

ORDINANCE NO. C-15-

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 EXPAND THE AUTHORITY OF THE SPECIAL MAGISTRATE TO HEAR AND DETERMINE THE DISPOSITION OF OUTSTANDING CODE ENFORCEMENT LIENS; 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 establishing 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 13-325 adopted on December 7, 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, the extraordinary economic conditions since the amending of Chapter 11 of the Code have resulted in an excess of \$171,000,000 in recorded liens resulting in the delay of remedies to resolve properties in bankruptcy, foreclosure, or other issues; and

WHEREAS, city staff will be more efficiently utilized in its preparations for said hearings as opposed to the current labor intensive process of negotiating and mitigating current liens; and

WHEREAS, the Special Magistrate and the Code Enforcement Board impose said fines, order other conditions for resolution and are otherwise familiar with properties' history and ownership; and

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WHEREAS, the Special Magistrate will be provided with the guidelines currently used by city staff in determining appropriate relief; and

WHEREAS, it is in the City's best interest to direct lien settlement requests to the Special Magistrate where a property owner can present any and all evidence and extenuating circumstances in support of the lien settlement request in a single proceeding; and

WHEREAS, the City Commission has the authority to settle and release liens and shall authorize the Special Magistrate to settle and release liens as stated herein;

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 shall be hereby amended to read 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 shall have the authorization to reduce liens established by a Special Magistrate or the City Code Enforcement Board.
- (1) Application – A signed Application for Lien Settlement 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 or Code Enforcement Board. In order for the Clerk to process an Application for Lien Settlement, all violations in the original case as well as any existing violations at other properties owned by the applicant must be in compliance. 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;

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- 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 properties owned by the applicant;
- e. Payment of the administrative fee;
- f. Photographs of the perimeter of the property on which the violation occurred and photographs of a random sample of properties owned by the applicant. The maximum number of properties to be selected is 5 (five) and City staff will identify the properties for the application submittal;
- g. Photographs of the interior of the property 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 (which should include nature of the violation, date or approximate date on which compliance occurred, date or approximate date on which finding of violation was made or on which penalty was imposed, and case number) for the Clerk to identify the case file. A copy of the order should be attached;
- j. A brief explanation of the reduction sought, along with supporting documentation and evidence;
- k. If the lien settlement 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 lien settlement request is based upon financial inability, written documentation to support this contention. Such information may include bank account statements of at least six (6) months, federal income tax returns for the last three (3) years, W-2 statements, or other financial affidavit; or
- 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 for tax proposes.

(2) Initial Consideration – No application shall be accepted or processed unless the code violations on the subject property have been brought into compliance. The Special Magistrate shall not grant a lien reduction to any applicant whose property is subject of any pending foreclosure proceedings filed by the City of Fort Lauderdale without

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express written consent of the City Attorney's Office. 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 and processed. If all compliance requirements have been met, the Clerk will set a hearing, at which time the Special Magistrate may consider the application and the City's 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, and the City both 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 proper. 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 brought into compliance;
- 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;
- 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. Cost incurred by the City to abate the violation and prosecute the case and including administrative and overhead expenditures;
- h. Value of contribution to the Adopt-A-Neighbor program.
- (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 penalty(s) to be reinstated.
- (7) The request for lien settlement must present a clear and convincing case for lien reduction, 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) Appeal – Reduction under this section is strictly discretionary by the Special Magistrate, and the order of Special Magistrate is subject to appeal as provided herein and otherwise provided by law for administrative proceedings.
- (10) 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.

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 days from the date of final passage.

PASSED FIRST READING this the ____ day of _____, 2015.

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

Mayor
JOHN P. "JACK" SEILER

ATTEST:

City Clerk
JONDA K. JOSEPH

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