

ORDINANCE NO. 2022-10

AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, REPEALING CHAPTER 2 “ADMINISTRATION”, ARTICLE III “BOARDS, COMMITTEES, COMMISSIONS”, DIVISION 2 “CODE ENFORCEMENT”; ADOPTING A NEW ARTICLE VIII “CODE COMPLIANCE”; PROVIDING FOR SEVERABILITY, PRESERVATION, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Chapter 162, Part I, Florida Statutes, sets forth the process the City has been utilizing for traditional code compliance for properties which violate the City’s code of ordinances within the City; and

WHEREAS, the City also currently uses its code compliance citation process in order to more efficiently and effectively address day-to-day simple violations; and

WHEREAS, the City Council recognizes the need to update its ordinances regarding code compliance in order to make the entire process more efficient, effective, and address the reduction of liens when properties are brought into compliance; and

WHEREAS, the City Council recognizes that by updating its code compliance processes as set forth herein such updates should help to encourage voluntary code compliance by all property owners; and

WHEREAS, the City Council of the City of Greenacres legislatively determines and declares that creation of a new code compliance ordinance as set forth herein is in the public interest of the health, safety and general welfare of the residents and business community of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, THAT:

SECTION 1. LEGISLATIVE FINDINGS, INTENT AND PURPOSE.

The WHEREAS clauses contained herein are legislatively determined to be true and correct and are incorporated herein and represent the legislative findings of the City Council. It is the purpose and intent of this ordinance to promote the health, safety, and general welfare of the residents of the City, to obtain voluntary compliance with the City’s code of ordinances and efficiently and effectively pursue violations when voluntary compliance is not achieved.

SECTION 2. BOUNDARIES.

That this Ordinance shall apply to all properties located within the boundaries of the City of Greenacres, Florida.

SECTION 3. REPEAL OF CHAPTER 2 ADMINISTRATION, ARTICLE III BOARDS, COMMITTEES, COMMISSIONS, DIVISION 2 CODE ENFORCEMENT.

The City Council hereby repeals, in full, Chapter 2. Administration, Article III. Boards, Committees, Commissions, Division 2. Code Enforcement.

SECTION 4. CREATION OF CHAPTER 2 ADMINISTRATION, ARTICLE VIII CODE COMPLIANCE.

The City Council hereby amends the Greenacres Code by adding Chapter 2 Administration, Article VIII Code Compliance, which shall read as follows:

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ARTICLE VIII. – CODE COMPLIANCE

DIVISION 1. – GENERALLY

Sec. 2-287. – Intent, applicability and jurisdiction.

(a) It is the intent of this article to promote, protect and improve the health, safety and welfare of the citizens of the city by authorizing the appointment of one (1) or more special magistrates with authority to impose administrative fines and other noncriminal penalties, to provide an equitable, expeditious, effective and inexpensive method of obtaining compliance with the city's codes and ordinances, and obtaining enforcement where a pending or repeated violation continues to exist.

(b) This article creates the city's code compliance process consistent with the Chapter 162, Part I, the Local Government Code Enforcement Boards Act, as set forth in sections 162.01 – 162.13, Florida Statutes (as amended from time to time).

(c) As an alternative to the enforcement procedures authorized under Chapter 162, Part I, Florida Statutes, and pursuant to sections 162.13 and 162.22, Florida Statutes, the city hereby adopts a civil citation procedure as set forth in this article at division 3.

(d) The city hereby authorizes its special magistrate(s) to hold hearings and assess fines against violators of the city's code of ordinances in accordance with the terms and conditions set forth in this article and with the Local Government Code Enforcement Boards Act (not applicable to division 3).

(e) The jurisdiction of the city's special magistrate(s) shall not be exclusive. Any alleged violation of the city's code of ordinances may be pursued by appropriate remedy in court or other appropriate venue at the option of the city.

(f) The city council reserves the right to establish a code compliance board consistent with the Local Government Code Enforcement Boards Act.

Sec. 2-288. – Special magistrate appointed.

