

FILED #43  
COLLIER COUNTY, FLORIDA

2013 JUL 23 AM 9:10

COLLIER COUNTY

CONSOLIDATED CODE ENFORCEMENT ORDINANCE

CLERK OF COURTS

ORDINANCE NO. 2013 - 49

BY ~~AN~~ AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF  
~~COLLIER COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2007-44,~~  
AS AMENDED, KNOWN AS THE CONSOLIDATED CODE  
ENFORCEMENT ORDINANCE, BY MODIFYING ARTICLE IV, SECTION  
5, AS IT RELATES TO THE SUPERIORITY OF A LIEN ON PROPERTY  
IMPOSED BY AN ORDER OF THE CODE ENFORCEMENT BOARD OR  
SPECIAL MAGISTRATE; PROVIDING FOR CONFLICT AND  
SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF  
LAWS AND ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the Constitution of Florida authorizes Florida counties to exercise broad home rule powers; and

WHEREAS, Section 125.01(1), *Florida Statutes*, provides that the legislative and governing body of a County shall have the power to carry on County government and that said power includes, but is not restricted to, a number of powers set forth in Section 125.01, so long as any powers exercised are not inconsistent with general or special laws; and

WHEREAS, Section 125.01(1)(t), *Florida Statutes*, provides that a county may adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law; and

WHEREAS, Sections 125.01(3)(a) and (b), *Florida Statutes*, recognize that the enumeration of powers in Section 125.01(1), *Florida Statutes*, incorporates all implied powers necessary or incident to carry out those powers and that Section 125.01, *Florida Statutes*, shall be liberally construed in order to effectively carry out the purpose of the section and to secure for counties the broad exercise of home rule powers authorized by the State Constitution; and

WHEREAS, pursuant to Chapter 162, *Florida Statutes*, "The Local Government Code Enforcement Boards Act," the Board of County Commissioners of Collier County (Board) duly enacted Collier County Ordinance No. 2007-44, known as "The Collier County Consolidated Code Enforcement Ordinance, which superseded and repealed prior ordinances; and

WHEREAS, the Board subsequently amended Ordinance No. 2007-44 through its adoption of Ordinance No. 2010-04; and

Words Underlined are added; Words ~~Struck-Through~~ are deleted.

WHEREAS, in light of the May 16, 2013 decision of the Supreme Court of Florida, it is necessary to modify Ordinance No. 2007-44, as amended, as it relates to the superiority of a lien on property imposed by an order of the Code Enforcement Board or the Special Magistrate.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA that:

**SECTION ONE: AMENDMENT TO ARTICLE IV, SECTION 5 OF ORDINANCE NO. 2007-44, AS AMENDED.**

Article IV, Section 5 is hereby amended to read as follows:

ARTICLE IV. Procedures Governing the Code Enforcement Board, Nuisance Abatement Board, and the Special Magistrate

\* \* \* \* \*

**Section 5. Penalties before Enforcement Board and Special Magistrate.**

(1) Upon a finding of violation, the Enforcement Board or Special Magistrate may order the Violator to pay a fine which shall not exceed \$1,000.00 per day per violation for each day the first violation continues past the date set for compliance by the Enforcement Board or Special Magistrate; or in the case of a repeat violation, may order the repeat Violator to pay a fine which shall not exceed \$5,000.00 per day per violation for each day the repeat violation continues past the date set for compliance by the Code Enforcement Board, or from the time the violation has been repeated, and a hearing shall not be necessary for the issuance of the Order. If the Enforcement Board or Special Magistrate finds a violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$15,000.00 per violation.

(2) In determining the amount of the fine, if any, the Enforcement Board or Special Magistrate, as the case may be, shall consider the following factors:

- (a) The gravity of the violation;
- (b) Any actions taken by the Violator to correct the violation; and
- (c) Any previous violations committed by the Violator.

(3) The Nuisance Abatement Board may order the Violator to pay a fine which shall not exceed \$250.00 per day for each day the first violation continues past the date set for compliance; or in the case of a repeat Violator, may order the repeat Violator to pay a fine which shall not exceed \$500.00 per day.

(4) Where the Nuisance Abatement Board hears an administrative action, based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the property owner shall not be subject to a lien against his or her property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the

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property owner of a second stolen property conviction of the tenant. The total fines imposed pursuant to the authority of § 893.138, Florida Statutes, shall not exceed \$15,000.00.

(5) A certified copy of an Enforcement Board or Special Magistrate's Order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation occurred or exists, and upon any other real or personal property owned by the Violator; and except as otherwise provided by law, including mortgages recorded prior in time and the lien of county taxes, shall be superior to the interest on such parcel or property of any owner, lessee, tenant, after-recorded mortgagee, or other person ~~except the lien of county taxes,~~ and shall be coequal with county taxes enforced in the same manner as a court judgment by the sheriffs of this state, including levy against personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the enforcement board may authorize the county attorney to foreclose on the lien or forward the lien to a collection agency. No lien created pursuant to this Section may be foreclosed on real property that is a homestead under Article X, Section 4 of the Florida Constitution.

(6) No lien provided under this division 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 the lien is commenced in a court of competent jurisdiction. 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.

## **SECTION TWO: CONFLICT AND SEVERABILITY.**

In the event this Ordinance conflicts with any other ordinance of Collier County, the more restrictive shall apply. If any phrase or portion of this Ordinance, or the particular application thereof, shall be held invalid or unconstitutional by any court, administrative agency or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses or phrases and their application shall not be affected thereby.

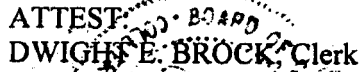
## **SECTION THREE: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Collier County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

## **SECTION THREE: EFFECTIVE DATE.**

This Ordinance shall become effective upon filing with the Florida Department of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier  
County, Florida, this 9th day of July, 2013.

ATTEST:   
DWIGHT E. BROCK, Clerk

By:  Deputy Clerk

Attest as to Chairman's  
signature only.

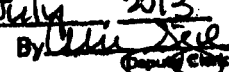
BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

By: 

GEORGIA A. HILLER, ESQ.  
CHAIRWOMAN

Approved as to form and legality:

  
Jeffrey A. Klatzkow  
County Attorney

This ordinance filed with the  
Secretary of State's Office the  
16th day of July, 2013  
and acknowledgement of that  
filing received this 28th day  
of July, 2013  
By: 

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STATE OF FLORIDA)

COUNTY OF COLLIER)

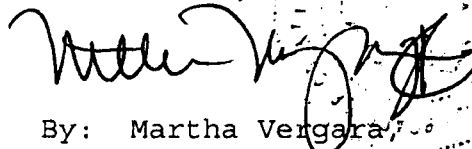
I, DWIGHT E. BROCK, Clerk of Courts in and for the Twentieth Judicial Circuit, Collier County, Florida, do hereby certify that the foregoing is a true and correct copy of:

**ORDINANCE 2013-49**

which was adopted by the Board of County Commissioners on the 9th day of July, 2013, during Regular Session.

WITNESS my hand and the official seal of the Board of County Commissioners of Collier County, Florida, this 15th day of July, 2013.

DWIGHT E. BROCK  
Clerk of Courts and Clerk  
Ex-officio to Board of  
County Commissioners



By: Martha Vergara,  
Deputy Clerk