

**1. Discussion Objective:**

**Work Session Date:** April 16, 2012

To define a consistent and fair lien reduction process.

**2. Submitter of Information:**

- Council
- Town Staff
- Town Attorney

**3. Estimated Time for this item:**

45 minutes.

**5. Background:**

Lien reduction requests have increased during the past year and due to the economic climate, more are expected.

As these requests have come forward, Council expressed a desire to establish a standard process to deal with these complex issues.

A recommended resolution was previously presented to Council, but was rejected due to the complexity of the process itself. Council expressed a desire for a process that would be easier for the public to understand.

We are presenting an example garnered from the City of Sanford, Florida that will cover the important elements but should be much easier to understand and process.

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



*Town of Fort Myers Beach*

# **MEMORANDUM**

To: Mayor and Council

From: Terry Stewart, Town Manager

Date: April 5, 2012

Re: Lien Reduction Process

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During the past ten months, the Town has examined a potential process for providing general guidance and handling lien reduction requests. Most of these liens are related to code enforcement violation fines and since many of those fines are daily fines, until the violation is corrected, the amounts continue to accrue and become substantial.

As you know, we have experienced an increase in the number of requests for reduction of these liens. In order to ensure that the Town is able to reach decisions about requests for reduction that are fair and consistent, it seems that a Council approved methodology is appropriate.

This matter came to you at a previous Council meeting with a recommendation that you adopt a policy based upon one from the City of Safety Harbor, FL. After discussion, the Council decided that policy was too complicated and did not provide a framework it could accept.

The information presented to you for discussion at this Workshop turns to a policy from the City of Sanford, FL that is less complicated than that of the previous recommendation, but at the same time, addresses all the important elements necessary to fairly consider a lien reduction.

Included within the package are all materials from the previous presentation as well as the materials illustrating the adopted procedure from the City of Sanford. Staff will be prepared to assist you in arriving at a decision on this issue and hopefully be able to craft a final policy that gives you comfort.

**ORDINANCE NO. 2008-4111**

**AN ORDINANCE OF THE CITY OF SANFORD, FLORIDA RELATING TO CODE ENFORCEMENT LIENS; PROVIDING THAT THE CITY MANAGER, OR DESIGNEE, IS AUTHORIZED TO EXECUTE AND RECORD A SATISFACTION OF LIENS UPON FULL PAYMENT OF CODE ENFORCEMENT FINES OR PENALTIES; PROVIDING THAT THE CITY MANAGER, OR DESIGNEE, SHALL CONSIDER ANY APPLICATIONS FOR REDUCTION OR FORGIVENESS OF CODE ENFORCEMENT FINES OR PENALTIES WHEN ORDERS IMPOSING SUCH FINES OR PENALTIES HAVE BEEN RECORDED IN THE PUBLIC RECORDS AND MAKE RECOMMENDATION TO THE CITY COMMISSION; PROVIDING CRITERIA FOR THE CITY MANAGER, OR DESIGNEE, AND THE CITY COMMISSION, TO FOLLOW WHEN CONSIDERING APPLICATIONS FOR REDUCTION OR FORGIVENESS OF LIENS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 162.09(3), *Florida Statutes*, provides that code Enforcement liens run in favor of local governing body, and the local governing body may execute a satisfaction or release of any code enforcement lien; and

**WHEREAS**, Section 162.09(2)(c), *Florida Statutes*, provides that the code enforcement board, or lawful designee, may reduce a code enforcement fine before the order imposing such fine has been recorded; and

**WHEREAS**, Attorney General Opinion 02-62 and Attorney General Opinion 99-03 opine that code enforcement boards or designee, 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; and

**WHEREAS**, Attorney General Opinion 99-03 opines that a city commission may delegate its authority to execute satisfactions or release of code enforcement liens so long as such

delegation does not result in a complete divestiture of such liens by the city commission to a private party; and

**WHEREAS**, pursuant to Section 166.021, *Florida Statutes*, the City of Sanford through its home rule powers may exercise any power for municipal purposes except those expressly prohibited by law.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF SANFORD, FLORIDA:**

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Commission.

