

ORDINANCE NO. 1027 – 2022

AN ORDINANCE OF THE CITY OF MIAMI SPRINGS, FLORIDA, AMENDING SECTION 32-68, “MITIGATION OF FINES,” OF THE CITY’S CODE OF ORDINANCES TO ESTABLISH PROCEDURES AND GUIDELINES FOR THE MITIGATION OF CODE ENFORCEMENT FINES, PENALTIES AND LIENS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 32-68 of the City of Miami Springs’ (the “City”) Code provides the Code Compliance Board or Special Magistrate with broad authority to negotiate and settle all code enforcement fines and liens; and

WHEREAS, the City wishes to streamline the process of mitigating code enforcement fines, penalties and liens and provide uniformity and guidelines with percentages to assist the City and the Board or Special Magistrate; and

WHEREAS, it is the goal of the City to incentivize property owners to timely come into compliance with the City Code and assure that the fines, penalties and liens are paid; and

WHEREAS, the City Council finds that diligent property owners should receive a benefit for being timely and efficient with correcting Code violations, and should understand the mitigation process and have an expectation to be treated fairly and uniformly; and

WHEREAS, the City Council finds that this Ordinance is in the best interests of City residents and property owners.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That the above recitals are confirmed, adopted and incorporated herein and made a part hereof by reference.

Section 2. Amending Code. That Section 32-68 in Article VIII, Chapter 32, of Title III of the City Code of Ordinances, entitled “Mitigation of fines” is hereby amended to read as follows:

TITLE III – ADMINISTRATION

Chapter 32 – BOARDS, COMMISSIONS, COMMITTEES

ARTICLE VIII. – CODE COMPLIANCE BOARD

* * *

Sec. 32-68. - Mitigation of fines. Mitigation of Fines, Penalties and Liens.

~~(A) The violator, or the violator's successors or assigns who have an ownership interest in the property encumbered by a lien pursuant to this article may request a mitigation hearing to reduce the fines only after the violations encompassed within the code compliance case have been corrected. Upon receipt of a written request for a mitigation hearing, the clerk for the board shall set the matter for a hearing before the board.~~

~~(B) A mitigation hearing is not an appeal or a de novo review of the code compliance case. The formal quasi-judicial procedures shall not apply.~~

~~(C) At the mitigation hearing, the board may consider the following criteria:~~

- ~~(1) Good cause for a reduction of the fines.~~
- ~~(2) The cooperation of the violator, including whether the violator appeared before the board at the original hearing.~~
- ~~(3) The gravity of the violation.~~
- ~~(4) The actions taken by the violator to correct the violation.~~
- ~~(5) Whether there was an extraordinary hardship, which affected compliance.~~
- ~~(6) Whether the violator is a repeat violator.~~
- ~~(7) The total or estimated costs incurred by the City for the handling of the case.~~
- ~~(8) The amount of the proposed reduction.~~
- ~~(9) Any equitable considerations raised by the violator or the City relating to the amount of the reduction.~~
- ~~(10) The number of days that the violation existed.~~

~~(D) In no event shall the fines be reduced below the costs incurred by the City in its prosecution of the violations.~~

~~(E) The board has the discretion to grant or deny a request for mitigation.~~

(a) The terms "fine," "civil penalty" or "lien" are used interchangeably in this section and each term is synonymous with each other and shall encompass fines, civil penalties and liens.

(b) The board, special magistrate, and City Manager are authorized to negotiate, reduce and settle fines in accordance with the terms of this section.

(c) The violator, or the violator's successor or assign, who has an ownership interest in the property encumbered by a code enforcement fine (the "applicant"), may file a request for mitigation to reduce such fine with the City Manager or designee. After receipt of the request for mitigation, a compliance inspection shall be conducted and thereafter a hearing may be scheduled if the code compliance inspector finds that all violations were corrected but that the fines have not yet been paid and that there are no other outstanding code violations, whether on the property to which the lien attaches or on another property belonging to the applicant, or debts owed to the City for which the applicant is responsible.

(d) Upon receipt of a written request for mitigation of fines and the filing of an affidavit of partial compliance by the code compliance inspector which sets forth that all outstanding violations of the board or special magistrate's order have been corrected, except for payment of any outstanding fines, the City shall set the matter for a mitigation hearing before the board or special magistrate.

(e) The City Manager, or designee, may, in his or her sole discretion, enter into a settlement agreement with the applicant to pay a fine that may be reduced pursuant to the guidelines in this section without the need for a hearing.

