

## **PLANNING AND ZONING BOARD**

### **STAFF REPORT**

**MEETING DATE:** July 16, 2018

**AGENDA NO:** VIII. A.

**AGENDA ITEM:** Land Development Regulation Amendment – City-initiated Amendment to Article 4.5 “Overlay and Environmental Management Districts”, Section 4.5.1 “Historic Preservation: Designated Districts, Sites and Buildings” to create an entirely new subsection regarding Historic Site and Buildings Maintenance Regulations, to revise procedures for Certificates of Economic Hardship, and to revise regulations regarding Tax Exemption Revocation Proceedings, pursuant to LDR Section 2.2.2(E)(6).

**FILE:** 2018-111-LDR

### **ITEM BEFORE THE BOARD**

The item before the board is that of making a recommendation to the City Commission regarding Ordinance No. 12-18, a City-initiated amendment to Article 4.5 “Overlay and Environmental Management Districts”, Section 4.5.1 “Historic Preservation: Designated Districts, Sites and Buildings” to create an entirely new subsection regarding Historic Site and Buildings Maintenance Regulations, to revise procedures for Certificates of Economic Hardship, and to revise regulations regarding Tax Exemption Revocation Proceedings, pursuant to LDR Section 2.4.5(M).

### **PROPOSED AMENDMENT**

The amendment to the Land Development Regulation (LDR) is City-initiated and seeks to create an entirely new subsection regarding Historic Site and Buildings Maintenance Regulations, to revise procedures for Certificates of Economic Hardship, and to revise regulations regarding Tax Exemption Revocation Proceedings within LDR Section 4.5.1.

The proposed ordinances were drafted by City staff in concert with the Historic Preservation Task Force (HPTF). The HPTF was formed by the City Manager at the City Commission’s direction in November 2015. The group was tasked with strengthening historic preservation in Delray Beach, to fill in any gaps in resources, to protect & preserve properties and to create incentives. The City Commission reviewed the HPTF’s recommendations in June 2017 and directed staff to move forward with their recommendations.

One of the HPTF’s recommendations to the City Commission was to create new or updated ordinances and Land Development Regulations (LDR) that would add strength to the City’s current regulations. The proposed amendments are as follows:

### **CODE OF ORDINANCE AMENDMENTS:**

- Board Up: Boarding of Vacant Buildings or Dwellings to provide uniformity throughout the City by mandating specific forms of boarding on windows and doors of vacant structures. Requires a Boarding Certificate by Chief Building Official for a maximum 12 month period.
- Fines: Establishes enhanced fines for violations that are either irreparable or irreversible in nature or the result of willful action or neglect. Larger fines for repeated violations.

The proposed Board Up Ordinance is being processed under separate cover as it involves amending the Code of Ordinances and such amendments process directly to the City Commission. The proposed changes to the Fines ordinance were amended via Ordinance No. 03-18 in February 2018.

### **LAND DEVELOPMENT REGULATIONS AMENDMENTS**

- Create new LDR Section 4.5.1(E)(9):
  - Maintenance Requirements for Historic Sites and Buildings; Penalties: Language added to require every owner of historic and archeological sites or owner of buildings, structures, improvements and appurtenances within historic districts to maintain and keep such in good repair in order to prevent destruction and decay as caused by either decay, deterioration or other hazards.
  - Creates new requirements relating to maintenance of structural components in order to prevent against decay and deterioration. Prohibits deterioration and decay either through willful action or willful neglect.
  - Places affirmative duty on homeowner to properly maintain structure. Create penalties when violations of the maintenance regulations occur which are a repeat violation or a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature than such penalties can include:
    - No permit to be issued for any alteration or new construction affecting such property for a period of five (5) years, other than permits necessary to correct the violation. A waiver clause is included to address corrections to the violation.
    - Condition for any new land use approval to rebuild, reconstruct, restore or replicate the structure or object on the property in accordance with the standards and development procedures as set forth in Section 4.5.1.
    - Elimination of qualification of historic preservation incentives including but not limited to ad valorem tax exemption.
- Amend subsection 4.5.1(H), Undue Economic Hardship by repealing and readopting it to provide for new and revised procedures relating to applicants that received code enforcement violations and are experiencing economic hardship to obtain a Certificate of Economic Hardship that affords additional time to make

repairs and provides notice of local agencies able to provide assistance. Certificate of Economic Hardship tolls the imposition of fines and liens against the property for a period up to 12 months; can be revoked for noncompliance. Requires applicant to take affirmative steps to obtain assistance to cure defects. Provides incentive for property owner to resolve code issues.

- Amending subparagraph 4.5.1(J)(10), Revocation Proceedings by repealing and readopting it to provide for revised regulations concerning tax exemption revocation to the conditions set forth in LDR Section 4.5.1(E)(5), Standards and Guidelines and the newly created LDR Section 4.5.1(E)(9) as a requirement to maintain an ad valorem tax exemption.

Pursuant to LDR Section 2.4.5(M)(1), amendments to the Land Development Regulations may be initiated by the City Commission, Planning and Zoning Board or City Administration; or an individual. The proposed amendment is a City-initiated text amendment to the Land Development Regulations.

Pursuant to LDR Section 2.4.5(M)(5), Findings, in addition to LDR Section 1.1.6(A), the City Commission must make a finding that the text amendment is consistent with the Comprehensive Plan.

A review of the objectives and policies of the adopted Comprehensive Plan was conducted and it was found that several Objectives and Policies within the Future Land Use, Housing, Coastal Management and Conservation Elements are applicable and compatible with the proposed amendments.

## **FUTURE LAND USE ELEMENT**

### **Objective A-4**

The redevelopment of land and buildings shall provide for the preservation of historic resources. The objective shall be met through continued adherence to the City's Historic Preservation Ordinance and, where applicable, to architectural design guidelines through the following policies:

#### **Policy A-4.1**

Prior to approval or recommending approval of any land use or development application for property located within a historic district or designated as a historic site, the Historic Preservation Board must make a finding that the requested action is consistent with the provisions of Section 4.5.1 of the Land Development Regulations relating to historic sites and districts and the "Delray Beach Design Guidelines".

### **Objective A-5**

The City shall maintain its Land Development Regulations, which shall be regularly reviewed and updated, to provide timely, equitable and streamlined processes including,

but not limited to, building permit processes for residential developments and to accommodate mixed-use developments, and other innovative development practices.

## **HOUSING ELEMENT**

### **Objective A-9**

The City shall support the conservation and rehabilitation of historically significant housing, especially where such housing is an identifying characteristic of a particular neighborhood.

### **Policy A-9.1**

This objective will be implemented in accordance with the standards and criteria of Section 4.5.1 of the Land Development Regulations, Historic Preservation Sites and Districts.

## **COASTAL MANAGEMENT ELEMENT**

### **Objective B-2**

The value of historic preservation to economic development is recognized and shall be a component of economic development programs throughout the City. With respect to the Coastal Planning Area, this relationship shall be achieved through the following policies:

### **Policy B-2.1**

The Marina Historic District shall embrace principles of historic preservation and economic development in a sensitive and blending manner. See Objective C-1 for the specific implementation program.

### **Objective C-1**

The retention, rehabilitation, and protection of historic resources as provided for in the City's Historic Preservation Ordinance shall continue to be applied in the Coastal Planning Area. In coordination with the residents and the Historic Preservation Board, all efforts will be made to keep all the listed historic structures in the coastal planning area in fine condition and to list additional structures and districts as needed.

### **Policy C-1.2**

The southernmost portions of the Marina Historic District, located in the third and fourth blocks and zoned R-1AA, shall continue to be enhanced through the renovation of existing single family and multi-family structures, sensitive rehabilitation of historic structures, and new construction which is appropriate and compatible to the historic district.

### **Objective C-3**

Development, redevelopment or conservation on the barrier island and in the Marina Historic District shall occur in a manner which does not change the character, intensity of use, or demand upon existing infrastructure in the Coastal Planning Area.

## **CONSERVATION ELEMENT**

### **Policy B-1.5**

Natural reservations which exist as historic sites shall be protected through the continued implementation and enforcement of the City's Historic Preservation Ordinance.

In consideration of the applicable Comprehensive Plan Future Land Use, Housing, Coastal Management and Conservation Elements as noted above, the proposed amendment to Article 4.5 "Overlay and Environmental Management Districts", Section 4.5.1 "Historic Preservation: Designated Districts, Sites and Buildings", meets the intent of the Comprehensive Plan, the historic preservation code and will improve historic preservation efforts within the City of Delray Beach.

<b>REVIEWED BY OTHERS</b>
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The Historic Preservation Board reviewed the item as a discussion item at the January 7, 2018 meeting and were in support of the request. The Board asked for expanded definitions and clarifications to the ordinances, that improved communications be provided to the Board regarding Code Enforcement efforts and supported the process for boarding.

The Historic Preservation Board reviewed the item at the June 13, 2018 meeting, and recommended approval by a vote of 7-0.

The Downtown Development Agency (DDA) reviewed the item at the April 9, 2018 meeting and voted unanimously in support of the proposed amendment.

The West Atlantic Redevelopment Coalition (WARC) reviewed the item at the May 3, 2018 meeting and voted unanimously in support of the proposed amendment but noted concerns with:

- Enforcement on violations prior to adoption of new ordinances;
- How will public be informed of the new ordinances;
- The Economic Hardship Certificate should include more extensions;
- New ordinances regarding Affirmative Maintenance should be more stringent on developers; and,
- Clear boarding – want program to be put in place.

The Pineapple Grove Mainstreet reviewed the item at the April 25, 2018 meeting and voted in support of the proposed amendment.

<b>ALTERNATIVE ACTIONS</b>
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- A. Continue with direction.
- B. Recommend approval to the City Commission of the City-initiated amendment to Land Development Regulation Article 4.5 “Overlay and Environmental Management Districts”, Section 4.5.1 “Historic Preservation: Designated Districts, Sites and Buildings” to create an entirely new subsection regarding Historic Site and Buildings Maintenance Regulations, to revise procedures for Certificates of Economic Hardship, and to revise regulations regarding Tax Exemption Revocation Proceedings, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in pursuant to LDR Section 2.4.5(M).
- C. Recommend denial to the City Commission of the City-initiated amendment to Land Development Regulation Article 4.5 “Overlay and Environmental Management Districts”, Section 4.5.1 “Historic Preservation: Designated Districts, Sites and Buildings” to create an entirely new subsection regarding Historic Site and Buildings Maintenance Regulations, to revise procedures for Certificates of Economic Hardship, and to revise regulations regarding Tax Exemption Revocation Proceedings, and finding that the text amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in pursuant to LDR Section 2.4.5(M).

<b>RECOMMENDED ACTION</b>
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Recommend approval to the City Commission of the City-initiated amendment to Land Development Regulation Article 4.5 “Overlay and Environmental Management Districts”, Section 4.5.1 “Historic Preservation: Designated Districts, Sites and Buildings” to create an entirely new subsection regarding Historic Site and Buildings Maintenance Regulations, to revise procedures for Certificates of Economic Hardship, and to revise regulations regarding Tax Exemption Revocation Proceedings, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in pursuant to LDR Section 2.4.5(M).

