

MEMORANDUM

Agenda Item No. 11(A)(7)

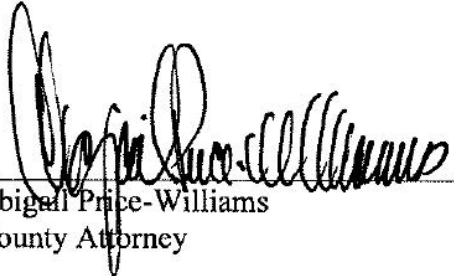
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: August 31, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving
amendment to Implementing
Order 2-5 relating to payment of
penalties for Code Enforcement
violations; clarifying
departmental responsibilities
with respect to payments made
by jointly and severally liable
parties

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Joe A. Martinez.



Abigail Price-Williams
County Attorney

APW/uw

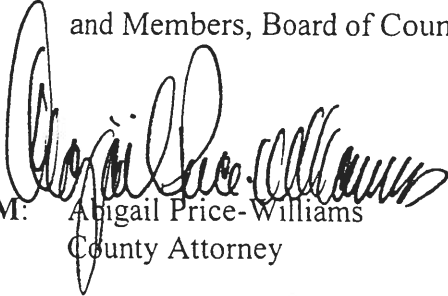


MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: August 31, 2020

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(7)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(7)
8-31-20

RESOLUTION NO. _____

RESOLUTION APPROVING AMENDMENT TO
IMPLEMENTING ORDER 2-5 RELATING TO PAYMENT OF
PENALTIES FOR CODE ENFORCEMENT VIOLATIONS;
CLARIFYING DEPARTMENTAL RESPONSIBILITIES WITH
RESPECT TO PAYMENTS MADE BY JOINTLY AND
SEVERALLY LIABLE PARTIES

WHEREAS, Miami-Dade County Implementing Order 2-5 sets forth guidelines and procedures for enforcement proceedings undertaken by all County departments to ensure compliance with ordinances passed by the Board of County Commissioners; and

WHEREAS, as noted in Implementing Order 2-5, it is the policy of Miami-Dade County to recover enforcement fines levied, administrative hearing and enforcement costs incurred by the departments involved in code enforcement activities, and accrued interest by utilizing administrative settlement and lien procedures as permitted by law; and

WHEREAS, the Miami-Dade County Municipal Code also authorizes the imposition of joint and several liability on any person with a legal, beneficial, or equitable interest in the facility or instrumentality causing or contributing to the violation or the real property where such facility is located; and

WHEREAS, while joint and several liability can be an effective enforcement mechanism to ensure that cited violations are corrected, it cannot be used as a means to collect multiple recoveries for the same violation; and

WHEREAS, when multiple parties who are jointly and severally liable receive a citation for the same violation, one or more parties may erroneously believe that each party must still pay any penalty in full even after one of parties has already paid the full penalty amount; and

WHEREAS, this confusion has occasionally extended to the County's collection of payments where, in certain cases, the County has failed to properly record the payment of a penalty in full, or in part, and violators are then informed that full payment is still owed; and

WHEREAS, accordingly, this Board desires to amend Implementing Order 2-5 as reflected in the attached to require that County departments ensure that: (a) full payment by one violator of any civil penalties owed serves as full satisfaction of the civil penalties for that violation and (b) partial payment by any violator reduces the amounts owed by all jointly and severally liable violators in the amount thereof,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recitals are incorporated in this resolution and are approved.

Section 2. This Board amends Implementing Order 2-5 relating to Code Enforcement, in substantially the form attached as Attachment A and incorporated by reference herein, to require that County departments ensure that: (a) full payment by one violator of any civil penalties owed serves as full satisfaction of the civil penalties for that violation and (b) partial payment by any violator reduces the amounts owed by all jointly and severally liable violators in the amount thereof.

The Prime Sponsor of the foregoing resolution is Commissioner Joe A. Martinez. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman

Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.

Jose "Pepe" Diaz

Eileen Higgins

Joe A. Martinez

Dennis C. Moss

Xavier L. Suarez

Daniella Levine Cava

Sally A. Heyman

Barbara J. Jordan

Jean Monestime

Sen. Javier D. Souto


The Chairperson thereupon declared this resolution duly passed and adopted this 31st day of August, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Michael B. Valdes

ATTACHMENT "A"

IO No.: 2-5
Ordered: ~~[[9/19/2019]]~~
Effective: ~~[[10/1/2019]]~~

MIAMI-DADE COUNTY IMPLEMENTING ORDER

CODE ENFORCEMENT

AUTHORITY:

The Miami-Dade County Home Rule Charter, including, among others, Sections 1.01, 2.02(A), 5.01 and 5.03, and Chapter 8CC, Code of Miami-Dade County.

