

ORDINANCE NO. 2019- 006

AN ORDINANCE OF THE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AMENDING TITLE XV, CHAPTER 153, ENTITLED "CODE ENFORCEMENT," OF THE VILLAGE CODE OF ORDINANCES BY CLARIFYING THE MITIGATION PROCESS FOR CODE ENFORCEMENT FINES, THE ROLE OF THE VILLAGE ATTORNEY, THE ENFORCEMENT OF LIENS AND COMPLIANCE WITH THE VILLAGE CODE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Commission of North Bay Village (the "Village") wishes to clarify the procedures in its Code for mitigating code enforcement fines; and

WHEREAS, the Village Attorney is authorized to represent the Village in all code enforcement hearings and may pursue other legal remedies to gain compliance with the Code; and

WHEREAS, pursuant to the Florida Supreme Court's decision in City of Palm Bay v. Wells Fargo Bank, N.A., 114 So. 3d 924 (2013), code enforcement liens do not have superiority status as special assessment liens; and

WHEREAS, pursuant to Section 162.13, Florida Statutes, the Village is not prohibited from enforcing its Code by any other means; and

WHEREAS, pursuant to Section 162.11, Florida Statutes, an aggrieved party, including the Village, may pursue an appeal of the Special Master's order; and

WHEREAS, the Village Commission finds that this amendment improves the quality of life within the Village and is in the best interest of its residents.

NOW, THEREFORE, BE IT ENACTED BY THE COMMISSION OF NORTH BAY

VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Incorporated. The above-stated recitals are hereby confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Village Code of Ordinances Amended. Chapter 153 of the North Bay Village Code of Ordinances, entitled "Code Enforcement," is hereby amended to read, as follows:

* * *

Chapter 153 - CODE ENFORCEMENT

* * *

§ 153.02 – Code Enforcement Officers, Special Masters and Village Attorney

* * *

(B) Special Masters.

* * *

(4) The Special Master shall have the powers to:

* * *

(g) Mitigate fines and costs previously assessed as provided by this Chapter.

(h) Take any action that is necessary to effectuate the powers of the Special Master consistent with the intent of this Code.

(C) Village Attorney.

(1) The Village Attorney shall serve as counsel to the Village in ~~the defense of appeals to the Special Master~~code enforcement hearings. The Village Attorney shall have the power, upon approval by the Village Commission, to initiate civil actions to enforce compliance with the Village Code~~for declaratory and injunctive relief, and orders to compel, and to commence any other action to enforce civil fines, correction orders and orders of the Special Master, and to compromise and settle fines and penalties.~~

§ 153.03 - Code enforcement procedures.

* * *

(G) ~~Liens; priority and foreclosure of liens.~~

(1) A certified copy of an order imposing a fine may be recorded in the public records of Miami-Dade County and shall, upon recording, constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.

(2) ~~Liens shall~~may be enforced by foreclosure in circuit court and subject to the provisions contained in F.S. § 162.09(3), as amended; ~~provided, however, that the lien shall have the same priority, effect and duration as a special assessment lien. Liens shall have a duration of 20 years.~~

(3) Nothing contained in this chapter shall prohibit the Village from enforcing its Code by any other means. The enforcement procedures outlined herein 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.

(H) *Appeals.*

(1) ~~An aggrieved party, including the violator, property owner, local governing body, and property owners and tenants within 300 feet of the property that is subject to an order of violation by the Special Master, may appeal the final order to the Circuit Court. In the case of property owners and tenants, they shall have standing to appeal to the circuit court only if they appeared at the hearing before the Special Master and presented evidence in substantial opposition to the final order of the special master. The appeal shall not be a hearing de novo but shall be limited to appellate review of the record. An appeal shall be filed within 30 days of rendition of the order.~~

* * *

§ 153.05 – Mitigation of fines.

(A) The violator, or the violator's successors or assigns who have an ownership interest in the property encumbered by a lien pursuant to this article, may request a mitigation hearing to reduce the fines only after the violations encompassed within the code enforcement case have been corrected. Upon receipt of a written request for a mitigation hearing, the clerk for the Special Master shall set the matter for a hearing before the Special Master.

(B) A mitigation hearing is not an appeal or a de novo review of the code enforcement case. The formal quasi-judicial procedures shall not apply.

(C) At the mitigation hearing, the Special Master may consider the following criteria:

(1) Good cause for a reduction of the fines.

(2) The cooperation of the violator, including whether the violator appeared before

the Special Master at the original hearing.

(3) The gravity of the violation.

(4) The actions taken by the violator to correct the violation.

(5) Whether there was an extraordinary hardship, which affected compliance.

(6) Whether the violator is a repeat violator.

(7) The total or estimated costs incurred by the Village for the handling of the case.

(8) The amount of the proposed reduction.

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

(10) The number of days that the violation existed.

(D) In no event shall the fines be reduced below the costs incurred by the Village in its prosecution of the violations.

(E) The Special Master has the discretion to grant or deny a request for mitigation.

* * *

Section 3. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 4. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in Code. The provisions of this Ordinance shall become and be made a part of the City Code, that the sections of this Ordinance may be

renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word

Section 6. Implementation. The Village Manager, Village Attorney, and Village Clerk are hereby authorized to take such further action as may be needed to implement the purpose and provisions of this Ordinance

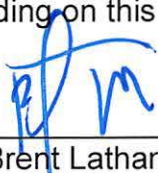
Section 7. Effective Date. That this Ordinance shall become effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Vice Mayor Wilmoth who moved its adoption. This motion was seconded by Commissioner Strout and upon being put to a vote, the vote was as follows:

Mayor Brent Latham	<u>YES</u>
Vice Mayor Marvin Wilmoth	<u>YES</u>
Commissioner Jose R. Alvarez	<u>ABSENT</u>
Commissioner Andrea Jackson	<u>ABSENT</u>
Commissioner Julianna Strout	<u>YES</u>

PASSED on first reading on this 9th of April, 2019.

PASSED AND ENACTED on second reading on this 14th day of May, 2019.



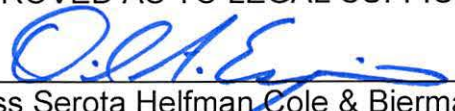
Brent Latham, Mayor

ATTEST:



Elora Riera,
Village Clerk

APPROVED AS TO LEGAL SUFFICIENCY:



Weiss Serota Helfman Cole & Bierman, PL
~~INTERIM~~ VILLAGE ATTORNEY