

CITY OF MIDWAY, FLORIDA

ORDINANCE NO. 2020-01

AN ORDINANCE OF THE CITY OF MIDWAY,
FLORIDA ADOPTING A RULE FOR CODE
COMPLIANCE AND ASSESSMENT OF FINES;
PROVIDING FOR SEVERABILITY; AND
PROVIDING AN EFFECTIVE DATE.

WHEREAS, under Chapter 162 of the Florida Statutes, the City Council determines that the City has the authority to hold hearings and assess fines against violators of respective municipal codes, ordinances and land development regulations.

WHEREAS, after such determination the City Council concludes that the adoption of such rule is necessary to promote, protect, and improve the health, safety, and welfare of all citizens by resolving citizen complaints and enforcing the City's codes.

WHEREAS, the City Council wanted to ensure priorities for enforcement which include: threats to public health & safety of dangerous, abandoned, and/or unsecured buildings, hazardous pools, ponds, and/or excavations neglected, abandoned, and/or environmental, zoning and junk & litter; and

WHEREAS, after such determination the City Council concludes that such efforts of enforcement are achieved through the collective efforts of citizens and city code enforcement personnel, and in special cases, law enforcement.

WHEREAS, the City Council scheduled a public meeting to occur in the City's Chambers at which time public comments, or timely delivered written comments, would be received and considered; and

WHEREAS, the City Clerk provided proper public notice of the City Council's public meeting.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF
MIDWAY, FLORIDA:**

ARTICLE 1

INTRODUCTION

SECTION 1 LEGISLATIVE FINDINGS. It is hereby ascertained determined, and declared that:

(A) Pursuant to Article VIII, section 2 of the Florida Constitution and section 166.021, Florida Statutes, the City of Midway, Florida shall have the governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited and/or preempted by law.

(B) Pursuant to Section 162.02, Florida Statutes, the city council of the City of Midway, Florida has the responsibility and authority to promote, protect, and improve the health, safety, and welfare of the citizens of Midway, Florida by authorizing the creation of administrative boards 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 Midway, Florida, where a pending or repeated violation continues to exist.

(C) Pursuant to Section 162.03(2), Florida Statutes, the city council of the City of Midway, Florida may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective municipal codes,

ordinances and land development regulations. A special magistrate shall have the same status as an enforcement board under this ordinance.

(D) The creation of an ordinance adopting a rule for code compliance and assessment of fines within the City of Midway, Florida is necessary to provide a public purpose and promote, protect, and improve the health, safety, and welfare of the citizens of Midway, Florida.

(E) There has been and continues to be an inordinate amount of complaints by citizens and notices by code enforcement personnel of Midway, Florida, necessitating a rule for code compliance and assessment of fines within the City of Midway, Florida.

(F) The City Council of Midway, Florida finds and determines that a substantial number of complaints of the City cannot be resolved unless such rule is mandatory.

(G) It is the intent of the City Council to enforce compliance with all municipal codes and/or ordinances to hold hearings and assess fines against repeated violators of the respective municipal codes, ordinances and land development regulations; and to promote the health, safety, and welfare of the citizens of Midway, Florida.

(H) It is the intent of the City Council to adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the City Council, or both, the authority to hold hearings and assess fines against violators of the respective municipal codes, ordinances and land development regulations.

SECTION 2 DEFINITIONS. As used in this Ordinance, the following words and terms shall have the following meanings, unless the context clearly otherwise requires.

(A) "Code enforcement personnel" means any authorized agent or employee of the City of Midway whose duty it is to assure code compliance.

(B) "Repeat violation" means a violation of a provision of a code, ordinance, or land development regulation by a person who has been previously found through any code enforcement personnel or planning and zoning committee 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.

SECTION 3 INTERPRETATION. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "shall" or "will" are mandatory; the term "may" is discretionary; the terms "hereof," "herein," "hereto," "hereunder," and similar terms refer to this Ordinance; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

ARTICLE II

CITATIONS; PENALTIES; ADMINISTRATIVE FINES; COSTS OF REPAIRS; LIENS; AND DURATION

SECTION 1 CITATIONS; PENALTIES. The City of Midway is authorized to enforce codes and ordinances by establishing procedures for the implementation of such provisions, including a schedule of violations and penalties to be assessed by code enforcement personnel.

(A) All code enforcement personnel are authorized to issue a citation to a person when, based upon personal investigation, the code enforcement personnel 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 personnel 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 personnel finds that the person has not corrected the violation within the time period, a code enforcement personnel may issue a citation to the person who has committed the violation. Code enforcement personnel do 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 personnel 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 code enforcement personnel 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.
- (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 personnel.
- (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 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.

(D) After issuing a citation to an alleged violator, a code enforcement personnel shall deposit the original citation and one copy of the citation with the county court and must provide a copy of the court filing to the City manager.

(E) Penalties:

(1) A violation of a code or an ordinance is a civil infraction.

(2) If the person who has committed the civil infraction does not contest the citation, a civil penalty of less than the maximum civil penalty shall be imposed.

(3) No penalty shall be imposed for the issuance of a citation by code enforcement personnel who has reasonable cause to believe that a person has committed an act in violation of a code or an ordinance.

(4) No penalty shall be imposed for the contesting of a citation in county court.

(5) Any person who willfully refuses to sign and accept a citation issued by code enforcement personnel shall be guilty of a misdemeanor of the second degree, punishable as provided in Fla. Stat. § 775.082 or § 775.083.

SECTION 2 ADMINISTRATIVE FINES; COSTS OF REPAIR; LIENS.

