

ORDINANCE NO. 2016-12

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE V, DIVISION 2, SECTION 2-214 OF THE CODE OF ORDINANCES RELATING TO CODE ENFORCEMENT FINES, TO IMPOSE A CAP ON CODE ENFORCEMENT FINES; AMENDING DIVISION 3, TO CREATE A LIEN REDUCTION PROCEDURE; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Port Orange to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Section 162.09(3), Florida Statutes, provides that a lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section; and

WHEREAS, the City Council recognizes that the main objective of any code enforcement action is to gain compliance with the city's codes; and

WHEREAS, the City Council recognizes that a lien imposed on property that is disproportionate to the property's value impedes the transfer and rehabilitation of said property, and increases the likelihood of a continual and perpetual code enforcement violation; and

WHEREAS, the City Council wishes to limit code enforcement fines to a proportion of the property value of the offending property in order to avoid creating a disincentive for compliance; and

WHEREAS, the City Council wishes to incentivize compliance with its codes by creating a lien reduction program that rewards eligible applicants for compliance; and

WHEREAS, for purposes of this Ordinance text with underlined (underlined) type shall constitute additions to the original text and text with strike-through (~~strike-through~~) type shall constitute deletions to the original text;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1. The City Council of the City of Port Orange, Florida hereby amends Chapter 2, Article V, Division 2, Section 2-214 of the Code of Ordinances to read as follows:

Sec. 2-214. - Administrative fines; liens generally.

- (a) The code enforcement board, upon notification by the code compliance inspector, or the code enforcement manager, that a previous order of the code enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the code enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found by the code inspector to have occurred. In addition, if the violation is a violation described in F.S. 162.06(4), or its successor, the code enforcement board shall notify the city council, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the city council to make further repairs or to maintain the property and does not create any liability against the city for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this section, a hearing shall not be necessary for issuance of

the order imposing the fine. If, after due notice and hearing, the code enforcement board finds a violation irreparable or irreversible in nature, it may order the violator to pay a fine as specified in subsection (b).

- (b) A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first violation, \$500.00 per day for a repeat violation, and up to \$5,000.00 per violation if the code enforcement board finds the violation to be irreparable or irreversible in nature, except as increased as provided herein upon resolution of the city council. In the event the city population increases to a population equal to or greater than 50,000 persons, then the city manager may bring forth a resolution to the city council which certifies that the population has increased and surpassed 50,000 persons, and the city council through approval of this resolution, by a majority vote plus one, may authorize the imposition of fines in excess of those set forth above. Upon the city council's authorization by resolution, such fines shall not exceed \$1,000.00 per day per violation for a first violation, \$5,000.00 per day per violation for a repeat violation, and up to \$15,000.00 per violation if the code enforcement board or special master finds the violation to be irreparable or irreversible in nature. For the purposes of this section, each day shall be considered a separate violation. In addition to any fines, the code enforcement board may impose additional fines to cover all costs incurred by the city in enforcing its codes and all costs of repairs pursuant to subsection (a).
- (c) In determining the amount of the fine, if any, the code enforcement board shall consider the following factors:
- (1) The gravity of the violation;
 - (2) Any actions taken by the violator to correct the violation; and
 - (3) Any previous violations committed by the violator.
- (d) A fine imposed by the code enforcement board or special magistrate shall not exceed fifty percent of the just value of the real property where the violation occurred; however, this cap shall not apply to the city's actual abatement, administrative, and prosecutorial costs incurred during enforcement. Just value

shall be determined by the just value listed by the Volusia County Property Appraiser as of the date of the order assessing the fine.

(de) The code enforcement board may reduce a fine imposed pursuant to this section.

(ef) A certified copy of an order imposing a fine, or a fine plus repair and prosecution costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. The city council may petition the circuit court for enforcement of the order, and the 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 pursuant to this section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien 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 entered pursuant to this section. After three months from the filing of any such lien, which remains unpaid, the code enforcement board may authorize the city attorney to foreclose on the lien. No lien created pursuant to the provisions of this article may be foreclosed on real property which is a homestead under Article X, Section 4 of the State Constitution of the State of Florida. All fines and liens imposed by the code enforcement board shall bear interest at the rate provided by law for court judgments. Such liens may be foreclosed in the same manner as provided by law for the foreclosure of mortgages.

