

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AMENDING THE CITY OF CAPE CORAL, FLORIDA, CODE OF ORDINANCES, CHAPTER 2, "ADMINISTRATION", ARTICLE V, "BOARDS AND COMMISSIONS", DIVISION 3, "CODE ENFORCEMENT", BY CREATING SECTION 2-88.5, "PROCEDURE TO REQUEST THAT A FINE OR LIEN BE REDUCED; CONDITIONS AND CRITERIA THEREFOR"; REGARDING THE PROCEDURE TO REQUEST FINE OR LIEN REDUCTIONS BY THE SPECIAL MAGISTRATE; PROVIDING FOR CODIFICATION AND RESOLUTION OF CONFLICTING LAWS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Sections 2-81 through 2-92 of the City's Code of Ordinances provides for code enforcement proceedings before a special magistrate; and

WHEREAS, the Mayor and City Council for the City of Cape Coral desire to establish procedures to allow property owners to apply for forgiveness or reduction of an existing code enforcement lien or fine before the special magistrate; and

WHEREAS, the Mayor and City Council desire to create conditions and criteria to be applied by the special magistrate when considering such applications for forgiveness or reduction of an existing code enforcement lien or fine, in the interest of promoting greater efficiency, consistency, and fairness; and

WHEREAS, the Mayor and City Council hereby find that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated by reference and are approved.

SECTION 2. Chapter 2, Article V, Division 3, of the City of Cape Coral, Florida, Code of Ordinances, is hereby amended by creating Section 2-88.5, to read in its entirety as follows:

**CHAPTER 2
ARTICLE V
DIVISION 3**

§ 2-88.5 Procedure to request that a fine or lien be reduced; conditions and criteria therefor.

- (a) The legal owner of property against which a fine or lien has been imposed by the City, whether it be the violator or a subsequent purchaser of the property, or an enforcing department, may seek a satisfaction of such fine or lien with less than full payment thereof.
- (b) The legal owner or enforcing department may seek such satisfaction:
 - (1) Upon motion to the special magistrate as prescribed by subsection (d); or
 - (2) Upon joint motion between the enforcing department and the legal owner as prescribed by subsection (e).
- (c) No such motion shall be granted by the special magistrate unless:
 - (1) All ad valorem property taxes, special assessments, City utility charges and other government-imposed liens against the subject real property have been paid; and
 - (2) All City Code violations as related to the order rendered by the special magistrate at the initial violation hearing have been corrected under necessary permits issued therefor.
- (d) Reduction upon motion.
 - (1) Either party may move for a reduction in fine or lien as ordered from a violation hearing. Said motion shall be filed with the City Manager, or the City Manager's designee, a copy of which shall be furnished by the movant to the other party and to the City Attorney's Office.

