

**ORDINANCE NO.2019-3**

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, ESTABLISHING REGULATIONS FOR CODE COMPLIANCE WITHIN THE CITY OF WESTLAKE; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; WHICH SHALL BECOME PART OF THE CODE OF ORDINANCES, ENTITLED "CODE COMPLIANCE", PROVIDING FOR CODIFICATION, PROVIDING FOR A CONFLICTS CLAUSE, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.**

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**WHEREAS**, in accordance with Florida Statutes, Chapter 163, upon incorporation, the County's comprehensive plan shall be deemed controlling, until the City of Westlake adopts its own comprehensive plan; and

**WHEREAS**, on or about May 3, 2018, the Florida Department of Economic Opportunity provided the City with notice of intent to find the City's initial comprehensive plan in compliance, and

**WHEREAS**, the purpose of this ordinance is in the interest of the health, safety, peace and general welfare of the people of the City of Westlake, and

**WHEREAS**, the intent of the City Council in adopting this code is to establish reasonable and uniform regulations that will protect the health, safety, property values, and general welfare of the people, businesses, and industries of the City; and

**WHEREAS**, this ordinance seeks to preserve and improve the quality of life for residents and businesses within the community through the enforcement of the codes and ordinances.

**WHEREAS**, this ordinance was written in accordance with Florida State Statutes chapters 162, 553.73, 553.79, 553.80 and 775.083,

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY FOR THE CITY OF WESTLAKE, FLORIDA, as follows:**

**Section 1. Incorporation:** The above recitals are confirmed, adopted and are incorporated herein and made a part hereof by this reference.

**Section 2. Code Compliance.** The code of ordinances for the City of Westlake shall contain a chapter entitled "Code Compliance" which code shall contain the provisions as specifically set forth herein.

**Chapter 9 Code Compliance**

**ARTICLE I GENERALLY**

**Section 9.1 Intent:**

It is the intent of this chapter to promote, protect, and improve the health, safety, and welfare of the citizens of the City by providing an equitable, expeditious, efficient, and effective method of enforcing the codes of the City.

## Section 9.2 Definitions

For the purpose of this chapter the following definitions shall apply.

**Abandoned real property** means any property that is vacant and is subject to a mortgage under a current notice of default and/or notice of mortgage's sale, pending tax assessor's lien sale and/or vacant properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and properties transferred under a deed in lieu of foreclosure sale.

**Citation or Civil violation notice** shall mean a notice of violation with a civil penalty and fine, as provided for in the code.

**City Attorney** means the attorney for the City.

**City Council** means the council of the City of Westlake.

**Code Compliance Officer** means any designated employee or agent of the City whose duty it is to enforce codes and ordinances enacted by the City Council and to provide evidence of code ordinance violations to special magistrates, including, but not limited to code inspectors, code compliance specialists, law enforcement officers and animal control officers.

**Continuing Violation** shall mean a violation which remains uncorrected beyond the time period for correction contained in either the code compliance reminder, citation, the order of special magistrate, or order of the hearing office.

**Local Property Management Company** means a property manager, property maintenance company or similar entity responsible for the maintenance and security of registrable real property within twenty (20) driving miles of the City limits. Upon review of the credentials of the City, or its designee, may allow a non-local manager to be listed.

**Notice of Violation** means any written notice to a violator in accordance with the provisions of the Code of Ordinance and F.S. Chapter 162.

**Repeat Violation** means a violation of a provision of a code or ordinance by a person or entity who has been previously found, by the special magistrate, hearing officer, through 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. For purposes of the Code of Ordinances, a repeat violation shall be deemed to be a violation which reoccurs only after correction of the previous violation. A violation which remains uncorrected beyond the time prescribed for correction in the civil violation notice shall be treated as a continuing violation.

**Special Magistrate** means an attorney or retired judge, whose membership is in good standing with the Florida Bar, who is appointed by the City Council to preside over code compliance matters and who may be discharged by the City Council at its discretion, with or without cause.

**Uncorrected violation** means a violation which is determined by the special magistrate to be irreparable or irreversible in nature and which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition or circumstance.

**Vacant** means any building/structure that is not legally occupied.

**Violator** shall be defined as any individual or legal entity that has committed or is alleged to have committed a code violation or is legally responsible for a code violation including, but not limited to, a property owner or his agent, tenant, entity on the premises or any combination thereof.

