

ORDINANCE NO. 09-17

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 2 ARTICLE VI ENTITLED "CODE ENFORCEMENT" AND CREATING CHAPTER 2, ARTICLE VI, DIVISION 4, SECTION 2-681 THROUGH 2-682 OF THE CODE OF ORDINANCES ENTITLED "CODE COMPLIANCE MITIGATION PROCEDURES AND GUIDELINES"; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, The City of Key West's Code Compliance Special Magistrate has the authority to mitigate all fines that have not yet been reduced to liens; and

WHEREAS it is the intent of the City Commission for the City of Key West to establish criteria for the Special Magistrate to mitigate fines;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 2 of the Code of Ordinances is hereby amended as follows\*:

Sec. 2-646. Lien; enforcement of order.

(a) A certified copy of an order imposing a fine pursuant to this division may be recorded in the public records and thereafter shall constitute a lien

against the land on which the violator exists or, if the violator does not own the land, upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of the 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.

b) A fine imposed pursuant to this division 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. Payment of all fines and costs shall be made payable to the City of Key West within thirty (30) days of issuance of the Findings and Order of the Code Compliance Special Magistrate unless a finding of good cause is made by the Special Magistrate to provide for a longer payment period not to exceed 90 days. Upon expiration of thirty (30) days after issuance of the Findings and Order by the Special Magistrate, city staff shall institute lien procedures in accordance with Florida Statute §162.09.

(c) A lien arising from a fine imposed pursuant to this division runs in favor of the city commission, and the city commission may execute a satisfaction or release of lien entered pursuant to this division.

(d) After three months from the filing of any such lien which remains unpaid, the special master may authorize the city attorney 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 this division may be foreclosed on real property which is a homestead under article X, section 4 of the state constitution.

That Chapter 2 Division 4 of the Code of Ordinances is hereby created as follows\*:

DIVISION 4. CODE COMPLIANCE MITIGATION; JURISDICTION

Sec. 2-681 Jurisdiction of the Code Compliance Special Magistrate

The Code Compliance Special Magistrate shall have jurisdiction to hear all requests for mitigation.

Sec. 2-682 Mitigation Guidelines; Court Costs

(a) The Special Magistrate shall not consider any mitigation request until compliance is

achieved by the applicant. If compliance is not possible, the Special Magistrate shall make specific written findings to that effect.

(b) The Special Magistrate shall consider the amount of time in which compliance was achieved by the applicant as follows:

(1) If compliance was achieved within 60 days of the imposition of the daily fine, the fine shall not be mitigated or discounted by more than ninety percent (90%)

(2) If compliance is achieved within 61 to 120 days of the imposition of the daily fine, the fine shall not be mitigated or discounted by more than fifty percent (50%)

(3) If compliance is achieved within 121 to 180 days of the imposition of the daily fine, the fine shall not be mitigated or discounted by more than twenty percent (20%)

(4) No mitigation shall be considered if compliance was achieved more than 180

days from the imposition of the daily fine.

- (c) The Special Magistrate may consider relevant aggravating factors frustrating compliance in consideration of Section (b) above. In the event the Special Magistrate deviates from the guidelines specified in this section, specific written findings shall be entered into the record to that effect.
- (d) Other factors that may be considered by the Special Magistrate include:
- (1) Severity of the underlying violation;
  - (2) Effect the violation has had on the neighbors and neighborhood
- (e) The Special Magistrate shall impose court costs in every case brought to hearing unless it can be demonstrated by the violator that compliance was achieved at a reasonable time prior to hearing and reasonable efforts were made on behalf of the violator to inform the code compliance officer.

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\*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a special meeting held this 4th day of August, 2009.

Read and passed on final reading at a special meeting held this 1st day of September, 2009.

Authenticated by the presiding officer and Clerk of the Commission on 2nd day of September, 2009.

Filed with the Clerk September 2, 2009.



MORGAN MCPHERSON, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK