

ORDINANCE NO. 894

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA RENAMING AMENDING CHAPTER 5 ¾ “CODE ENFORCEMENT” OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council has conducted a thorough review of Chapter 5 ¾ “Code Enforcement” of the Town Code; and

WHEREAS, the Town Council has determined that it is in the best interest of the Town residents and personnel to more clearly define code enforcement procedures.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, AS FOLLOWS:

Section 1. Recitals. That the above states recitals are hereby adopted and confirmed.

Section 2. Town Code Amended. That Chapter 5 ¾ “Code Enforcement” of the Code of Ordinances of the Town of Bay Harbor Islands is hereby renamed and amended to read as follows:¹

Code Enforcement Compliance

Sec. 5 3/4-1. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Code means collectively the Town Code of Ordinances and applicable sections of the County Code.

Code Compliance Officer means any authorized agent or employee of the Town whose duty it is to ensure compliance with the Code.

Continuing violation means a violation which remains uncorrected beyond the time period for correction contained in either the civil violation notice or the final order of the Special Magistrate, whichever is applicable.

Correction Period means the amount of time granted to a Violator to bring a violation into compliance with the Code.

¹ Additions to existing Town code text are shown by underline; deletions from existing Town code text are shown by ~~strikethrough~~.

Manager means the Town Manager.

Notice means a civil violation notice issued to a Violator in accordance with the provisions of this article.

Repeat Violation means a violation of a provision of the Code by a person whom the Special Magistrate has previously found to have violated the same provision of the Code within 5 years of the previous violation.

Special Magistrate means a person appointed pursuant to section 5 3/4-3.

Uncorrectable Violation means a violation which is irreparable or irreversible in nature and which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition or circumstance.

Violator means that person responsible for a violation of the Code.

Sec. 5 3/4-1 2. Civil offenses and penalties.

Unless otherwise provided, the violation of any code or ordinance of the ~~†Town or of any county or state law, rule or regulation~~ shall constitute a civil offense punishable by civil penalty in the amount prescribed by the code or ordinance or resolution as prescribed in section 5 3/4-8 11.

Sec. 5 3/4-2 3. ~~Code compliance officer(s);~~ Appointment and qualifications of sSpecial masters Magistrates; terms of office; compensation. ~~appointment by town manager.~~

~~(a) The town manager shall appoint one or more code compliance officers to administer and enforce the provisions of this Code. Such code compliance officers may be any agent or employee of the town, including law enforcement officers, appointed by the town manager; these duties may be in addition to other duties. The organization and administrative operating procedures of the town office enforcing the code and its relationship and coordination with other administrative departments, agencies, officials and employees of the town government shall be established and placed in effect, from time to time, by the town manager.~~

~~(b) The town manager shall appoint special masters to enforce the provisions of this Code in accordance with this chapter.~~

(a) Appointment. Appointments of Special Magistrates shall be made by the Town Manager subject to the ratification by the Town Council.

(b) Qualifications. Special Magistrates shall have experience or demonstrate an interest in code enforcement and shall possess outstanding reputations for civic pride, integrity, responsibility and business or professional ability.

(c) Term of office. Special Magistrates shall be appointed for a term of one year and may be reappointed at the discretion of the Town Manager, subject to ratification by the Town Council.

(d) Compensation. Special Magistrates shall not be Town employees, but may be compensated at a rate to be determined by administrative order of the Town Manager.

Sec. 5 ³/₄ - 4. Powers of Special Magistrates.

Special Magistrates shall have the power to:

(a) Adopt rules for the conduct of hearings.

(b) Subpoena violators and witnesses for hearings. Subpoenas shall be served by the Town Police Department or by the Town staff.

(c) Subpoena evidence.

(d) Take testimony under oath.

(e) Assess and order the payment of civil penalties as provided in this Chapter.

(f) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

(g) Mitigate the amount of civil penalties assessed in an amount up to but not in excess of 50 percent of the total amount of civil penalty, not including administrative costs, subject to rules and guidelines that may be promulgated by resolution of the Town Council from time to time. Mitigation of civil penalties in excess of 50 percent only can be made by the Town Council, upon consideration of compelling factors warranting such relief. Provided however, in no case shall mitigation occur prior to satisfactory correction of the violation or other permanent disposition of the building or property that obviates the need for correction. The administrative costs of the hearing shall not be subject to mitigation at any time. The Special Magistrate shall include in his findings of fact, conclusions of law, and order the basis for his decision on the request for mitigation of fines.

Sec. 5 ³/₄ - 5. Duties of Town Attorney.

The Town Attorney shall provide legal advice to the Special Magistrates. If an appeal is taken pursuant to section 5 ³/₄ -9, the Town Attorney shall represent the Town at such proceedings.

Sec. 5 ³/₄ - 6. Authority to initiate enforcement proceedings.

Code Compliance Officers shall have the authority to initiate code enforcement proceedings in accordance with the procedures enumerated in section 5 ³/₄ -7.

Sec. 5 ³/₄ -7. Enforcement procedures.

a) *Notice of violation.* If, upon personal investigation, a Code Compliance Officer finds that a violation has been committed, the Code Compliance Officer shall issue a Notice to the Violator informing the Violator that s/he has committed a violation of the Code and enumerating the fine to be imposed and Correction Period.

