

CITY OF WEST MIAMI, FLORIDA

ORDINANCE No. 95-02

AN ORDINANCE AMENDING "CODE OF CITY OF WEST MIAMI", CHAPTER 2, "ADMINISTRATION", AND IN PARTICULAR ARTICLE VII, BY ADDING DIVISION 2A, "SUPPLEMENTAL CODE ENFORCEMENT PROCEDURES", AND BY ADDING SECS. 2-146 -- 2-154. ENFORCEMENT PROCEDURES FOR CIVIL INFRACTIONS, PENALTIES, HEARINGS AND APPEAL AND RECOVERY OF CIVIL PENALTIES. PROVIDING THAT PROVISIONS OF THIS ORDINANCE SHALL BE SUPPLEMENTAL TO OTHER CODE ENFORCEMENT PROVISIONS AND PROCEDURES; AND REPEALING ALL ORDINANCES INCONSISTENT HEREWITH.

WHEREAS, the City Commission finds it to be in the best interest of the City to establish a procedure for the issuance of civil infraction notices and fines which will enable departments to more effectively enforce the ordinances and codes of the City; and

WHEREAS, the proposed amendments will assist the powers and enforcement ability of the Code Enforcement Board in order to expedite the compliance process;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF WEST MIAMI:

SECTION 1. That Article VII of Chapter 2 of the "Code of the City of West Miami", entitled "Powers of the Code Enforcement Board", and in particular Division 2, entitled "Code Enforcement Board", shall be and it is hereby amended, as follows:

2A. Supplemental Code Enforcement Procedures

Sec. 2-146 Civil Offenses and Penalties

a) The violation of any provision of any ordinances or Codes listed in Sec. 2-154 of this Chapter shall constitute a civil offense punishable by civil penalty in the amount prescribed in Sec. 2-154.

Sec. 2-147 Reserved

Sec. 2-148 Civil Violation Enforcement Procedures

a) As used in this Chapter "Code Enforcement Officer" means any designated employee acting as an agent of the City whose duty it is to enforce codes and ordinances enacted or adopted by the City.

b) For the purpose of this Chapter "violators" shall be deemed to be those persons or entities legally responsible for the violations of Codes listed in Sec. 2-154.

c) A code Enforcement Officer who finds a violation of the sections of this code as amended and/or other Ordinances adopted by this Code as amended from time to time, shall prescribe a reasonable time period within which the violator must correct the violation. This determination 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.

d) A Code Enforcement 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 to the violator, or his/her agents, or by leaving the civil violation notice at the violator's usual place of abode with any person residing therein who is fifteen (15) years of age or older and informing that person of its contents, or the civil violation notice may be sent by certified mail, return receipt requested. If service cannot be effected by any other means, posting of the civil violation notice in a conspicuous place on the premises or property upon which the violation has been observed may be performed. Such posting shall be deemed proper service, and the time for compliance, stated in the notice, shall commence with the date such notice is posted. Proof of posting shall be verified by photograph and affidavit.

e) The civil violation notice shall include but not be limited to the following:

1. Date of issuance.
2. Name of the code enforcement officer and division or department issuing the notice.
3. Name and address of the violator.
4. Title and section number of the Code 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.
7. Instructions and due date for paying the civil fine of filing for an administrative hearing before the Code Enforcement Board to appeal the civil fine.
8. Time within which the violation must be corrected.
9. Notice that each day of continued violation after the time period for correction has lapsed, 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 not halt the accrual of continuing violation penalties.
11. Notice that failure to request an administrative hearing within twenty (20) days after service of the civil violation notice shall constitute a waiver of the violator's right to an administrative hearing before the Code Enforcement Board, 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 be found guilty of the violation.

Sec. 2-149 Civil Penalties

a) Penalties for violations of the ordinances to be enforced by this chapter shall be in the amount prescribed in the schedule of civil penalties in Section 2-154.

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

c) A "repeat violation" is a recurring violation of an ordinance by a violator who has previously been guilty of the same violation. 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 by section 2-154. 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 immediately preceding violation, provided that the maximum penalty payable for the first day of any one repeat violation shall be five hundred dollars (\$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

of correction given in the civil violation notice until the correction is made or until a request for administrative hearing is filed, whichever come first. If the named violator requests an administrative hearing and loses his appeal, the Code Enforcement Board shall determine a reasonable time period within which correction of the violation must be made, based on the considerations set forth in section 2-148. If correction is not made within the period set by the Code Enforcement Board, continuing violation penalties shall begin to accrue again after the time for correction has run.

f) Civil penalties assessed pursuant to this Article are due and payable to the City of West Miami on or before the last day of the period allowed for the filing of an administrative hearing before a Code Enforcement Board, or if proper appeal is made, when the appeal has been finally decided adversely to the named violator.

