

ORDINANCE NO. 02-17

AN ORDINANCE OF TOWN OF MIAMI LAKES, FLORIDA, AMENDING CHAPTER 8CC OF THE TOWN CODE, TITLED "CODE ENFORCEMENT" SUBSTITUTING THE TOWN OF MIAMI LAKES FOR COUNTY AGENCIES AND OFFICIALS; PROVIDING FOR QUALIFICATIONS, APPOINTMENTS AND REMOVAL OF HEARING OFFICERS; PROVIDING FOR CODE ENFORCEMENT PROCEDURES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Miami-Dade County has been providing Code Enforcement Services to the Town of Miami Lakes in accordance with the Second Interlocal Agreement between Miami-Dade County and the Town of Miami Lakes; and

WHEREAS, the Town of Miami Lakes will assume responsibility for Code Enforcement within the Town; and

WHEREAS, pursuant to Section 8.3 of the Town Charter, Chapter 8CC of the Code of Miami-Dade County, Florida, currently serves as the Town Code regarding matters of Code Enforcement within the boundaries of the Town ("Town Code"); and

WHEREAS, the Town Council desires to amend Chapter 8CC of the Town Code in order to facilitate the transition of Code Enforcement to the Town and to protect the public health, safety, and welfare of the residents of the Town.

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.¹

Section 2. Section 8CC-1 of the Town Code is hereby amended to read as follows:

Sec. 8CC-1. Civil offenses and penalties; hearing officers.

The violation of any ~~County~~ Town ordinance listed in Section 8CC-10 of this chapter shall constitute a civil offense punishable by civil penalty in the amount prescribed in Section 8CC-10 and as modified by Section 8CC-4 of this chapter. Accordingly, there is hereby created and established a code enforcement position to be filled by hearing officers to enforce the ordinances listed in Section 8CC-10 which are contained in and enacted pursuant to this Code.

Section 3. Section 8CC-2 of the Town Code is hereby amended to read as follows:

Sec. 8CC-2. Qualifications of officers; appointment; and removal.
organization.

~~(a) The County Manager shall create a Hearing Officer Review Board, comprised of three (3) members from code enforcement departments, one (1) member from the County Clerk's Office, two (2) members from the public at large, and one (1) member from the Office of the County Attorney. The duty of the Board shall be to recommend new Hearing Officer appointments and review, on an annual basis, the performance of Hearing Officers and, as necessary recommend the removal or reappointment of Hearing Officers to the County Manager.~~

~~(b) The Hearing Officer Review Board shall use as its basis for recommendation for appointment, criteria to be developed by the Review Board for approval and concurrence of the County Manager and Clerk of the Board of County Commissioners. Such appointments by the County Manager shall be submitted to the Clerk of the Board for ratification by the Clerk.~~

~~(c) Hearing Officers shall be residents of Miami Dade County who possess outstanding reputations for civic pride, interest, integrity,~~

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

~~responsibility, and business or professional ability. Appointments shall be made by the County Manager or his designee upon recommendation of the Hearing Officer Review Board and on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk.~~

~~(d) The County Manager or his designee shall appoint as many Hearing Officers as are deemed necessary. Appointments shall be made for a term of one (1) year. Upon recommendation of the Hearing Officer Review Board, any Hearing Officer may be reappointed at the discretion of the County Manager, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual Hearing Officer; provided, however, that a determination as to removal or reappointment must be made for each individual Hearing Officer at the end of each of his or her one-year term. The County Manager shall have authority to remove individual Hearing Officers with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.~~

~~(e) The Miami-Dade County Attorney's Office shall serve as general counsel to the Hearing Officers. If an appeal hearing is held pursuant to Section 8CC-8, the County Attorney's Office shall represent the County at such proceedings.~~