Report by: Michelle Hoyland, Principal Planner

Attachments:      Ordinance No. 12-18  
                            Ordinance No. 13-18  
                            Ordinance No. 03-18

ORDINANCE NO. 12-18

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES AT SECTION 4.5.1 "HISTORIC PRESERVATION: DESIGNATED DISTRICTS, SITES, AND BUILDINGS" OF ARTICLE 4.5. BY ADOPTING AN ENTIRELY NEW SUBSECTION WITH ENTIRELY NEW REGULATIONS AND A NEW TITLE REGARDING HISTORIC SITE AND BUILDINGS MAINTENANCE REGULATIONS ALONG WITH REVISED OR EXPANDED PENALTIES FOR FAILURE TO CONFORM TO THESE REQUIREMENTS; FURTHER AMENDING SUBSECTION 4.5.1 BY REPEALING SUB-SECTION 4.5.1.(H) AND READOPTING IT TO PROVIDE FOR REVISED PROCEDURES FOR REQUESTS OF CERTIFICATES OF ECONOMIC HARDSHIP; FINALLY, AMENDING SUBPARAGRAPH 4.5.1.(J)(10) BY REPEALING AND READOPTING IT TO PROVIDE FOR REVISED REGULATIONS CONCERNING TAX EXEMPTION REVOCATION PROCEEDINGS; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to LDR Section 2.2.6, the Historic Preservation Board reviewed these amendments at a public hearing held on June 13, 2018, and voted \_\_\_\_ to \_\_\_\_ to recommend \_\_\_\_\_ of the amendments to the Planning and Zoning Board; and

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on \_\_\_\_\_, 2018 and voted \_\_\_\_ to \_\_\_\_ to recommend that the changes be approved; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach finds the ordinance is consistent with the Comprehensive Plan.

WHEREAS, The City Commission of the City of Delray Beach, Florida, recognizes the need to research and develop a plan for the continued preservation of historical structures and sites through educational materials and incentives and to designate additional structures and districts located within the City of Delray Beach; and

WHEREAS, recognizing this need, the Historical Preservation Task Force was commissioned by the City Manager; and

WHEREAS, the Historic Preservation Task Force is comprised of members from diverse educational and professional backgrounds representing residents of the City of Delray Beach, historical societies, community organizations, historic preservation societies, and City of Delray Beach staff; and

WHEREAS, based on the recommendations of the Historic Preservation Task Force, the City Commission desires to clarify its language in the Land Development Regulations concerning the maintenance and perpetuation of historic structures and districts; and

WHEREAS, the City Commission desires to impose affirmative maintenance requirements for the owners of structures or buildings located within historic districts in order to avoid the degradation and neglect, whether willful or inadvertent, of historic structures located within the City of Delray Beach; and

WHEREAS, the City Commission finds it necessary and appropriate to impose penalties for certain egregious acts or continued neglect affecting historic structures or buildings in order to protect and preserve said structures.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance as if fully restated herein.

Section 2. Article 4.5. “Overlay and Environmental Management Districts” of the Land Development Regulations of the City of Delray Beach, Florida, is amended by adopting an entirely new Subparagraph 4.5.1.(E)(9) to be newly titled and to read as follows:

**(9) Maintenance Requirements for Historic Sites and Buildings; Penalties**

- (a) Every owner of historic and archeological sites or owner of buildings, structures, improvements and appurtenances within historic districts shall keep in good repair and shall properly maintain both the exterior and site. The owner of a building or structure located within the historic district through the exercise of sufficient and reasonable care shall provide for the maintenance and upkeep of these sites and buildings in order to prevent destruction and decay as caused by either deterioration or other hazards.
- (b) In addition to the general standards and guidelines set forth at Sub-paragraph 4.5.1.(E)(5) above, the owner shall preserve a historic structure against decay and deterioration through the correction of the following deficiencies:
  - 1. Facades which may fall and injure the subject or adjoining structure or building, or members of the public.



2. Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports.
  3. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.
  4. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors.
  5. Presence or signs that would indicate rotting wood or termite infestation.
  6. Any fault or defect in the structure or building which renders it structurally unsafe, insufficiently protected from weathering, or not properly watertight.
- (c) In the sole discretion of the City, a violation of any of the provisions of sub-paragraph 4.5.1.(E)(9) may be penalized either as set forth in the City of Delray Beach Operating Guidelines Manual for the Community Improvement Division, as may be amended from time to time, or additionally by imposing the penalties provided for at Sec. 37.36 of the City Code of Ordinances which have been authorized pursuant to state law at Chapter 162, F.S.
- (d) Notwithstanding the penalties set forth at above sub-paragraph (c), and in addition to the penalties authorized by this section and the Code of Ordinances, a violation of these maintenance regulations which are determined by the City to be either a repeat violation, or a serious threat to the public health, safety and welfare; or if the violation is irreparable or irreversible in nature, then in any of these circumstances, the owner may also be subject to the following provisions:
1. Following the determination by the City of violations under one or more of the circumstances set forth above, no permit will be issued for any alteration or new construction affecting such property for a period of five (5) years, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the Historic Preservation Board that the violation has been corrected, any remaining portion of the five-year prohibition on issuance of a permit may be waived. Notwithstanding this waiver, no other provision or penalty of Sub-paragraph 4.5.1.(E)(9) may be waived by the Historic Preservation Board.
  2. As a condition for any new land use approval, the owner may be required to rebuild, reconstruct, restore or replicate the structure or object on the property in accordance with applicable standards and development procedures as set forth in Section 4.5.1.
  3. The ad valorem tax exemption provided for historic structures or properties under Section 4.5.1. and all historic preservation incentives will not apply to historically designated buildings, structures, landscape features, improvements or sites that are damaged, destroyed, or demolished through either action or inaction of the owner concerning maintenance regulation violations identified in sub-paragraph 4.5.1.(E)(9)(d) herein.

Section 3. Sub-section 4.5.1(H) "Undue economic hardship" at Article 4.5. "Overlay and Environmental Management Districts" of the Land Development Regulations of the City of Delray Beach, Florida, is amended by repealing Sub-section 4.5.1.(H) and readopting it to read as follows:

**(H) Undue economic hardship.**

(1) An applicant experiencing undue economic hardship may file an application for a Certificate of Economic Hardship. A Certificate of Economic Hardship application must be submitted within thirty (30) days of the issuance of a violation notice from Code Enforcement. The violation notice shall state the defects observed by the Code Enforcement officer as well as the various incentive programs and preservation organizations that may be available for repair.

(a) The Historic Preservation Board shall schedule a public hearing within sixty (60) days from the receipt of the application and shall provide notice of such hearing to the appropriate entities including the Code Enforcement Board and the Department of Community Improvement. A copy of the application for Certificate of Economic Hardship shall be provided to the Code Enforcement Board.

(b) During the period between receipt of the Certificate of Economic Hardship Application and the hearing before the Board, it is the sole responsibility of the applicant to discuss the proposed violation(s) with various local preservation organizations to consider alternatives that will avoid an economic hardship and have the least adverse effect to the property and the districts. Proof of the applicant's efforts will be a factor considered by the Historic Preservation Board in determining whether to issue a Certificate of Economic Hardship.

(2) In all instances where there is a claim of undue economic hardship, the property owner shall submit with the application for Certificate of Economic Hardship, within a reasonable period of time, prior to a meeting with the Historic Preservation Board, the following documentation:

(a) For All Property:

1. The amount paid for the property, the date of purchase, and the party from whom purchased;
2. The assessed value of the land and improvements thereon, according to the two most recent assessments;
3. Real estate taxes for the previous two years;
4. Annual debt service or mortgage payments, if any, for the previous two years;
5. All appraisals, if any, obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
6. Any listing of the property for sale or rent, price asked, and offers received, if any; and

7. Any consideration by the owner as to profitable adaptive uses for the property, including but not limited to possible fair market rents for the property if it were rented or leased in its current condition.

(b) **For Income Property (Actual or Potential):**

1. The annual gross income from the property for the previous two years, if any;
2. The annual cash flow, if any, for the previous two years; and
3. The status of leases, rentals, or sales for the previous two years.

Section 4. Sub-section 4.5.1(J) "Tax exemption for historic properties" at Article 4.5. "Overlay and Environmental Management Districts" of the Land Development Regulations of the City of Delray Beach, Florida, is amended by repealing Subparagraph 4.5.1.(J)(10) and readopting it to read as follows:

**(10) Revocation Proceedings:**

(a) The Historic Preservation Board may initiate proceedings to revoke the ad valorem tax exemption provided herein, in the event the applicant, or subsequent owner or successors in interest to the property, fails to maintain the property according to the terms, conditions and standards as set forth at Sub-paragraph 4.5.1(E)(5) and Sub-paragraph 4.5.1(E)(9) or violates the terms of the Historic Preservation Exemption Covenant.

(b) ~~The Historic Preservation Planner~~ The Director of Planning, Zoning and Building, or designee, shall provide notice to the current owner of record of the property and the Historic Preservation Board shall hold a revocation hearing and make a recommendation to the City Commission.

(c) The City Commission shall review the recommendation of the Historic Preservation Board and make a determination as to whether the tax exemption shall be revoked, a written resolution revoking the exemption and notice of penalties as provided in Paragraph 8 of the covenant ~~shall~~ will be provided to the owner, the Palm Beach County Property Appraiser, and filed in the official records of Palm Beach County.

(d) Upon receipt of the resolution revoking the tax exemption, the Palm Beach County Property Appraiser shall discontinue the tax exemption on the property as of January 1<sup>st</sup> of the year following receipt of the notice of revocation.

Section 5. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 6. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 7. Specific authority is hereby given to codify this Ordinance.

Section 8. This Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

\_\_\_\_\_  
M A Y O R

\_\_\_\_\_  
City Clerk

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

Approved as to form and legal sufficiency:

\_\_\_\_\_  
R. Max Lohman, City Attorney

ORDINANCE NO. 13-18

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 100, "NUISANCES", AT TITLE 9.- "GENERAL REGULATIONS" BY REPEALING SECTION 100.10 AND READOPTING IT WITH NEW TITLE, "BOARDING CERTIFICATE; REQUIREMENTS", TO PROVIDE FOR REGULATIONS REGARDING THE BOARDING AND SECURING OF VACANT BUILDINGS, STRUCTURES, OR DWELLINGS IN THE CITY; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, buildings which remain vacant and unoccupied for any unreasonable period of time are a serious hazard to public health, welfare, safety and quality of life; and,

WHEREAS, such buildings become an attractive nuisance or dangerous condition to children, become a harborage for insects rodents, vermin or other pests, become an invitation to criminals as a temporary abode and as a place to conduct illegal activity, and create a potential fire hazard; and,

WHEREAS, the unkempt and unsecured grounds surrounding such buildings invite the dumping of garbage and trash thereon and contribute to the growth of blight within the City necessitating additional government services and potentially decreasing property values; and,

WHEREAS, the City Commission of the City of Delray Beach desires to prevent such interference with the use and enjoyment of neighboring property; and,

WHEREAS, the City Commission of the City of Delray Beach desires to amend the current Nuisance Section of the Code of Ordinance to require the boarding of vacant structures and buildings in order to protect the health, safety and welfare of the citizens and prevent and abate such nuisance conditions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance as if fully restated herein.