(a) The city council may appoint one (1) or more special magistrates who shall have the authority to hold hearings and assess fines against violators of the ordinances of the city, as provided in Chapter 162, Part I, Florida Statutes, and in this article. The special magistrate shall serve in an *ex officio* capacity if the appointed special magistrate serves other local governments as a special magistrate. Such service to other local governments does not create duties inconsistent with serving as special magistrate to the city.

(b) A special magistrate shall be an attorney admitted to the Florida Bar who possesses experience in zoning and land use law, building regulations, code enforcement, and/or administrative law.

(c) A special magistrate shall not be a city employee, but shall enter into an agreement to provide professional services at a rate established by the city.

(d) The city shall provide necessary and reasonable clerical and administrative support to enable a special magistrate to perform his or her duties. A special magistrate shall not be authorized to hire or use the services of any person except those provided by the city to assist him or her in the performance of his or her duties.

Sec. 2-289. - Powers of special magistrate.

A special magistrate shall have the power to:

(a) Adopt rules for the conduct of hearings.

(b) Subpoena alleged violators and witnesses to special magistrate hearings. Subpoenas may be served by the sheriff of the county or police department of the city.

(c) Subpoena evidence to special magistrate hearings.

(d) Take testimony under oath.

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

Sec. 2-290. - Definitions.

Except as otherwise clarified herein, the terms used in this article shall have the same definition as set forth in Chapter 162, Part I, Florida Statutes:

(a) *Special magistrate* means an attorney admitted to the Florida Bar who possesses experience in zoning and land use law, building regulations, code enforcement and/or administrative law, and has been appointed by the city council to hold hearings and assess fines against violators of the city ordinances.

(b) *Code compliance administrator* means the city employee or his or her designee having the responsibility for providing administrative support for special magistrates, accepting applications, giving notices, presenting cases and otherwise supporting the code compliance program.

(c) *Code officer* means any authorized agent or employee of the city whose duty it is to assure code compliance.

(d) *Repeat violation* means a violation of a provision of an ordinance by a person who has been previously found through a code enforcement board, special magistrate or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five (5) years prior to the violation, notwithstanding the violations occurred at different locations. All repeat violations shall be subject to an administrative fee which reasonably represents the costs to the city for original and repeat enforcement of its code of ordinances. The administrative fee shall be set by resolution and shall be included in a lien authorized under this division.

Secs. 2-291 – 2-294. – Reserved.

DIVISION 2. – NOTICE OF VIOLATION PROCEDURE (CHAPTER 162, PART I, FLORIDA STATUTES)

Sec. 2-295. - Compliance procedure.

(a) *Generally.* It shall be the duty of the code officer to initiate enforcement proceedings of the various codes; no special magistrate shall have the power to initiate such proceedings.

(b) *Notification of violation; hearing; written notice of hearing.* Except as provided in subsections (c) and (d), if a violation of the codes is found, the code officer shall notify the violator and give him or her a reasonable time to correct the violation. The notice may also include the notice of hearing should the violation continue beyond the time specified for correction; or, code compliance may issue a separate notice of hearing should the violation continue beyond the time specified for correction. The written notice of violation and notice of hearing shall be served as provided in this article to the violator. If the violation is corrected and then recurs or if the

violation is not corrected by the time specified for correction by the code officer, the case may be presented to the special magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state.

(c) Repeat violations. If a repeat violation is found, the code officer shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. This notice may include a notice of hearing if an upcoming hearing date is known. The code officer, upon notifying the violator of a repeat violation, shall notify a special magistrate and request a hearing. The code officer shall schedule a hearing and shall provide notice pursuant to this article to the violator (unless already provided). The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state.

(d) When code officer may immediately notify a special magistrate. If the code officer has reason to believe a violation presents a serious threat to the public health, safety or welfare or if the violation is irreparable or irreversible in nature, the code officer shall make a reasonable effort to notify the violator and may immediately notify a special magistrate and request a hearing. The original notice to the violator may include the notice of hearing if an upcoming hearing date is known.