(a) Appointments of Code Enforcement Hearing Officers shall be made by the Town Manager. Hearing Officers shall, at all times during their appointment, be members in good standing of the Florida Bar and shall have a minimum of five years' experience in the practice of the area of law involving local government matters. Hearing Officers shall possess outstanding reputations for civic pride, interest, integrity, responsibility and business or professional ability. Appointments shall be made for a term of one year. Code Enforcement Hearing Officers may be reappointed at the discretion of the Town Manager. Code Enforcement Hearing Officers shall not be Town employees but may be compensated at a rate to be determined by the Town Manager, subject to approval by the Town Council. Hearing Officers may be removed at the discretion of the Town Council.

b (e) The Town Attorney shall provide legal counsel to the Town and its Code Inspectors. If a hearing is requested pursuant to Section 8CC-6 or if an appeal is taken pursuant to 8CC-8, the Town Attorney shall represent the Town at such proceedings.

Section 4. Section 8CC-3 of the Town Code is hereby amended to read as follows:

- (a) For the purposes of this chapter, a "Code Inspector" is defined to be any agent or employee of Town whose duty is to assure the enforcement of and compliance with the Code of Town of Miami Lakes. Prior to being provided the authority to initiate enforcement proceedings under this Chapter, a Code Inspector shall be required to successfully complete a criminal background investigation. ~~as prescribed by administrative order of the County Manager. Subject to the requirements of Section 8CC-11 below, a "Code Inspector" is also defined to be any agent or employee of a municipality who has been authorized pursuant to that Section to assure code compliance. Municipal employees shall also be required to successfully complete a criminal background investigation prior to being provided authority to initiate enforcement proceedings under this Chapter.~~

* * * *

- (e) (1) ~~A Code Inspector 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 agent, or by leaving the civil violation notice at the violator's usual place of abode with any person residing therein who is fifteen (15) years of age or older and informing that person of its contents. If such service cannot be effected, the civil violation notice may be sent by certified mail, return receipt requested, or by posting of the civil violation notice in a conspicuous place on the premises or real property upon which the violation has been observed. Such posting of the civil violation shall be deemed proper service, and the time for compliance, stated in the notice, shall commence with the date such notice is posted. Service of the civil violation notice to the violator shall be effected either by:~~

A. Certified mail, return receipt requested, provided such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the Town by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraph (2) and by first class mail directed to the addresses furnished to the Town with a

properly executed proof of mailing or affidavit confirming the first class mailing; or

B. Hand delivery by the sheriff or other law enforcement officer, Code Inspector, or other person designated by the Town; or

C. 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

D. In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection 1(a) above, at the option and discretion of the Town Manager, notice may also be served by publication or posting as follows:

(a) The notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of available to the public generally in Miami-Dade County, as specified in Chapter 50, Florida Statutes.

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

(c) In lieu of publication as described in paragraph (2)(a), such notice may be posted at least ten (10) days prior to the hearing or prior to the expiration of any deadline contained in the notice in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at Town Hall.

(3) 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.

(4) Evidence that an attempt has been made to hand deliver or mail the Notice as provided herein, together with proof of publication or posting, shall be sufficient to show that the requirements of this part have been met, without regard to whether or not the violator actually received such notice.

(f) The civil violation notice shall include but not be limited to the following:

* * * *

(10) ~~Notice that the filing of a request for an administrative hearing will toll the accrual of continuing violation penalties.~~

(11) Notice that failure to request an administrative hearing within twenty (20) days, or within the specified time period listed for a violation of a specific Section of the Code, after service of the civil violation notice shall constitute a waiver of the violator's right to an administrative hearing before the Hearing Officer, and that such waiver shall constitute an admission of violation.

(11) (12) Notice that the violator may be liable for the reasonable costs of the administrative hearing should he be found guilty of the violation.

(12) (13) Notice that the violator may be liable for the Town's costs and expenses incurred as a result of investigation, enforcement, testing or monitoring should the violator be found guilty of the violation.