Sec. 2-150 Right of Violators: Payment of Fine, Right to Appeal; Failure to Pay and Correct, or Appeal.

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

1. Pay the civil penalty in the manner indicated on the violation notice, and correct the violation within the time specified on the notice; or

2. Request an administrative hearing before a Code Enforcement Board to appeal the determination of the inspector which resulted in the issuance of the civil violation.

b) An appeal for administrative hearing shall be accomplished by filing a request in writing to set the hearing for review and mailed to the code enforcement clerk or his/her designee or to the address indicated on the notice, not later than twenty (20) days after the service of the notice.

c) If the named violator, after notice, fails to pay the civil penalty and correct the violation (within the time specified), or to timely request an administrative hearing before the Code Enforcement Board, such failure shall constitute a waiver of the violator's right to an administrative hearing before the Code Enforcement Board. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.

Sec. 2-151. Schedule and Conduct of Administrative Hearing

a) Upon receipt of a named violator's timely request for an administrative hearing, the code enforcement clerk or his/her designee shall set the matter down for hearing on the next available regularly scheduled hearing date or as soon thereafter as possible.

b) The code enforcement clerk or his/her designee shall send a notice of hearing by certified mail to the violator at his/her last known address. The notice of hearing shall include but not be limited to the following:

1. Name of the inspector who issued the notice.
2. Factual description of alleged violation.
3. Date of alleged violation
4. Section of the Code allegedly violated
5. Place, date and time of the hearing
6. Right of violator to be represented by an attorney
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, and
9. Notice that requests for continuances will not be considered if not received in writing by the code enforcement officer at least ten (10) calendar days prior to the date set for hearing.

c) The Code Enforcement Board shall conduct hearings on a regularly scheduled monthly basis or more frequently upon request of the Chief of Code Enforcement or his/her designee. No hearing shall be set sooner than twenty (20) days from the date of service of the notice of infraction.

d) All hearings before the Code Enforcement Board 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.

e) The proceedings at the hearing shall be recorded electronically and/or by a stenographer and if recorded by a stenographer may be transcribed at the expense of the party requesting the transcript.

f) The City Commission, or their designee, shall provide clerical and/or administrative support personnel for the Code Enforcement Board to facilitate the proper issuance of civil infraction notices, processing and review of cases as may be reasonably required, and for proper performance of clerical and Code Enforcement Board's duties.

g) Each case before the Code Enforcement Board shall be presented by the inspector or representative of the department issuing the violation.

h) The hearing need not be conducted in accordance with the formal rules of evidence and those relating to witnesses. Any relevant evidence shall be admitted if the Code Enforcement Board finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

i) 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.

j) The Code Enforcement Board shall make findings of fact based on the evidence in the record alone. In order to make a finding upholding a Code Enforcement Officer's determination that a violation exists, the Code Enforcement Board must find that a preponderance of the evidence indicates that the violator was legally responsible for the violation of the relevant section of the Ordinances or Codes as cited, and that a violation does/did in fact exist.

k) the prescribed time for correction of the violation given to the named violator and contained in the civil infraction notice shall be 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, the Code Enforcement Board may make a re-determination as to the reasonableness of the time for correction contained in the civil infraction notice is excessive.

If the Code Enforcement Board determines that the time given for correction was insufficient, the penalty for a continuing violation may be calculated from the date determined by the Code Enforcement Board to be the reasonable date for correction.

l) If the named violator is found guilty of the violation, he/she may be held liable for the costs of the administrative hearing.

m) The fact-finding determination of the Code Enforcement Board shall be limited to whether the alleged violation did in fact occur and, if so, whether the person named in the civil violation notice is legally responsible for that violation. The Code Enforcement Board shall either affirm or reverse the determination of the Code Enforcement Officer as to the responsibility of the named violator for the correction of the Ordinance or Code violation. The Code Enforcement Board may also modify the determination of the Code Enforcement Officer as to the time for correction contained in the civil infraction notice, subject to the provisions of Section 2-151. If the Code Enforcement Board reverses the determination of the Code Enforcement Officer and finds the named violator not responsible for the alleged violation in the civil infraction notice, the named violator shall not be

liable for the payment of any civil penalty, absent successful appeal of the Hearing Officer's ruling by the City. If the decision of the Code Enforcement Board is to affirm the Code Enforcement Officer's determination of violation, then the following elements may be included:

1. Amount of civil penalty
2. Administrative costs of hearing; and
3. Date by which the violation must be corrected to prevent resumption of continuing violation penalties.

n) The Code Enforcement Board 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 City of West Miami Police Department or by the staff of the Code Enforcement Board.
3. Subpoena evidence.
4. Take testimony under oath; and
5. Assess and order the payment of civil penalties as provided herein.

o) The Code Enforcement Board shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized City and County Board of appropriate jurisdiction for administrative interpretation of the legal provision(s) on which the alleged violation was based. Upon exhaustion of the administrative review and finalization of the administrative order by such Board or Body, the Code Enforcement Board may exercise all powers granted to them by this Article. The Code Enforcement Board shall not, however, exercise any jurisdiction over alleged code violations where a named violator has properly filed a request for administrative interpretation and review by such City or County Board or Body until such time for review has lapsed.

p) The Code Enforcement Board shall be bound by the interpretations and decisions of the duly authorized City and County Boards of appropriate jurisdiction concerning the provisions within their respective jurisdictions. In the event such a Board or Body finds that the cited violation of the Ordinance or Code has not been properly interpreted, that provision upon which the violation is based, shall prohibit the Code Enforcement Board from proceeding with the enforcement of the alleged violation.

Sec. 2-152 Recovery of Unpaid Civil Penalties; Unpaid
Penalty to Constitute a Lien; Foreclosure

a) The City 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 of Dade County and thereafter shall constitute a lien against the land on which the violation exists or existed; if the violator does not own the land, upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three (3) months from the filing of any such lien which remains unpaid, the City of West Miami may foreclose or otherwise execute on the lien.

Sec.. 2-153. Appeals

a) The violator or the City may appeal an order of the Code Enforcement Board by filing a Notice of Appeal with the Dade County Court. Such appeal shall be filed within thirty (30) days of the issuance of the order by the Code Enforcement Board. A violator shall have the right to a de novo appeal provided that all other administrative remedies have been exhausted.

b) In the absence of reversal of the Code Enforcement Board's ruling by an appellate court of competent jurisdiction, the findings of the Code Enforcement Board shall be conclusive as to a determination of responsibility for the Ordinance or Code violation, and such findings shall be admissible in any proceeding to collect unpaid penalties.

c) Nothing contained in this chapter shall prohibit the City from enforcing its City ordinance or City code 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 enforcement of any section of this code.

Sec. 2-154. Schedule of Civil Penalties

a) The table contained herein in Section 2-154 (b) lists the sections of Ordinances or Codes, as they may be amended from time to time, which may be enforced pursuant to the provisions of this Article; and prescribes the dollar amount of civil penalty for the violation of these sections recommended by the relevant City Departments.

b) The "descriptions of violations" below are for informational purposes only and the civil penalties attached are meant only as proposed figures not intended to limit the nature, number of or amount of fines to be imposed for the violations which may be cited in this Section. To determine the exact nature of the activity prescribed or required by this code, the relevant code section, ordinance or treatise cited in the specific violation must be examined.

<u>Code Violation</u>	<u>Description of Violation</u>	<u>Civil Penalty.</u>
CWMC Sec.4-1	Maintaining of Fowl	\$ 25.00
CWMC Sec.4-2	Maintaining of more than three (3) dogs or three (3) cats	\$ 25.00
CWMC Sec.4-3	Molesting or trapping dogs or cats	\$ 50.00
CWMC Sec.4-4	Prohibited raising of bees	\$ 50.00
CWMC Sec.4-5	Unlawful exposing of poison	\$250.00
CWMC Sec.4-21	Permitting a dog to become a public nuisance	\$100.00
CWMC Sec.4-24	Nuisances created by excessive barking	\$ 50.00
CWMC Sec.4.25	Vicious dog restrictions	\$100.00
CWMC Sec.5-6	Starting construction work w/o a permit (COUNTY) (CITY)	\$350.00 \$250.00
CWMC Sec.5-19	Failure to provide protection of outdoor pools from entry	\$ 50.00
CWMC Sec.5-20	Failure to provide protection of indoor pools from entry	\$ 50.00
CWMC Sec.5-21	Failure to provide protection of raised pool from entry	\$ 50.00
CWMC Sec.5-56	Prevention of deterioration or blight (commercial)	\$250.00
CWMC Sec.5-63	Failure to provide required outdoor lighting	\$200.00
CWMC Sec.5-108	Prevention of deterioration or blight (residential)	\$ 50.00
CWMC Sec.7-1	Violation of fire code	\$250.00
CWMC Sec.8-2	Failure to provide proper garbage storage facility	\$150.00

