

**1. Requested Motion:**

Motion to approve Resolution 12-01, Lien Reduction.

**Meeting Date: Jan. 3, 2012**

**Why the action is necessary:**

To provide a fair, consistent and equitable methodology for processing property owner requests for reductions of liens against property imposed by the Town of Fort Myers Beach.

**What the action accomplishes:**

Enables owners of properties encumbered by town imposed liens to apply for reductions in lien amounts and insures that all information required for the decision is provided.

**2. Agenda:**

- Consent
- Administrative

**3. Requirement/Purpose:**

- Resolution
- Ordinance
- Other

**4. Submitter of Information:**

- Council
- Town Staff
- Town Attorney

**5. Background:**

From time to time, there are properties on which the Town has imposed a legal monetary lien for various reasons, but most often related to Town Code violations. Some of these liens may have accumulated to substantial amounts. The property owner of such a property may believe there are plausible reasons why the lien amount should be mitigated or forgiven. This ordinance establishes a methodology to enable said property owners to present their case for Town Council's consideration. The resolution defines the application process and the information necessary to bring a lien reduction request to the Town Council. It also sets forth specific parameters to be assessed and used by staff in making a recommendation for reduction to the Town Council

**6. Alternative Action:**

None

**7. Management Recommendations:**

Management recommends approval of this ordinance.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

**9. Council Action:**

- Approved
- Denied
- Deferred
- Other

RESOLUTION NO. 12-01

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE AND RECORD SATISFACTIONS OF LIENS UPON FULL PAYMENT OF CODE ENFORCEMENT FINES OR PENALTIES; AUTHORIZING THE TOWN MANAGER TO CONSIDER ANY APPLICATIONS FOR REDUCTION OF CODE ENFORCEMENT LIENS OR FINES WHEN ORDERS IMPOSING SUCH LIENS OR FINES HAVE BEEN RECORDED IN THE PUBLIC RECORDS BY THE CODE ENFORCEMENT SPECIAL MAGISTRATE AND MAKE RECOMMENDATIONS TO THE TOWN COUNCIL; PROVIDING CRITERIA FOR THE TOWN MANAGER TO FOLLOW WHEN CONSIDERING APPLICATIONS FOR REDUCTION OR FORGIVENESS OF LIENS OR FINES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 162.09(3), Florida Statutes, provides that code enforcement liens run in favor of the local governing body, and the local governing body may agree to satisfy or release code enforcement liens; and

WHEREAS, the Attorney General of the State of Florida has concluded that code enforcement boards and code enforcement special magistrates are not authorized to reduce fines when code enforcement orders have been recorded in the public records, and that the local governing body is vested with the authority to reduce or satisfy liens after such liens have been recorded (AGO2002-62); and

WHEREAS, the Attorney General has also concluded that a local governing body, such as the Town Council, may delegate its authority to execute satisfactions or releases of code enforcement liens so long as such delegation does not result in a complete divestiture of such liens by the Town Council to a private party; and

WHEREAS, pursuant to Section 166.021, Florida Statutes, the Town of Fort Myers Beach through its home rule powers may exercise any power for municipal purposes except those expressly pre-empted or prohibited by law.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals

are hereby adopted as the findings of the Town Council.

**SECTION 2. APPLICATIONS FOR SATISFACTION OR RELEASE OF CODE ENFORCEMENT LIENS.**

A. Where a certified copy of an order imposing a penalty or fine relating to a Code Enforcement case has been recorded in the public records and has become a lien against the land and/or property of the violator/property owner, such violator/property owner may apply for a satisfaction or release of such lien as follows:

1. Upon full payment by the violator/property owner of the fine or penalty imposed in accordance with the Town Land Development Code, the Town Manager, or his/her designee, is hereby authorized to execute and record a satisfaction of lien; or

2. Upon request for a reduction or forgiveness of a fine or penalty imposed in accordance with the Town Land Development Code, the violator/property owner shall submit a written application to the Town Manager, or his/her designee.

B. Applications for a reduction or forgiveness of a lien shall include, at a minimum, the following:

1. A copy of the order imposing a lien upon the property;

2. The code enforcement case number;

3. The date when the subject property was brought into compliance with the Town Code;

4. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted;

5. The terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;

6. The reasons, if any, compliance was not obtained prior to the recording of the order imposing the lien; and

7. The amount of the reduction in the fine sought by the violator/property owner.

C. The application shall be executed under oath and sworn to in the presence of a notary public and submitted to the Town Manager.