(A) An enforcement board, upon notification by code enforcement personnel that an order of the enforcement board 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 in an amount specified

in this section for each day the violation continues past the date set by the enforcement board 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 Fla. Stat. § 162.06(4), the enforcement board shall notify the City Council (if not the City Council), 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 section. Making such repairs does not create a continuing obligation on the part of the City Council to make further repairs or to maintain the property and does not create any liability against the City Council 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 part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in paragraph (B)(1).

(B)(1) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (A). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.

(2) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

- a. The gravity of the violation;
- b. Any actions taken by the violator to correct the violation; and

c. Any previous violations committed by the violator.

(3) An enforcement board may reduce a fine imposed pursuant to this section.

(4) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this 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. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the City of Midway, and the City Council may execute a satisfaction or release of lien entered pursuant to this section. After 3 months from the filing of any such lien which remains unpaid, the enforcement board 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 the provisions of this part may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under s. 4(a), Art. X of the State Constitution.

SECTION 3 DURATION OF LIENS. No lien shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to Fla. Stat. § 162.09(3) in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. The

City Council shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

ARTICLE III

ENFORCEMENT BOARD ORGANIZATION; POWERS; PROCEDURES; AND HEARINGS

SECTION 1 ORGANIZATION OF ENFORCEMENT BOARDS AND POWERS.

(A) The City Council may serve as a enforcement board or may appoint one or more code enforcement boards and legal counsel for the enforcement boards. Should the population of the City of Midway exceed a population equal to or greater than 5,000 persons, the City Council must appoint seven-member code enforcement boards. The City Council may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

(B) Members of the enforcement boards shall be residents of the City of Midway. Appointments shall be made in accordance with applicable law and ordinances based on experience or interest in the subject matter jurisdiction of the respective code enforcement board, in the sole discretion of the City Council. The membership of each enforcement board shall, whenever possible, include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.

(C) The terms of appointments of the members of the enforcement boards shall be in accordance with Fla. Stat. § 162.05, with exception of the City Council serving as an enforcement board.

- (D) Each enforcement board shall have the power to:
- (1) Adopt rules for the conduct of its hearings.
 - (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the City of Midway.
 - (3) Subpoena evidence to its hearings.
 - (4) Take testimony under oath.
 - (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

SECTION 2 ENFORCEMENT PROCEDURES.

(A) It shall be the duty of the Code enforcement personnel to initiate enforcement proceedings of the various codes; however, no member of an enforcement board shall have the power to initiate such enforcement proceedings.

(B) Except as provided in subsections (3) and (4), if a violation of the codes is found, the code enforcement personnel shall notify the violator in writing and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify an enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in Fla. Stat. § 162.12, to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in Fla. Stat. § 162.12. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code enforcement personnel, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(C) If a repeat violation is found, the code enforcement personnel 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 an enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to Fla. Stat. § 162.12. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state. If the repeat violation has been corrected, the code enforcement board 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 or her rights to this hearing and pay said costs as determined by the code enforcement board.

(D) If the code enforcement personnel 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 enforcement board and request a hearing.

(E) If the owner of property that is subject to an enforcement proceeding before an enforcement board, special 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 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 proceeding.

(4) File a notice with the City of Midway 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 5 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (a), (b), and (c) 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 3 ENFORCEMENT BOARD HEARINGS.

(A) Upon request of the code enforcement personnel, or at such other times as may be necessary, the chair of an enforcement board may call a hearing of an enforcement board; a hearing also may be called by written notice signed by at least three members of a seven-member enforcement board or signed by at least two members of a five-member enforcement board. Minutes shall be kept of all hearings by each enforcement board, and all hearings and proceedings shall be open to the public. The City Council shall provide clerical and administrative personnel as may be reasonably required by each enforcement board for the proper performance of its duties.

(B) Each case before an enforcement board shall be presented by a member of the administrative staff of the City of Midway. Upon prevailing in prosecuting a case before the enforcement board, the City of Midway shall be entitled to recover all costs incurred in

prosecuting the case before the board and such costs may be included in the lien authorized under Fla. Stat. §162.09(3).

(C) An enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code enforcement personnel and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(D) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those members present and voting, except that at least four members of a seven-member enforcement board, or three members of a five-member enforcement board, must vote in order for the action to be official. 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 Fla. Stat. § 162.09(1), the cost of repairs may be included along with the fine if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the City of Midway 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 enforcement board 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.

ARTICLE IV

SEVERABILITY; SUPPLEMENTAL AUTHORITY; EFFECTIVE DATE

SECTION 1 SEVERABILITY. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 2 SUPPLEMENTAL AUTHORITY. Except as expressly provided for elsewhere in this Ordinance, this Ordinance shall not be construed as repealing or superseding any City of Midway Ordinances and consistent provisions therein, or Florida Statutes or Laws, and shall be construed as providing alternative or supplemental authority for the exercise of all powers granted and provided for herein. This Ordinance shall be read in concert with the Florida Statutes as it may be amended or renumbered from time to time.

EFFECTIVE DATE. A certified copy of this Ordinance shall be filed with the Department of State within ten (10) days after enactment by the City Council and the Ordinance shall take effect as provided by law

PASSED AND DULY ADOPTED ON THIS 5th DAY OF March, 2020.

CITY COUNCIL OF THE CITY OF
MIDWAY, FLORIDA

By: 
Ronald Colston, Mayor

CERTIFICATION

The undersigned, Clerk of the City of MIDWAY, FLORIDA, do hereby certify that the above and foregoing AN ORDINANCE OF THE CITY OF MIDWAY, FLORIDA ADOPTING A RULE FOR CODE COMPLIANCE AND ASSESSMENT OF FINES, PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE, was duly enacted on the date set forth above at a regular meeting of the City Council of the City of MIDWA, FLORIDA.

(SEAL)

By: Frances Harrell
Frances Harrell, City Clerk