CWMC Sec.8-4	Failure to cover garbage container	\$ 150.00
CWMC Sec.8-5	Improper location of garbage container	\$ 150.00
CWMC Sec.8-6	Garbage container in state of disrepair	\$ 150.00
CWMC Sec.8-7	Frequency of disposal	\$100.00
CWMC Sec.8-8	Illegal disposal of garbage	\$250.00
CWMC Sec.8-12	Disposal of industrial waste	\$250.00
CWMC Sec.8-55	Illegal private disposal	\$250.00
CWMC Sec.9	Occupational License	\$200.00
CWMC Sec.10-3	Failure to comply with Hurricane precautions	\$250.00
CWMC Sec.10-5	Prohibited acts of noise	\$ 20.00
CWMC Sec.10-7	Unlawful planting of trees or shrubs on City property	\$ 20.00
CWMC Sec.10-8	Unlawful posting of notices or signs	\$ 50.00
CWMC Sec.10-12	Unlawful political signs	\$ 50.00
CWMC Sec.10-22	Maintaining of a nuisance	(a) \$ 25.00 (b) \$ 20.00 (c) \$100.00 (d) \$ 50.00 (e) \$100.00 (f) \$100.00 (g) \$100.00 (h) \$100.00 (i) \$100.00
CWMC Sec.13-2	Unlawful markers	\$ 20.00
CWMC Sec.13-3	Unlawful maintaining of merchandise displayed on street or sidewalk	\$ 100.00
CWMC Sec.13-34	Illegal planting on parkway	\$ 25.00
CWMC Sec.13-35	Maintaining plants, shrubs, hedges or trees extending over sidewalks	\$ 30.00
Z.O.282 Sec.2	Violation of Special Use/Planned Development	\$250.00

	Development	\$250.00
Z.O.282 Sec.4.11 thru 19	Use District Regulation	\$ 50.00
Z.O.282 Sec.4.21 thru 4.27	"A" Use District Regulations	\$ 50.00
Z.O.282 Sec.4.31 thru 4.45	"C" Use District Regulations	\$150.00
Z.O.282 Sec.4.A1 thru 4A5	General "R-1" and "R-2" Regul.	\$ 50.00
Z.O.282 Sec.5	Off Street parking, loading and unloading requirements	\$ 50.00
Z.O.282 Sec.7	General regulations common to all use districts	\$ 50.00
Z.O.282 Sec.9	Driveways and approaches	\$ 25.00
Z.O.282 Sec.10	Sidewalks provisions	\$100.00
Z.O.282 Sec.11	Swimming Pools	\$ 50.00
Z.O.282 Sec.12	Livestock, poultry, pets, etc.	\$ 50.00
Z.O.282 Sec.13	Property maintenance	\$ 50.00
Z.O.282 Sec.14	Signs	\$250.00
Z.O.282 Sec.15	Building permits	\$250.00
Z.O.282 Sec.17	Certificate of Occupancy	\$250.00

All repeat offenders will be subject to double the civil infraction amount, per day, of non-compliance.

Section 2-155 That all ordinances or parts of ordinances inconsistent or in conflict herewith shall be and they are hereby repealed.

PASSED AND ADOPTED THIS 19TH DAY OF APRIL 1995.



MAYOR
ATTEST.



CITY CLERK

Approved as to form and sufficiency

15/ Jose A. Villalobos
CITY ATTORNEY

Roll Call Vote:

Mayor Sosa	<u>YES</u>
Vice Mayor Gonzalez	<u>YES</u>
Commissioner Diaz-Padron	<u>YES</u>
Commissioner Rozio	<u>YES</u>
Commissioner Trigo	<u>YES.</u>

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