ORDINANCE NO. 2018-017

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 22 ENTITLED "CODE ENFORCEMENT", OF THE CODE OF ORDINANCES OF THE CITY OF HIALEAH, AND IN PARTICULAR, AMENDING ARTICLE I, GENERAL PROVISIONS, TO PROVIDE FOR PURPOSE AND DEFINITIONS; RESCINDING ARTICLE II, "CODE ENFORCEMENT BOARD PROCEDURES"; AMENDING ARTICLE III, "ENFORCEMENT PROCEDURES", DIVISION 2. "SPECIAL MASTER" REQUIRING BAR MEMBERSHIP AS A QUALIFICATION FOR APPOINTMENT; CLARIFYING TERMS OF APPOINTMENT, REMOVAL; AND PROVIDING FOR POWERS; AMENDING DIVISION 3. "CIVIL VIOLATION ENFORCEMENT PROCEDURES", SUBSTITUTING THE TERM CITATION FOR NOTICE OF CIVIL VIOLATION; PROVIDING FOR A REASONABLE TIME IN WHICH TO CORRECT CIVIL VIOLATIONS; PROVIDING FOR THE CONTENT OF THE NOTICE OF CIVIL VIOLATION; PROVIDING FOR A SCHEDULE OF CIVIL PENALTIES FOR FAILURE TO CORRECT, INCLUDING CONTINUING AND REPEAT VIOLATIONS; CREATING APPEAL RIGHTS BY ADMINISTRATIVE HEARING AND PROVIDING FOR A PROCEDURE TO REQUEST AND CONDUCT THE HEARING; CREATING LIEN RIGHTS IN THE CITY FOR FAILURE TO COMPLY WITH A SPECIAL MASTER ORDER; PROVIDING FOR REDUCTION OF PENALTIES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the proliferation of code violations, as well as the increasing number of

repeated and continuing violations cases have impacted the community negatively;

WHEREAS, the City believes that through voluntary compliance, cooperation, a spirit of personal responsibility and community pride, conditions that create code violations can be eliminated;

WHEREAS, the general purpose and intent of this ordinance is to create, preserve and promote a community where all properties are maintained in a fashion that emphasizes an aesthetically pleasing city, that encourages community pride, reserves neighborhood integrity, ensures a comfortable, safe and clean environment, protects the public's health and wellbeing, and maintains property values; and

WHEREAS, this ordinance intends to promote, protect and improve the health, safety and welfare of the residents of the city, by adopting an equitable, expeditious and effective method of enforcing the City's code, that will foster voluntary compliance, prompt correction of noted violations, eliminate repeated and continuing violations, observes notions of fundamental due process, and that is consistent, fair and equitable in its application.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 22 entitled "Code Enforcement" of the Code of Ordinances of the City of Hialeah, Florida is hereby amended to read as follows:

Chapter 22

CODE ENFORCEMENT

ARTICLE I. - IN GENERAL

Sec. 22-1. – Purpose.

It is the intent of this chapter to promote, protect and improve the health, safety and welfare of the citizens of the City by the creation of code compliance procedures that will provide an equitable, expeditious, efficient and effective method for enforcement of the codes, ordinances, rules and regulations of the city, Miami Dade County, State of Florida, and any other statutes, codes, ordinances, rules and regulations that the city is authorized to enforce within its jurisdiction. Pursuant to F.S. § 162.03, as amended from time to time, the city hereby adopts an alternative code enforcement system for the enforcement of its own codes, ordinances, rules and regulations. Any civil penalty

imposed or collected pursuant to this chapter shall not limit any other civil or administrative remedies that the city may be entitled to by law.

Sec. 22-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative hearing shall mean a hearing before the special master to contest the findings of a code inspector that resulted in the issuance of a notice of civil violation; to determine whether and when the violator complied with the special master order; to determine whether the violator is entitled to a reduction of the fines accrued pursuant to an order; or for any other ancillary decision in the prosecution of an enforcement matter required to be made by a special master pursuant to this chapter.

Affidavit of non-compliance shall mean an affidavit of the code inspector certifying that the violator has failed to correct the violation within the time allowed for correction; failed to pay the civil penalty as set forth in the order of the special master; or otherwise failed to comply with a special master order.

Appeal shall mean a review by a court of competent jurisdiction of a final administrative order of the special master.

Code means any of the several chapters of the City of Hialeah Code of Ordinances, or any other code, ordinance or rule duly adopted by the city council, which codes may be cited either by the section number from the City of Hialeah Code of Ordinances, or by the sections numbers in the Miami Dade County Code, building code, fire codes or other technical codes that city is authorized to enforce within its jurisdiction.

Code compliance official means the supervisor of the code compliance division of the city.

Code enforcement clerk means the administrative staff person or designee in the code compliance division responsible for the preparation, development and coordination of the administrative hearing and case management services necessary to support the special master.

Code inspector means the authorized agent or employee of the city whose duty it is to ensure compliance with the code.

Continuing violation means any violation that remains uncorrected beyond the reasonable time period established for correction contained in either the notice of civil violation or the final order of the special master, whichever is applicable. For each day of continued violation after the time period for correction has run, an additional penalty in the same amount as the original violation shall accrue.

Notice means the mailing of a notice of civil violation or notice of administrative hearing as required by this chapter to the person required to be notified of a code violation.

Person means any and all persons, natural or artificial, including any individual, firm, association, joint venture, partnership, or other entity, however organized.

Reasonable cause shall mean that a reasonable belief exists that a code provision has been violated and that the violator committed, or is the person responsible for the creation or maintenance of the violation.

Repeat violation is a recurring violation of an ordinance or law by a violator who has previously been found guilty of the same violation within the last five (5) years, notwithstanding that the violations may have occurred at different locations.

Violator means the person who allegedly committed the violation of the code or is responsible for the violation of the code.

Uncorrectable or irreparable violation means a violation which cannot be remedied after the violation was committed because the violation constitutes a single prohibited act rather than an ongoing condition or circumstance. Each reoccurrence of an uncorrectable violation shall constitute a separate violation and shall subject the violator to an additional penalty.

Sec. 22-3. - Civil offenses and penalties.

The violation of any city ordinance or any lawful rule, regulation or written order of the city shall constitute a civil offense punishable by civil penalty in the amount provided for in this chapter as amended by the city council from time to time.

Sec. 22-~~1~~4. - Additional remedies.

Any person who violates a section of this chapter or any lawful rule, regulation or written order promulgated under this chapter is subject to injunction or other equitable relief to enforce compliance with or prohibit the violation of this chapter. Further, such person is liable for any damage to the city caused by such violation and for the reasonable costs and expenses incurred by the city in enforcing this chapter, including, but not limited to the costs of enforcement inspections, reasonable repairs, preparation of enforcement reports, photographs, title searches, postage and other administrative costs for enforcement and collection, except as so limited in this chapter. All such sums shall become immediately due and payable upon order of the ~~code enforcement board,~~ special master or court.

