

ORDINANCE NO. 05- 68

AN ORDINANCE OF TOWN OF MIAMI LAKES, FLORIDA, AMENDING CHAPTER 8CC OF THE TOWN CODE TO PROVIDE FOR THE RIGHT OF A VIOLATOR TO REQUEST A HEARING ON THE ISSUE OF COMPLIANCE WITH THE ORDER OF THE HEARING OFFICER,; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, recent court precedent requires municipalities to provide a violator the right to request a hearing to challenge whether there is compliance with an order of the Hearing officer; and

WHEREAS, the Town Council desires to amend Chapter 8CC of the Town Code in order to provide that right.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

**Section 1.** **Recitals.** The above recitals are true and correct and are incorporated herein by reference.<sup>1</sup>

**Section 2.** Section 8CC-4 of the Town Code is hereby amended to read as follows:

**Sec. 8CC-4. Civil penalties and related terms construed.**

\* \* \*

(g) Continuing violation penalties shall be assessed by the hearing officer upon the filing of an Affidavit of Non-Compliance by the Code Inspector. The violator may

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<sup>1</sup> (Coding: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.)

request an administrative hearing, which hearing shall be strictly limited to the amount of the continuing violation based upon the length of time the violation continued to exist. Upon the filing of the Affidavit of Non-Compliance, the Code Inspector shall send a copy of the Affidavit of Non-Compliance to the violator by first class mail, at the last known address of the violator. Said affidavit shall include, but not be limited to, the following:

- (1) The date of issuance; and
- (2) Section number of Code that has been violated; and
- (3) Amount of continuing penalty to be assessed by the hearing officer; and
- (4) Notice of right to request an administrative hearing and instructions on how to file a request for the administrative hearing; and
- (5) Notice that failure to request an administrative hearing within twenty (20) days after service of the Affidavit of Non-Compliance shall constitute a waiver of the violator's right to the administrative hearing; and
- (6) Notice that the administrative hearing is strictly limited to the amount of the continuing penalty based solely upon the length of time the violation continued to exist but in no case in excess of the maximum set forth in the Code; and
- (7) Notice that the violator shall be liable for the reasonable costs of the administrative hearing if the violator is unsuccessful at the hearing.

~~(g)~~(h) Civil penalties assessed pursuant to this chapter are due and payable to Town of Miami Lakes on the last day of the period allowed for the filing of an appeal from the Hearing Officer's decision, or, if proper appeal is made, when the appeal has been finally decided adversely to the named violator.

**Section 3.** Section 8CC-5 of the Town Code is hereby amended to read as follows:

**Sec. 8CC-5. Rights of violators; payment of fine; right to appeal; failure to pay and correct, or to appeal.**

(a) A violator who has been served with a civil violation notice or an Affidavit of Non-Compliance shall elect either to:

- (1) Pay the civil penalty in the manner indicated on the notice, and correct the violation within the time specified on the notice (if applicable); or
- (2) Request an administrative hearing before a Hearing Officer to appeal the decision of the Code Inspector which resulted in the issuance of the civil violation notice or Affidavit off Non-Compliance.

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**Section 4.** Section 8CC-6 of the Town Code is hereby amended to read as follows:

**Sec. 8CC-6. Scheduling and conduct of hearing.**

\* \* \*

- (k) The Hearing Officer shall make findings of fact based on evidence of record and conclusions of law and shall issue a final order affording the proper relief upholding the Code Inspector's decision. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed. In order to make a finding upholding the Code Inspector's decision, the Hearing Officer must find that a preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant Section of the Code as charged for purposes of a civil violation notice, or that the violation continued to exist for the time period set out in the Affidavit of Non-Compliance, for purposes of an Affidavit of Non-Compliance.

- (l) If the named violator is found guilty of the violation or if the violation is found to be a continuing violation pursuant to an Affidavit of Non-Compliance, he the violator shall pay the reasonable costs of the administrative hearing and the costs and expenses of the Town for investigation, enforcement, testing, or monitoring. The costs and expenses of the Town for investigation, enforcement, testing, or monitoring shall be calculated and submitted to the Hearing Officer, to be attached to the final order for amount owed, in standard format as prescribed by the Town Manager. All costs of enforcement shall be paid within thirty (30) days of the date of the administrative hearing.
- (m) The fact-finding determination of the hearing officer for purposes of a civil violation notice shall be limited to whether the violation alleged did occur and, if so, whether the person named in the civil violation notice can be held responsible for that violation. The fact-finding determination of the hearing officer for purposes of an Affidavit of Non-Compliance shall be strictly limited to length of time that the violation existed. Based upon this fact-finding determination, the Hearing Officer shall either affirm or reverse the decision of the Code Inspector ~~as to the responsibility of the named violator for the Code violation~~. If the Hearing Officer affirms the decision of the Code Inspector with respect to a civil violation notice, the hearing officer, pursuant to Section 8CC-4(f), shall determine a reasonable time period within which correction of the violation must be made, provided however, that such time period shall be no more than thirty (30) days. If the Hearing Officer reverses the decision of the Code Inspector and finds the named violator not responsible for the Code violation alleged in the civil violation notice, the named violator shall not be liable for the payment of any civil penalty, absent reversal of the Hearing Officer's findings pursuant to Section 8CC-8(a). If the decision of the Hearing Officer is to affirm, then the following elements shall be included:

\* \* \*

**Section 5. Repeal Of Conflicting Provisions.** All other provisions of the Code of Miami-Dade County as made applicable to the Town by Article VIII, Section 8.3 of the Town Charter which are in conflict with this Ordinance are hereby repealed.

**Section 6. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 7. Inclusion In The Code.** It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Miami Lakes Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 8. Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Councilmember Collins, who moved its adoption on first reading. The motion was seconded by Thomson and, upon being put to a vote, the vote was as follows:

Councilmember Mary Collins  
Councilmember Robert Meador, II  
Councilmember Michael Pizzi  
Councilmember Nancy Simon

Yes  
Yes  
Yes  
Yes

Councilmember Peter Thomson  
Vice Mayor Roberto Alonso  
Mayor Wayne Slaton

Yes  
Yes  
Yes

PASSED AND ADOPTED on first reading this 8<sup>th</sup> day of February, 2005.

The foregoing Ordinance was offered by Councilmember Collins, who moved its adoption on second reading. The motion was seconded by Councilmember Vice Mayor Alonso and, upon being put to a vote, the vote was as follows:

Councilmember Mary Collins  
Councilmember Robert Meador, II  
Councilmember Michael Pizzi  
Councilmember Nancy Simon  
Councilmember Peter Thomson  
Vice Mayor Roberto Alonso  
Mayor Wayne Slaton

Yes  
Yes  
Yes  
Yes  
Yes  
Yes  
Yes

PASSED AND ADOPTED on second reading this 8<sup>th</sup> day of March, 2005.

Wayne Slaton  
Wayne Slaton  
MAYOR

ATTEST:

Delia Castro  
TOWN CLERK

Approved as to form and legality for the use and benefit of the Town of Miami Lakes only:

[Signature]  
Weiss, Serota, Helfman, Pastoriza, Guedes  
Cole & Boniske, P.A.  
TOWN ATTORNEY