

ORDINANCE NO. 15- 183

AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA AMENDING CHAPTER 8 “CODE ENFORCEMENT” OF THE TOWN’S CODE TO PROVIDE FOR CIVIL PENALTY REDUCTIONS BY THE HEARING OFFICER; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 8 of the Town of Miami Lakes (the “Town”) Code pertains to Code Enforcement; and

WHEREAS, the Town Council desires for the Town’s Code Enforcement Hearing Officer to consider requests for reductions in civil penalties imposed by the Hearing Officer; and

WHEREAS, the Town Council wishes to amend the Town’s Code Enforcement Ordinance in order to better address and serve the needs of the Town; and

WHEREAS, the Town Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate and advances the public interest.

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

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Adoption. The Town Council hereby adopts the amendments to Sections 8-6 and 8-7 of Chapter 8 of the Town’s Code, which are attached hereto as Exhibit “A” and are incorporated herein¹.

Section 3. Repeal of Conflicting Provisions. All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

Section 4. 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,

¹ Additions to the text are shown in underline and deletions from the text are shown in ~~strikethrough~~.

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 5. Inclusion in the Town Code. It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Town Code and that if necessary the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Article”, “Division” or other appropriate word.

Section 6. Effective Date. This Ordinance shall become effective immediately upon its adoption on second reading.

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FIRST READING

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

Mayor Michael A. Pizzi, Jr.	<u>no</u>
Vice Mayor Manny Cid	<u>no</u>
Councilmember Tim Daubert	<u>yes</u>
Councilmember Tony Lama	<u>yes</u>
Councilmember Ceasar Mestre	<u>absent</u>
Councilmember Frank Mingo	<u>absent</u>
Councilmember Nelson Rodriguez	<u>yes</u>

Passed and adopted on first reading this 5th day of May, 2015.

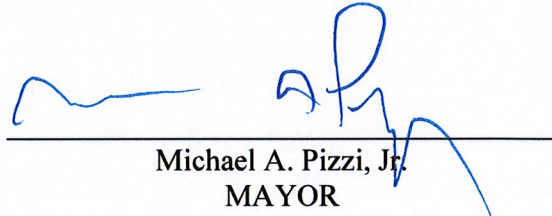
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SECOND READING

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

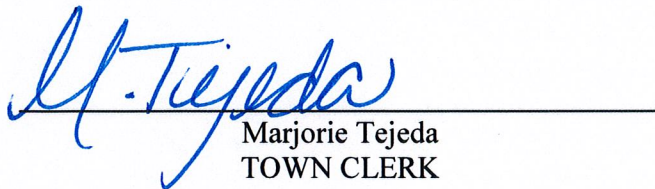
Mayor Michael A. Pizzi, Jr.	<u>yes</u>
Vice Mayor Manny Cid	<u>no</u>
Councilmember Tim Daubert	<u>yes</u>
Councilmember Tony Lama	<u>yes</u>
Councilmember Ceasar Mestre	<u>yes</u>
Councilmember Frank Mingo	<u>yes</u>
Councilmember Nelson Rodriguez	<u>yes</u>

Passed and adopted on second reading this 2nd day of June, 2015.



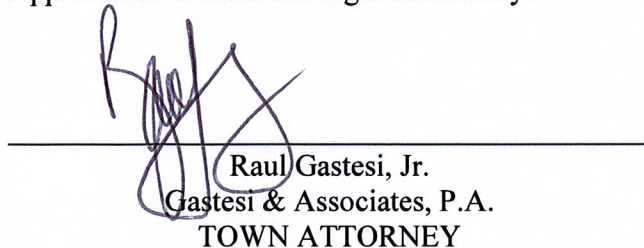
Michael A. Pizzi, Jr.
MAYOR

Attest:



Marjorie Tejada
TOWN CLERK

Approved as to form and legal sufficiency:



Raul Gastesi, Jr.
Gastesi & Associates, P.A.
TOWN ATTORNEY

EXHIBIT A

CHAPTER 8 - CODE ENFORCEMENT²

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

- (a) Upon receipt of a named violator's timely request for an administrative hearing, the Hearing Officer shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as possible or as mandated in the specified Code section which is enforced pursuant to this chapter.
- (b) The Hearing Officer shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include but not be limited to the following:
 - (1) Name of the Code Inspector who issued the notice;
 - (2) Factual description of alleged violation;
 - (3) Date of alleged violation;
 - (4) Section of the Code allegedly violated;
 - (5) Place, date and time of the hearing;
 - (6) Right of violator to be represented by a lawyer;
 - (7) Right of violator to present witnesses and evidence;
 - (8) Notice that the failure of the violator to attend hearing may result in civil penalty being assessed against him; and
 - (9) Notice that requests for continuances will not be considered if not received by the Hearing Officer at least ten calendar days prior to the date set for hearing.
- (c) The Hearing Officers shall call hearings on a monthly basis or upon the request of the Town Clerk. No hearing shall be set sooner than 20 calendar days from the date of service of the notice of violation.
- (d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the Hearing Officer at least ten calendar days prior to the date set for the hearing.
- (e) All hearings of the Hearing Officer shall be open to the public. All testimony shall be under oath. Assuming proper notice, a hearing may proceed in the absence of the named violator.
- (f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.
- (g) The Town Manager 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 Town Manager or his designee.

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- (i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the Hearing Officer finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.
- (j) Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called him to testify and to rebut the evidence against him.
- (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 noncompliance, for purposes of an affidavit of noncompliance.
- (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 noncompliance, 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. These costs and expenses 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 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 noncompliance 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.
- (n) If the Hearing Officer affirms the decision of the Code Inspector with respect to a civil violation notice, the hearing officer, pursuant to Section 8-4(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 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 8-8(a). If the decision of the Hearing Officer is to affirm, then the following elements shall be included:
 - (1) Amount of civil penalty;
 - (2) Administrative costs of hearing; and

(3) Date by which the violation must be corrected to prevent imposition of continuing violation penalties, if applicable.

(o) The Hearing Officer 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 Miami-Dade County Sheriff's Department 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.

(p) The Hearing Officer may reduce a civil penalty imposed pursuant to this section, provided that a request to reduce the civil penalty is made after the violation for which the civil penalty was assessed is corrected, provided that the civil penalty has not been paid and provided good cause shall be shown for such reduction as provided in sec. 8-7(e). Nothing contained in this section shall prohibit the Town from enforcing this Code by any other means. The enforcement procedures outlined in this section 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.

(Code 2000, § 8CC-6; Ord. No. 02-17, § 6, 5-14-2002; Ord. No. 05-68, § 4, 3-8-2005)

Sec. 8-7. - 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; civil penalty reduction.

(a) The Hearing Officer, upon notification by the Code Inspector that a final order of the Hearing Officer issued in accordance with Section 8-6(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 may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties. 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 three months from the filing of any such lien which remains unpaid, the Town of Miami Lakes may foreclose or otherwise execute on the lien.