Section 2. That Chapter 100, "Nuisances", at Title 9. "GENERAL REGULATIONS" be amended by repealing Section 100.10. and readopting it with new title, "Boarding Certificates; Requirements", along with new requirements concerning the boarding of any vacant and unoccupied building, structure or dwelling which reads as follows:

Sec. 100.10. ~~INDIVIDUALLY DESIGNATED HISTORIC STRUCTURES AND STRUCTURES IN HISTORIC DISTRICTS.~~

- ~~(A) Structures that are individually designated as historic or are located in historic districts shall be maintained in a secure and attractive manner. All defective structural and decorative elements of such building facades shall be repaired or replaced in a workmanlike manner, to match as closely as possible the original materials and construction of the building. All exterior walls shall have all loose material removed and patching or resurfacing shall be accomplished to match the existing or adjacent surfaces as to materials, color, bond, and joining. All cornices, trim and window frames that are damaged, sagging or otherwise deteriorated shall be repaired or replaced to be made structurally sound and all exposed materials painted, stained or otherwise treated in a consistent manner.~~

Sec. 100.10. BOARDING CERTIFICATE; REQUIREMENTS.

- (A) Responsibility for Property Maintenance. Every owner of a building or structure is required to maintain such property in a manner so as not to violate the provisions of this section, and such owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding such property.
- (B) Nuisance Declared. It is declared unlawful and a public nuisance for an owner of a building or structure to maintain such property or to permit such property to be maintained in such a manner that any one or more of the conditions described in the following subsections are found to exist:
- (1) Any vacant and unoccupied building, structure or dwelling of which doors, windows, or other openings are broken or missing so as to allow access to the interior, or if boarded to any extent, the building, structure or dwelling is not secured in compliance with this section.
  - (2) Any vacant and unoccupied building, structure or dwelling of which doors, windows or other openings are secured by boarding, but for which there is not current and valid Certificate of Boarding as required by this section.
- (C) Certificate Required for Boarding Building or Dwellings
- (1) All buildings, structures or dwellings which are boarded shall require a Certificate of Boarding to be issued by the City. The fee for boarding certificates shall be set by resolution of the City Commission.
  - (2) No person shall erect, install, place, or maintain boards over the doors, windows, or other openings of any building or structure or otherwise secure such openings by a means others than the conventional method used in the original construction and design of the building or structure without first applying for and, within 30 days of application, completing all of the steps necessary for the issuance of a Certificate of Boarding, and thereafter having a valid and current Certificate of Boarding issued by the Chief Building Official.
  - (3) The Chief Building Official shall issue a Certificate of Boarding required by subsection (C)(1) of this section upon the submission of a written application by the owner of the property or his authorized representative or contractor; upon the payment of the required fee; and upon the confirmation, through inspection by the Chief Building Official, or designee, that the boarding

or other method of securing the building or structure has been done in compliance with this section.

- (4) The Certificate of Boarding issued pursuant to this section shall authorize the boarding or other securing of a building, dwelling or structure for a period of no greater than six (6) months from the date of the issuance. Renewal of the Certificate of Boarding may be granted, one time, after the initial six-month period for an additional six months. A property owner, his representative or contractor seeking renewal of the Certificate of Boarding must file a written request with the Planning, Zoning and Building Department for hearing no later than ten (10) business days prior to the expiration of the original certificate. The issuance of a renewal Certificate of Boarding shall be subject to all of the following conditions:

(a) The boarding or other method of securing the building or structure has been done in compliance with this subsection, as confirmed by a Code Enforcement officer or building inspector after inspection of the building or structure.

(b) The owner, his authorized representative or contractor has submitted to the Chief Building Official a detailed plan for correction, repair, or rehabilitation of violations of state or local building and housing standards and for the securing of the doors, windows, and other openings by the conventional method used in the original construction and design of the building or structure or, alternatively, a detailed plan for sale of the property to another person or entity with provision in the sale of correction, repair, or rehabilitation.

(c) The owner or his authorized representative or contractor has submitted to the Chief Building Official, prior to the hearing, a time line addressing the application for all appropriate permits for such work and for completing such work prior to the expiration of the renewal certificate or, alternatively, a time line for the sale of the property.

(d) The renewal certificate may be revoked if the owner fails to comply with the plan for such work or fails to adhere to the submitted time line. Written notice of the City's revocation of the renewal certificate shall be provided to the owner.

- (5) A Certificate of Boarding may not be extended beyond the renewal period except upon demonstration that good cause for the renewal exists. Good cause shall require a showing by the owner that the certificate renewal is made necessary by conditions or events beyond the owner's control, such as inability to obtain financing for repair or rehabilitation, inability to locate a suitable buyer, unanticipated delays in construction or rehabilitation, or unanticipated damage to the property. In addition, where appropriate, good cause shall also require a showing by the owner that the owner has exercised reasonable and due diligence in attempting to complete the needed correction, repair, or rehabilitation, or is attempting to sell the property. If good cause exists to renew the certificate, the certificate may be renewed for a period of up to, but not more than, an additional six months, subject to all of the same conditions imposed on the original renewal certificate.

- (1) Standards for Securing Building. The boarding of the doors, windows, or other openings of any building, dwelling or structure, or any means of securing such openings, other than by the

conventional method used in the original construction and design of the building or structure, must comply with the specifications as promulgated by the City which will accompany the Certificate of Boarding when approved. Such specifications may be varied by the City for the types of building construction or the general building classification, e.g. historic structures.

(D) Violations; Enforcement. Violations of this section shall be enforced through the code enforcement process.

(E) Penalty. Penalties may be imposed pursuant to Sec. 37.36 as authorized by Chapter 162, F.S.

(F) Exceptions. A Certificate of Boarding shall not be required in the following circumstances:

- (1) Temporary emergency situations, including but not limited to, damage caused by vandalism, fire, theft, accident, or act of God. Any boarding or securing of openings under a temporary emergency situation shall not exceed sixty (60) days.
- (2) Weather and hurricane preparation when a hurricane or tropical storm watch or warning has been issued by the National Weather Service.
- (3) Unoccupied residences secured with storm shutters.
- (4) Properties deemed to be “unsafe structures” by the Chief Building Official or his designee.
- (5) Properties which have a valid permit for a building permit which requires the contractor or owner to secure the property.
- (6) Properties which are in the process of securing a building permit by way of submitting a complete application.

(G) Costs Incurred by City; Assessment of Lien. All costs incurred by the City based upon actions taken by the City to cure violations of this division shall be charged and billed to the person in violation of this section as provided for in Section 37.36 of this Code and pursuant to Chapter 162, F.S.

Section 3. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 5. Specific authority is hereby given to codify this Ordinance.

Section 6. This Ordinance shall become effective immediately upon its passage on second and final reading.



PASSED AND ADOPTED in regular session on second and final reading on this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

\_\_\_\_\_  
M A Y O R

\_\_\_\_\_  
City Clerk  
First Reading\_\_\_\_\_

Second Reading\_\_\_\_\_

Approved as to form and legal sufficiency:

\_\_\_\_\_  
R. Max Lohman, City Attorney

ORDINANCE NO. 03-18

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 37, "DELRAY BEACH CODE ENFORCEMENT GENERAL PROVISIONS", BY REPEALING SECTIONS 37.01 THROUGH 37.46 AND READOPTING SAME, AS REVISED IN ORDER TO AMEND AND REVISE THE CITY'S CODE ENFORCEMENT PROCEDURES IN ACCORDANCE WITH CHAPTER 162, FLORIDA STATUTES; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, the City Commission of the City of Delray Beach has determined that a need exists to revise and update the City's code enforcement procedures in accordance with Chapter 162, Florida Statutes; and

WHEREAS, the City Commission has determined that the adoption of this ordinance in the best interests of the health, safety, and welfare of the citizens and the public at-large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, that:

Section 1. The recitations set forth above are ratified and incorporated herein.

Section 2. Chapter 37, "Delray Beach Code Enforcement" of the Code of Ordinances of the City of Delray Beach, Florida, shall be amended to read as set forth in Exhibit 'A', which is attached hereto and incorporated herein.

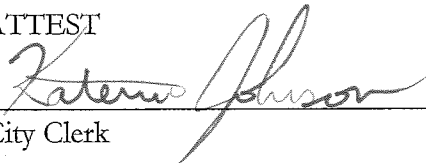
Section 3. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 5. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the 20<sup>th</sup> day of February, 2018.

ATTEST

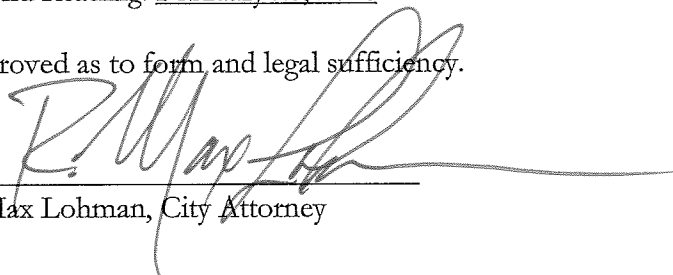
  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
MAYOR

First Reading: February 6, 2018

Second Reading: February 20, 2018

Approved as to form and legal sufficiency.

  
\_\_\_\_\_  
R. Max Lohman, City Attorney

## EXHIBIT A – Ordinance No. 03-18

### **CHAPTER 37. – DELRAY BEACH CODE ENFORCEMENT**

#### **GENERAL PROVISIONS**

##### **Sec. 37.01. - 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 authorizing the creation of the Code Enforcement Board and creating the position of Code Enforcement Special Magistrate with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing the City codes and ordinances ~~in force in the City~~ where a pending or repeated violation continues to exist, ~~including, but not limited to those codes listed in Section 37.02.~~ Specific authority to hire and appoint a Special Magistrate and/or Code Enforcement Board attorney is hereby delegated to the City Manager or designee. A special magistrate shall have the same status as the Code Enforcement Board under this chapter. References in this chapter to the Board, except in Secs. 37.15 – 37.24, shall include a special magistrate if the context permits.

##### **Sec. 37.02. - ENFORCEMENT OF CERTAIN CODES AUTHORIZED.**

- (A) The Code Enforcement Board shall, as described in Section 37.01 above, have ~~concurrent~~ the authority and jurisdiction to hear and decide cases involving alleged non-criminal violations of: which are not criminal in nature where a pending or repeated violation of the City codes as they now exist or as they may be amended by ordinance from time to time has been committed.
- (1) Any codes, ordinances, or resolutions of the city;
- (2) Any condition of any development order or any final action of the planning, zoning, and appeals board; or
- (3) Any statute, code, rule, or regulation incorporated into the city's code of ordinance by reference.
- (B) Those code enforcement cases that are open and pending as of the effective date of this section, as evidenced by a notice of violation having been issued or the matter having been set for hearing, shall be heard by the special magistrate.
- (C) The authority granted herein is not exclusive and shall not prohibit the city from enforcing its codes by any other legal means.

