

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 2 ENTITLED "ADMINISTRATION," ARTICLE VI ENTITLED "CODE ENFORCEMENT", BY AMENDING SECTION 2-631 ENTITLED "DEFINITIONS", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-632 ENTITLED "FINDINGS AND PURPOSE", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-633 ENTITLED "INTENT", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-634 ENTITLED "SPECIAL MASTER", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-635 ENTITLED "POWERS AND DUTIES OF SPECIAL MASTER", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-636 ENTITLED "STAFF SUPPORT AND LEGAL COUNSEL TO THE SPECIAL MASTER", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE, BY CLARIFYING THE LEGAL REPRESENTATION OF THE SPECIAL MAGISTRATE AND CODE COMPLIANCE STAFF; BY AMENDING SECTION 2-637 ENTITLED "ENFORCEMENT AND PROCEDURE", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-638 ENTITLED "NOTICES", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE, BY REFLECTING THE REQUIREMENTS OF F.S. 162.12(A); BY AMENDING SECTION 2-639 ENTITLED "PRESENTATION OF CITY'S CASE", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE, BY CLARIFYING THE LEGAL REPRESENTATION OF CODE COMPLIANCE STAFF; BY AMENDING SECTION 2-640 ENTITLED "HEARING; TESTIMONY", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE, BY REQUIRING MINUTES BE TAKEN PURSUANT TO F.S. 286.011(2); BY AMENDING SECTION 2-641 ENTITLED "FINDINGS AND ORDER", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-642 ENTITLED "APPEALS", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-643 ENTITLED

"FINE FOR COMPLIANCE OR REPEAT VIOLATION; COSTS OF REPAIR", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-644 ENTITLED "MAXIMUM AMOUNT OF FINES", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE, BY CLARIFYING FINES PER VIOLATION; BY AMENDING SECTION 2-645 ENTITLED "DETERMINATION OF FINES; REDUCTION OF FINES; ADDITIONAL FEES", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE, BY CLARIFYING FACTORS TO LEVY FINES AND COSTS; BY AMENDING SECTION 2-646 ENTITLED "LIEN; ENFORCEMENT OF ORDER", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-676 ENTITLED "DEFINITION", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-678 ENTITLED "AUTHORITY TO ISSUE CITATION", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE, BY CLARIFYING OPTIONS OF CODE OFFICERS ON ISSUING CITATIONS; BY AMENDING SECTION 2-679 ENTITLED "VIOLATIONS; PROCEDURE", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE; BY AMENDING SECTION 2-680 ENTITLED "CIVIL PENALTY", BY CHANGING REFERENCES OF CODE ENFORCEMENT TO CODE COMPLIANCE, BY CLARIFYING CIVIL PENALTY FINE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission for the City of Key West recognizes that on January 4, 2007, a resolution was passed by the City Commission changing the title of code enforcement to code compliance; and

WHEREAS, the City Commission recognizes that the role of the city attorney and his staff in presenting code compliance cases to the special magistrate needs clarification.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST,
FLORIDA:

Section 1: That Section 2-631 of the Code of Ordinances is
hereby amended as follows*:

ARTICLE VI- CODE ~~ENFORCEMENT~~ COMPLIANCE

DIVISION 2. ~~SPECIAL MASTER~~ SPECIAL MAGISTRATE PROCEDURE

Sec. 2-631. - Definitions.

The following words, terms and phrases, when used in this division,
shall have the meanings ascribed to them in this section, except
where the context clearly indicates a different meaning:

Code inspector means any authorized city agent or employee
whose duty it is to ensure code compliance.

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~~ compliance special magistrate or any other
quasi-judicial or judicial process to have violated or who has
admitted violating the same provision within five years prior to
the violation, notwithstanding the violations occur at different
locations.

*(Coding: Added language is underlined; deleted language is ~~struck through~~. Added language for second reading is double-underlined; deleted language is ~~double struck through~~.)

Section 2: That Section 2-632 of the Code of Ordinances is hereby amended as follows*:

Sec. 2-632. - Findings and purpose.

