



PLANNING & DEVELOPMENT DEPARTMENT COMMUNITY DEVELOPMENT BOARD STAFF REPORT

MEETING DATE: December 18, 2018

AGENDA ITEM: G.1.

CASE: TA2018-10005

ORDINANCE NO.: 9228-19

REQUEST: Review and recommendation to the City Council, of amendments to Article 7. Enforcement Proceedings and Penalties of the Community Development Code, to revise code enforcement board and special master hearing procedures, fines and establish a new local civil penalty/citation process for code violations.

INITIATED BY: City of Clearwater, Planning and Development Department

BACKGROUND:

The City enforces the provisions of the Clearwater Community Development Code (“the Code”) and the Clearwater Code of Ordinances through Article 7 of the Code. Article 7, in turn, was created under the authority of Chapter 162, Florida Statutes which vests in local governments the power to “create[e]... administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist.” § 162.02, Fla. Stat.

The City desires to amend Article 7 in three respects. First, the City’s proposed ordinance amends the so-called “nuisance case” regulations to allow the municipal code enforcement board or a special magistrate to enter orders permitting the City to enter onto a violator’s property to abate and maintain a nuisance after notice and a hearing. Second, the ordinance re-adopts and re-affirms a heightened fine schedule that was previously adopted in 2000. And finally, the ordinance creates a new civil citation system authorizing the issuance of civil citations to code violators and establishing an appeal system should a violator elect to contest this violation.

ANALYSIS:

- **Amendments to Nuisance Regulations**

Currently, the City prosecutes violations of Sect. 3-1503, “*Nuisances*,” by posting a sign on the violator’s property asserting the existence of a nuisance and that if compliance is not met within 5 days or an appeal made to municipal code enforcement board, the City will enter on the property and abate the nuisance at the owner’s cost. Sect. 7-102(A)(2). The proposed ordinance amends Sections 7-102(A)(2) and 7-102(F)(2) to provide that if a violator fails to comply with a violation notice then the City may bring an action to enforce the nuisance code before the municipal code enforcement board or special magistrate. This ensures that all property owners are given adequate notice of the violation and an opportunity to be heard should they wish to contest the violation.

Additionally, the proposed ordinance amends Sect. 7-103(E), “*Entry and repair/nuisances*,” and vests in the municipal code enforcement board the authority to enter orders permitting the City to enter onto the property to abate and maintain the nuisance should the property owner fail to do so after a hearing. By using the term “and maintain” the nuisance, the order acts in the mode of a continuing mandatory injunction allowing the City to not only correct the violation when it first appears, but also if the violation ever appears again. This is important because under the current version of the Code, code inspectors are required to begin the process anew each time the nuisance is created even if the City has already abated the nuisance on the property.

Finally, the proposed ordinance vests in the municipal code enforcement board the authority to render two other types of orders related to nuisances. First, the board is authorized to render “declarations of violations.” These orders declare that while a violator did abate a nuisance before the board’s hearing, the violator failed to do so within the time period prescribed in the code inspector’s notice of violation. Second, the board is authorized to render orders against a “repeat violation” as the term is used in both the Code and Chapter 162, Florida Statutes. This order provides that if a violator commits a repeat violation, the City is authorized to enter onto the property to abate and maintain the nuisance even if the violator corrects the violation. These orders are designed to prevent the scenario where the City must waste precious government resources prosecuting a violator before the board repeatedly.

- **Re-Adopting and Re-Affirming a Portion of Ordinance No. 6526-00**

Under Chapter 162, Florida Statutes, the municipal code enforcement board is authorized to levy fines against violators for violations of municipal ordinances which are capped at \$250.00 per day for a first violation and \$500.00 per day for a repeat violation. § 162.09(2)(a), Fla. Stat. The statute also provides that a municipality with a population greater than 50,000 may adopt an ordinance allowing for fines greater than this statutory cap, but only if the ordinance is passed by a “majority plus one” vote. § 162.09(2)(d), Fla. Stat.

On June 15, 2000 the City Ordinance adopted No. 6526-00 which, amongst other things, amended Section 7-103 of the Code and authorized the municipal code enforcement board to impose fines greater than the statutory limit. Before imposing such a fine, the board was required to consider: 1) the gravity of the violation; 2) any actions taken to correct the violation; 3) any previous violations committed by the violator; 4) any danger to the public’s health, safety, and welfare; 5)

the length of time the violation existed; and 6) whether the violation harmed persons legally on the property such as tenants.

