

ORDINANCE NO. 91-01

AN ORDINANCE OF THE CITY OF WEST MIAMI, FLORIDA, AMENDING ARTICLE VII MUNICIPAL CODE ENFORCEMENT, BY PROVIDING DEFINITIONS; PROVIDING ADDITIONAL TWO ALTERNATE MEMBERS; PROVIDING FOR REPEAT VIOLATORS; PROVIDING FOR ADMINISTRATIVE FINES; PROVIDING FOR ENFORCEMENT OF LIENS; PROVIDING FOR SERVICE OF NOTICE; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WEST MIAMI:

Section 1. Article VII, Chapter 2 of the West Miami Code is hereby amended to read as follows:

ARTICLE VII. MUNICIPAL CODE ENFORCEMENT

Sec. 2-136. Definitions.

As used in Sections 2-139 and 2-140.

(1) "Code inspector" means any authorized agent or employee of the City of West Miami whose duty it is to assure code or ordinance compliance.

(2) "Repeat violation" means a violation of a provision of a code or ordinance by a person whom the Code Enforcement Board has previously found to have violated the same provision within 5 years prior to the violation.

Sec. 2-137. Municipal code enforcement board; organization.

(a) There is hereby created a code enforcement board granting thereto the authority to hold hearings and assess fines against violators of the City of West Miami codes and ordinances, including but not limited to enforce the occupational license, fire, building, zoning, sign, and other related technical codes

and ordinances in force in the city (except where prohibited by specific county ordinance). The board shall consist of seven (7) members appointed by the mayor and city commission for three (3) year terms except as set forth herein. There shall be appointed two (2) alternate members to serve on the board in the absence of board members. Members of the municipal code enforcement board shall be residents of the city. Appointments shall be made on the basis of experience or interest in the subject matter jurisdiction of the Code Enforcement Board. The membership of the code enforcement board shall, whenever possible, consist of an architect, a businessman, an engineer, a general contractor, a subcontractor, and a realtor, but shall not be limited to these professions if there are no such qualified persons available.

(b) The initial appointments to the municipal code enforcement board shall be as follows:

(1) Two (2) members appointed for a term of one year from November 1, 1981;

(2) Three (3) members appointed for a term of two (2) years from November 1, 1981;

(3) Two (2) members appointed for a term of three years from November 1, 1981.

Upon expiration of initial terms, subsequent appointments for three (3) years shall be made. Any member may be reappointed for one successive term by the mayor and city commission. Appointments to fill a vacancy shall be for the remainder of the unexpired term. If a member fails to attend two (2) of three (3) consecutive meetings without cause and without prior approval of

the chairman, the board shall declare the member's office vacant and the mayor and city commission shall promptly fill such vacancy for the remainder of the term. Any member may be removed or suspended from the municipal code enforcement board, for cause, by an affirmative four-fifths majority vote of the city commission.

(c) Members of the municipal code enforcement board shall during the first meeting after November first of each year select a chairman, vice-chairman and secretary. The presence of four (4) or more members shall constitute a quorum. Members shall serve without compensation but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the mayor and city commission.

Sec. 2-138. Powers of code enforcement board.

The municipal code enforcement board shall have the power to:

- (a) Adopt rules for the conduct of its hearings.
- (b) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the police department of the city.
- (c) Subpoena evidence to its hearings.
- (d) Take testimony under oath.
- (e) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

Sec. 2-139. Enforcement procedures.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes. No member

of the municipal code enforcement board shall have the power to initiate such enforcement proceedings.

(b) Except as provided in subsections (c) and (d) hereafter, if a violation of the codes and ordinances is found, the code inspector shall notify the violator and give him a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify the code enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in section 2-143 to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in Sec. 2-143. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(c) If the code inspector has reason to believe a violation presents a serious threat to public health, safety, and welfare, or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the code enforcement board and request a hearing.

(d) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correction the violation. The

code inspector, upon notifying the violator of a repeat violation, shall notify the code enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing and provide notice pursuant to Sec. 2-143. The case may be presented to the code enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state.

Sec. 2-140. Conduct of hearing.

(a) Upon request of the code inspector, or at such other times as may be necessary, the chairman of the municipal code enforcement board may call a hearing of the board; a hearing may also be called by written notice signed by at least three (3) members of the board. Minutes shall be kept of all hearings by the municipal code enforcement board, and all hearings and proceedings shall be open to the public. The city commission shall provide clerical and administrative personnel as may be reasonably required by the code enforcement board for the purpose of performance of its duties.