(Code 1960, § 8A-18; Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)

Secs. 22-~~2~~5—22-30. - Reserved.

ARTICLE II. - CODE ENFORCEMENT BOARD PROCEDURES

~~DIVISION 1. - GENERALLY~~

~~Sec. 22-31. - Definitions.~~

~~The following words, terms and phrases, when used in this article and article III of this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~Board means the code enforcement board.~~

~~Code means the provisions of technical codes in the city, including but not limited to occupational licenses, fire, building, transportation, water and sewers, solid waste, housing, land development, zoning, landscaping, sign codes and ordinances. The term "code" also includes future amendments to existing city technical codes and also includes technical codes and standards which have been or may be expressly incorporated, approved or adopted by reference together with all future amendments to such technical codes and standards.~~

~~Code enforcement clerk means the administrative staff person or designee in the code compliance division responsible for the preparation, development and coordination of all administrative and case management services necessary for the proper function of the board.~~

~~Code inspector means the authorized agent or employee of the city whose duty it is to ensure code compliance. The training and qualifications of city employees and agents as code inspectors shall be established by the city.~~

~~Continuing violation means any violation that remains uncorrected beyond the reasonable time period for correction contained in either the civil violation notice or~~

~~the final order of the board or the special master, whichever is applicable~~

~~Notice means the mailing of a civil violation notice or citation by certified mail, return receipt requested, by hand delivery, by publication or posting as provided in section 22-189. Any other notice provided in this article may be given by first class mail service.~~

~~Reasonable cause means that a reasonable belief exists that a code provision has been violated and the violator committed the code violation or is the person responsible for maintaining the code violation.~~

~~Repeat violation means a code or ordinance violation by a person or entity who has been previously found to have violated the same provision within five years prior to the violation, notwithstanding the violations occur at different locations. A repeat violation that remains uncorrected beyond the time prescribed for correction in the civil violation notice shall be treated as a continuing violation.~~

~~Violator means any person who has committed a code violation or who is legally responsible for a code violation, including but not limited to a property owner or his agent, tenant, entity on the premises or any combination thereof.~~

~~(Code 1960, § 8A-1; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 99-32, § 1, 2-23-1999; Ord. No. 2000-68, § 1, 8-8-2000)~~

~~Cross reference — Definitions generally, § 1-2.~~

~~State Law reference — Similar provisions, F.S. § 162.04.~~

~~Secs. 22-32 — 22-60. - Reserved.~~

~~DIVISION 2. - CODE ENFORCEMENT BOARD~~

~~Sec. - 22-61. — Created; composition; appointment; qualifications.~~

~~(a) There is created and established a code enforcement board to enforce the occupational license, fire, building, transportation, solid waste, housing, land development, zoning, landscaping, sign and other related codes and ordinances. The board shall consist of seven members appointed by a five-sevenths vote of the city council for three-year terms except as set forth in this division. Each councilmember will nominate one person to an assigned position on the code enforcement board. All future nominations to that position, upon a vacancy or upon expiration of a term of office, shall be made by the assigned councilmember or the councilmember's successor in office. The city council may appoint two alternate members to serve on the code enforcement board in the absence of board members from names submitted to council by the mayor to meet quorum requirements.~~

~~(b) Members of the board shall be residents of the city, and appointments shall be made on the basis of experience or interest in the subject matter jurisdiction of the board. The membership of the board shall, whenever possible, include an architect, a businessman, an engineer, a general contractor, a subcontractor, and a realtor.~~

~~(Code 1960, § 8A-2(a); Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 98-78, § 1, 6-23-1998)~~

~~State Law reference — Similar provisions, F.S. § 162.05(1), (2).~~

~~Sec. 22-62. - Terms; vacancies.~~

~~(a) The initial appointments to the code enforcement board shall be as follows:~~

~~(1) Two members appointed for a term of one year each.~~

~~(2) Three members appointed for a term of two years each.~~

~~(3) Two members appointed for a term of three years.~~

~~(b) Thereafter, any appointment shall be made for a term of three years. Any member may be reappointed by the city council.~~

~~(c) Appointments to fill a vacancy shall be for the remainder of the unexpired term. If any member fails to attend two of three successive meetings without cause and without prior approval of the chairman, the board shall declare the member's position vacant and shall immediately provide notice to the city clerk by submission of a certificate signed by the chairman of the board certifying such absences. The city council shall fill such vacancy for the remainder of the term at its next regularly scheduled meeting.~~

~~(d) Members may be suspended and removed for cause upon a vote of five-sevenths of the city council.~~

~~(Code 1960, § 8A-2(b); Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 98-78, § 1, 6-23-1998)~~

~~State Law reference—Similar provisions, F.S. § 162.05(3).~~

~~Sec. 22-63. - Officers; quorum; compensation.~~

~~(a) Members of the code enforcement board shall elect a chairman, who shall be a voting member.~~

~~(b) The presence of four or more members shall constitute a quorum.~~

~~(c) Members shall serve without compensation, but may be reimbursed for such travel, mileage and per diem expenses as may be authorized by the city council.~~

~~(Code 1960, § 8A-2(c); Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 98-78, § 1, 6-23-1998)~~

~~State Law reference—Similar provisions, F.S. § 162.05(4).~~

~~Sec. 22-64. - Powers.~~

~~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 police department, the sheriff or such other persons authorized to deliver subpoenas;~~

~~(3) Subpoena evidence;~~

~~(4) Take testimony under oath; and~~

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

~~(Code 1960, § 8A-3; Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995)~~

~~State Law reference — Similar provisions, F.S. § 162.08.~~

~~Secs. 22-65 — 22-90. - Reserved.~~

~~DIVISION 3. - ENFORCEMENT PROCEDURES~~

~~Sec. 22-91. — Duties of code inspector regarding various code violations.~~

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

~~(b) Except as provided in subsections (c) and (d) of this section, if a violation of any code is found, the code inspector shall notify the violator and give reasonable time to correct the violation. If the violation continues beyond the time specified for correction, the code inspector shall notify the board and request a hearing pursuant to the procedure in section 22-92. Written notice shall be hand delivered or mailed to the named violator or as prescribed in section 22-189. If the violation is corrected and then~~

~~recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the board. Even if the violation has been corrected prior to the board hearing, the notice shall so state.~~

~~(c) If the code inspector has reason to believe a violation presents serious threat to the public health, safety or welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the named violator and may immediately notify the board and request an immediate hearing.~~

~~(d) If a repeat violation is found, the code inspector shall make a reasonable effort to notify the named violator and may immediately notify the board and request a hearing but is not required to give the named violator a reasonable time to correct the violation. The code inspector, upon notifying the named violator of a repeat violation, shall notify the board and request a hearing. The board, through its clerical staff, shall schedule a hearing and shall provide notice in the form as provided in section 22-187. The case may be presented to the code enforcement board even if the repeat violation has been corrected prior to the board meeting and the notice shall so state.~~