SECTION 2. The City Council of the City of Port Orange, Florida hereby amends Chapter 2, Article V, Division 2 of the Code of Ordinances to establish a new Section 2-226 to read as follows:

Sec. 2-226. – Lien Reduction Program.

(a) Purpose. This section shall be known as the Lien Reduction Program. This program is offered to provide eligible property owners with an opportunity to

seek a reduction to code enforcement liens recorded against the owner's property in accordance with the procedure described herein.

- (b) Applications. Applications shall be made in writing on a form approved by the community development director. Completed applications shall be submitted to the community development director, or his or her designee, together with a non-refundable application fee of \$100 by mail or hand-delivery to City Hall.
- (c) Eligibility. In order to be eligible for a lien reduction, the applicant shall meet the following criteria:
 - (1) The applicant owns the property that is the subject of the lien;
 - (2) All property located within the city and owned by the applicant is in compliance with the code and has no uncorrected violations; and
 - (3) The applicant does not have any outstanding debts owed to the city or taxes due to the county, except for the lien sought to be reduced.
- (d) Exclusions and limitations.
 - (1) If the applicant owned the property which is the subject of the lien at the time the code enforcement lien sought to be reduced was imposed and meets the eligibility criteria, he or she may only participate in this program once. Any subsequent code enforcement liens imposed on the same property while owned by the same owner shall not be eligible for lien reduction under this program.
 - (2) Any lien reduction pursuant to this program shall be void in the event that an applicant who applies for and receives a lien reduction subsequently rents, leases, sells or otherwise transfers or conveys the property to the individual or entity that owned the property at the time the code enforcement lien was imposed if said transfer or conveyance takes place within a five year period from the date of lien reduction approval. Any voided lien reduction pursuant to this subsection shall result in a new lien being recorded by the city for the full lien amount prior to the reduction.
- (e) Application approval. The community development director shall have the authority to approve or deny applications consistent with this section.

- (f) Lien reduction and payment. An applicant who is determined eligible to receive a code enforcement lien reduction shall have sixty (60) days to pay either 20% of the outstanding code enforcement lien amount or the city's actual abatement, administrative, and prosecutorial costs incurred during enforcement, whichever is greater. The city shall record a satisfaction of lien upon payment of the reduced lien amount within sixty (60) days of the lien reduction approval. If the reduced lien amount is not paid within sixty (60) days from the date of approval, the lien amount will revert to the original lien amount and the application fee shall be forfeited.
- (g) Judicially imposed sale. Any proceeds received by the city through a foreclosure sale, tax deed sale, or other judicially imposed sale, shall be applied to the outstanding lien amount prior to any lien reduction application being processed. The remaining lien amount may then be reduced pursuant to the procedures set forth herein.
- (h) Appeal. Any individual or entity aggrieved by the decision of the community development director regarding an application for lien reduction may appeal the decision to the city manager in writing within ten (10) days of the community development director's decision. A request to appeal shall contain at a minimum the name of the applicant, a copy of the original application, a copy of the community development director's decision, and the grounds for appeal. The decision of the city manager on appeal shall be final.

SECTION 4. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

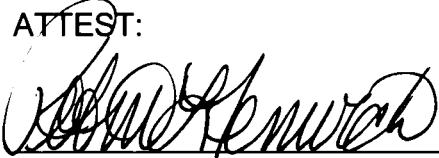
SECTION 5. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 6. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 7. This ordinance shall become effective immediately upon final passage by the City Council.



MAYOR ALLEN GREEN

ATTEST:


Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the 19 day of July, 2016

Passed and adopted on second and final reading on the 2 day of August, 2016

Reviewed and Approved: 
Deputy City Attorney