D. Upon receipt of the application for a satisfaction or release of lien and payment to the Town of a One Hundred Dollar (\$100.00) non-refundable fee to reimburse the Town for its administrative costs associated with processing the application for satisfaction or release of lien, the Town Manager, or his/her designee, shall confirm that the violation which resulted in the order imposing the lien has been brought into compliance.

E. The Town Manager, or his/her designee, shall then review and consider the application for satisfaction or release of lien in accordance with the following threshold criteria:

1. If a property owner acquired property on which a lien was previously recorded, a waiver or reduction of lien shall not be granted because the lien should have been identified and satisfied by the property owner at the time the property was acquired.

2. If a title insurance policy was issued at the time of purchase of the

property and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien shall not be granted.

3. A request for waiver or reduction of a lien shall not be granted if the Town Council previously reduced the amount of the lien, regardless of whether the request is received from the original applicant for reduction or from a subsequent applicant.

F. If the Town Manager, or his/her designee, determines that the one or more of the above established threshold criteria applies to the request, the Town Manager, or his/her designee, shall issue a written denial of the application. If the applicant desires to appeal the Town Manager's threshold determination to the Town Council, the applicant may do so by filing a written appeal with the Town Manager asserting why the Town Council should make an exception to its established guidelines and reduce or forgive the lien. Said request must be filed within fifteen (15) calendar days of the issuance of the Town Manager's written denial. Upon the receipt of a proper and timely appeal, the Town Manager shall present the information to the Town Council for its consideration and final determination at the next available Town Council meeting.

G. If the Town Manager, or his/her designee, determines that a request does not involve any of the above established threshold criteria that would warrant immediate dismissal, the Town Manager, or designee, shall consider the following factors and maximum percentage reduction amounts in formulating a recommendation to the Town Council on whether to reduce or forgive the lien:

(1) Gravity of the Violation (Impact on the public health, safety and general welfare of the occupant(s) and surrounding properties.

(a) Minor

50%

(b) Significant 25%

(2) Time taken to bring the property into compliance, calculated from the date Notice of Violation is issued

(a) Under 6 months	30%
(b) 6-12 months	20%
(c) 1-2 Years	10%
(d) More than two years	0%

(3) Previous Code Violations on the property

(a) No previous history	20%
(b) Repeat Violator	0%

Maximum lien reduction shall not exceed 100%, provided, however, that all costs incurred by the Town as a result of the violation, including any costs incurred by the Town to correct the violation, prosecution and legal costs will be recovered to the fullest extent allowed by law, regardless of application of allowable reduction factors as specified above.

H. After the Town Manager has formulated a recommendation concerning the request for satisfaction or release of lien, the matter shall be scheduled for consideration by Town Council at its next available meeting. The Town Council may take action based solely upon the sworn application, recommendation of the Town Manager, and the applicant's written statements, if any, concerning the factors warranting reduction or forgiveness of the lien in considering the application for satisfaction or release of lien.

I. After due consideration the Town Council may vote to reduce the amount of the lien, forgive the full amount of the lien or deny the request to reduce or forgive the lien.

J. When a lien is satisfied as a result of full payment, reduced payment or forgiveness as ordered by the Town Council, the Town Manager may execute all implementing documents and the Town Clerk shall record the satisfaction/release of lien in the Public Records of Lee County, Florida, with the applicant paying all costs of recording, and provide the original Release of Lien to the property owner after recording.

**SECTION 4. IMPLEMENTING ACTIONS.** The Town Manager, or his/her designee, is hereby authorized to take any actions necessary in order to fully implement the provisions of this Resolution.

**SECTION 5. EFFECTIVE DATE.** This Resolution shall take effect immediately upon adoption by the Town Council.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_ and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED ON THIS \_\_\_\_\_ DAY OF JANUARY, 2012.

Larry Kiker, Mayor	_____	Bob Raymond, Vice Mayor	_____
Joe Kosinski, Councilmember	_____	Jo List, Councilmember	_____
Alan Mandel, Councilmember	_____		

ATTEST: TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Michelle Mayher, Town Clerk

By: \_\_\_\_\_  
Larry Kiker, Mayor

Approved as to legal sufficiency by:

By: \_\_\_\_\_  
Fowler White Boggs, Town Attorney