

ORDINANCE NO. 12-05

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RELATING TO CODE ENFORCEMENT LIENS; AMENDING SECTION 2-427 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE BY DELETING CERTAIN PROVISIONS RELATING TO THE EXECUTION OF SATISFACTIONS OF LIEN AND JURISDICTION OVER LIENS; CREATING A NEW DIVISION 4 IN CHAPTER 2, ARTICLE V, OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, TO BE ENTITLED "REDUCTION AND/OR RELEASE OF CODE ENFORCEMENT LIENS," CREATING SECTION 2-432, "PROCEDURE TO OBTAIN A REDUCTION AND/OR RELEASE OF A CODE ENFORCEMENT LIEN;" PROVIDING FOR APPLICATION REQUIREMENTS; CRITERIA FOR THE TOWN MANAGER OR DESIGNEE AND THE TOWN COUNCIL TO FOLLOW WHEN CONSIDERING APPLICATIONS FOR REDUCTION OR FORGIVENESS OF CODE ENFORCEMENT LIENS; TIME PERIOD WITHIN WHICH ANY REDUCED LIEN AMOUNT MUST BE PAID; RECORDING OF RELEASE OF LIEN; PROVIDING FOR CODIFICATION; CONFLICTS; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 162.09(3), *Florida Statutes*, provides that Code Enforcement liens run in favor of local governing body, and the local governing body may execute a satisfaction or release of any code enforcement lien; and

WHEREAS, Section 162.09(2)(c), *Florida Statutes*, provides that the code enforcement board, or lawful designee, may reduce a code enforcement fine before the order imposing such fine has been recorded; and

WHEREAS, Attorney General Opinion 02-62 and Attorney General Opinion 99-03 opine that code enforcement boards or designee, are not authorized to reduce fines after code enforcement orders have been recorded in the public records, and that only the local governing body is vested with the authority to reduce or satisfy liens after such liens have been recorded; and

WHEREAS, Attorney General Opinion 99-03 concludes that a Town Council may delegate its authority to execute satisfactions or releases of code enforcement liens so long as such delegation does not result in a complete divestiture of such liens by the Town Council to a private party; and

WHEREAS, pursuant to Section 166.021, *Florida Statutes*, the TOWN OF FORT MYERS BEACH through its home rule powers may exercise any power for municipal purposes except those expressly prohibited by law.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Sections 2-427(c) and (e) of the Town of Fort Myers Beach Land Development Code are hereby amended as follows:

(c) **Creation of a lien.** A certified copy of an order imposing a fine or a fine plus repair costs, and/or assessing the costs of prosecution, may be recorded in the public records and thereafter will constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order will not be deemed to be a court judgment except for enforcement purposes. A fine imposed under this article will continue to accrue until (i) the violator has complied with the order rendered by the special magistrate or until (ii) a judgment is rendered in a suit to foreclose the lien, whichever occurs first. A lien arising from a fine imposed under this section runs in favor of the Town of Fort Myers Beach, and the town manager may execute a satisfaction or release of lien entered in accordance with this section. The special magistrate may authorize the town attorney to foreclose on a lien which remains unpaid for a period of three or more months after filing thereof or sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created under this article may be foreclosed on real property which is a homestead under section 4, article X of the state constitution. The money judgment provisions of this section will not apply to real or personal property which is covered under section 4(a), article X of the state constitution.

~~(e) **Jurisdiction over lien.** The special magistrate will retain jurisdiction over all cases in which a lien has been recorded until the lien has been released. Upon a showing of clear and convincing evidence by the violator, the special magistrate has the authority to reduce the lien amount for pay-off purposes, in the following circumstances:~~

~~a. The violator has come into compliance, but due to circumstances beyond his or her control resulting in extreme financial hardship, the violator cannot pay the full amount necessary to satisfy and release the lien; or~~

~~b. The violator has not come into compliance, but has a contract to sell the property, contingent upon release of the lien, to a contract purchaser who intends to bring the property into compliance, provided, however, that the contract purchaser must first enter into an agreement with the town, indicating his intent to bring the property into compliance and a timetable for completing the work and establishing security for performance. The authority to reduce fines granted to the special magistrate will be applicable to all code enforcement cases in which a lien has been placed on the property and remains unsatisfied.~~

Section 3. The following shall be added as a new Division 4 in Article V, Chapter 2 of the Land Development Code of the Town of Fort Myers Beach:

**DIVISION 3. REDUCTION AND/OR RELEASE OF
CODE ENFORCEMENT LIENS.**

Sec. 2-432. Procedure to obtain reduction and/or release of a code enforcement lien.

(a) Where a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the land and/or

property of the violator/property owner, such violator/property owner may apply for a release of such lien as follows:

(1) Upon full payment by the violator/property owner of the fine or penalty imposed as a result of a code enforcement action, the town manager or designee is hereby authorized to execute and record, at the property owner's expense, a release of lien.