- (c) Liens created pursuant to this section may be discharged and satisfied by paying to the Town of Miami Lakes 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 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 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 Town and shall be subrogated to the rights of the Town in respect to the enforcement of such lien, as permitted by law.
- (d) Notwithstanding any provision of this Code, no 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:
- (1) Unpaid civil penalties;
 - (2) Unpaid administrative costs of hearing;
 - (3) Unpaid Town investigative, enforcement, testing or monitoring costs; or
 - (4) Unpaid liens, any or all of which are owed to Town of Miami Lakes pursuant to the provisions of this Code.
- (e) Civil Penalty Reduction. The violator, or the violator's successors or assigns (the "applicant"), who has an ownership interest in the property encumbered by a lien for civil penalties, may file a request for a reduction of the civil penalty before the Hearing Officer only after a compliance inspection is completed during which a code inspector finds that all violations were corrected. Upon receipt of a written request for a reduction of a civil penalty, and the filing of an affidavit of partial compliance by the code inspector which sets forth that all outstanding violations of the Hearing Officer's order have been corrected, except for payment of any outstanding civil penalties, the Town Manager or the Town Manager's designee shall set the matter for penalty reduction hearing by the Hearing Officer. However, if a court action has been commenced to obtain compliance with the order of the Hearing Officer, no hearing shall be held for a reduction of the civil penalty.
- (1) At the hearing on the request for reduction of the civil penalty, the fact-finding determination of the Hearing Officer shall be limited to evidence establishing:
 - (a) Good cause for a reduction of the civil penalty,
 - (b) The amount of the reduction, and
 - (c) Any equitable considerations raised by the applicant or the Town relating to the amount of the reduction.
- Said hearing shall not be an opportunity to appeal any finding of fact or conclusions of law set forth in any prior order of the Hearing Officer or any administrative determination of the Town.

- (2) The Hearing Officer may reduce a civil penalty once the applicant has otherwise complied with an order of the Hearing Officer based on a showing of good cause, but in no event shall the civil penalty be reduced below the costs incurred by the Town in its prosecution of violations, including but not limited to, any attorney's fees and staff time. In no event, however, shall any administrative fees previously ordered by the Hearing Officer be waived or reduced, and the applicant may be held liable for the reasonable cost of any additional hearing at the discretion of the Hearing Officer.
- (3) In determining good cause, and the amount of the reduction, if any, the Hearing Officer shall consider:
- (a) The gravity of the violation.
 - (b) Any actions taken by the violator or the applicant to correct the violation.
 - (c) The time frame within which the violator or the applicant complied with the Hearing Officer's order.
 - (d) Any previous, or other outstanding violations whether committed by the applicant, or pertaining to the property to which the lien attaches, unless an order finding a violation is under appeal at the time of the determination.
 - (e) Whether the applicant's failure to timely comply with an order of the code inspector or the Hearing Officer is due to an inability to comply based on factors beyond the control of the applicant.
- (4) With regard to the amount of the Civil Penalty in excess of the costs referenced in section 8-7(e)(2) above, upon a finding of good cause, the Hearing Officer has the sole discretion to grant or deny the request for a reduction of the remaining civil penalty according to the following guidelines:
- (a) For owner-occupied residential property, an approximate reduction to an amount equal to the value of one day's fine.
 - (b) For non-owner occupied residential property and entity-owned property, a maximum reduction of 75 percent of the total civil penalty (the original civil penalty plus the continuing civil penalty amounts, if any, including interest).
 - (c) For bank-owned properties, a maximum reduction of 50 percent of the total civil penalty (the original civil penalty plus the continuing civil penalty amounts, if any, including interest).
- (5) If a civil penalty is reduced, the order of the Hearing Officer shall provide that if the applicant fails to pay the reduced civil penalty by the date ordered by the Hearing Officer, then the original amount of the civil penalty shall be automatically reinstated.
- (6) A certified copy of the order reducing the civil penalty shall not be recorded in the public records unless the terms of the order reducing the civil penalty are fully complied with and the order shall so provide.
- (7) Upon compliance with the terms of the order reducing the civil penalty, including receipt of timely payment in full of the amount of the reduced civil penalty, and all costs, the Town Manager, or the Town Manager's designee, shall record a copy of the order reducing the civil penalty and a release or satisfaction of the lien.

(8) A reduction of a civil penalty may only be granted once as to any violation.

(9) A reduction of a civil penalty shall not be granted to a violator or applicant that was eligible for a lien reduction pursuant to ordinance number 14-172.

(10) A request to reduce a civil penalty shall constitute a waiver of all rights to contest or appeal, in any venue, any findings of fact or conclusions of law set forth in any prior order of the Hearing Officer or any administrative determination of the Town with respect to the violation or violations to which the reduction request pertains.

(Code 2000, § 8CC-7; Ord. No. 02-17, § 7, 5-14-2002)