(b) *Notification of Town Manager.* If, upon personal investigation, a Code Compliance Officer finds that the Violator has not corrected the violation within the Correction Period, the Code Compliance Officer shall notify the Town Manager or his designee in writing and may request a hearing. When conducting his investigation, the Code Compliance Officer shall have the authority to enter and inspect properties and structures to the extent permitted by law.

(c) *Serious or Uncorrectable Violations.* If the Code Compliance Officer has reason to believe a violation presents a serious threat to the public health, safety or welfare, or if the violation is an Uncorrectable Violation, the Code Compliance Officer may issue a notice requiring immediate correction of the violation and may immediately notify the Town Manager or his/her designee and request a hearing.

(d) *Repeat violations.* If a Code Compliance Officer finds a Repeat Violation, the Code Compliance Officer shall issue a Notice to the Violator informing the Violator that s/he has committed a violation of the Code, enumerating the fine to be imposed, but is not required to grant a Correction Period. The Code Compliance Officer, upon notifying the Violator of a Repeat Violation, shall notify the Town Manager or his designee and request a hearing. Where the Violator is not granted a Correction Period, the violation shall be considered a Continuing

Violation and shall be subject to a daily fine until such time as the violation is brought into compliance.

~~Sec. 5 3/4-3. Code compliance officer(s) Powers and duties generally.~~

~~The duties, functions, powers and responsibilities of the code compliance officer shall include the following:~~

~~(1) The enforcement of the provisions of all town ordinances, codes, resolutions, rules and regulations promulgated thereunder, all rules and regulations of the Florida Building Code, and all rules and regulations of the state board of health and the state hotel and restaurant commission, in cooperation with such state agencies.~~

~~(2) Investigate complaints, make a continuing study of all buildings, structures and lots in the town, institute actions necessary to abate violations of all town, county and state laws and regulations governing the use and occupancy of such buildings, structures and lots and prosecute proceedings for violations of such regulations.~~

~~(3) Make appropriate surveys and inspections to determine whether the provisions of the code are being complied with and whether minimum standards are being maintained.~~

~~(4) Make inspections of all lands, buildings, premises or facilities and equipment in accordance with procedures prescribed by this Code to determine whether the provisions of this Code are being complied with and make recommendations for methods by which compliance may be more effectively maintained.~~

~~(5) Render all possible assistance and technical advice to persons operating and maintaining any lands, building facilities, premises and equipment.~~

~~(6) Establish, operate and maintain a continuous program for monitoring and inspection of buildings and lots in the town, designed to provide accurate data and information as to whether the provisions established by this Code are being complied with and whether the level of adequate housing and commercial property facilities is increasing or decreasing in the town.~~

~~(7) Publish and disseminate information to the public concerning matters relating to code compliance and the advantages of such compliance.~~

~~(8) Make periodic reports concerning the status of zoning and planning requirements and property maintenance standards and the enforcement of the provisions of this Code, and recommendations concerning the improvement of compliance and controls.~~

~~(9) Perform such other administrative duties as may be assigned by the town manager.~~

~~(10) These duties may be in addition to other duties.~~

~~Sec. 5 3/4 4. Same Identification.~~

~~The code compliance officer shall be furnished with an official identification card which shall contain the name of the officer, his/her photograph, pertinent descriptive identifying information and such other matters designed to facilitate recognition by the public of the status of such official. Upon request, the code compliance officer shall exhibit such identification when entering any lands, building or premises. The requirements of this section shall not in any way be construed as relieving the code compliance officer from compliance with the procedures prescribed in this chapter for making inspections.~~

~~Sec. 5 3/4 5. Same Records; duty to make record searches and issue certificates thereon.~~

~~All records of the code compliance officer shall be public. Upon request, the code compliance officer shall be required to make a search of the records maintained under his/her supervision and control and issue certificates concerning violations and as to whether the property involved has been inspected and whether or not any violations have been found to exist in respect thereto. The code compliance officer shall have the power and authority to charge and collect reasonable fees for making such searches and certificates.~~

~~Sec. 5 3/4 6. Same Inspection of lands and buildings.~~

~~(a) *Inspection of lands and the exterior of buildings.* The office of code compliance is hereby authorized to make inspections to determine the condition of all lands and the exterior of all buildings and premises. For the purpose of making such inspections, the code compliance officer of the office of code compliance is hereby authorized to enter, examine and survey all lands, and the exteriors of all buildings or any other structures or premises.~~

~~(b) *Inspection of lands and the interior of buildings.* The office of code compliance is hereby authorized to make inspections, after written notice to the owner or occupant of such property setting forth the time and the date inspection is to be made, to determine the condition of all lands and the interior of all buildings and premises. For the purpose of making such inspections, the code compliance officer of the office of code compliance is hereby authorized to enter, examine and survey all lands, buildings or any other structures or premises.~~

~~(c) *Duties of owners or occupants of lands and buildings.* The owner, operator or occupant of every land or building, or the person in charge thereof, shall give the code compliance officer free access at all reasonable times for the purpose of such inspection, examination and survey, and shall supply as correctly and promptly as possible all information requested by the code compliance officer of the office of code compliance. Every occupant of any land or building shall give the owner thereof, or his/her agent or employee, access to any part of such land or building or its premises at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this Code or with any rule, regulation or lawful order issued pursuant to the provisions of this Code. Failure to permit an inspection to be made in compliance with the provisions of this section shall constitute a violation of this Code and shall subject the violator to the penalties prescribed herein.~~