However, Ordinance No. 6526-00 was adopted by a vote of three “Ayes,” one “Nay,” and one “Absent.” It therefore failed to meet the statutory requirement of a “majority plus one” vote needed to authorize fines greater than the statutory cap. To the Planning and Development Department’s institutional knowledge, no such fine has ever been imposed against a violator. The Department, however, feels that it is necessary to re-adopt and re-affirm this portion of Ordinance No. 6526-00 so that the Code comports with state law.

- **Creation of a City-Run Civil Citation System**

In addition to prosecutions before the municipal code enforcement boards, the Code allows for prosecutions in county court after the issuance of a civil citation. Sect. 4-103(H). Because these proceedings are prosecuted under the Florida Rules of Criminal Procedure and the Florida Rules of Evidence, they are both time-consuming and costly. Indeed, these proceedings often require the City Attorney’s Office and the code inspectors to attend several hearings before a trial is commenced, and the City only sees \$10.00 of every fine that is paid with the remaining amount (sometimes hundreds of dollars) going to the County.

The proposed ordinance keeps these types of proceedings, but amends Sect. 4-103(H) to allow the City to run its own civil citation system utilizing special magistrates. Under this proceeding, a violator will be given a notice of a violation (unless one of four exemptions to the notice requirement are met) and if the violation is not corrected within the time period specified, issued a civil citation with an accompanying fine. The violator can either pay the fine or appeal the citation to a special magistrate, who will be an attorney licensed to practice law in the State of Florida recommended by the City Attorney’s Office and confirmed by the City Council. At the appeal hearing, the special magistrate will either uphold or the dismiss the citation and render a final order. Both the City and the violator have the right to move for rehearing of this decision and appeal it to the Pinellas County Circuit Court through a petition for a writ of certiorari.

- **Remaining Amendments**

The proposed ordinance makes two other technical amendments to the Code. First, the ordinance amends Sect. 8-102 to define “*irreparable or irreversible violation*,” a term used in both the Code and Chapter 162, Florida Statutes but which is not defined in either. Second, the ordinance creates Appendix A, Section XX which sets the fine schedule for the newly created civil citation system.

CRITERIA FOR TEXT AMENDMENTS:

Community Development Code Section 4-601 sets forth the procedures and criteria for reviewing text amendments. All text amendments must comply with the following:

- 1. The proposed amendment is consistent with and furthers the goals, policies and objectives of the Comprehensive Plan.**

A review of the Clearwater Comprehensive Plan identified the following Goals, Objectives and Policies which will be furthered by the proposed Code amendments:

Goal A.6 The City of Clearwater shall utilize innovative and flexible planning and engineering practices, and urban design standards in order to protect historic resources, ensure neighborhood preservation, redevelop blighted areas, and encourage infill development.

The proposed amendments are geared towards efficiently and effectively removing blight from troubled properties, whether done through the streamlined nuisance regulations or the newly created civil citation system. Moreover, the provision in the ordinance allowing for heightened fines acts as a deterrence against future code violations, which protects historic resources and ensures neighborhood preservation.

Objective A.6.1 The redevelopment of blighted, substandard, inefficient and/or obsolete areas shall be a high priority and promoted through the implantation of redevelopment and special area plans, the construction of catalytic private projects, city investment, and continued emphasis on property maintenance standards.

Property maintenance standards are codified in Article 15 of the Code. Included in Article 15 is the requirement that “[n]o person owning, leasing, operating, occupying or having control of any premises within the city shall maintain, keep or permit any nuisance affecting the citizens of the city.” Sect. 3-1503(A). The proposed ordinance allows for additional enforcement of this provision – and the objective expressed in A.6.1. of the Comprehensive Plan – through streamlining the nuisance abatement process before the municipal code enforcement board and instituting the civil citation system.

Policy A.6.1.13 The City of Clearwater will continue to promote infill development and the removal of blight through the Unsafe Structures Program.

As of August 2006, the City’s Unsafe Structures Program has resulted in either demolition or full code compliance of over 1,020 structures. The streamlined nuisance process, heightened fines, and civil citation system should only add to this number either because they act as an efficient resolution to a present problem or a deterrence to a future one.

2. The proposed amendment furthers the purposes of the Community Development Code and other City ordinances and actions designed to implement the Plan.

The proposed text amendments will further the purposes of the CDC in that it will be consistent with the following purposes set forth in Section 1-103.

