

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #06-005

TO: Commissioner Linda Haskins
FROM: Jorge L. Fernandez, City Attorney *JLB*
DATE: August 18, 2006
RE: Maximum Civil Penalty for Code Enforcement Citations

You requested a legal opinion as to whether the City Commission is authorized to increase to \$1,000 the maximum civil penalty of \$500 that is currently prescribed under *Article 8.1 of the Zoning Ordinance 11000, "Tree Protection"* and Florida Statutes. The answer is in the negative.

Florida Statutes, Section 162.21, *Enforcement of county or municipal codes or ordinances; penalties*; specifically, subsection 162.21(5) (b) states that a maximum civil penalty for a civil citation shall not exceed \$500. A copy of Section 162.21 is attached. Therefore, if a code enforcement inspector issues a civil citation (ticket) for a violation of the Tree Protection Ordinance, the maximum penalty allowed by state law is \$500 for that ticket.

However, the per diem fines pursuant to a Code Enforcement Board case, as distinguished from a civil citation above, may be increased to \$1000 per day if the City Commission passes the appropriate legislation.

Florida Statutes, Section 162.09, *Administrative fines; costs of repair; liens*; specifically, subsection 162.09(2) (d) provides:

A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in paragraph (a). Such fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs pursuant to subsection (1). Any ordinance imposing such fines shall include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines, including, but not limited to, those factors set forth in paragraph (b).

In April of 2005, pursuant to a request from the administration and in accordance with the above referenced provision of the Florida Statutes, this office drafted legislation that would increase the per diem daily fines to a maximum \$1,000 per day. This legislation was scheduled

for City Commission and was subsequently pulled by the administration. A copy of the legislation is attached for your review. The proposed legislation would authorize the Code Enforcement Board to impose fines up to \$1,000 per day for code violations, including violations of the Tree Protection Ordinance.

Please advise if I can be of further assistance.

cc: Mariano Loreto De Mola, Director of Code Enforcement

Enclosures

JLF/vm

COUNTY ORGANIZATION AND
INTERGOVERNMENTAL RELATIONS

Chapter 162
COUNTY OR MUNICIPAL
CODE ENFORCEMENT

.62.21 Enforcement of county or municipal codes or ordinances; penalties.--

1) As used in this section, "code enforcement officer" means any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.

2) A county or a municipality may designate certain of its employees or agents as code enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Employees or agents who may be designated as code enforcement officers may include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or firesafety inspectors. Designation as a code enforcement officer does not provide the code enforcement officer with the power of arrest or subject the code enforcement officer to the provisions of ss. 943.085-943.255. Nothing in this section amends, alters, or contravenes the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

3)(a) A code enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court will hear the charge.

b) Prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, a code enforcement officer may issue a citation to the person who has committed the violation. A code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

c) A citation issued by a code enforcement officer shall be in a form prescribed by the county or the municipality and shall contain:

1. The date and time of issuance.

2. The name and address of the person to whom the citation is issued.

3. The date and time the civil infraction was committed.

- . The facts constituting reasonable cause.
- . The number or section of the code or ordinance violated.
- . The name and authority of the code enforcement officer.
- . The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
- . The applicable civil penalty if the person elects to contest the citation.
- . The applicable civil penalty if the person elects not to contest the citation.

