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OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor Fletcher, Vice-Mayor Carroll, Councilmember Turner, Councilmember Kramer, and Councilmember Winger
From: Wayne R. Coment, City Attorney
Subject: Amendment of code enforcement ordinance; addition of lien reduction process
Date: December 21, 2012

The attached ordinance is provided for first reading at the January 8, 2013 City Council meeting. This Ordinance amends the Code Enforcement provisions of the City Code.

This ordinance adds a new section 2-308 which provides a standardized procedure for processing and considering requests for reduction or forgiveness of code enforcement liens as was discussed with the City Council. In addition to this new procedure, the ordinance incorporates amendments and clarifications to numerous other provisions of the code enforcement ordinance which have been under study after using the new procedures for some time now. Following are a few proposed modifications that bear specific mention:

Sec. 2-276((f). Clarifies a code enforcement board member may not participate in official capacity in any case in which the member is a complainant;

Sec. 2-296(b). Clarifies that a code enforcement officer may issue one citation for multiple violations found at one location specifying the total penalties on that one citation or a separate citation may be issued for each violation;

Sec. 2-296(c). Provides a separate document may be used by code enforcement as a warning rather than strictly using a citation form;

Sec. 2-296(c)(7). Clarifies that a warning may be served by first class mail;

Sec. 2-296(g)(h). Clarifies the process for amendment or withdrawal of a citation;

Sec. 2-296(j). Clarifies that refusal to sign a citation is a violation of state statutes and the other related violations are city ordinance violations;

Sec. 2-300. Provides a standard civil penalty for a third or subsequent code violation within five years is \$250.00;

Sec. 2-301(c); 2-302(f). Provides a violator receiving a written warning can enter into an agreement to correct the violation; and

Generally, provides more discretion to the code enforcement board in imposing or waiving a civil penalty on a case by case basis.

If the Council finds the ordinance agreeable as proposed the next step will be to schedule the ordinance for public hearing. The ordinance is also on the Code Enforcement Board's agenda for review on January 9, 2013. Please let me know should you have any questions or comments.

A handwritten signature in black ink, appearing to read "Wayne R. Coment", written over a horizontal line.

Wayne R. Coment
City Attorney

ORDINANCE NO. 2013 - _____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, RELATING TO CODE ENFORCEMENT PROCEDURES; AMENDING ARTICLE VII, CODE ENFORCEMENT, OF CHAPTER 2, ADMINISTRATION, OF THE CODE OF THE CITY OF VERO BEACH; PROVIDING FOR CLARIFICATION AND ESTABLISHING PROCEDURES FOR PROCESSING REQUESTS FOR CODE ENFORCEMENT LIEN REDUCTIONS; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR TRANSITION AND CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a fundamental purpose of municipal government is to promote, protect, and improve the health, safety, and general welfare of the citizens of the municipality; and

WHEREAS, an important part of performing such purpose is the enforcement of the codes, ordinances, and other laws in force within the municipality's jurisdiction; and

WHEREAS, the City Council of the City of Vero Beach ("City Council") previously adopted the code enforcement system and procedures provided for in Ordinance 2008-07 as permitted by Chapter 162, Florida Statutes, for the enforcement of codes, ordinances, and other laws in force in the City of Vero Beach; and

WHEREAS, the adopted code enforcement system has been successfully implemented and used by the City of Vero Beach in streamlining code enforcement procedures; and

WHEREAS, operation of these streamlined code enforcement procedures has demonstrated certain areas of the process where clarification as provided in this Ordinance will be helpful to further the intent and purpose of the adopted procedures; and

WHEREAS, the City Council desires to establish procedures and criteria for processing requests for reduction or forgiveness of code enforcement liens; and

WHEREAS, the City Council finds that the amendments to the code enforcement system and procedures provided for in this Ordinance are in the public interest and further promote efficiency in City code enforcement efforts,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, THAT:

Section 1 – Adoption of “Whereas” clauses.

The foregoing “Whereas” clauses are hereby ratified and incorporated herein as forming the purpose and legislative intent of this Ordinance.

Section 2 – Amendment of ARTICLE VII CODE ENFORCEMENT.

Article VII, Code Enforcement, of Chapter 2, Administration, is hereby amended as follows:

ARTICLE VII. CODE ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 2-261. Title.

This article shall constitute and may be cited as the "Code Enforcement Ordinance of the City of Vero Beach."

Sec. 2-262. Intent; exemption from Chapter 162, Florida Statutes; application; provisions supplemental.

(a) *Intent.* It is the intent of this article to promote, protect, and improve the health, safety, and general welfare of the citizens of the City of Vero Beach by the creation of a code enforcement system and procedures that will provide an equitable, expeditious, efficient, and effective method for enforcement of, and to encourage compliance with, the code, ordinances, rules, and regulations of the City of Vero Beach and the state, county and uniform laws, statutes, codes, ordinances, rules, and regulations that may be enforced by the city pursuant to this article.

(b) *Exemption from F.S. chapter 162; application of article.* The City of Vero Beach shall be exempt from the provisions of F.S. ch. 162, to the extent that said chapter relates to any code provision that is or may be adopted or enforced within the city, specifically including but not limited to city, state, county, and uniform laws, statutes, codes, ordinances, rules, and regulations that may be enforced by the city. The procedures specified in this article may be used to enforce any such code provision, including but not limited to the following specified matters as they may be adopted or regulated by this Code, but excluding any violation delineated strictly as a criminal offense or limited to other enforcement procedures:

- (1) Alarm systems;
- (2) Alcoholic beverages;
- (3) Amusements and entertainment;
- (4) Animals;
- (5) Aviation;
- (6) Boardinghouses;
- (7) Boats and waterways;
- (8) Buildings and building regulations;
- (9) Bulkheads and waterways;
- (10) Business tax;
- (11) Contractors and contracting;
- (12) Environment;
- (13) Flood damage prevention and drainage;
- (14) Land development;
- (15) Landscaping and tree protection;
- (16) Marine activities, structures and facilities;
- (17) Parks and recreation;
- (18) Property and structure maintenance;
- (19) Public nuisances;
- (20) Public rights-of-way;
- (21) Sales and solicitation;
- (22) Signs and satellite dish antennas;
- (23) Solid waste;
- (24) Traffic and vehicles;
- (25) Utilities;
- (26) Vehicles for hire;
- (27) Subdivisions; and
- (28) Zoning and land use.

(c) *Provisions supplemental.* Nothing contained in this article or code shall prohibit the city from enforcing any code provision by any other means. The enforcement procedures specified in this article are cumulative to all others available to the city and shall not be deemed to be prerequisites to filing suit for enforcement in a court of competent jurisdiction. No civil penalty or costs prescribed, assessed, or

collected pursuant to this article shall limit any other civil or administrative remedies that the city may have by law to abate any continuing violation or public nuisance.

Sec. 2-263. Definitions.

As used in this article:

Affidavit of non-compliance means an affidavit of the officer certifying that the violator has failed to correct the violation within the time allowed for correction.

Appeal means:

- (1) An administrative hearing before the board for review of the issuance of a code enforcement citation or the amount of the continuing penalties or costs assessed in a notice of assessment;
- (2) A review by a court of competent jurisdiction of final administrative action of the board; and
- (3) The act of timely filing a written request for an administrative hearing before the board or a notice of appeal for appellate review of final board action by a court of competent jurisdiction.

Board means the code enforcement board of the City of Vero Beach as authorized in this article and duly created and its members appointed by the city council.

Code enforcement citation and *citation* mean a written notice of the violation of a code provision issued by a code enforcement officer.

Code means the code of the City of Vero Beach and all ordinances duly enacted by the city council, and all rules and regulations adopted pursuant thereto by ~~resolution~~ of the city council, and shall include all provisions of state, county, or and uniform law, statute, code, ordinance, rule, ~~or~~ and regulation adopted by the city council or that the city is otherwise authorized to enforce within its jurisdiction.

Code enforcement officer and *officer* mean any employee or agent of the city whose duty is to assure enforcement of and compliance with the code within the city and shall include, but is not limited to, any duly sworn law enforcement officer of the city, any animal control or parking enforcement officer of the city, and any building official, building inspector, and other compliance officer of the city or Indian River County exercising their official duties as authorized within the city.

Continuing violation means a correctable violation that remains uncorrected beyond the time period for correction stated in the code enforcement citation or the board order, whichever is applicable.

Correctable violation means:

- (1) A violation of a code provision that is comprised of an ongoing condition, circumstance, or activity that requires some action or inaction to remedy the violation rather than a single prohibited act; and
- (2) A violation of a code provision that requires mitigation of the violation or its effects in order to be deemed corrected.

Costs means costs and expenses incurred by the city in enforcing any code provision, including but not limited to the cost and expense for enforcement inspections, investigations, testing and monitoring, administrative hearings, preparation of reports, notices, orders, liens, releases, and other documents, photographs, video recordings, title searches, collection fees, recording fees, postage and other service fees, materials and supplies, and other demonstrable administrative and enforcement costs and expenses of an enforcement action arising from the violation of any code provision.

Notice of assessment means a notice of assessment of continuing penalties setting forth the amount of the civil penalties and costs assessed for a continuing violation.

Party means the named violator or the city.

Repeat violation means a violation of a code provision by a person or entity who has been previously found by a code enforcement board, special magistrate, or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding the violations occur at different locations. In the case of correctable violations, a repeat violation can occur only after correction of the previous violation has been made.

Special magistrate and *magistrate* mean a code enforcement special magistrate as authorized in this article and duly appointed by the city council.

Stop ~~work order~~ and ~~stop order~~ means any written statement, written directive, or written order stating that the cited work or activity shall cease, the reason for the order, and the conditions under which the cited work or activity will be permitted to resume.

Uncontested violation means a violation for which a code enforcement citation is issued and:

- (1) An appeal hearing is not timely requested by the violator, or
- (2) An appeal hearing is timely requested by the violator, but the violator fails to appear for such hearing after notice of the hearing date and time is given to the violator as provided in this article.

Uncorrectable violation means a violation of a code provision that cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition, circumstance, or activity, but shall not include a violation of a code provision that requires mitigation of the violation or its effects.

Violator means a person or legal entity alleged or deemed legally responsible for a violation subject to enforcement under this article and may include all tenants, property owners, and other responsible persons and entities.

Warning means a code enforcement citation or separate document issued as provided in this article without assessment of a civil penalty in order to inform the violator of the applicable law and encourage future compliance and, if issued for a correctable violation, to provide the violator with an opportunity to correct the violation and avoid issuance of a code enforcement citation assessing a civil penalty or commencement of other enforcement action.

DIVISION 2. CODE ENFORCEMENT BOARD AND MAGISTRATES

Sec. 2-276. Code enforcement board.

(a) *Composition; board member qualifications, appointment, term, and removal.* The code enforcement board of the City of Vero Beach shall be composed of seven regular members and two alternate members appointed by the city council in its sole discretion, as follows:

- (1) Board members shall be residents of the city who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability and demonstrate experience, interest, and knowledge in code enforcement matters.
- (2) Appointment and reappointment of board members shall be made in accordance with the applicable ordinances of the city and the additional qualifications specified in this section. The charter officers of the city shall make recommendations to the city council regarding appointments and reappointments. The membership of the board shall, whenever possible, include an architect, a business person, an engineer, a general contractor, a subcontractor, and a realtor. Board members shall have no contract or property right in their respective positions.
- (3)
 - a. Appointment and reappointment of board members shall be made for a term of four years, except as otherwise provided in this article.
 - b. A member may be reappointed upon approval of the city council in its sole discretion.

- c. An appointment to fill a vacancy on the board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chair, the board shall declare the member's office vacant, and the city council shall promptly fill such vacancy.
- d. The members shall serve at the pleasure of the city council in accordance with the ordinances and resolutions of the city and may be suspended or removed by the city council in its sole discretion upon majority vote of the full city council.

(b) *Board chairman and vice-chairman.* The members of the board shall elect a chair and vice-chair annually from among the regular members of the board in attendance at the first meeting of the board subsequent to the annual city council election. The chair and vice-chair shall be voting members and may initiate or second motions.

(c) *Quorum; board action.* The presence of four or more members shall constitute a quorum. No action of the board shall be official without the affirmative vote of at least four board members.

(d) *Compensation of board members.* Unless otherwise provided by the city council, board members shall serve without compensation, but may be reimbursed for such travel, training, mileage, and per diem expenses as may be authorized by the city council.

(e) *Duties and powers.* The board shall have the duty and power to:

- (1) Hold hearings on at least a regular monthly basis as needed and upon the written call of the board chairman, the vice-chairman in the chairman's absence, or at least three regular board members.
- (2) Adopt rules for the conduct of hearings before the board. All such rules shall be consistent with the code and the requirements for the conduct of quasi-judicial proceedings and due process. Such rules shall also govern hearings before special magistrates, as the context permits.
- (3) Serve as impartial judge to hear and justly make final determination of matters within the board's jurisdiction and to issue appropriate orders as the circumstances and justice require.
- (4) Conduct evidentiary hearings on appeals to the board regarding issuance of code enforcement citations and regarding notices of assessment, and

to continue such hearings from time to time as the board deems appropriate in the interest of justice.

- (5) Subpoena violators, witnesses, and evidence to hearings on its own motion.
- (6) Take testimony under oath and receive other evidence.
- (7) Issue orders having the force of law to command action or the cessation of action to correct or mitigate a violation found by the board to exist.
- (8) Make findings and determinations regarding whether a violation found by the board to exist constitutes a public nuisance representing a threat to the public health, safety, and welfare.
- (9) Issue orders having the force of law to assess and order the payment of civil penalties and costs.
- (10) Retain jurisdiction over the proceedings and orders of the board until the time for appeal has run or an appeal is filed.
- (11) Mitigate, compromise, and settle, reduce, and waive civil penalties assessed for good and reasonable cause shown as determined by the board in the interest of justice if the violator has corrected the violation and otherwise complied with the board's orders even though the a board order assessing the civil penalties has otherwise become final. However, except for the board may not take any such action regarding civil penalties that have become a lien by the recording of a certified copy of the order in the public records nor may. ~~The the board shall not compromise or reduce~~ take any such action as to any costs and expenses assessed or otherwise due the city.
- (12) Study and report on code enforcement matters submitted by the city council to the board for consideration and recommendation.

(f) *Limitation of authority.* No board member shall have the authority to initiate or prosecute any enforcement action. Any board member who is a complainant or appears as a witness in any case or proceeding before the board or a special magistrate shall be disqualified to otherwise participate or act in their official capacity therein in such case or proceeding.

Sec. 2-277. Special magistrates.

(a) *Office created.* There is hereby created and established the office of special magistrate. References in this article to the board shall include and apply to all duly appointed special magistrates, as the context permits.

(b) *Qualifications.* Special magistrates shall be members of the Florida Bar in good standing for five or more years and residents of the City of Vero Beach who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability and demonstrate experience, interest, and knowledge in code enforcement matters.

(c) *Appointment; term; removal.* The city council may appoint one or more special magistrates as it deems necessary for furtherance of the intent of this article. Appointments shall be made for a term of one year. Any special magistrate may be reappointed at the sole discretion of the city council. The charter officers of the city shall make recommendations to the city council regarding appointments and reappointments. There shall be no limit on the number of reappointments of any individual special magistrate; provided, however, that a determination as to reappointment must be made for each individual special magistrate at the end of each term. Special magistrates shall serve at the pleasure of the city council and may be suspended or removed by the city council in its sole discretion upon majority vote of the full city council. Appointments to fill any vacancy shall be for the remainder of the unexpired term. Special magistrates shall have no contract or property right in their respective positions.

(d) *Compensation.* Unless otherwise provided by the city council, special magistrates shall serve without compensation, but may be reimbursed for such travel, training, mileage, and per diem expenses as may be authorized by the city council.

(e) *Duties and powers.* Special magistrates shall have the same duties, powers, and limitation on powers as those conferred on the board under this article, as the context permits.

Sec. 2-278. Board attorney.

The city attorney or his designee shall be general counsel to the board and special magistrates and shall provide those legal services as may be reasonably required for the proper performance of their duties. The city attorney and his designee shall not also prosecute or present cases before the board or any special magistrate.

Sec. 2-279. Board clerk.

The city clerk or his designee shall be clerk to the board and special magistrates and shall provide those clerical and administrative services as may be reasonably required for the proper performance of their duties. The board clerk shall keep the

minutes of each meeting, a record of each proceeding, and a progress docket for each enforcement action filed with the board clerk. The board clerk shall be custodian of the board's official records and all tangible evidence received, and shall administer oaths as authorized by law, prepare agendas and orders, issue notices and subpoenas, and prepare or issue other documents required or otherwise necessary under this article.

Secs. 2-280--2-295. Reserved.

DIVISION 3. CODE ENFORCEMENT PROCEDURES

Sec. 2-296. Authority of code enforcement officers; enforcement procedures; ~~issuance of code enforcement citations and stop-work orders; violator duty to property transferee.~~

(a) *Authority of code enforcement officers.* Code enforcement officers shall have the following duties and authority that shall be in addition to all other duties or authority they may have by law:

- (1) Investigate violations of code provisions and initiate code enforcement action pursuant to this article ~~by issuance of code enforcement citations.~~
- (2) Issue citations, warnings, and stop-work orders pursuant to this article.
- (3) Enforce the provisions of F.S. §§ 489.127(1), ~~and 489.132(1), and 489.531(1),~~ relating to contracting and unlicensed, uncertified, or unregistered contractors.
- (4) Present and prosecute code enforcement cases before the board.

