

ORDINANCE NO.: 18-15

AN ORDINANCE OF THE CITY OF BELLE ISLE CREATING A NEW ARTICLE III IN CHAPTER 14 OF THE CITY CODE RELATING TO SUPPLEMENTAL CODE ENFORCEMENT CIVIL CITATION PROVISIONS AND REGULATIONS; PROVIDING ALTERNATIVE PROCESSES AND PROCEDURES FOR CODE ENFORCEMENT CITATIONS; PROVIDING FOR THE COLLECTION OF FEES AND PENALTIES; PROVIDING A POST-DEPRIVATION HEARING PROCESS AND PROCEDURES; PROVIDING ADDITIONAL APPELLATE JURISDICTION POWERS TO BE EXERCISED BY THE SPECIAL MAGISTRATE; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, sections 162.13 and 162.21(8), Florida Statutes, provide that Florida municipalities are not limited to the specific code enforcement alternatives set forth therein, and Florida municipalities are not prohibited from enforcing their local codes of ordinances by any other means; and

WHEREAS, certain code violations of an itinerant or transient nature, of a limited duration, those amenable to one-time penalties as opposed to per day penalties and fines, those occurring on public property, on properties not owned or occupied by the alleged violators, or otherwise not amenable to enforcement through pre-deprivation or pre-penalty notice and an opportunity to correct such violations are largely not enforced or are unenforceable by existing city code provisions and code enforcement procedures; and

WHEREAS, the City Council has determined that the creation of a supplemental and alternative code enforcement civil citation process may address the above-referenced code violations that have evaded review or were otherwise not subject to readily compliance and enforcement alternatives given the circumstances relating to particular violations.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Belle Isle, Florida:

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this ordinance.

SECTION 2. Amendment. Chapter 14 of the City Code of Ordinances is amended to create a new Article III entitled Supplemental Code Citation Process, which shall read as follows:

ARTICLE III. –Supplemental Code Citation Process

Sec. 14-40. Supplemental code enforcement citation process.

(a) *Generally.* It is the intention that this article shall provide a cumulative alternative to existing city code provisions and existing Florida law regarding the enforcement of the city's code of ordinances.

Pursuant to this article, all city code inspectors and code enforcement officers may issue civil citations to alleged violators of the city’s code of ordinances. Such citations shall be in a form prescribed by the city and shall contain:

- (1) the date and time of issuance of the citation;
- (2) the name and address of the person to whom the citation is issued;
- (3) the date and time the civil code infraction was committed;
- (4) the facts constituting reasonable cause;
- (5) the number or section of the code or ordinance violated;
- (6) the name and authority of the code inspector or code enforcement officer;
- (7) the procedure for the person to follow in order to pay the civil penalty or to contest or appeal the citation;
- (8) the applicable civil penalty relating to the violation and citation;
- (9) a conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to contest or appeal the citation, then such person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty authorized by law.

(b) Fees and penalties; Citation payment due date. A violation of the city’s code of ordinances shall be punishable under this article by a fine or penalty of up to \$400.00 per violation. Fees for violations shall be due and payable within ten (10) business days from the date of service by U.S. Mail of city written notification or ten (10) business days from the date of hand delivery or posting on the relevant personal property of the violator which constituted the violation or where the violation originated, as applicable, providing notification of the imposition of the fees and penalties set forth herein. The fees and penalties set forth herein are separate and apart from any additional fines, penalties, or remedial measures that the city may assess or impose for violations of this article under federal or Florida law, this code of ordinances, or otherwise as provided herein.

(1) Classification penalties. All violations of city codes or ordinances and the applicable civil penalties under this article shall be classified as follows:

<u>Classification Penalty</u>	<u>Civil Penalty</u>
<u>Class I</u>	<u>\$50.00</u>

<u>Class II</u>	<u>\$100.00</u>
<u>Class III</u>	<u>\$200.00</u>
<u>Class IV</u>	<u>\$300.00</u>
<u>Class V</u>	<u>\$400.00</u>

In the event the particular code or ordinance violated does not set forth the appropriate classification penalty, then such violation shall be punishable as a Class I violation.

(2) Repeat violations. Each successive repeated violation of a particular code or ordinance section shall be subject to a civil penalty for the next higher violation classification. For example, a second violation of a Class I violation will be fined as a Class II violation, a third violation of a Class I violation will be fined as a Class III violation, and so on.

(3) Subsequent codes and ordinances; amendments. City codes and ordinances subsequently enacted or amended may set forth the applicable civil penalties for violations by designating the appropriate violation classification as provided in subsection (1) of this section. In the event no classification is set forth therein, then violations shall be designated Class I violations.

(c) Appeal of fines and fees. Any person determined by the city to be in violation of any provision of the city's code of ordinances that is cited or assessed penalties under this article may appeal the imposition of any fee or penalty imposed by filing a written request for appeal to the special magistrate within fifteen (15) business days of service or hand delivery of the city's written citation or notification that imposes any fines or fees relating to a violation of the city's code of ordinances. The written request for appeal shall also be filed with the city's code enforcement department or its designees. The written request for appeal must contain a short statement of the grounds for the appeal. The special magistrate, exercising appellate jurisdiction over the matter, shall hear the appeal within sixty (60) days after the filing of the written request for appeal and shall give notice of the hearing to the appellant and the city's code enforcement department or its designees. The appellant shall pay to the city a fee prescribed by the city commission to cover the administrative costs of such an appeal.