~~Sec. 5 3/4-7. Enforcement procedures.~~

~~(a) *Persons or entities deemed violators.* For the purpose of this chapter, "violators" shall be deemed to be those persons or entities legally responsible for the violation of the town's Code ordinances, resolution, rules and regulations promulgated thereunder, rules and regulations of the Florida Building Code, rules and regulations of the state board of health and the state hotel and restaurant commission, and county and state laws, rules and regulations.~~

~~(b) *Reasonable time to correct.* A code compliance officer who finds a violation shall determine a reasonable time period within which the violator must correct the violation. Any civil fine or penalty which is imposed will be waived if the violation is corrected within the time period. The determination of a reasonable time period shall be based on considerations of fairness; practicality; ease of correction; ability to correct; severity of violation; nature, extent and probability of danger or damage to the public; and other relevant factors relating to the reasonableness of the time period prescribed. The code compliance officer does not have to provide the violator with a reasonable time period to correct the violation if the code compliance officer has reason to believe that a violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature. In such a situation, the code compliance officer shall notify the special master and request a hearing.~~

~~(c) *Civil violation notice Issuance, delivery.* A code compliance officer who finds such a violation shall issue a civil violation notice to the violator. Service shall be effected by delivering~~

~~the civil violation notice at the violator's usual place of abode with any person residing therein who is 15 years of age or older and informing that person of its contents. If such service cannot be effected, the civil violation notice may be sent by certified mail, return receipt requested, or by posting of the civil violation notice in a conspicuous place on the premises or real property upon which the violation has been observed.~~

~~Such posting of the civil violation notice shall be deemed proper service and the time for compliance, stated in the notice, shall commence with the date such notice is posted.~~

~~(d) *Same Required information.* The civil violation notice shall include, but not be limited to, the following:~~

~~(1) Date of issuance.~~

~~(2) Name of code compliance officer and division or department, if applicable, issuing the notice.~~

~~(3) Name and address of the violator.~~

~~(4) Section number of the Code, ordinance, law, rule or regulation that has been violated.~~

~~(5) Brief description of the nature of the violation, including location, date and time of violation.~~

~~(6) Amount of the civil penalty for which the violator may be liable if the violation is not corrected within the prescribed time period.~~

~~(7) Time within which the violation must be corrected.~~

~~(8) If the violation is not corrected within the prescribed time period, instructions and due date for paying the civil fine or filing for an administrative hearing before a special master to appeal the civil fine.~~

~~(9) Notice that each day of continued violation after the time period for correction has run shall be deemed a continuing violation, subject to additional penalty in the same amount without the need for additional notices of violation.~~

~~(10) Notice that the filing of a request for an administrative hearing will toll the accrual of continuing violation penalties.~~

~~(11) Notice that failure to request an administrative hearing within 20 days after service of the civil violation notice shall constitute a waiver of the violator's right to an administrative hearing before the special master and that such waiver shall constitute an admission of violation.~~

~~(12) Notice that the violator may be liable for the reasonable costs of the administrative hearing should he/she be found guilty of the violation.~~

Sec. 5 ³/₄ - 8. Contents and service of Notice.

a) A notice shall include:

(1) The date and time of issuance.

(2) The name of the Code Compliance Officer issuing the Notice.

(3) The name and address of the Violator.

(4) The section of the Code that has been violated.

(5) A brief description of the nature of the violation, including the location, date and time of the violation.

(6) The amount of the civil penalty for which the Violator may be liable if s/he is found in violation.

(7) The instructions and date for paying the civil penalty or for filing a request for an administrative hearing before a Special Magistrate to appeal the civil penalty.

(8) The Correction Period.

(9) A statement that each day of continued violation after expiration of the Correction Period shall be deemed a Continuing Violation subject to an additional penalty in the same amount without the need for additional Notices.

(10) A statement that the filing of a request for an administrative hearing will toll the accrual of Continuing Violation penalties.

(11) A statement that failure to request an administrative hearing within 20 days after service of the Notice shall constitute a waiver of the Violator's right to an administrative hearing before the Special Magistrate, and that such waiver shall constitute an admission of the violation, and that, in such case, an order may be entered against the Violator for the amount of the civil penalty.

(12) A statement that the Violator may be liable for the reasonable administrative hearing costs should s/he be found in violation.

(b) Service of the Notice to the Violator shall be effected either by:

(1) Certified mail, return receipt requested, provided that if such Notice is sent under this paragraph to the owner of the property in question at the address listed in the tax

collector's office for tax notices, and at any other address provided to the Town by such owner and is returned as unclaimed or refused, Notice may be provided by posting as described in subparagraphs (c)(2)a. and b. and by first class mail directed to the addresses furnished to the Town with a properly executed proof of mailing or affidavit confirming the first class mailing;

(2) Hand delivery by the sheriff or other law enforcement officer, Code Compliance Officer or other person designated by the Town by:

a. Leaving the Notice at the Violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the Notice; or

b. In the case of commercial premises, leaving the Notice with the manager or other person in charge.