Section 5. Section 8CC-4 of the Town Code is hereby amended to read as follows:

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

* * * *

(d) A "repeat violation" is a recurring violation of an ordinance by a violator who has previously been guilty of the same violation within the last five (5) years. In the case of correctable violations, a repeat violation can occur only after correction of the previous violation has been made. For the first repeat violation, the amount of the civil penalty shall be ~~double the amount of penalty prescribed for the original violation by Section 8CC-10. The amount of civil penalty due for each subsequent repeat violation shall be double the amount of penalty due for the first day of the immediately preceding violation, provided that the maximum penalty payable for the first day of any one (1) repeat violation shall be one thousand dollars (\$1000.00).~~ five hundred dollars (\$500.00).

* * * *

(g) Civil penalties assessed pursuant to this chapter are due and payable to ~~Miami-Dade County~~ 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 6. Section 8CC-6 of the Town Code is hereby amended to read as follows:

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

* * * *

(c) The Hearing Officers shall call hearings on a monthly basis or upon the request of the Town Clerk. ~~of the Board of County Commissioners.~~ No hearing shall be set sooner than twenty (20) calendar days from the date of service of the notice of violation.

* * * *

(g) The Town Manager ~~Clerk of the Board of County Commissioners~~ shall provide clerical and administrative personnel as may be reasonably required by each Hearing Officer for the proper performance of his duties.

(h) Each case before a Hearing Officer shall be presented by the County ~~Town~~ Manager or his designee.

* * * *

(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 ~~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.~~ The order may include a notice that it must be complied with by a specified date and that a fine may be imposed.

(l) If the named violator is found guilty of the violation, he shall pay the reasonable costs of the administrative hearing and the costs and expenses of the County ~~Town~~ for investigation, enforcement, testing, or monitoring. The costs and expenses of the County ~~Town~~

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 ~~departmental administrative orders of the County Town~~ Manager. All costs of enforcement shall be paid within thirty (30) days of the date of the administrative hearing. ~~unless an alternate timeframe is established by the department.~~

* * * *

(n) The Hearing Officer shall have the power to:

- (1) Adopt procedures for the conduct of hearings.
- (2) Subpoena alleged violators and witnesses for hearings in accordance with Florida law.
- (3) Subpoena evidence.
- (4) Take testimony under oath.
- (5) Assess and order the payment of civil penalties as provided herein.

~~(o) (1) A Hearing Officer shall postpone and shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized County board of appropriate jurisdiction an administrative appeal concerning the interpretation or application of any technical provisions of the Code Section allegedly violated. However, once an issue had been determined by a Hearing Officer in a specific case, that issue may not be further reviewed by a County board in that specific case. A named violator waives his right to administrative appeal to other County boards if the violator does not apply for such appeal prior to the violator's code enforcement hearing before the Hearing Officer.~~

~~(2) Upon exhaustion of a timely filed administrative appeal and finalization of the administrative order by such board, the Hearing Officer may exercise all powers given to him by this chapter. The Hearing Officer shall not, however, exercise any jurisdiction over such alleged Code violations until the time allowed for court appeal of the ruling of such board has lapsed or until such further appeal has been exhausted.~~

~~(3) The Hearing Officer shall be bound by the interpretations and decisions of duly authorized County boards concerning the provisions of~~

~~the codes within their respective jurisdictions. In the event such a board decides that an alleged violation of the Code is not in accordance with such board's interpretation of the Code provision on which the violation is based, the Hearing Officers shall not be empowered to proceed with the enforcement of the violation.~~

Section 7. Section 8CC-7 of the Town Code is hereby amended to read as follows:

Sec. 8CC-7. Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; interest to be paid on liens; foreclosure; prohibition of the issuance of permits, licenses, certificates of use and occupancy, or zoning approvals to violators with unpaid civil penalties or liens.

