

**MUNICIPAL CODE ENFORCEMENT BOARD
CITY OF CLEARWATER, FLORIDA**

RULES AND REGULATIONS

ARTICLE I – NAME

The name of this Board shall be the “Municipal Code Enforcement Board of the City of Clearwater, Florida.”

ARTICLE II – JURISDICTION

The Board has jurisdiction over those matters, which are set forth in Article 5, Division 4 and Article 7, of the Community Development Code of the City of Clearwater, Florida.

ARTICLE III – OFFICERS AND THEIR DUTIES

Section 1: The officers shall be a Chair and a Vice-Chair. The City Clerk shall provide the Secretary.

Section 2: The Chair shall preside at all meetings (and hearings) of the Board and shall have the duties normally conferred by parliamentary usage of such officers. The Chair shall have the authority to decide all points of order and run all hearings including setting time limits on the parties’ presentations and testimony of any witnesses. This authority shall include the duty to decide all objections and other evidentiary matters that may arise during the hearing. Any ruling by the Chair may be reversed by a majority vote of the Board.

Section 3: The Chair shall be one of the members of the Board. The Chair shall have the privilege of discussing all matters before the Board and shall have the same voting rights as all Board members.

Section 4: The Vice-Chair shall act in the absence of the Chair. In the absence of the Chair and Vice-Chair, the most senior member of the Board present at the meeting shall assume the duties of the Chair.

ARTICLE IV – ELECTION OF OFFICERS

Section 1: Nomination of officers shall be made from the floor at the first meeting in January of each year, and the election shall be held immediately thereafter.

Section 2: A candidate receiving a majority vote shall be declared elected and shall serve a term of one year or until a successor is elected.

Section 3: Vacancies in office shall be filled immediately by regular election procedures.

ARTICLE V – MEETINGS

Section 1: Regular Meetings shall be held at least every two (2) months. The Board may set meetings more frequently if necessary.

Section 2: Special Meetings may be called by the Chair or any member of the Board by notification to the Board Secretary, who shall determine a date and time for the special meeting and poll members to see if a quorum can be met.

Section 3: Whenever possible, **notice of all meetings**, regular and special, shall be given to all Board members at least twenty-four (24) hours in advance of the meeting.

Section 4: Attendance

- 1) Members shall notify the Secretary of the Board if they are unable to attend a meeting.
- 2) Members missing two of three consecutive meetings without cause and without prior notification may be requested to forfeit their appointment. According to City Code, a member also may be removed by the city manager for excessive absences, i.e. more than four absences, excused or unexcused, in any consecutive 12-month period.

Section 5: A **Quorum** of the Board shall consist of four (4) members. All actions of the Board shall require the concurring vote of a simple majority of the members of the Board then present and voting.

Section 6: Each member present shall cast an “aye” or “nay” **vote** on each item before the Board.

Conflicts of Interest – Any Board member who has a conflict of interest on an item due to a special private gain or loss shall announce the conflict prior to the beginning of the hearing on that item and must abstain from discussion and vote on that item. The member also must file the Memorandum of Voting Conflict with the Secretary of the Board as required by Florida Statute within fifteen (15) days of the meeting.

Section 7: All regular and special meetings, hearings and **records** shall be open to the public.

Section 8: Parliamentary procedure in Board meetings shall be governed by the current edition of Robert’s Rules of Order and by the Rules and Regulations contained herein.

ARTICLE VI – ORDER OF BUSINESS

1. Call to Order
2. Minutes Approval
- ~~3. Citizens to be Heard re Items Not on the Agenda~~
- ~~3.4. Public Hearings~~
- ~~4.5. Unfinished Business~~
- ~~5.6. New Business~~
- ~~6.7. Nuisance Abatement Lien Filings and Nuisance Abatement Cases~~
- ~~7.8. Adjourn~~

ARTICLE VII – INITIATION OF ACTIONS BEFORE THE BOARD

Section 1: All actions before the Board, except violations of Section 3-1503 of the Community Development Code, shall be initiated by the City Attorney's Office filing an Affidavit of Violation and Request for Hearing with the Secretary of the Board.

Section 2: The Secretary shall assign a case number and set the public hearing date.

Section 3: After a case is set for hearing, the Secretary shall send out a Notice of Hearing to the alleged violator in accordance with Section 162.12 F.S., or effect personal service upon a party by the Police Department or Code Inspector. A copy of said Notice of Hearing shall be sent to the City Attorney, Code Inspector, and Attorney for the Board.

Section 4: After a case is set for hearing, the Secretary of the Board shall be empowered to prepare subpoenas as requested by the Inspector and alleged violator.

Section 5: At the meeting, the Secretary shall provide Board members with packets that include Respondents' home address and copies of subject Code, Notices of Violation and Hearing, Affidavit of Violation, Request for Hearing, and proof of service.

ARTICLE VIII – HEARING PROCEDURES

Section 1: The Board may only consider evidence presented at the Hearing when reaching a decision.

Section 2: All witnesses shall be sworn in by the Secretary. The Secretary may swear in all witnesses who may testify before the Board prior to commencement of the public hearings. The Chair or Secretary shall remind witnesses so sworn that they are under oath prior to taking said witnesses' testimony.

Section 3: The Chair shall request identification of the Respondent, their representative or attorney, and witnesses prior to the case hearing.

Section 4: Assuming proper notice of the hearing has been provided to the Respondent, pursuant to Section 162.12 F.S., a hearing may proceed in the absence of the Respondent. Representatives for an absent Respondent must present proof that the Respondent appointed the Representative(s).

Section 5: PHASE ONE – Consider Violation

- 1) The City shall present its summary case **regarding the violation(s)** to include the property's address, Code section with brief description of violations, and one photograph of each violation.
- 2) If the Respondent is absent without representation, the violation shall be considered proven and the board shall determine that the Respondent's property is.
 - a) In violation of the Code; OR
 - b) In violation of the Code but corrected prior to the meeting; OR
 - c) A repeat violation of the Code.

3) The Chair shall ask the Respondent, representative or attorney if the Respondent admits to the violation(s). **If the Respondent does not contest** the charges, existence of the violation shall be considered proven and the Board shall immediately deliberate in open session before the public and determine that the Respondent's property is:

- a) In violation of the Code; OR
- b) In violation of the Code but corrected prior to the meeting; OR
- c) A repeat violation of the Code.

4) If the Respondents **contest the existence of violations**, staff shall present the remainder of the violation portion of their case and the Respondents may present their case **regarding the violation**.

- a) Both parties have an opportunity to cross examine all witnesses.
- b) The Board and its attorney may question any witness.
- c) The right of parties to present rebuttal evidence is discretionary with the Board.
- d) The Board may, in its discretion, adjourn a Hearing for a period not to exceed thirty-one (31) days at any time during the Hearing and request further information from either party. At the time the Hearing is reconvened, only those Board members who were present from the beginning of the Hearing may participate in the deliberations and decision making process. This requirement may be waived by consent of both parties.
- e) Upon receipt of all evidence related to the violation, the Chair shall close the violation portion of the Hearing. Thereafter, there shall be no discussion between the Board, Inspector, Respondent, or their representatives unless the majority of the Board votes to reopen this portion of the Hearing.
- f) The Board shall immediately deliberate in open session before the public and determine that the Respondent's property is:
 - i) In violation of the Code; OR
 - ii) In violation of the Code but corrected prior to the meeting; OR
 - iii) Not in violation of the Code; OR
 - iv) A repeat violation of the Code.

Section 6: PHASE TWO – Consider Affirmative Relief

- 1) If the Respondent is absent without representation, the Board may consider and vote on Phases One and Two together.
- 2) If the Board finds the property violates the Community Development Code/Code of Ordinances, staff will present **recommendations for affirmative relief** and can include an abbreviated time line of City activities related to the violation.
- 3) Respondents or their representatives may present information regarding extenuating circumstances affecting their ability to comply with recommendations.

4) Upon receipt of all evidence related to relief, the Chair shall close the relief portion of the Hearing. Thereafter, there shall be no discussion between the Board, Inspector, Respondents or their representatives unless the majority of the Board votes to reopen this portion of the Hearing.

5) The Board shall immediately deliberate in open session before the public and issue an oral Order. The Order shall contain findings of fact and conclusions of law and state the affirmative relief granted by the Board.

6) Said Order shall be reduced to writing within ten (10) days and sent to the Respondent certified mail, return receipt requested.

Section 7: The Respondent or City may petition the Board to rehear any Board Order resulting from a public hearing.

1) This petition must be made in writing and filed with the City Clerk within ten (10) days of the postmark of the written order. A request for rehearing shall be based only on the ground that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law which was fundamental to the board's decision. The written request for rehearing shall specify the precise reasons therefor.

2) The Board will determine if it will rehear the case before oral argument or evidence is presented. The motion to grant a rehearing must be made by a Board member who previously voted on the prevailing side.

a) The Board may schedule a hearing where the parties will be given the opportunity to present evidence or argument limited to the specific reasons for which the rehearing was granted,

OR

b) The Board may modify or reverse the order, without receiving further evidence, provided that the change is based on a finding that the prior decision resulted from a ruling on a question of law which was an erroneous ruling.

3) Until a request for rehearing has been denied or otherwise disposed of, the order of the Board shall be stayed and the time for taking an appeal shall not commence until the date upon which the Board has finally disposed of the request for rehearing.

Section 8: A property owner may appeal a nuisance violation to the Municipal Code Enforcement Board.

1) The appeal must be made in writing and filed with the Board Secretary within five days of the posting of the property with notice of a nuisance violation.

2) Appeals of nuisance violation notices shall be presented by the appellant, who shall have the burden of showing that the condition described in the notice did not exist or of showing why the condition should not be remedied by the city at the expense of the appellant. If the owner, agent or representative, fails to appear before the board at the designated time to present the appeal, then the owner shall be deemed to have authorized the city to take such remedial action as is necessary to abate the nuisance.