The city commission has determined that full enforcement of the city codes and ordinances is essential to ensuring the public health, safety and welfare. To accomplish this purpose, the city commission creates the position of code ~~enforcement~~ compliance special ~~master~~ magistrate for the hearing of all code ~~enforcement~~ compliance cases.

Section 3: That Section 2-633 of the Code of Ordinances is hereby amended as follows:

Sec. 2-633. - Intent.

It is the intent of this division to promote, protect, and improve the health, safety, and welfare of the citizens of the city by creating the special ~~master~~ magistrate with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in the city where a pending or repeated violation continues to exist.

Section 4: That Section 2-634 of the Code of Ordinances is hereby amended as follows:

Sec. 2-634. - Special ~~master~~ magistrate.

(a) The city commission shall appoint one or more special ~~masters~~ magistrates to hear code ~~enforcement~~ compliance cases. The city commission may appoint the number of special ~~masters~~ magistrates that the city commission determines is necessary. All special ~~masters~~ magistrates shall serve at the pleasure of the city commission and may be removed from the position with or without cause by a majority vote of the city commission. The terms and conditions of a special ~~master's~~ magistrate's appointment, including but not limited to fees and length of the term of appointment, shall be determined by resolution of the city commission.

(b) All persons appointed as code ~~enforcement~~ compliance special ~~masters~~ magistrates must have been members of the state bar for five years and have experience either in a judicial or special ~~master~~ magistrate capacity or in local government or land use law. A code ~~enforcement~~ compliance special ~~master~~ magistrate may not hold any other appointive or elective office while serving as special ~~master~~ magistrate.

(c) The code ~~enforcement~~ compliance special ~~master~~ magistrate is granted the same powers, duties and authority under F.S. ch. 162, including the authority to impose fines and liens and to order foreclosures of liens as that granted by statute or ordinance to a code ~~enforcement~~ compliance board and its chairperson.

(d) The special ~~master~~ magistrate may also determine a repeat violation, as set forth in section 2-631, and impose fines accordingly where the original finding of violation was made by the code ~~enforcement~~ compliance ~~board~~ special magistrate.

Section 5: That Section 2-635 of the Code of Ordinances is hereby amended as follows:

Sec. 2-635. - Powers and duties of special ~~master~~ magistrate.

The special ~~master~~ magistrate shall have the power to:

- (1) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the police department.
- (2) Subpoena evidence to its hearings.
- (3) Take testimony under oath.
- (4) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

Section 6: That Section 2-636 of the Code of Ordinances is hereby amended as follows:

Sec. 2-636. - Staff support and legal counsel to special ~~master~~ magistrate.

(a) The city manager shall provide appropriate staff support to enable the special ~~master~~ magistrate to fulfill his duties as provided in this division.

(b) ~~The office of the city attorney shall provide legal counsel to the special master. An assistant city attorney shall provide legal counsel to city code compliance staff. In the event that the special magistrate requires legal assistance from the city attorney, a "Chinese wall" shall be observed between the city attorney and the assistant city attorney consistent with Florida Bar Rule of Professional Conduct 4-1.10.~~

Section 7: That Section 2-637 of the Code of Ordinances is hereby amended as follows:

Sec. 2-637. - Enforcement procedure.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes. The special ~~master~~ magistrate shall not have the power to initiate such enforcement proceedings.

(b) Except as provided in subsections (c) and (d) of this section, if a violation of the codes is found, the code inspector shall notify the violator and give him a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify the special ~~master~~ magistrate and request a hearing. The special ~~master~~ magistrate, through clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in section 2-638 to the violator. At the option of the

special ~~master~~ magistrate, notice may additionally be served by publication or posting as provided in section 2-638. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the special ~~master~~ magistrate, even if the violation has been corrected prior to the hearing, and the notice shall so state.

(c) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the special ~~master~~ magistrate and request a hearing. The special ~~master~~ magistrate, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to section 2-638. The case may be presented to the special ~~master~~ magistrate even if the repeat violation has been corrected prior to the special ~~master~~ magistrate hearing, and the notice shall so state. If the repeat violation has been corrected, the special ~~master~~ magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his rights to this hearing and pay the costs as determined by the special ~~master~~ magistrate.