(b) *Commencement of code enforcement action; warnings citations.* Whenever, based upon personal investigation, an officer has reasonable and probable grounds to believe that a violation of a code provision subject to enforcement under this article has occurred or exists, the officer finding such violation may issue a code enforcement citation to the violator. ~~Such citation may be issued as a warning with no civil penalty as the first response to a violation in any instance in which it is reasonable for the officer to determine that the violator was unaware of the code provision or unclear as to how to comply with it.~~ When more than one violation of the same or different code provisions is found by an officer to have occurred or exist at the same property or location such multiple violations may be cited on a single citation specifying the combined civil penalties assessed for all of the violations or such multiple violations may be cited on separate citations. If the officer finds that a violation is correctable, the officer shall determine a reasonable time period within which the violator must correct the violation. This determination shall be based on considerations of fairness; practicality; ease of correction; ability to correct; severity of the violation; nature, extent and probability of danger or damage to the public; and any other relevant factors

CODING: Words stricken are deletions; words underlined are additions.

relating to the reasonableness of the time period prescribed by the officer. The officer shall specify on the citation the date by which correction must be made in order to avoid further enforcement action, however, A time period for correction need not be specified if the officer determines athe violation to be an uncorrectable violation.

(c) Warnings. A code enforcement citation or a separate document may be issued as a warning with no civil penalty as the first response to a violation in any instance in which it is reasonable for the officer to determine that the violator was unaware of the code provision violated or the violator was unclear as to how to comply with such code provision. Multiple violations found at the same location may be specified in a single warning. Issuance of a warning shall not be deemed to be a prerequisite to issuance of a citation assessing a civil penalty or any other enforcement action.

~~(e)~~(d) Service of citations and warnings. Service of a code enforcement citation or warning shall be effected by:

- (1) Delivery of a copy to the violator or the violator's authorized agent by a code enforcement officer; or
- (2) A code enforcement officer leaving a copy of the citation at the violator's usual place of residence with any person residing therein who is 15 years of age or older and informing that person of its contents; or
- (3) A code enforcement officer leaving a copy of the citation with the manager or other person in charge in the case of commercial premises or real property; or

~~If service by any such method cannot be effected, the citation may be served by:~~

- (4) Mailing a copy of the citation by certified mail, with delivery evidenced by a signed return receipt, to the violator's last known mailing address as listed in the tax records of Indian River County, the records of the Florida Department of Highway Safety and Motor Vehicles, the records of the city, or other mailing address provided to the city or the code enforcement officer by the violator or the violator's agent; or
- (5) Posting a copy of the citation in a conspicuous place on the premises or real property upon which the violation has been observed and mailing a copy by first class mail to or posting in a conspicuous place at the violator's last known mailing address as determined in ~~the preceding~~ paragraph (4). Service by such posting and first class mailing shall be evidenced by an affidavit of service and shall be deemed sufficient and complete upon such posting and mailing; or

(6) If the violator is a legal entity other than a natural person, ~~service may be effected by serving, in the any manner provided in this section, any officer, partner, member, or registered agent of such entity as listed in the records of the state of Florida or the state or country in which the entity is organized if not registered in this state-;~~ or

(7) If the citation or a separate document is issued as a warning, first class mailing to the violator's last known mailing address as determined in paragraph (4) or by any other method provided for service in this section. Service of a warning by first class mail shall be deemed sufficient and complete on mailing to such address.

~~(d)~~(e) *Contents of citation.* The code enforcement citation shall include the following:

- (1) Date of issuance.
- (2) Name of officer and division or department issuing the citation.
- (3) Name and address of the violator.
- (4) Section number of the code provision that has been violated.
- (5) Brief factual description of the nature of the violation, including location, date, and time of violation.
- (6) Amount of the applicable civil penalty to be paid if the violator elects to pay the civil penalty and amount of the maximum civil penalty for which the violator may be liable if the violator elects to appear before the board and is found by the board, after the hearing, to have committed the violation.
- (7) Instructions and due date for paying the civil penalty or filing for an administrative hearing to appeal the issuance of the citation.
- (8) Time within which the violation must be corrected, if applicable.
- (9) Notice that each day of continued violation after the time period for correction has run shall be deemed a continuing violation subject to assessment of additional penalties, without the need for issuance of additional citations, if applicable.
- (10) Notice that the violator must notify the officer after the violation is corrected, if applicable.

- (11) If issued as a violation warning, notice that a repeat of the same violation, even if the violation occurs at a different location, or failure to correct the violation within the time period given for correction in the warning, will result in issuance of a citation assessing a civil penalty.
- (12) Notice that the filing of a request for an administrative hearing will toll the accrual of continuing violation penalties.
- (13) Notice that failure to request an administrative hearing within ten days after service of the civil violation notice, excluding Saturdays, Sundays, and legal holidays, shall constitute a waiver of the violator's right to an administrative hearing and that such waiver shall constitute an admission of the violation.
- (14) Notice that the violator may be liable for the reasonable costs of the administrative hearing if the violator is found to have committed the violation.
- (15) Notice that the violator may be liable for the costs and expenses incurred by the city as a result of the enforcement action if the violator is found to have committed the violation.
- (16) Notice that if the violator does not correct the violation, if applicable, or request a hearing within the time allowed, the city may cause correction of the violation and charge the violator for the reasonable costs and expenses incurred by the city for such correction plus an administrative fee, which expenses and fees shall be a lien against the property on which the violation is corrected.

~~(e)~~(f) *Filing of citation; recording.* After serving the code enforcement citation, the officer shall deposit the original and one copy of the citation with the board clerk. A certified copy of the code enforcement citation or a notice of violation based upon the citation may be recorded in the public records of the county. Such recording under this section shall not act as or be a lien on any property and shall not act as a notice of a lien on any property, but shall merely act as public notice of the existence of the violation. Warnings shall not be filed with the board clerk or recorded in the public records, but shall be retained in the records of the city department or division issuing the warning.

(g) *Citation amendment.* A code enforcement citation may be amended by the city at any time prior to final adjudication by filing an amended citation with the board clerk and providing a copy to the violator. After amendment the case shall proceed on the amended citation, however the board may postpone any hearing based on the amended citation as justice may require.

(h) Citation withdrawal. A code enforcement citation may be withdrawn by the city at any time prior to final adjudication. A citation filed with the board clerk shall be withdrawn by the city filing a written notice of withdrawal with the board clerk and providing a copy to the violator or by oral announcement before the board at a hearing noticed to the violator, in which case the withdrawal shall be noted in the record. After withdrawal of the citation the board clerk shall close the case.

(f)(i) ~~Stop-work orders; appeal; non-compliance.~~ Whenever, based upon personal investigation, the officer has reasonable and probable grounds to believe an unsafe condition exists or may result or damage to persons or property may occur due to continuation of the work or activities comprising the violation, or if the violation concerns the failure to obtain any required administrative approval, permit, inspection, or license prior to commencing or continuing the work or activities, the officer may order the work or activity immediately stopped by service of a stop-work order in the same manner as a code enforcement citation. Failure to comply with the stop-work order and cease the work or activities shall be a separate violation of this code and shall be punished by a civil penalty of \$500.00 per day for each day the stop-work order is violated. Appeal of the issuance of a stop-work order shall be to the issuing officer's department head, in writing, within ten days of service of the stop-work order and thereafter as provided in the general appeal provisions of this code for appeal of administrative decisions. The work or activities subject of the stop-work order shall be stayed pending final resolution of the appeal. Appeal of the issuance of a code enforcement citation for violation of a stop-work order shall be as provided for appeal of the issuance of any other code enforcement citation. A stop order may be amended, modified, cancelled, or withdrawn by the issuing officer as the circumstances require, in which case the violator shall be notified of such action.

(g)(j) ~~Refusal to sign citation; interference with officer; impersonating officer.~~ Any person who willfully refuses to sign and accept service of a code enforcement citation or stop-work order personally served by any code enforcement officer, or who otherwise willfully interferes with any code enforcement officer in the performance of the officer's official duties, or who falsely represents himself to be a code enforcement officer, shall be guilty of a misdemeanor of the second degree as provided by F.S. §§ 162.21(6), 489.127(5)(m), 489.531(4)(m), or 828.27(5), and punishable as provided in F.S. §§ 775.082 and 775.083. Any person who otherwise willfully interferes with any code enforcement officer in the performance of the officer's official duties, or who falsely represents himself to be a code enforcement officer, shall be guilty of a violation of this Code punishable as provided in section 1-14 of this Code.

(h)~~Sec. 2-297. Violator duty to inform property transferee.~~ Violator duty to inform property transferee. If the violator is the owner of the real property or commercial enterprise that is subject to an enforcement action concerning a correctable violation and such violator transfers ownership of the property or commercial enterprise after service of the initial code enforcement citation, such violator shall:

- (1) Disclose to the prospective transferee, in writing, the existence and the nature of the enforcement action.
- (2) Deliver to the prospective transferee a copy of the citations and notices and other materials relating to the enforcement action received by the violator.
- (3) Disclose to the prospective transferee, in writing, that the new owner will be responsible for correction of the violation and compliance with the applicable code provisions and orders issued in the code enforcement action.
- (4) File a notice with the code enforcement officer of the transfer of ownership, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

Failure of the violator to make the disclosures described in subsections (1), (2), and (3) before the transfer of ownership creates a rebuttable presumption of fraud, and unless such presumption is rebutted and the new owner is shown to be responsible for correcting the violation and paying the accrued civil penalties and costs, such violator shall be responsible for all civil penalties and costs assessed for the violation through the date of its correction. If ownership is transferred before the enforcement action is concluded, the case shall not be dismissed and may proceed against the violator for any outstanding civil penalties and costs, however, the new owner shall be provided a reasonable period of time to correct the violation prior to enforcement action being initiated against the new owner.

Sec. ~~2-297~~ 2-298. Service of notices, orders, liens, and other documents.

Except as otherwise provided in this article, service of notices, orders, liens, and other documents required or authorized by this article shall be by serving a copy by:

- (1) Any method provided in this article for service of a code enforcement citation; or
- (2) First class mailing, evidenced by a certificate of service, to the violator's last known mailing address as specified on the code enforcement citation or as found in the tax records of Indian River County, the records of the Florida Department of Highway Safety and Motor Vehicles, the records of the city, or other mailing address provided to the city or the code enforcement officer by the violator or the violator's agent. Service by first class mail shall be deemed sufficient and complete on mailing to such address.

Sec. ~~2-298~~ 2-299. Time computation.

Time computation shall be as provided in this section except when otherwise provided. In computing any period of time prescribed or allowed by this article or by order of the board, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this section, "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

Sec. ~~2-299~~ 2-300. Civil penalties.

(a) *Generally.* Each violation of a code provision enforced pursuant to the procedures specified in this article shall constitute a civil offense punishable as provided in this article.

(b) *Maximum penalty.* Except as otherwise provided for the specified code provision violated, each violation of a code provision enforced under this article shall be punishable by assessment of a civil penalty not exceeding \$500.00. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense punishable by such maximum civil penalty. In determining the amount of a civil penalty, the board shall consider: (1) the gravity of the violation; (2) any actions taken by the violator to correct or mitigate the violation; and (3) any previous violations committed by the violator.

(c) *Reduced penalty for uncontested violation.* Except as otherwise provided by the code provisions applicable, a violator that does not contest the violation alleged in the citation shall be entitled to pay a reduced civil penalty in the following prescribed amounts:

First violation . . . \$50.00

First repeat violation within five years . . . \$100.00

Second and subsequent repeat violation within five years . . . \$150.00

Third and subsequent repeat violation within five years . . . \$250.00

(d) *Waiver of right to pay reduced penalty.* A violator that elects to appear before the board waives the right to pay the reduced civil penalty specified on the citation.

(e) *Repeat uncorrectable violation.* Each reoccurrence of an uncorrectable violation shall constitute a separate violation and shall subject the violator to a separate civil penalty in the same amount as prescribed for the first violation. If, however, a violator has been previously found guilty of or admitted an uncorrectable violation and causes the same uncorrectable violation to occur a second or subsequent time within five years of the prior violation, notwithstanding the violations occur at different locations, each reoccurrence of the uncorrectable violation by such violator shall constitute a repeat violation.

(f) *Continuing violation.* Except as otherwise provided for a continuing repeat violation, for each day of continued violation after the time for correction of a correctable violation has run, an additional penalty in the same amount as that prescribed for the first violation shall be added. Unless an appeal is timely filed, continuing violation penalties shall accrue commencing with the first day after the date for correction given in the code enforcement citation or board order and continue until the date the correction is made. Continuing violation penalties shall not be imposed for uncorrectable violations.

(g) *Continuing repeat violation.* A repeat correctable violation that remains uncorrected beyond the time prescribed for correction shall be treated as a continuing violation, however, the additional penalty for each day of continued repeat violation shall be equal to the doubled amount due for the first day of the repeat violation.

(h) *Assessment of penalty after contested violation hearing.*

(1) *Uncorrectable violation.* A violator found by the board, after the hearing, to have violated the provision of the code alleged in the citation that is an uncorrectable or repeat uncorrectable violation, shall may be punished by assessment of a civil penalty of ~~not less than that specified on the citation,~~ but not more than the maximum civil penalty for such violation.

(2) *Correctable violation.* If the board finds, after the hearing, that the alleged correctable violation exists, the board shall may assess for the initial violation a civil penalty of ~~not less than that specified on the citation,~~ but not more than the maximum civil penalty for such violation; shall order that the violation be corrected within a reasonable time period as determined by the considerations set forth in subsection 2-296(b); and shall establish the continuing civil penalty to be assessed should the violator not correct the violation within the time allowed. If correction is not made by the set time, the board may assess the continuing violation

penalties for each day the violation continues past the date set for correction. Except as provided for a repeat correctable violation, continuing violation penalties shall not be assessed for the time period commencing the first day after the date the violation first occurred, as found by the board, through the date established by the board for correction.

- (3) *Repeat correctable violation.* If the board finds, after the hearing, that the alleged repeat correctable violation exists, the board shall may assess for the initial repeat violation a civil penalty of ~~not less than that specified on the citation,~~ but not more than the maximum civil penalty for such violation; shall order that the violation be corrected within a reasonable time period as determined by the considerations set forth in subsection 2-296(b); and shall establish the continuing civil penalty to be imposed should the violator not correct the violation within the time allowed. If correction is not made by the set time, the board may assess the continuing violation penalties for each day the repeat violation continues, beginning with the first day after the date the repeat violation first occurred, as found by the board.

Sec. ~~2-300~~ 2-301. Rights of violators; appeal; assessment and payment of civil penalties and costs; failure to pay or correct, or to appeal.

(a) *Code enforcement citation.* A violator who has been served with a code enforcement citation shall elect either to:

- (1) Pay the civil penalty in the manner indicated on the citation and correct the violation, if applicable, within the time specified on the citation; or
- (2) Enter a waiver of hearing and agreement to correct the violation as provided in section ~~2-304~~ 2-302; or
- (3) Appeal by administrative hearing the issuance of the citation by filing a written request for a hearing with the board clerk no later than ten days after service of the citation, excluding Saturdays, Sundays, and legal holidays. Failure of the violator to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing on the citation. Such a waiver of the right to an administrative hearing shall be deemed an admission of the violation and thereafter penalties and costs may be assessed and other appropriate action taken accordingly by the board.

(b) *Notice of assessment.* A violator who has been served with a notice of assessment shall elect either to:

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- (1) Correct the violation and pay the continuing civil penalties accrued up to the date of correction and all costs assessed, in the manner indicated on the notice of assessment; or
- (2) Appeal by administrative hearing ~~the amount of the continuing penalties and costs assessed~~ issuance of the notice of assessment by filing a written request for a hearing with the board clerk no later than ten days after service of the notice of assessment, excluding Saturdays, Sundays, and legal holidays. ~~Such hearing shall be strictly limited to the amount of the continuing penalties based upon the length of time the violation continued to exist and the amount of the costs assessed.~~ Failure of the violator to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing on the notice of assessment. Such a waiver of the right to an administrative hearing shall be deemed an admission that the amount of the civil penalties and costs assessed in the notice of assessment, including the assessment of continuing penalties, are correct, due, and payable to the city and thereafter an appropriate order may be entered or other appropriate action taken accordingly by the board.

(c) Warning. A violator who has been served with a code enforcement warning shall refrain from repeating the violation. If a correctable violation, the violator shall correct the violation within the time specified on the warning. The violator shall also have the option of entering into an agreement to correct the violation as provided in section 2-302. The issuance of a warning is not appealable as a warning does not impose a civil penalty or other deprivation of property subject to review.

~~(e)~~(d) *Due date.* Unless additional time is granted by the board for good cause, civil penalties and costs assessed pursuant to this article are due and payable to the city on the last day of the period allowed for the filing of a request for an administrative hearing or for the filing of an appeal from a board decision, or if proper appeal is made, when the appeal has been finally decided adversely to the violator, if applicable.

~~(d)~~(e) *Failure to pay penalty or appeal.* If the violator, after service of the code enforcement citation for an uncorrectable violation or for a correctable violation that is corrected within the time specified in the citation, fails to pay the civil penalty by the due date and fails to timely request an administrative hearing, the board shall be informed of such failure by report from the officer or board clerk and the board ~~shall~~ may thereafter enter an order ordering the violator to pay the civil penalty specified on the citation or take such other action as the board deems appropriate under the circumstances and in the interest of justice. The city shall be entitled to also recover costs of the action from the violator upon filing of an affidavit of the costs with the board clerk, which costs shall be included in the order. At least ten days before the hearing, the board clerk shall send the violator notice of the hearing at which such report of non-compliance will be made, together with a copy of any affidavits filed.