**SECTION 2. APPLICATION FOR SATISFACTION OR RELEASE OF CODE ENFORCEMENT LIENS.** A new section to the Code of Ordinances of the City of Sanford is added to read as follows:

Where a certified copy of an order imposing a penalty or fine 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:

- (a) Upon full payment by the violator/property owner of the fine or penalty imposed in accordance with this chapter, the City Manager or designee is hereby authorized to execute and record a satisfaction of lien.
- (b) Upon request for a reduction or forgiveness of a fine or penalty imposed in accordance with this chapter, the violator/property owner shall submit a written application to the City Manager or designee.
- (c) The application shall include the following:
  - (1) A copy of the order imposing a lien upon the property;

- (2) The code enforcement case number;
  - (3) The date upon which the violator/property owner brought the subject property into compliance with the requirements of the City 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 specific 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 accomplished by the violator/property owner prior to the order of penalty or fine being recorded; and
  - (7) The amount of the reduction in penalty or fine sought by the violator/property owner;
  - (8) This application shall be executed under oath and sworn to in the presence of a notary public and delivered to the City Manager designee.
- (d) The violator/property owner shall submit at the time of application, payment to the City in the amount of \$100.00 to reimburse the City for its administrative costs associated with handling the application and recording the order imposing a penalty or fine and the requested satisfaction or release of lien. These costs are non-refundable, without regard to the final disposition of the application for satisfaction or release of lien.
- (e) Upon receipt of the application for satisfaction or release of lien and the payment provided above, the City Manager, or designee, shall confirm through the Code Enforcement Office that the violation which resulted in the order imposing penalty or fine has been brought into full compliance.
- (f) The City Manager, or designee, shall then review and consider the application for satisfaction or release of lien for the threshold criteria as follows:
- (1) If a property owner has acquired property on which a lien was recorded, a waiver or reduction of lien may not be granted for in such cases, the lien should have been identified and satisfied by the property owner at the time of acquisition, or

- (2) If a title insurance policy is issued upon the purchase of the property and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien may not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction or waiver would place the City in the position of indemnifying the title insurer against its losses, which losses should be reflected in premium charges, or
  - (3) A request for waiver or reduction in lien may not be granted if the City Commission has previously reduced the amount of lien. This statement applies whether or not the request is received from the original applicant for reduction or a subsequent applicant.
- (g) If the City Manager or designee determines that the request fails any one of the above-established criteria guidelines, the City Manager or designee shall issue a written denial of the request. If the applicant wishes to appeal the City Manager's decision to the City Commission, the applicant may do so by filing a written appeal with the City Manager stating why the Commission should make an exception to its established guidelines and reduce or waive the lien. Upon proper appeal, the City Manager shall present the information to the City Commission at a regular meeting for their consideration and final determination.
- (h) If the City Manager or designee determines that the request does not fail any one of the above-established criteria guidelines, the City Manager or designee shall review the request further. The City Manager or designee, in determining its recommendations, shall consider the following factors:
- (1) The gravity of the violation(s);
  - (2) The time it took the violator/property owner to come into compliance;
  - (3) The accrued amount of the code enforcement fine or lien; as compared to the market value of the property and
  - (4) Any previous code violation(s) of applicant/owner.
  - (5) Consideration for the future or proposed use of the property for public purpose.
  - (6) Listing of all other properties owned by the applicant/owner in Seminole County, Florida.

- (i) The City Manager or designee shall place the application for satisfaction or release of lien upon the agenda of the next regularly scheduled City Commission meeting. The City Commission may take action based solely upon the sworn application, recommendation of the City Manager or designee and the applicant shall have opportunity to address the City Commission as to the factors warranting reduction or waiver of lien in considering the application for satisfaction or release of lien.
- (j) The City Commission may reduce the amount of the lien, waive the full amount of the lien or continue the lien in its full amount.
- (k) When a lien is satisfied as a result of full payment, reduced payment or waiver as ordered by the City Commission, the City shall record the satisfaction/release of lien in the Public Records of Seminole County, Florida and provide a copy to the property owner.

**SECTION 3. SAVING PROVISION.** This Ordinance shall be amended, modified and/or supplemented from time to time as the City Commission shall deem necessary to advance the best interests of the City and its citizenry in fulfilling the mandates of Chapter 162, Fla. Statutes, as amended.

