city and the city shall record the partial release of lien in the official records of the county.

Sec. 2-345. - Notices.

(a) All notices required by this division shall be provided to the alleged violator by:

(1) Certified mail, and at the option of the local government return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (b)(1) and (2).

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

(3) 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 informing such person of the contents of the notice; or

(4) In the case of a 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), at the option of the special magistrate, notice may also be served by publication or posting, as follows:

(1) 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 Palm Beach County. The newspaper shall meet such requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements. Proof of publication shall be made as provided in sections 50.041 and 50.051, Florida Statutes.

(2) In lieu of publication as described above, such notice may be posted 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 of which shall be the property upon which the violation is alleged to exist and the other of which shall be

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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.

(3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a).

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

SECTION 5. SEVERABILITY. Should any one or more of the provisions or element of this ordinance be held invalid, such provision or element shall be null and void, and shall be deemed separate from the remaining provisions or elements of this ordinance and shall in no way affect the validity of any of the remaining provisions or elements of this ordinance.

SECTION 6. PRESERVATION. All pending code compliance cases and code compliance orders existing at the time of the adoption of this ordinance are preserved and shall remain in full force and effect. All code compliance cases to be taken before the special magistrate after the date of adoption of this ordinance shall be processed in accordance with this ordinance. All requests for a release or partial release of an existing code compliance order which are made after the date of the adoption of this ordinance shall be processed in accordance with this ordinance.

SECTION 7. CONFLICTS. All other ordinances and resolutions in conflict with this ordinance are hereby cancelled, repealed or revised to be consistent with provisions and elements of this Ordinance.

SECTION 8. CODIFICATION. Specific authority is hereby granted to codify Section 4 of this Ordinance by removing the current Division 2, entitled "Code Enforcement Board and Special Master", as set forth in Chapter 2, Article VI; and, replacing it with the newly created Division 2, entitled "Code Compliance", to be set forth at Chapter 2, Article VI. The sections set forth in Section 4 of this Ordinance may be renumbered to accomplish such intentions.

SECTION 9. EFFECTIVE DATE. That this Ordinance shall take effect immediately upon its final approval and adoption.

PASSED AND APPROVED on first reading this ____ day of _____, 2021.

PASSED AND ADOPTED on second and final reading this ____ day of _____, 2021.

APPROVED:

RONNIE L. FELDER
MAYOR

SHIRLEY D. LAINER
CHAIRPERSON

ATTEST:

CLAUDENE L. ANTHONY
CERTIFIED MUNICIPAL CLERK
CITY CLERK

KASHAMBA MILLER-ANDERSON
CHAIR PRO TEM

TRADRICK MCCOY
COUNCILPERSON

JULIA A. BOTEL, Ed.D
COUNCILPERSON

DOUGLAS A. LAWSON
COUNCILPERSON

REVIEWED AS TO LEGAL SUFFICIENCY

DAWN S. WYNN, CITY ATTORNEY

DATE: _____

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1ST READING

MOTIONED BY: _____

SECONDED BY: _____

T. MCCOY _____

K. MILLER-ANDERSON _____

S. LAINER _____

J. BOTEL _____

D. LAWSON _____

2ND & FINAL READING

MOTIONED BY: _____

SECONDED BY: _____

T. MCCOY _____

K. MILLER-ANDERSON _____

S. LAINER _____

J. BOTEL _____

D. LAWSON _____

REVIEWED AS TO LEGAL SUFFICIENCY

DAWN S. WYNN, CITY ATTORNEY

DATE: _____