(b) Each case before the board shall be presented by either the city attorney or by a member of the administrative staff of the city, as designated by the city manager.

(c) The code enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator as well as any other witnesses presented. Formal rules of evidence shall not apply but fundamental due process shall be observed and shall

govern the proceedings.

(d) At the conclusion of the hearing, the code enforcement board shall issue findings of fact, based on evidence of record and conclusion of law, and shall issue an order affording the proper relief consistent with powers granted herein. The findings shall be by motion approved by a majority of those members present and voting, except that at least four (4) members of the code enforcement board must vote in order for the action to be official. The order may include a notice that it must be complied with by a specific date, and that a fine may be imposed if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of Dade County and shall constitute notice to any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the enforcement board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

Sec. 2-141. Administrative fines; liens; duration; appeals; foreclosures; attorney fees.

(1) The code enforcement board, upon notification by the code inspector that an order of the code enforcement board has not been complied with by the set time or, upon finding that a repeat violation has been committed, 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 by the code enforcement board for

compliance or, in the case of a repeat violation, for each day the repeat violation continues past the date of notice to the violator of the repeat violation. If a finding of a violation or a repeat violation has been made as provided in this Section, and a hearing shall not be necessary for issuance of the order imposing the fine.

(2)(a) A fine imposed pursuant to this article shall not exceed Two Hundred and 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.

(b) In determining the amount of the fine, if any, the code enforcement board shall consider the following factors:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation; and
3. Any previous violations committed by the violator.

(c) The code enforcement board may reduce a fine imposed pursuant to this Section.

(3) The certified copy of an order imposing a fine 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 levying against the personal property, but such order shall not be deemed to be a court judgment except for enforcement

purposes. A fine imposed pursuant to this Section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever event occurs first. After three (3) months from the filing of such lien which remains unpaid, the code enforcement board may authorize the city attorney to foreclose on the lien. 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.

(4) No lien provided upon this ordinance shall continue for a period longer than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction.

(5) In an action to foreclose on a lien, the prevailing party is entitled to recover all costs including a reasonable attorney's fee, that is incurred in the foreclosure. A continuation of the lien affected 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.

An aggrieved party, including the city, may appeal a final administrative order of the code enforcement board 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 enforcement board. The appeal shall be filed without thirty (30) days of the execution of the order to be appealed.

Sec. 2-142 Appeals.

An aggrieved party, including the city, may appeal a final administrative order of the code enforcement board 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 enforcement board. The appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

Sec. 2-143. Notices.

(1) All notices required by this article shall be provided to the alleged violator by certified mail, return receipt requested, or by hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the city; or by 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.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board, notice may also be served by publication or posting, as follows:

(a) 1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

(b) 1. If there is no newspaper of general circulation in the county where the code enforcement board is located, three copies of such notice shall be posted for at least 28 days in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse in said county.

2. 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.

(c) 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 (1).

Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), 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.

Sec. 2-144. Provisions of this article supplemental

None of the provisions contained in this article shall be considered exclusive. It is the legislative intent of this ordinance to provide an additional or supplemental means of obtaining compliance with the codes and ordinances.

Sec. 1-145. Metropolitan Dade County Codes.

The code inspector and municipal code enforcement board shall not attempt enforcement of any of the Metropolitan Dade County Codes specifically prohibited by any provisions of the Metropolitan Dade County Code.

Section 2. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

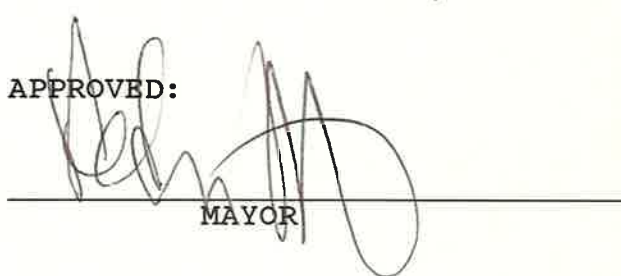
Section 3. If any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

Section 4. It is the intention of the City Commission that the provisions of this ordinance shall become and be made a part of the West Miami Code; and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section, article" or such other appropriate word or phrase in order to accomplish such intentions.

Section 5. This Ordinance shall take effect immediately upon passage.

PASSED AND ADOPTED this 16 day of January, ~~1990.~~ ^{1991.}

APPROVED:



MAYOR

ATTEST:



CITY CLERK

Approved as to form and sufficiency

CITY ATTORNEY

Roll Call Vote:

Mayor Reboredo y

Vice Mayor Sosa y

Commissioner Busse y

Commissioner Hickey-Patton y

Commissioner Trigo y

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