**SECTION 4. SEVERABILITY.** If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

**SECTION 5. CODIFICATION.** It is the intention of the City Commission of the City of Sanford, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Sanford, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to Section," "Article," or other appropriate word.

**SECTION 6. CONFLICTS.** All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

**SECTION 7. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon its passage and adoption.

**PASSED AND ADOPTED** this 23<sup>rd</sup> day of June, 2008.

Attest:

**CITY OF SANFORD, FLORIDA**

  
\_\_\_\_\_  
Janet R. Dougherty, City Clerk

  
\_\_\_\_\_  
Linda Kuhn, Mayor

Approved as to form and legality:

  
\_\_\_\_\_  
Kenneth W. McIntosh, Assistant City Attorney

**CERTIFICATE**

I, Janet R. Dougherty, City Clerk of the City of Sanford, Florida, do hereby certify that a true and correct copy of the foregoing Ordinance No. 4111, PASSED AND ADOPTED by the City Commission of the City of Sanford, Florida, on the 23rd day of June, 2008, was posted at the front door of the City Hall in the City of Sanford, Florida, on the 25th day of June, 2008.

  
\_\_\_\_\_  
Janet R. Dougherty, as the City Clerk of  
the City of Sanford, Florida

**REQUIREMENTS FOR CODE ENFORCEMENT  
FINE/LIEN WAIVER OR REDUCTION**

**City of Sanford, Florida**

P.O. Box 1788, Sanford, FL 32772

300 N. Park Avenue

(407) 688-5160

1. **Completed waiver/reduction request form.** All blanks are to be filled in by applicant.
  
2. **Compliance.** The City Commission will not consider a request for a waiver or reduction of a fine until the property is in compliance with the Order.
  
3. **Written Explanation/Justification.** The City of Sanford's Commission rules and regulations require that the City Manager or the City Manager's designee consider certain criteria prior to reducing or waiving a fine/lien. In the space provided on the request form or with attached page(s), please provide an explanation of how and why your request meets the criteria of Ordinance 2008-4111 (attached).
  
4. **Timely Submission.** Request forms are required to be submitted at least three (3) weeks in advance to be heard at the City Commission meeting, which is, generally, the second and fourth Monday of each month.
  
5. **Application Fee.** A non-refundable application fee of \$100.00 (one hundred dollars) must be submitted with the application.

# City of Sanford

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## REQUEST FOR REDUCTION OR WAIVER OF FINE/LIEN

Code Enforcement Case No. \_\_\_\_\_

Address of Property under Fine or Lien: \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Nature of Violation: \_\_\_\_\_

Date Fine Began: \_\_\_\_\_ Compliance Date/  
Date Fine Ended: \_\_\_\_\_

Daily Amount of Fine Imposed: \$ \_\_\_\_\_ Total Amount of Fine: \$ \_\_\_\_\_

I swear or affirm that the information I have provided on this Request is true and correct. I have paid the non-refundable \$100.00 application fee, and I have attached a copy of the Order imposing a fine/lien on my property.

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Date

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, who is personally known to me or has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida

**WRITTEN EXPLANATION/JUSTIFICATION**

The City of Sanford's Commission rules and regulations require written explanation and justification to request a waiver or reduction of the fine/lien. In the space below or on an attached sheet(s), please provide an explanation or justification of how and why your request meets the following criteria.

**1. FACTUAL BASIS FOR GRANTING REDUCTION OR FORGIVENESS OF LIEN:**

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**2. REASONS, IF ANY, COMPLIANCE WAS NOT ACCOMPLISHED PRIOR TO THE ORDER OF LIEN OR FINE BEING IMPOSED:**

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**3. AMOUNT OF REDUCTION OF LIEN OR FINE BEING SOUGHT:**

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**4. LIST ALL PROPERTY IN SEMINOLE COUNTY, FLORIDA, OWNED BY APPLICANT/OWNER:**

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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 \_\_\_\_\_, 2012.

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

ATTEST: TOWN OF FORT MYERS BEACH

By: _____	By: _____
Michelle Mayher, Town Clerk	Larry Kiker, Mayor

Approved as to legal sufficiency by:

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