



TO: Honorable Mayor & Members of the
Fort Lauderdale City Commission

FROM: Lee R. Feldman, ICMA-CM, City Manager

DATE: April 21, 2015

TITLE: Ordinance Amending the City Code to Provide Special Magistrates with
the Authority to Settle Code Enforcement Fines, Penalties and Liens

Recommendation

It is recommended that the City Commission adopt an ordinance amending the City Code to delegate authority to Special Magistrates to settle the disposition of code enforcement fines, penalties and liens.

Background

On July 15, 2008, the City Commission adopted an ordinance improving the code enforcement process by establishing the authority of the Special Magistrate and other quasi-judicial boards to hear and decide code violation cases and to impose fines and liens on cases where the property owner did not timely comply in curing the violation(s). Currently there exceeds \$171 million in fines that have been recorded against properties in the City.

As the economy stagnated and property values decreased, on occasion, property owners found the amount of unpaid liens to be higher than the assessed value of the property. In an effort to bring properties into compliance, enhance neighborhood vitality, and have the outstanding fines paid to the City, a lien reduction program was established, providing property owners with a process to request settlement of outstanding liens. Pursuant to Resolution 13-325, the City Commission authorized the City Manager to settle and release certain code enforcement liens, such as liens with a face value of \$25,000 or less and liens “cross attaching” to property outside the City’s jurisdiction. Currently, liens greater than \$25,000 are presented to the City Commission for approval.

An administrative process is in place to address these requests, which summarily require diligent research on property ownership for the subject property, ownership of all properties owned by the respondent, foreclosure status, calls for service for police or code response, history and status of code violations, and current face value of any liens. When the submittal packet is completed, the Code Compliance Manager meets with the property owner or authorized representative to negotiate the settlement

amount. Once a settlement amount is reached, the tentative agreement is routed to the City Manager for review and acceptance and recommendation of the settlement agreement for consideration by the City Commission.

As an administrative practice, the lien settlement minimum has been set at 75% of the outstanding lien amount. Hard costs are collected in full and Water Works liens in accordance with the Commission approved schedule. This policy has resulted in a significant increase in staff time required to respond to repetitive requests by the property owner for reconsideration of the reduced lien amount. Resources to facilitate communication between the property owner and the City Manager's Office have also increased because the property owner often elevates the issue to this level for resolution.

The repetition of these steps ultimately lengthens the period for the property to be sold, occupied and maintained. The process can be simplified by bringing these requests before Special Magistrates to evaluate the evidence presented at the hearing and render a decision on any potential reduction of the fines, penalties and liens.

Changing this process and directing the requests to the Special Magistrate reduces the time staff spends on coordinating separate negotiation meetings with the property owner and Code Compliance Manager, setting up subsequent conferences with the division manager or City Manager for further consideration, synchronizing information between the various City personnel who are intervening the process, and following up with the property owner on the status on the request. The level of service will not only improve because the property owner will receive a confirmed date of the hearing, attend and provide evidence at the hearing, and be present for the Special Magistrate's ruling on the case but also the decision will be made in one central location – the Special Magistrate's chamber.

Furthermore, there is a provision in the proposed ordinance that enables staff to bring the request before the City Commission for a determination when extenuating circumstances exist. The City Manager will also have the authority to execute administrative releases for unenforceable liens, such as properties undergoing bank foreclosure or bankruptcy as well as releases in lieu of litigation no less than 75% or 85% of the face value of the lien.

City staff contends the requests for lien relief merit a fair and objective treatment for the satisfaction of any encumbrance. Special Magistrates are more appropriate officials to settle the disposition of fines, penalties and liens, particularly since the fines were originally imposed by a Special Magistrate or the Code Enforcement Board. Special Magistrates will also be responsible for stipulating the timeframe for remittance of the payment or denying the lien settlement request.

The guidelines for the reduction of fines, penalties and liens that are currently used by staff will be provided to the Special Magistrate for consideration in reviewing reduction requests and are outlined below:

1. At the discretion of the Special Magistrate, relevant factors to determine the appropriate relief to be granted include but are not limited to:
 - a. The nature and gravity of the violation;
 - b. Any actions taken by the respondent to correct the violation;
 - c. The length of time between the previously ordered compliance date and the date the violation was brought into compliance;
 - d. Any actual costs expended by the respondent to cure the violation as provided by supporting documentation, including payment of City licensing or permit fees;
 - e. Any other prior or current violations committed by the respondent on the subject property or upon any other property owned by the respondent within the City;
 - f. Repeat violations committed by the same owner and/or property manager regardless of whether it is on the same property; and
 - g. Cost incurred by the City to abate the violation and prosecute the case, including administrative and overhead expenditures;
2. 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, other than the statute of limitations to enforce a judgment be considered.
3. Any reduction granted shall be contingent upon payment within a specified time period. Failure to provide valid payment to the City by the date ordered shall cause original fine to be reinstated.
4. The request for fine reduction must present a clear and convincing case, which is determined by the Special Magistrate; otherwise it shall be denied.
5. If relief is denied based upon the merits of the claim, such denial shall be with prejudice and the matter will not be reheard.
6. The City Commission may grant relief, conditioned upon compliance within a specified time period, for property that is not in, or cannot be placed in, compliance, in exceptional circumstances.

At the April 7, 2015, City Commission Meeting, the City Commission requested the addition of specific language to require payment of direct City costs. Section 11-3(c)(9) in the proposed ordinance has been amended to reflect that modification. The Cost of Prosecution Worksheet will be completed by staff and presented to the Special Magistrate to ensure the proper reimbursements are collected (see Exhibit 2, which is a draft Worksheet).

The City Commission's adoption of the proposed ordinance streamlines the fines, penalties and liens process and aligns it with our priority action plan items and strategic plan initiatives.

Resource Impact

Although the proposed ordinance modification requires the Code Compliance Division to make some administrative changes to process and finalize these requests, the City staff anticipates no significant impact on the budget or human resources, unless staff is required to conduct a more extensive diligent search on property owners, related affiliates, foreclosure proceedings, and real estate portfolio.

Strategic Connections:

This item is a *Commission Annual Action Plan* priority, included within the Management Agenda, advancing the Code Compliance Process Improvement effort.

This item is a *Press Play Fort Lauderdale Strategic Plan 2018* initiative, included within the Neighborhood Enhancement Cylinder of Excellence, specifically advancing:

- Goal 5: Be a community of strong, beautiful, and healthy neighborhoods.
- Objective 2: Enhance the beauty, aesthetics, and environmental quality of neighborhoods.
- Initiative 4: Implement the finding from the Code Compliance Process Improvement.

This item advances the *Fast Forward Fort Lauderdale 2035 Vision Plan: We Are Community*.

Attachment:

Exhibit 1 – Proposed Ordinance

Exhibit 2 – Cost of Case Prosecution Worksheet (Draft)

Prepared by: Sharon P. Ragoonan, Code Compliance Manager

Department Director: Jenni Morejon, Director, Sustainable Development