##### **Sec. 37.03. - DEFINITIONS.**

For the purpose of this Chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*Board.* The Code Enforcement Board of the City.

*City Attorney.* The City Attorney or Assistant City Attorney.

*City Commission.* The legislative body of the City.

Code Enforcement Board Attorney. An attorney and a member in good standing of the Florida Bar for a minimum of five (5) years who has been retained by the City to provide legal advice to the Board and assist with the conduct of hearings.

*Code Enforcement Clerk.* The town clerk or any other employee so designated by the City Manager.

*Code enforcement officers or building/ Code Enforcement Officers.* Those employees or other agents of the City designated by ordinance or duly authorized and appointed by the City Manager, whose duty it is to enforce city codes and to present code violations to the Code Enforcement Board.

*Codes.* The Chapters of this Code of Ordinances described in Section 37.02 above.

~~Notice or written notification.~~ Notice shall be provided to the alleged violator ~~by certified mail, return receipt requested, by hand delivery, by the Sheriff or other Law Enforcement Officer, Code Inspector or other person designated by the local governing body, by leaving notice in the violator's usual place of residence with any person residing therein who is above the age of fifteen (15) years of age and informing such person of the contents of a notice or at the option of the Code Enforcement Board by publication pursuant to in accordance with F.S. Section 162.12(2), Fla. Stat. In lieu of publication, such notice may be posted for at least ten (10) days in at least two (2) locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at City Hall.~~

~~Notice to appear.~~ A written order issued by a Code Enforcement Officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time.

*Repeat violation.* A violation of the provision of any code or ordinance by a person who has been previously found through a Code Enforcement Board, a Special Magistrate, or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five (5) years prior to the violation, notwithstanding the violations occur at different locations.

Special Magistrate. The hearing officer who presides over code enforcement hearings, who must be an attorney and a member in good standing of the Florida Bar for a minimum of five (5) years.

*Violator.* The person responsible for the code violation, which in the appropriate circumstances shall be the perpetrator of the violation or the owner of the real property upon which the violation occurred, or both.

#### **Sec. 37.04. - PROVISIONS OF CHAPTER SUPPLEMENTAL.**

As set forth in F.S. Section 162.13, nothing contained in this Chapter shall prohibit the City from enforcing its codes by any other means. It is the legislative intent of this Chapter to provide

an additional or supplemental means of obtaining compliance with the codes set forth in Section 37.02.

**Secs. 37.05 – 37.14. – RESERVED.**

**CODE ENFORCEMENT BOARD**

**Sec. 37.15. - COMPOSITION; APPOINTMENT OF MEMBERS.**

The Code Enforcement Board shall be composed of seven (7) regular members, along with two (2) alternate members, appointed by the City Commission. Appointments to both regular and alternate member positions shall be on the basis of experience or interest in the fields of zoning and building control. The regular and alternate membership of the Board shall, whenever possible, include an architect, a business person, an engineer, a general contractor, a subcontractor, and a Realtor.

**Sec. 37.16. - TERMS OF APPOINTMENT.**

(A) In order that terms of office of all regular members of the Code Enforcement Board will not expire at the same time, the initial appointments to the Board shall be as follows:

- (1) Two (2) members shall be appointed for a term of one year.
- (2) Three (3) members shall be appointed for a term of two (2) years.
- (3) Two (2) members shall be appointed for a term of three (3) years.

(B) Thereafter, all appointments shall be made by the City Commission for a term of three (3) years.

**Sec. 37.17. - QUALIFICATIONS OF MEMBERS.**

Each regular member and alternate member appointed to the Code Enforcement Board shall possess, in addition to experience or interest in the fields of zoning and building control, the following minimum qualifications, where appropriate:

(A) The architect and the engineer shall be registered under the laws of the State regulating the practice of architecture and engineering, or shall possess similar qualifications under the laws of other states, or shall have actual experience deemed by the City Commission to be equivalent to such registration.

(B) The general contractor and the subcontractor shall possess a valid certificate of competency and ~~occupational license~~ business tax receipt recognized and accepted under the laws of the State and the ordinances of the City regulating the business of contracting, and where required, State registration as a contractor, or shall possess similar qualifications under the laws of other states, or shall have actual experience deemed by the Commission to be equivalent to a certification.

(C) The Realtor shall be licensed under the laws of the State licensing real estate brokers as either a broker or a salesperson, or shall possess similar qualifications under the laws of other states, or shall have actual experience deemed by the Commission to be equivalent to licensing.

(D) The businessperson shall be actively engaged in any lawful business within the City and shall hold a current and valid ~~occupational license~~ business tax receipt issued by the City, or shall be an officer or employee of a business entity holding a current and valid ~~occupational license~~ business tax receipt issued by the City, or shall have actual experience deemed by the Commission to be equivalent to a certification.

(E) Each regular and alternate member of the Code Enforcement Board shall be a resident of the City.

#### **Sec. 37.18. - OFFICERS; ALTERNATE MEMBERS.**

(A) The Code Enforcement Board officers shall consist of a Chairperson, a Vice-Chairperson, and other officers as the Board shall deem necessary.

(B) Officers of the Board shall be elected from among its members by a majority vote of the membership at the Board's first meeting after their initial appointment, and annually thereafter.

(C) A member of the Board may be elected to serve as an officer without restriction as to the number of terms served.

(D) The alternate members of the Board may attend all meetings of the Board but shall act only in the absence, disability, or disqualification of a regular member thereof, and the minutes of the Board's meeting shall reflect in whose stead the alternate member is acting

#### **Sec. 37.19. - QUORUM.**

As set forth in F.S. Section 162.05(3), four (4) or more members of the Code Enforcement Board shall constitute a quorum.

#### **Sec. 37.20. - COMPENSATION.**

As set forth in F.S. Section 162.05(3), members of the Code Enforcement Board shall serve without compensation, but may be reimbursed for travel expenses, mileage expenses, and other per diem expenses as may be authorized by the Commission and approved by the City Manager.

#### **Sec. 37.21. - AUTHORITY TO ADOPT RULES AND REGULATIONS.**

The Code Enforcement Board may adopt those rules and regulations as are not inconsistent with the provisions of this Chapter or the Local Government Code Enforcement Board Act (F.S. Sections 162.01 et seq.) as same now exist or as hereafter may be amended, which the Board finds necessary to carry out the provisions of this Chapter, subject to approval of the City Commission.

#### **Sec. 37.22. - APPOINTMENT OF ~~BOARD~~ CLERK; OTHER STAFF.**

The City Manager shall appoint a City employee to be the Code Enforcement ~~Board~~ Clerk, who shall perform the functions assigned to the Clerk as set forth in this Chapter. For the purpose of administering this Chapter, ~~the Board may call upon the City manager to furnish~~ may designate

other city employees as may be necessary to carry on or assist the Board in performing its functions and duties under this Chapter.

#### **Sec. 37.23. - VACANCIES AND REAPPOINTMENT.**

As set forth in F.S. Section 162.05(2), a member may be reappointed for one successive term, upon approval of the City Commission. Appointments to fill any vacancy to the Code Enforcement Board shall be for the remainder of the unexpired term of office.

#### **Sec. 37.24. - NONATTENDANCE AT MEETINGS; REMOVAL FROM OFFICE.**

~~As set forth in F.S. Section 162.05(2),~~ If any regular Code Enforcement Board member fails to attend two (2) out of three (3) successive meetings without cause and without prior approval of the Chairperson, the Board shall declare the member's office vacant, and the City Commission shall promptly fill that vacancy. The members shall serve at the pleasure of the Commission and may be suspended or removed ~~for~~ with or without cause at any time by a majority vote of the Commission; and may also be removed for cause at any time by a majority vote of the Commission according to the procedures for removal of Board members as set forth in this Code.

#### **Secs. 37.25 – 37.34. - RESERVED**

### **ENFORCEMENT PROCEDURES**

#### **Sec. 37.35. - CITY ATTORNEY; ROLE AND AUTHORITY.**

~~As set forth in F.S. Section 162.05(5),~~ The City Attorney shall either be counsel to the Code Enforcement Board or shall represent the City by presenting cases before the Board or Special Magistrate, but in no case shall the City Attorney serve in both capacities. Whenever the City Attorney serves in the capacity of presenting cases before the Board, he shall have full prosecutorial discretion, including, but not limited to the right to negotiate a plea with a violator and present that plea to the Board for approval, to recommend the disposition of a case to the Board, and to decline to prosecute a case, similar to the discretion exercised by the State Attorney in criminal cases.

#### **Sec. 37.36. - INITIATION OF ENFORCEMENT PROCEDURES AND FINES.**

(A) ~~[Code Enforcement Officer.] It shall be the duty of the Code Enforcement Officer to initiate enforcement proceedings of the various codes. However, no member of the Code Enforcement Board shall have the power to initiate such enforcement proceedings. The initiation and prosecution of code violation cases shall be conducted in accordance with Chapter 162, Fla. Stat. and the City of Delray Beach Code Compliance Policies and Procedures Manual, as may be amended.~~

(B) ~~[Notice of Violation.] Except as provided in paragraphs (C) and (E), if a violation of the codes described in Section 37.02 is found, the Code Enforcement Officer shall notify the violator and give him a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the Code Enforcement Officer shall notify the Code Enforcement Board and request a hearing. The Board, through its clerical staff, shall schedule a hearing, and written~~



notice of such hearings shall be hand-delivered or mailed as provided by this Chapter to the violator. If the violation is corrected and then recurs, the case shall be presented to the Board Special Magistrate even if the violation has been corrected prior to the Board hearing, and the notice shall so state. In accordance with Sec. 162.09(2)(d), Fla. Stat., a fine imposed pursuant to this chapter shall not exceed one thousand (\$1,000) per day per violation for a first violation and shall not exceed five thousand dollars (\$5,000) per day per violation 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 fifteen thousand dollars (\$15,000) per violation.

~~(C) — [Request for Hearing.] If the Code Enforcement Officer has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare, he shall make a reasonable effort to notify the violator and may immediately notify the Board and request a hearing.~~

~~(D) — Fire Prevention Code Violations. If the violation arose under Chapter 96, the Code Enforcement Officer or the Chief of the Fire Department may, at his option, either proceed under this Chapter or pursuant to the authority and procedures set forth in Chapter 96. Nothing in this Chapter shall be construed or applied to limit the authority of the Chief of the Fire Department or of any fire marshal or fire inspector to proceed pursuant to Chapter 96.~~

~~(E) — [Repeat Violations.] If a repeat violation is found, the Code Enforcement Officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation, and may immediately issue a citation. The Code Enforcement Officer, upon notifying the violator of a repeat violation, shall notify the Code Enforcement Board and request a hearing. The Code Enforcement Board Clerk, through its clerical staff, shall schedule a hearing, and shall provide written notification to the violator. The case may be presented to the Code Enforcement Board even if a repeat violation has been corrected prior to the Board's hearing and the notice shall so indicate. 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.~~

~~(F) — [Violation of Code or Ordinance.] Notwithstanding Section 37.36(B), a Code Enforcement Officer may issue a notice to appear at any hearing conducted by a County Court if the officer, based upon personal investigation, has reasonable cause to believe that the person has violated a code or ordinance. If a person issued a notice to appear under this Section refuses to sign such notice, the Code Enforcement Officer has no authority to arrest such person.~~

~~(G) — [Written Notice Required.] Prior to issuing a notice to appear, a Code Enforcement Officer shall provide written 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 fewer than five (5) days and no more than thirty (30) days. If, upon personal investigation, a Code Enforcement Officer finds that the person has not corrected the violation within the prescribed time period, a Code Enforcement Officer may issue a notice to appear to the person who has committed the violation. A Code Enforcement Officer is not required to provide the person with a reasonable time period to correct the violation prior to issuing a notice to appear and may immediately issue a notice to appear if a repeat violation is found, or if the Code Enforcement 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.