- (2) A hearing shall be convened by the City Manager, or the City Manager's designee, before the special magistrate, with notice pursuant to Section 2-85 being transmitted to both the legal owner and the enforcing department.
 - (3) At the hearing, the movant shall have the opportunity to advise the special magistrate of the mitigating factors set forth herein.
 - (4) The enforcing department shall appear at said hearing and advise the special magistrate as to whether compliance has been achieved at the subject property as related to the order rendered by the special magistrate at the violation hearing, and in addition shall advise as to whether all ad valorem property taxes, special assessments, city utility charges and other government-imposed liens against the subject real property have been paid, and whether the legal owner is personally indebted to the City for any reason.
 - (5) At the conclusion of the hearing, the special magistrate shall render his or her findings of facts and conclusions of law orally based on evidence entered into the record. These findings shall be reflected in a written order, copies of which shall be transmitted to the respondent and the enforcing department by the special magistrate through its clerical staff within ten business days after the hearing.
 - (6) The special magistrate shall, in addition to granting or denying the request for reduction in fines and liens, also assess the City's administrative costs for the hearing in the order, to be paid by the moving party. Such administrative costs shall be approved by Resolution of the City Council.
- (e) Reduction upon joint motion.
- (1) If an agreement for reduction in a fine or lien has been reached between an enforcing department and a legal owner of the subject property, a joint motion signed by representatives for both parties may be filed with the special magistrate through its clerical staff, along with a proposed agreement outlining the terms of reduction and/or vacating any fines or liens, as applicable.
 - (2) The enforcing department shall determine whether compliance have been achieved as related to the order rendered by the special magistrate at the violation hearing, determine whether all ad valorem property taxes, special assessments, city utility charges and other government-imposed liens against the subject real property have been paid, and whether the legal owner is personally indebted to the city for any reason.
 - (3) Upon receipt of the joint motion and proposed agreement, the special magistrate shall ratify and approve the agreement for the reduction in a fine or lien amount and assess the City's administrative costs. Such administrative costs shall be approved by Resolution of the City Council.
- (f) If the subject property for which a fine or lien reduction is being considered is owned by a government or quasi-government entity, the special magistrate may reduce such fine or lien even if the violation has not been corrected.
- (g) Fine or lien reduction criteria. In evaluating a request for a fine or lien to be reduced, the special magistrate shall consider the following:
- (1) The gravity of the violation;
 - (2) The time in which it took the violator to come into compliance;
 - (3) Any prior or subsequent code violations on the subject property during the current owner's time of ownership;
 - (4) Whether the owner requesting the reduction took proactive action to correct the violations for which the fine or lien was imposed;
 - (5) Any actual costs expended by the owner to cure the violation(s) as provided by supporting documentation, including payment of City licensing or permit fees; and
 - (6) Any other factor which may show a hardship on the owner requesting the reduction or which may provide a reasonable basis for the requested relief.
- (h) Liens or fine amounts for hard costs incurred by the City, including, but not limited to, lot clearing, board-up, demolition, and any costs incurred by a City contractor to cure a violation, shall not be reduced by the special magistrate.
- (i) If the applicant fails to timely pay the reduced fine or lien amount, and the City's administrative costs, in accordance with the terms approved by a special magistrate order under Subsection (d),

or agreement under Subsection (e), the fine or lien amount shall revert back to the original amount.

- (j) The special magistrate's consideration of and determination on whether to forgive or reduce a code compliance fine/lien is an administrative decision as to whether to accept less for a debt owed to the city, not a quasi-judicial one. The property owner/code violator has already received due process through the special magistrate code compliance proceeding and had appellate rights through that process. The procedures in this Section 2-88.5 are not intended to create additional substantive or procedural due process rights.

SECTION 3. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AT THEIR REGULAR SESSION THIS _____ DAY OF _____, 2025.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

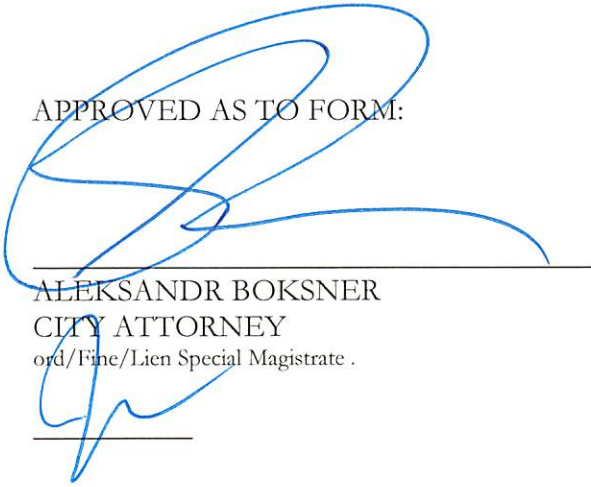
GUNTER _____
STEINKE _____
LEHMANN _____
DONNELL _____

LASTRA _____
KILRAINE _____
LONG _____
KADUK _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2025.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:



ALEKSANDR BOKSNER
CITY ATTORNEY
ord/Fine/Lien Special Magistrate .