**Section 9.3 Special Magistrate:**

- (a) **Appointment.** Pursuant to Chapter 162, Florida Statutes, the City Council may appoint one or more special magistrates who shall have the powers and authority to hold hearings and to impose fines and assess liens and other noncriminal penalties against violators of the City's codes and ordinances.
- (b) **Recommendation.** The City Manager shall, upon the recommendation and advice of the City Attorney, bi-annually recruit qualified attorneys and retired judges to serve as special magistrate. Upon being provided two recommended attorneys and/or retired judges by the City Manager and the City Attorney, the City Council shall appoint, by resolution, at least one Special Magistrate and alternate special magistrate.
- (c) **Qualification.** Applicants for the Special Magistrate position must:
  - (1) Be a resident of the State of Florida;
  - (2) Be a retired Florida Judge or be an attorney whose membership with the Florida Bar is in good standing and who has at least seven (7) years' experience; and
  - (3) Possess experience and expertise in at least one of the following disciplines and a working familiarity with the others: (i) land use matters; (ii) local government law; (iii) Americans with Disabilities and Fair Housing Act law; (iv) real estate law, and (v) administrative law.
- (d) **Term.** Each Special Magistrate shall have a term of two years. Special Magistrates may be appointed for consecutive two year terms. Special Magistrates are subject to removal, with or without cause, from their positions at any time by the City Council in its sole discretion.
- (e) **Not City Employees.** Special Magistrates should not be considered City Employees. However, subject to compliance with documentation required by the City Manager or his or her designee, a Special Magistrate may be compensated at a rate to be determined by the City Manager. Special magistrates shall serve in an ex officio capacity if the appointed Special Magistrate serves other local governments as a special magistrate. Such service to other local governments does not create duties inconsistent with serving as special magistrate to the City of Westlake.
- (f) **Jurisdiction.** Special Magistrates shall have jurisdiction and authority to hear and decide cases involving alleged violations of:
  - (1) Any codes, ordinances, or resolutions of the City; or
  - (2) Any statute, code, or regulation incorporated into the City's code of ordinances by reference.
- (g) **Powers.** The Special Magistrate 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 Palm Beach County Sheriff's Office;
  - (3) Subpoena evidence to its hearings;
  - (4) Take testimony under oath;
  - (5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.
- (h) **Non-exclusive.** The authority granted herein is not exclusive and shall not prohibit the City from enforcing its codes by other legal means.

## **ARTICLE II. CODE COMPLIANCE PROCEDURES**

### **Section 9.20 Compliance Procedure:**

(a) It shall be the duty of the Code Compliance Officer to initiate code compliance proceedings. The Special Magistrate shall not have the power to initiate compliance proceedings.

(b) Except as provided in subsection (d), if a violation of any code is found, the Code Compliance Officer shall notify the violator and give a reasonable time to correct the violation.

(c) The determination of a reasonable time shall be based upon considerations of fairness, practicality, ease of correction, ability to correct, severity of the violation, nature, extent and probability of danger or damage to the public, and other relevant factors relating to the reasonableness of the time period is necessary and reasonable. A timeframe for correction should not exceed thirty (30) days, unless providing a longer time period is necessary and reasonable.

(d) Should the violation continue beyond the time specified for correction, the Code Compliance Officer shall notify the Special Magistrate and request a hearing. The Special Magistrate, through the clerical staff of the City Attorney's Office, shall schedule a hearing. The violator shall be noticed of such hearing in accordance with sections 9.26 and 9.27, below.

(e) The applicable Code Compliance Officer and the violator must attempt to meet face-to-face at a pre-hearing meeting to resolve disputes. This meeting may take the form of an informal meeting or formal mediation. Prior to the hearing, the Code Compliance Officer must provide a written certification to the Special Magistrate that Code Compliance Officer has attempted to resolve the dispute in good faith but was unable to.

(f) If the Code Compliance Officer 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 Compliance Officer shall make a reasonable effort to notify the violator and may immediately notify the Special Magistrate and request a hearing on an expedited basis.

(g) If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the Code Compliance Officer, the case may be presented to the Special Magistrate even if the violation has been corrected prior to the hearing, and the notice so state.