(d) If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the

public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the special ~~master~~ magistrate and request a hearing.

(e) If the owner of property which is subject to an enforcement proceeding before the special ~~master~~ magistrate or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code ~~enforcement~~ compliance proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code ~~enforcement~~ compliance proceeding.

(4) File a notice with the code ~~enforcement~~ compliance official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

(f) A failure to make the disclosures described in subsections (e) (1), (2), and (3) of this section before the transfer creates a rebuttable presumption of fraud. If the property is transferred

before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

Section 8: That Section 2-638 of the Code of Ordinances is hereby amended as follows:

Sec. 2-638. - Notices.

(a) All notices required by this division shall be provided to the alleged violator by:

(1) Certified mail, and at the option of the local government return receipt requested, provided if such notice is sent under this subsection to the owner of the property in question ~~at~~ to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, ~~and at any other address provided to the city by such owner and is returned as unclaimed or refused,~~ notice may be provided by posting as described in subsection (b) (1) of this section and by first class mail directed to the addresses furnished to the

city with a properly executed proof of mailing or affidavit confirming the first class mailing;

(2) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the city commission;

(3) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(4) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(b) In addition to providing notice as set forth in subsection (a) of this section, at the option of the special ~~master~~ magistrate, notice may also be served by publication or posting, as follows:

(1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the special ~~master~~ magistrate is located. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

(2) In lieu of publication as described in subsection (b) (1) of this section, such notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the

property upon which the violation is alleged to exist and the other of which shall be at the primary city office. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(3) Notice by publication or posting may run concurrently with, or may follow, an attempt to provide notice by hand delivery or by mail as required under subsection (a) of this section.

(c) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a) of this section, together with proof of publication or posting as provided in subsection (b) of this section, shall be sufficient to show that the notice requirements of this division have been met, without regard to whether or not the alleged violator actually received such notice.

Section 9: That Section 2-639 of the Code of Ordinances is hereby amended as follows:

Sec. 2-639. - Presentation of city's case.

Each case before the special ~~master~~ magistrate ~~shall~~ may, at the option of the administrative staff, be presented by either the office of the city attorney ~~a private attorney hired by the city for the exclusive purpose of presenting the city's case before the special master~~ or by a member of the city administrative staff. The attorney representing the city shall not serve both as legal advisor

to the special ~~master~~ magistrate and as presenter of cases before the special ~~master~~ magistrate.

Section 10: That Section 2-640 of the Code of Ordinances is hereby amended as follows:

Sec. 2-640. - Hearing; testimony.

The special ~~master~~ magistrate shall hear the cases on the agenda for that day. All testimony shall be under oath and minutes shall be taken pursuant to F.S.286.011(2). ~~shall be recorded.~~ The special ~~master~~ magistrate shall take testimony from the code inspector and the alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.

Section 11: That Section 2-641 of the Code of Ordinances is hereby amended as follows:

Sec. 2-641. - Findings and order.

(a) At the conclusion of the hearing, the special ~~master~~ magistrate shall issue findings of fact based on the evidence of the record and conclusions of law and shall issue an order affording the proper relief consistent with powers granted in this division. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in section 2-643, the cost of repairs may be

included along with the fine if the order is not complied with by such date.

(b) A certified copy of such order shall be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator, and if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the special ~~master~~ magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

Section 12: That Section 2-642 of the Code of Ordinances is hereby amended as follows:

Sec. 2-642. - Appeals.

An aggrieved party, including the city, may appeal a final administrative order of the special ~~master~~ magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special ~~master~~ magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed pursuant to F.S. 162.11.

Section 13: That Section 2-643 of the Code of Ordinances is hereby amended as follows:

**Sec. 2-643. - Fine for noncompliance or repeat violation;
costs of repair.**

The special ~~master~~ magistrate, upon notification by the code inspector that a previous order has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine for each day the violation continues past the date set by the special ~~master~~ magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in section 2-637(d), the special ~~master~~ magistrate shall notify the city commission, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this division. Making such repairs does not create a continuing obligation on the part of the city commission to make further repairs or to maintain the property and does not create any liability against the city commission for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this

article, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, the special ~~master~~ magistrate finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in section 2-644.