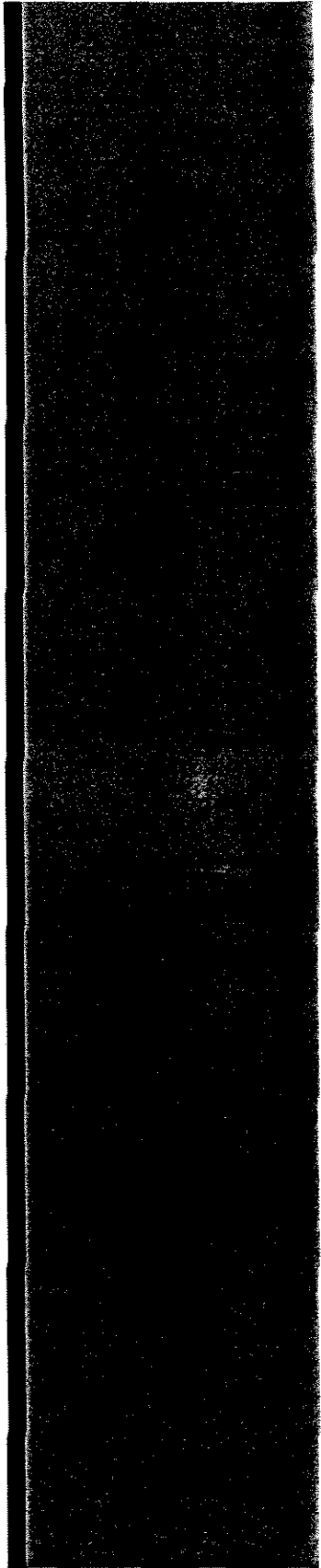
.0. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

4) After issuing a citation to an alleged violator, a code enforcement officer shall deposit the original citation and one copy of the citation with the county court.

5) A county or a municipality is authorized to enforce codes and ordinances under the provisions of this section and may enact an ordinance establishing procedures for the implementation of such provisions, including a schedule of violations and penalties to be assessed by code enforcement officers. If a county or municipality chooses to enforce codes or ordinances under the provisions of this section, each code or ordinance or the ordinance enacted by the county or municipality establishing procedures for implementation of this section shall provide:

- a) That a violation of a code or an ordinance is a civil infraction.
- b) A maximum civil penalty not to exceed \$500.
- c) A civil penalty of less than the maximum civil penalty if the person who has committed the civil infraction does not contest the citation.
- d) For the issuance of a citation by a code enforcement officer who has reasonable cause to believe that a person has committed an act in violation of a code or an ordinance.
- e) For the contesting of a citation in county court.
- f) Such procedures and provisions as are necessary to provide for the enforcement of a code or an ordinance under the provisions of this section.

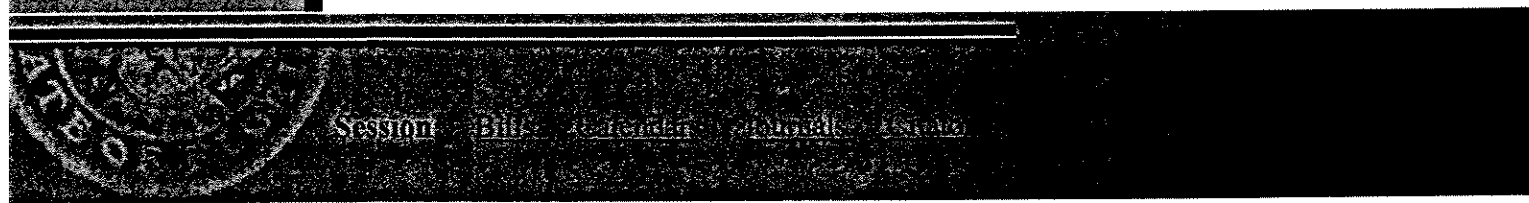
6) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.



7) The provisions of this part shall not apply to the enforcement pursuant to ss. 553.79 and 553.80 of the Florida Building Code adopted pursuant to s. 553.73 as applied to construction, provided that a building permit is either not required or has been issued by the county or the municipality.

3) The provisions of this section are additional and supplemental means of enforcing county or municipal codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. Nothing contained in this section shall prohibit a county or municipality from enforcing its codes or ordinances by any other means.

History.--s. 11, ch. 89-268; s. 7, ch. 94-291; s. 1444, ch. 95-147; s. 3, ch. 96-385; s. 4, ch. 98-287; s. 115, ch. 2000-141; s. 35, ch. 2001-186; s. 4, ch. 2001-372.



DRAFT
4/20/05

ORDINANCE NO. _____

AN ORDINANCE OF THE MIAMI CITY COMMISSION AMENDING CHAPTER 2 ADMINISTRATION/ARTICLE X OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, ENTITLED "CODE ENFORCEMENT" MORE PARTICULARLY BY AMENDING SECTIONS 2-811, 2-814 AND 2-817 OF SAID CODE; TO AMEND THE DEFINITIONS SECTION AND TO CLARIFY THE MAXIMUM DAILY FINES; CONTAINING A REPEALER PROVISION AND A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CITY CODE.