- It is the purpose of this Development Code to implement the Comprehensive Plan of the city; to promote the health, safety, general welfare and quality of life in the city; to guide the orderly growth and development of the city; to establish rules of procedure for land

development approvals; to enhance the character of the city and the preservation of neighborhoods; and to enhance the quality of life of all residents and property owners of the city. (*Section 1-103.A., CDC*)

- It is the further purpose of this Development Code to make beautification of the city a matter of the highest priority and to require that existing and future uses and structures in the city are attractive and well-maintained to the maximum extent permitted by law. (*Section 1-103.D, CDC*)
- Protect the character and the social and economic stability of all parts of the city through the establishment of reasonable standards which encourage the orderly and beneficial development of land within the city. (*Section 1-103.E.2, CDC*)
- Preserve the natural resources and aesthetic character of the community for both the resident and tourist population consistent with the city's economic underpinnings. (*Section 1-103.E.5, CDC*)
- Coordinate the provisions of this Development code with corollary provisions related to parking, fences and walls, signs, minimum habitable area and like supplementary requirements designed to establish an integrated and complete regulatory framework for the use of land and water within the city. (*Section 1-103.E.12, CDC*)

The amendments proposed in Ordinance No. 9228-19 will further the above referenced purposes by implementing the Comprehensive Plan policies related to code enforcement and establishing a regulatory framework geared towards eradicating nuisances. These regulations will ensure that blight is effectively and efficiently dealt with thereby enhancing the City's character.

SUMMARY AND RECOMMENDATION:

The proposed ordinance amends Article 7 of the Code related to code enforcement. The amendments create new regulations for nuisance cases; re-adopt and re-affirm certain heightened fine limits; and creates a new civil citation system all geared towards combating blight. The proposed ordinance is consistent with and will further the goals of the Clearwater Comprehensive Plan and the purposes of the Community Development Code. Based upon the above, the Planning and Development Department recommends:

APPROVAL of Ordinance No. 9228-19 that amends the Community Development Code.

Prepared by Planning and Development Department Staff: _____

Terry Teunis
Codes Compliance Manager

ATTACHMENT: Ordinance No. 9228-19

ORDINANCE NO. 9228-19

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA, AMENDING SECTION 7-102 OF THE COMMUNITY DEVELOPMENT CODE TO MODIFY THE NOTICE AND HEARING PROCEDURES FOR NUISANCE CODE ENFORCEMENT CASES; RE-ADOPTING AND RE-AFFIRMING THE PORTION OF ORDINANCE NO. 6526-00 THAT AMENDED SECTION 7-103(B) OF THE COMMUNITY DEVELOPMENT CODE AND AUTHORIZED THE CODE ENFORCEMENT BOARD OR SPECIAL MASTER TO IMPOSE FINES GREATER THAN THE LIMITS PREVIOUSLY ALLOWED BY LAW; AMENDING SECTION 7-103(E) OF THE COMMUNITY DEVELOPMENT CODE TO PERMIT THE MUNICIPAL CODE ENFORCEMENT BOARD TO ISSUE ORDERS RELATED TO NUISANCE CODE ENFORCEMENT CASES; AMENDING SECTION 7-103(H) OF THE COMMUNITY DEVELOPMENT CODE TO PROVIDE FOR ONE OR MORE SPECIAL MAGISTRATES TO EXERCISE THE POWERS AS PROVIDED IN THIS SECTION AND STATE LAW RELATED TO CODE ENFORCEMENT AND TO PROVIDE FOR AN APPEALS PROCESS TO CONTEST A CITATION, WHICH INCLUDES THE ASSESSMENT OF ADMINISTRATIVE CHARGES AND CIVIL CITATION PENALTIES; AMENDING SECTION 8-102 OF THE COMMUNITY DEVELOPMENT CODE TO DEFINE THE TERM "IRREPARABLE OR IRREVERSIBLE VIOLATION"; CREATING APPENDIX A, SECTION XX, "CIVIL CITATION PENALTIES"; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Clearwater adopted a new Community Development Code on January 21, 1999 which took effect on March 8, 1999; and

WHEREAS, the City of Clearwater desires to modify the notice and hearing procedures for nuisance code enforcement cases; and

WHEREAS, the City of Clearwater, via Ordinance No. 6526-00, made comprehensive amendments to the Community Development Code on June 15, 2000; and

WHEREAS, one of the amendments to the Community Development Code adopted by the City of Clearwater on June 15, 2000, amended Section 7-103 and authorized the code enforcement board or special master to impose fines greater than the limits previously allowed by law; and

WHEREAS, Section 162.09(d), Florida Statutes expressly permits a municipality with a population greater than 50,000 to adopt, by a vote of at least a majority plus one

of the entire governing body, an ordinance authorizing the code enforcement board or special master to impose such fines; and

WHEREAS, it appears from the minutes of the June 15, 2000, City Commission meeting that Ordinance No. 6526-00 was adopted by a vote of three "Ayes," one "Nay," and one "Absent"; and

WHEREAS, the City of Clearwater has determined that it is necessary to ensure that the amendment to Section 7-103 of the Community Development Code is passed in a matter that comports with Section 162.09(d), Florida Statutes; and

WHEREAS, effective code enforcement is essential to the health, safety and welfare of the City of Clearwater; and

WHEREAS, Florida Statutes, Chapter 162 provides the City with the powers to create multiple Code Enforcement Boards or Special Magistrates with the powers to enforce the City Code; and

WHEREAS, Florida Statutes, Chapter 162 provides that the City may regulate and create any supplemental methods in which to enforce its municipal regulations, ordinances and codes; and

WHEREAS, Florida Statutes, Chapter 162 provides that the City may regulate and create any supplemental methods in which to enforce its municipal regulations, ordinances and codes; and

WHEREAS, the City has a compelling interest in expediting code compliance; and

WHEREAS, the purpose of allowing the Municipal Code Enforcement Board to enter orders declaring that the City has the right to enter onto private property to abate and maintain nuisances is to effectively and expeditiously enforce City Code; and

WHEREAS, the purpose of a civil citation enforcement program is also to effectively and expeditiously enforce the City Code; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
CLEARWATER, FLORIDA:

Section 1. Section 7-102 of the Clearwater Community Development Code is hereby amended to read as follows:

Section 7-102. - Code enforcement board/special master hearing procedures.

(A)(2). *Nuisance cases.* Upon completion of a field investigation by a code enforcement officer and determination that a nuisance exists under Code of Ordinances

Section 3-1503, the property shall be posted with a notice advising of the existence and nature of the violation and requiring compliance ~~within~~ no less than five days and no more than 10 days after the date of posting ~~or the filing of a notice of appeal to the municipal code enforcement board during such five day period~~ and that if the violation is not corrected within the time period prescribed, a hearing will be held before the municipal code enforcement board or special master on a date certain. ~~In nuisance cases only, posting of notice shall be deemed legally sufficient to provide notice; t~~The code enforcement officer may shall additionally attempt to obtain personal service ~~upon~~ and/or mail notice to the property owner within the five to 10 day period as contemplated in Section 162.12, Florida Statutes.

(F)(2). *Presentation of case.* Violations of Section 3-1503, Nuisances, may be presented as "nuisance cases" or "non-nuisance cases" under this Subsection.

a. *Non-nuisance cases.* Each case before the special master or municipal code enforcement board shall be presented on behalf of the city either by the office of city attorney or by a member of the city's administrative staff. If the city prevails in prosecuting a case, the city shall be entitled to recover all costs incurred in prosecuting the case.

b. *Nuisance cases.* ~~Appeals from the issuance of a notice of violation in nuisance cases 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. Each case before the special master or municipal code enforcement board shall be presented on behalf of the city either by the office of city attorney or by a member of the city's administrative staff. If the city prevails in prosecuting a case, the city shall be entitled to recover all costs incurred in prosecuting the case and shall be entitled to an order as described in Section 7-103(E). 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 including, but not limited to, the right to enter the property and take action to remedy the condition without further notice to the owner.~~

Section 2. The portion of Ordinance No. 6526-00 that amended Section 7-103, Community Development Code to authorize the code enforcement board or special master to impose fines greater than the limits previously allowed by law is hereby re-adopted and re-affirmed by a vote of at least a majority plus one of the City Council, and Section 7-103(B), Community Development Code is amended to read as follows:

Section 7-103. - Remedies; penalties.

B. *Fines.* 1. Upon being notified by the code inspector that an order issued by the special master or municipal code enforcement board has not been complied with within the time established in such order or upon finding that a repeat violation has been committed, the special master or municipal code enforcement board shall order the violator to pay a fine to the city for each day the violation continues past the compliance date established in its order or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. Any fine the special master or municipal code enforcement board imposes pursuant to this section shall not exceed \$250.00 per day for a first violation or \$500.00 per day for a repeat violation. If the municipal code enforcement board finds a violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.

2. A violation of Article 3, Division 3, Adult Use Standards shall be punished by a fine not to exceed \$500.00, or imprisonment for a term not exceeding 60 days, or by both a fine and imprisonment, as may be imposed by the county court.

3. In determining the amount of the fine, if any, the municipal code enforcement board or special master shall consider the following factors:

1. The gravity of the violation.
2. Any actions taken by the violator to correct the violation.
3. Any previous violations committed by the violator.

4. The municipal code enforcement board or special master may impose fines in excess of the limits set forth above. Such fines shall not exceed \$1,000.00 per day per violation for a first violation, \$5,000.00 per day per violation for a repeat violation, and up to \$15,000.00 per violation if the municipal code enforcement board or special master finds the violation to be irreparable or irreversible in nature. In addition to such fines, the municipal code enforcement board or special master may impose additional fines to cover all costs incurred by the city in enforcing its codes and all repair costs. In imposing such excess fines, the municipal code enforcement board or special master shall consider:

- a. The gravity of the violation.
- b. Any actions taken by the violator to correct the violation and the effectiveness of such actions.
- c. Any previous violations committed by the violator.
- d. Any danger to the public health, safety, and welfare posed by the violation.

e. The length of time the violation existed.

f. Whether the violation harmed persons legally on the property such as tenants.

Section 3. Section 7-103(E) of the Clearwater Community Development Code is hereby amended to read as follows:

Section 7-103. - Remedies; penalties.

(E). *Entry and repair/nuisances.*

1. Order allowing entry onto the property to abate and maintain the nuisance.

In the event a nuisance is determined by a code inspector to exist and notice has been provided as required by 7-102, and the violator has not appealed to the special master or municipal code enforcement board, and the nuisance continues unabated, or an appeal has been filed but is denied by the special master or municipal code enforcement board, then the municipal code enforcement board or special master shall enter an order requiring the violator to abate nuisance within five days of the date of the order and declaring that if the nuisance has not been abated by such time then the city has the right to take such remedial action as is necessary to abate and maintain the nuisance including but not limited to the right to enter the property and have such work done on behalf of the owner at the owner's cost, including administrative costs, which shall become a lien against the land on which the violation exists and upon any other real or personal property owned by the violator as provided in Section 7-103FG. Any order rendered under this subsection shall run with the land once recorded in the Official Records of Pinellas County, Florida.

2. Declaration of violation.

In the event that a violator abates a nuisance after the date of compliance in the code inspector's notice but before any hearing before the municipal code enforcement board or special master, the code inspector may still bring the case before the municipal code enforcement board or special master for hearing and the municipal code enforcement board or special master shall thereafter enter a declaration of violation finding the violator in violation of the city's codes. Any declaration rendered under this subsection shall run with the land once recorded in the Official Records of Pinellas County, Florida.

3. Repeat violation.

In the event that a violator commits a repeat violation after either abating a nuisance after entry of an order by the municipal code enforcement board or special master as provided Section 7-103(E)(1) or suffering a declaration of violation as provided in Section 7-103(E)(2), the code inspector shall notify the property owner or

the violator and submit the violation to the special master or municipal code enforcement board for a hearing. At the next available meeting after receipt of the notice of violation, the special master or municipal code enforcement board shall conduct a hearing regardless of whether the violation has been corrected, and the notice shall so state. If it finds that a repeat violation exists or existed, the municipal code enforcement board or special master shall enter an order declaring that the city has the right to take such remedial action as is necessary to abate and maintain the nuisance including but not limited to the right to enter the property and have such work done on behalf of the owner at the owner's cost, including administrative costs, which shall become a lien against the land on which the violation exists and upon any other real or personal property owned by the violator as provided in Section 7-103G even if the violation has been corrected, and the notice shall so state. Any order rendered under this subsection shall run with the land once recorded in the Official Records of Pinellas County, Florida.

Section 4. Section 7-103(H) of the Clearwater Community Development Code is hereby amended to read as follows:

Section 7-103. - Remedies; penalties.

H. *Civil penalty/citation.*

1. Prosecution in county court.

As an alternative to the special master and the municipal code enforcement board, a code enforcement officer may issue a citation for violation of a provision of the City's Code for prosecution in county court pursuant to Section 1.12 of the City's Code. A code enforcement officer may issue a notice to appear at any hearing conducted by a county court if the officer, based upon personal investigation, has reasonable cause to believe that the person has violated a code or ordinance. A notice to appear means a written order issued by a code enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. If a person issued a notice to appear under this section refuses to sign such notice, the code enforcement officer has no authority to arrest such person. A person convicted of violating a provision of this development code through the use of this subsection may be ordered to pay a fine, not to exceed \$500.00. Prior to issuing a notice to appear, a code enforcement officer shall provide written notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no fewer than five days and no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the prescribed time period, a code enforcement officer may issue a notice to appear to the person who has committed the violation. A code enforcement officer is not required to provide the person with a reasonable time period to correct the violation prior to issuing a notice to appear and may immediately issue a notice to appear if a repeat violation is found, or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety,

or welfare or that the violator is engaged in violations of an itinerant or transient nature, as defined in Section 8-102, or if the violation is irreparable or irreversible.

2. Civil citation.

a. Authority.

- i) This section has been enacted pursuant to the Home Rule powers of the City and authority of F.S. Ch. 162, as a supplemental method of enforcing certain sections of the codes and ordinances of the City and is enacted to protect the public health, safety, and welfare.
- ii) Nothing in this section shall be construed to prohibit the City from enforcing its codes and ordinances by any other means including, but not limited to: a summons; a notice to appear in the county or circuit court; an arrest; an action before the Code Enforcement Board; a civil action for injunctive relief; a stop work order, a demolition order, or any other method of enforcement.

b. Applicability. The provisions of this section shall apply to all violations of the Clearwater Code of Ordinances and the Clearwater Community Development Code and includes any ordinance of the City which is not specifically set forth therein.

c. Enforcement procedures.

- i) A code enforcement inspector is authorized to issue a citation to a person when, based upon personal investigation, the inspector has reasonable cause to believe that the person is in violation of the City Code. The citation shall contain:
 - (a) The date and time of issuance.
 - (b) The name and address of the person to whom the citation is issued.
 - (c) The date and time the civil infraction was committed, or observed to exist, or identified by the code enforcement inspector.
 - (d) The facts constituting reasonable cause.

- (e) The number or section of the code or ordinance violated.
 - (f) The name and title of the code enforcement inspector.
 - (g) The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
 - (h) The applicable civil penalty if the person elects not to contest the citation.
 - (i) The applicable civil penalty if the person elects to contest the citation.
 - (j) The time period in which an appeal must be requested and the location where such request may be made.
 - (k) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to request a Special Magistrate appeal hearing to contest the citation, that person shall be deemed to have waived their right to contest the citation and that, in such case, an order of the Special Magistrate may be entered against that person for the amount of the civil citation.
- ii) Prior to issuing a citation, a code enforcement inspector shall provide written notice to the person that the person has committed a violation of the City Code and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no less than 5 days and no more than 30 days. If, upon personal investigation, a code enforcement inspector finds that the person has not corrected the violation within the given time period, a code enforcement inspector may issue a citation to the person who has committed the violation.
 - iii) A code enforcement inspector does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately

issue that citation if a code enforcement inspector has reason to believe that the violation:

- (a) Is a repeat violation; or
 - (b) Presents a serious threat to the public health, safety, or welfare; or
 - (c) Is irreparable or irreversible; or
 - (d) Is itinerant or transient nature.
- iv) Each violation of the City Code shall be a separate civil infraction. Each day such violation shall continue shall be deemed to constitute a separate civil infraction.
- v) After issuing a citation to an alleged violator, a code enforcement inspector shall keep on file the citation for a period of eight weeks or at least 30 days after all appeal times have expired, whichever is later.
- vi) A violation of the City Code enforced by the provisions of this section is a civil infraction punishable by a maximum civil penalty not to exceed \$500 or such amount as may hereafter be prescribed by law. The fines to be assessed by code enforcement inspectors shall be established by this section.
- vii) Subject to the procedures below, the alleged violator has the option of paying the penalty to the City or requesting an appeal hearing to be heard by the Special Magistrate authorized to hear civil citation hearings. Payment of said penalty to the City shall be made either in person or by mail, postmarked on or before, 15 days after receipt of the citation. If the alleged violator elects to pay the applicable penalty set forth on the citation, that person shall be deemed to have admitted the infraction and waived the right to a hearing.
- viii) If a person fails to pay the penalty within the specified period or fails to timely request a hearing, that person shall be deemed to have waived the right to contest the citation. An order of the Special Magistrate may be entered against that person for the amount of the civil citation.

d. Special magistrate; appointment, powers.

- i) The City Council may appoint one or more Special Magistrates who shall have the authority to hold civil citation appeal hearings, assess fines against violators of the City Code and otherwise exercise the powers of a municipal Code Enforcement Board as provided in F.S. ch. 162, pt. I, as and to the extent provided in this section.
- ii) Special Magistrates shall consist of the following:
 - (a) One or more attorneys licensed to practice law in the State of Florida recommended by the City Attorney's Office and confirmed by City Council.
 - (b) To the extent permitted by applicable laws, the City may enter into a contract approved by City Council for use of a Special Magistrate.
- iii) Minutes and records of hearings before a Special Magistrate shall be kept and maintained by the City in the manner and to the extent required by law. The City shall provide necessary and reasonable clerical and administrative support to enable a Special Magistrate to perform his or her duties. A Special Magistrate shall not be authorized to hire or use the services of any person except those provided by the City to assist him in the performance of his duties.

e. Appeal of civil citation to special magistrate.

Any petitioner who wants to appeal the violation charged by a civil citation shall file with the City Clerk's Office a request for hearing on the form required by the code enforcement officer by 5:00 p.m. on the tenth day following the date of the service of the civil citation. Such requests may be mailed by the violator if such request is sent certified mail and post-marked before midnight on the tenth day following the date of the service of the civil citation.

f. Hearing procedures.

- i) Hearings may be held at any time after giving the notice required by this section. All hearings shall be open to the public.

- ii) The code enforcement inspector shall provide the Special Magistrate with a copy of the civil citation, the notice provided prior to issuance of the civil citation (if applicable), any recorded images related to the citation, and any other case history data prior to a hearing pursuant to this section.
- iii) Notice of hearing shall be provided by certified and first class mail, to the address provided by the violator in the request for hearing, at least 20 days before the hearing.
- iv) Cases on the agenda for a particular day shall be heard. All testimony shall be under oath and shall be recorded. The Special Magistrate shall take testimony from the code enforcement inspector, the petitioner and any other person with relevant information to the civil citation. The Special Magistrate shall review the case history and any recorded images. The Special Magistrate shall not be bound by the formal rules of evidence; however, he or she shall act to ensure fundamental due process in each case.
- v) The hearing may be continued once, prior to the hearing, at the discretion of the City, if the violator provides the City with written notice of the request to continue seven days before the scheduled date of the hearing. Any violator may cancel his or her hearing by paying the penalty stated on the civil citation plus administrative costs established by this section before the start of the hearing. This information including where to make payment and the accepted forms of payment shall be set forth in the notice of hearing.
- vi) At the conclusion of each hearing, the Special Magistrate shall determine whether a violation of the City Code has occurred, in which case the Special Magistrate shall uphold or dismiss the citation and issue a final order. If the citation is upheld, the final order shall order the violator to pay the penalty stated on the citation and shall order the violator to pay the administrative charges established by the code enforcement officer. The order shall be mailed to the violator along with a notice of the violator's right to rehearing under the provisions of Section 7-102H(2)(i) or the right to appeal under the provisions of Section 7-102(H)(2)(j).

vii) If the violator fails to appear at the hearing, the violator shall be deemed to have waived the right to contest the citation, and the Special Magistrate will enter an order upholding the citation and ordering the violator to pay the penalty stated on the citation plus the administrative charges.

g. Administrative charges.

In addition to the penalty stated on the citation, administrative charges shall be assessed against the violator. The code enforcement officer shall establish the administrative charges, which charges shall at least cover all the costs to administer the appeal hearing. The cost associated with providing City staff for the hearing shall be considered part of the administrative charges. The code enforcement officer shall review the administrative charges every six months and adjust, if necessary, to assure coverage of all the costs incurred in providing the hearings.

h. Rehearing.

Either the prosecutor or the violator may request a rehearing of the decision of the Special Magistrate. A request for rehearing shall be made, in writing, and shall be delivered to the city clerk within ten days of the date that the Special Magistrate mails 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 decision of the Special Magistrate. The written request for rehearing shall specify the precise reasons therefor. If such a rehearing request has been delivered to the city clerk, the Special Magistrate's final order shall not be deemed rendered as that term is used in Section 7-102(H)(2)(j) as to any existing party until a signed, written order disposing of the rehearing request has been mailed to all parties.

i. Appeal.

Any aggrieved party including the City may appeal a final order of the Special Magistrate to the circuit court, if allowed, by filing for a petition for writ of certiorari within 30 days of rendition of the Special Magistrate's final order. The date of rendition of the final order shall be the date the final order is mailed to the aggrieved party. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the Special Magistrate.

j. Collection of unpaid penalty.

The code enforcement officer may establish procedures for the collection of any unpaid civil penalty and administrative costs. At the discretion of the code enforcement officer, the final order of the Special Magistrate for any unpaid fines or fines plus

administrative costs, if applicable, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Such liens may be foreclosed upon by the City subject to the state laws governing such code enforcement liens.

k. Notices.

i) All notices required by this part, other than the initial violation warning letter, must be provided to the violator by:

(a) Certified mail to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database, except the City may provide notice of a Special Magistrate hearing to any other address provided to the City by the alleged violator on the appeal hearing request form by first class mail.

(b) Hand delivery;

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such persons of the contents of the notice; or

(d) In the case of a violation at a commercial premises, leaving the notice with the manager or other person in charge. Each employee of the business shall be deemed to be an agent of the business for service of warning notices and citations during regular business hours.

(e) Additional notice may be completed by posting a copy of the notice or citation in a conspicuous place upon the property which is the subject of the violation. Such posting, together with proof of mailing in subsection (1) shall be sufficient to show that the notice requirements were met without regard to whether or not the alleged violator actually received such notice.

ii) For violations involving vehicles, vessels, or equipment which have a visible state license or registration, notice may be provided to the registered owner of the vehicle,

vessel, or equipment by certified mail to the owner's record address for the license or registration. In addition to such mailing, the notice may be provided in accordance with subsection (a) to the property owner where the vehicle, vessel, or equipment in violation is located.

I. Schedule of violations and penalties.

The list of violations with their corresponding classifications included in the Pinellas County Uniform Fine Schedule adopted by the Sixth Judicial Circuit of the State of Florida in its Administrative Order 2010-063 is hereby incorporated by reference. A person who receives a civil citation pursuant to this section shall be subject to a civil penalty in accordance with Section XX, Appendix A. All civil penalties collected pursuant to this section, less administrative costs, shall be placed in a fund restricted for nuisance abatement purposes throughout the city, including but not limited to payment of special magistrate fees, abandoned buildings, unsafe structures, unsecured properties and structures, and demolition.

Section 5. Section 8-102 of the Clearwater Community Development Code is hereby amended to read as follows:

Irreparable or irreversible violation means a violation that causes harm, damage, injury, or change that is incapable of correction, repair, or return to an original condition.

Section 6. Appendix A, Section XX.—Civil Citation Penalties is hereby created to read as follows:

XX. Civil Citation Penalties (§ 7-102(H)(2)):

	<u>First Infraction</u>	<u>Second Infraction</u>	<u>Third Infraction</u>	<u>Fourth Infraction and Each Subsequent Infraction</u>
<u>Class I</u>	<u>\$200.00</u>	<u>\$400.00</u>	<u>\$500.00</u>	<u>\$500.00</u>
<u>Class II</u>	<u>\$150.00</u>	<u>\$300.00</u>	<u>\$450.00</u>	<u>\$500.00</u>
<u>Class III</u>	<u>\$125.00</u>	<u>\$250.00</u>	<u>\$375.00</u>	<u>\$500.00</u>
<u>Class IV</u>	<u>\$100.00</u>	<u>\$200.00</u>	<u>\$300.00</u>	<u>\$400.00</u>
<u>Class V</u>	<u>\$80.00</u>	<u>\$160.00</u>	<u>\$240.00</u>	<u>\$320.00</u>

Section 7. The City of Clearwater does hereby certify that the amendments contained in this Ordinance are consistent with, and in conformance with, the City's Comprehensive Plan.

Section 8. Should any part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part declared to be invalid.

Section 9. Notice of the proposed enactment of this Ordinance has been properly advertised in a newspaper of general circulation in accordance with applicable law.

Section 10. The provisions of this Ordinance shall take effect immediately following adoption.

PASSED ON FIRST READING

PASSED ON SECOND AND FINAL
READING AND ADOPTED

George N. Cretekos
Mayor

Approved as to form:

Attest:

Michael P. Fuino
Assistant City Attorney

Rosemarie Call
City Clerk