Sec. 2-296. - Conduct of hearing.

(a) Manner of calling hearing; open to public. Upon request of the code officer, or at such other times as may be necessary, a special magistrate may call a hearing. All hearings and proceedings shall be open to the public.

(b) Presenting cases. Each case before a special magistrate shall be presented by the city attorney or designee or by the code compliance administrator or designee.

(c) Testimony; rules of evidence. The special magistrate shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The special magistrate shall take testimony from the code officer, alleged violator and such other witnesses as may be necessary in the special magistrate's determination. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) Findings of fact; order of compliance.

(1) At the conclusion of the hearing, the special magistrate shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein. The order may include a notice that it must be complied with by a specified date, and that if the order is not complied with by said date, the following may be imposed: a daily accruing fine and the assessment of the costs of repair (if applicable). The order may, upon the request of the city, authorize the city to enter onto the property to make the necessary repairs if the violator fails to timely do so. The order may also impose the city's administrative costs of prosecution. A certified copy of such order may be recorded in the official records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, subsequent purchasers, successors

in interest, or assigns. If an order is recorded in the official records pursuant to this subsection and the order is complied with by the date specified in the order, the special magistrate shall issue an order acknowledging compliance that shall be recorded in the official records. A hearing is not required to issue such an order acknowledging compliance.

(2) Further, if a violation is found, the violator shall be given twenty (20) days within which to request a hearing to challenge the fine amount imposed by the order. If such a hearing is not timely requested and if the violation is not corrected by the time established in the order and/or all administrative costs are not timely paid, the city may record a certified copy of the order in the official records of the county and thereafter the order shall constitute a lien under section 162.09, Florida Statutes. The hearing to challenge the fine amount imposed by the order shall be requested in writing to the code compliance administrator and shall be limited to a consideration of only those new findings necessary to impose a fine. The violator shall bear the burden of proof at such hearing to show cause why the fine imposed in the order is not appropriate. If a request for hearing to challenge the fine amount is timely received by the code compliance administrator, a hearing will be set and notice of the hearing date and time shall be sent by regular U.S. mail to the address provided on the written request for the hearing. All orders entered by the special magistrate at this hearing which impose a fine and/or administrative costs may be recorded in the official records of the county by the city and thereafter the orders shall constitute a lien under section 162.09, Florida Statutes.

(3) If fines accrue under the order by the special magistrate prior to the order becoming a lien, the special magistrate may reduce the fines consistent with this article for the reduction of liens.

Sec. 2-297. - Waiver of hearing procedure; stipulation and agreed order.

(a) *Voluntary stipulation option.* In the event that a violator agrees with the violation(s) contained on the notice of violation(s), but needs more time to correct the violations, the violator shall have the option to enter into a voluntary stipulation wherein the violator agrees to the violation(s) and waives the violator's right to all further hearings before the special magistrate. The violator shall then have additional time as agreed to between the violator and the code officer to correct the violation(s) before any fine begins to accrue.

(b) *Stipulation form.* The stipulation must be in writing and on a form provided to the violator by the code officer. The stipulation shall indicate that the waiver of hearing is solely at the option of the violator, and that the violator has an absolute right to have a hearing before the special magistrate. The stipulation shall further contain the date that the violator must correct the violation(s) before a fine begins to accrue, and shall state the amount of the daily fine if the violation(s) is not corrected by the correction date.

(c) *Agreed order.* By signing the stipulation, the violator agrees to the entry of an agreed order approving the stipulation. The violator is not required to be present at the hearing at which the stipulation is reviewed by the special magistrate. The order shall provide that the stipulation shall have the same effect as an order entered by the special magistrate imposing a fine and creating a lien in the event that the violator does not correct the violation(s) by the correction date or

otherwise fails to timely and fully comply with the terms of the stipulation. The city may record the stipulation in the official records of the county if the violator does not correct the violation(s) by the correction date or otherwise fails to timely and fully comply with the terms of the stipulation.

