

ORDINANCE #2006-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, CREATING A NEW CHAPTER OF THE CODE OF ORDINANCES OF THE CITY OF DORAL ENTITLED "CODE COMPLIANCE;" PROVIDING FOR DEFINITIONS, APPOINTMENT AND AUTHORITY OF CODE ENFORCEMENT SPECIAL MAGISTRATES, AND ENFORCEMENT PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Doral desires to promote and improve the health, safety and welfare of the citizens of the City of Doral; and

WHEREAS, the City Council desires to provide an equitable, expeditious, effective and inexpensive method of enforcing codes and ordinances in force in the city where a pending or repeat violations exists or continues to exist; and

WHEREAS, the City Council desires to repeal any conflicting provisions of the County Code pertaining to Code Compliance and establish its own Code Compliance ordinance;

WHEREAS, the Ordinance is enacted pursuant to the authority of Florida Statute, chapter 162; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DORAL:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirm as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. That the "Code of the City of Doral," is hereby amended to create a new Chapter entitled, "Code Compliance" as follows:

Article I. Code Compliance

Sec. 1. Intent.

(a) It is the intent of this chapter to promote, protect and improve the health, safety and welfare of the citizens of the City of Doral and to provide an equitable, expeditious, effective and inexpensive method of enforcing codes and ordinances in force in the city where a pending or repeat violation exists or continues to exist. This chapter is enacted pursuant to the authority of F.S. ch. 162.

(b) The city's special magistrate shall have jurisdiction to hear and decide cases in which violations are alleged of any provision of the city's or county's codes or ordinances.

(c) Any alleged violation of a city or county code or ordinance may also be enforced in any court of competent jurisdiction or in any other appropriate forum as provided by law or municipal or county ordinance.

Sec. 2. Alternate code enforcement system created.

The city creates, pursuant to F.S. ch. 162, an alternate code enforcement system that gives special magistrate appointed as set forth in articles II and III of this chapter the authority to hold hearings and impose fines, liens and other non-criminal penalties against violators of the city's or county's codes and ordinances.

Sec. 3. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Special Magistrate means persons appointed by the city manager or his designee to enforce city or county codes and ordinances as provided in this Code.

Code Inspector means the code compliance officers or any authorized agent or employee of the city whose duty it is to assure code compliance.

Repeat violation means:

(1) A violation of a provision of a city code or ordinance by a person whom a code enforcement special magistrate has previously found to have violated the same code provision within five years prior to the current violation, notwithstanding the violations at different locations.

(2) A violation committed by an entity which has one or more officers, major shareholders or general partners in common with another entity which violated the same code provision within five years of the current violation. For purposes of this section a major shareholder shall be one who owns at least 25 percent of the shares of that corporation. This paragraph shall only apply where the common officers, major shareholders or general partners are or were actively involved in the management of the entity committing the violation at the time when the violation occurred.

Sec. 4. Litter enforcement officers.

Pursuant to the provisions of F.S. § 403.413, the Florida Litter Law, the code compliance officers are designated as litter enforcement officers of the city, for the purposes of enforcing F.S. § 403.413. ~~and section 46-92.~~ Such employees are designated and appointed as litter enforcement officers.

ARTICLE II. SPECIAL MAGISTRATE*

***State law references:** Authority to appoint special magistrate, F.S. § 162.03(2).

Sec. 1. Appointment of special magistrate.

The city manager or his designee may appoint a special magistrate, who shall be authorized to hold hearings and impose fines, liens and other no criminal penalties against violators of city or county codes and ordinances. The special magistrate shall be an individual who shall have been determined by the city manager and city attorney to have the knowledge, skills and abilities to perform as special magistrate. Each special magistrate shall be appointed for a term of one year and shall receive an hourly rate of compensation in accordance with reasonable prevailing rates for special magistrates as determined by the city manager.

Sec. 2 Functions, duties.

Except as provided in this Code, special magistrate shall have the duties, powers and responsibilities and shall carry out the functions and procedures as set forth in this chapter.

