

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2016-___

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES AMENDING THE CODE OF THE CITY OF CORAL GABLES BY AMENDING DIVISION 2 “CODE ENFORCEMENT BOARD” AND DIVISION 3 “SUPPLEMENTAL CODE ENFORCEMENT PROCEDURES” OF ARTICLE VI “CODE ENFORCEMENT” OF CHAPTER 101 “ADMINISTRATION AND ENFORCEMENT”; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission desires to revise the City’s code enforcement procedures to provide for enforcement of the unsafe structures provisions of the City code by the Construction Regulation Board, to adopt an alternative code enforcement system pursuant to Section 162.03(2), Florida Statutes, and for consistency and uniformity;

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing recital is hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance upon adoption hereof.

SECTION 2. That Division 2 “Code Enforcement Board” of Article VI “Code Enforcement” of Chapter 101 “Administration and Enforcement” is amended as follows:¹

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Sec. 101-162. - Powers generally.

The code enforcement board shall 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 county sheriff, the code enforcement division, or the police department of the city.
- (3) Subpoena evidence.
- (4) Take testimony under oath.

¹/ Deletions are indicated by ~~striketrough~~. Insertions are indicated by underlining.

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

Sec. 101-163. - Code enforcement officer defined; provisions supplemental.

(a) It shall be the duty of the code enforcement officer to initiate enforcement proceedings of the various codes. No member of the code enforcement board shall have the power to initiate such enforcement proceedings.

(b) Except as provided in subsection (ed) of this section, if a violation of any code is found, the code enforcement officer shall notify the violator and give him reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officer shall notify the code enforcement board and request a hearing pursuant to the procedure in the following subsection. Written notice shall be mailed to such violator as prescribed herein.

(c) In addition to the party who caused the violation, the current owner of the property and the party who has possession of the property are responsible for the violation, even if a prior owner or an unknown third party caused the violation. The code enforcement board may find the landlord as well as the tenant responsible for a violation. A condominium or homeowner's association shall be responsible for any violation affecting the common elements of the condominium or homeowners' association, in addition to any other party who actually caused the violation.

~~(e)~~(d) If the code enforcement officer has reason to believe a violation presents serious threat to the public health, safety or welfare, the code enforcement officer shall make a reasonable effort to notify the violator and may immediately notify the code enforcement board and request a hearing.

~~(d)~~(e) A code enforcement officer is defined as any authorized agent or employee of the city whose duty it is to ensure code compliance.

~~(e)~~(f) None of the provisions contained in this division shall be considered exclusive. The code enforcement officer or official shall have the option to use any method provided by the Code or law to enforce the provisions of the various city codes.

* * *

Sec. 101-165. Code enforcement officer to present cases.

Each case before the code enforcement board shall be presented by a code enforcement officer or member of the administrative staff of the city. The city attorney or designee may serve as counsel to the code enforcement board or may represent the city by presenting cases before the code enforcement board, but in no case shall the same individual attorney serve in both capacities at the same hearing. The City may retain

special counsel to serve in either capacity. If an appeal is taken from any decision of the code enforcement board, the city attorney or designee shall represent the city at such proceedings.

* * *

Sec. 101-168. Imposition of fines; unpaid fine to constitute a lien, foreclosure.

(a) The code enforcement board, upon notification by the code enforcement officer that a previous order of the board has not been complied with by the set time, may order the violator to pay a fine in the amount established by resolution or ordinance of the city commission. Unless otherwise provided, the initial fine may not to exceed \$250.00 for a violation, \$500.00 for a repeat violation, and \$5000.00 for an irreversible or uncorrectable violation. The fine shall continue to accrue, as applicable, for each day the violation continues past the date set for compliance. The code enforcement board may also order the violator to pay administrative costs, including investigative costs.

(b) If the violation has not been corrected by the date set for compliance, the city shall serve on the violator a copy of a notice of intent to lien that shall include the following:

- (1) Date of issuance.
- (2) A reference to the order of the code enforcement board that continues to be violated.
- (3) Notice of the right to request an administrative hearing before the code enforcement board and instructions on how to file the request.
- (4) Notice that failure to request an administrative hearing within 20 days after the date of the notice of continuing violation shall constitute a waiver of the right to a hearing.
- (5) Notice that the hearing is strictly limited to whether and when the violator complied with the order of the code enforcement board.
- (6) Notice that fines continue to accrue while the hearing is pending and that, if the violator is not successful at the hearing, fines will have accrued retroactive to the deadline in the original order.
- (7) Notice that the violator shall be liable for administrative costs if the violator is unsuccessful at the hearing.