(d) *Agreed order not entered.* In the event the special magistrate does not approve the stipulation, the violator shall not be prejudiced for not appearing at the hearing and shall be given additional reasonable time for compliance and shall be issued a notice of hearing to appear at the next available hearing. Said notice shall be sent by regular U.S. Mail to the address contained on the stipulation.

(e) *Lien reduction rights not waived.* The stipulation shall not waive the violator's right to request a lien reduction hearing if a lien is imposed as a result of the stipulation.

Sec. 2-298. - Administrative fines; liens.

(a) *Generally.* A special magistrate may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code officer.

(b) *Amount of fines.*

(1) A fine imposed pursuant to this section shall not exceed two hundred fifty dollars (\$250.00) per day for a first violation and shall not exceed five hundred dollars (\$500.00) per day for a repeat violation, and, in addition, may include all costs of repairs incurred in accordance with this article. However, if a special magistrate finds the violation to be irreparable or irreversible in nature, the special magistrate may impose a fine not to exceed five thousand dollars (\$5,000.00) per violation.

(2) In determining the amount of the fine, if any, the special magistrate shall consider the following factors:

- a. _____ The gravity of the violation;
- b. _____ Any actions taken by the violator to correct the violation; and
- c. _____ Any previous violations committed by the violator.

(c) *Administrative fee related to the prosecution of code compliance cases.* Costs incurred by the city in the successful prosecution of a code compliance case, including a repeat violation, may be assessed against the violator pursuant to section 162.07, Florida Statutes. The amount of these costs may be set from time to time by resolution of the city council. Such costs may be included in the lien authorized under this division.

(d) *Fine imposed.* Unless a fine has already been converted to a lien under section 2-296, a certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the official records of the county by the city 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 and an order recorded under section 2-296 may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy

against personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this article shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien or in a suit to recover a money judgment, pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this article runs in favor of the city, and the special magistrate and/or the city may execute a release of lien or partial release of lien as specifically authorized under this article. After three (3) months from the filing of any such lien which remains unpaid, the special magistrate may authorize the city attorney or designee to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this article may be foreclosed on real property which is homestead under Section 4, Article X of the Florida State Constitution.

Sec. 2-299. - Duration of lien.

No lien provided under this article shall continue for a period longer than twenty (20) years after the certified copy of an order imposing fine or an order recorded under section 2-296 has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including reasonable attorney fees, incurred in the foreclosure. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien. 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. 2-300. - Appeals.

An aggrieved party, including the city, may appeal a final administrative order of a 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 special magistrate. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed. The city attorney or designee is hereby authorized to defend such appeals on behalf of the city and/or special magistrate. Except for an appeal filed by the city, notice of the appeal shall be sent to the city's code compliance division.

Sec. 2-301. - Applications for lien reductions, release of liens and partial releases of liens; lien caps; waiver of hearing; amnesty; and, property improvement account.

(a) *Applicability.* The procedures set forth in this division for lien reductions, releases of liens and partial releases are applicable to any violator whose case has been heard before the city's code compliance special magistrate or board.

(b) *Application.* The code compliance administrator shall furnish the form for an application for a lien reduction, a release of lien and a partial release of lien. In order to be considered, the application form must be fully completed and submitted to the code compliance administrator with the applicable fees set by city council resolution. The application fees are non-refundable.

(c) *Waiver of lien reduction hearing.* Upon receipt of a completed application for a lien reduction which satisfies the criteria set forth in section 2-302 below, the code compliance administrator

or designee shall calculate the amount of the reduction consistent with this division. The code compliance administrator or designee shall notify the applicant of the proposed reduction amount and, if the applicant agrees with the proposed reduction amount, the applicant may enter a voluntary reduction stipulation with the code compliance administrator. The form of the voluntary reduction stipulation shall be determined by the code compliance administrator in consultation with the city attorney. A fully executed voluntary reduction stipulation may be approved by the special magistrate administratively, without a hearing. Upon payment of the reduction amount set forth in the voluntary reduction stipulation as approved by the special magistrate, the city shall execute and record a release of the lien in the official records of the county. If the applicant does not agree with the proposed reduction amount, or the special magistrate does not approve the executed voluntary reduction stipulation, the code compliance administrator or designee shall set the reduction application for a hearing before the special magistrate consistent with this division.