Sec. 3 Powers of the special magistrate.

Each special magistrate shall have the power to:

- (1) Adopt rules for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the police department or the sheriff.
- (3) Subpoena evidence.
- (4) Take testimony under oath.
- (5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance. In cases of repeat violations, if the special magistrate finds that the violator's conduct is habitual or flagrant or amounts to a refusal to comply with prior orders, the special magistrate may suspend the violator's certificate of use and/or business license for a period not to exceed six months.
- (6) Assess and order the payment of civil penalties as proscribed herein.

State law references: Similar provisions, F.S. § 162.08.

ARTICLE III. ENFORCEMENT PROCEDURE*

***State law references:** Enforcement procedure, F.S. § 162.06.

Sec. 1 Generally.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes and ordinances. No special magistrate shall have the power to initiate such enforcement proceedings.

(b) Except as provided in subsections (c) and (d) of this section, if a violation of a city or county ordinance or code 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 a special magistrate and request a hearing. A hearing shall be scheduled and written notice of such hearing shall be hand delivered or mailed as provided in this section to the violator. At the option of the special magistrate, notice may additionally be served by publication or posting as provided in this section. 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 a special magistrate even if the violation has been corrected prior to the scheduled hearing, and the notice shall so state.

(c) 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 correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify a special magistrate and request a hearing. The special magistrate, through the city clerk's office, shall schedule a hearing and shall provide notice pursuant to this section. The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the scheduled hearing, and the notice shall so state. If the repeat violation has been corrected, the special magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his rights to this hearing and pay the costs as determined by the special magistrate.

(d) If the code inspector has reason to believe a violation presents a serious threat to the 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 special magistrate and request a hearing.

(e) If the owner of property which is subject to an enforcement proceeding before a special magistrate, or a court transfers ownership of such property between the time the initial pleading was served and the time of the special magistrate hearing, such owner shall:

(1) Disclose, in writing, the existence and nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and the 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 notice in writing with the code enforcement official disclosing 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 five days after the date of the transfer. A failure to make the disclosures described in subsections (1), (2), and (3) 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.

(f) In addition to notifying the violator as provided in subsections (b), (c) and (d) of this section, the code inspector, clerical staff or other persons designated by the city manager may also provide notice by mail or other means to the mortgage holder(s) and/or other persons or entities having an interest in the subject property.

State law references: Similar provisions, F.S. § 162.06.

Sec. 2. Conduct of hearings.

(a) Upon request of the code inspector or at such other times as may be necessary, the special magistrate may call hearings. The special magistrate at any hearing may set a future hearing date. The special magistrate shall attempt to convene no less frequently than once every month but may meet more or less often as the demand necessitates. Minutes shall be kept of all hearings, and all hearings shall be open to the public. The city clerk's office shall provide clerical and administrative personnel as may be reasonably required for the proper performance of the special magistrate duties. If the local governing body prevails in prosecuting a case before the special magistrate, it shall be entitled to recover all costs incurred in prosecuting the case before the special magistrate, including but not limited to costs for enforcement, inspections, preparation of enforcement reports, photographs, testing, monitoring, title search, postage, service of notice and or orders, translator, audio/video of proceeding, recording demonstrable administrative and or clerical costs, attributable special magistrate fees, hearing facility costs; such costs may be included in the lien authorized under F.S. § 162.09(3).

(b) Except as provided in article II of this chapter, the special magistrate shall proceed to hear the cases on the agenda for that day and shall take testimony from the code inspector and alleged violator. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings.

(c) The code compliance division chief or the city attorney shall represent the city by presenting cases before the special magistrate.

(d) At the conclusion of the hearing, the special magistrate shall issue findings of fact based on evidence and conclusions of law and shall issue an order affording the proper relief consistent with the powers granted herein. The order may include a notice that it must be complied with by a specified date, and that a fine may be imposed if the order is not complied with by that date, and, under the conditions specified in this section, the cost of repairs may be included along with the fine if the order is not complied with by the specified date. A certified copy of such order may be recorded in the public 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, upon any subsequent purchases, successors in interests, or assigns. If an order is recorded in the public records pursuant to this section 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 public records. A hearing is not required to issue such an order acknowledging compliance.