~~(H) — If the owner of property which is subject to an enforcement proceeding before an enforcement board, special master, 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; and~~

~~(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; and~~

~~(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; and~~

~~(4) — File a notice with the code enforcement official 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 five (5) days after the date of the transfer.~~

~~(5) — A failure to make the disclosures described in Sections 37.36(H)(1) — (4) 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.~~

#### **Sec. 37.37. — SCHEDULING OF HEARINGS.**

~~Upon request of the Code Enforcement Officer, or at such other times as may be necessary, the Chairperson of the Code Enforcement Board may call a hearings of the Board. Hearings may also be called by written notice signed by at least three (3) members of the Board. Hearings may also be set by the Board, for a specific day and time in each and every month, unless canceled by the Board. At any hearing the Board may set a future hearing date. The Board shall attempt to convene no less frequently than once every two (2) months, but it may meet more or less often as the demand necessitates.~~

#### **Sec. 37.38. — FORMAL HEARING.**

~~(A) — When the Code Enforcement Board Clerk sets a formal hearing to consider an alleged violation, the Clerk shall set the time and date for the formal hearing and notify the alleged violator pursuant to the procedures for notice set forth in the definition of notification in Section 37.03, and the City Attorney. The violator shall be given at least seven (7) days' written notice of the formal hearing.~~

~~(B) — All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. At the time and place set for the formal hearing, the Board shall hear and consider all testimony offered and shall examine and consider all evidence presented. At the conclusion of the hearing, the 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 (4) members of the 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 if the order is not complied with by said date.~~

**Sec. 37.39. -- CONFLICT OF INTEREST; HEARING PROCEDURES.**

~~(A) — No Code Enforcement Board member shall act in any case in which that member has a conflict of interest.~~

~~(B) — As required by F.S. Section 162.07(1), all hearings and proceedings of the Board shall be open to the public, and any person whose interests may be affected by the matter before the Board shall be given an opportunity to be heard. Minutes of all Board hearings shall be kept by the Board Clerk. As required by F.S. Section 162.07(2), each case before the Board shall be presented by the City Attorney or by a member of the administrative staff of the City. As required by F.S. Section 162.07(3), the enforcement board shall take testimony from the Code Enforcement Officer and the alleged violator.~~

~~(1) — If the alleged violator fails to attend the Code Enforcement Board hearing after proper notice has been given, then the Code Enforcement Board may proceed against the alleged violator by moving for summary adjudication.~~

~~a. — All motions for summary adjudication must be supported by affidavits from the Code Enforcement Officer attesting to the existence of a violation and demonstrating proper notice to the alleged violator.~~

~~(C) — Hearings shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. They shall, however, be conducted in accordance with accepted parliamentary procedures relative to motions, votes, and decisions. Fundamental due process shall be observed and shall govern all hearings.~~

~~(D) — All relevant evidence shall be admitted if, in the opinion of the Board, it is the type of evidence upon which reasonable and responsible persons would normally rely in the conduct of business affairs, regardless of the existence of any common law or statutory rule which might make the evidence inadmissible over objections in civil actions. The Chairperson of the Board may exclude irrelevant or unduly repetitious evidence.~~

~~(E) — Hearsay evidence may be accepted for the purpose of supplementing or explaining any direct evidence, but this 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) — Each party to the hearing shall have the right to:~~

- ~~(1) — Call and examine witnesses;~~
- ~~(2) — Introduce exhibits;~~
- ~~(3) — Cross examine opposing witnesses;~~

~~(4) — Impeach witnesses; and~~

~~(5) — Rebut evidence.~~

~~(G) — The alleged violator has the right to be represented by an Attorney at the formal hearing.~~

~~(H) — As required by F.S. Section 162.07(3), all testimony before the Board shall be under oath and shall be recorded. The alleged violator or the City may cause the proceedings to be recorded by a certified court reporter or other certified recording instrument.~~

~~(I) — The Board shall have the power in accordance with F.S. Section 162.08, to:~~

~~(1) — Adopt rules for the conduct of its hearings not otherwise in conflict with this Chapter or F.S. Sections 162.01 et seq.;~~

~~(2) — Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the City Police Department;~~

~~(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.~~

~~(J) — If the City prevails in prosecuting a case before the Code Enforcement Board, it shall be entitled to recover all costs incurred in prosecuting the case before the Board.~~

~~(K) — The alleged violator may settle their case by entering into a stipulated agreement with the City.~~

#### **Sec. 37.40 — SUBPOENA POWERS AND PROCEDURES.**

~~The City, the Code Enforcement Board, or the alleged violator may request that witnesses, records (including surveys, plats, and other materials), and other evidence, be subpoenaed to any formal hearing. Subpoenas may be served by Officers of the City Police Department or other persons designated by the City. The Chairperson of the Board shall provide the Clerk of the Board with sufficient signed and blank witness subpoenas to be provided to alleged violators and the City for the purpose of subpoenaing witnesses, records, and other evidence. The alleged violator shall pay to the City a fee of twenty-two dollars (\$22.00) for each subpoena issued.~~

#### **Sec. 37.41. — DECISIONS AND ENFORCEMENT ORDERS.**

~~(A) — *Enforcement Orders Final Subject to Right of Appeal.* Every enforcement order of the Code Enforcement Board shall be final subject to the right of the aggrieved party including, without limitation, the City or the violator, to appeal a ruling or order of the Board to the Circuit Court of the Fifteenth Judicial Circuit of Florida in and for the county. This appeal shall not be a hearing de~~

novi, but shall be limited to appellate review of the record created before the Code Enforcement Board. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

(B) — *Contents of Enforcement Orders.* Every enforcement order of the Board shall be in writing and shall include findings of fact and conclusions of law, and shall indicate the vote upon the order.

(C) — *Disposition of Enforcement Orders.* Every enforcement order shall be signed by the Chairperson and shall be filed in the office of the City Clerk. A copy of the signed order shall be sent by certified mail, return receipt requested, to the violator.

(D) — *Time Limit for Making Decision.* The Board shall in every proceeding reach a decision without unreasonable or unnecessary delay and shall, in all instances, reach a decision within twenty (20) calendar days from the date of the hearing.

(E) — *Compliance by City Employees.* All City employees shall take action as necessary in accordance with a decision of the Board.

(F) — *[Recording in Public Records.]* A certified copy of a Code Enforcement Board 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 and the finding 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 of Palm Beach County pursuant to this subsection and the order is complied with by the date specified in the order, the Code Enforcement Board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing before the Code Enforcement Board is not required to issue a Board order acknowledging compliance.

#### **Sec. 37.42. — ADMINISTRATIVE FINES; COSTS OF REPAIR; LIENS.**

(A) — An enforcement board, upon notification by the code inspector 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 Section 37.36(C), the enforcement board shall notify the local governing body, 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 local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body 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 subsection (B)(1).

(B) — ~~(1) A fine imposed pursuant to this Section shall not exceed two hundred fifty dollars (\$250.00) one thousand (\$1,000) per day for a first violation and shall not exceed five hundred dollars (\$500.00) five thousand dollars (\$5,000) 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 five thousand dollars (\$5,000.00) fifteen thousand dollars (\$15,000) per violation. If the violation is a violation described in Section 99.03, the fine imposed shall not exceed one thousand dollars (\$1,000.00) per day per violation for a first violation, shall not exceed five thousand dollars (\$5,000.00) per day per violation for a repeat violation, and shall not exceed a maximum of fifteen thousand dollars (\$15,000.00) per violation if a Code Enforcement Board finds the violation to be irreparable or irreversible in nature.~~

~~(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 local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this Section. After three (3) months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body 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 Section 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 Section 4(a), Art. X of the State Constitution. Actions for money judgments under this Section may be pursued only on fines levied after October 1, 2000.~~

### **Sec. 37.43. — DURATION OF LIEN**

~~No lien provided by this Chapter or under the authority of F.S. Sections 162.01 et seq., shall continue for a longer period 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 reasonable attorney's fees, that it incurs in foreclosure. 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.~~

**~~Sec. 37.44. -- INJUNCTIVE RELIEF.~~**

~~—— In the event the Code Enforcement Board believes that a violation presents a serious threat to the public health, safety, and welfare, the Board may direct the City Attorney to seek appropriate injunctive relief in the name of the City from the Circuit Court.~~

**~~Sec. 37.45. -- SUPPLEMENTAL CODE ENFORCEMENT PROCEDURES.~~**

~~(A) —— Intent:~~

~~(1) —— It is the intent of the City Commission to promote, protect, and improve the health, safety, and welfare of the citizens of Delray Beach, Florida, and to provide an equitable, expeditious, effective and inexpensive method of enforcing codes and ordinances of the City.~~

~~(B) —— Definitions:~~

~~(1) —— For the purposes of this Chapter of the Code of Ordinances, the following terms, phrases, words, and their derivations shall have the meaning as defined:~~

~~(a) —— Citation or Civil Violation Notice shall mean a notice of violation with a civil penalty and fine, as provided for in the Code.~~

~~(b) —— Code means collectively the City of Delray Beach Code of Ordinances, as may be amended from time to time, any applicable sections of the Minimum Housing Code, SBCCI, as may be amended from time to time, or the applicable Florida Building Code, as may be amended from time to time.~~

~~(c) —— Code Enforcement Officer means any authorized agent or employee of the City whose duty it is to assure compliance with the Code.~~

~~(d) —— Hearing Officer is an individual, appointed pursuant to the Code of Ordinances, who is authorized to conduct hearings on appeals of civil violation notices. A hearing officer enters findings of fact, conclusions of law, and may adjust fines imposed pursuant to civil violation notices depending on evidence and testimony entered at the hearing.~~

~~(e) —— Notice shall be provided to alleged violator(s) or property owner(s) by certified mail, return receipt requested, by hand-delivery or posting, or as provided in this ordinance and Chapter 162 of the Florida Statutes.~~

~~(f) —— Law Enforcement Officer means any authorized agent or employee of the City's Police Department.~~

~~(C) —— Civil Offenses/Penalties; Intent and Purpose. The violation of any provision of any of the ordinances of the City of Delray Beach or the applicable Minimum Housing or Florida Building~~

Code, shall constitute a civil offense punishable by civil penalty as provided herein. The civil citation process is intended to supplement the Code Enforcement Board ~~Special Magistrate~~ process and other enforcement processes by providing an additional enforcement process that will expedite the correction of certain types of code violations. These types of violations include, but are not limited to: itinerant types of sign violations which may be quickly rectified (banners, balloons, sidewalk, snipe signs), unlicensed contractors, contractor licensing requirements, overflowing dumpsters, trash piles, hatracking of trees, failure to secure job sites during hurricane warnings, and operating vendor type businesses without license.