Section 14: That Section 2-644 of the Code of Ordinances is hereby amended as follows:

Sec. 2-644. - Maximum amount of fines.

A fine imposed pursuant to this division shall not exceed \$250.00 per day, per violation for a first violation and shall not exceed \$500.00 per day, per violation for a repeat violation and, in addition, may include all costs of repairs pursuant to section 2-643. However, if the special ~~master~~ magistrate finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.

Section 15: That Section 2-645 of the Code of Ordinances is hereby amended as follows:

Sec. 2-645. - Determination of fines; reduction of fines; additional fees.

(a) In determining the amount of any fine, if any, under this division, the special ~~master~~ magistrate shall consider the following factors:

(1) The gravity of the violation, including, but not limited to the impact of the violation on life, health, or safety issues;

(2) Any actions taken by the violator to correct the violation; and

(3) Any previous violations committed by the violator.

(b) The special ~~master~~ magistrate may reduce a fine imposed pursuant to this division pursuant to Sec.2-682.

(c) In addition to such fines, the special ~~master~~ magistrate may impose ~~additional fines to cover~~ all costs incurred by the city ~~commission~~ in enforcing its codes against a violator and all costs of repairs incurred by the city in achieving compliance pursuant to section 2-643.

Section 16: That Section 2-646 of the Code of Ordinances is hereby amended as follows:

Sec. 2-646. - Lien; enforcement of order.

(a) A certified copy of an order imposing a fine pursuant to this division may be recorded in the public records and thereafter shall constitute a lien against the land on which the violator exists or, if the violator does not own the land, upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of the state, including execution and levy

against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes.

(b) A fine imposed pursuant to this division shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. Payment of all fines and costs shall be made payable to the City of Key West within 30 days of issuance of the findings and order of the code compliance special magistrate unless a finding of good cause is made by the special magistrate to provide for a longer payment period not to exceed 90 days. Upon expiration of 30 days after issuance of the findings and order by the special magistrate, city staff shall institute lien procedures in accordance with F.S. § 162.09.

(c) A lien arising from a fine imposed pursuant to this division runs in favor of the city commission, and the city commission may execute a satisfaction or release of lien entered pursuant to this division.

(d) After three months from the filing of any such lien which remains unpaid, the special ~~master~~ magistrate may authorize the city attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to this division may be foreclosed on real property which is a homestead under article X, section 4 of the state constitution.

Section 17: That Section 2-676 of the Code of Ordinances is hereby amended as follows:

Sec. 2-676. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Code enforcement compliance officer means any designated city employee or agent whose duty it is to enforce codes and ordinances enacted by the city, including but not limited to code inspectors, law enforcement officers, and fire safety inspectors; provided, however, nothing in this division shall be construed to authorize any person designated as a code ~~enforcement~~ compliance officer to perform any functions or duties of a law enforcement officer other than as specified in this division. A code ~~enforcement~~ compliance officer shall not make physical arrests or take any person into custody and, except for fire inspectors, shall be exempt from requirements relating to the special risk class of the state retirement system, bonding, and the criminal justice standards and training commission, as defined and required by general law. Designation as a code ~~enforcement~~ compliance officer does not subject a person to the provisions of F.S. §§ 943.085-943.255. Nothing in this division amends, alters, or contravenes the provisions of any

state-administered retirement system or any state-supported retirement system established by general law.

Law enforcement officer means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

Section 18: That Section 2-678 of the Code of Ordinances is hereby amended as follows:

Sec. 2-678. - Authority to issue citations.

Any code ~~enforcement~~ compliance officer is empowered to issue citations 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 city code provision or ordinance. All city code provisions and ordinances may, at the election of the code compliance officer, be enforced by this division by means of citation to the county court, except where expressly prohibited by law or ordinance.

Section 19: That Section 2-679 of the Code of Ordinances is hereby amended as follows:

Sec. 2-679. - Violations; procedure.