(d) *City council amnesty.* The city council may from time to time by resolution approve an amnesty program to incentivize property owners to bring their properties into compliance and obtain a release of lien(s) from the city. The amnesty program may reduce the maximum lien reduction percentage set forth in section 2-302(f). The amnesty program resolution shall set forth a temporary timeframe for the amnesty program to be available to property owners by written application.

(e) *Property Improvement Account.* City council may from time to time by resolution authorize a Property Improvement Account in which a percentage of all code compliance fees, fines, liens and other charges paid to the city shall be deposited. If authorized, the City Manager or designee shall establish policies and programs for utilization of the Property Improvement Account funds to assist homestead property owners and to assist those other property owners seeking to improve the overall appearance of their property and the city.

Sec. 2-302. - Lien reductions.

(a) *Criteria.* The following criteria must be complied with prior to a lien reduction hearing before a special magistrate:

(1) The property in question must be in total compliance and an affidavit of compliance must be issued for the case(s) being considered.

(2) The property in question must be free of all outstanding debts (including taxes) due to the city.

(3) The request for lien reduction application must be completed and submitted to the code compliance administrator along with the applicable fee as set by city resolution. All outstanding administrative fees owed to the City, as ultimately determined by the code compliance administrator, shall also be paid at the time of application; however, the code compliance administrator may allow the outstanding administrative fees to be paid, in full, as part of a reduced lien amount.

(4) All other properties owned by the violator within the city must not have any active code compliance case(s). The applicant shall provide the city a list of all properties owned by the applicant within the city along with the application.

(b) *Hearing scheduled; option to postpone.* Except as otherwise set forth herein, if the reduction application is complete and the above criteria have been met, a lien reduction hearing shall be scheduled before a special magistrate. The applicant will be notified in writing of the scheduled hearing at least five (5) days prior to the hearing date by regular U.S. Mail to the address provided on the application. In its sole discretion, the city may postpone such hearing if it wishes to pursue the collection of the lien(s) through an alternate remedy at law or in equity, and the city shall notify the applicant of such postponement in writing. If the postponement is anticipated to last longer than three (3) months, the City may in its sole discretion deny the reduction application and return any fee paid for the same.

(c) *Lien reduction hearing.* The special magistrate at a lien reduction hearing shall make one (1) of the following determinations: The lien may be reduced to a specified amount, or the request for lien reduction may be denied. The special magistrate shall review all the facts set forth in the application to determine if the applicant is eligible for the requested relief prior to making a decision and entering an order. The lien reduction hearing shall not be a hearing de novo of the original case, but shall be limited solely to the issue of whether the lien assessed should be reduced. The burden of proof shall be on the applicant to show cause for reducing the lien. The city attorney, code compliance administrator and/or their designee may make recommendations regarding any lien reduction. Any lien reduction made pursuant to this section is not applicable to any administrative fees or costs assessed at any prior hearing.

(d) *Factors considered.* In determining how much to reduce the outstanding lien, the special magistrate shall consider the following factors:

- (1) The gravity of the violation;
- (2) Any action taken by the violator to correct the violation; and,
- (3) Any previous violations committed by the violator.

(e) *City debts to be paid.* The cost of the lien reduction application fee and any code compliance administrative fees associated with the property and any other city debts (including taxes) that are required to be paid, as ultimately determined by the code compliance administrator, shall not be included in any lien reduction and must be paid.

(f) *Maximum reduction.* The special magistrate shall not reduce any lien to less than ten (10) percent of the remaining outstanding balance of the lien for commercial or non-homesteaded residential properties and 3% for homesteaded residential properties.

(g) *Release of lien.* Upon full compliance with the special magistrate's order reducing the lien, the city shall prepare a release of lien and record the release of lien in the official records of the county.