~~(D) — Qualifications, Appointment and Removal, Compensation of Hearing Officers.~~

- ~~(1) — For the purpose of this article, appointments of Hearing Officers shall be made by the City Commission.~~
- ~~(2) — Hearing Officers shall be lawyers in good standing, licensed to practice law in Florida.~~
- ~~(3) — Appointments shall be made for a term of one year. Hearing Officers may be reappointed or removed at the discretion of the City Commission.~~
- ~~(4) — Hearing Officers shall be compensated at a rate to be determined by the City Commission.~~
- ~~(5) — If a Hearing Officer is removed from a case, the case may be assigned to another Hearing Officer.~~

~~(E) — Powers of Hearing Officer. Under this article, Hearing Officers shall have the power to:~~

- ~~(1) — Apply the rules for the conduct of quasi-judicial hearings adopted by the City Commission.~~
- ~~(2) — Subpoena violators and witnesses for hearings. Subpoenas shall be served by the Police Department or by the city staff, or as provided by ordinance.~~
- ~~(3) — Subpoena evidence.~~
- ~~(4) — Take testimony under oath.~~
- ~~(5) — Assess and order the payment of fines as provided according to ordinance and statute.~~
- ~~(6) — Enter findings of fact, conclusions of law, and issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.~~

~~(F) — Attorney to Serve as Counsel. The City Attorney (or his/her designee) shall provide legal advice to City Staff, if requested.~~



(G) ~~Authority to Initiate Enforcement Proceedings. Enforcement proceedings shall be initiated as a result of an observed violation by a code/law enforcement officer. Hearing Officers shall not have authority to initiate such enforcement procedures.~~

(H) ~~Enforcement Procedures; Contents and Services of Notices/Civil Violations.~~

- ~~(1) A code/law enforcement officer who finds a violation of the code shall issue a notice stating that the violator has committed a violation of the code and shall specify a reasonable time period within which the violator must correct the violation. This determination shall be based on consideration of fairness, practicality, ease of correction, ability to correct, severity of violation, or nature, extent, and probability of danger or damage to the public, degree of nuisance to neighbors and neighborhood, and other relevant factors relating to the reasonableness of the time period prescribed.~~
- ~~(2) A code/law enforcement officer is authorized to issue a citation to a person when, based upon his/her personal investigation, the inspector has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted section of the City's Code of Ordinances, the Minimum Housing Code, and the applicable Florida Building Code, as may be amended from time to time.~~
- ~~(3) If, upon his/her personal investigation, a code/law enforcement officer finds that the person has not corrected the violation within the time period, a code/law enforcement officer shall issue a citation to the person or legal entity who has committed the violation. A code/law enforcement officer does not have to provide the violator 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 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. Unlicensed contractors, working under a stop work order, performing work without permits, tree abuse, illegal dumping, failure to secure a job site during a hurricane warning, and similar situations do not require prior notice and may result in an immediate citation.~~
- ~~(4) A citation issued by a code/law enforcement officer shall be in a form prescribed by the City and shall contain:
  - ~~a. The date and time of issuance.~~
  - ~~b. The name and address of the person or entity to whom the citation is issued.~~
  - ~~c. The date and time the civil infraction was committed.~~
  - ~~d. The facts constituting reasonable cause.~~
  - ~~e. The number or section of the code violated.~~
  - ~~f. The name of the code/law enforcement officer.~~
  - ~~g. The procedure for the person or entity to follow in order to pay the civil penalty or to contest the citation.~~~~

- h. ~~The applicable civil penalty if the person or entity elects to contest the citation and that the violator may be liable for costs associated with conducting the administrative hearing.~~
  - i. ~~The applicable civil penalty if the person or entity elects not to contest the citation.~~
  - j. ~~A conspicuous statement that if the person or entity fails to pay the civil penalty within the time allowed, or fails to file an appeal to contest the violation within fourteen (14) days of service of the notice, he/she shall be deemed to have waived their right to contest the citation and that, in such case, a finding may be rendered against the person for an amount up to the maximum civil penalty.~~
- (5) ~~After issuing a citation, the code/law enforcement officer shall deposit the original with the clerk of the code enforcement division.~~
  - (6) ~~Any person who willfully refuses to sign and accept a citation issued by a code/law enforcement officer shall be guilty of a misdemeanor of the second degree punishable as provided in Section 775.082, Florida Statutes, as amended, or Section 775.083, Florida Statutes, as amended.~~
  - (7) ~~All notices required by the code shall be provided to the alleged violator by certified mail, return receipt requested; overnight courier; by hand delivery by a law enforcement officer of the City, Code Enforcement Officer, or other person designated by the City; or by leaving the notice at the violator's usual place of residence with someone residing at the residence above fifteen (15) years of age and informing such person of the contents of the notice; and may include posting at site of violation.~~
  - (8) ~~Such notice may be posted for at least ten (10) days in at least two (2) locations; one of which shall be the property upon which the violation is alleged to exist and the other which shall be, in the case of municipalities, at the primary municipal government office. 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 place of its posting. Notice by 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 (7).~~
  - (9) ~~Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (7), together with proof of posting as provided in subsection (8), shall be sufficient to show that the notice requirements of the code have been satisfied, without regard to whether or not the alleged violator actually received such notice.~~
- (1) ~~Civil Penalties; Appeals; Failure to Pay/Correct.~~
  - (1) ~~Civil penalties assessed pursuant to this Article are due and payable to the City on or before the last day of the period allowed for the filing of an administrative hearing before a hearing officer or in any event no later than~~

~~fourteen (14) days after the issuance of the notice, or if proper appeal is made, when the appeal has been finally decided if in a manner adverse to the cited violator.~~

~~(2) — A violator who has been served with a civil infraction notice shall elect either to:~~

- ~~a. — Pay the civil penalty in the manner indicated on the infraction notice, and correct the violation within the time specified on the notice; or~~
- ~~b. — Request an administrative hearing before a hearing officer to appeal the determination of the Code Enforcement Officer, which resulted in the issuance of the civil infraction notice.~~

~~(3) — An appeal for administrative hearing shall be accomplished by filing a request in writing to set the hearing for review and mailed to the Code Enforcement Clerk or his/her designee or to the address indicated on the notice, with a postmark indicating that it was marked not later than fourteen (14) days after the service of the citation notice.~~

~~(4) — If the named violator, after notice, fails to pay the civil penalty and correct the violation (within the time specified), or to timely request an administrative hearing before a hearing officer, such failure shall constitute a waiver of the violator's right to an administrative hearing before a hearing officer. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly. The civil penalty shall be an accruing fine amount which will be assessed daily for continuing violations which have not been corrected.~~

~~(f) — Scheduling and Conduct of Appeal Hearing:~~

~~(1) — Upon receipt of a named violator's timely request for an administrative hearing, the code/law enforcement officer or his/her designee shall set the matter down for hearing on the next available regularly scheduled hearing date or as soon thereafter as possible.~~

~~(2) — City staff shall send a notice of hearing by certified and regular mail to the violator at the last known address or the address contained on the appeal. The notice of hearing shall include the place, date and time of the hearing, as well as a copy of the civil violation notice.~~

~~(3) — An informational statement shall include:~~

- ~~a. — Right of violator to be represented by an attorney.~~
- ~~b. — Right of violator to present witnesses and evidence.~~
- ~~c. — Notice that failure of violator to attend hearing may result in civil penalty being assessed in absence of the violator.~~

- d. ~~Notice that requests for continuances will not be considered if not received in writing by the code compliance officer at least five (5) calendar days prior to the date set for hearing.~~
- e. ~~Right to have a court reporter present at the violator's own expense.~~
- (4) ~~The Hearing Officer shall conduct hearings on a regularly scheduled monthly basis, depending on the number of appeals, or more frequently upon request of the City Manager or his/her designee. No hearing shall be set sooner than twenty (20) days from the date of service of the notice of infraction.~~
- (5) ~~A hearing date shall not be considered postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the hearing officer at least five (5) calendar days prior to the date set for the hearing. A decision shall be made at least two (2) working days before the meeting.~~
- (6) ~~All hearings of the Hearing Officer shall be open to the public. All testimony shall be under oath. Assuming proper notice, a hearing may proceed in the absence of the named violator.~~
- (7) ~~The proceedings at the hearing shall be recorded electronically or by a court stenographer and may be transcribed at the expense of the party requesting the transcript.~~
- (8) ~~The Code Enforcement Clerk shall provide clerical services as may be reasonably required by each Hearing Officer for the proper performance of their duties.~~
- (9) ~~Each case before a Hearing Officer shall be presented by the City staff.~~
- (10) ~~The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings. Any relevant evidence shall be admitted if the Hearing Officer finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary. Hearsay evidence may be accepted for the purpose of supplementing or explaining any 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.~~
- (11) ~~Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called that witness to testify, and to offer rebuttal of the evidence.~~

- (12) ~~The Hearing Officer shall make findings of fact and conclusions of law based on the evidence of record. In order to make a finding upholding the Code Enforcement Officer's decision, the Hearing Officer must find that the preponderance of the evidence indicates that the named violator was responsible for the violation of the relevant section of the code. The initial burden of proof shall be with the City to show by the greater weight of evidence that a code violation exists and that the alleged violator committed, or was responsible for maintaining or permitting the violation to continue. Once this burden has been met, it shall be the responsibility of the violator to rebut the evidence submitted by the City.~~
- (13) ~~The time for correction given by the code/law enforcement officer to the named violator and contained in the notice of violation is rebuttably presumed to have been a reasonable time for correction. Upon presentation of relevant evidence by the named violator that the time for correction was not reasonable, however, the Hearing Officer may make a predetermination as to the time period being insufficient. If the Hearing Officer determines that the time given for correction was insufficient, the penalty for a continuing violation shall be calculated from the date determined by the Hearing Officer to be reasonable time for correction.~~
- (14) ~~If the named violator is found guilty of the violation, he/she may be held liable for the reasonable cost of the administrative hearing, at the discretion of the Hearing Officer.~~
- (15) ~~After all evidence has been submitted and all testimony heard, the Hearing Officer shall issue findings of fact and conclusions of law orally, at the hearing, which shall then be incorporated in a written order affording the proper relief consistent with the powers granted in this Chapter. Such order may command a violator to take whatever steps are necessary to bring a violation into compliance by the date announced at the meeting and subsequently placed in the order. The order shall be announced orally at the meeting and within five (5) working days subsequent to the hearing shall be reduced to writing and mailed to the violator.~~
- (16) ~~The order of the Hearing Officer may require the violator to pay a fine according to the civil violation schedule, including administrative charges. Fines for repeat violations may be doubled.~~
- (17) ~~In determining any reduction of the fine, the Hearing Officer may consider the following factors:~~
- ~~1. The gravity of the violation.~~
  - ~~2. Any actions taken by the violator to correct the violation.~~
  - ~~3. Any previous violations committed by the violator.~~
- (18) ~~The Hearing Officer may reduce or eliminate a fine provided good cause is shown for such reductions.~~