~~(e)~~(f) *Failure to correct violation or appeal.* If the violator, after service of the code enforcement citation for a correctable violation, fails to correct the violation within the time specified in the citation and fails to timely request an administrative hearing, the board shall be informed of such failure by report from the officer and filing with the board clerk an affidavit of non-compliance and the board ~~shall~~ may thereafter direct the board clerk to issue a notice of assessment of continuing penalties, grant additional time for correction of the violation, or take such other action as the board deems appropriate under the circumstances and in the interest of justice. The city shall be entitled to also recover costs of the action from the violator upon filing of an affidavit of the costs with the board clerk, which costs shall be included in the any notice of assessment and any order issued by the board. At least ten days before the hearing, the board clerk shall send the violator notice of the hearing at which such report of non-compliance will be made, together with a copy of any affidavits filed.

~~(f)~~(g) *Issuance of notice of assessment.* Upon direction from the board and receipt of the affidavits provided for in this section, the board clerk shall issue and send the notice of assessment of the continuing penalties and costs to the violator. The notice of assessment shall include, but is not limited to:

- (1) The date of issuance.
- (2) The name and address of the violator.
- (3) A copy of the code enforcement citation upon which the notice of assessment is based.
- (4) Amount of continuing penalties and costs due as of the date of the notice of assessment, together with notice that the civil penalties will continue to accrue until the violation is corrected.
- (5) Notice that failure to correct the violation or pay the penalties and costs assessed and accrued will result in report of such non-compliance to the board and the issuance of an appropriate order.
- (6) Instructions for paying the civil penalties and costs or filing for an administrative hearing to appeal the amounts assessed.
- (7) Notice that failure to request an administrative hearing within ten days after service of the notice of assessment, excluding Saturdays, Sundays, and legal holidays, shall constitute a waiver of the violator's right to an administrative hearing and that such waiver shall constitute the violator's admission that the amount of the civil penalties and costs stated in the notice of assessment are correct, due, and payable to the city.

- (8) Notice that the issues for determination at the administrative hearing are strictly limited to the amount of the continuing penalties based solely upon the length of time the violation continued to exist and the amount of the costs.
- (9) Notice that the violator shall be liable for the reasonable costs of the administrative hearing and any additional costs and expenses incurred by the city as a result of the enforcement action if the board finds at the hearing that the penalties and costs are correct as stated in the notice of assessment.

~~(g)~~(h) *Failure to comply with notice of assessment or appeal.* If the violator, after service of the notice of assessment, fails to pay the accrued civil penalties and costs by the due date or fails to correct the violation by such due date and fails to timely request an administrative hearing, the board shall be informed of such failure by report from the officer and filing with the board clerk an affidavit of non-compliance for an uncorrected violation and the board shall may thereafter enter an appropriate order ordering the violator to correct the violation and pay the civil penalties and costs due, including provision for continuing penalties for an uncorrected violation, and making findings as to the existence of a public nuisance, if applicable, or take such other action as the board deems appropriate under the circumstances and in the interest of justice. At least ten days before the hearing, the board clerk shall send the violator notice of the hearing at which such report of non-compliance will be made, together with a copy of any affidavits filed.

~~(h)~~(i) *Failure to comply with board order or appeal.* If the violator, when an adverse board order is rendered after an administrative hearing on a contested violation, fails to correct the violation within the time specified in the order or fails to pay the civil penalties or costs assessed, and fails to timely appeal the board decision, the board shall be informed of such failure by report from the officer and filing with the board clerk an affidavit of non-compliance and the board shall may thereafter enter an appropriate order ~~ordering the violator to pay the civil penalties and costs, including provision for continuing penalties for an uncorrected violation, and making findings as to the existence of a public nuisance, if applicable~~ or take such other action as the board deems appropriate under the circumstances and in the interest of justice. The city shall be entitled to also recover any additional costs of the action from the violator upon request of the city and filing of an affidavit of costs with the board clerk. At least ten days before the hearing, the board clerk shall send the violator notice of the hearing at which such report of non-compliance will be made, together with a copy of any affidavits filed.

~~(i)~~(j) *Service of orders.* The board clerk shall send a copy of all board orders entered to the violator and the code enforcement officer.

Sec. 2-301 2-302. Waiver of hearing; agreement to correct violation; additional time for correction; non-compliance; correction by city.

(a) *Waiver of hearing to contest citation; additional time to correct.* A violator that agrees with a correctable violation specified in the code enforcement citation, but requests additional time to correct the violation, shall also have the option to admit to the violation and waive the right to an administrative hearing to contest the issuance of the citation. The violator shall then have such reasonable additional time agreed to between the violator and the code enforcement officer to correct the violation before continuing penalties will begin to accrue. The code enforcement officer may extend, no more than one time and with the approval of the officer's supervisor, such agreed additional time if the violator demonstrates good faith and progress in making the correction and that a reasonable need for an extension of time exists.

(b) *Written agreement to correct violation; contents.* The violator's admission of the violation, waiver of the right to a hearing, and agreement to correct shall be in writing on a form provided by the city. Such form shall include but is not limited to the following:

- (1) The violator's acknowledgment that the violator has an absolute right to have an administrative hearing to contest the issuance of the code enforcement citation; the waiver of the right to an administrative hearing is solely the violator's option; and by signing the waiver the violator voluntarily waives the right to such a hearing.
- (2) The agreed date by which the violation must be corrected or continuing civil penalties will begin to accrue.
- (3) The amount of the daily continuing civil penalty that will be assessed if the violation is not corrected by the agreed correction date.
- (4) The violator's agreement to correct the violation and pay by the agreed correction date the city's costs incurred through the date of the waiver, plus the cost of re-inspection.
- (5) The violator's agreement to pay by an agreed date the city's costs incurred in the case and the cost of re-inspection, except to the extent any of such costs are waived by the city.
- ~~(5)~~(6) The action or inaction required of the violator to correct the violation.
- ~~(6)~~(7) The violator's agreement that if the violation is not corrected or the costs are not paid by the agreed correction date the board may enter an order assessing the daily continuing penalties and the costs, plus any additional costs incurred by the city subsequent to the waiver.

(7)(8) The violator's agreement that if the violation is not corrected by the agreed correction date, regardless of whether or not it is deemed a public nuisance, the city or its contractors may enter the property without liability to the violator and without further notice to the violator and make all reasonable repairs and perform all work required to correct the violation at the violator's expense and assess such costs plus an administrative fee against the property on which the violation was corrected.

(c) *Hearing on non-compliance.* If the violator admits to the violation and waives the right to an administrative hearing as provided in this section, but fails to correct the violation or pay the costs as agreed by the violator, the board shall be informed of such failure by report from the officer and filing with the board clerk an affidavit of non-compliance. At least ten days before the hearing, the board clerk shall send the violator notice of the hearing at which such report of non-compliance will be made, together with a copy of any affidavits filed. The issues for determination by the board at such hearing shall be strictly limited to whether or not the violation was corrected and the costs paid as agreed by the violator.

(d) *Board action after non-compliance.* If the board finds, after the hearing, that the violation has not been corrected, the board ~~shall~~ may enter an order assessing the continuing penalties and costs. If the finding is that the violation has been corrected, but the costs have not been paid, the board ~~shall~~ may enter an order ordering the violator to pay such costs. The board shall also assess in any order entered against the violator any additional costs incurred and requested by the city subsequent to the waiver of hearing. The board may grant the violator additional time for compliance if the board finds that the violator has demonstrated good faith and progress in correction of the violation, if applicable, and shown a reasonable need for an extension of time to complete correction of the violation or pay the costs. The board clerk shall send a copy of the board order to the violator and the code enforcement officer.

(e) *Correction of violation by city; assessment of costs.* Whenever the board enters a final order pursuant to this section finding that the violation has not been corrected, the city manager may, pursuant to the purchasing requirements of this code and the waiver of hearing, immediately cause all reasonable repairs and work to be done to correct the violation, regardless of whether or not the violation is deemed a public nuisance. The city manager may employ such city or contracted labor and materials as the city manager finds reasonably necessary to correct the violation. Entry on the real property and making such repairs or corrections to correct the violation shall not create a continuing obligation on the part of the city to make further repairs or corrections or to maintain the property and shall not create any liability against the city or any official, employee or contractor of the city for any damages to the property if entry on the property and the repairs and work are made in good faith to correct the violation. The reasonable costs incurred by the city for the repairs and work to correct the violation, plus an administrative fee of ten percent or \$150.00, whichever is greater,

shall be assessed by resolution of the city council as provided in subsection 2-303(b) against the real property on which the violation was corrected.