(2) Upon request for a reduction or forgiveness of a fine or penalty that constitutes a lien resulting from a code enforcement action, the violator/property owner shall submit a written application to the town manager or designee. The application shall include the following:

- (i) A copy of the order imposing a lien upon the property;
- (ii) The code enforcement case number;
- (iii) The date upon which the violator/property owner brought the subject property into compliance with the requirements of the Town Code;
- (iv) The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted;
- (v) The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;
- (vi) The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded; and
- (vii) The amount of the reduction in penalty or fine requested by the violator/property owner;
- (viii) Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default.
- (iv) All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal.
- (v) The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager designee.

(3) The violator/property owner shall submit, at the time of application, an application fee in the amount of \$200.00 to reimburse the town for its administrative costs associated with handling the application and recording the order imposing a penalty or fine and the requested release of lien. The application cost is non-refundable, without regard to the final disposition of the application for reduction, forgiveness and release of lien.

(4) Upon receipt of the application for release of lien and the payment provided above, the town manager, or designee, shall confirm through the code enforcement division that

the violation which resulted in the order imposing the penalty or fine has been brought into full compliance.

(5) The town manager, or designee, shall then review and consider the status of the application for release of lien with respect to the following:

(i) If a property owner acquired the property after the code enforcement lien was recorded, a waiver or reduction of lien may not be granted because the lien should have been identified and satisfied by the property owner at the time of purchase of the property.

(ii) If a title insurance policy was issued at the time the property was purchased and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien may not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction or waiver would place the town in the position of indemnifying the title insurer against its losses, which losses are the result of negligent examination of title by the title insurer.

(iii) A request for waiver or reduction in lien may not be granted if the town council has previously reduced the amount of the lien. This statement applies whether or not the request is received from the original applicant for reduction or from a subsequent applicant who acquired the property.

(6) If the town manager or designee determines that the request falls within any one of the above factual situations, the town manager or designee shall issue a written denial of the request for reduction or forgiveness. If the applicant desires to appeal the town manager's decision to the town council, the applicant may do so by filing a written appeal with the town manager stating the reason(s) why the town council should make an exception to its established guidelines and consider a reduction or forgiveness of the lien. Upon filing of a proper appeal, the town manager shall present the information to the town council at a regular meeting for their consideration and final determination.

(7) If the town manager or designee determines that the request does not fall within any of the above factual situations and therefore qualifies for possible reduction or forgiveness, the town manager or designee shall review the request further. The town manager or designee, in formulating a recommendation on whether to reduce the amount of the lien or forgive the lien entirely, shall consider the following factors:

(i) The gravity of the violation(s);

(ii) The amount of time it took the violator/property owner to come into compliance;

(iii) The accrued amount of the code enforcement lien as compared to the market value of the property;

(iv) Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal

amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action;

(v) Any previous code violation(s) of applicant/owner;

(vi) Consideration for the future or proposed use of the property for public purpose; and

(vii) The number and status of all other properties owned by the applicant/owner in Lee County, Florida.

(8) The town manager or designee shall place the application for satisfaction or release of lien upon the agenda of a regularly scheduled town council meeting. The town council may take action based solely upon the sworn application, recommendation of the town manager or designee and the applicant shall have opportunity to address the town council as to the factors he or she believes warrant reduction or waiver of lien in considering the application for satisfaction or release of lien.

(9) The town council may reduce the amount of the lien, waive the full amount of the lien or continue the lien in its full amount and may accept, modify or reject the recommendations of the Town Manager or designee.

(10) Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within thirty (30) days of the town council approval date. If the reduced amount is not paid in full within the thirty (30) day period, the reduction shall be come null and void and the full amount of the lien shall be due and payable.

(11) When a lien is satisfied as a result of full payment, reduced payment or waiver as ordered by the town council, the town shall record the satisfaction/release of lien in the Public Records of Lee County, Florida and provide a copy to the property owner.

Section 4. CODIFICATION. It is the intention of the Town Council of the TOWN OF FORT MYERS BEACH, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Land Development Code of the TOWN OF FORT MYERS BEACH, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to Section," "Article," or other appropriate word.

Section 5. CONFLICTS. All previously adopted Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Section 6. SEVERABILITY. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

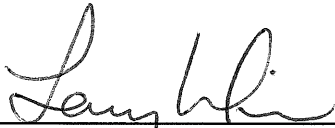
Section 7. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Kosinski and seconded by Council Member Mandel and upon being put to a roll call vote, the result was as follows:

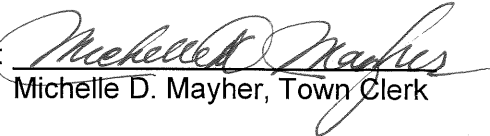
Larry Kiker, Mayor aye
Joe Kosinski aye
Alan Mandel aye

Bob Raymond, Vice Mayor aye
Jo List aye

DULY PASSED AND ADOPTED THIS 18th DAY OF JUNE 2012, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH.

By: 
Larry Kiker, Mayor

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: 
FOWLER WHITE BOGGS, Town Attorney