(c) In addition to providing service of the Notice as set forth above, at the option and discretion of the Town Manager or his designee, the Notice may also be served by publication or posting as follows:

(1) a. The Notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Miami-Dade County, as specified in F.S. ch. 50.

b. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

(2) a. In lieu of publication as described in paragraph (c)(1), such Notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the Notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist (if any) and the other of which shall be at Town Hall.

b. Proof of posting shall be by affidavit of the person posting the Notice, which affidavit shall include a copy of the Notice posted and the date and places of its posting.

- (3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide Notice by hand delivery or by mail as required under subsection (b).
- (d) Evidence that an attempt has been made to hand deliver or mail Notice as provided in subsection (b) (e.g., by affidavit of the Code Compliance Officer), together with proof of publication or posting as provided in subsection (c), shall be sufficient to show that the notice requirements of this section have been met, without regard to whether or not the alleged Violator actually received such Notice.
- (e) If the owner of property which is subject to an enforcement proceeding before the Special Magistrate or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:
- (1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.
 - (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.
 - (3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
 - (4) File a notice with the Code Compliance Officer of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.
- A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable Correction Period before the hearing is held.

Sec. 5 ³/₄ -9. Rights of Violators; payment of fine; right to appeal; failure to pay and correct or to appeal.

- (a) A Violator who has been served with a Notice shall elect either to:

(1) Pay the civil penalty in the manner and within the time indicated on the Notice and correct the violation within Correction Period specified on the Notice;

or

(2) Request an administrative hearing before the Special Magistrate to appeal the decision of the Code Compliance Officer which resulted in the issuance of the Notice.

(b) An appeal of the Notice shall be accomplished by filing a request in writing to the address indicated on the Notice, not later than 20 calendar days after the date of service of the Notice.

(c) If the named Violator, after Notice, fails to pay the civil penalty and correct the violation within the Correction Period, or to timely request an administrative hearing before the Special Magistrate, the Special Magistrate shall be informed of such failure by report from the Code Compliance Officer in the form of an affidavit. Failure of the Violator to appeal the decision of the Code Compliance Officer within the prescribed time period shall constitute a waiver of the Violator's right to administrative hearing before the Special Magistrate. A waiver of the right to administrative hearing shall be treated as an admission of the violation, and penalties may be assessed accordingly.

Sec. 5 ³/₄ - 10. Scheduling and conduct of hearing.

(a) Upon receipt of a named Violator's timely request for an administrative hearing or a hearing request from the Code Compliance Officer as provided for in section 5 ³/₄ - 9, the Town Manager or designee shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as practicable.

(b) The Town Manager or designee shall send a notice of hearing by first class mail, or any other method reasonably calculated to effect delivery, to the Violator at his last known address. The notice of hearing shall include but not be limited to the following:

(1) Name of the Code Compliance Officer who issued the Notice.

(2) Factual description of the alleged violation.

(3) Date of the alleged violation.

(4) Section of the Code allegedly violated.

(5) Place, date and time of the hearing.

- (6) Notice of the right of the Violator to be represented by an attorney.
- (7) Right of the Violator to present evidence and witnesses, and to cross-examine witnesses.
- (8) Notice that failure of the Violator to attend the hearing may result in civil penalty and administrative hearing costs being assessed.
- (9) Notice that requests for continuances must be received in writing by the Special Magistrate at least ten calendar days prior to the date set for the hearing.
- (c) The Town Manager or designee shall call hearings on a monthly basis or upon the request of the Director of Code Compliance.
- (d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the Special Magistrate at least ten calendar days prior to the date set for the hearing. Any applicable fines, previously assessed will continue to accrue, unaffected by the continuances granted.
- (e) All hearings of the Special Magistrate shall be open to the public. All testimony shall be under Oath. Assuming proper notice, in the absence of the named Violator, a hearing may proceed and a default order may be entered against the Violator.
- (f) The proceedings at the hearing shall be recorded by the Town and may be transcribed by and at the expense of the party desiring the transcript.
- (g) The Town Clerk shall provide clerical and administrative personnel as may be reasonably required by the Special Magistrate for the proper performance of its duties.
- (h) Each case before the Special Magistrate shall be presented by the Town Manager or designee.
- (i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings. Any relevant evidence shall be admitted if the Special Magistrate finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.
- (j) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross examine opposing witnesses on any matter relevant to the issues even though that

matter was not covered in the direct examination; to impeach any witness regardless of which party first called that witness to testify; and to offer rebuttal of the evidence.

(k) The Special Magistrate shall make findings of fact and conclusions of law based on evidence of record. In order to make a finding upholding the Code Compliance Officer's decision, the Special Magistrate must find that a preponderance of the evidence indicates that the named Violator was responsible for the violation of the relevant section of the Code.

(l) The Correction Period granted by the Code Compliance Officer to the named Violator and contained in the Notice is rebuttably presumed to have been a reasonable time for correction. Upon presentation of relevant evidence by the named Violator that the Correction Period was not reasonable; however, the Special Magistrate may make a redetermination as to reasonableness of the time for correction contained in the Notice. If the Special Magistrate determines that the Correction Period was insufficient, the penalty for a Continuing Violation shall be calculated from the date determined by the Special Magistrate to be a reasonable date for correction.