(h) If a repeat violation is found, the Code Compliance Officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The Code Compliance Officer, upon notifying the violator of a repeat violation, shall notify the Special Magistrate and request a hearing. The Special Magistrate shall schedule a hearing and shall provide notice pursuant to sections 9.26 and 9.27, below. The case may be presented to the Special Magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the Special Magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable fees upon the violator. The repeat violator may choose to waive his or her rights to this hearing and pay the costs and fees as determined by the Special Magistrate.

(i) If the owner of property, which is subject to a compliance proceeding before the Special Magistrate, transfers ownership of such property between the time the initial notice is 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 compliance proceeding received by the transferor.

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

(4) File a notice with the code compliance division of the transfer of the property, with the identity and address of the new owner and all copies of the disclosures made to the new owner, within five (5) days after the date of transfer.

A failure to make disclosures described in subsections (1), (2) and (3) 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.

(j) Managers of rental properties may file with the City Manager's Office or designated office a list of the properties they manage, along with the name and address of the person whom any courtesy notice provided under this subsection should be sent. The City Manager's Office or designated office may prescribe a required format for the information, so as to best accommodate the provision of courtesy notices. Whenever a notice of violation is provided to the owner of tenant of any property, the City Manager's Office or designated office shall attempt to mail a courtesy copy of the notice of violation, as well as any subsequent notice of hearing pertaining to the violation, to the name and address provided by the rental property manager. Failure to mail any courtesy copy shall not, however, affect the validity of any notice of violation, hearing or other procedure or proceeding.

#### **Section 9.21 Conduct of Hearing**

**(a) Manner of calling hearing; open to the public.** Upon request of the Code Compliance Officer, or at such other times as may be necessary, the Special Magistrate may call duly noticed hearings. The Special Magistrate shall attempt to convene no less frequently than once every month, but may convene more or less as often as the demand necessitates. All hearings and proceedings shall be open to the public, and minutes shall be kept of all proceedings. The City Council or City Manager shall provide clerical and administrative personnel as may be reasonably required by the Special Magistrate for the proper performance of his or her duties.

**(b) Presenting cases.** Each case before the Special Magistrate shall be presented by the City Attorney, his or her designee, or by the Code Compliance Officer.

**(c) Testimony; rules of evidence.** The Special Magistrate shall proceed to hear the cases on the agenda for that date. All testimony shall be under oath and shall be recorded. The Special Magistrate shall take testimony from the Code Compliance Officer and the alleged violator, if present. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern these proceedings.

**(d) Rights of parties to hearing.** Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses; impeach witnesses, and rebut evidence.

**(e) Evidence.** All evidence shall be admitted at Special Magistrate hearings if, in the opinion of the Special Magistrate, it is the type of evidence upon which reasonable and responsible persons would normally rely in the conduct of business, regardless of the existence of any common-law or statutory rule which might make such evidence inadmissible over objections in civil actions. The Special Magistrate may exclude irrelevant or unduly repetitious evidence. Hearsay evidence may be accepted for the purpose of supplementing or explaining direct evidence, but such hearsay evidence shall not in and of itself be considered sufficient to support a finding or decision unless the evidence would be admissible over objections in a civil action.

(f) **Stipulation.** At any time prior to a case being heard by the Special Magistrate, an alleged violator may enter into a stipulation with the City agreeing to any matter, including but not limited to, the following:

(1) That the alleged violator has, in fact, committed a violation or that a violation has occurred on the property at issue.

(2) That the violation shall be corrected on or before a specific date, subject to approval by the Special Magistrate.

(3) That the alleged violator will be fined for each day past the date set for compliance.

(4) The stipulation shall be in writing and shall be signed by both the City and the alleged violator. The Special Magistrate shall issue an order reflecting the terms of the stipulation.

(g) **Findings of fact; issuance of order.** At the conclusion of the hearings, the Special Magistrate shall issue an order containing 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 order may include a notice that must be complied with by a specific date and that a fine may be imposed and that, under the conditions specified in Section 9.22, the cost of repairs and the cost of compliance may be included along with the fine if the order is not complied with by the specified date.

(h) **Recordation.** A certified copy of such order may 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, 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 date specified in the order, the Special Magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A Special Magistrate hearing is not required to issue such an order acknowledging compliance.

#### **Section 9.22 Fines; Cost Recovery; Liens and Collections; Lien Reductions**

(a) **Generally.** The Special Magistrate 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 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 Compliance Officer. In addition, if the violation is a violation described in Section 9.20(f), the Special Magistrate shall notify the City Council, which may make all reasonable repairs required to bring the property into compliance and charge the violator with the reasonable cost of the repairs and cost of compliance along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the City to make further repairs or to maintain the property and does not create any liability against the City 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 section, a hearing shall not be necessary for issuance of the order imposing the fine.

#### **(b) Amount of Fines.**

(1) A fine imposed pursuant to this section shall not exceed two hundred fifty dollars (\$250.00) per day for a first violation and shall not exceed five hundred dollars (\$500.00) per day for a repeat violation, and, in addition, may include all costs of repairs incurred in accordance with this section. However, if the Special Magistrate finds the violation to be irreparable or irreversible in nature, the Special Magistrate may impose a fine not to exceed five thousand dollars (\$5,000.00) per violation.

(2) In determining the amount of the fine, if any, the Special Magistrate 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) The Special Magistrate may reduce a fine imposed pursuant to this section.

(c) **Cost Recovery.** If the City prevails in prosecuting a case before the Special Magistrate, it shall be entitled to recover all costs incurred in prosecuting the case before the Special Magistrate and such costs may be assessed against the violator and included in any authorized lien.

(d) **Liens.** A certified copy of an order imposing a fine or a fine plus repair and administrative costs shall be recorded in the public records of Palm Beach County 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, and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. Such lien shall accrue interest at the rate determined by the Chief Financial Officer of the State of Florida, pursuant to Section 55.03, Florida Statutes. 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. After three (3) months from the filing of any lien, which remains unpaid, the Special Magistrate may authorize the City Attorney to foreclose the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. A fine imposed pursuant to this section 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. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under Article X, Section 4 of the State Constitution. A lien arising from a fine imposed pursuant to this section runs in favor of the City council and the City council may execute a release of any lien pursuant to this section.

(e) **Lien Reductions.** The Special Magistrate may modify or partially release liens according to the following application guidelines.

- (1) Application for modification must be made by the violator or owner of the violating property.
- (2) Payment in the amount of \$250.00 must be made with the application.
- (3) The violation must be cured, and no other violation may be present.
- (4) Partial release of lien against a non-offending property will be decided by the Special Magistrate upon application and in the event granted, shall include a provision that administrative and hard costs attributed to the offending property be paid by the applicant.

#### **Section 9.23 Duration of Lien:**

No lien provided under this article shall continue for a period longer than twenty (20) years after the certified copy of an order imposing a fine has been recorded unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, 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 cost 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 purchaser for valuable consideration without notice unless a notice of lis pendens is recorded.

**Section 9.24 Assignment of Liens:**

The City Manager or the City Manager's designee shall have the authority to assign liens to a private third party for collection at its discretion, provided its contract with said third party provides the following:

- (1) The City shall retain the power to decide which liens to assign;
- (2) The City shall retain the power to decide what collection techniques are permissible and to prohibit use of any technique it finds objectionable;
- (3) The City shall retain the power to take back any assigned debt or lien; and
- (4) The City shall retain the power to terminate the contract for any or no reason.

**Section 9.25 Appeals:**

An aggrieved party, including the City, wishing to appeal any final administrative order of the Special 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 Magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed. Upon filing of any appeal with the circuit court, the aggrieved party shall immediately file a copy of the Notice of Appeal with the City Clerk.

**Section 9.26 Service of Notices:**

(a) All notices required by this article shall be provided as follows:

- (1) Certified mail, return receipt requested to the owner of the property in question at the address listed in the Palm Beach County's Property Appraiser's database. The City 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 herein.
- (2) Hand delivery by the sheriff or other law enforcement officer, Code Compliance Officer, or other person designated by the City Council;
- (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), at the option of the City, 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 Palm Beach County. Proof of publication shall be made by the publisher or Code Enforcement Officer so designated as provided in section 50.041 and 50.051 Florida Statutes. The newspaper shall meet such requirements as are prescribed under Chapter 50 for legal and official advertisements.
- (2) In lieu of publication as described in paragraph (1), such notice may be posted at least ten (10) 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 shall be at the Westlake City Hall for such notices. 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 or attempts to provide notice by hand delivery or by mail as required under subsection (a).

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

**Section 9.27 Notices of Hearing:**

All Notices of Hearing before the Special Magistrate shall contain the following:

- (a) The address or parcel control number of the property;
- (b) The name of the Code Compliance Officer who initiated the request for the hearing;
- (c) A factual description of the alleged violation of Code;
- (d) The date of the alleged violation and the timeframe given to correct the violation;
- (e) The section of Code allegedly violated;
- (f) Information on where to receive a copy of the Official City File;
- (g) The place, date and time of the hearing; and
- (h) Notice that requests for continuances will not be considered if not received by the Special Magistrate at least five (5) business days prior to the hearing.

**Chapter 9.28 Authority to Adopt Special Magistrate Rules and Regulations:**

The City Council may adopt by resolution such Special Magistrate rules and regulations not inconsistent with Florida Statutes Chapter 162 which the City Council finds necessary to carry out the provisions of this Chapter.

**ARTICLE III. ENFORCEMENT THROUGH CITATIONS**

**Section 9.40 Citations:**

- (a) A Code Compliance Officer is authorized to issue a citation to a person when, based upon personal investigation, the Code Compliance 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 Palm Beach County Court will hear the charge at a specified date and time.
- (b) Prior to issuing a citation, a Code Compliance Officer or other regulatory agencies, as may be appropriate, 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 thirty (30) days.
- (c) If, upon personal investigation, a Code Compliance Officer finds that the person has not corrected the violation within the time period, a Code Compliance Officer may issue a citation to the person who has committed the violation.
- (d) If a repeat violation is found or if the Code 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, or that the violator is engaged in violation of an itinerant or transient nature within the jurisdiction while moving from place to place, a Code Compliance Officer does not have to provide the person with a reasonable time period to correct the violation and may immediately issue a citation or notice to appear.
- (e) A citation issued by a Code Compliance Officer shall be in a form prescribed by the City Council 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 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 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.

(f) After issuing a citation to an alleged violator, a Code Compliance Officer shall deposit the original citation or notice to appear and one copy of the citation or notice to appear with the Palm Beach County Court.

(g) Any person who is issued a citation by a Code Compliance Officer may contest the citation by appearing in the Palm Beach County Court at the date and time specified in the citation and advising the court that they wish to contest the citation and request a hearing on the matter. A hearing shall then take place at a time set by the court to provide the City and the person, to whom the citation was issued, an opportunity to present evidence concerning the violation to the court.

**Section 9.41 Penalties:**

(a) A violation of a code or an ordinance enforced pursuant to such section is a civil infraction. The maximum civil penalty shall not exceed \$500.00.

The civil penalty provided for the disposition of a citation issued pursuant to this chapter shall be as follows:

Number of Violations Within Any 12 Month Period	Amount of Fine If Not Contested	Amount of Fine If Contested
First Offense	\$100	\$200
Second Offense	\$200	\$300
Third Offense	\$300	\$400

Any person who willfully refuses to sign and accept a citation or notice to appear issued by a Code Compliance Officer shall be guilty of a misdemeanor of the second degree, punishable as provided in section 775.083, Florida Statutes.

(b) The provisions of this section shall not apply to the enforcement pursuant to Sections 553.79 and 553.80, Florida Statutes, of the building codes adopted pursuant to Section 553.73, Florida Statutes, as they apply to construction, provided that a building permit is either not required or has been issued by the City. For purposes of this chapter, building codes means only those codes adopted pursuant to Section 553.73, Florida Statutes.

(c) The provisions of this article are an additional and supplemental means of enforcing a code or ordinance. Nothing contained in this article shall prohibit the City or special magistrate from enforcing a code or ordinance by any other means. These enforcement methods may include, but are not limited to, the issuance of a notice of violation, a summons, or a notice to appear

in court. A notice to appear means a written order issued by a Code Compliance Officer in lieu of physical arrest.

**Section 9.42 Applicability:**

Code compliance procedures enumerated here in Chapter 9 shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to the City above and beyond any other state, county or local provisions for same.

**Article IV Registry**

**Section 9.50 Establishment of a Registry:**

Pursuant to the provisions of this division, the City shall establish a registry cataloging each abandoned property within the City, containing the information required by this article.

**Section 9.51 Registration of Defaulted Mortgage Real Property**

(a) Any mortgagee who holds a mortgage on real property located within the City shall perform an inspection of the property to determine vacancy or occupancy, upon default by the mortgagor. The mortgagee shall, within ten days of the inspection, register the property with the code compliance department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be vacant or occupied.

(b) Registration pursuant to this section shall contain the name, direct mailing address, a direct contact name, telephone number, and e-mail address for the mortgagee, and the servicer, and the name and 24-hour contact phone number of the local property management company responsible for the security and maintenance of the property.

(c) Mortgagees who have existing registrable property on the effective date of this article have 30 calendar days from the effective date to register the property with the code compliance department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is vacant or occupied.

(d) If the mortgage on a registrable property is sold or transferred, the new mortgagee is subject to all the terms of this article must within five days of the transfer register the property and pay a registration fee in accordance with this article. Any previous unpaid annual registration fees are the responsibility of the new mortgagee or trustee, as applicable, and are due and payable with their initial registration.

(e) If the mortgagee owner of a foreclosed real property sells or transfers the property to a non-arm's length related person or entity, the transferee, is subject to all the terms of this article must within five days of the transfer register the property and pay a registration fee in accordance with this article. Any previous unpaid annual registration fees are the responsibility of the new registrable property owner and are due and payable with their initial registration.

(f) As long as the property is registrable it shall be inspected by the mortgagee, or designee, monthly. If an inspection shows a change in the property's occupancy status the mortgagee shall, within ten days of that inspection, update the occupancy status of the property registration.

(g) A non-refundable annual registration fee established by resolution or ordinance by the City council, shall accompany each registration pursuant to this section.

(h) All registration fees must be paid directly from the mortgagee, trustee, servicer, or owner. Third party registration fees are not allowed without the consent of the City and/or its authorized designee.

(i) Properties subject to this section shall remain under the annual registration requirement, and the inspection, security and maintenance standards of this section as long as they are registrable.

(j) Until the mortgage or lien on the property in question is satisfied, or legally discharged, the desire to no longer pursue foreclosure, the filing of a dismissal of lis pendens and/or summary of final judgment and/or certificate of title, voluntary or otherwise, does not exempt any mortgagee holding the defaulted mortgage, from all the requirements of this article as long as the borrower is in default.

(k) Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten days of the change.

(l) Failure of the mortgagee to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this article is a violation of the article and shall be subject to enforcement and any resulting monetary penalties.

(m) Pursuant to a finding by the special magistrate, or any other administrative or judicial finding and determination that any property is in violation of this article, the City may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

**Section 9.53 Waivers:** The application of this Chapter may be waived by the City Manager or designee where such waiver would be in the best interests of the City of Westlake.

**Section 3. Severability:** Should the provisions of this ordinance be declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall remain notwithstanding the invalidity of any part.

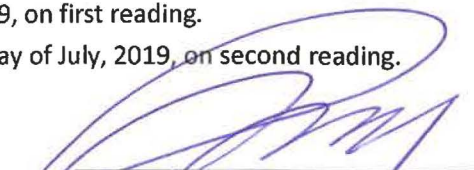
**Section 4. Codification:** It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances for the City of Westlake, Florida and the sections of this ordinance may be re-numbered or re-lettered to accomplish such intentions, and the word "ordinance" shall be changed to "section" or other appropriate word.

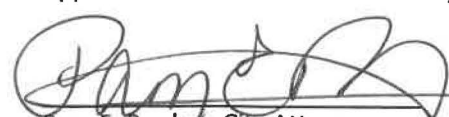
**Section 5. Effective Date:** This ordinance shall be effective upon adoption on second reading.

PASSED this 17th day of June, 2019, on first reading.

PASSED AND ADOPTED this 22<sup>nd</sup> day of July, 2019, on second reading.

  
\_\_\_\_\_  
Sandra Demarco, City Clerk

  
\_\_\_\_\_  
City of Westlake  
Roger Manning, Mayor

Approved as to form and Sufficiency  
  
\_\_\_\_\_  
Pam E. Booker, City Attorney