~~(Code 1960, § 8A-4; Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)~~

~~State Law reference—Similar provisions, F.S. § 162.06.~~

~~Sec. 22-92. - Convening of hearings.~~

~~The chairman of the code enforcement board may call hearings of the board. Hearings may also be called by written notice signed by at least four members of the board. The board, at any hearing, may set a future hearing date. The board shall attempt to convene no less frequently than once every month, but may meet more or less often as the demand necessitates. Minutes shall be kept of all hearings, and all hearings shall be open to the public. The city~~

~~council shall provide clerical and administrative personnel as may be reasonably required for the performance of the board's duties.~~

~~(Code 1960, § 8A-5; Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995)~~

~~State Law reference — Similar provisions, F.S. § 162.07(1).~~

~~Sec. 22-92.1. — Duties of property owner; rebuttable presumption.~~

~~(a) The property owner, between the time of the notice or citation is served and the time of the board hearing or hearing before the special master, shall:~~

~~(1) Disclose the existence and the nature of the proceeding to a prospective purchaser or if the court transfers ownership of the property during this time period, to the new owner.~~

~~(2) Deliver to the prospective purchaser or new owner, a copy of the pleadings, notices and other materials received by the property owner or seller relating to the code enforcement proceeding or to the hearing before the special master.~~

~~(3) Disclose to the prospective purchaser or new owner that the new owner will be responsible for code compliance and with orders issued in the code enforcement proceeding or by the special master.~~

~~(4) File a notice with the code enforcement officer of the property transfer, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the transfer date.~~

~~(b) A failure to make the disclosures described in paragraphs (a)(1), (2) and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.~~

~~(Ord. No. 2000-68, § 1, 8-8-2000)~~

~~Sec. 22-93. - Presentation of cases by code inspector.~~

~~Each case before the code enforcement board shall be presented by the director of code compliance or a member of the city's administrative staff.~~

~~(Code 1960, § 8A-6; Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995)~~

~~State Law reference — Similar provisions, F.S. § 162.07(2).~~

~~Sec. 22-94. - Testimony; due process.~~

~~The code enforcement board shall proceed to hear the cases on the agenda for that day. The board shall take testimony from the code inspector or staff member and the alleged violator. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.~~

~~(Code 1960, § 8A-7; Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995)~~

~~State Law reference — Similar provisions, F.S. § 162.07(3).~~

~~Sec. 22-95. - Issuance of findings of fact and order of relief.~~

~~At the conclusion of the hearing as provided in this division, the code enforcement board shall issue findings of fact based on evidence and conclusions of law and shall issue an order affording the proper relief consistent with powers granted in this article. The findings shall be by motion approved by a majority of those present and voting, except that at least four members of the board must vote for the action to be official.~~

~~(Code 1960, § 8A-8; Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995)~~

~~State Law reference — Similar provisions, F.S. § 162.07(4).~~

~~Sec. 22-96. – Imposition of fines; lien for unpaid fine; foreclosure.~~

~~(a) The board, upon notification by the code inspector that an order of the board has not been complied with by the set time, may order the violator to pay a fine not to exceed $250.00 for each day the violation continues past the date set for compliance and shall not exceed $500.00 for each day the violation continues for a repeat violation, beginning with the date the repeat violation is found to have occurred by the code inspector. In determining the amount of the fine, if any, the board shall consider the gravity of the violation, any actions taken by the violator to correct the violation and any previous violations committed by the violator. A certified copy of the order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violations exist and a lien upon any other real or personal property owned by the violator.~~

~~(b) Upon petition to a circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this 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. A fine imposed shall continue to accrue until the violator comes into compliance or until the judgment is rendered in a suit to foreclose on a lien filed pursuant to this chapter, whichever occurs first. After three months from the filing of any such lien that remains unpaid, the board may authorize the city attorney to foreclose on the lien. No lien created pursuant to this chapter may be foreclosed on real property which is homestead under Section 4, Article X of the Florida Constitution. In any action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee and reasonable repairs required to bring the property into compliance. The continuation of the~~

~~lien effected 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.~~

~~(c) The board may issue an order requiring payment of such administrative costs not to exceed $75.00 when such costs are found to have been incurred as a result of proper actions taken by the petitioner to bring about code compliance.~~

~~(d) The board, upon notification by the code inspector that a code violation has been corrected before the hearing date specified in the notice of hearing, shall accept such notification as acknowledgment of compliance, and no fines shall be imposed, but administrative costs may be assessed in each case in an amount not to exceed $75.00.~~

~~(e) The board may reduce a fine once a violator has complied with an order of the board based on a showing of good cause, but in no event shall the fine be reduced below the costs incurred by the city in its prosecution of code violations as set forth in section 22-1 or five percent of the total fine (the original fine plus the continuing fine amounts), if compliance occurs within three months of the compliance date; ten percent of the total fine amount, if compliance occurs more than three months but less than 18 months from the compliance date; 15 percent of the total fine amount, if compliance occurs from 18 months to 36 months of the compliance date; and 25 percent of the total fine amount if compliance occurs 36 months or more after the compliance date, whichever amount is greater. If a fine is reduced and the violator fails to pay the reduced fine within 30 days from the date ordered by the board or the date a fine is reduced by the board, then the original amount of the fine shall be reinstated. The board has the authority where there is a demonstrated showing of good cause to reduce fines below the fine reduction guidelines. The board shall exercise this authority with great caution and only in exceptional circumstances that do not occur frequently.~~

~~(f) The provisions of articles I through IV are not the exclusive remedies or means for enforcement of the code. The city's access to the courts of the state is neither prohibited nor precluded by the enactment of this chapter.~~

~~(Code 1960, § 8A-9; Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)~~

~~State Law reference—Similar provisions, F.S. § 162.09.~~

~~Sec. 22-97.—Appeal of board ruling.~~

~~An aggrieved party, including the city, may appeal a ruling or order of the code enforcement board to the circuit court. An appeal shall be filed within 30 days of the date of execution of the written order appealed. The appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the board.~~

~~(Code 1960, § 8A-10; Ord. No. 83-117, § 1, 9-27-1983; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995)~~

~~State Law reference—Similar provisions, F.S. § 162.11.~~

Secs. 22-~~98~~31—22-125. - Reserved.

ARTICLE III. - ~~CITATION~~—ENFORCEMENT PROCEDURES

DIVISION 1. - GENERALLY

Secs. 22-126—22-150. - Reserved.

DIVISION 2. – ~~HEARING OFFICERS~~ SPECIAL MASTERS

Sec. 22-151. - Qualifications; appointment and removal of special masters.