SUPERSEDES:

This Implementing Order supersedes ~~[[Administrative]]~~ >>~~Implementing~~<< Order 2-5 ordered ~~[[July 25, 2000]]~~ >>September 19, 2019<< and effective ~~[[August 4, 2000]]~~ >>October 1, 2019<<.

POLICY:

It shall be the policy of Miami-Dade County to foster compliance with the ordinances passed by the Board of County Commissioners, as embodied in the Code of Miami-Dade County (the "Code") by encouraging its Code Inspectors to utilize available enforcement mechanisms, including the issuance of Uniform Civil Violation Notices ("CVNs"), to attain this goal. It shall also be the policy of Miami-Dade County to recover enforcement fines levied, administrative hearing and enforcement costs incurred by the departments involved in code enforcement activities, and accrued interest by utilizing administrative settlement and lien procedures as permitted by law.

ENFORCEMENT PROCEDURE FOR MUNICIPALITIES:

Municipalities within Miami-Dade County shall be entitled to utilize the applicable provisions of Chapter 8CC within their municipal boundaries by entering into an interlocal agreement with Miami-Dade County pursuant to Code Section 8CC-11. The County reserves the right to set minimum education, training and background check requirements to be met by municipal employees or agents enforcing the Code. Furthermore, the County shall provide oversight and auditing authority in order to withdraw delegation if it is determined that the municipality is improperly enforcing the Code. Any appeals to the Circuit Court or beyond from CVNs issued by a municipality shall be handled by that municipality and its legal staff.

HEARING OFFICERS:

Compensation for Hearing Officers shall be \$50.00 per hour for a minimum of \$200.00 and up to a maximum of \$400.00 per day.

DEPARTMENTS' RESPONSIBILITIES:

Department directors of those departments charged with code enforcement, or their designees, shall be responsible for the following:

1. Prior to being provided the authority to initiate enforcement proceedings under Section 8CC-3(a) of the Code, a Code Inspector shall be required to successfully complete a "Level 2" state and national criminal history record check, which shall be conducted by the Human Resources Department through the Florida Department of Law Enforcement and the Federal Bureau of Investigation at the request of Code Enforcement departments. This criminal history background check consists of a nationwide search of law enforcement databases and includes a review of federal, state and local criminal activity. The Level 2 criminal history records check requirements shall be included in all Code Inspector job announcements. Municipal employees shall also be required to successfully complete a Level 2 criminal history record check or its equivalent prior to being provided authority to initiate enforcement proceedings under Chapter 8CC of the Code. In addition, driving records shall be reviewed as a part of the initial criminal background check and subsequently on an annual basis.
2. Code Inspectors shall enforce the ordinances listed in Section 8CC-10 of the Code within the jurisdiction of their respective departments.
3. Upon the issuance of a CVN the issuing Department will transmit a copy of the CVN, or the required data, to the Code Enforcement division of the Miami-Dade County Finance Department. Processes pertaining to the enforcement of the Code, including, but not limited to the enforcement language written on the CVN, all notices and due process requirements, shall be the responsibility of the Department. >>If the Department has issued a CVN against multiple violators as jointly and severally liable for a violation, the Department shall ensure that: (a) full payment by one violator of any civil penalties owed shall serve as full satisfaction of the civil penalties for that violation and (b) partial payment by any violator shall reduce the amounts owed by all jointly and severally liable violators in the amount thereof. Notwithstanding the foregoing, payment by any one or more joint and severally liable violators shall not (i) nullify, cancel, or void the obligation of all joint and several violators to remedy or correct the violation, nor (ii) limit the Department from pursuing any other available judicial or administrative remedies.<< The Departments will collaborate with the Finance Department prior to the modification of the stated forms and notices to coordinate efficiencies among the enforcement and collection processes.
4. Named violators shall be notified on the CVN that: (a) all original civil penalty payments, continuing civil penalty payments and administrative hearing costs imposed pursuant to the provisions of Chapter 8CC shall be remitted directly to the Code Enforcement division of the Miami-Dade County Finance Department, with a

check made payable to “Miami- Dade County Finance”, unless the case is the subject of a settlement agreement; and (b) all appeals of a CVN or Assessment of Continuing Penalties shall be sent directly to, and filed with, Code Enforcement, County Clerk Division.

