



# CITY OF MARCO ISLAND

To: Marco Island City Council  
From: Casey Lucius, Assistant City Manager  
Date: October 18, 2021  
Re: City's Fining System and Policy Considerations

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## **Background**

At the July 19, 2021 City Council meeting, Councilor Brechnitz asked for a staff report explaining the City's process for assessing and collecting fines. In an effort to fully understand and explain the fining process, staff assembled a group of employees including representatives from the Building Department, Police Department, Fire Department, Code Enforcement, Legal, and Finance. This report lays out the process to assess fines, collect fines, and the process by which the Finance Department addresses unpaid fines. This report also includes policy recommendations for Council consideration.

## **Process to Assess Fines:**

For the purposes of this report, we have focused on Code violations that appear before the Magistrate, where the Magistrate assesses a fine and the violator is invoiced by the Finance Department. Further we have focused on two dominant scenarios: 1) fines for property owners, and 2) fines against a contractor independent of a property address. These cases cross the Building Department, the Water and Sewer Department, and Code Enforcement.<sup>1</sup> Of note, few violations that are given to homeowners are placed on the Magistrate agenda. Approximately 90% of the homeowners who receive a violation, pay the fine or achieve compliance.

Separately, the Police Department issues parking citations which are not invoiced and are not assessed by the Magistrate (unless the ticket is contested). The Fire Department also issues fines for false alarms that are not part of the Magistrate's hearing.<sup>2</sup>

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<sup>1</sup> City of Marco Island Code of Ordinances Sec. 14-31 – 14-46: Notice of Violation, Fines, Civil Citations

<sup>2</sup> City of Marco Island Code of Ordinances Sec. 22-36 – Fees for response to malfunctioning fire alarm, detection, and suppression systems.

## Current Process to Collect Fines

If the Magistrate assesses a fine for a violation, a Magistrate's Order is signed and sent to the Finance Department. Finance sends an invoice to the property owner, business, or individual (i.e. contractor). After 30 days if the fine is not paid, the Finance Director has the option to lien the property.<sup>3</sup> In 2020, eight (8) properties were liened by the City. However, in 2019 and 2020, forty-three (43) liens were satisfied.

If the property owner complies and remedies the violation, the Code case is closed, but there may still be an outstanding amount owed by the property owner or costs incurred by the City. In this case the property owner can return to the Magistrate and the Magistrate may reduce the penalty. Mitigation also occurs when the property owner sells the property and the fine is reduced by the Magistrate in order to remove a lien.

The chart below shows the number of code cases, including those that remain open from 2019 and 2020.

<b>2019 Code cases</b>	
Open	97
Closed/Unfounded	2428/883
Compliance	97%
Total	3408
<b>2020 Code cases</b>	
Open	583
Closed/Unfounded	2164/228
Compliance	80%
Total	2973

The majority of the code cases during 2019 and 2020 were related to construction, parking, boat/trailer parking, RV parking, sidewalks, and weeds. "Open" code cases include those that have been invoiced but are unpaid, cases that require follow-up by a Community Service Officer, a case awaiting a Magistrate hearing.

## Rate of Collection

The chart below shows the fines that have been billed, collected, and amounts outstanding as of June 30, 2021. The "billed amount" reflects fines assessed by the Magistrate and invoices sent (does not include parking tickets or citations issued by a Police Officer).

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<sup>3</sup> City of Marco Island Code of Ordinances Sec. 14-61, Liens.

While the amount outstanding from FY2016-FY2021 is over \$1M, when we examined those fines that are over \$10,000 there are 24 properties that make up \$993,366, or 85%, of the total outstanding amount. Further, of those 24 properties, three (3) of them had outstanding fines totaling \$477,754, or 41% of the total. The City recorded liens against these three properties.

One of the properties which has an outstanding balance of \$53,800 has recently been auctioned. One property which owed \$156,954 was recently mitigated by the Magistrate when the property owner came into compliance, and the Magistrate lowered the amount owed to \$3,500. The third property continues to have an outstanding balance of \$267,000.