(d) Discretionary authority of special magistrate on appeal. The special magistrate may reduce or waive the fees or penalties imposed based upon appellant's presentation of evidence and testimony relating to any efforts taken to correct the violation(s) in a timely manner, the gravity of the violation(s), and any previous violations committed by the appellant in the previous twelve (12) month period. The city shall be permitted a reasonable opportunity to present its own evidence regarding the reasonableness of any fees imposed and to rebut any evidence or argument presented by the appellant.

(e) Past due fees and penalties for violations occurring on private property. In the event that the fees imposed in accordance with this article are not paid when due for any reason, including but not

limited to mistake or inadvertence, the city shall have the right to collect such fees and charges relating to violations occurring on private property as follows:

(1) The city shall serve, by certified mail-return receipt requested and regular U.S. Mail, a notice of non-payment upon the violator and the current owners of the property based on the ownership information appearing on the Orange County Property Appraiser's website. Provided the city sends the notice of non-payment, the violator and/or current owner's failure to receive delivery of such notice of non-payment shall not invalidate or otherwise impact the city's ability to collect the outstanding amount owed through the recording of a lien, maintenance of foreclosure proceedings, or any other remedies provided by Florida law.

(2) The notice of non-payment shall contain:

(i) a description or address of the property from which the violation originated or upon which the violation occurred;

(ii) advise the violator and/or property owner of the amount due and the fee and/or charges that were not paid; and

(iii) advise that in the event the fees and/or charges are not paid within thirty (30) calendar days from the date of the notice of non-payment, that a notice of lien against the applicable property upon which the violation originated or upon which the violation is located may be recorded in the official records of the county and such notice of lien may be foreclosed upon by the city to collect the outstanding sums owed plus accrued interest and attorneys' fees and other collection expenses.

(3) If the amount set forth in the notice of non-payment is not paid within thirty (30) days from the date of the notice of non-payment, then the outstanding balance owed to the city shall accrue interest at the rate of twelve percent (12%) per annum until such amount is paid in full; the city may proceed to record a notice of lien against the applicable property in the official records of the county, which, once recorded, shall constitute a lien against the property described therein; and a copy of the notice of lien shall be served by U.S. Mail to the violator and the property owner at the same addresses as set forth in subsection (2) above.

(4) After the expiration of sixty (60) days from the date of recording of the notice of lien, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted and prosecuted in conformity with the Florida statutory provisions regarding foreclosure proceedings and procedures. The city shall also have the right to bring an action for monetary judgment to collect past due amounts owed.

(5) The violator and the owner shall be responsible, jointly and severally, for and the city shall be entitled to reimbursement for the payment of all collection expenses and costs, including attorneys' fees and litigation costs and recording and filing fees, incurred by the city in the collection of fees and charges, filing of liens, and in actions to foreclose such liens or actions for monetary judgments.

(6) The collection and enforcement procedures set forth in this subsection shall be cumulative with and in addition to any applicable procedures provided in any other ordinance of the city, any applicable Florida law, or any agreement. Failure of the city to follow the procedures set forth in this subsection shall not constitute nor be construed as a waiver of the city's rights to proceed under any other ordinance of the city, in accordance with Florida law, or pursuant to any agreement.

(f) *Past due fees and penalties for violations not occurring on private property.* In the event that the fees imposed in accordance with this article are not paid when due for any reason, including but not limited to mistake or inadvertence, the city shall have the right to collect such fees and charges relating to violations not occurring on private property as follows:

(1) The city, in its discretion, may file suit for the recovery of any fees and penalties issued pursuant to this article or otherwise obtain a monetary judgment to collect past due amounts owed, initiate code enforcement proceedings relating to the violation, or pursue any other additional fines, penalties, or remedial measures that the city may assess or impose for violation of this article under federal or Florida law, this code of ordinances, or otherwise as provided herein. In such event the violator shall be responsible for and the city shall be entitled to reimbursement for the payment of all collection expenses and costs incurred by the city in the collections of any such past due fees and penalties for violations not occurring on private property.

(2) The collection and enforcement procedures set forth in this subsection shall be cumulative with and in addition to any applicable procedures provided with and in addition to any applicable procedures provided in any other ordinance of the city, any applicable Florida law, or any agreement. Failure of the city to follow the procedures set forth in this subsection shall not constitute nor be construed as a waiver of the city's rights to proceed under any other ordinance of the city, in accordance with Florida law, or pursuant to any agreement.

SECTION 4. Codification. This Ordinance shall be incorporated into the Code of Ordinances of the City of Belle Isle, Florida. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance or the Code of Ordinances of the City of Belle Isle, Florida may be freely made.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. Conflicts. In the event of a conflict or conflicts between this Ordinance and any

other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 7. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Council of the City of Belle Isle, Florida.

FIRST READING: _____, 2018

SECOND READING: _____, 2019

	YES	NO	ABSENT
Ed Gold	_____	_____	_____
Anthony Carugno	_____	_____	_____
Jeremy Weinsier	_____	_____	_____
Mike Sims	_____	_____	_____
Harvey Readey	_____	_____	_____
Jim Partin	_____	_____	_____
Sue Nielsen	_____	_____	_____

ADOPTED this ____ day of _____, 2019, by the City Council of the City of Belle Isle, Florida.

CITY COUNCIL
CITY OF BELLE ISLE

Lydia Pisano, Mayor

ATTEST:

Yolanda Quiceno, City Clerk

Approved as to form and legality,

Kurt Ardaman, City Attorney

STATE OF FLORIDA

COUNTY OF ORANGE

I, Yolanda Quiceno, City Clerk of the City of Belle Isle do hereby certify that the above and foregoing document ORDINANCE 18-15 was duly and legally passed by the Belle Isle City Council, in session assembled on the _____ day of _____, 2019, at which session a quorum of its members were present.

Notary