(m) If the named Violator is found guilty of the violation, s/he may be held liable for the reasonable cost of the administrative hearing.

(n) The fact-finding determination of the Special Magistrate shall be made no later than 60 days after a final hearing, at which all testimony and evidence have been presented. The fact-finding determination of the Special Magistrate shall be limited to whether the violation alleged did occur, and, if so, whether the person named in the Notice may be held responsible for that violation. Based upon this fact-finding determination, the Special Magistrate shall either affirm or reverse the decision of the Code Compliance Officer. The Special Magistrate may also modify the Correction Period granted by the Code Compliance Officer, subject to the provisions of subsection (l) of this section. If the Special Magistrate reverses the decision of the Code Compliance Officer and finds the named Violator not responsible for the Code violation alleged in the Notice, the named Violator shall not be liable for the payment of any civil penalty, absent reversal of the Special Magistrate's findings pursuant to section 5³/₄ - 13.

(o) A decision of the Special Magistrate affirming the decision of the Code Compliance Officer shall include the following elements:

(1) Amount of civil penalty.

(2) Administrative costs of hearing.

(3) Date by which the violation must be corrected to prevent presumption of Continuing Violation penalties, if applicable.

(p) The Special Magistrate shall postpone a hearing if the named Violator, prior to the scheduled hearing date, files with the Town Council, an administrative appeal concerning the interpretation or application of the Code provisions upon which the alleged violation was based. However, once an issue has been determined by the Special Magistrate in a specific case that issue may not be further reviewed by the Town Council in that specific case.

(q) Upon exhaustion of a timely filed administrative appeal and finalization of the administrative order by the Town Council, the Special Magistrate may exercise all powers given to him or her by this article. The Special Magistrate shall not, however, exercise any jurisdiction over such alleged Code violations until the time allowed for court appeal of the ruling of the Town Council has lapsed or until such further appeal has been exhausted.

(r) The Special Magistrate shall be bound by the interpretations and decisions of the Town Council concerning the provisions of the Code. If The Town Council decides that an alleged violation of the Code is not in accordance with its interpretation of the Code provision on which the violation is based, the Special Magistrate shall not be empowered to proceed with the enforcement of the violation.

Sec. 5 3/4-8 11. Civil penalties and related terms construed.

~~(a) Penalties for violations of the town's Code and ordinances, or of any law, rule or regulation to be enforced by this chapter shall be in the amounts prescribed in the Code, ordinances or by resolution. Provided, however, that the maximum daily civil penalty shall be \$250.00 for a single violation. Provided further, however, the penalty will be waived and there shall be no penalty imposed if the violation is corrected within the time period prescribed in the civil violation~~

~~notice. If the violation is not corrected within the prescribed time period, the daily civil penalty shall be considered to have accrued from the date the notice was served.~~

~~(b) "Continuing violations" are those violations which remain uncorrected beyond the reasonable time period for correction contained in the civil violation notice. For each day of continued violation after the time for correction has run, an additional penalty in the same amount as that prescribed for the original violation shall be added.~~

~~(c) A "repeat violation" is a recurring violation by a violator who has previously been guilty of the same violation within a period of five years. A repeat violation can occur only after correction of the previous violation has been made. For the first repeat violation, the amount of the civil penalty shall be double the amount of penalty prescribed for the original violation. The amount of civil penalty due for each subsequent repeat violation shall be double the amount of penalty due for the first day of the immediate preceding violation; provided, that the maximum penalty payable for the first day of any one repeat violation shall be \$500.00.~~

~~(d) A repeat violation which remains uncorrected beyond the time prescribed for correction in the civil violation notice shall be treated as a continuing violation and the additional penalty for each day of continued violation shall be equal to the doubled amount due for the first day of the repeat violation.~~

~~(e) Continuing violation penalties shall accrue from the date for correction given in the civil violation notice until the correction is made or until a request for administrative hearing is filed, whichever comes first. If the named violator requests an administrative hearing and loses his appeal, the special master shall determine a reasonable time period within which correction of the violation must be made, based on the considerations set forth in section 5 3/4-11(l) and (n). If correction is not made within the period set by the special master, continuing violation penalties shall begin to accrue again after the time for correction has run.~~

~~(f) Civil penalties assessed pursuant to this chapter are due and payable to the town on the last day of the period allowed for the filing of an appeal from the special master's decision, or, if proper appeal is made, when the appeal has been finally decided adversely to the named violator.~~

(a) Unless otherwise provided by a Resolution of the Town Council, penalties for violations of the provisions to be enforced through this article shall be \$250.00 per day for a first violation.

- (b) The penalty for an Uncorrectable Violation shall not exceed \$5,000.00 per violation.
- (c) For each day of a Continuing Violation, an additional penalty in the same amount as that prescribed for in the original violation shall be added.
- (d) For a Repeat Violation, the amount of the civil penalty shall be \$500.
- (e) A Repeat Violation which remains uncorrected beyond the expiration of the Correction Period shall be treated as a Continuing Violation, and the additional penalty for each day of continued violation shall be \$500.00.
- (f) Continuing Violation penalties shall accrue from the date of correction given in the Notice until the correction is made or until a request for administrative hearing is filed, whichever comes first. If the Violator requests an administrative hearing and loses his appeal, the Special Magistrate shall determine a reasonable Correction Period. If a correction is not made within the Correction Period set by the Special Magistrate, Continuing Violation penalties shall begin to accrue again after the time for correction has run.
- (g) If, pursuant to a finding by the Special Magistrate, the violation is a violation described in Section 5 ³/₄ - 7(c) the Town may, at its discretion, make all reasonable repairs that are required to bring the property into compliance and charge against the Violator the cost of the repairs along with the fine imposed pursuant to this Section. The Town shall have a lien upon the property in such amount until paid, which lien shall be prior to all other liens on such property, except taxes. Such lien, when delinquent for more than three months, may be foreclosed in the manner provided for the foreclosure of mortgages on real property. Making such repairs does not create a continuing obligation on the part of the Town to make further repairs or to maintain the property and does not create any liability against the Town for any damages to the property if such repairs were completed in good faith.
- (h) Civil penalties assessed pursuant to this Chapter are due and payable to the Town on the last day of the period allowed for the filing of an appeal from the Special Magistrate's decision, or, if a proper appeal is made, when the appeal has been finally decided adversely to the named Violator.

~~Sec. 5 3/4-9. Rights of violators; payment of fine; right to appeal; failure to pay and correct, or to appeal.~~

~~(a) A violator who has been served with a civil violation notice shall elect either to:~~

~~(1) Correct the violation within the time specified in the notice, after which the penalty will be waived and no penalty will be imposed; or~~

~~(2) Pay the civil penalty in the manner indicated on the notice for each day of continuing violation; or~~

~~(3) Request an administrative hearing before a special master to appeal the decision of the code compliance officer which resulted in the issuance of the civil violation notice.~~

~~(b) Appeal by administrative hearing of the notice of violation shall be accomplished by filing a request in writing to the address indicated on the notice not later than 20 calendar days after the service of the notice. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master. A waiver of the right to administrative hearing shall be treated as an admission of violation and be assessed accordingly.~~

~~(c) If the named violator after notice fails to correct the violation (within the time specified), or to pay the civil penalty for each day of continuing violation, or to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code enforcement officer. Such report shall be by affidavit of the code compliance officer. The affidavit must so reflect and must set forth a request that the special master issue an order finding the violator guilty of a continuing violation, imposing continuing penalties to be effective beginning on the date of civil violation notice, and ending at the date that the penalty is paid or the violation corrected, whichever occurs later. The town manager, in consultation with the special master, shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as practicable.~~

~~Sec. 5 3/4-10. Qualifications of special masters and removal; organization.~~

~~(a) Special masters may be residents of the town or paid professionals who shall possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the town manager or his or her designee on~~

~~the basis of experience or interest in code enforcement. Such appointments shall be submitted to the town council for ratification.~~

~~(b) The town manager or his or her designee shall appoint as many special masters as are deemed necessary. Appointments shall be made for a term of one year. Any special master may be reappointed at the discretion of the town manager, subject to ratification by the town council. There shall be no limit on the number of reappointments that may be given to any individual special master; provided, however, that a determination as to removal or reappointment must be made for each special master at the end of each of his/her one year terms. The town manager shall have authority to remove a special master with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.~~

~~(c) Special masters shall not be town employees but shall be compensated at a rate to be determined by administrative order.~~

~~(d) The town attorney shall serve as general counsel to the special masters. If an appeal is taken pursuant to section 5 3/4 13, the town attorney shall represent the town at such proceedings.~~

~~Sec. 5 3/4 11. Scheduling and conduct of hearing.~~

~~(a) *Hearing to be scheduled by special master.* Upon request of the code compliance officer, and upon receipt of affidavit(s) of noncompliance from the code compliance officer, or upon receipt of a named violator's timely request for an administrative hearing, the special master shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as possible.~~

~~(b) *Notice of hearing; information thereon.* The special master or town manager shall send a notice of hearing as provided in F.S. Ch. 162.12, including by hand-delivery or certified mail, return receipt requested, to the named violator at his/her last known address or by posting in a conspicuous place on the premises or real property upon which the violation has been observed. The notice of hearing shall include, but not be limited to, the following:~~

~~(1) Name of the code compliance officer who issued the notice.~~

~~(2) Factual description of alleged violation.~~

~~(3) Date of alleged violation.~~

~~(4) Section of the code, ordinance, law, rule or regulation allegedly violated.~~