5. For any CVN issued in which a date of correction has been given, or for any case in which a Hearing Officer has set a date of correction (see Sec. 8CC-4(f) of the Code), or in which the Department has extended the date of compliance by Agreement, a Code Inspector must prepare an Affidavit of Compliance or Non-Compliance as appropriate and send a copy to Code Enforcement, County Clerk Division. The Affidavit must indicate whether payment of the civil penalty has been made and the violation has been corrected by the applicable date of correction set forth in the CVN or by the Hearing Officer; and, if the violation has not been corrected or payment of the civil penalty has not been made, an Affidavit of Non-Compliance must so reflect and must set forth a request that a Hearing Officer issue an Order finding the violator guilty of a continuing violation and assess continuing penalties based upon the length of time the civil penalty remained unpaid and/or the violation continued to exist beyond the applicable date of compliance.
6. Departments shall be authorized to enter into agreements, extending dates of compliance with the Code, settling civil penalties and liens for amounts less than the maximum continuing penalty, costs and accrued interest. Such agreements shall contain the justification for settlement; the CVN number; the original penalty amount; the settlement amount; the amount collected (indicating full payment or partial payment); and, the signature of the department director, or designee, with notification to the Code Enforcement division of the Miami-Dade County Finance Department and to Code Enforcement, County Clerk Division. If any penalties have been made the subject of court actions, settlements must also include an approval from the County Attorney’s Office. Unless otherwise specifically provided in the Code, the department will require the violator to remit the original amount of the ticket and any administrative hearing costs imposed by the Hearing Officer to the Code Enforcement division of the Miami-Dade County Finance Department and will collect the remainder of the settlement amount directly. The Departments shall provide to the Code Enforcement division of the Miami-Dade County Finance Department a written settlement memorandum which includes the following information: CVN number, settlement amount, amount received, date received, and record of collection number. If the settlement is based upon installment payments, the department shall provide the foregoing information for each payment until satisfaction of the agreement.
7. Whenever a violator has corrected a violation but failed to pay the civil penalty, or has failed to correct the violation and pay the civil penalty, or has paid the civil penalty but failed to correct the violation, then, upon the assessment of continuing penalties by a Hearing Officer, the named violator will be advised that if payment of

the assessed penalties is not received, a lien shall be placed against the named violator's real and/or personal property unless the Department enters into a settlement agreement with the named violator. The departments shall notify the violator of Miami-Dade County's intent to file said lien against the violator's real or personal property when permitted by law. The Notice of Intent to Lien shall offer the violator an opportunity within a specified time period to avoid placement of the lien by executing a settlement agreement which provides for correction of the violation, payment of the original amount of the CVN, payment of continuing penalties, payment of administrative hearing costs where applicable, payment of all enforcement costs incurred by the department and accrued interest. A copy of the Notice of Intent to Lien shall be sent to mortgage holders and may be sent to insurance carriers, credit bureaus and any other parties holding a legal, equitable or beneficial interest in the property.

8. A lien shall be placed on a violator's real or personal property, except as provided for herein, if the violator does not respond within the prescribed time period to the Notice of Intent to Lien by correcting the violations and paying all penalties, costs and interest due, or executing a settlement agreement and complying with said agreement. The lien document shall make specific reference to the civil violation notice number and the issuing department. The lien shall be recorded in the Official Records of Miami-Dade County, and the Code Enforcement division of the Miami-Dade County Finance Department shall be notified of same.
9. Departments may offer a payment plan in negotiating settlements prior to or after placement of liens upon written request of the violator and establishment of economic need or extenuating circumstances. In order to insure the department's ability to collect all civil penalties, administrative hearing and enforcement costs and interest due, departments are required to file a lien where possible whenever the violator enters into a payment plan in response to a Notice of Intent to Lien.
10. Upon placement of a lien against real or personal properties, the individual or business entity holding a mortgage on the property shall be notified of the lien placement by the department. The department may notify credit bureaus, insurance carriers and other parties holding a legal, equitable or beneficial interest in the property of the placement of the lien.
11. The department may initiate collection proceedings including, but not limited to, referral to collection agencies and filing of civil suits as warranted in an effort to recover monies owed Miami-Dade County resulting from the issuance of CVNs.
12. For any lien placed against real property pursuant to Chapter 8CC or other provisions of the Code which remains unsatisfied one year from the date of recordation of the lien, the departments may notify the Office of the County Attorney and it shall be the responsibility of the County Attorney to initiate foreclosure actions

in Circuit Court on non-homestead properties where foreclosure of the property is in the best interest of Miami-Dade County.

13. Upon final payment under a settlement agreement or full payment of a lien, all accrued interest and the costs of lien recordation and satisfaction, the departments shall record a Satisfaction of Lien in the Miami-Dade County public records. The Satisfaction of Lien document shall make specific reference to the civil violation notice number and the issuing department.

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