(f) Agreement to correct violation after warning. A violator that agrees with a correctable violation specified in the warning, but requests additional time to correct the violation, shall have the option to enter into an agreement to suspend code enforcement action and correct the violation pursuant to the applicable provisions of this section. Such agreement shall not require the payment of any costs. The remedy for failure of the violator to correct the violation as agreed shall be limited to issuance of a code enforcement citation as if the agreement to correct had not been entered into by the violator.

Sec. 2-302 2-303. Scheduling and conduct of hearing requested by violator.

(a) *Scheduling of hearing.* Upon receipt of the violator's timely request for an administrative hearing to contest the issuance of the code enforcement citation or the amount of the penalties or costs specified in the notice of assessment, the board clerk shall set and notice the matter for hearing at the next regularly scheduled board meeting or as soon thereafter as possible. The board clerk shall return an untimely request for an administrative hearing to the violator with written explanation for its return.

(b) *Notice of hearing; contents.* At least ten days before the hearing, the board clerk shall send a notice of hearing to the violator and provide a copy to the officer issuing the citation. The notice of hearing on a contested citation or notice of assessment shall include the following:

- (1) Place, date and time of the hearing.
- (2) Right of the violator to be represented by an attorney.
- (3) Right of the violator to present witnesses and evidence.
- (4) Notice that failure of the violator to attend the hearing will constitute a waiver of the right to an administrative hearing and that such waiver shall be deemed an admission of the violation alleged in the code enforcement citation or the amount of the civil penalties and costs specified in the notice of assessment, as the case may be, and that the board may enter a final order accordingly.
- (5) Notice that the violator will be responsible for insuring that a verbatim record of the hearing is made should the violator desire to appeal an adverse decision of the board.

- (6) Notice that requests for a postponement of the hearing will only be considered if received by the board clerk at least five days prior to the date set for the hearing.

(c) *Subpoenas.* The board clerk shall execute and issue subpoenas for hearings upon written application of a party or at the direction of the board. Only a sheriff, deputy sheriff, officer of the city police department, or other person certified to serve process may serve subpoenas. The serving officer shall promptly file a written return of service with the board clerk. The party requesting the issuance of a subpoena shall pay the cost of service. The board clerk may require payment of the cost of service before issuance of the subpoena. The city shall pay the cost of service for subpoenas issued on the board's own motion. A violator found by the board to have committed or who admits the violation shall be assessed the costs of service incurred by the city.

(d) *Time of hearing.* No hearing shall be set sooner than ten days from the date of service of the code enforcement citation or notice of assessment, excluding Saturdays, Sundays, and legal holidays, unless such minimum time period is waived in writing by the violator.

(e) *Hearing postponement.* A scheduled hearing may be postponed and rescheduled one time by the board clerk provided a request for the postponement showing good cause is received in writing by the board clerk at least five days prior to the date set for the hearing and such request is approved by the board chairman or vice chairman in the chairman's absence. The clerk shall send to the violator and issuing officer notice of the new date for any hearing so postponed.

(f) *Hearings public.* Board meetings shall be open to the public, however, participation in any administrative hearing is limited to the parties in the enforcement action, their attorneys and legal representatives, witnesses called by a party, board members, and board staff.

(g) *Testimony.* All hearing testimony shall be under oath or affirmation administered by the board clerk.

(h) *Violator failure to appear.* Upon a showing of proper notice of the hearing being sent to the violator, the hearing may proceed in the absence of the violator and appropriate action taken by the board as provided in this article.

(i) *Continuation of hearing.* Once commenced, no hearing shall be deferred or continued except for good cause shown and as justice may require as determined by the board.

(j) *Hearing record.* The board clerk shall electronically record hearing proceedings. Transcription of the hearing record shall be at the expense of the

requesting party. The board clerk may require the estimated cost of transcription to be paid in advance and applied to the final cost.

(k) *Prosecution of case.* Each case shall be presented before the board by the initiating officer or other designee as the city manager may appoint from time to time. The city manager is authorized to retain legal counsel to serve as prosecutor in those cases deemed necessary by the city manager.

(l) *Rules of evidence.* Formal rules relating to evidence and witnesses shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Any relevant testimony and other evidence submitted by a party shall be admitted if the board finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

(m) *Witnesses and evidence.* 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 the witness to testify; and to rebut the evidence against the party. Each party shall have the right to inquire of any board member about ex parte communications regarding the case.

(n) *Retention of exhibits.* The board clerk shall be the custodian of all tangible evidence submitted, which shall be retained by the board clerk until the time for an appeal has expired or as otherwise required by law.

(o) *Board action.* The board shall make findings of fact based on evidence of record upon conclusion of the hearing. All findings and determinations of the board shall be by motion approved by a majority of those members present and voting, except that at least four members of the board must vote in order for the action to be official.

(p) *Costs.* If the violator is found to have committed the violation or if the amount of the civil penalties and costs stated in the notice of assessment is found to be correct, the board shall assess against the violator the reasonable costs of the administrative hearing and the reasonable costs incurred by the city in the enforcement action. The costs and expenses requested by the city for reimbursement shall be calculated and submitted to the board for assessment at the hearing.

(q) *Board determination; time to correct violation; board order.* The fact-finding determination of the board for purposes of a contested code enforcement citation shall be ~~limited as to whether or not~~ the violation alleged did occur or exists and, if so, whether the person or entity named in the citation is responsible for that violation. The fact-finding determination of the board for purposes of a contested notice of assessment shall be ~~strictly limited as to~~ the length of time that the violation existed and whether the violation still exists. The findings and determination of the board shall be based on a preponderance of the evidence presented at the hearing. If the board finds

the violator responsible for a correctable violation, the board shall determine a reasonable time period within which correction of the violation must be made, as determined by the considerations set forth in subsection 2-296(b), provided however, that such time period shall be no more than 30 days unless the board determines that a longer time period is reasonable and necessary based on the evidence presented. If the board finds that the violator is not responsible for the violation alleged in the code enforcement citation, the violator shall not be liable for the payment of any civil penalty or costs, absent reversal of the board's findings after an appeal. If the decision of the board is to find the violator responsible for the violation alleged or any amounts imposed by the notice of assessment, then the following elements shall be included in the board's final order, a copy of which shall be sent by the board clerk to the violator and the code enforcement officer:

- (1) Total amount of civil penalty imposed, if any;
 - (2) Costs and expenses of the enforcement action assessed, including costs of the administrative hearing;
 - (3) Instructions and due date for paying the civil penalties and costs;
 - (4) Date by which the violation must be corrected to prevent imposition of continuing penalties, if applicable.
 - (5) Notice that the violator must notify the code enforcement officer for re-inspection after the violation is corrected, if applicable.
 - (6) Notice that failure to comply with the board's order on a continuing violation will result in the issuance of an appropriate final order assessing the continuing penalties.
 - (7) If the board finds that the violation exists and constitutes a public nuisance representing a threat to the public health, safety, and welfare, notice that the violation is deemed a public nuisance and should the violator fail to correct the violation and abate such public nuisance or appeal within the time allowed, the city or its contractors may enter the property and cause the repairs or work reasonably necessary to correct the violation and abate the public nuisance with the costs and expenses incurred by the city for such correction, plus an administrative fee, charged as an additional lien against the property on which the violation was corrected.
 - (8) Notice of the right to appeal the board action to the circuit court.
- (r) *Appeal of technical code interpretation; abatement of enforcement hearing; administrative interpretation binding.*

- (1) The board shall postpone and shall not conduct a hearing if the violator, prior to the scheduled hearing date, timely files with the appropriate authority a written administrative appeal concerning the interpretation or application of any technical provisions of the code allegedly violated. It shall be the responsibility of the violator to provide evidence before or at the time of the hearing to show that such administrative appeal has been timely filed. However, once a technical issue has been determined by the board in a specific case, that issue shall not be further reviewed by administrative appeal arising from that specific enforcement action. A violator waives all right to such administrative appeal concerning the interpretation or application of any technical provisions of the code as it relates to the enforcement action if the violator does not timely apply for such appeal prior to the date of the violator's hearing before the board.
- (2) Upon exhaustion of a timely filed administrative appeal concerning the interpretation or application of any technical provisions of the code and final determination regarding such administrative appeal, the board may exercise all powers granted under this article. The board shall not, however, exercise any jurisdiction over such alleged code violation until the time allowed for appeal of such final determination of the administrative appeal has lapsed or until such further appeal has been exhausted.
- (3) The board shall be bound by the interpretations and decisions of any duly authorized administrative official or city board concerning the provisions of the codes within their respective jurisdictions or authority, and the final interpretations and decisions of the city council, as the case may be. In the event such duly authorized administrative official or city board, or the city council, decides that an alleged violation of the code is not in accordance with such official, board or city council interpretation of the code provision on which the violation is based, the board shall not be empowered to proceed with the enforcement action.