(a) Special masters shall possess outstanding reputations for civic pride, interest, integrity,

responsibility, and business or professional ability. The special master shall be a member of the state bar in good standing or a retired judge of one of the courts of the state. ~~Appointments shall be made by the mayor and approved by a majority vote of the city council.~~

(b) Appointments shall be made by the mayor and approved by a majority vote of the city council. The mayor shall appoint as many special masters as are deemed necessary. ~~Appointments shall be made for a term of one year. A special master may be reappointed at the discretion of the city council. There shall be no limit on the number of reappointments for an individual special master. The city council shall have the authority to remove a special master with or without cause. Appointments to fill any vacancy shall be for the unexpired term.~~

(c) The city council shall have the authority to remove a special master with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term. ~~A special master shall not be a city employee and shall be compensated at a rate determined by administrative order.~~

(Code 1960, § 8A-11(a); Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, 8-8-2000; Ord. No. 2005-03, § 1, 1-11-2005)

Sec. 22-152. - Terms.

Appointment as a ~~hearing officer~~ special master under this division shall be made for a term of one year. A ~~hearing officer~~ special master may be reappointed at the discretion of the city council. There shall be no limit on the

number of reappointments for an individual ~~hearing officer~~ special master. ~~The city council shall have the authority to remove a hearing officer with or without cause. Appointments to fill any vacancy shall be for the unexpired term.~~

(Code 1960, § 8A-11(b); Ord. No. 95-63, § 1, 8-22-1995)

Sec. 22-153. - City employees; compensation.

A ~~hearing officer~~ special master shall not be a city employee and shall be compensated at a rate determined by administrative order.

(Code 1960, § 8A-11(c); Ord. No. 95-63, § 1, 8-22-1995)

Sec. 22-154. – Powers.

The special master shall have the power to:

(a) Adopt procedures for the conduct of hearings;

(b) Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the police department or such other persons authorized to deliver subpoenas;

(c) Subpoena evidence;

(d) Take testimony under oath;

(e) Issue orders commanding whatever steps are necessary to bring a violation into compliance; and

(f) Assess and order the payment of civil penalties and repair costs as provided herein, including reassessment of civil penalties after compliance and fine reduction within the guidelines of section 22-187.

Sec. 22-155. City attorney to serve as counsel.

The city attorney shall provide legal advice to the special master. If an appeal is taken pursuant to section 22-

188, the city attorney shall represent the city at such proceedings.

Sec. 22-156. - Authority to initiate enforcement proceedings.

The special master shall not have the authority to initiate enforcement proceedings.

Secs. 22-1547—22-180. - Reserved.

DIVISION 3. – CIVIL VIOLATION ENFORCEMENT PROCEDURES

Sec. 22-181. - Issuance of ~~citation~~ notice of civil violation on personal investigation of code inspector.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes. A code inspector~~, as an alternative to the procedures set forth in article I through III hereof,~~ who finds a violation of the code may issue a ~~citation~~ notice of civil violation to a person when the code inspector upon personal investigation has reasonable cause to believe that a person or entity has committed a violation of the code, or is legally responsible for ~~a~~ said code violation.

(b) In addition to the person who caused the violation, the current property owner and the person who has possession of the property are responsible for the violation, even if the violation was caused by a prior owner or an unknown third party. A condominium association shall be responsible for any violation affecting the common elements of the condominium in addition to any other party who may have actually caused the violation.

(Code 1960, § 8A-12(a); Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)

State Law reference— Similar provisions, F.S. § 162.21(3)(a).

Sec. 22-182. - Reasonable time for correcting violation.

(a) Except as provided in paragraphs (c) and (d) of this section 22-182, the notice of civil violation shall specify a reasonable time period within which the named violator must correct the violation. This determination shall be based on considerations of fairness, practicality, ease of correction, 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.

(b) If, upon personal investigation, a code inspector finds that the named violator has not corrected the violation within the time period specified in the notice of civil violation, and has failed to contest the notice of civil violation pursuant to section 22-185, the code inspector may request a hearing before the special master. The code inspector may present the case before the special master even if the violation has been corrected prior to the hearing, and the notice shall so state. If the violation has been corrected, the city retains the right to request a hearing to determine reasonable enforcement fees and costs.

(c) If the code inspector has reason to believe a violation presents serious threat to the public health, safety or welfare of the community or if the violation is uncorrectable, irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the named violator and the property owner, if different from the violator, and may immediately request a hearing before the special master, but is not required to give the named violator a reasonable time to correct the violation.~~Prior to issuance of a citation, the code inspector shall provide a civil violation notice to the violator and shall provide a reasonable time period, not to exceed 30 days, within which the person must~~

~~correct the violation; provided, however, the code inspector does not have to provide a violator a reasonable time to correct a violation prior to issuance of a citation if the code inspector has reason to believe the violation presents a serious threat to the health, safety and welfare of the citizens of the city or that the violator is engaged in violations of an itinerant or transient nature within the city while moving from place to place, or if the violation is irreparable or irreversible, or if a repeat violation is found. The determination of a reasonable time period for correction shall be based on fairness, practicality, 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.~~

(d) If a repeat violation is found, the code inspector shall make a reasonable effort to notify the named violator and the property owner, if different from the violator, and may immediately request a hearing before the special master, but is not required to give the named violator a reasonable time to correct the violation. The code inspector shall schedule an administrative hearing before the special master and shall provide notice in compliance with section 22-189. The case may be presented before the special master even if the repeat violation has been corrected prior to the administrative hearing and the notice shall so state. If the repeat violation has been corrected, the city retains the right to request an administrative hearing to determine reasonable enforcement fees and costs.

(Code 1960, § 8A-12(b); Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)

State Law reference— Similar provisions, F.S. § 162.21(3)(b).

Sec. 22-183. - Contents of ~~citation~~ notice of civil violation.

~~(a)~~ The form of the ~~citation~~ notice of civil violation issued pursuant to this division shall provide the following information:

(1) The date of issuance;

(2) The name ~~and title or position~~ of the code inspector issuing the notice of civil violation;

(3) The name and address of the violator;

(4) The ~~number or~~ section number or description of the code, ~~or~~ ordinance or law violated;

(5) A brief description of the nature of the violation, including the location, date and time of the violation;

(6) The procedure for the violator to follow in order to pay the civil penalty or to contest the ~~citation~~ notice of civil violation;

(7) The applicable civil penalty for which the violator may be liable ~~if the person elects to contest the citation~~;

(8) The time within which the violation must be corrected; ~~The applicable civil penalty if the person elects not to contest the citation~~;

(9) A conspicuous statement that each day of continued violation after the time period for correction has run shall be deemed a continuing violation subject to an additional penalty in the same amount as the original civil penalty;

(10) A statement that the filing of a request for an administrative hearing will toll the accrual of continuing violation penalties;

(~~9~~ 11)A conspicuous statement that if the violator fails to correct the violation and/or fails to pay the civil

penalty within the time allowed, and fails to contest the ~~citation~~ notice of civil violation by requesting an administrative hearing before a special master within ~~ten~~ fifteen (15) days after service of the ~~citation~~ notice of civil violation, the violator shall be deemed to have waived his right to contest the ~~citation~~ notice of civil violation, that such waiver shall constitute an admission of the violation, and that in such case, an order may be entered against the violator for the amount of the civil penalty, any applicable continuing violation penalties, and any other applicable costs; and

~~(10) The time within which the violation must be corrected; and~~

(1~~1~~2)Notice that the violator may be liable for the reasonable costs of the administrative hearing should the violator be found guilty of the violation.