~~(5) Place, date and time of the hearing.~~

- ~~(6) Right of violator to be represented by a lawyer.~~
- ~~(7) Right of violator to present witnesses and evidence.~~
- ~~(8) Notice that failure of violator to attend hearing may result in civil penalty being assessed against him/her.~~
- ~~(9) Notice that requests for continuances will not be considered if not received by the special master at least ten calendar days prior to the date set for hearing.~~
- ~~(e) *Frequency and timeliness.* The special master shall call hearings on a monthly basis or upon the request of the town clerk. No hearing shall be set sooner than 20 calendar days from the date of service of the notice of violation, unless the special master determines that the violation is a serious threat to the public health as described in section 5 3/4-7(a) or if the violator requests an earlier date.~~
- ~~(d) *Postponement or continuance.* A hearing date shall not be postponed or continued unless a request for continuance, showing a good cause for such continuance, is received in writing by the special master at least ten calendar days prior to the date set for the hearing. A named violator may be granted continuances of hearings up to three times, with good cause shown. In any event, the applicable fines, if any, previously assessed for the subject violation shall continue to accrue, unaffected by the continuance(s) granted.~~
- ~~(e) *Openness of hearings; oaths; procedure in absence of violator.* All hearings of the special master shall be open to the public. All testimony shall be under oath. Assuming proper notice, a hearing may proceed in the absence of the named violator.~~
- ~~(f) *Recordation of proceedings.* The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.~~
- ~~(g) *Clerical and administrative personnel.* The town clerk shall provide clerical and administrative personnel as may be reasonably required by each special master for the proper performance of his or her duties.~~
- ~~(h) *Presentation by manager.* Each case before a special master shall be presented by the town manager or his or her designee.~~
- ~~(i) *Rules of conduct.* The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings. Any relevant evidence shall be admitted if the special master finds it~~

~~competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.~~

~~(j) *Witnesses.* Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called him to testify, and to rebut the evidence against him/her.~~

~~(k) *Findings of fact.* No later than 60 days after a final hearing, at which all testimony and evidence have been presented, the special master shall make findings of fact based on evidence of record and conclusions of law and incorporate same into a written decision. In order to make a finding upholding the code compliance officer's decision, the special master must find that a preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant section of the code, ordinance, law, rule or regulation as charged.~~

~~(l) *Redetermination of reasonable time for correction.* The time for correction given by the code compliance officers to the named violator and contained in the civil violation notice is rebuttably presumed to have been a reasonable time for correction. Upon presentation of relevant evidence by the named violator that the time for correction was not reasonable, however, the special master may make a redetermination as to the reasonableness of the time for correction contained in the civil violation notice. The special master may not make a determination that the time given for correction in the civil violation notice was too short unless the time given for correction had not yet run at the time the special master makes his/her decision. If the special master determines that the time given for correction was insufficient, the penalty for a continuing violation shall be calculated from the date determined by the special master to be a reasonable date for correction; provided, that a request for administrative hearing was not filed before the reasonable date for correction set by the special master.~~

~~(m) *Violator liable for costs of hearing.* If the named violator is found guilty of the violation, he/she may be held liable for the reasonable costs of the administrative hearing, at the discretion of the special master.~~

~~(n) *Limitation on special master's determination; affirmation, reversal or modification of code compliance officer's decision.* The fact-finding determination of the special master shall be limited to whether the violation alleged did occur, and if so, whether the person named in the~~

~~civil violation notice can be held responsible for that violation. Based upon this fact finding determination, the special master shall either affirm or reverse the decision of the code compliance officer as to the responsibility of the named violator of the Code violation. The special master may also modify the decision of the code compliance officer as to the time for correction contained in the civil violation notice, subject to the provisions of paragraph (1) above. If the special master reverses the decision of the code compliance officer and finds the named violator not responsible for the violation alleged in the civil violation notice, the named violator shall not be liable for the payment of any civil penalty, absent reversal of the special master's findings pursuant to section 5 3/4 13(a). If the decision of the special master is to affirm, then the following elements shall be included:-~~

~~(1) Amount of civil penalty.~~

~~(2) Administrative costs of hearing.~~

~~(3) Date by which the violation must be corrected to prevent resumption of continuing violation penalties.~~

~~A copy of the decision shall be sent to the violator by hand delivery or by certified mail, return receipt requested.~~

~~(e) Powers of special master. The special master shall have the power to:-~~

~~(1) Adopt procedures for the conduct of hearings.~~

~~(2) Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the police department of the town or by the staff of the town manager, or any other person designated by the town manager.~~

~~(3) Subpoena evidence to the hearings.~~

~~(4) Take testimony under oath.~~

~~(5) Assess and order the payment of civil penalties as provided herein.~~

~~(6) Mitigate the amount of civil penalties assessed in an amount up to but not in excess of 50 percent of the total amount of civil penalty, not including administrative costs, subject to rules and guidelines that may be promulgated by resolution of the town council from time to time. Mitigation of civil penalties in excess of 50 percent only can be made by the town council, upon consideration of compelling factors warranting such relief. Provided however, in no case shall mitigation occur prior to satisfactory correction of the violation or other permanent disposition of~~

~~the building or property that obviates the need for correction. The administrative costs of the hearing shall not be subject to mitigation at any time.~~

~~(7) Toll the accruing of fines upon a finding of impossibility of performance, whether due to natural disaster, act of God, or other unforeseen and/or unpredictable occurrence or event, until the impediment to performance ceases.~~

~~(p) *Procedure of special master upon administrative appeal:*~~

~~(1) A special master shall postpone and shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with the town council an administrative appeal concerning the interpretation or application of the Code provisions on which the alleged violation was based. However, once an issue has been determined by a special master in a specified case, that issue may not be further reviewed by the town council in that specific case.~~

~~(2) Upon exhaustion of a timely filed administrative appeal and finalization of the administrative order by the town council, the special master may exercise all powers given to him/her by this chapter. The special master shall not, however, exercise any jurisdiction over such alleged Code violations until the time allowed for court appeal of the ruling of such council has lapsed or until such further appeal has been exhausted.~~

~~(3) The special master shall be bound by the interpretations and decisions of the town council concerning the provisions of the Town Code. In the event the town council decides that an alleged violation of the Code is not in accordance with the council's interpretation of the Code provision on which the violation is based, the special master shall not be empowered to proceed with the enforcement of the violation.~~

Sec. 5 3/4-12. Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; foreclosure.