~~(K) — Civil Penalties and Related Terms Construed.~~

- ~~(1) — Penalties for violations of the provisions to be enforced through this article shall be in the amounts prescribed in the schedule of civil penalties contained in Subsection (Q).~~
- ~~(2) — For each day of a continued violation, an additional penalty in the same amount as that prescribed for in the original violation shall be added.~~
- ~~(3) — For the first repeat violation, the amount of the civil penalty shall be double the amount of the penalty prescribed for the original violation in Subsection (Q). The amount of civil penalty due for each subsequent repeat violation shall be double the amount of penalty due for the first day of the immediately preceding violation, provided that the maximum penalty payable for any repeat violation shall be five hundred dollars (\$500.00).~~
- ~~(4) — A repeat violation which remains uncorrected beyond the time prescribed for correction in the citation shall be treated as a continuing violation, and the additional penalty for each day of continued violation shall be double the amount due for the first day of the repeat violation, except as noted in (3) above.~~
- ~~(5) — Continuing violation penalties shall accrue from the date of correction given in the citation until the correction is made or until a request for administrative hearing is filed, whichever comes first. If the named violator requests an administrative hearing and loses the appeal, the Hearing Officer shall determine a reasonable time period within which correction of the violation must be made, based on the considerations set forth in Subsection (J)17. If correction is not made within the period set by the Hearing Officer, continuing violation penalties shall begin to accrue again after the time for correction has run.~~
- ~~(6) — Civil penalties assessed pursuant to this chapter are due and payable to the City on the last day of the period allowed for the filing of an appeal from the hearing officer's decision, or, if a proper appeal is made, when the appeal has been finally decided adversely to the named violator.~~

~~(L) — Recovery of Unpaid Civil Penalties; Unpaid Penalty to Constitute a Lien; Foreclosure.~~

- ~~(1) — The City may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.~~
- ~~(2) — A certified copy of an order imposing a civil penalty shall be recorded in the public records and thereafter shall constitute a lien against the property 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 may be enforced in the same manner as a court judgment by the sheriffs of this State, including~~

levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A civil penalty imposed pursuant to this Article shall continue to accrue until the violator complies or until judgment is rendered in a suit to foreclose a lien filed pursuant to this Chapter, whichever occurs first. After three (3) months from the date of filing of any such lien which remains unpaid, the City may foreclose or otherwise execute the lien.

- (3) — 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 a lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party may recover interest and all costs, including a reasonable attorney's fee, incurred in the foreclosure. The continuation of the lien affected 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.

(M) — Appeal of Order.

- (1) — An aggrieved party, including the City, may appeal an order of a Hearing Officer to the appellate division of 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 Hearing Officer. An appeal shall be filed within thirty (30) calendar days of the issuance of the order sought to be overturned. Failure to make such appeal within the prescribed thirty-day period shall render the findings of the Hearing Officer conclusive, binding and final.
- (2) — Unless the findings of the Hearing Officer are overturned in a proceeding held pursuant to this section, findings of the Hearing Officer shall be admissible in any proceeding to collect unpaid penalties.
- (3) — No aggrieved party other than the City may apply to the court for relief unless such party has first exhausted the remedies provided for in this Article and has taken all available steps provided in this Article. It is the intention of the City that all steps provided by this Article shall be taken before any application is made to the court for relief; and no application shall be made by any aggrieved party other than the City to a court for relief except from an order issued by a Hearing Officer pursuant to this Chapter. It is the intention of the City that, notwithstanding anything in this Article to the contrary, the City shall retain all rights and remedies otherwise available to it to secure compliance with or prevent violations of the code. For purposes of an appeal, the Code Enforcement Clerk shall make available, for public inspection and copying, the record upon which each final order of a Hearing Officer is based. The Code Enforcement Clerk shall make a reasonable charge commensurate with the cost for the preparation of the official record on appeal and transmittal thereof to the circuit court for making certified copies of any records or portion thereof.

(N) — Provisions Contained Herein are Supplemental. Nothing contained in this Article shall prohibit the City from enforcing its Code by any other means. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filing suit for the enforcement of any section of this Code.

(O) — Additional Enforcement Powers. In addition to the powers and authority given to the City and Hearing Officers pursuant to this article, the City may, in its discretion, exercise any powers given to municipalities by Florida Statutes, Chapter 162, as amended, and all other municipal powers.

(P) — Schedule of Civil Penalties:

- (1) — The schedule of civil penalties, as may be amended from time to time by resolution of the City, shall be the same as set forth in Subsection (Q) of this Article. Repeat violations are doubled.
- (2) — For violations of any section of this Code for which a specific penalty is not prescribed in Subsection (Q), a penalty shall be imposed which shall not be less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00) per day for a repeat violation. For the purposes of continuing violations, each day shall constitute a separate violation.

(Q) — Civil penalties:

Code		Civil Penalty	
Code Section	Description of Violation	Noncontested	Contested
CITY CODE OF ORDINANCES			
GARBAGE AND TRASH			
51.02	Dumping on private property is prohibited	200.00	275.00
51.03	Garbage placed in containers	150.00	225.00
51.20 (A) and (B)	Removal of building materials—Owner's responsibility	100.00	175.00
51.22	Vegetative waste collection	100.00	175.00
51.23	Bulk trash collection	100.00	175.00
51.35 – 51.40	Required and approved trash containers, roll-offs, maintenance, replacement	100.00	175.00
51.41 – 51.44	Garbage preparation; use of containers	50.00	125.00
51.45	Construction receptacles	150.00	225.00
51.55 – 51.59	Special refuse; recycling	100.00	175.00
	All other violations of Section 51	100.00	175.00
ABANDONED PROPERTY JUNK, TRASH AND DEBRIS			
90.02	Allowing wrecked, dismantled, unlicensed or inoperable vehicles or vessels on public property	150.00	225.00
90.03	Allowing wrecked, dismantled, unlicensed, inoperable vehicles or vessels on private property	150.00	225.00
90.07	Allowing repair work outside an enclosed building; storage of dismantled vehicles	150.00	225.00
90.16	Operating junk yard without obtaining required permits	250.00	325.00
	All other Section 90 violations	100.00	175.00
ANIMALS			



Code Section	Description of Violation	Civil Penalty	
		Noncontested	Contested
91.18	Unlawful retail sales of dogs and cats/failure to post or falsified Certificate of Source	400.00	500.00
<b>FIRE SAFETY</b>			
96.02	Inspection required	100.00	175.00
96.04	Open burning prohibited	200.00	275.00
96.05(e)	Objects within 5 feet of fire hydrant	150.00	225.00
96.08(B), (C)	Storage, discharge or release of hazardous wastes	100.00	150.00
96.16	Adoption of N.F.P.A. — Any other violation of N.F.P.A.	150.00	225.00
<b>GARBAGE ON PRIVATE PROPERTY</b>			
98.03(A)	Unlawful deposit of garbage	150.00	225.00
98.03(B)	Unlawful accumulation of garbage	150.00	225.00
<b>LITTER ON PRIVATE PROPERTY</b>			
98.04(A)	Unlawful deposit of litter	150.00	225.00
98.04(B)	Unlawful existence of litter	150.00	225.00
98.04(C)	Property to remain free of litter	150.00	225.00
<b>LITTER ON BUSINESS</b>			
98.05(A)	Unlawful deposit of litter in business	150.00	225.00
98.05(B)	Unlawful existence of litter in business	150.00	225.00
<b>LITTER IN PUBLIC PLACE</b>			
98.06	Unlawful to throw or deposit litter in a public place	250.00	325.00
<b>LITTER ON STREET</b>			
98.07(A)	Unlawful deposit of litter on sidewalk, parking area, right-of-way or street	250.00	325.00
98.07(B)	Unlawful existence of litter on sidewalk, parking area, right-of-way, or street	150.00	225.00
<b>LITTER ON VACANT LOTS</b>			
98.08(A)	Unlawful deposit of litter on private property	150.00	225.00
98.08(B)	Unlawful existence of litter on private property	150.00	225.00
<b>LITTER IN WATER</b>			
98.10	Unlawful to deposit litter in water	150.00	225.00
98.20	Unlawful to throw or scatter litter on street, sidewalk, alley, public or private property	150.00	225.00
<b>THROWING LITTER FROM VEHICLES</b>			
98.21	Unlawful for driver or passenger to throw or deposit litter on any street, public place, or private property	150.00	225.00
<b>VEHICLES TRANSPORTING REFUSE OR LOOSE MATERIALS</b>			
98.22(A)	Loose materials blowing or dropping from vehicles	200.00	275.00
98.22(C)	Required watertight vehicle to prevent odors and spillage	250.00	325.00
98.23	Unlawful dropping litter from aircraft	250.00	325.00
98.23(A)	Waste tire dumpster required to register	250.00	325.00
98.23(B)	License required for waste tire collection	250.00	325.00
98.23(C)(1)	Transporting tires without license	250.00	325.00
98.23(C)(2)	Giving false identification	100.00	175.00
98.23(C)(3)	Unlawful subcontracting	200.00	275.00
	All other sections of Chapter 98	100.00	175.00
<b>NOISE CONTROL</b>			
99.03	Unlawful for a person to make unreasonably loud, excessive, or unnecessary noise	250.00	325.00
<b>GENERAL REGULATIONS</b>			
100.01(A)(1)	Unlawful existence of weeds, undergrowth, brush trash or garbage on property	150.00	225.00
100.01(A)(2)	Unlawful existence of weeds, grass, plant life over 12 inches high	150.00	225.00
100.01(A)(3)	Unlawful existence of vegetative trash mixed with other refuse	150.00	225.00