(f) At the hearing, the fact-finding determination of the board or special magistrate shall be limited to evidence establishing:

(1) Good cause for a reduction of the fines;

(2) The amount of the reduction; and

(3) Any equitable considerations raised by the applicant or the City relating to good cause or the amount of the reduction.

Said hearing shall not be an opportunity to appeal any finding of fact or conclusions of law set forth in any prior order of the board or special magistrate or any administrative determination of the City.

(g) The board or special magistrate may reduce the fines based on a showing of good cause once the applicant has otherwise complied with an order of the board or special magistrate, but in no event shall the fines be reduced below the administrative costs incurred by the City nor shall any administrative costs previously awarded by the board or special magistrate, costs of repair, or assessment liens be waived or reduced.

(h) In determining good cause, and the amount of the reduction, if any, the board or special magistrate shall consider:

(1) The gravity of the violation.

(2) Any actions taken by the violator or applicant to correct the violation.

(3) Any previous, or other outstanding violations, whether committed by the violator or applicant, or pertaining to the property to which the lien attaches, unless an order finding a violation is under appeal at the time of the determination.

(4) Whether the violation is irreparable or irreversible in nature.

(5) Whether the violator or applicant's failure to timely comply within the time provided by the code compliance inspector, board or the special magistrate is due to an inability to comply based on factors beyond the control of the violator or applicant.

(i) Upon a finding of good cause, the board or special magistrate has the sole discretion to grant or deny the request for a mitigation of fines according to the following guidelines, provided the reduction is to an amount that is not less than the administrative costs incurred by the City:

(1) If compliance occurs within three months of the deadline for compliance provided for in the order of the board or special magistrate, a maximum reduction of 80 percent of the total fines;

(2) If compliance occurs more than three months but less than 12 months from the compliance deadline, a maximum reduction of 60 percent of the total fines;

(3) If compliance occurs from 12 months to 18 months of the compliance deadline, a maximum of 40 percent of the total fines; and

(4) If compliance occurs more than 18 months after the compliance deadline, a maximum of 25 percent of the total fines.

(j) The board or special magistrate has the authority where there is a demonstrated showing of financial hardship or other good cause to reduce the fines below the reduction guidelines. The board or special magistrate shall exercise this authority with great caution and only in documented and exceptional circumstances. An applicant alleging financial hardship has the burden of presenting evidence of inability to pay the fines.

(k) If fines are reduced, the order of the board or special magistrate shall provide that, if the applicant fails to pay the reduced fines by the date ordered by the board or special magistrate, then the original amount of the total fines shall be automatically reinstated. The board or special magistrate may impose conditions on the granting of a request for mitigation of the fines and may allow additional hearings upon request if necessary to establish compliance with said conditions before an order reducing the fines is entered.

(l) The order reducing the fines shall not be recorded in the public records and the order shall so provide.

(m) Upon receipt of timely payment in full of the mitigated amount of fines and the recording costs, the City shall record a satisfaction of lien in the public records, if applicable.

(n) A mitigation of fines shall only be granted once as to any violation of an order of the board or special magistrate. No mitigation shall be granted:

(1) To reduce an initial civil penalty or an award of administrative costs;

(2) To reduce the fines for an uncorrectable violation;

(3) If the City Attorney has requested authorization to bring further enforcement action or commenced an action to obtain compliance with the order of the board or special magistrate, including, but not limited to, an action for injunctive relief, foreclosure, or money judgment; or

(4) If, for whatever reason, the fines have already been paid.

* * *

Section 3. Codification. That it is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the City Code, that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 4. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall become effective immediately upon adoption on second reading.

PASSED ON FIRST READING on the 10th day of October, 2022, on a motion made by Councilman Best and seconded by Vice Mayor Vazquez.

PASSED AND ADOPTED ON SECOND READING this 24th day of October, 2022, on a motion made by Vice Mayor Vazquez and seconded by Councilwoman Bravo. Upon being put to a roll call vote, the vote was as follows:

Vice Mayor Dr. Victor Vazquez	<u>YES</u>
Councilman Bob Best	<u>YES</u>
Councilman Dr. Walter Fajet	<u>YES</u>
Councilwoman Jacky Bravo	<u>YES</u>
Mayor Maria Puente Mitchell	<u>YES</u>

PASSED AND ADOPTED this 24th day of October, 2022.



MARIA PUENTE MITCHELL
MAYOR

ATTEST:



ERIKA GONZALEZ, MMC
CITY CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

A handwritten signature in blue ink, appearing to read "H. Serota", is written over a horizontal line.

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
CITY ATTORNEY