When the City presents a nuisance case for abatement and maintenance, the Board Chair will inquire if the owner, agent or representative is present. If the owner, agent or representative fails to appear before the board at the designated time, the owner shall be deemed to have admitted the violation and acquiesced to the City's request to enter onto the property to abate and maintain the nuisance. The board may thereafter enter an order on a single motion finding the owner in violation of the City of Clearwater Code and allowing the City to enter the property to abate and maintain the nuisance. If the owner, agent or representative does appear before the board at the designated time then the normal hearing procedures will govern the administration of the case.

If the City presents multiple nuisance cases for abatement and maintenance during a hearing, the Board Chair is authorized to make a single roll call to inquire if any owners, agents or representatives are present. The board may then enter separate orders on a single motion for all cases in which the owner, agent or representative is not present finding the individual owner in violation of the City of Clearwater Code and allowing the City to enter the property to abate and maintain the nuisance.

ARTICLE IX – ENFORCEMENT

Section 1: After the Board issues an order and schedules a date of compliance, a designated City Official shall make an inspection to determine if the violation has been corrected.

Section 2: The designated City Official then shall issue an Affidavit of Compliance or Non-Compliance and file it with the Board Secretary. Upon acceptance by the Board, a copy of said Affidavit shall be sent to the violator by certified mail, return receipt requested.

Section 3: No extensions to compliance dates will be granted

Section 4: After a fine or nuisance abatement lien has been imposed by the Board, a Violator or prospective purchaser of the subject property may petition for reconsideration of the amount of such fine or lien.

- 1) The petition must be in writing, signed by the Violator or prospective purchaser. A prospective purchaser must attach a contract for purchase and sale or equivalent evidence of pending sale.
- 2) Factors for the Board to consider when determining whether to reduce the amount of such fine or lien are:
 - a) Did the violator bring the property into compliance regarding cited violation(s);
 - b) If extreme or undue hardship is shown related to payment of the fine or lien or reaching compliance within the required time;
 - c) If Code violations exist on other properties owned by the violator or prospective buyer;
 - d) If a development or redevelopment proposal would result in improvement or upgrade to the property;

- e) If such a development or redevelopment plan exists, it would be impractical to enforce the compliance action directed by the Board; and
 - f) If payment would hinder a proposed sale of the property.
- 3) The amount of the fine or lien may not be reduced once City foreclosure action is instituted.
- 4) The amount of a fine or lien will not be reduced below the amount representing administrative costs incurred by the City regarding the case.
- 5) The Board shall determine the payment deadline for a reduced fine.
- 6) The Board Secretary shall notify the violator by regular mail of the Board's decision.

Section 5: A letter of notification of lien shall be mailed to the violator each calendar quarter until the condition is corrected and/or the lien satisfied. Failure to give such notice shall not bar enforcement of any lien by the Board.

Section 6: A certified copy of an Order finding the existence of a violation concerning real property shall be recorded in the public records of Pinellas County by the Secretary unless the Board directs the Secretary otherwise. Once recorded, such Order shall have the effect provided for in the City Code and specifically Section 7-103. G(1), Community Development Code.

Section 7: A certified copy of an Order imposing a fine shall be recorded in the public records of Pinellas County by the Secretary unless the Board directs otherwise. The fine imposed shall accrue in accordance with the City Code and specifically Section 7-103. G(1), Community Development Code.

Section 8: Fines will be capped at the value of the property as determined by the Pinellas County Property Appraiser at the time the violator pays the fine or when the City is provided expert proof that it would be impractical to enforce the compliance action directed by the Board.

Section 9: The Clearwater Municipal Code Enforcement Board will allow bona fide purchasers of real property in which code enforcement liens exist to pay the City of Clearwater 10 % of the outstanding code enforcement fine or \$1500.00 whichever is greater in order to satisfy the outstanding City of Clearwater Code Enforcement lien. Such reduction may only occur if the new purchaser of the real property has never previously owned the real property in question, agrees to legally own the property for at least 12 months from the date of the fine reduction, and satisfies the fine reduction within 10 days of receiving notice of the fine reduction. The City of Clearwater may require a Hold Harmless and Indemnification Agreement for all code enforcement lien reductions. The City of Clearwater may unilaterally choose not to agree to the fine reduction on any particular case and if so, chooses, the case will come before the Code Enforcement Board for lien reduction consideration.

ARTICLE X – MISCELLANEOUS

Section 1: These Rules and Regulations may be altered in a manner not inconsistent with the City Code during a regular meeting by the affirmative vote of at least four (4) members of

the board, provided notice of the proposed change is given to the Board at a preceding regular meeting.

Section 2: The provisions of these Rules and Regulations may be discussed and/or adopted, or readopted by the Board as deemed necessary.

THESE RULES AND REGULATIONS ARE HEREBY APPROVED THIS 28th DAY OF NOVEMBER 2018.

/s/Wayne Carothers

Chair