At reasonable intervals, a violator may request an inspection to determine compliance with an order of the code enforcement board. After an

inspection that results in a finding that the violation has not been corrected, the violator may request a hearing as set forth in this subsection.

(c) A certified copy of an order imposing a fine and/or requiring the payment of administrative and investigative costs may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists ~~or, if the violator does not own the land,~~ or existed and upon any other real or personal property owned by the violator and may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed otherwise to be a judgment of a court except for enforcement purposes; ~~a~~After six ~~three~~ months from the filing of any such lien which remains unpaid, the city commission may authorize the city attorney to foreclose on the lien.

~~(b)~~(d) No lien provided by ~~F.S. ch. Chapter~~ Chapter 162, Florida Statutes, shall continue for a longer period 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 lien is commenced in a court of competent jurisdiction. 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.

* * *

Sec. 101-169. Appeals of ruling.

(a) ~~The named violator or~~ An alleged violator may appeal a notice of violation to the code enforcement board. An aggrieved party, including the city may appeal a final administrative order of the code enforcement board ~~by filing petition for certiorari review in to the circuit court in its appellate capacity and for the county in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for the review of administrative action.~~ Such an appeal shall not be a hearing de novo, but shall limited to appellate review of the record created before the code enforcement board. An appeal shall be filed within 30 days of the ~~date~~ execution of the written order to be appealed.

(b) In the absence of reversal of the code enforcement board's ruling by an appellate court of competent jurisdiction, the findings of the code enforcement board shall be conclusive as to a determination of responsibility for the ordinance or code violation, and such findings shall be admissible in any proceeding to collect unpaid fines.

~~(b)~~(c) Nothing contained in this section shall prohibit the city from enforcing ~~any~~its codes section by any other means. ~~It is the legislative intent to provide an additional or supplemental means of obtaining compliance with local codes. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filing suit for enforcement of any code section.~~

Sec. 101-170. Notices ~~to be by certified mail.~~

(a) All notices required by this division shall be ~~by certified mail, return receipt requested, or where mail would not be effective, by hand delivery by the code enforcement officer.~~ 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, or to any other address provided by the alleged violator in writing to the local government for the purpose of receiving notices. 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. It is the responsibility of the alleged violator to keep the address information current. 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)(2)(a) and (b)(2)(b); or

(2) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the City Commission; or

(3) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age 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), notice may also be served by publication or posting, as follows:

(1) a. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

b. Proof of publication shall be made as provided in ss. 50.041 and 50.051, Florida Statutes.

(2) a. In lieu of publication as described in paragraph (1), such notice may be posted prior to the expiration of any deadline contained in the notice or at least 10 days prior to the hearing. The notice shall be posted

on the property where the violation is alleged to have occurred and at city hall.

b. 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) a. 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).

b. 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.

Sec. 101-171. Lien for costs of correction.

The code enforcement board may authorize the city to correct a violation that presents a serious threat to the public health, safety, and welfare. The property owner or other violator shall reimburse the city for the expenses incurred in correcting the violation. If the property owner or other violator does not reimburse the city for the cost of correction within 30 days of the date the city sends an invoice, then the city may lien the property with such costs, along with an administrative fee of \$500.00 to recover administrative personnel service costs. The city shall have a special assessment lien that it may record in the public records of Miami-Dade County. The lien shall accrue interest at the maximum legal rate from the date of the city's invoice until the costs and administrative fee are paid. The city commission may authorize the city attorney to foreclose on the lien. Such lien shall have equal dignity with a tax lien.

SECTION 3. That Division 3 “Supplemental Code Enforcement Procedures” of Article VI “Code Enforcement” of Chapter 101 “Administration and Enforcement” is amended as follows:

Sec. 101-182. Qualifications and removal of officers.

* * *

(d) ~~The city attorney's office shall~~ or designee may serve as ~~general~~ counsel to the hearing officers/special masters or may represent the city by presenting cases before the hearing officers/special masters, but in no case shall the same individual attorney serve in both capacities. The city attorney may retain special counsel to serve in either capacity. If

an appeal is taken from any decision of the hearing officer/special masters, the city attorney's office or designee shall represent the city at such proceedings.

Sec. 101-183. Civil ~~infraction~~ violation enforcement procedures.