(a) The ~~€~~Town may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.

(b) A certified copy of an order imposing a civil penalty 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. 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 levy against the personal property, but such order

shall not be deemed to be a court judgment except for enforcement purposes. A civil penalty imposed pursuant to this ~~e~~Chapter shall continue to accrue until the ~~vi~~Violator ~~comes into compliance~~ complies or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this chapter, whichever occurs first. After three months from the filing of any such lien which remains unpaid, the ~~the~~Town may foreclose or otherwise execute on the lien or sue to recover a money judgment of the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this section 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 shall not apply to real property or personal property which is covered under section 4(a), Article X of the State Constitution.

(c) No lien provided under this ~~e~~Chapter 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 is commenced pursuant to F.S. § 162.09 in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. 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.

Sec. 5 3/4-13. Appeals of order.

(a) An aggrieved party, including the ~~the~~Town, may appeal a final order of a ~~special master~~ Special Magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the ~~s~~Special ~~master~~ Magistrate. An appeal shall be filed within 30 calendar days of the issuance of the order sought to be overturned. Failure to make such appeal within the prescribed thirty-day period shall render the findings of the ~~s~~Special ~~master~~ Magistrate conclusive, binding and final.

(b) Unless the findings of the ~~sSpecial master~~ Magistrate are overturned in a proceeding held pursuant to paragraph (a), all findings of the ~~sSpecial master~~ Magistrate shall be admissible in any proceeding to collect unpaid penalties.

(c) No aggrieved party other than the ~~€Town~~ may apply to the court for relief unless such party has first exhausted the remedies provided for in this ~~€Chapter~~ and has taken all available steps provided in this ~~€Chapter~~. It is the intention of the ~~€Town €Council~~ that all steps ~~as~~ provided by this ~~€Chapter~~ shall be taken before any application is made to the court for relief, and no application shall be made by any aggrieved party other than the ~~€Town~~ to the court for relief except from an order issued by a ~~sSpecial master~~ Magistrate pursuant to this ~~€Chapter~~. It is the intention of the ~~€Town €Council~~ that, notwithstanding anything in this ~~€Chapter~~ to the contrary, the ~~€Town~~ shall retain all judicial rights and remedies otherwise available to it to secure compliance with or prevent violations of ~~town ordinances~~ the Code. For the purposes of appeal, the ~~€Town €Clerk~~ shall make available for public inspection and copying the record upon which each final order of a ~~sSpecial master~~ Magistrate is based. The ~~€Town €Clerk~~ may make a reasonable charge ~~commensurate with the cost for the preparation of the official record on appeal and transmittal thereof to the circuit court and~~ for making certified copies of any record or portion thereof.

Sec. 5 3/4-14. Provisions contained herein are supplemental.

Nothing contained in this chapter shall prohibit the ~~€Town~~ from enforcing its Code and ordinances 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 the Code ~~or ordinances of the town~~.

Sec. 5 3/4- 15. Additional enforcement powers.

In addition to the powers and authority given to the Special Magistrates for the Town pursuant to this article, the Town may, in its discretion, exercise any powers given to municipalities or their Special Magistrates by F.S. ch. 162.

~~Sec. 5 3/4-15. Violations; schedule of civil penalties.~~

~~(a) Violations of this chapter shall be subject to the imposition of penalties as provided herein and as provided under section 1-8 and any other applicable penalty section(s) of the Code of the~~

~~Town of Bay Harbor Islands. Each day of violation shall constitute a separate, punishable offense.~~

~~(b) The town council may publish from time to time by resolution a schedule showing the sections of the Code and ordinances which may be enforced pursuant to the provisions of this chapter and the dollar amount of civil penalty for the violation of these sections as they may be amended.~~

~~(c) Any "description of violations" is for informational purposes only and is not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, ordinances, laws, rules or regulations. To determine the exact nature of the activity proscribed or required by the Code, ordinances, laws, rules or regulations, the relevant Code, ordinances, laws, rules or regulations section must be examined.~~

Sec. 5 3/4-16. Authority of town manager to settle or resolve Code violations.

Notwithstanding any of the foregoing sections of this chapter, ~~the town manager in conjunction with the~~ ~~the~~ Town's Litigation Committee, shall have the authority at all times to settle or otherwise resolve violations of the Town Code and the penalties arising thereunder.

Section 3. Severability. 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 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and be made a part of the Code of Bay Harbor Islands, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. Effective Date. This Ordinance shall be effective immediately upon its adoption on second reading.

PASSED on First Reading this 9th day of November, 2009.

PASSED AND ADOPTED on Second Reading this 14th day of December, 2009.

MAYOR

ATTEST:

TOWN CLERK

Approved as to form and legal sufficiency

TOWN ATTORNEY