



City of Fort Pierce

Community Response Divisions Code Enforcement & Animal Control

Protecting the health, safety and welfare of our community

Margaret M. Arraiz, Code Compliance Manager

TO: The Honorable Mayor Hudson and City Commissioners
THROUGH: Nicholas Mimms, City Manager
FROM: Peggy Arraiz, Code Compliance Manager
RE: Fines & Liens - Proposed Policy Changes
DATE: March 7, 2016

As discussed by the City Commission at a recent Conference Agenda, below are the proposed changes to the policies and procedures that govern the implementation of fines and the follow up policies for reducing / rescinding a lien.

In preparation for addressing these matters, Code Enforcement Board recommendations have been incorporated for review and consideration.

ASSESSING FINES

Legal authority and background:

- Code Enforcement operates under Florida Statute 162, which provides the following direction:
 - S.S. 162.09 (2)(a) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.
- For many years it was standard procedure to implement the highest fine allowed by law, which ultimately results in unrealistic lien amounts.
- Approximately a year ago, Code Enforcement adjusted the method of imposing fines and now assesses a much lower fine, between \$25 - \$100, depending on the nature of the violation. This should result in a lower lien amount but the effect of this change will not be seen for several years.

Proposed policy changes and recommendations - Imposing Fines:

- The Code Enforcement Board recommends capping the accrual at 120% of the property value at the time of the order. This type of fine will, at a minimum, require the situation to be taken seriously and compel the violator to correct the violation.
- Due to State Statute 162.09, which states, “a fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first, the Legal Department has proposed initiating a “hybrid” policy.
 - The fine initially is assessed at an amount suitable to the nature of the violation.
 - That amount will accrue until a certain point as determined by the City Commission - either a set amount such as \$5000, a set time such as 100 days or a percentage of the property value such as 50% of the current value.
 - Once that threshold is reached, the fine will then reduce to a nominal fee (\$1, \$5, etc.) and that amount will continue to accrue until the violation has been cured.
- This recommendation is supported by both staff and the Code Enforcement Board as it addresses the severity of the violation at the onset, complies with the State Statute regarding continuation of the accrual but also addresses the concerns of the City Commission.
 - Staff also recommends including a provision for a “repeat violator” which would double the threshold limit.

LIEN REDUCTIONS & RESCINDMENT

Legal authority and background:

- State Statute places the following restrictions upon code enforcement liens:
 - A lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section.
 - After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien.
- The City's Rules of Procedure for the Code Enforcement Board and Special Magistrates, as adopted by the City Commission, have the following restrictions:
 - A respondent may request a reduction of a lien otherwise, imposed by the City after the original violation is in compliance and the Department has issued an affidavit of compliance.
 - The Department shall schedule a hearing on the request before the Special Magistrate or Board, with notice to the respondent. After hearing both sides, the Special Magistrate shall make a determination, or the Board shall adopt a motion, recommending to the Commission that the request for reduction of the lien be denied, granted, or granted with conditions.

Proposed policy changes and recommendations - Lien Reductions:

The City has been faced with several tumultuous years that have given rise to circumstances that did not exist when the City's rules regarding lien reductions were drafted. Foreclosures, tax sales and short sales are now the leading causes for reduction requests over owner requests.

Requestor for lien reduction	2014	2015
Owner / Violator	7	6
New Owner - (New owner through private sales, bank sales, etc.)	7	9
Bank (Bank owned through foreclosure.)	2	3
Tax Sales (New owner via tax sale. Excess proceeds distributed to the City.)	4	7
Other (Staff initiated to correct deficiencies in lien, partial release from spreading lien, etc.)	2	1
TOTAL REDUCTION REQUESTS	22	26

Taking these new factors into consideration and the fact that in approximately 2/3 of the cases the new owners are the party that corrects the violation, it is recommended to provide a more "user friendly" process for satisfying the lien.

Staff recommends establishing a multi-tiered set of regulations that will help administer these lien reduction requests and provide timely resolution.

Release of Lien Procedures (proposed)	
Administered by Staff	<ul style="list-style-type: none"> • Tax sales in which the excess proceeds exceed the estimated administration charges and the money is received by the City. • Requests for reduction - accept an offer of <u>\$5,000 or more</u> for residential property and <u>\$10,000 or more</u> for commercial property; <u>and</u> • The time to pay the reduced amount is <u>60 days or less</u>. • A summary report of all requests administered by staff will be provided to the City Manager's office on a <u>monthly?/quarterly?</u> basis.
Code Enforcement Board / Special Magistrate approval	<ul style="list-style-type: none"> • Requests for reduction - accept an offer of <u>\$3,000 or more</u> for residential property and <u>\$7,500 or more</u> for commercial property; <u>and</u> • Time needed to pay reduced amount is <u>less than six (6) months</u>. • A summary report of all requests administered by the Code Board / Special Magistrate will be provided to the City Manager's office on a <u>?monthly / quarterly?</u> basis.
City Commission approval (existing procedure)	<ul style="list-style-type: none"> • Requests for full waiver / rescindment. • Requests for reduction - accept an offer of <u>less than \$3,000</u> for residential property; or • Requests for reduction - accept an offer of <u>less than \$7,500</u> for commercial property. • Requests for reduction that require a payment plan of more than six (6) months. • Any reduction request wherein the requestor is not agreeable to the Code Board / Special Magistrate ruling. • Any reduction request that falls within the Code Board / Special Magistrate's purview, but in staff's opinion should be placed before the City Commission for consideration. Staff must state on the record the basis for such a request - Ex) repeat violator or foreclosure by bank where the bank did not correct the violation and transferred title to a new owner.

ADDITIONAL ITEMS FOR CONSIDERATION

Proposed policy changes and recommendations - Additional items:

- The City Commission has recommended establishing an application fee for processing reduction requests, the purpose of which is to cover administering the request. The City currently has multiple application fees varying in range from \$100 (conditional use) to \$500 (appeal of administrative officer).
 - Staff recommends establishing an application fee of \$250.00, which is waived if the reduction request follows the “Fast Track” process and is administered by staff or the Code Board / Special Magistrate.
- The above recommendation for changing the policy for imposing fines does not apply to the fines that are currently on the books.
 - The Code Board / Special Magistrate signs an Order Determining Violation, which states the daily fine followed by an Order Assessing Fine and Imposing Lien. Both are official documents that are recorded with the Clerk of Court.
 - Each case on the books needs to be manually checked to determine if the lien is still valid. For example, has the property gone through a foreclosure and if so, did it have any effect on our lien?
 - However, as staff reviews each file and determines a lien is valid, the proposed new lien reduction policy may help to process these liens quickly and efficiently.
- The Code Enforcement Board was also highly supportive of the City moving forward with foreclosure on properties. State Statute allows local jurisdictions to foreclose on a property that is not a homesteaded property and has a lien that has not been paid for three (3) months.