(h) Reversion of original lien amount. If a respondent fails to timely and fully pay the reduced lien amount, the lien shall automatically revert back to the original, pre-reduced amount and the special magistrate's order reducing the lien shall not be recorded.

Sec. 2-303. – Unenforceable lien releases.

(a) Unenforceable liens. In addition to the reduction of liens described above, the city shall be authorized to execute a release of a code compliance lien which has been deemed in writing by the city attorney to be legally unenforceable or uncollectible as described below:

(1) The statute of limitations relating to the lien has otherwise expired;

(2) The lien was properly foreclosed by order of an appropriate court with jurisdiction;

(3) The lien was properly discharged in a bankruptcy proceeding by order of a bankruptcy court;

(4) The property encumbered by the lien is currently owned by the city; and/or,

(5) Any other reason as determined by the city attorney that establishes the lien is legally unenforceable or uncollectible.

(b) Application. An application for a release of lien shall be submitted to the code compliance administrator along with the application fee to cover the city's costs for the processing of the application and recording costs.

(c) Recording of release. If issued, the city shall record the release of lien in the official records for the county.

Sec. 2-304. – Partial release of liens.

An applicant may request a partial release of lien where the lien on the property inside the city's boundaries attaches to another property located inside or outside the city's boundaries pursuant to section 162.09, Florida Statutes. The following procedures shall apply to such request:

(1) The applicant shall complete an application for such partial release and pay all applicable application fees as set by city resolution.

(2) The property for which the partial release is requested must be free of all outstanding debts (including taxes) due to the city.

(3) All property owned by the applicant in whole or in part that is located in the city, including the property for which the lien originated, must be in compliance with all city ordinances prior to the granting of the partial release of lien. If the applicant's property within the city is not in compliance, the applicant may provide the city with a letter of credit to guarantee compliance within a set timeframe not to exceed 120 days. The form of the letter of credit shall be approved

by the city attorney and the amount of the letter of credit shall be ten (10) percent of the total lien amount.

(4) Upon the applicant's payment of ten (10) percent of the total lien amount, the code compliance administrator shall notify the city attorney of the partial release of lien application and payment of the applicable fees.

(5) Upon notice from the code compliance administrator, the city attorney or designee shall prepare the partial release of lien for execution by the city and the city shall record the partial release of lien in the official records of the county.

Sec. 2-305. - Notices.

Notice delivery. Unless otherwise set forth in this article, all notices required by this article shall be provided to the alleged violator by:

(1) Certified mail, and at the option of the city return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The city may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within thirty (30) days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (b)(1) and (2);

(2) Hand delivery by the sheriff or other law enforcement officer, code officer, or other person designated by the city council;

(3) Leaving the notice at the violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person of the contents of the notice; or

(4) In the case of a commercial premises, leaving the notice with the manager or other person in charge.

(b) Additional notice options. In addition to providing notice as set forth in subsection (a), at the option of the city, notice may also be served by publication or posting, as follows:

(1) Such notice shall be published once during each week for four (4) consecutive weeks (four (4) publications being sufficient) in a newspaper of general circulation in Palm Beach County. The newspaper shall meet such requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements. Proof of publication shall be made as provided in sections 50.041 and 50.051, Florida Statutes.

(2) In lieu of publication as described above, such notice may be posted at least ten (10) days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two (2) locations, one of which shall be the property upon which the violation is

alleged to exist and the other of which shall be city hall. 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 (a).

(c) Notice requirements met. Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection (b), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

Sec. 2-306. - Disclosure requirements when transfer of ownership.

(a) Transfer of ownership. If the owner of property that is subject to an enforcement proceeding before the code enforcement board or special magistrate transfers ownership of such property between the time the notice of violation 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 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 city manager 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 5 days after the date of the transfer.

(b) Failure to provide notice. A failure to make the disclosures described in paragraphs (1), (2) and (3) above 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 period of time to correct the violation before the hearing is held.