Sec. 2-303 2-304. Violation constituting public nuisance; correction by city; assessment of costs as lien.

(a) *Violation constituting public nuisance; correction by city.* Whenever the board enters a final order finding a violation exists that constitutes a public nuisance representing a threat to the public health, safety, or welfare, the board clerk shall send a copy of such order to the violator, all mortgagees and other lienors having an interest in the real property as shown in the public records of the county, and to the code enforcement officer. If such violation remains unabated after the time for appeal has run and an appeal is not filed or the order is finally affirmed after appeal, the city manager may, subject to the purchasing provisions of this code, cause all reasonable repairs and work to be done to correct the violation and abate the public nuisance. The city

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manager may employ such city or contracted labor and materials as the city manager finds reasonably necessary to correct the violation and abate the public nuisance. Entry on the real property and making such repairs or corrections to abate the public nuisance shall not create a continuing obligation on the part of the city to make further repairs or corrections or to maintain the property and shall not create any liability against the city or any official, employee or contractor of the city for any damages to the property if entry on the property and the repairs and work are made in good faith to abate the public nuisance.

(b) *Costs of correction.* The reasonable costs incurred by the city for the repairs and work to correct the violation and abate the public nuisance, plus an administrative fee of ten percent or \$150.00, whichever is greater, shall be assessed against the real property on which the violation was corrected. Such assessment shall be levied by resolution of the city council and shall be a special assessment lien against the real property, which lien shall accrue interest at the legal rate as of the date the resolution is adopted. The city attorney shall prepare the lien resolution and record it in the public records of the county after its adoption.

(c) *Notice of lien resolution hearing.* At least ten days before the city council meeting at which the adoption of the lien resolution will be considered, the city clerk shall send notice of such meeting to the violator, all mortgagees and other lienors having an interest in the real property as shown in the public records of the county, and to the code enforcement officer. The violator, as well as such mortgagees and lienors, if any, may appear before the city council and shall be heard on the proposed lien resolution.

Sec. 2-304 2-305. Recovery of unpaid civil penalties and costs; unpaid penalties and costs to constitute a lien; foreclosure; duration of liens; prohibition of the issuance of permits, licenses, certificates of use and occupancy, or zoning approvals.

(a) *Judicial remedies.* Upon approval of the city council, the city attorney may institute proceedings in a court of competent jurisdiction to compel correction of a violation, compel payment of civil penalties and costs assessed, or foreclose on any lien.

(b) *Unpaid penalties and costs to constitute a lien; enforcement.* A certified copy of a board order assessing a civil penalty or costs may be recorded in the public records of each jurisdiction where appropriate and thereafter shall constitute a lien against the land on which the violation occurred, if applicable, and a lien upon any all other real and personal property owned by the violator at the time of such recording or thereafter acquired by the violator, except as otherwise provided by law. Such liens shall inure to the benefit of the city and may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's personal property, but shall not be deemed to be a court judgment except for enforcement

purposes. The city may foreclose or otherwise execute on any lien that remains unpaid after 90 days from the recording of any such order.

(c) *Duration of lien; foreclosure; attorneys' fees.* No lien created pursuant to this article shall continue for a period longer than 20 years, unless within that time an action on the lien is commenced in a court of competent jurisdiction. In such action, the prevailing party shall be entitled to recover all costs and reasonable attorneys' fees incurred in such action. In the event each party shall partially prevail in such action, costs and attorneys' fees shall be equitably apportioned between the parties by the court. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by commencement of an action on the lien shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded in the public records of the county.

(d) *Superiority of liens.* Each and every lien created pursuant to this article shall be deemed co-equal with ad valorem taxes and ~~to be~~ prior in dignity to any other lien, including mortgages, irrespective of the date of the recording of the city's lien or the date of the recording of any mortgage or any other lien on real property, and such city lien shall survive any action to foreclose such inferior lien whether such inferior lien arises by virtue of a mortgage, a mechanic's lien or other security interest in real property; provided, however, that nothing herein contained shall be construed to be respecting the priority of liens, and where such law or statute specially provides for the priority of liens, the provisions hereof shall be construed to achieve harmony therewith.

(e) *Discharge of liens; ~~assignment.~~* Any lien created pursuant to this article may be satisfied and discharged by paying to the city the amount of civil penalties and costs specified in the order or lien and accruing through the date of correction of the violation plus the cost of re-inspection, and all costs of repairs and work incurred by the city to correct the violation plus the administrative fee and interest, if applicable, together with all collection and administrative costs, recording fees, and costs and fees to prepare and record a release and satisfaction of the lien in the public records. The amount payable to satisfy any lien may be reduced only by approval of the city council, in its sole discretion. ~~Except as provided for an assignment, when any lien has been paid to the city, the city attorney shall promptly cause evidence of the satisfaction and discharge of such lien to be prepared and executed and thereafter duly recorded in the public records of each appropriate jurisdiction. The city manager is authorized to execute any such release and satisfaction on behalf of the city upon collection of all amounts due the city under the order or lien. Any person, firm, corporation or other legal entity, other than the owner of the property against whom the lien is effective, that pays any unsatisfied lien arising under this article shall be entitled to receive an assignment of the lien held by the city and shall be entitled to the rights of the city in respect to the enforcement of such lien as permitted by law. An unsatisfied lien may be paid and assigned to such third party at a discounted sum approved by the city council. When such third party pays any unsatisfied lien, the city attorney shall prepare and the city~~

~~manager may execute on behalf of the city an assignment of the lien. The lien assignee shall be responsible and pay for recording in the appropriate public records the assignment of lien and any subsequent release and satisfaction of the lien.~~

(f) Assignment of liens. Any person, firm, corporation or other legal entity, other than the owner of the property against whom the lien is effective, that pays any unsatisfied lien arising under this article shall be entitled to receive an assignment of the lien held by the city and shall be entitled to the rights of the city in respect to the enforcement of such lien as permitted by law. Such payment and assignment shall be without recourse. An unsatisfied lien may be paid and assigned to such third party at a discounted sum approved by the city council. When such third party pays any unsatisfied lien, the city attorney shall prepare and the city manager may execute on behalf of the city an assignment of the lien. The lien assignee shall be responsible and pay for recording in the appropriate public records the assignment of lien and any subsequent release and satisfaction of the lien.

(g) Release and satisfaction. Except as provided for an assignment, when the amount payable under a lien has been received by the city, the city attorney shall cause evidence of the satisfaction and discharge of such lien to be prepared and executed and thereafter duly recorded in the public records of each appropriate jurisdiction. The city manager is authorized to execute any such release and satisfaction on behalf of the city upon collection of the full amount payable to the city.

~~(f)~~(h) Use of collection agency. The city manager may, for the purpose of collecting any delinquent civil penalties or costs from a violator, whether or not reduced to a lien, contract with any debt collection agency or attorney doing business within or without this state for the collection of such delinquent civil penalties or costs and the costs of the collection. The costs of collection, including any reasonable attorney's fee, paid or owed to any collection agency or attorney retained by the city, shall be added to the balance owed and paid by the violator, in an amount not to exceed 40 percent of the amount owed at the time the matter is referred for collection. The city may share confidential information with such collection agency or attorney necessary for the collection.

~~(g)~~(i) Prohibition of administrative action. Regardless of any other code provision and unless deemed necessary for correction or abatement of the violation or for compliance with section 2-308 regarding lien reductions, or in order to avoid imminent peril to life or property, no officer, official, agent, employee or board of the city shall approve, grant, or issue any operating permit, license, building permit, certificate of use or occupancy, variance, platting action, zoning action, or the like regarding or for the real property of any violator with: (1) any uncorrected violation of any code provision on such real property; (2) any unpaid civil penalty or costs arising from a code enforcement action regarding such real property; or (3) any unpaid code enforcement, correction, or abatement lien against such real property; any or all of which are outstanding or owed to the city pursuant to the provisions of this article or any other

code provision. Appeal of any denial or refusal to act pursuant to this section shall be as provided in the general appeal provisions of this Code for appeal of an administrative decision and shall be a prerequisite to any judicial proceeding on the matter.

Sec. ~~2-305~~ 2-306. Rehearing; amendment of orders.

(a) *Rehearing; grounds.* The board may rehear all or part of the issues in any enforcement action upon any party demonstrating sufficient grounds for a rehearing or on the board's own initiative. Sufficient grounds shall include but are not limited to:

- (1) Mistake, inadvertence, surprise, or excusable neglect of a party or the party's representative;
- (2) Newly discovered evidence which could not have been timely discovered before the hearing resulting in entry of the board order by the exercise of due diligence, is more likely than not to change the outcome, was discovered after the conclusion of the hearing or proceeding, is material to the issues raised in the hearing or proceeding, and is not impeachment or cumulative evidence;
- (3) Fraud, misrepresentation, or other misconduct of an adverse party; or
- (4) Lack of notice of the enforcement action or hearing.

