

ORDINANCE NO. C-15-16

AN ORDINANCE AMENDING CHAPTER 11, CODE ENFORCEMENT, ARTICLE II SECTION 11-3, JURISDICTION OF BOARD AND SPECIAL MAGISTRATE, OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA, TO DELEGATE THE AUTHORITY TO THE SPECIAL MAGISTRATE TO REDUCE CODE ENFORCEMENT FINES, PENALTIES AND LIENS; PROVIDING FOR A WRITTEN PROCEDURE FOR THE REDUCTION PROCESS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Ordinance C-08-36 adopted on July 15, 2008, amended Chapter 11 of the Code of Ordinances of the City of Fort Lauderdale, Florida, and established the authority of the special magistrate and a quasi-judicial board to hear and decide code violation cases and to impose fines and liens; and

WHEREAS, Resolution 13-235 adopted on December 17, 2013, authorized the City Manager to settle and release certain code enforcement liens with a face value of \$25,000 or less with all other liens presented to the City Commission for approval; and

WHEREAS, the current administrative policy allows a minimum settlement amount of seventy-five percent (75%) of the amount of the lien where violations have been complied, with exceptions of hard cost liens and certain utility liens; and

WHEREAS, extraordinary economic conditions in the past decade have resulted in an excess of \$171,000,000 in recorded liens and a delay of remedies to resolve properties in bankruptcy, foreclosure, or other proceedings; and

WHEREAS, Subsection 162.09(3), Florida Statutes (2014), provides, in part, that “[a] lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section.”; and

WHEREAS, Subsection 162.09(2)(c), Florida Statutes (2014), provides that “[a]n enforcement board may reduce a fine imposed pursuant to this section.”; and

Exhibit 1
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WHEREAS, Subsection 162.03(2), Florida Statutes (2014), provides, in part, that “[a] special magistrate shall have the same status as an enforcement board under this chapter.”; and

WHEREAS, it is in the City’s best interest to delegate requests for reduction of fines to the special magistrate before whom a property owner can present any and all evidence and extenuating circumstances in support of the request in a single proceeding;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That Chapter 11, Code Enforcement, Article II, Code Enforcement Board/Special Magistrate Procedures, Section 11-3. Jurisdiction of board and special magistrate, of the Code of Ordinances of the City of Fort Lauderdale, Florida, is amended to provide as follows:

Sec. 11-3. Jurisdiction of board and special magistrate.

- (a) There shall be one (1) board and one (1) or more special magistrates. The board and special magistrates shall have jurisdiction to hear and decide cases in which violations of any provision of the Code are alleged.
- (b) Any alleged violation of the Code may also be enforced by the city in any court of competent jurisdiction.
- (c) The special magistrate is authorized to reduce fines and penalties established by a special magistrate or by the City Code Enforcement Board as follows:
 - (1) Application – A signed Application for Fine Reduction from any order imposing a fine by a special magistrate or by the Code Enforcement Board must be filed with the clerk for the special magistrate. In order for the clerk to process an Application for Fine Reduction, all violations in the original case as well as any existing violations at other properties owned by the applicant must be in compliance and have no outstanding monies owed to the City. The application must include:
 - a. Name, address and signature of the applicant.

- b. If represented by an attorney, the name and address of the attorney must also be given; and the attorney must either file a Notice of Appearance or must sign the application.
- c. Address or brief legal description, or both, of the property on which the violation occurred.
- d. Address or brief legal description, or both, of all real property owned by the applicant located in the State of Florida.
- e. Payment of the administrative fee.
- f. Photographs of the exterior of the property on which the violation(s) occurred.
- g. Photographs of the interior of the structure if the lien is associated with violation(s) associated with the interior of the structure.
- h. An affidavit of compliance for the case(s).
- i. Sufficient information should be attached including, the nature of the violation, the case number for the clerk to identify the case and a copy of the order imposing the fine.
- j. A brief explanation of the reduction sought, along with supporting documentation and evidence.
- k. If the fine reduction request is based upon the actual cost of repairs to the property to correct the violation(s), written documentation to support this contention, including, but not limited to, City issued permit card and description of permitted work.
- l. If the fine reduction request is based upon financial inability, a financial affidavit must be filed with supplemental information that may include bank account statements of at least six (6) months, or federal income tax returns or W-2 statements for the last three (3) years.
- m. If the lien amount exceeds the equity in the subject property, written documentation to support this contention. Such information should include a current appraisal or Broward County Property Appraiser's latest valuation.