Secs. 2-307 – 2-312. – Reserved.

DIVISION 3. – CIVIL CITATION PROCEDURE

Sec. 2-313. - Citation procedure.

(a) Citation authorized. If a violation (or a repeat violation) of the city's code, for which the city has set specific fines, is believed to have occurred or to exist, a code officer may issue the violator a courtesy warning notice or a civil citation (hereinafter "citation").

(b) Reasonable cause. A code officer is authorized to issue a citation to an individual or entity (hereinafter "person") when based upon personal investigation, the officer has reasonable cause to believe that the person has committed a violation of the code for which the city has set a specific fine.

(c) Citation criteria. A citation issued by a code officer shall contain:

- (1) The date and time of issuance.
- (2) The name and address of the person to whom the citation is issued.
- (3) The date and time the civil infraction was committed, if known.
- (4) The facts constituting reasonable cause.
- (5) The number or section of the code violated.
- (6) The name of the code officer.
- (7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
- (8) The date, time and location of the hearing to be held if the citation fine is not paid or if the violation is not timely complied.
- (9) The applicable penalty if the person elects to contest the citation.
- (10) The applicable penalty if the person elects not to contest the citation.
- (11) The time set for compliance with the code and for payment of the fine.
- (12) A statement that if the person fails to appear before the special magistrate to contest the citation, he or she shall be deemed to have waived his or her right to contest the citation and that, in such case, an order may be entered against the person for an amount up to the maximum civil penalty plus the city's administrative costs.

(d) Delivery of citation. The citation shall be delivered to the violator in accordance with section 2-305 of this article.

(e) Compliance. A violator who has received a citation shall either:

- (1) Comply with the code section cited, if applicable, and pay the fine, on or before the time set forth in the citation; or
- (2) Appear at the hearing, as scheduled on the citation, and contest the violation cited. If the alleged violator elects to appear at the hearing and contest the violation, he or she shall bring any witnesses or evidence to the hearing.

(f) Waiver of rights. If the alleged violator fails to appear at the hearing, the alleged violator shall have waived all rights to a hearing and to otherwise contest the citation.

(g) Special magistrate hearing and order. The special magistrate, after a hearing on the citation, shall make a determination of whether or not a violation of the code has been committed. The hearing shall be conducted in accordance with section 2-296. If a violation is found to have occurred, the special magistrate may enter an order, as set forth in section 2-296, requiring the payment of the citation fine, payment of the administrative costs of the hearing, and the compliance of the violation, all by a date certain, along with the imposition of a daily fine and the

authorization of the city to enter onto the property to make necessary repairs and the assessment of the costs of such repair (if applicable) if such compliance date is not met. A certified order assessing fines and/or administrative costs (and costs of repairs, if applicable) may be recorded as a lien against the subject property as set forth in section 2-296.

(h) *Payment constitutes admission.* Payment of a citation shall constitute admission of a violation for purposes of finding a repeat violation.

Sec. 2-314. - Schedule of violations and fines.

(a) The following schedule of violations and fines may be assessed by code officers and by the special magistrate in its review and adjudication of matters in accordance with this division.