State law references: Similar provisions, F.S. § 162.07.

Sec. 4. Fine.

(a) A special magistrate, upon notification by the code inspector that an order previously issued in a case 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 special magistrate 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 inspector.

(b) In addition, if the violation is a violation described in section 1(d) of this Article III, the special magistrate shall notify the city manager, which may make all reasonable repairs required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this article, a hearing shall not be necessary for issuance of the order imposing the fine. If after due notice and hearing a special magistrate finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in subsection (c) below.

(c) In addition to such fines, a special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its or the county's codes and all costs of repairs pursuant to subsections (a) and (b).

(d) A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 per day for a repeat violation. In addition, the special magistrate may include all costs of repairs pursuant to subsection (c). However, if the special magistrate finds the violation to be irreparable or irreversible in nature, he may impose a fine not to exceed \$5,000.00 per violation.

(e) In determining the amount of the fine, if any, the special magistrate 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.

(f) A special magistrate may reduce a fine imposed pursuant to this section.

(g) A 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 levy 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 article 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 occurs first.

(h) A lien arising from a fine imposed pursuant to this section runs in favor of the City Council. The City Manager shall have the authority to execute a satisfaction or release of lien entered pursuant to this section upon full payment of such.

(i) After three months from the filing of any lien which remains unpaid, the special magistrate may authorize the city attorney to foreclose on the lien. No lien created

pursuant to the provisions of this article may be foreclosed on real property which is a homestead under Fla. Const., art. X, § 4.

State law references: Similar provisions, F.S. § 162.09.

Sec. 5. Duration of lien.

No lien provided under this chapter shall continue for a period longer than 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. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The city commission 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.

State law references: Similar provisions, F.S. § 162.10.

Sec. 6. Rehearings; mitigation of fines and liens.

(a) Rehearings. Upon filing of a petition for rehearing by a violator or by the city administration, a special magistrate may rehear a case, take additional testimony and issue a new order. The petition must be filed with the code compliance division and must demonstrate that there is newly discovered evidence that could not have been discovered through the use of due diligence prior to the original hearing and that will probably change the result if a rehearing is granted, or the special magistrate has overlooked or failed to consider something which renders the order issued erroneous. A petition for rehearing must be filed within 30 days of the filing of the order sought to be reheard.

(b) Mitigation of fines. The Special Magistrate shall have the authority to consider applications for mitigations of fines prior to a lien being filed in the case. All applications for mitigation shall be made in writing and under oath. No applications for mitigation shall be considered until an affidavit of compliance has been filed by the city inspector. A petition for mitigation of fine shall be brought within one year after the entry of the special magistrate order imposing the fine. Mitigation may not be used for purpose of rehearing or appeal of the original order imposing the fine.

(c) Mitigation of Liens. Once a lien has been recorded, all requests for mitigation of the lien shall be considered by the City Manager, and approved by the Special Magistrate. No request shall be considered until an affidavit of compliance has been filed by the city inspector. Further, once the City has filed a foreclosure action on the lien, the City Council shall consider settlement of the foreclosure action and liens.

Sec. 7. Appeals.

An aggrieved party, including the city administration, 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 30 days of the rendition of the order to be appealed.

State law references: Similar provisions, F.S. § 162.11.

Sec. 8. Notices.

(a) All notices required by this part shall be provided to the alleged violator by:

(1) Certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the local government by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subsections (b)(2)a. and b., and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing;

(2) Hand delivery by the sheriff or city police officer or other law enforcement officer, code inspector, or certified process server or other person designed by the local governing body;

(3) 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; or

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

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

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

b. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

(2) a. In lieu of publication as described in subsection (1), such notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be, at the primary municipal government office of the City of Doral, located at 8300 NW 53 Street, Doral, Florida.

b. 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) of this section.