~~(b) Any person who willfully refuses to sign and accept a citation issued by a code inspector shall be guilty of a misdemeanor of the second degree punishable as provided in F.S. § 775.082 or F.S. § 775.083.~~

(13) Notice that the violator may be liable for the costs and expenses incurred by the city as a result of the investigation and enforcement proceedings, should the violator be found guilty of the violation.

(Code 1960, § 8A-12(c), (d); Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)

State Law reference— Similar provisions, F.S. § 162.21(3)(c), (6).

Sec. 22-184. - Civil penalties.

(a) A person who receives a ~~citation~~ notice of civil violation from a code inspector for a code violation has committed a civil infraction and shall be subject

to a fine or civil penalty in accordance with the ~~following schedule:~~ schedule of civil penalties set forth in section 22-190.

(b) Unless otherwise provided by the code, any violation of the code that is not specified within section 22-190 shall be assessed as follows:

(1) For the first ~~citation~~ instance of a violation, by a civil penalty ~~of~~ in the amount of $100.00 ~~or a penalty representing a fine amount exceeding $100.00 imposed by other provisions of this Code~~;

(2) For a ~~which includes a~~ repeat violation, by a civil penalty ~~of~~ in the amount of $200.00 ~~or a penalty representing a fine amount exceeding $200.00 imposed by other provisions of this Code;~~.

~~(3) Any person requesting a hearing who fails to appear before a special master to contest the citation shall be deemed to have waived his or her right to contest the citation, and a penalty may be assessed against the person for an amount not to exceed $500.00. A violation of the judgment issued by the special master shall be deemed to be a continuing violation and carry the penalties set forth in subsection (a)(4) below;~~

~~(4) Continuing violations shall carry a civil penalty, not to exceed $100.00 per day, for each day the violation continues. Repeat violations shall carry a civil penalty, not to exceed $200.00 per day, for each day the violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector; and~~

~~(5) Nothing contained in the section shall prohibit the city from enforcing its code or ordinances by any other means.~~

(c) Notwithstanding sections 22-184 (a), 22-184 (b), and 22-190, the penalty for an uncorrectable or irreparable violation shall be $500.00 per violation.

(d) Continuing violation penalties shall accrue from the date of correction given in the notice of civil violation until the correction is made and payment of the civil penalty is received, or until a request for administrative hearing is timely filed in accordance with section 22-185(c), whichever comes first. For each day of continued violation after the time for correction has run, an additional penalty in the same amount as that prescribed for the original violation shall be added. The maximum total penalty for any one continuing violation shall be fixed at thirty (30) times the original penalty amount. No continuing violation penalties shall accrue during the time period from the date of the notice of civil violation until the date of the administrative hearing, if the violator timely requests an administrative hearing to appeal the notice of civil violation. Continuing violation penalties shall not be imposed by the special master for uncorrectable violations. Penalties for continuing violations may be imposed by the special master and continue accruing after the date for correction given by the special master's order has run.

(e) For a repeat violation, the amount of the civil penalty shall be double the amount of penalty prescribed for the original violation. A repeat violation which remains uncorrected beyond the time prescribed for correction in the ~~citation~~ notice of civil violation shall be treated as a continuing violation. A repeat violation can occur only after correction of the original violation has been documented by the code inspector.

(f) Civil penalties assessed pursuant to this section are due and payable to the city on or before the last day of the period allowed for the filing of an

administrative hearing request, or for the filing of an appeal from a special master's order, or if a proper appeal is made, when the appeal has been adjudged adversely to the violator.

(Code 1960, § 8A-13; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000; Ord. No. 2002-56, § 1, 8-27-2002; Ord. No. 2012-76, § 1, 11-13-2012)

State Law reference— Schedule of fines, F.S. § 162.21(5).

Sec. 22-185. - Rights of violators; payment of fine; right to appeal; failure to pay and correct.

~~(a) A violator who has been served with a civil violation notice citation may elect to correct the violation within the time specified on the citation. If the violator corrects the violation within the specified time, then the code inspector shall not issue a citation and the matter that gave rise to the service of the civil violation notice shall be terminated.~~

(~~b~~a) A violator who has been served with a ~~citation~~ notice of civil violation shall elect either to:

(1) Pay the civil penalty in the manner indicated on the ~~citation~~ notice of civil violation and correct the violation within the time specified on the notice of civil violation, if applicable; or

(2) Request an administrative hearing before a special master to contest the determination of the code inspector which resulted in the issuance of the notice of civil violation.

(b) If the violator corrects the violation within the specified time and pays the applicable civil penalty, then the matter that gave rise to the issuance of the notice of civil violation shall be terminated and the case shall be closed.

(c) A request for administrative hearing shall be accomplished by filing a request in writing with the code enforcement clerk or by mailing the written request to the code enforcement clerk or designee to

the address indicated on the ~~citation~~ notice of civil violation not later than ~~ten~~ fifteen (15) calendar days after the service of the ~~citation~~ notice of civil violation. If the written request is mailed, the alleged violator shall have ~~15~~ twenty (20) calendar days from the service of the ~~citation~~ notice of civil violation for the code compliance clerk or designee to receive the written request. The named violator, upon compliance, may request an administrative hearing if the violator seeks to contest the amount of the fine stated in the ~~citation~~ notice of civil violation.

(d) If the named violator, after notice, fails to pay the civil penalty and/or correct the violation within the time specified, if applicable, or fails to timely request an administrative hearing before a special master, such failure shall constitute a waiver of the violator's right to an administrative hearing before the special master. A waiver of the right to administrative hearing shall be treated as an admission of the violation, and penalties shall be assessed accordingly. ~~in the amount stated in the citation on the day following the expiration of the time period for filing a request for administrative hearing in subsection (c) of this section and shall carry a civil penalty, not to exceed $50.00 per day, for each day that the violation continues past the date the penalties are assessed. Repeat violations shall carry a civil penalty not to exceed $100.00 per day, for each day that the violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector.~~

(e) If the owner of the property which is subject to an enforcement proceeding before the special master transfers ownership of such property between the time the notice of civil violation was served and the time of the administrative hearing, the property owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the notice of civil violation, notices, and other materials relating to the code enforcement proceeding received by the property owner.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the code and all orders entered pursuant to this chapter 22.

(4) File a notice with the code compliance official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five (5) days after the date of the transfer.

A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer, and/or failure to file a notice with the code enforcement official creates a rebuttable presumption of fraud. If the property is transferred before the administrative hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the administrative hearing is held.

(Code 1960, § 8A-14; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)

Sec. 22-186. - Conduct of administrative hearing.

(a) Upon receipt of the code inspector or ~~a~~ named violator's timely request for an administrative hearing pursuant to this division, the code enforcement clerk or designee shall set the matter down for hearing on the next available regularly scheduled hearing date or as soon thereafter as possible in accordance with subsection (c) of this section.