(a) The Hearing Officer, upon notification by the Code Inspector that a final order of the Hearing Officer issued in accordance with Section 8CC-6(k) has not been complied with by the set time or upon finding that a repeat violation has been committed, may enter a final order requiring the violator to pay a fine for each day the violation continues past the date set by the Hearing Officer for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the Code Inspector.

(b) The Town of Miami Lakes ~~Miami-Dade County~~ may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties. ~~(b)~~ A certified copy of an order imposing a civil penalty may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or 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 ~~one (1) year~~ 3 months from the filing of any such lien which remains unpaid, the Town of Miami Lakes ~~Miami-Dade County~~ may foreclose or otherwise execute on the lien.

(c) Liens created pursuant to Section 8CC-7 may be discharged and satisfied by paying to the Town of Miami Lakes ~~Miami-Dade County~~ the amount specified in the notice of lien, together with interest thereon from the date of the filing of the lien computed at the rate of twelve (12) percent per annum or the highest interest rate allowed by Florida law, together with the administrative costs, filing and recording fees and fees

paid to file a satisfaction of the lien in the public records. When any such lien has been discharged, the Town of Miami Lakes ~~Miami-Dade County~~ shall promptly cause evidence of the satisfaction and discharge of such lien to be recorded in the public records. Any person, firm, corporation or legal entity, other than the present owner of the property involved, who pays any such unsatisfied lien shall be entitled to receive an assignment of the lien held by the ~~County~~ Town and shall be subrogated to the rights of the ~~County~~ Town in respect to the enforcement of such lien, as permitted by law.

(d) Notwithstanding any provision of this Code, no ~~County or municipal~~ Town officer, agent, employee or board shall approve, grant or issue any operating permit, license, building permit, certificate of use and occupancy, municipal occupational licenses, platting action, or zoning action to any named violator with (i) unpaid civil penalties; (ii) unpaid administrative costs of hearing; (iii) unpaid ~~County~~ Town investigative, enforcement, testing, or monitoring costs; or (iv) unpaid liens, any or all of which are owed to Town of Miami Lakes ~~Miami-Dade County~~ pursuant to the provisions of the Code of the Town of Miami Lakes, Miami-Dade County, Florida.

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

Sec. 8CC-8. Appeals.

(a) The named violator or the ~~County~~ Town may appeal a final order of the Hearing Officer for all violations except those contained in Chapter 5 of the ~~Miami-Dade County~~ Town Code by filing a notice of appeal in the Circuit Court in and for Miami-Dade County, Florida, ~~in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for the review of administrative action~~ within 30 days of the execution of the order to be appealed.

(b) For violations of Chapter 5 of the ~~Miami-Dade County~~ Town Code, the violator or the ~~County~~ Town may seek to overturn the order of a Hearing Officer by making application to County Court for a trial de novo on the merits. Such application shall be filed within thirty (30) calendar days of the issuance of the order sought to be overturned. A violator shall have the right to a de novo proceeding provided that all administrative remedies have been exhausted. Failure to make such application within the prescribed thirty-day period shall render the findings of the Hearing Officer conclusive, binding and final. All

findings of the Hearing Officer shall be admissible evidence at any de novo proceeding held pursuant to this section.

(c) Unless the findings of the Hearing Officer are overturned in a proceeding held pursuant to Section 8CC-8(a), all findings of the Hearing Officer shall be admissible in any proceeding to collect unpaid penalties.

Section 9. Section 8CC-9 of the Town Code is hereby amended to read as follows:

Sec. 8CC-9. Provisions contained herein are supplemental; general penalty for failure to correct violations.

(1) Nothing contained in this chapter shall prohibit Town of Miami Lakes ~~Miami-Dade County~~ from enforcing its Code 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 the enforcement of any Section of this Code.

