

ORDINANCE NO. 32-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL, FLORIDA, AMENDING SECTION 2-260 AND 2-262 OF THE CITY CODE RELATED TO THE APPLICATION PROCEDURE FOR CODE ENFORCEMENT LIEN SATISFACTIONS AND RELEASES INCLUDING AUTHORIZING THE SPECIAL MAGISTRATE TO MAKE RECOMMENDATIONS TO THE CITY COUNCIL REGARDING SUCH APPLICATIONS; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes; and

WHEREAS, the City Council previously established an application procedure to handle code enforcement lien satisfactions and releases; and

WHEREAS, the City Council desires to amend the application procedure requiring the Code Enforcement Special Magistrate to make a written recommendation to the City Council regarding applications not otherwise approved by the City Manager under section 2-260 of the City Code; and

WHEREAS, the City Council of the City of Cape Canaveral, Florida, hereby finds this Ordinance to be in the best interests of the public health, safety and welfare of the citizens of Cape Canaveral.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL HEREBY ORDAINS, AS FOLLOWS:

Section 1. **Recitals.** The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Council of the City of Cape Canaveral.

Section 2. Amending Section 2-260 and 2-262 of the City Code. The City of Cape Canaveral Code of Ordinances, Section 2-260 and 2-262 are hereby amended as set forth below (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while *** indicate deletions from Chapter 2 – Administration Article VI. – Code Enforcement that shall remain unchanged in the City Code):

CHAPTER 2 – ADMINISTRATION

- 1 (5) The reasons, if any, compliance was not obtained prior to the order of penalty or fine
2 being recorded;
- 3 (6) The reduction in penalty or fine sought by the applicant;
- 4 (7) A statement verifying whether the applicant was issued any title policy or policies for
5 the subject property encumbered by the lien after the date the lien was recorded in
6 the public records of Brevard County, Florida. If such a policy or policies were issued to
7 the applicant, a copy of any such title policy shall be submitted with the application;
- 8 (8) Any other information which the applicant deems pertinent to the request, including
9 but not limited to the circumstances that exist which would warrant the reduction or
10 satisfaction of the penalty or fine.
- 11 (c) *Reimbursement to city for recording costs at time of application.* The applicant shall submit,
12 at the time of application, an application fee established by the city to defray some or all of
13 the city's costs of processing the application including, but not limited to, personnel, legal,
14 and costs associated with recording the order imposing a penalty or fine and the requested
15 release or reduction of lien. These costs are nonrefundable, without regard for the final
16 disposition of the application.
- 17 (d) *Application review.* Upon receipt of the application and payment provided above, the code
18 enforcement division shall confirm that the violation, which resulted in the order imposing
19 penalty or fine, has been corrected. If the violation has been corrected and there are no
20 current code violation(s) upon the property in question, the code enforcement division shall
21 place the application and a staff recommendation upon the agenda of the next meeting of
22 the special magistrate city council for the City of Cape Canaveral for a hearing and
23 recommendation to the city council.
- 24 (e) At the hearing before the special magistrate city council, the special magistrate city council
25 shall review and consider the application for reduction or release of lien, provide the
26 violator with an opportunity to address the ~~board~~ special magistrate regarding the
27 application for reduction or release of lien, and to take the testimony of other interested
28 parties, including but not limited to city staff.
- 29 Upon review of the application and any testimony presented by the applicant, city staff or
30 other interested party, the special magistrate city council shall render a written recommendation
31 to the city council based on findings of fact and law to either by motion or writing approve,
32 approve with conditions, or deny the application for reduction or release of lien. The city council
33 shall consider and give considerable weight to the written recommendation of the special
34 magistrate and render a final decision on the application.

1 Whenever a recommendation or decision is made under this section, the following factors
2 shall be applied by the city in determining the amount of any reduction or release:

- 3 (1) The amount of any administrative and out-of-pocket costs incurred by the city which
4 are directly associated with the underlying code enforcement case and lien including,
5 but not limited to, code enforcement staff and attorney time, postage, advertising and
6 recording costs, and other city expenses related to any measure taken by the code
7 board or city to abate a nuisance caused by the violation;
- 8 (2) The gravity and number of the violation(s);
- 9 (3) The amount of the requested reduction;
- 10 (4) The time in which it took to bring the property into compliance;
- 11 (5) Whether the applicant was responsible for the violation which caused the lien;
- 12 (6) Whether the applicant is or will be a bona fide purchaser of the subject property and is
13 filing or has filed for a homestead exemption evidencing a desire to reside within the
14 city on a non-transient basis, or whether the property is or will be acquired for
15 investment or other purposes;
- 16 (7) Whether the applicant acquired the subject property with knowledge of the subject
17 lien or should have knowledge of the lien through reasonable due diligence;
- 18 (8) The accrued amount of the code enforcement fine or lien as compared to the current
19 market value of the property;
- 20 (9) With respect to a speculator, non-homestead purchaser of the subject property, the
21 accrued amount of the code enforcement fine or lien as compared to the
22 investment/profit that will be gained as a result of the purchase or sale of the property
23 and the reduction or satisfaction;
- 24 (10) Any previous or subsequent violations pertaining to the property unless an order
25 finding a violation is under appeal at the time of determination;
- 26 (11) Any previous or subsequent violations of the applicant pertaining to the other
27 properties owned within city, unless an order finding a violation is under appeal at the
28 time of determination;
- 29 (12) Any relevant information contained in any title policy required to be submitted to the
30 city under this section;
- 31 (13) Any financial hardship;

1 (14) Any other mitigating circumstance which may warrant the reduction or satisfaction of
2 the penalty or fine; and

3 (15) Any other administrative review criteria relevant to whether it is equitable to reduce or
4 release a lien which are adopted by the city manager, in writing, and are intended to
5 be applied to all applications on a uniform basis.