(b) The code compliance clerk or designee shall send a notice of hearing ~~by first-class mail~~ to the violator and to the property owner, if different from the violator, in compliance with section 22-189. ~~at the violator's last known address.~~ The notice of hearing shall include the following:

(1) The name of the code inspector who issued the notice of civil violation;

(2) A factual description of the alleged violation;

(3) The date of the alleged violation was observed by the code inspector;

(4) The section number or ~~section~~ description of the code allegedly violated;

(5) The place, date and time of the administrative hearing;

(6) Notice of ~~T~~the right of the violator to be represented by an attorney;

(7) Notice of ~~T~~the right of the violator to present witnesses and evidence and to cross examine witnesses; and

(8) Notice that failure of the violator to attend the administrative hearing may result in civil penalty, continuing violation penalties and administrative costs being assessed against the violator.

(c) The special master shall conduct the administrative hearings on a regularly scheduled ~~monthly~~ basis. No hearing shall be set sooner than 30 days from the date of service of the ~~citation~~ notice of civil violation unless as so provided in this section.

(d) All administrative hearings before the special master shall be open to the public. All testimony shall be under oath. If proper notice has been given, a hearing may proceed in the absence of the named violator.

(e) The proceedings at the administrative hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(f) Each case before a special master shall be presented by the code compliance official, code inspector and/or designee. ~~inspector or representative of the department which issued the citation.~~

(g) The administrative hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings. Any relevant evidence shall be admitted if the special master finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

(h) 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 the witness to testify and to offer rebuttal ~~the~~ evidence ~~against the witness~~.

(i) The special master shall make findings of fact and conclusions of law based on the evidence presented. ~~In order to uphold the decision of the code inspector, the special master must find that the greater weight of the evidence shows the existence of a code violation and that the named violator committed or was responsible for maintaining the violation. The special master shall either affirm or reverse the determination of the code inspector as to the issuance of the citation. The special master may also modify the determination of the code inspector as to the time for correction contained in the citation. If the special master reverses the determination of the code inspector and finds the named violator not responsible for the alleged~~

~~violation in the citation, the named violator shall not be liable for the payment of any civil penalty unless the city successfully appeals the ruling of the special master. If the decision of the special master is to affirm the code inspector's determination of violation, the following elements may be included in the special master's decision:~~

~~(1) The amount of the civil penalty;~~

~~(2) Administrative costs of the hearing; and~~

~~(3) The date by which the violation must be corrected to prevent a continuing violation.~~

(j) Based upon the findings made by the special master, the decision of the code inspector shall either be affirmed or reversed.

(1) In order to affirm the decision of the code inspector, the special master must find that the greater weight of the evidence shows the existence of a code violation and that the named violator committed or was responsible for the violation.

(2) If the special master reverses the decision of the code inspector and finds the named violator not responsible for the code violation alleged in the ~~citation~~ notice of civil violation, the named violator shall not be liable for the payment of any civil penalty, continuing violation penalties or administrative hearing costs, absent reversal of the special master's findings pursuant to section 22-188.

(3) The special master may also modify the decision of the code inspector as to the time for correction contained in the notice of civil violation. The time for correction given by the code inspector to the named violator in the notice of civil violation is presumed to be reasonable but may be rebutted by the violator. Upon presentation of relevant evidence by the named violator that the time for correction

was not reasonable, the special master may make determination as to reasonableness of the time for correction contained in the notice of civil violation. If the special master determines that the time given for correction was insufficient, the penalty for a continuing violation shall be calculated from the date determined by the special master to be a reasonable date for correction.

(k) The special master may, for good cause shown, postpone or continue an administrative hearing.

(~~j~~l) If the violator is found guilty of the violation, the violator may be held liable for the ~~reasonable costs of the~~ administrative hearing cost in the amount of $150.00. ~~at the discretion of the special master~~.

(m) If the decision of the special master is to affirm the code inspector's determination of violation, the following elements may be included in the special master's final order:

(1) The amount of the civil penalty, including applicable continuing violation penalties plus any other applicable costs incurred by the city;

(2) Administrative costs of the hearing in the amount of $150.00; and

(3) The date by which the violation must be corrected to prevent resumption of continuing violation penalties, if applicable.

~~(k) The 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 police department or such other persons authorized to deliver subpoenas;~~

~~(3) Subpoena evidence;~~

~~(4) Take testimony under oath; and~~

~~(5) Assess and order the payment of civil penalties and repair costs as provided herein, including reassessment of civil penalties after compliance and fine reduction within the guidelines of section 22-96. If a fine is reduced and the violator fails to pay the reduced fine within 30 days from the date a fine is reduced by the special master, then the original amount of the fine shall be reinstated. The special master has the authority where there is a demonstrated showing of good cause to reduce fines below the fine reduction guidelines. The special master shall exercise this authority with great caution and only in exceptional circumstances that do not occur frequently. The special master may hear and decide fine reductions from orders imposed by the code enforcement board.~~

(~~l~~n) The 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.

(~~m~~o) The code inspector, special master or the named violator may request that witnesses and records, including surveys, plats and other materials, be subpoenaed to any formal hearings. Subpoenas may be served by officers of the police department or other such persons authorized to deliver subpoenas. The city clerk shall provide sufficient signed and blank witness and document subpoena forms to the named violator and the code inspector for the purpose of having witnesses and records subpoenaed. The violator shall pay to the city a fee for each subpoena served.

(p) If the violator fails to correct the violation by the date set for compliance in the special master's order and/or pay for the civil penalties, continuing violation penalties and any other costs assessed by the special master in compliance with section 22-184, the code inspector shall serve on the violator a

notice of non-compliance and intent to file a lien. The violator may contest the code inspector's finding of non-compliance and the imposition of the lien by requesting an administrative hearing before a special master in compliance with section 22-185 within fifteen (15) days after service of the notice of non-compliance and intent to file the lien. If the violator fails to request the administrative hearing, the violator shall be deemed to have waived his right to contest the finding of non-compliance and imposition of the lien, and such waiver shall constitute an admission of non-compliance with the special master's order. The city may proceed to record a certified copy of the special master's order in compliance with section 22-187 without any further action from the special master.

(1) Upon receipt of a named violator's timely request for an administrative hearing, pursuant to this section, the code enforcement clerk or designee shall set the matter down for hearing on the next available regularly scheduled hearing date or as soon as possible thereafter.

(2) The code enforcement clerk or designee shall send a notice of hearing to the violator in compliance with section 22-189. The notice of hearing shall include the following:

(i) A reference to the order of the special master that continues to be violated;

(ii) Date and issuance of affidavit of non-compliance;

(iii) The name of the code inspector who inspected the property and prepared the affidavit of non-compliance;

(iv) The place, date and time of the administrative hearing;

(v) Notice of the right of the violator to be represented by an attorney;

(vi) Notice of the right of the violator to present witnesses and evidence and to cross examines witnesses;

(vii) Notice that failure of the violator to attend the administrative hearing may result in civil penalty and administrative costs being assessed against the violator;

(viii) Notice that the fines continue to accrue while the administrative hearing is pending, and that if the violator is not successful at the hearing fines will accrue retroactive to the deadline of the original order;

(ix) Notice that the administrative hearing is strictly limited to whether and when the violator complied with the order of the special master; and

(x) Notice that the violator may be responsible for the administrative costs of the hearing in the amount of $150.00 if the violator is unsuccessful at the hearing.