* * *

(c) A code enforcement officer who finds a violation of any ordinance or code section the sections of this Code, as amended, and/or other ordinances adopted by this Code, as amended from time to time, shall prescribe a reasonable time period within which the violator must correct the violation. This determination shall be based on consideration, ability to correct, severity of violation, nature, extent and probability of danger or damage to the public, and other relevant factors relating to the reasonableness of the time period prescribed. A time for correction need not be specified if the violation is deemed to be an irredeemable irreversible or uncorrectable violation or a repeat violation. Repeat violation as used in this chapter means a violation of a provision of a code or ordinance by a respondent who has been previously found, through a code enforcement board 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 that the violations occur at different locations.

(d) In addition to the party who caused the violation, the current owner of the property and the party who has possession of the property are responsible for the violation, even if a prior owner or an unknown third party caused the violation. The hearing officer/special master may find the landlord as well as the tenant responsible for a violation. A condominium or homeowner's association shall be responsible for any violation affecting the common elements of the condominium or homeowner's association, in addition to any other party who actually caused the violation.

(~~e~~) A code enforcement officer who finds such a violation shall issue a civil violation notice to the violator. Service shall be effected ~~by delivering the civil violation notice to the violator, or his agents, or by leaving the civil violation notice at the violator's usual place of abode with any person residing therein who is 15 years of age or older and informing that person of its contents, or the civil violation notice may be sent by certified mail, return receipt requested. If service cannot be effected by any other means, posting of the civil violation notice in a conspicuous place on the premises or property upon which the violation has been observed may be performed. Such posting shall be deemed proper service, and the time for compliance stated in the notice shall commence with the date such notice is posted. Proof of posting shall be verified by photograph and affidavit as provided in Section 101-170.~~

Sec. 101-184. Civil penalties.

(a) Penalties for violations of the ordinances and statutes to be enforced by this chapter shall be in an amount as established by a resolution or ordinance of the city commission. Unless otherwise provided, the initial civil penalty may not to exceed

\$250.00 for a violation, \$500.00 for a repeat violation, and \$5000.00 for in irreversible or uncorrectable violation. Civil penalties shall continue to accrue, as applicable, for each day the violation continues past the date set for compliance. The hearing officer/special master may also order the violator to pay administrative costs, including investigative costs.

* * *

(c) Civil penalties assessed pursuant to this article are due and payable to the city on or before the last day of the period allowed for the filing of a request for an administrative hearing before a hearing officer, or if proper appeal is when the appeal has been finally decided adversely to the named violator.

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Sec. 101-186. Schedule and conduct of administrative hearing.

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(c) The hearing officer/special master shall conduct hearings on a regularly scheduled ~~monthly~~ basis or more frequently upon request of the city manager or his designee. ~~No hearing shall be set sooner than 20 days from the date of service of the notice of infraction.~~

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(g) Each case before a hearing officer/special master shall be presented by the inspector or representative of the department issuing the violation or by the city attorney or designee.

* * *

(n) If the violation has not been corrected by the date set for compliance, the code enforcement officer shall serve on the violator a copy of a notice of intent to lien that shall include the following:

- (1) Date of issuance.
- (2) A reference to the order of the hearing officer/special master that continues to be violated.
- (3) Notice of the right to request an administrative hearing before the hearing officer/special master and instructions on how to file the request.

(4) Notice that failure to request an administrative hearing within 20 days after the date of the notice of continuing violation shall constitute a waiver of the right to a hearing.

(5) Notice that the hearing is strictly limited to whether and when the violator complied with the order of the hearing officer/special master.

(6) Notice that fines continue to accrue while the hearing is pending and that, if the violator is not successful at the hearing, fines will have accrued retroactive to the deadline in the original order.

(7) Notice that the violator shall be liable for administrative costs if the violator is unsuccessful at the hearing.

At reasonable intervals, a violator may request an inspection to determine compliance with an order of the hearing officer/special master. After an inspection that results in a finding that the violation has not been corrected, the violator may request a hearing as set forth in this subsection.

~~(n)~~ The hearing officer/special master shall have the power to:

- (1) Adopt procedures for the conduct of hearings;
- (2) Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the county sheriff, the code enforcement division, or the police department of the city or by the staff of the hearing officer;
- (3) Subpoena evidence;
- (4) Take testimony under oath; and
- (5) Assess and order the payment of civil penalties as provided herein.