(b) *Written request required; time for request; hearing on request.* A request for rehearing shall be in writing, specifying the specific grounds for the rehearing, and shall be filed with the board clerk no later than ten days after rendition of the board order. A timely request may be amended to state new grounds in the discretion of the board at any time before the request is determined. The board clerk shall set and notice a hearing on an authorized and timely request for rehearing in the manner provided in this article for administrative hearings. If after the hearing the board finds sufficient grounds and grants the request, the rehearing may proceed at that time on the issues approved by the board for rehearing. In the alternative, the board may schedule the rehearing for a date and time certain as the board deems appropriate, in which case the board shall issue an order granting the rehearing, specifying the date and time for the rehearing and the issues on which the board granted rehearing. The board clerk shall serve a copy of the board order on the parties and provide a copy to the code enforcement officer.

(c) *Time for appeal tolled; abandonment of request.* An authorized and timely request for a rehearing under this section, until disposed of, tolls the time to file a notice of appeal of the final board action. A party, who files a request for rehearing and before the request is disposed of files an appeal from the same board order on which the rehearing is requested, is deemed to have abandoned the request for a rehearing.

(d) *Amendment of orders.* The board may take additional testimony and receive additional evidence, reconsider and amend its orders, or enter new orders, as the circumstances and justice requires.

Sec. ~~2-306~~ 2-307. Appeal of board order; admissibility of board action.

(a) *Appeal of board order to circuit court.* In an appeal to review final orders of the board, the appellant shall file the original notice of appeal with the board clerk within 30 days of rendition of the order to be reviewed, and file a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the court. The board clerk shall provide a copy of the notice of appeal to the code enforcement officer and the board attorney upon filing. Such an appeal shall proceed in accordance with the procedures provided by the Florida Rules of Appellate Procedure for the review of final administrative action and shall not be a hearing de novo but shall be limited to appellate review of the record created before the board. The code enforcement board, individual board members, magistrates, or code enforcement officers shall not be named as parties to such an appeal.

(b) *Findings and action of board admissible.* Unless the action of the board is overturned in an appellate proceeding held pursuant to this article, all findings and action of the board shall be admissible in any proceeding to collect unpaid penalties or costs, foreclose any lien, or compel the correction of any violation.

Sec. 2-308. Reduction or forgiveness of code enforcement liens.

Where a certified copy of a code enforcement order has been recorded in the public records and has become a lien against the land or property of a property owner, such property owner may request a reduction or forgiveness of all or any portion of such lien as follows:

(a) Requests for lien reduction or forgiveness. The property owner requesting reduction or forgiveness of all or any portion of a code enforcement lien shall complete and file with the city clerk an application in the form provided by the city. The application shall include:

- (1) Payment of a non-refundable application fee of \$100.00 for processing the application;
- (2) A copy of the recorded code enforcement order imposing civil penalties and/or costs;
- (3) A copy of the code enforcement order finding the violation has been corrected and the subject property brought into compliance with the code;

- (4) The factual circumstances upon which the property owner believes the application should be granted;
- (5) The reasons, if any, compliance was not obtained prior to the order imposing civil penalties and/or costs being recorded;
- (6) The amount of the lien reduction being sought;
- (7) Any other information which the property owner deems pertinent to the request, including but not limited to the circumstances that exist which would warrant a reduction or forgiveness of all or any portion of the lien; and
- (8) The sworn and notarized signature of the property owner.

(b) *Application processing; review and recommendation by city manager.* Upon receipt of an application for lien reduction or forgiveness, the city clerk shall forward the application and any supporting records to the city manager. The city manager shall review the application and supporting records and confirm that the subject property has been brought into compliance with all code provisions and remains in compliance. If the application is complete and the subject property is in compliance with the code, the city manager shall forward his recommendation to the city clerk regarding reduction of the amount of the lien, forgiveness of the full amount of the lien, or denial of the property owner's request in its entirety after consideration of the following factors:

- (1) The nature of the violation;
- (2) The severity of the violation;
- (3) Whether the violation was a repeat violation of the same or a different code provision;
- (4) The duration of the violation;
- (5) The extent to which the property owner cooperated with the city in causing correction of the violations and bringing the property into compliance;
- (6) Whether and the extent to which city funds or resources were expended to bring the property into compliance, including code enforcement costs;
- (7) Whether the property owner purchased the subject property subsequent to recording of the code enforcement order and whether such lien should have been considered by the property owner prior to purchasing the property;

- (8) Whether the city council or the code enforcement board or magistrate has previously reduced the amount of the lien under consideration either at the request of the current or a previous property owner;
- (9) Whether there are any other unsatisfied code enforcement penalties or costs owed to the city by the property owner or code enforcement liens on other property owned by the property owner;
- (10) Whether there are any other properties owned by the property owner that have uncorrected violations of any code provision;
- (11) The accrued amount of the code enforcement lien as compared to the fair value of the subject property;
- (12) Any financial hardship of the property owner; and
- (13) Any additional mitigating circumstances which may warrant the reduction or forgiveness of all or a portion of the code enforcement lien.

(c) *Presentation to city council.* After receipt of the city manager's recommendation, the city clerk shall schedule the property owner's request for the next available city council meeting. The city clerk shall provide the property owner notice of the date and time of the city council meeting at which the request will be considered.

(d) *City council action.* Upon consideration of the information provided by the property owner, the recommendation of the city manager, and any other relevant documentation or statements as to the factors warranting lien reduction or forgiveness, the city council may reduce the amount of the lien, forgive the full amount of the lien, or deny the request in its entirety. The city council may attach any conditions to its decision which the city council finds appropriate in its discretion.

(e) *Compliance with conditions.* Failure of the property owner to comply with all conditions established by the city council in conjunction with the approval of a lien reduction or forgiveness shall will result in the automatic denial of the request regardless of the city council's decision as to such lien reduction or forgiveness.

(f) *Effect of denial of request.* If the request for lien reduction or forgiveness is denied or if the request is automatically denied due to the failure of the property owner to comply with the conditions established by the city council, the property owner shall thereafter be barred from making a subsequent request for reduction or forgiveness of the subject lien for a period of one (1) year from the date of the denial. During the one-year period the subject lien may only be satisfied and released upon payment of the full amount due.

(g) Satisfaction of lien. When the amount payable under a lien reduced or forgiven by the city council has been received by the city, the city attorney shall cause evidence of the satisfaction and discharge of such lien to be prepared and executed and thereafter duly recorded in the public records of each appropriate jurisdiction. The city manager is authorized to execute any such release and satisfaction on behalf of the city upon collection of such full amount.

(h) Nature of decision. Code enforcement liens are an asset of the city. Any action of the city council to reduce the amount of the lien, forgive the full amount of the lien, or deny the request in its entirety is strictly a discretionary decision and not a final administrative decision or order which is appealable.

Secs. ~~2-307~~ 2-309 -- 2-330. Reserved.

Section 3 – Transition.

Nothing in this Ordinance shall be construed so as to affect any past or pending code enforcement action, notice of violation, code enforcement citation, notice of assessment of continuing penalties, or order of the code enforcement board or any magistrate, or any past, pending, or existing liens, fines, costs, or other obligations arising from code enforcement, nuisance abatement, special assessment, or otherwise, all of which shall continue in full force and effect as if this Ordinance had not been adopted.

Section 4 – Conflict and severability.

In the event any provision of this Ordinance conflicts with any other provision of the Code or other applicable law, the more strict provision shall apply and supersede. If any phrase or portion of this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

Section 5 – Codification.

The provisions of this Ordinance shall be codified in the Code of the City of Vero Beach, Florida.

Section 6 – Effective Date.

This Ordinance shall become effective upon final adoption by the City Council.

This Ordinance was read for the first time on the _____ day of _____ 2013, and was advertised on the _____ day of _____ 2013, for a public hearing to be held on the _____ day of _____ 2013, at the conclusion of which hearing it was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted by the following vote of the City Council:

Mayor A. Craig Fletcher	_____
Vice Mayor Tracy M. Carroll	_____
Councilmember Pilar E. Turner	_____
Councilmember Jay Kramer	_____
Councilmember Richard G. Winger	_____

ATTEST:

CITY OF VERO BEACH, FLORIDA

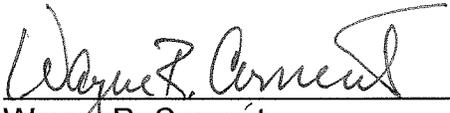
Tammy P. Vock
City Clerk

A. Craig Fletcher
Mayor

[SEAL]

Approved as to form and
legal sufficiency:

Approved as conforming to
municipal policy:



Wayne R. Coment
City Attorney

James R. O'Connor
City Manager

Approved as to Technical
Requirements:

Approved as to Technical
Requirements:

David E. Currey
Chief of Police

Timothy J. McGarry
Planning & Development Director