(Code 1960, § 8A-15; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)

Sec. 22-187. - Recovery of unpaid civil penalties; lien for unpaid penalty; foreclosure and other relief.

(a) The city may institute proceedings in a circuit court to compel payment of civil penalties and to compel compliance, make repairs and other equitable and injunctive relief.

(b) A certified copy of any order imposing a civil penalty or a civil penalty plus administrative costs may be recorded in the county public records and thereafter shall constitute a lien against the land upon which the violation exists or existed or upon

any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this 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. A civil penalty imposed pursuant to this section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city, and the city may execute a satisfaction or release of lien pursuant to this section. After three months from the filing of any such lien that remains unpaid, the city may foreclose on or otherwise execute the lien. No lien created pursuant to this chapter may be foreclosed on real property which is homestead under Section 4, Article X of the Florida Constitution. In any action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fees and reasonable costs of repairs incurred by the city to bring the property into compliance. ~~and it may be enforced in the same manner as a court judgment, including execution and levy against personal property of the violator, but shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing and recording of such lien that remains unpaid, the city may foreclose or otherwise execute on the lien.~~

(c) No lien provided under this section shall continue for a period longer 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 a lien is commenced in a court of competent jurisdiction. The city shall be entitled to collect all costs incurred in recording and satisfying the lien.

(d) The violator, or the violator's successor or assign, who has an ownership interest in the property encumbered by the recorded order of the special master may file a request for a reduction of fines before the special master only after an inspection is conducted by the city and a code inspector finds that all violations were corrected. Upon receipt of a written request for a reduction, and the filing of an affidavit of partial compliance by the code inspector, the code compliance official shall set the matter for penalty reduction hearing by the special master. However, if the city has commenced action to obtain compliance with the order of the special master, including but not limited to an action for injunctive relief, foreclosure, or money judgment, no reduction hearing shall be held. No request for a reduction of civil penalties may be accepted or processed unless the code violations on the subject property have been corrected.

(e) At the hearing, the findings of the special master shall be limited to evidence establishing:

(1) Good cause for a reduction of the civil penalty, and

(2) The amount of the reduction.

Said hearing shall not be an opportunity to appeal any findings of fact or conclusions of law set forth in any prior order of the special master or any administrative determination of the city.

(f) In determining good cause, and the amount of the reduction, if any, the special master shall consider:

(1) The gravity of the violation;

(2) Any actions taken by the violator to correct the violation;

(3) Any previous, or other outstanding violations whether committed by the violator, 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;

(4) Whether the violation is uncorrectable, irreparable or irreversible in nature;

(5) Whether the violator's failure to timely comply with an order of the special master is due to an inability to comply based on factors beyond the control of the violator; and

(6) Any equitable considerations raised by the violator or the city relating to the amount of the reduction.

(g) Upon a finding of good cause, the special master has the sole discretion to grant or deny the request for a reduction of civil penalty according to the following guidelines:

(1) If compliance occurs within three months of the date for compliance set forth in the order of the special master; a maximum reduction of 95 percent of the total amounts owed to the city, which includes the original civil penalty, continuing civil penalties, any applicable costs, interests and fees assessed;

(2) If compliance occurs more than three months but less than 12 months from the compliance date, a maximum reduction of 75 percent of the total amounts owed to the city, which includes the original civil penalty, continuing civil penalties, any applicable costs, interests and fees assessed;

(3) If compliance occurs from 12 months to 18 months of the compliance date; a maximum of 50 percent of the total amounts owed to the city, which includes the original civil penalty, continuing civil penalties, any applicable costs, interests and fees assessed; and

(4) If compliance occurs more than 18 months after the compliance date, a maximum of 25 percent of the total amounts owed to the city, which includes the original civil penalty, continuing civil penalties, any applicable costs, interests and fees assessed.

(h) The special master has the authority where there is a demonstrated showing of financial hardship or other good cause to reduce the civil penalty below the civil penalty reduction guidelines included above. The special master shall exercise this authority with great caution and only in documented and exceptional circumstances. A violator alleging financial hardship has the burden of presenting evidence of inability to pay the civil penalty. In no event shall the fine be reduced below the amount of the original fine plus the costs incurred by the city in its prosecution of the code violations. The special master shall not waive or reduce any administrative fees previously ordered to be paid. The violator shall be responsible for the administrative hearing cost in the amount of $150.00.

(i) If the amounts owed to the city are reduced, the order of the special master shall provide that if the violator fails to pay the reduced amount by the date ordered, then the original amounts owed shall be automatically reinstated. The special master may impose conditions on the granting of a request for reduction and may allow additional hearings upon request if necessary to establish compliance with said conditions before an order reducing the amounts owed is entered.

(j) Upon receipt of timely payment in full of the reduced amount, and the recording costs, the city shall record a copy of the order reducing the penalties and a satisfaction or release of lien.

(k) A request for a reduction hearing shall include a waiver of the right, if any, to seek judicial review of

the special master's decision whether or not to reduce the fine and if so, by how much. A reduction of civil penalty may only be granted once as to any violation of an order of the special master. If a reduction is denied based upon the merits of the claim, such denial shall be with prejudice and the matter shall not be reconsidered.

(l) Liens arising from a fine imposed pursuant to a violation of chapter 38, chapter 54 and chapter 86 of the code are ineligible for reduction.

(Code 1960, § 8A-16; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)

Sec. 22-188. - Appeals of orders of special masters.

(a) An aggrieved party, including the city, ~~The violator or the city~~ may appeal a~~n~~ final order of a special master by filing a petition for certiorari with the circuit court, appellate division. Such appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special master. An appeal shall be filed within 30 days of the date of issuance of the order by the special master sought to be overturned.

(b) Failure to make such appeal within the prescribed 30-day period and ~~I~~in the absence of reversal of a special master's ruling by a court of competent jurisdiction acting in an appellate capacity, the findings of the special master shall be conclusive, binding and final ~~as to a determination of responsibility for the code violation~~, and such findings shall be admissible in any proceeding to collect unpaid penalties or for equitable or injunctive relief.

(c) ~~Nothing contained in this article shall prohibit the city from enforcing its code by any other means. The enforcement procedures set forth in article II of this chapter and this article are cumulative to all~~

~~others and shall not be deemed to be prerequisites to filing suit for the enforcement of the code.~~ No aggrieved party other than the city may apply to the court for relief unless such party has first exhausted the remedies provided for in this article and has taken all available steps provided in this chapter; and no application shall be made by any aggrieved party other than the city to a court for relief except from an order imposing fines or assessing continuing fines issued by the special master pursuant to this chapter. It is the intention of the city that, notwithstanding anything in this chapter to the contrary, the city shall retain all rights and remedies otherwise available to it to secure compliance with or prevent violations of the code.