6 (f) To the maximum extent feasible, the city council shall collect, at a minimum, all
7 administrative and out-of-pocket costs incurred by the city as specified in subsection (e)(1).
8 If the city council approves the application to reduce or release the lien and the approval is
9 conditioned upon the applicant paying a reduced penalty, fine, or any other condition, the
10 satisfaction or release of lien shall not be prepared or recorded in the public records of
11 Brevard County, Florida by the city manager until the condition(s) imposed by the city
12 council have been satisfied.

13 (g) *Compliance and right of appeal.* The applicant shall have 30 days in which to comply with
14 the conditions imposed by the city council unless otherwise approved by the city council in
15 a written agreement with the applicant.

16 (1) If the application is denied, or if the application is automatically denied due to the
17 failure of the applicant to comply with the conditions imposed by the city council, the
18 applicant shall thereafter be barred from applying for a subsequent reduction or
19 release of lien for a period of one year from the date of denial. During the one-year
20 period, the lien may only be satisfied and released upon full payment of the fine or
21 penalty imposed in accordance with this division.

22 (2) The city council shall render a final decision on the application based upon the
23 recommendation of the special magistrate, sworn application and any other additional
24 and necessarily relevant information or testimony provided to the city council at the
25 meeting by the applicant, city manager or any other interested party. Any decision
26 made by the city council pursuant to this section shall be deemed final and not subject
27 to any further administrative review by the city. The applicant shall have 30 days, or
28 such time period determined by the city council in a written agreement, in which to
29 comply with any decision of or condition imposed by the city council or the
30 application shall be deemed automatically denied and thereafter, the applicant shall
31 be barred from applying for a subsequent reduction or release of lien for a period of
32 one year from the date of the city council's decision. During the one-year period, the
33 lien may only be satisfied and released upon full payment of the fine or penalty
34 imposed in accordance with this division.

(3) When a lien is satisfied as a result of reduced payment or release as ordered by the city council, the city manager is hereby authorized to execute and record in the public records of Brevard County, Florida, a satisfaction of lien on behalf of the city.

- (h) *Partial release of liens; liens recorded in error.* Under appropriate circumstances determined by the city council to be in the best interests of the city, city council may approve an application conditioned upon a partial release of lien that releases a city lien from a specific piece of property. However, the lien will remain in effect and will encumber any other properties which are subject to the lien pursuant to law. Partial releases of lien may also be authorized by the city council to account for any funds paid to the city to reduce the amount owed on the lien. In addition, nothing herein shall prohibit the city manager from releasing a lien, in whole or part, that was recorded in error by the city. An application shall not be required to release a lien recorded in error.
- (i) The provisions of this division shall be deemed supplemental and in addition to the city council's right, at its discretion, to collect a lien imposed by the city and to compel or bring properties into compliance with the City Code by any other lawful means deemed reasonably necessary by the city council.

DIVISION 4. – SPECIAL MAGISTRATE

* * *

Sec. 2-262. Powers of special magistrates.

Special magistrates shall have the power to:

- (a) Hear and decide violations of the Code.
- (b) Adopt administrative rules for the efficient conduct of hearings consistent with the City Code and other applicable law. Said rules shall be in a form approved by the city attorney.
- (c) Subpoena alleged violators and witnesses for hearings; subpoenas shall be served by the county sheriff, process server or by the city staff.
- (d) Subpoena evidence deemed relevant to hearings.
- (e) Take testimony under oath.
- (f) Assess and order the payment of civil penalties as provided herein.
- (g) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

- 1 (h) Have jurisdiction to consider and address orders previously entered by the city code
2 enforcement board.
- 3 (i) Have jurisdiction to make recommendations to the city council pursuant to 2-260
4 regarding applications for satisfaction, release, or reduction, of code enforcement
5 liens.

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9 **Section 3. Repeal of Prior Inconsistent Ordinances and Resolutions.** All prior
10 inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances
11 and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.
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13 **Section 4. Incorporation Into Code.** This Ordinance shall be incorporated into the
14 Cape Canaveral City Code and any section or paragraph, number or letter, and any heading may
15 be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical,
16 and like errors may be corrected and additions, alterations, and omissions, not affecting the
17 construction or meaning of this ordinance and the City Code may be freely made.
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19 **Section 5. Severability.** If any section, subsection, sentence, clause, phrase, word or
20 provision of this Ordinance is for any reason held invalid or unconstitutional by any court of
21 competent jurisdiction, whether for substantive, procedural, or any other reason, such portion
22 shall be deemed a separate, distinct and independent provision, and such holding shall not affect
23 the validity of the remaining portions of this Ordinance.
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25 **Section 6. Effective Date.** This Ordinance shall become effective immediately upon
26 adoption by the City Council of the City of Cape Canaveral, Florida, and pursuant to the City
27 Charter.
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33 **[Adoption and Signature Page Follows]**
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3 **ADOPTED** by the City Council of the City of Cape Canaveral, Florida, this 17th day of
4 August, 2021.
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10 _____
11 **Bob Hoog, Mayor**
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13 ATTEST: For Against

14
15 Mike Brown _____

16 _____
17 **Mia Goforth, CMC** Robert Hoog _____

18 **City Clerk** Mickie Kellum _____

19 Wes Morrison _____

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21 Angela Raymond _____
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24 First Reading: July 20, 2021

25 Advertisement: August 5, 2021

26 Second Reading: August 17, 2021
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29 Approved as to legal form and sufficiency
30 for the City of Cape Canaveral only by:

31 _____
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33 **Anthony A. Garganese, City Attorney**