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 chapter have been met without regard to whether or not the alleged violator actually received such notice.

State law references: Similar provisions, F.S. § 162.12.

Sec. 9. Civil liability; penalties; attorneys' fees.

(a) Any person who violates a provision of this chapter or any lawful rule, regulation, or written order of the special magistrate under this chapter is subject to injunction or other equitable relief to enforce compliance with or to prohibit the violation of this chapter. Further, such person is liable for any damage to city caused by such violation, and for the reasonable costs and expenses incurred by the city in enforcing the provisions of this

chapter, including but not limited to all costs for enforcement and collection. All such sums shall become immediately due and payable upon expenditure by the city and shall become delinquent if not paid within 30 days after notice to the violator of either the city's bill or special magistrate order itemizing the enforcement costs incurred in enforcing the provisions of this chapter (the "due date"). All such delinquent sums shall bear interest at the rate of 12 percent per annum.

(b) In addition to the foregoing, any person who violates a provision of this chapter or any lawful rule, regulation or written order of the special magistrate under this chapter is subject to the judicial imposition of a civil penalty for each offense in an amount not to exceed that set forth in this. Each day during any portion of which a violation occurs constitutes a separate offense.

(c) Upon the rendition of a judgment or decree by any of the courts of this state against any person and in favor of the city in any action to enforce compliance with or prohibit the violation of the provisions of this chapter, the court shall adjudge or decree against that person and in favor of the city a reasonable sum as fees or compensation for the attorney acting on behalf of the code compliance chief, building official or the city in the suit in which recovery is had. Such fees or compensation shall be included in the judgment or decree rendered in the case. This provision shall apply to all civil actions filed after the effective date of this chapter. Cessation of the violation of any of the provisions of this chapter prior to rendition of a judgment or prior to execution of a negotiated settlement, but after an action has been filed by the code compliance chief, building official, or the city to enforce the provisions of this chapter, shall be deemed for the purposes of this section the functional equivalent of a confession of judgment or verdict in favor of the code compliance chief, building official or the city to enforce the provisions of this chapter, shall be deemed for the purposes of this section the functional equivalent of a confession of judgment or verdict in favor of the code compliance chief or building official, for which attorney's fees shall be awarded as set forth in this section.

(d) Nothing in this section shall be construed to permit or require the code compliance director, building official, nor city attorney to bring an action on behalf of any private person.

Sec. 10 Provisions of this chapter supplemental.

None of the provisions contained in this chapter shall be considered exclusive. The city administration or code inspectors have the option to use any method provided by law or municipal or county ordinance to enforce the provisions of the various city or county codes, or conditions required there under.

State law references: Similar provisions, F.S. § 162.13.

Section 3. Severability. That if any section, subsection, sentence, clause, phrase, work or amount of this ordinance shall be declared unconstitutional or invalid by competent authority, then the remainder of the ordinance shall not be affected thereby, and shall remain in full force and effect.

Section 4. Repeal of Conflicting Provisions. That all ordinances or parts of ordinances or resolutions of the County Code made inconsistent or in conflict herewith

shall be and they are hereby repealed in their entirety insofar as there is conflict or inconsistency.

Section 5. Inclusion in Code. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the City of Doral 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 6. Effective Date. This Ordinance shall be effective upon adoption on second reading.

The foregoing Ordinance was offered by Councilman Van Name who moved its adoption. The motion was seconded by Vice Mayor Cabrera and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Peter Cabrera	Yes
Councilmember Michael DiPietro	Yes
Councilwoman Sandra Ruiz	Yes
Councilmember Robert Van Name	Yes

PASSED AND ADOPTED upon first reading the 8th day of February, 2006.

PASSED AND ADOPTED upon second reading the 8th day of March, 2006.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA-HILL, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE CITY OF DORAL:



JOHN J. HEARN, CITY ATTORNEY