Code Code Section	Description of Violation	Civil Penalty	
		Noncontested	Contested
100.01(A)(4)	Unlawful accumulations of bulky, heavy, unbundled or uncontainerized items	150.00	225.00
100.01(B)	The existence of vegetation trees and shrubs that impair traffic safety is prohibited	250.00	325.00
100.01(C)	The existence of any vegetation, trees or shrubs that interferes with street lights, signs, sidewalks or other public improvements is prohibited	200.00	275.00
100.01(D)	The adjoining public right-of-way must be maintained	150.00	225.00
100.01(E)	Pyramid or similar type markers are prohibited	150.00	225.00
100.02	Unlawful debris, vegetation, or structure on property which may create a hazard in times of hurricane	250.00	325.00
100.03	Unlawful accumulation of sand, rock, debris, or spoil on lot	100.00	175.00
100.04	Seawall repair is required on all properties adjacent to sand, stream, or body of water	150.00	225.00
100.05(A); (B)	Unlawful to maintain standing water where mosquitoes may breed	150.00	225.00
100.06(A); (B)	Unlawful excavation which is in dangerous or unsafe condition; declared a nuisance	250.00	325.00
100.07(A)	Any portion of a lot not covered with a building, structure, parking area, or walkway shall be sodded or covered with appropriate ground cover	100.00	175.00
100.07(B)	All landscape materials shall be maintained in a healthy condition	100.00	175.00
EXTERIOR BUILDING WALLS			
100.08(A)	All building walls shall be maintained in a secure and attractive manner. All defective material shall be repaired. All loose materials, cornices, trim and window frames shall not be deteriorated, shall be structurally sound, and exposed materials shall be painted.	100.00	175.00
PETS ON THE BEACH, PARKS OR RECREATIONAL FACILITIES			
	All sections of Chapter 101 except 101.27(B) and 101.36(E)(1)	100.00	175.00
101.27(B)	No person shall bring into any park or municipal beach site, any cat, dog or other animal without a permit from the Parks and Recreation Department	50.00	125.00
101.36(E)(1)	No person shall bring into any recreational facility any cat, dog, or other animal	50.00	125.00
STREETS AND SIDEWALKS—CONSTRUCTION, EXCAVATION, AND REPAIR			
102.01(A); (B)	Construction in right-of-way (permit required)	100.00	175.00
102.17	Construction on street (permit required)	100.00	175.00
102.20	Construction standards for public r-o-w	100.00	175.00
102.40	Standards for movable newsracks	100.00	175.00
102.42	Certificate of compliance for newsrack	50.00	125.00
102.43	Newsrack standards	100.00	175.00
102.44	Prohibited locations/site triangle requirement	250.00	325.00
102.46	Abandonment	150.00	225.00
	All other violations of Section 102	100.00	175.00
LOCAL BUSINESS TAX RECEIPT			
110.02	Local Business Tax Receipt required	100.00	175.00
110.08	State license required	100.00	175.00
110.113	Commercial vehicles—Required name (4 inches) to be displayed	100.00	175.00
110.116	Failure to get preinspection required for new business	75.00	150.00
	All other violations of Section 110	100.00	175.00
ALARMS			
112.21	Failure to get alarm registration	50.00	125.00
112.23	Failure to display alarm decal	50.00	125.00

Code Code Section	Description of Violation	Civil Penalty	
		Noncontested	Contested
112.26	Failure to respond/verify alarm malfunction	75.00	150.00
112.27	Multiple malfunction violations		
	1st offense	0.00	0.00
	2nd offense	0.00	0.00
	3rd offense	0.00	0.00
	4th offense	25.00	50.00
	All other violations of Section 112	100.00	175.00
HANDBILLS/SOLICITING			
118.02	Unlawful distribution of handbills	100.00	175.00
118.03	Unlawful soliciting and peddling	100.00	175.00
118.06	Failure to pay a business tax for soliciting	100.00	175.00
	All other violations for Section 118	100.00	175.00
MOBILE FOOD TRUCKS			
120.01	Unlawful operation of a mobile food truck		
	1st offense	250.00	325.00
	2nd offense	425.00	500.00
SKATEBOARDING			
132.09	Unlawful skateboarding/roller skating on sidewalk along Atlantic Avenue between State Road A-1-A and I-95	50.00	100.00
	All other sections of City Code not mentioned	100.00	175.00
CITY LAND DEVELOPMENT REGULATIONS			
4.3.2(A) — (C)	Use Determination — Allowed and incompatible uses	200.00	275.00
4.3.3(A) — (Z)	Special Uses/District Regulations	200.00	275.00
4.3.4(A) — (K)	Development Standards		
	Setbacks; lot coverage; density; zoning matrix	100.00	175.00
4.4.2 — 4.4.28	Permitted Uses	250.00	325.00
SIGNS			
4.6.7(D)(2)	Garish signs	100.00	175.00
4.6.7(E)(1)	Permits required for signs	100.00	175.00
4.6.7(F)	Sign area, height, setbacks	100.00	175.00
4.6.7(f)	Prohibited signs	150.00	225.00
	All other violations of Section 4.6.7	100.00	175.00
LIGHTING			
4.6.8(A)(1) — (4)	Lighting requirements, height, lighting illumination standards	100.00	175.00
PARKING			
4.6.9(B)(1) — (5)	Parking required	150.00	225.00
4.6.9 (C)(1)	Parking design	150.00	225.00
4.6.9 (C)(2)	Residential uses (spaces req'd)		
	(a) Single-family	50.00	125.00
	(b) Duplexes	75.00	150.00
	(c) Multifamily	100.00	175.00
	(d) Guest parking	50.00	125.00
4.6.9 (C) (3)	Commercial uses	150.00	225.00
4.6.9(C)(4)	Office uses	150.00	225.00
4.6.9(C)(5)	Industrial uses	150.00	225.00
4.6.9(C)(6)	Recreational/Community Facilities	150.00	225.00
	All other violations of Section 4.6.9	150.00	225.00
4.6.10	Off loading requirements	150.00	225.00

Code Section	Description of Violation	Civil Penalty	
		Noncontested	Contested
4.6.11	Outside storage of materials, supplies, products, and vehicles shall only be allowed if specified in the district	250.00	325.00
4.6.13(A)	Parking and storage of commercial vehicles, boats, trucks, and similar vehicles in a residential district	250.00	325.00
4.6.13(B)	Truck parking—Residential zones—Prohibited boat, trailer, RV storage in residential zones	250.00	325.00
4.6.14	Site triangle visibility of intersections	250.00	325.00
4.6.15	Pool enclosures, requirements	250.00	325.00
LANDSCAPING			
4.6.16(A)	General requirements	100.00	175.00
4.6.16(B)	Applicability	100.00	175.00
4.6.16(C)	Compliance, review	100.00	175.00
4.6.16(D)	Site plan requirements	150.00	225.00
4.6.16(E)	Design standards	100.00	175.00
4.6.16(F)	Irrigation requirements	100.00	175.00
4.6.16(G)	Prohibited species	150.00	225.00
4.6.16(H)	Minimum requirements		
	(1) Single Family (new)	50.00	125.00
	(2) Duplex (new)	75.00	150.00
	(3) Multi-Family, Commercial, Industrial (new)	150.00	225.00
	(4) Multi-Family, Duplex, Commercial, and Industrial (existing)	100.00	175.00
	(5) Sight distance req'd (ref. Section 4.6.14)	250.00	325.00
4.6.16(I)	Minimum requirements		
	(1) General	100.00	175.00
	(2) Pruning/hatracking	200.00	275.00
4.6.17	Soil erosion (all sections)	100.00	175.00
5.1	Subdivision Regulations (all sections)	100.00	175.00
5.3	Right of Way Dedication (all sections)	100.00	175.00
WORK IN PUBLIC RIGHT OF WAY			
6.3.2	Permit required for work in public right-of-way	100.00	175.00
SIDEWALK CAFE REQUIREMENTS			
6.3.3(A)	Permit required	100.00	175.00
6.3.3(F)	Design Guidelines		
6.3.3(F)(1) — (13)	Path of egress, no table zones, hours of operation, cleanliness, etc.	150.00	225.00
BUILDING REGULATIONS			
7.1.2	Required plans and permit	100.00	175.00
7.1.3	Florida Building Code (all sections)	100.00	175.00
7.1.3(B)(1) — (4)	Florida Building Code Standards	100.00	175.00
7.1.4	Property Maintenances; Building Standards		
7.1.4(C)(1)	Buildings	150.00	225.00
	(a), (b) Safety	150.00	225.00
7.1.4(C)(2)	Debris/Storage on partially vacant lot	150.00	225.00
7.1.4(D)(1)	Hurricane precautions		
	(a) Required canvas awnings, tents to be removed	150.00	225.00
	(b) Construction materials to be secured	250.00	325.00
	(c) Outdoor furniture and materials to be secured	250.00	325.00
7.1.4(D)(2)(b)	Required repairs after hurricane (unsafe structure)	250.00	325.00
7.1.5(B)(1)(2)	Required numbers on buildings	100.00	175.00
7.1.5(C)	Required display and size of numbers—Visible from street	50.00	125.00

Code Section	Description of Violation	Civil Penalty	
		Noncontested	Contested
7.1.7	Seawalls required to be in good repair	100.00	150.00
<b>ELECTRICAL CODE</b>			
7.2.1(A)(1); (2)	Required electrician for work	100.00	175.00
7.2.1(A)(1); (3)	Required sign electrician for work	100.00	175.00
7.2.1(B)	National Elec. Code and National Fire Code adopted by reference violations	100.00	175.00
7.2.1(C)	Allowing another person to obtain permit or do work under your license	200.00	275.00
7.2.2(A)(1) — (3)	Required plans and installation methods	100.00	175.00
7.2.2(B)	Concealing work before final	150.00	225.00
7.2.2(C)	Using non-approved apparatus/fixtures	200.00	275.00
7.2.5(C)	Interfering with enforcement	150.00	225.00
	All other Section 7 violations	100.00	175.00
<b>BUILDING MAINTENANCE</b>			
7.8.3	Buildings shall be maintained by Owner	100.00	175.00
<b>STANDARD HOUSING CODE THROUGH LDR SECTIONS 7.4.1 AND 7.8.3</b>			
101.4.1 — 101.4.4	Repairs required on existing buildings	100.00	175.00
101.6	Maintenance of buildings; safeguards; owner responsible	100.00	175.00
103.2	Unsafe residential buildings to be repaired or demolished	250.00	325.00
301	Occupying or allowing occupation of a substandard building	150.00	225.00
302.1 — 302.4	Required sanitary & plumbing facilities	100.00	175.00
302.5.1 — 302.5.6	Required heating facilities	100.00	175.00
302.6	Required kitchen facilities	100.00	175.00
303.1	Required windows	100.00	175.00
303.2	Required ventilation	100.00	175.00
303.3	Required bathroom ventilation	100.00	175.00
303.4	Required electrical outlets	100.00	175.00
305.1 — 305.23.2	Doors, windows and screen requirements	100.00	175.00
306.1 — 306.4	Minimum space requirements	100.00	175.00
307.1 — 307.6	Sanitation requirements for multi-family	150.00	225.00
308.1 — 308.7	Rooming house requirements	150.00	225.00
309.1 — 309.6	Dangerous dwellings	250.00	325.00
	All other sections of Standard Housing Code not mentioned	100.00	175.00

#### **Sec. 37.46. - NOTICES.**

(A) — All notices required by this part shall be provided to the alleged violator by:

- (1) — Certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the local government by such owner and is returned as unclaimed or refused, notice may be provided by posting as described below and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing;
- (2) — Hand delivery by the Sheriff or other Law Enforcement Officer, Code Inspector, or other person designated by the local governing body;

- ~~(3) — Leaving the notice at the violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person of the contents of the notice;~~
- ~~(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 Code Enforcement Board, notice may also be served by publication or posting, as follows:~~
- ~~(1) — (a) — Such notice shall be published once during each week for four (4) consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the Code Enforcement Board is located. The newspaper shall meet such requirements as a prescribed under F.S. Chapter 50, for legal and official advertisements.~~
- ~~(b) — Proof of publication shall be made as provided in F.S. Sections 50.041 and 50.051.~~
- ~~(2) — (a) — 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 (2) locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at City Hall.~~
- ~~(b) — 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.~~
- ~~(c) — Evidence that an attempt has been made to hand deliver or mail notice as set forth herein, together with proof of publication or posting as set forth herein shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.~~

**Secs. 37.37 – 37.46. – RESERVED.**