~~(o) A hearing officer/special master shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized city and county board of appropriate jurisdiction for administrative interpretation of the legal provisions on which the alleged violation was based. Upon exhaustion of the administrative review and finalization of the administrative order by such board or body, the hearing officer/special master may exercise all powers granted to him by this article. The hearing officer/special master shall not, however, exercise any jurisdiction over alleged code violations where a named violator has properly filed a request for administrative interpretation and review by such city or county board or body until such time for review has lapsed.~~

~~(p) The hearing officer/special master shall be bound by the interpretations and decisions of the duly authorized city and county boards of appropriate jurisdiction concerning the provisions within their respective jurisdictions. In the event such a board~~

~~or body finds that the cited violation of the ordinance or code has not been properly interpreted, that provision upon which the violation is based, shall prohibit a hearing officer/special master from proceeding with the enforcement of the alleged violation.~~

Sec. 101-187. Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; foreclosure.

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(b) A certified copy of an order imposing a civil penalty and/or requiring the payment of administrative and investigative costs may be recorded in the ~~public~~ official records of the county and thereafter shall constitute a lien against the land on which the violation exists or existed ~~or, if the violator does not own the land,~~ and upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien that remains unpaid, the city may foreclose or otherwise execute on the lien.

Sec. 101-188. Appeals.

(a) ~~The named violator or~~ An alleged violator may appeal a civil violation notice to the code enforcement board. An aggrieved party, including the city may appeal a final order of a hearing officer/special master in the manner provided by law to the circuit court in its appellate capacity. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the hearing officer/special master. An appeal shall be filed within 30 days of the execution of the written order to be appealed.

* * *

(c) Nothing contained in this chapter shall prohibit the city from enforcing any ~~its city ordinance or city code section~~ by any other means. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filing suit for enforcement of any ordinance or code section ~~of this Code~~.

Sec. 101-189. Lien for costs of correction.

The hearing officer/special master may authorize the city to correct a violation that presents a serious threat to the public health, safety, and welfare. The property owner or other violator shall reimburse the city for the expenses incurred in correcting the violation. If the property owner or other violator does not reimburse the city for the cost of correction within 30 days of the date the city sends an invoice, then the city may lien the property with such costs, along with an administrative fee of \$500.00 to recover administrative personnel service costs. The city shall have a special assessment lien that it may record in the official records of Miami-Dade County. The lien shall accrue interest at the maximum legal rate from the date of the city's invoice until the costs and administrative fee are paid. The city commission may authorize the city attorney to foreclose on the lien. Such lien shall have equal dignity with a tax lien.

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Sec. 101-190. Mitigation of recorded fines.

A property owner who has corrected a violation the subject of code enforcement order that has been recorded in the public records may seek to reduce a fine as follows:

~~(1a)~~ The property owner shall obtain a certificate from the code enforcement division that the violation has been corrected. Thereafter, the property owner shall request a mitigation hearing by filing a written request for same with the code enforcement division detailing the reasons supporting the request for mitigation of fines;

~~(2b)~~ Hearings on requests for mitigation.

~~a.(1)~~ Hearings on requests for mitigation of fines shall be before the city's hearing officer/special master, whose decision may be appealed to the code enforcement board, which decision shall be final and binding;

~~b.(2)~~ An application for mitigation of fine before a hearing officer/special master shall be filed with the clerk of the code enforcement division, with a copy to the city attorney, together with a fee in the amount established by the city commission for administrative costs;

~~e.(3)~~ A determination on whether to reduce a code enforcement fine shall be guided by principles of fairness and equity and take into consideration the good faith efforts of the property owners to come into compliance expeditiously with the code enforcement order. The determining body may impose reasonable conditions on the reduction of the fine. ~~Stipulations entered into by the city through the city attorney, building and zoning director and affected property owner shall be submitted to the hearing officer/special master for ratification;~~

~~d.~~(4) An application for appeal of the hearing officer/special master's decision to the code enforcement board shall be filed with the ~~building and zoning~~ development services director, with a copy to the city attorney, together with a fee in the amount established by the city commission for administrative costs.

(c) The City may, through the City attorney, enter into fine reduction agreements.

SECTION 4. SEVERABILITY.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5. REPEALER.

This ordinance is intended to provide authority to the City Attorney without limiting any other authority of the City Attorney or other city officers provided in other parts of the City Charter, City Code, and Zoning Code. Accordingly, any other ordinances or parts of ordinances that provide authority to the City Attorney or other city officers are not repealed by this ordinance.

SECTION 6. CODIFICATION.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be re-numbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions. Specifically, Division 3 "Permit Fees," of Article III of Chapter 105 is renumbered as Division 2, Article II of Chapter 105.

SECTION 7. EFFECTIVE DATE.

This ordinance shall become effective upon adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, A.D., 2016.

APPROVED:

JIM CASON
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

CRAIG E. LEEN
CITY ATTORNEY