WHEREAS, the City of Miami has a continuous problem with violations of its codes and ordinances; and

WHEREAS, Chapter 162.09 of the Florida Statutes provides for enhanced code enforcement fines; and

WHEREAS, Chapter 162.09 (d) of the Florida Statutes allows a municipality having a population equal to or greater than 50,000 to adopt, by a vote of at least a majority plus one of the entire governing body of the municipality, an ordinance that gives code enforcement boards or special masters, authority to impose fines not to exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special master finds the violation to be irreparable or irreversible in nature; and

WHEREAS, the population within the City of Miami is over the required statutory amount of 50,000 inhabitants; and

WHEREAS, it is the intent of the City of Miami to promote, protect, and improve the health, safety, and welfare of its citizens by actively seeking compliance from violators of the City's codes and ordinances;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Ordinance are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

Section 2. Chapter 2/Article X of the Code of the City of Miami, Florida, as amended, entitled " Code Enforcement", is hereby amended in the following particulars:^{1/}

"CHAPTER 2
ADMINISTRATION

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ARTICLE X CODE ENFORCEMENT

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Sec. 2-811. Definitions

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Repeat violation means a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations.

^{1/} Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.

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Sec. 2-814. Enforcement procedure.

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(c) If a violation is found to have been repeated by a violator after having once been cited, the code inspector shall notify the violator that the violation must be cured immediately. The code inspector, upon notifying the violator of the repeated violation, shall then notify the code enforcement board or special master by requesting an immediate hearing. The code enforcement board or special master, through its clerical staff, shall promptly schedule a hearing before the board or special master and shall provide notice pursuant to F.S. § 162.12. The case may then be presented to and sanctioned by the enforcement board or special master even if the repeated violation has been corrected prior to the hearing, and notice shall so state. Upon finding that the same violation has been repeated by the same violator(s), the board or special master may order the violator(s) to pay a fine of not more than \$5,000.00 per day per violation ~~\$500.00~~ for each day the repeated violation continues past the date set for compliance, for each time the violation has been repeated.

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Sec. 2-817. Administrative costs, fines; liens.

(a) The board or special master, upon notification by the code inspector that an order has been complied with within the time specified in the order, shall accept such notification as acknowledgment of compliance and no fines shall be imposed.

(b) The board or special master, upon notification by the code inspector or city attorney that an order of the board or special master has not been complied with by the set time for compliance, may order the violator(s) to pay a fine of not more than ~~\$250.00~~ \$1000.00 ~~for each day the violation~~ per day per violation that continues past the date set for compliance, and not more than \$5,000 per day per violation for a repeat violation. However, if a code enforcement board or special master finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$15,000 per violation.

(c) In determining the amount of the fine, if any, the board or special master 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.

(d) ~~Only the~~ An enforcement board or special master may reduce a fine once a violator has complied with the order, and for good cause shown. The board or special master however, hereby authorizes the city to mitigate fines with violators, provided that the total amount of the daily fine imposed by the enforcement board or special master may only be reduced to the percentage stated in the schedule below:

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Section 3. All ordinances or parts of ordinances insofar as they are inconsistent or in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 5. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the Code of the City of Miami, Florida, as amended, which provisions may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or other appropriate word to accomplish such intention.

Section 6. This Ordinance shall become effective thirty (30) days after final reading and adoption thereof.^{2/}

^{2/} This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective

PASSED ON FIRST READING BY TITLE ONLY this _____ day of _____, 2005.

PASSED AND ADOPTED ON SECOND AND FINAL READING BY TITLE ONLY this _____ day of _____, 2005.

MANUEL A. DIAZ, MAYOR

ATTEST:

PRISCILLA A. THOMPSON
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

JORGE L. FERNANDEZ
CITY ATTORNEY

immediately upon override of the veto by the City Commission or upon the effective date stated herein, whichever is later.