(2) It shall be unlawful for a named violator found guilty of a code violation pursuant to Section 8CC-5(c) or Section 8CC-6 to fail to correct the violation as set forth in the ~~uniform civil~~ violation notice and said failure shall be a separate offense punishable ~~as set forth in Section 1-5 of the Code of Miami-Dade County Florida.~~ by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment in the County Jail for a period not to exceed sixty (60) days or both in the discretion of the court having jurisdiction over the cause. Each day that a violation continues shall be deemed a separate violation. This chapter shall also be subject to enforcement under Chapter 162, Florida Statutes. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

Section 10. Section 8CC-10.1 of the Town Code is hereby repealed in its entirety as follows:

Sec. 8CC-10.1. Code Enforcement Technology Trust Fund

~~Ten (\$10.00) Dollars shall be added to each civil penalty to be placed in a trust fund by the Clerk of Courts to be used for the enhancement of the technological capability of all code enforcement departments. The Clerk~~

~~of Courts and the County Manager shall jointly appoint a committee of five (5) people to determine the priority use of the fund.~~

Section 11. Section 8CC-11 of the Town Code is hereby repealed in its entirety as follows:

Sec. 8CC-11. Enforcement procedure for municipalities.

~~(a) Municipalities within Miami Dade County shall be entitled to enforce the applicable provisions of this chapter within their municipal boundaries subject to compliance with the provisions of this section.~~

~~(b) As a condition to enforcing the applicable provisions of this chapter, a municipality shall enter into an interlocal agreement with Miami Dade County. The interlocal agreement shall contain, at a minimum, the following:~~

~~(1) The section or sections of this Code which the municipality wishes to enforce through this chapter;~~

~~(2) The job title of the agents or employees of the municipality authorized to perform the enforcement functions and the number of agents or employees so authorized;~~

~~(3) The amount reimbursable to Miami Dade County for administrative costs relating to the conduct of hearings on appeals from violations issued by the municipality, including but not limited to attorneys' fees and costs, costs of transcription and clerical costs;~~

~~(4) The amount of revenue reimbursable to the municipality from any fine collected pursuant to this chapter.~~

~~(5) An agreement to indemnify and save the County harmless from and against any and all liability, actions and causes of action relating to the municipality's enforcement of the provisions of this chapter; and~~

~~(6) A term not to exceed three (3) years.~~

~~(e) With respect to laws and ordinances of County-wide application, the provisions of this section shall be supplemental to and not in derogation~~

~~of any authority of Miami-Dade County to enforce the provisions of those laws and ordinances.~~

~~(d) Nothing contained in this section is intended to extend the substantive effect or application of any County law or ordinance to any municipal area where such County law or ordinance is not effective or applicable.~~

~~(e) Nothing contained in this section shall prohibit any municipality from enforcing provisions of its municipal code or this Code by any lawful and authorized means.~~

Section 12. 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 13. 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 14. 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 15. 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 Councilmember Simon and upon being put to a vote, the vote was as follows:

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

PASSED AND ADOPTED on first reading this 9th day of May, 2002.

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

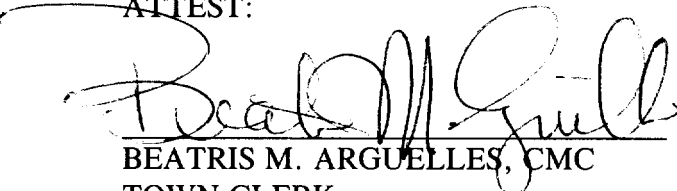
Councilmember Mary Collins	Yes
Councilmember Robert Meador, II	Yes
Councilmember Michael Pizzi	Yes
Councilmember Nancy Simon	Yes
Councilmember Peter Thomson	Yes
Vice Mayor Roberto Alonso	Yes
Mayor Wayne Slaton	Yes

PASSED AND ADOPTED on second reading this 14TH day of May, 2002.



WAYNE SLATON, MAYOR

ATTEST:



BEATRIS M. ARGUELLES, CMC
TOWN CLERK

TOWN CLERK

APPROVED AS TO FORM:

Alison S. Biele
TOWN ATTORNEY

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