- (2) Initial Consideration – No application shall be accepted or processed unless the code violations on the subject property have been eliminated. The special magistrate shall not grant a fine reduction to any applicant whose property is the subject of any pending foreclosure proceedings filed by the City of Fort Lauderdale without the express written consent of the City Attorney. The clerk shall provide a copy of the application to the City and to the appropriate department for review. The City may file a written response directed to the clerk, who shall provide the applicant with a copy of the response.
- (3) Hearing – The application will be set for the next available hearing date after the application is reviewed. If all compliance requirements have been met, the clerk will set a hearing, at which time the special magistrate may consider the application and any City response. The clerk shall notify the attorney or representative for the applicant, or the applicant if there is no attorney, by U.S. First Class Mail, not less than seven (7) prior to the scheduled hearing. No such hearing shall proceed where the property is not currently in compliance.
- a. A lien settlement request shall not be used for purposes of rehearing the entire case or as an appeal of the original order imposing the fine. A hearing on a request for a lien settlement cannot be used as a substitute for an appeal.
- (4) Determination – The special magistrate shall enter an Order granting or denying the requested relief in whole or in part, or such relief as the special magistrate may deem appropriate. The special magistrate shall consider all relevant factors to determine what relief, if any, is appropriate including, but not limited to:
- a. The nature and gravity of the violation;
- b. Any actions taken by the owner to correct the violation;
- c. The length of time between the ordered compliance date and the date the violation was eliminated;
- d. Any actual costs expended by the owner to cure the violation as provided by supporting documentation, including payment of City licensing or permit fees;

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- e. Any other prior or current violations committed by the owner on the subject property or upon any other property owned by the owner within the City;
 - f. Repeat violations committed by the same owner regardless of whether it is on the same property;
 - g. Costs incurred by the City to abate the violation and prosecute the case, including administrative and overhead expenditures;
- (5) Transfer of ownership after recordation of the City's lien shall not be considered as a factor in the lien settlement; nor shall a lapse of time before seeking enforcement be considered.
- (6) Any reduction granted shall be contingent upon payment within a specified time period. Failure to remit payment to the City by the date ordered shall cause the original fine not to be reduced.
- (7) The request for fine reduction must present a clear and convincing case, which is determined by the special magistrate; otherwise it shall be denied.
- (8) If relief is denied based upon the merits of the claim, such denial shall be with prejudice and the matter will not be reheard.
- (9) The special magistrate ~~may~~ shall not reduce or waive city administrative costs, including, but not limited to, inspection costs, postage fees, recording fees, advertising costs, and any and all costs of enforcement or any repair costs or costs to secure any structure, incurred by the city.
- (10) Appeal – Reduction under this section is strictly discretionary by the special magistrate. The application shall include a waiver of the right, if any, to seek judicial review of the special magistrate's discretionary decision whether or not to reduce the fine and if so, by how much.
- (d) The City Commission may grant relief, conditioned upon compliance within a specified time period, for a property that is not in, or cannot be placed in, compliance, in exceptional circumstances.

SECTION 2. That if any clause, section, or other part of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 3. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 4. That this ordinance shall be in full force and effect ~~thirty~~ sixty days from the date of final passage.

PASSED FIRST READING this the 7th day of April, 2015.

PASSED SECOND READING this the _____ day of _____, 2015.

Mayor
JOHN P. "JACK" SEILER

ATTEST:

City Clerk
JONDA K. JOSEPH