<u>Violation:</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth* Offense**</u>
<u>County Ordinance*</u>	<u>\$100.00</u>	<u>\$200.00</u>	<u>\$300.00</u>	<u>\$300.00— \$500.00</u>
<u>City Code Chapter 3 Animals</u>	<u>\$150.00</u>	<u>\$250.00</u>	<u>\$350.00</u>	<u>\$335.00— \$500.00</u>
<u>City Code Chapter 4 Buildings</u>	<u>\$100.00</u>	<u>\$200.00</u>	<u>\$300.00</u>	<u>\$300.00— \$500.00</u>
<u>City Code Chapter 5 Fire Prevention</u>	<u>\$200.00</u>	<u>\$300.00</u>	<u>\$400.00</u>	<u>\$400.00— \$500.00</u>
<u>City Code Chapter 7 Nuisance</u>	<u>\$100.00</u>	<u>\$200.00</u>	<u>\$300.00</u>	<u>\$300.00— \$500.00</u>
<u>City Code Chapter 8 Licensing***</u>	<u>\$100.00</u>	<u>\$150.00</u>	<u>\$200.00</u>	<u>\$200.00— \$500.00</u>
<u>City Code Chapter 9 Miscellaneous</u>	<u>\$100.00</u>	<u>\$200.00</u>	<u>\$250.00</u>	<u>\$250.00— \$500.00</u>
<u>City Code Chapter 11 Streets, Sidewalks</u>	<u>\$150.00</u>	<u>\$200.00</u>	<u>\$250.00</u>	<u>\$250.00— \$500.00</u>
<u>City Code Chapter 12 Subdivisions***</u>	<u>\$150.00</u>	<u>\$200.00</u>	<u>\$250.00</u>	<u>\$250.00— \$500.00</u>
<u>City Code Chapter 14 Traffic****</u>	<u>\$100.00</u>	<u>\$200.00</u>	<u>\$300.00</u>	<u>\$300.00— \$500.00</u>
<u>City Code Chapter 15 Utilities</u>	<u>\$100.00</u>	<u>\$200.00</u>	<u>\$250.00</u>	<u>\$250.00— \$500.00</u>
<u>City Code Chapter 16 Zoning***</u>	<u>\$150.00</u>	<u>\$200.00</u>	<u>\$250.00</u>	<u>\$250.00— \$500.00</u>
<u>All other applicable local, state or federal***</u>	<u>\$150.00</u>	<u>\$200.00</u>	<u>\$250.00</u>	<u>\$250.00— \$500.00</u>

* or as specified by county ordinance.

** mandatory appearance for fourth offense.

*** or as specified by state statute or other applicable code or regulation.

**** \$35.00 per violation for parking violations from section 14-28.

(b) For violations of any section of this code for which a specific fine is not prescribed as set forth above, the code administrator may set a fine to be imposed of up to two hundred fifty dollars per day for a first violation and five hundred dollars per day for a second, third, or fourth violation.

* * * * *

SECTION 5. SEVERABILITY

Should any one or more of the provisions or element of this ordinance be held invalid, such provision or element shall be null and void, and shall be deemed separate from the remaining provisions or elements of this ordinance and shall in no way affect the validity of any of the remaining provisions or elements of this ordinance.

SECTION 6. PRESERVATION

All pending code compliance cases and code compliance orders existing at the time of the adoption of this ordinance are preserved and shall remain in full force and effect. All code compliance cases to be taken before the special magistrate after the date of adoption of this ordinance shall be processed in accordance with this ordinance. All requests for a release or partial release of an existing code compliance order which are made after the date of the adoption of this ordinance shall be processed in accordance with this ordinance.

SECTION 7. CONFLICTS

All other ordinances and resolutions in conflict with this ordinance are hereby cancelled, repealed or revised to be consistent with provisions and elements of this Ordinance.

SECTION 8. CODIFICATION

Specific authority is hereby granted to codify Section 4 of this Ordinance by removing the current Division 2, entitled “Code Enforcement”, as set forth in Chapter 2, Article III; and, replacing it with the newly created Article VIII, entitled “Code Compliance”, to be set forth at Chapter 2. The sections set forth in Section 4 of this Ordinance may be renumbered to accomplish such intentions.

SECTION 9. EFFECTIVE DATE

That this Ordinance shall take effect immediately upon its final approval and adoption.

[The remainder of this page intentionally left blank.]

Passed on the first reading this 4th day of April, 2022.

PASSED AND ADOPTED on the second reading this DD day of Month, 2022.

Joel Flores, Mayor

Attest:

Quintella Moorer, City Clerk

John Tharp, Deputy Mayor

Peter Noble, Council Member, District II

Judith Dugo, Council Member, District III

Susy Diaz, Council Member, District IV

Paula Bousquet, Council Member, District V

Approved as to Form and Legal Sufficiency:

Glen J. Torcivia, City Attorney