AR Code	CODE		
Values			
Year	Sum of Billed Amount	Sum of Paid Amount	Sum of Due Amount
2016	255,000	133,889	121,111
2017	36,520	27,120	9,400
2018	503,628	102,048	401,580
2019	555,928	148,029	407,899
2020	75,145	22,908	52,238
2021	280,089	106,030	174,059
<b>Grand Total</b>	<b>1,706,310</b>	<b>540,023</b>	<b>1,166,287</b>

### Collecting Non-Property Related Fines

In the case of outstanding fines from contractors, the City does not lien the property because the violation is not against a property owner, but rather a contractor doing business on Marco Island. The City has an Inter-Local Agreement with Collier County regarding licensing and discipline of contractors. The agreement provides the authority for Collier County to issue licenses, collect fees, investigate, and discipline contractors through the County's Contractors' Licensing Board.

Additionally, Florida Statute F.S. 489.113(4) provides municipalities direction regarding the circumstances in which a City can deny the issuance of permits to contractors. A local government may deny issuance of or suspend a permit if a contractor fails to provide proof of public liability and property damage insurance coverage, and workers' compensation insurance coverage.<sup>4</sup> There is no allowance in State Statute for denying a permit due to failure to pay fines.

<sup>4</sup> F.S.489.113(4a-d) Regulation of Professions and Occupations: Contracting.

### **Policy Options:**

1. The City Council may direct the City Manager to contract with a Collections Agency to collect outstanding fines plus interest. The Collections Agency would receive a fee or percentage of the money collected. However, the City is still responsible for issuing a satisfaction or release of a lien. A Collections Agency cannot negotiate settlement of a lien (AGO 2001-09).
2. The City Council may direct the City Attorney to seek a Court Judgement against contractors or residents that have outstanding fines. This action would constitute litigation and may be costly to the City.
  - a. If Council chooses to take this course of action, staff recommends determining a threshold amount (i.e. \$20,000) in order to benefit from the cost of litigation.
  - b. Council may direct the City Attorney to seek foreclosures against non-homesteaded properties.
  - c. Council may direct the City Attorney to seek a civil judgment in the amount owed for homesteaded properties or non-property owners.
3. The City Council may consider withholding permits to residents and contractors that fail to pay fines, however the current Inter-Local Agreement puts the burden of discipline on the County Licensing Board.
  - a. If the Council chooses to take this action, staff will bring back a draft ordinance for consideration.
  - b. The City Attorney is researching other cities that have these procedures in place.

Of note, increasing daily fines is not an option for City Council consideration. Florida Statute 162.09 limits fines to \$250 per day for a first violation and \$500 per day for a repeat violation. Further, if the violation is irreparable or irreversible in nature (i.e. noise), fines may not exceed \$5,000 per violation.

### **Internal Procedural Improvements:**

1. Code will schedule certification hearings for properties with outstanding fines so those properties can be liened.
2. Code will add the two (2) properties to the Magistrate agenda for mitigation. These properties were mentioned above as owing \$53,800 and \$267,000.
3. Code and Finance will invoice using Energov (instead of Tyler Munis) so both Code and Finance can update the records accurately in one system including invoicing, compliance, and closing cases.
4. Staff will update Resolution 14-77 and update the fines in accordance with ordinance changes from 2014-2021 and bring this to Council for approval.

## **Costs**

There will be costs associated with the following actions:

1. Seeking a court judgement against a property owner or violator with unpaid fines will incur both attorney fees and court costs. Florida State Statute 162.30 requires municipalities to bear the cost of all court fees as well as to pay for any counsel appointed by the court to represent a private party.
2. If the City begins certification hearings to lien properties, Code would have an additional Magistrate hearing once per quarter dedicated to certification hearings. For Magistrate hearings, the City pays the Attorney, the Magistrate, and costs for certified mail and additional administrative time.
3. Alternatively, it may be beneficial to hire a half FTE to serve as a Code-Finance liaison responsible for following up on fines, sending certified letters to collect fines, scheduling certification hearings, recording liens, and reporting quarterly to City Council the status of paid and unpaid fines. This person would ensure that Finance invoices code cases through Energov, updates City resolutions to reflect new fine amounts approved by City Council, and update fine related Ordinances to align with State Statute.
4. An estimated \$100K will be necessary to obtain the proper licenses for the additional users that will be given access to the Energov system. These are primarily Code and Police Department Officers.

## **Attachments:**

- A. Interlocal Agreement City of Marco Island and Collier County Licensing and Discipline of Contractors.
- B. Resolution 14-77 Civil Penalties and Fines