(Code 1960, § 8A-17; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)

Sec. 22-189. - Notices.

(a) All notices required under this chapter including notice of civil violations and notices of administrative hearing must be provided to the violator and property owner, if different from the violator by: ~~The civil violation notice and the citations shall be in writing and furnished by certified mail, return receipt requested, or by hand-delivery by the sheriff or other law enforcement officer, code inspector or designated agent acting by and through the code inspector, 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 leaving the notice with the manager or other person in charge, if the violation concerns a commercial property. In all cases, the owner of the property shall be notified in addition to anyone else charged with an alleged violation occurring on the property. Notice by certified mail, return receipt requested, sent to the owner of the property at the~~

~~address listed in the tax collector's office for tax notices, and any other address provided to the city by such owner, shall be presumed that the notice was received by the owner, notwithstanding that the certified mail envelope may be returned by the post office as unclaimed or refused.~~

(1) Certified mail, 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. For property owned by a corporation, notice may be provided by certified mail, return receipt requested, to the registered agent of the corporation. If any notice is returned as unclaimed or refused, notice may be provided by publication and/or posting as described in subsections (b) and (c) below;

(2) Hand delivery to the violator by the sheriff or other law enforcement officer, code inspector or designated agent acting by and through the code inspector;

(3) Leaving the notice at the violator's usual place of residence with any person residing therein who is 15 years of age or older and informing such person of the contents of the notice;

(4) In the case of commercial premises, notice may be served by leaving the notice with the manager or other person in charge;

(b) In addition to providing notice as set forth in subsection (a) hereof, at the option of the code inspector, law enforcement officer or other person designated by the city, notice may also be served by publication, as follows:

(1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county. The newspaper

shall meet such requirements as are prescribed under F.S. Ch. 50 for legal and official advertisements;

(2) Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051;

(3) Notice by publication or posting may run concurrently with or may follow an attempt to provide notice by hand delivery or by mail as required under subsection (a) of this section.

(c) In lieu of publication, and under the circumstances set forth in subsection (a)(1) hereof, such notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice of civil violation, 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 city hall. Proof of posting shall be by affidavit of the person posting the notice of civil violation or notice of hearing, which affidavit shall include a copy of the notice of civil violation or notice of hearing ~~or citation~~ posted and the date and places of its posting.

(d) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a) of this section, together with proof of publication or posting as provided in subsections (b)~~(2)~~ ~~and (3)~~ and (c) above, shall be sufficient to show that the notice requirements of ~~article II of~~ this chapter ~~and this article~~ have been met, without regard to whether or not the named violator actually received such notice.

(Code 1960, § 8A-19; Ord. No. 94-46, § 1, 6-14-1994; Ord. No. 95-63, § 1, 8-22-1995; Ord. No. 2000-68, § 1, 8-8-2000)

Sec. 22-190. – Schedule of civil penalties.

The following table shows the sections of this code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter 22; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

The "Description of violations" below are illustrative only and are not meant to limit or define the nature of the violations or the subject matter of the listed code sections, except to the extent that different types of violations of the same code section may carry different civil penalties. For each code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this chapter 22, regardless of whether all activities proscribed or required within that particular section are described in the "Description of violations" column. To determine the exact nature of the activity proscribed or required by this code, the relevant code section must be examined.

Code Section	Description of the violations	Civil Penalty
City of Hialeah Code of Ordinances, Chapter 10, excluding Sec. 10-2(b) and Sec. 10-2(e).	Animals.	$100.00
City of Hialeah Code of Ordinances, Chapter 10, Sec. 10-2(b) and Sec. 10-2(e).	Animal cruelty.	$250.00
Florida Building Code, Sec. 105.1.	Work done without the benefit of a building permit.	$250.00

Miami-Dade County Code, Chapter 17, Sec. 17-23, Sec. 17-24, Sec. 17-27, and Sec. 17-28.	Minimum Housing Standards.	$100.00
Miami-Dade County Code, Chapter 17, Sec. 17-25, Sec. 17-26, Sec. 17-29, and Sec. 17-30.	Minimum Housing Standards.	$250.00
City of Hialeah Code of Ordinances, Chapter 50, Sec. 50-28.	Maintenance of exterior buildings and wall surfaces.	$100.00
City of Hialeah Code of Ordinances, Chapter 58, Article I, excluding Sec. 58-5.	Prohibited conduct.	$100.00
City of Hialeah Code of Ordinances, Chapter 58, Sec. 58-5.	Nuisances.	$250.00
City of Hialeah Code of Ordinances, Chapter 58, Article II.	Garbage and trash; used and waste tires.	$250.00
City of Hialeah Code of Ordinances, Chapter 58, Article III.	Graffiti.	$250.00
City of Hialeah Code of Ordinances, Chapter 58, Article IV.	Litter removal.	$250.00

City of Hialeah Code of Ordinances, Chapter 58, Article V.	Noise control.	$250.00
City of Hialeah Code of Ordinances, Chapter 74.	Signs regulations.	$100.00
City of Hialeah Code of Ordinances, Chapter 78, Sec. 78-31, Sec. 78-32, and Sec. 78-33.	Property maintained in a clean and presentable condition.	$100.00
City of Hialeah Code of Ordinances, Chapter 78, Sec. 78-36.	Illegal disposal of garbage or trash.	$250.00
City of Hialeah Code of Ordinances, Chapter 82.	Streets, sidewalks, swale areas and other public places.	$100.00
City of Hialeah Code of Ordinances, Chapter 86.	Business tax receipt.	$100.00
City of Hialeah Code of Ordinances, Chapter 90.	Vehicles for hire.	$100.00
City of Hialeah Code of Ordinances, Chapter 98.	Zoning regulations.	$250.00

City of Hialeah Land Development Code.	Land development regulations.	$250.00
City of Hialeah Landscape Manual.	Minimum landscape requirements.	$250.00

Sec. 22-191. – Provisions are supplemental

The enforcement procedures outlined in this chapter 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.

Secs. 22-190~~2~~—22-215. - Reserved.

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Section 2: **Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: **Penalties.**

Every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: **Inclusion in Code.**

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 5: **Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: **Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 27 day of February, 2018.

THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

Jose F. Caragol
Council Vice President

Attest:

Approved on this 5 day of March, 2018.

Marbelys Fatjo, City Clerk

Mayor Carlos Hernandez

~~Approved as to form and legal~~ sufficiency:

Lorena E. Bravo, City Attorney

Ordinance was adopted by a 5-0-2 vote with Councilmembers, Caragol, Zogby, Lozano, Cue-Fuente, and Hernandez voting"Yes' and Casáls-Munoz and Garcia-Martinez being absent.

~~Strikethrough~~ indicates deletion. Underline indicates addition.

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