

ORDINANCE NO. 1082

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 9, SECTIONS 9-29 AND CHAPTER 12, SECTION 12-27 OF THE TOWN CODE MODIFYING CIVIL PENALTIES TO BE ASSESSED FOR VIOLATION OF THE TOWN CODE, REPEALING RESOLUTION NO. 2271; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the Code of Ordinances of the Town of Bay Harbor Islands, Florida, provides for enforcement remedies for activities regulated under the jurisdiction of these codes; and

WHEREAS, said Code authorizes applicable fees, charges, and penalties for code violations to be charged by Resolution of the Town Council; and

WHEREAS, the Town Council wishes to repeal Resolution No. 2271 adopted on September 14, 2022, clarifying fees, charges, and penalties for code violations, in its entirety; and

WHEREAS, staff conducted a survey among comparable municipalities regarding civil penalties; and

WHEREAS, the Town Council has determined the Code provisions set forth below be revised by deleting words strikethrough and by adding the provisions indicated by underlining.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2. Resolution Repealed. Resolution No. 2271 is hereby repealed in its entirety.

Section 3. Town Code Amended. Chapter 9, Section 9-29 and Chapter 12, Section 2-27 of the Town Code are hereby amended to read as follows:

Sec. 9-29. Penalty; notice; lien.

- (a) Any person who shall violate any of the provisions of this chapter shall be punished in accordance with the provisions of section 1-8.
- (b) Violation of the provisions of this chapter creates a civil liability in addition to the penalty provisions of section 1-8. The civil liability of the owner, operator and occupant of the property shall be as follows:
 - (1) The town shall have the right to remove any container, garbage or trash, landscape debris, special-handling landscape debris and trash that is in violation of this chapter, and to levy and charge the owner of the property \$100 for the First Violation, \$250 for the Second Violation, and \$500 for each subsequent violation. ~~a fee as determined by the town but in the amount of not less than \$50.00 for each violation,~~ plus the costs to the town of removal and/or correction of any violation of this chapter.

Sec. 12-26. Permissible hours for construction activity and landscaping.

- (1) The performance of construction activity and landscaping within the town shall be allowed pursuant to the following schedule:
 - (a) *Construction activity.* Construction activity is permitted from 9:00 a.m. until 6:00 p.m. Monday through Friday. No construction activity is permitted on Saturdays or Sundays, except for watering in connection with dust mitigation.
 - (b) *Interior repair and maintenance activity.* Repair and maintenance activity inside a dwelling is permitted from 9:00 a.m. until 6:00 p.m. Monday through Friday. Repair and maintenance activity inside a dwelling is permitted on Saturdays between the hours of 10:00 a.m. and 5:00 p.m., provided that the activity does not result in audible noise outside the dwelling.
 - (c) *Landscaping activity.* Landscaping activity is permitted from 9:00 a.m. until 6:00 p.m. Monday to Friday. On Saturdays, landscaping activity is permitted between the hours of 10:00 a.m. and 5:00 p.m., but only by owners and tenants. There shall be no use of leaf blowers on Saturdays. No commercial landscapers are permitted to perform work in the town on Saturdays.
 - (d) *Town projects.* Town projects are permitted from 8:00 a.m. until 6:00 p.m. Monday to Friday. Weekends and nighttime hours shall be allowed at the discretion of the town manager, in the public's best interest to finish roadway and right of way projects expeditiously to minimize traffic impact and long-term inconvenience to residents and visitors of the town.
- (2) Except for watering as provided for in subsection (1)(a) above, no construction, repair, maintenance, or landscaping activity is permitted on Sundays or legal holidays, and the same is hereby specifically prohibited. For purposes of this section, the term "legal holidays" is defined as any day observed by the town as a legal holiday.
- (3) Notwithstanding the 9:00 a.m. start time provided for in Sections 1(a) and 1(b) above, projects that have submitted applications for new construction and foundation permits as of June 8, 2015 shall be permitted to perform construction activities from 8:00 a.m. until 6:00 p.m. Monday through Friday so long as all new construction and foundation permit(s) remain in full force and effect, except for construction activity located within 375 feet of Ruth K. Broad K-8 that shall commence no earlier than 9:00 a.m. Monday through Friday.

Sec. 12-27. Penalties.

The following fines and penalties shall be imposed on violators of this article:

- ~~(a) For the first violation, the violator shall receive a notice of violation imposing a fine of \$250.00.~~
- ~~(b) For any subsequent violation, the violator shall receive a notice of violation imposing a fine of \$500.00.~~
- (a) For the First Violation, the violator shall receive a Notice of Violation imposing a fine of \$1,000.00
Second Violation - \$2,000
Third Violation - \$3,000 plus 8-hour Stop Work Order
Each subsequent violation - \$5,000
- (b) However, notwithstanding the foregoing, for violation of Sections 12-26.1(b) and 12-26.1(c), the violator shall receive, for the first violation, a Notice of Violation imposing a fine of \$250, and for any subsequent violations, a Notice of Violation imposing a fine of \$500.

Section 4. Severability. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 5. Conflicts and Repealer. All Ordinances or parts of Ordinances, Resolutions, or parts of Resolutions in conflict herewith, be and the same are repealed to the extent of such conflict.

Section 6. Codification. If the Official Code of Ordinances of the Town of Bay Harbor Islands Tables of Contents or other reference portions is affected by these provisions, then changes are approved as a part of this Ordinance.

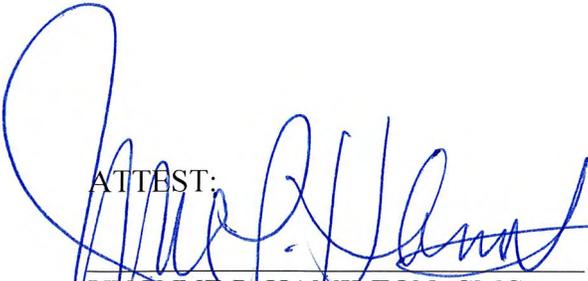
Section 7. Effective Date. This Ordinance shall be in full force and take effect upon its passing and adoption on second reading.

PASSED on First Reading this 11th day of January 2023.

PASSED AND ADOPTED on Second Reading this 1st day of February 2023.

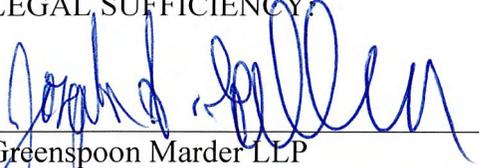


JOSHUA FULLER
Mayor

ATTEST:


YVONNE P. HAMILTON, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



Greenspoon Marder LLP
Town Attorneys
By: Joseph S. Geller, Esq.