(a) Prior to issuing a citation pursuant to this division, a code ~~enforcement~~ compliance officer shall provide notice to the person that the person has committed a violation of a code provision 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~~ compliance officer finds that the person has not corrected the violation within the time period, a code ~~enforcement~~ compliance officer may issue a citation to the person who has committed the violation. A code ~~enforcement~~ compliance 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~~ compliance 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.

(b) A code ~~enforcement~~ compliance officer shall issue a citation in a form prescribed by the city containing the following information:

- (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.

(4) The facts constituting reasonable cause.

(5) The number or section of the code or ordinance violated.

(6) The name and authority of the code ~~enforcement~~ compliance officer.

(7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation.

(8) The applicable civil penalty if the person elects to contest the citation.

(9) The applicable civil penalty if the person elects not to contest the citation.

(10) 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 the 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.

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

(d) This section is an additional and supplemental means of enforcing those city codes or ordinances referred to in section 2-677. Nothing contained in this division shall prohibit the city from enforcing its codes or ordinances by any other lawful means.

Section 20: That Section 2-680 of the Code of Ordinances is hereby amended as follows:

Sec. 2-680. - Civil penalty.

A violation of a city code or ordinance in which the code compliance officer has elected to issue a civil citation pursuant to this division shall result in assessment of a civil penalty of \$100.00 if the person who has committed the civil infraction does not contest the citation. If the person cited 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 the right to contest the citation, and in such case judgment may be entered against the person for an amount up to the maximum civil penalty, not to exceed \$500.00. Any person who willfully refuses to sign and accept a citation issued by a code enforcement compliance officer shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or 775.083.

Section 21: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 22: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 23: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2016.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2016.

Authenticated by the presiding officer and Clerk of the Commission on _____, 2016.

Filed with the Clerk _____, 2016.

Mayor Craig Cates	_____
Vice Mayor Clayton Lopez	_____
Commissioner Samuel Kaufmann	_____
Commissioner Richard Payne	_____
Commissioner Margaret Romero	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Executive Summary

To: Jim Scholl, City Manager
From: Jim Young, Director of Code Compliance *JY*
Date: April 6, 2016
Subject: Amendment to the Code Enforcement Ordinance

Action statement:

This measure proposes to amend Chapter Two entitled Administration, Article VI entitled Code Enforcement, of the City Code of Ordinances.

Background:

On January 4, 2007 Resolution 07-010 was passed by the Key West City Commission. This resolution changed the name of the Code Enforcement Division to the Code Compliance Division, however Article VI was not changed.

In 2014 Florida State Statute 162.12 (a) was amended regarding Notices. The Statute now states; "(a) Certified mail, and at the option of the local government return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1." This is also in conflict with City Ordinance Section Sec. 2-638 (a) (1) Notices, which states; "All notices required by this division shall be provided to the alleged violator by: Certified mail, return receipt requested, provided if such notice is sent under this subsection to the owner of the property in question at the address listed in the tax collector's office for tax notices and at any other address provided to the city by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subsection (b)(1) of this section and by first class mail directed to the addresses furnished to the city with a properly executed proof of mailing or affidavit confirming the first class mailing."

At a recent Code Compliance hearing it was discovered that there was a conflict with Florida State Statute and the City's Ordinance pertaining to how the special magistrate is provided legal counsel and who may present a case before the special magistrate. Therefore, these proposed amendments will clarify the role of the city attorney and his staff in providing legal counsel to the special magistrate and the presentation of code compliance cases before the special magistrate.

Options:

1. To approve the proposed ordinance revision which will update Chapter Two, Article VI.
2. To defeat the proposed ordinance amendment.

Recommendation:

To approve the proposed ordinance revision.

RESOLUTION NO. 07-010

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, DIRECTING THE CITY MANAGER TO CHANGE THE NAME OF THE CODE ENFORCEMENT DIVISION TO THE CODE COMPLIANCE DIVISION; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission recognizes as a matter of policy that the goal of code enforcement is actually code compliance by the citizens and property owners of Key West;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the City Manager is hereby authorized to change the name of the Code Enforcement Division to the Code Compliance Division of the City of Key West.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3 day of January, 2007.

Authenticated by the presiding officer and Clerk of the Commission on January 4, 2007.

Filed with the Clerk January 4, 2007.


MORGAN McPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK