

ARTICLE 10

**BOARDS AND COMMISSIONS;
CODE ENFORCEMENT**

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ARTICLE 10

BOARDS AND COMMISSIONS; CODE ENFORCEMENT

10.00.00 PURPOSE

This article provides the provisions relating to the creation, membership, duties, and procedures of the boards and commissions established to administer the City's Land Development Regulation.

10.01.00 GENERAL

10.01.01 Legislative Findings/ Intent, Ordinance 2002-01

A. City Codes or City Ordinances subsequently enacted or amended after February 7, 2002, may set forth the applicable civil penalty for violations by designating the appropriate violation classification as provided in this section.

B. It is the intent of the City Commission to provide the City of Lake Helen with all available legal remedies provided by State law for the enforcement of the City Code and City ordinances and that all applicable and permissible penalties provided by State law be available to punish violators.¹⁰

(Ord. 2002-01; § 1, 2-7-2002)

10.01.02 Short Title (Sections 10.01.02 through 10.07.02)

Sections 10.01.02 through 10.07.02 shall be known and may be cited as the “City of Lake Helen Code Enforcement, Nuisance Abatement and Citation Ordinance.”

(Ord. 2002-01; § 2, 2-7-2002)

10.01.03 Short Title (Section 10.05.00)

Sections 10.05.00 shall be known and may be cited as the “Municipal Code Enforcement Board Ordinance of the City of Lake Helen, Florida.”

(Ord. 2002-01; § 16, 2-7-2002)

10.01.04 Jurisdiction

The terms and provisions of this Article shall apply to all real property lying within the incorporated areas of the City of Lake Helen, Florida. All civil infractions of

¹⁰ Cross-reference – Section 1.11.02 General Penalty

provisions of this Code of Ordinances of the City of Lake Helen, as amended and City Ordinances duly adopted by the City Commission of Lake Helen may be enforced by any of the remedies available as set forth in this Article or as otherwise authorized by law.

(Ord. 2002-01; § 3, 2-7-2002)

10.01.05 Authority and Purpose

A. This Article is adopted pursuant to Chapter 162, *Florida Statutes*, and Chapter 828, *Florida Statutes*, and other applicable provisions of law as a supplemental method of enforcing the Code of Ordinances of the City of Lake Helen, as amended, and all other City ordinances enacted to protect the public health, safety, and welfare of the citizens of the City.

B. This Article shall be implemented in harmony with the provisions of the Animal Control Ordinance (Article 18) of the City of Lake Helen.

(Ord. 2002-01; § 4, 2-7-2002)

10.01.06 Definitions

The following definitions are hereby added to the Code of Ordinances of the City of Lake Helen and apply to all parts of this Article:

A. “City” means the City of Lake Helen.

B. “City Administrator” means the City Administrator of the City of Lake Helen or his or her designee.

C. “City Code” and “City ordinance(s)” means the Code of Ordinances of the City of Lake Helen, as amended, and City Ordinances enacted by the City Commission to be codified into the Code of Ordinances of the City of Lake Helen.

D. “Code enforcement officer” means any employee or agent of the City designated as such by the City Commission who are authorized agents or employees of the City whose duty it is to ensure code compliance with the City Code and City Ordinances which are subject of this Article.

E. “Person” means an individual, firm, association, organization, partnership, company, corporation, any other business entity, trust, whether government or private.

- F. “Repeat Violation” means violation of the same provision of the City Code or the same City ordinance by the same person within a five (5) year period.
(Ord. 2002-01; § 5, 2-7-2002)

10.02.00 CODE ENFORCEMENT OFFICER

10.02.01 Designation of Code Enforcement Officer

- A. For the purpose of this Article, the term “code enforcement officer” shall mean any employee or agent of the City designated by the City Commission whose duty it is to enforce codes and ordinances enacted by the City, and who has received appropriate training as determined by the City Commission. This shall include, but not be limited to, code inspectors and other code compliance personnel (building, zoning, animal control, and environmental), law enforcement officers, animal control officers, and fire safety inspectors.
- B. Designation of a code enforcement officer and appropriate training for such officer shall be determined by the City Commission and, but shall include, at a minimum, a forty-hour standard training course in the appropriate area of expertise as determined by the City Commission. Examples of such training include, but are not limited to, the forty-hour Level I certification of the Florida Association of Codes Enforcement, and the forty-hour course curriculum approved by the Florida Animal Control Association.

(Ord. 2002-01; § 6, 2-7-2002)

10.03.00 CODE ENFORCEMENT THROUGH HEARING OFFICER PROCESSES

10.03.01 Code Enforcement Hearing Officer

- A. Establishment:
1. It is the intent of this section to establish a hearing officer with the authority to impose administrative fines and other non-criminal penalties to promote, protect, and improve the health, safety, and welfare of the City of Lake Helen and to provide an equitable, expeditious, effective and an inexpensive method of enforcing the City Code and City ordinances where a pending or repeated violation exists or continues to exist. This Part of this Article has been enacted pursuant to the authority of Chapter 162, *Florida Statutes*, and other applicable law.

2. The City hearing officer shall have jurisdiction to hear and decide cases in which violations are alleged of any provisions of the City Code and City ordinances except as excluded herein.

B. Appointment, term and compensation:

1. The hearing officer shall be appointed by the City Commission and shall be an attorney duly licensed to practice law in the State of Florida.
2. The City may utilize the services of one (1) or more hearing officers to conduct hearings concerning the City Code and City ordinances.
3. Hearing officers shall serve for terms established by the City Commission. Hearing officers shall be subject to removal with or without cause, from their positions at any time during their term, by the City Commission. Hearing officers shall not be considered to be City employees, although they may receive compensation for their services and also may be reimbursed for such travel, mileage and per diem expenses as may be authorized.
4. The City Attorney shall act as legal counsel to the code enforcement officer. Because only attorneys may hold the position of hearing officer, the City Commission shall not be required to retain an attorney to represent the hearing officer.

C. Jurisdiction:

1. The hearing officer shall have the jurisdiction to hear and decide alleged violations of the City Code and City ordinances.
2. The jurisdiction of the hearing officer shall not be exclusive. Any alleged violation of the City Code or City ordinances may be pursued by any appropriate remedy in a court of competent jurisdiction at the option of the City Commission or administrative official whose responsibility it is to enforce the City Code or City ordinances.

D. Enforcement procedures:

1. It shall be the duty of the responsible City departments, through the code enforcement officer, to initiate enforcement proceedings of the City Code and City ordinances through the hearing officer process. The hearing officer shall not have the power to initiate such enforcement proceedings. Any violations presented to the hearing officer shall be administered by the code enforcement officer.
2. In the case of a first-time violation of the City Code or City ordinances, the code enforcement officer shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officer shall request a hearing before the hearing officer.
3. If a repeat violation is found, the code enforcement officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, shall request a hearing. The code enforcement officer shall schedule a hearing before the hearing officer and shall provide notice to the violator. The case may be presented to the hearing officer even if the repeat violation has been corrected prior to the hearing officer hearing and the notice shall so state.
4. If a code enforcement officer has reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, said decision being made in conjunction with the City Administrator, the code enforcement officer shall make a reasonable effort to notify the violator and may immediately request a hearing thereon.

E. Conduct of hearing:

1. The code enforcement officer shall call hearings by the hearing officer. All hearings by the hearing officer shall be open to the public.
2. Minutes shall be kept of all hearings.
3. The City shall provide a hearing room and clerical staff as may be reasonably required by the hearing officer to conduct hearings and perform his or her duties.
4. Each case before the hearing officer shall be presented by the code

enforcement officer. Additionally, the City Attorney or the designated City representative may present cases before the hearing officer. All relevant evidence shall be admitted. The hearing officer may exclude irrelevant or unduly repetitious evidence.

5. Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence.
6. The alleged violator has the right, at his or her own expense, to be represented by an attorney at any hearing.
7. All testimony before the hearing officer shall be under oath and shall be recorded. The alleged violator or the City may cause a verbatim record of the proceedings to be made.
8. The burden of proof shall be with the code enforcement officer to show by the greater weight of evidence that a code violation exists and that the alleged violator committed, allowed, or was responsible for maintaining the violation.
9. If notice has been provided pursuant to this Part of this Article and Chapter 162, *Florida Statutes*, to the violator of the public hearing, the hearing may be conducted and an order rendered in the absence of the violator.
10. At the conclusion of the hearing, the hearing officer shall issue an order setting forth findings of fact, based on evidence of record, and issue conclusions of law, and shall render relief in the order affording the proper relief consistent with powers granted in this Part of this Article. A written order shall be issued within a reasonable period of time subsequent to the hearing. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by that date. A second hearing shall not be necessary for the fine to begin.
11. A certified copy of an order imposing the fine provided for herein may be recorded in the public records of Volusia County or any other county, and thereafter such order shall constitute a lien against the property on which the violation exists or, if the violator does not own the land involved in the violation, upon any other real or personal property owned by the violator and may be enforced in the same manner as a court judgment by the sheriffs of this State including levy against personal property, but shall not be deemed otherwise to be a judgment of a court except for enforcement purposes.

12. When an order is recorded in the public records pursuant to this Part of this Article and the order is complied with by the dates specified in the order, the hearing officer shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required if such is an order acknowledging compliance.

F. The hearing officer shall have the power to:

1. Adopt rules for the conduct of its hearing;
2. Subpoena alleged violators and witnesses to its hearings. Subpoena evidence to its hearings. Subpoenas may be served by the Lake Helen Police Department;
3. Subpoena evidence to its hearings;
4. Administer oaths and take testimony under oath;
5. Issue an order having the force of law finding a violation of the City Code or City ordinances and commanding whatever steps are necessary to bring the violation into compliance;
6. Enter an order finding compliance.

G. *Administrative fines; liens:*

1. *Authority.* The code enforcement officer, upon determining that a previous order of the hearing officer has not been complied with in the time set by the hearing officer or upon finding that a repeat violation has been committed, may order the violator to pay a fine in the amount specified in the order of the hearing officer for each day the violation continues past the date set by the hearing officer for compliance or, in the case of a repeat violation for each day the repeat violation continues past the date of notice to the violator of the repeat violation. If a finding of a repeat violation has been made as provided in this Part of this Article, a hearing shall not be necessary for the issuance of an order imposing the fine.

2. *Maximum fine; consistency; reduction of fines:*

- a. A fine imposed pursuant to this Part of this Article shall not exceed two hundred and fifty dollars (\$250.00) per day per violation for a first violation and shall not exceed five

hundred dollars (\$500.00) per day per violation for a repeat violation.

- b. In formulating the provisions of the order, the hearing officer should be consistent in the imposition of fines, paying special attention to the gravity of the violation, any actions and the timeliness of actions taken by a violator to correct the violation and any previous violations committed by the violator.
- c. The hearing officer may reduce a fine imposed pursuant to this Part of this Article if warranted based upon a request of a violator. If, however, the subject violator fails to pay the reduced fine within a period of sixty (60) days from the day the order was rendered reducing the fine, then the original fine shall be reinstated without any order being issued to so provide.
- d. If the violator makes arrangements through the City Administrator to pay the reduced fine in monthly payments and fails to timely make one (1) of the payments, then the original fine, less payments made, shall be automatically reinstated.

3. *Lien.*

- a. A certified copy of an order imposing a fine may be recorded in the public records of Volusia County or any other county and therefore shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the Circuit Court, such order may be enforced in the same manner as a court judgment by the sheriffs of the State, including levy against the personal property, but such order shall not be deemed to be a Court judgment except for enforcement purposes. A fine imposed pursuant to this Part of this Article shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this Section, whichever occurs first. After three (3) months from the filing of any such lien which remains unpaid, the City Commission may

authorize the City Attorney to foreclose on the lien.

H. *Appeal.* An aggrieved party, including the City, may appeal a final administrative order of the hearing officer to the Circuit Court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the hearing officer. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

I. *Notices:*

1. All notices required by this Part of this Article shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the code enforcement officer, the City of Lake Helen Police Department or other law enforcement agency, or other person designated by the City Commission; or by leaving the notice at the violator's usual place of residence with any person present at the premises who would be authorized under Florida law to accept service of process in a civil proceeding and informing the person of the contents.
2. In cases involving commercial premises, leaving the notice with the office or business manager or other person in charge.
3. If notice is sent under this Part of this Article to the owner of the property on which the violation exists, to the address listed on the ad valorem tax roll, and at any other address provided to the City by the owner, it shall be presumed that the notice was received by the owner, notwithstanding the fact that the certified mail envelope may be returned by the post office as unclaimed or refused.
4. In addition to providing notice as otherwise set forth in this Part of this Article, at the option of the code enforcement officer, notice may also be served by publication or posting as follows:
 - a. Such notice shall be published one (1) time during each week for four (4) consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the area. The newspaper shall meet such requirements as are prescribed under Section 50, *Florida Statutes*, for legal and official advertisements.

- b. Proof of publication shall be made as provided in Section 50.041, *Florida Statutes*, and Section 50.051, *Florida Statutes*. Notice by publication or posting may run concurrently with or may follow an attempt to provide notice by hand delivery or by mail as required under Subsection 10.03.01 I. 4. a.

- 5. Evidence that an attempt has been made to hand deliver or mail notices together with proof of publication or posting shall be sufficient to show that the notice requirements of this Part of this Article have been met, without regard to whether or not the alleged violator actually received such notice.

(Ord. 2002-01; § 7, 2-7-2002)

10.04.00 CODE ENFORCEMENT THROUGH CITATIONS

10.04.01 Authorization of Code Enforcement Citation Program

The City of Lake Helen hereby creates a supplemental and additional method of enforcing the City Code and City Ordinances by the issuance of citations for violation of the Code of Ordinances of the City of Lake Helen and amending ordinances. Nothing contained herein shall prohibit the City of Lake Helen from enforcement of the Code of Ordinances of the City of Lake Helen or City ordinances by any other means or the judicial, quasi-judicial, or administrative.

(Ord. 2002-01; § 8, 2-7-2002)

10.04.02 Citation Authorization: Application¹¹

- A. *General authorization.* Any code enforcement officer is hereby authorized to issue a citation or warning notice to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of the City Code or a City ordinance.
- B. *Animal control.* An animal control officer designated as a code enforcement officer shall follow the specific requirements and procedures as otherwise set forth in the Animal Control Ordinance (Article 18), as amended from time to time, for the issuance of citations pursuant to the Animal Control

¹¹ **Cross-reference** - Article 1 General Provisions, Section 1.11.02 General Penalty

Ordinance (Article 18).¹²
(Ord. 2002-01; § 9, 2-7-2002)

10.04.03 Citation Procedures¹³

- A. *General authorization.* The code enforcement officer is hereby authorized to issue a warning notice to any person for violation of the City Code or any City ordinance when, based upon personal investigation, the code enforcement officer has reasonable cause to believe that a violation has occurred.
- B. *Citation with notice.* Prior to issuing a citation, a code enforcement officer shall provide notice to the person who is violating the City Code or City ordinance that the person has committed a violation of the City Code or a City ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than thirty (30) days unless unusual circumstances exist and the City Administrator concurs in such extended time period. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the stated time period, the code enforcement officer may issue a citation to the person who has committed the violation.
- C. *Citation without notice.* A code enforcement officer shall not be required to provide the person who has committed a violation of a City Code or City ordinance with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if the code enforcement officer has reason to believe, after consultation with the City Administrator, that the violation presents a serious threat to the public health, safety, or welfare or if the violation is irreparable or irreversible.
- D. *Written warnings.* Written warning notices, if applicable, and citations shall be provided to the alleged violator by hand delivery by the code enforcement officer. In the absence of the alleged violator, issuance of a written warning notice or citation may be accomplished by leaving a copy at the alleged violator's residence with any person present at the premises who would be authorized under Florida law to accept service of process in a civil proceeding and informing the person of the contents or by registered

¹² **Cross-references** - Article 18 Animal Control; Article 1 General Provisions, Section 1.11.02

¹³ **Cross-reference** - Article 1 General Provisions, Section 1.11.02 General Penalty

or certified mail, return receipt requested.

E. *Businesses.* Issuance of a written warning notice or citation to a business may be accomplished by leaving a copy at the business, during regular business hours, with any employee and informing the employee of the contents or by registered or certified mail, return receipt requested. Each employee of the business shall be deemed to be an agent of the business for service of warning notices and citations.

F. *Form of citation.* A citation issued by a code enforcement officer shall be in a form prescribed by the City and shall contain at a minimum:

1. The date and time of issuance;
2. The name and address of the person to whom the citation is issued;
3. The date and time the civil infraction was committed;
4. The facts constituting reasonable cause to believe that a violation of the City Code or a City ordinance has occurred;
5. The number of the section of the City Code or City Ordinance violated;
6. The name and authority of the code enforcement officer;
7. The procedure for the person to follow in order to pay the civil penalty or to contest the citation;
8. The applicable civil penalty if the person elects to contest the citation;
9. The applicable civil penalty if the person elects not to contest the citation; and
10. A conspicuous statement that, if the person fails to pay the civil penalty within the time allowed, or fails to appear in County Court to contest the citation, the person shall be deemed to have waived the right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to a maximum civil penalty.

- G. *Right to contest citation in County Court.* Any person receiving a citation issued under this Part of this Article must sign and accept a citation indicating a promise to:
1. Pay the applicable civil penalty within thirty (30) days of issue or enter agreement with the City as negotiated by the City Administrator and approved by the City Commission providing for a schedule of payments; or
 2. Appear in Volusia County Court within thirty (30) days of issue to receive a hearing date, the time and location of which shall be determined by the clerk of the County Court.
- H. *Preponderance of evidence required.* At any hearing pursuant to this part of this Article, the commission of a violation of the City Code or a City Ordinance must be proved by a preponderance of the evidence.
- I. *Applicable rules.* The Florida Rules of Civil Procedure and the Florida Evidence Code shall be applicable to any hearing.
- J. *Reasonable cause.* For issuance of a citation, a code enforcement officer must have reasonable cause to believe that a person has committed an act in violation of the City Code or a City ordinance.
- K. *Citations to be deposited with the County Court with a copy to the City Clerk.* After issuing a citation to an alleged violator, a code enforcement officer shall deposit the original and one (1) copy of the citation with the County Court, by filing same with the Clerk of the County Court.
- L. *Separate infractions.* Each violation of the City Code or a City Ordinance is a separate civil infraction. Each day such violation continues shall be deemed to constitute a separate civil infraction. A violation occurring on consecutive days may be treated as separate violations and result in a penalty for each day of violation.
- M. *Maximum penalty.* The maximum civil penalty for each violation shall not exceed five hundred dollars (\$500.00) plus any applicable court costs.
- N. *Refusal to sign.* If the person cited refuses to sign the citation, the code enforcement officer shall write the words "Refused" or "Refused to Sign"

in the space provided for the person's signature. The code enforcement officer shall then leave a copy of the citation with the person cited, if possible, and shall contact the Lake Helen Police Department to file the necessary reports alleging a violation of Section 162.21 (6), *Florida Statutes*, which provides that a person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree punishable as provided in Section 775.082, *Florida Statutes*, or Section 775.083, *Florida Statutes*.

(Ord. 2002-01; § 10, 2-7-2002)

10.04.04 Penalties¹⁴

- A. *Civil infractions.* A violation of the City Code or a City ordinance cited and enforced under the provisions of this Part of this Article shall be deemed a civil infraction.
- B. *Maximum penalty.* The maximum civil penalty shall not exceed five hundred dollars (\$500.00).
- C. *Civil penalty.* A civil penalty of less than the maximum civil penalty shall be assessed if the person who has committed the civil infraction does not contest the citation. If the citation is contested and the violator found guilty of the violation, the court may impose a civil penalty not to exceed five hundred dollars (\$500.00). In lieu of a civil penalty or in addition to a civil penalty, the Court may order the violator to perform public service.
- D. *Refusal to sign or accept citation.* Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082, *Florida Statutes*, or Section 775.083, *Florida Statutes*.

(Ord. 2002-01; § 11, 2-7-2002)

10.04.05 Classes of Violations and Civil Penalties¹⁵

- A. *Violation classifications.* Violations of the City Code and City Ordinances, and the applicable civil penalties shall be as follows:

¹⁴ **Cross-reference** - Article 1 General Provisions, Section 1.11.02 General Penalty

¹⁵ **Cross-reference** - Article 1 General Provisions, Section 1.11.02 General Penalty

Violation Classification	First Offense	Second Offense	Third & Subsequent Offenses*
Class I (Articles 8, 21, 24, 26, 27, 33 & 34)	\$50.00	\$100.00	Mandatory court hearing with fines up to \$500.00 as determined by the Court
Class II (Articles 12, 15, 23, 25 & 32)	\$100.00	\$200.00	Mandatory court hearing with fines up to \$500.00 as determined by the Court
Class III (Articles 3, 9, 17, 20 & 22)	\$200.00	\$300.00	Mandatory court hearing with fines up to \$500.00 as determined by the Court.

* The Court may order a violator to perform public service in addition to, or in lieu of a civil penalty.

B. *Basis for classification.* The City Commission shall classify a violation in accordance with the following guidelines:

1. Class I violations relate to non-health/safety violations which present no apparent danger to health or safety, but are violations of regulations intended to protect the public welfare and/or property, real or personal.
2. Class II violations relate to minor health/safety violations which pose a likely danger or threat of danger to the public health, safety, welfare or property, real or personal.
3. Class III violations relate to major health/safety violations which pose an imminent danger to the public health, safety, welfare, or property, real or personal.

(Ord. 2002-01; § 12, 2-7-2002)

10.04.06 Payment of Penalties; Court Hearings; Judgment of Court¹⁶

- A. If the person elects not to contest the citation, the person shall pay in full the applicable reduced civil penalty to the Clerk of the County Court within fourteen (14) days after issuance of the citation.
- B. If the person cited elects to pay the applicable reduced civil penalty set forth

¹⁶ **Cross-reference** - Article 1 General Provisions, Section 1.11.02 General Penalty

in this Part of this Article, the person shall be deemed to have admitted the infraction and waived the right to a hearing.

- C. If the person elects to contest the citation, the person shall appear in Court before a County Court Judge within twenty one (21) days of issuance of the citation to request a hearing date.
- D. A County Judge, after conducting a hearing on the citation, shall make a determination whether or not a violation of the City Code or a City ordinance has been committed. If a violation is found to have occurred, the County Judge may impose a civil penalty up to the maximum civil penalty in an amount not to exceed five hundred dollars (\$500.00) per citation plus all applicable court costs.
- E. The County Judge may provide for the civil penalty to be paid within such time as the Judge determines to be appropriate. If the person found to be in violation fails to pay the fine within the time provided, a civil judgment shall be entered against that person in the amount up to the maximum civil penalty not to exceed five hundred dollars (\$500.00) per citation.
- F. Should the person cited request a hearing as provided for herein, and thereafter fail to appear at such hearing, the person shall be deemed to have waived the right to contest the citation and a civil judgment shall be entered against the person in an amount up to the maximum civil penalty; provided, however, that the Court shall have the discretion to continue or reschedule any hearing when it determines that doing so will further the interest of justice. In such an event, the Clerk of the County Court shall notify the code enforcement officer and the person cited of the date and time of the new hearing.

(Ord. 2002-01; § 13, 2-7-2002)

10.04.07 Payment of Penalties

- A. All civil penalties shall be paid to and collected by the Clerk of County Court.
- B. A total of two dollars (\$2.00) per citation collected shall be credited to the revenues of the City and earmarked for code enforcement training purposes. Ten dollars (\$10.00) may be retained by the Clerk of County Court for an administrative fee. The remaining funds shall be deposited in the general revenues of the City.

- C. An exception to the general revenues deposit requirement shall be allowed only when specifically designated otherwise by ordinance.
- D. The City, as an additional remedy, may refer cases of violations not paid and not contested within thirty (30) days of issuance to a collection agency for processing, collection, and notification of failure to pay to the credit bureau.

(Ord. 2002-01; § 14, 2-7-2002)

10.04.08 Provisions Not Applicable to Certain Building Codes

The provisions of this Part of this Article shall not apply to the enforcement pursuant to Section 553.79, *Florida Statutes*, and Section 553.80, *Florida Statutes*, of building codes adopted pursuant to Section 553.73, *Florida Statutes*, as they apply to construction, provided that a building permit is either not required or has been issued by the City. For the purpose of this Article, "building codes" means only those codes adopted pursuant to Section 553.73, *Florida Statutes*.

(Ord. 2002-01; § 15, 2-7-2002)

10.05.00 CODE ENFORCEMENT BOARD

10.05.01 Creation and Membership of Code Enforcement Board.

There is hereby created, upon adoption of a resolution of the City Commission, a Lake Helen Code Enforcement Board which shall, upon appointment, be composed of five (5) members, all of whom shall be residents of the City. The City Commission may create or disband the Code Enforcement Board as it deems appropriate by adoption of a resolution taking such action.

(Ord. 2002-01; § 17, 2-7-2002)

10.05.02 Function: Appointment and Term of Office

- A. The Lake Helen Code Enforcement Board shall have the power and purpose of conducting hearings relating to the enforcement of such provisions of the City Code and City Ordinances as may be prescribed by resolution adopted by the City Commission.
- B. Appointment to the code enforcement board may be made by the City Commission, and the membership of the enforcement board shall consist of, whenever possible, an architect, an engineer, a general contractor and

other citizens of any occupation.

- C. The terms of members of the code enforcement board shall be two (2) years in duration unless otherwise provided in the City Commission's resolution.
- D. Appointment to fill any vacancy on the code enforcement board shall be for the remainder of the unexpired term of the vacating member.
- E. Any member of the code enforcement board who fails to attend two (2) out of three (3) successive meetings without cause and without prior approval of the chairman of the board shall automatically forfeit such appointment and the City Commission shall fill such vacancy. Members may also be removed for cause after notice.

(Ord. 2002-01; § 18, 2-7-2002)

10.05.03 Organization and Expenses of Code Enforcement Board

- A. At the first meeting of the code enforcement board in each year, the members shall elect one (1) of the members to be chairman. The person so elected shall function as chairman for a one-year term.
- B. Three (3) or more members of the code enforcement board present at any meeting shall constitute a quorum in order for the board to conduct its business. Members of the code enforcement board shall serve without compensation.

(Ord. 2002-01; § 19, 2-7-2002)

10.05.04 Enforcement Procedure before Code Enforcement Board.

- A. Except where the code enforcement officer charged with enforcing a particular technical code identified herein has reason to believe that a City Code or City ordinance violation presents a serious threat to the public health, safety and welfare, and the City Administrator concurs, the code enforcement procedure under this Part of this Article, if elected as a remedy by the City, shall be as follows:
 - 1. It shall be the duty of the code enforcement officer to initiate enforcement proceedings before the code enforcement board.
 - 2. Where the code enforcement officer finds or is made aware of a City Code or City ordinance violation, the code enforcement officer shall

notify the violator and such notice of violation shall provide a reasonable time within which to correct the violation. Should the violation continue beyond the time specified in the correction notice, then the code enforcement officer shall notify the code enforcement board and request a hearing pursuant to this Part of this Article. Notice of such hearing request shall be provided to the violator in the manner provided by this Part of this Article. The code enforcement officer need not provide a reasonable time to comply if the violation is a repeat violation.

3. If the code enforcement officer has reason to believe a violation presents a serious threat to the public health, safety and welfare, the code enforcement officer may proceed to request a hearing pursuant to this Part of this Article without notifying the violator.
4. Whenever a person has been notified of a code violation by the code enforcement officer, he or she may, within ten (10) days of such notification, request a hearing pursuant to this Part of this Article. The code enforcement board shall then conduct a hearing using the same procedures as if the hearing had been requested by the code enforcement officer.

(Ord. 2002-01; § 20, 2-7-2002)

10.05.05 Hearing Procedure before The Code Enforcement Board.

- A. The chairman of the code enforcement board may call enforcement board hearings and such hearings may also be called by a written notice signed by three (3) members of the board. The code enforcement board may at any hearing set a future hearing date.
- B. The code enforcement board shall convene at least once every two (2) months, but may convene more often as the case demand dictates.
- C. Minutes shall be kept of all hearings held by the code enforcement board and all such hearings shall be open to the public.
- D. The City Administrator shall provide clerical and administrative personnel as may be required to assist the code enforcement board in the proper performance of its duties.
- E. Each case before the enforcement board shall be presented by the code

enforcement officer or the City Attorney.

- F. The City may provide counsel to the code enforcement board, but in no case shall the City Attorney present a case on behalf of City staff and represent the board in the same case.
- G. Cases on the agenda for a particular day shall be heard. All testimony shall be under oath and shall be recorded. The code enforcement board shall take testimony from the code enforcement officer, the violator and any other person familiar with the case or having knowledge about the case. The code enforcement board shall not be bound by formal rules of evidence; however, it shall act to ensure fundamental due process in each of its hearing cases. Irrelevant, immaterial or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonable prudent persons in the conduct of their affairs shall be admissible. Cases may be heard by the code enforcement board even if a repeat violation has been corrected prior to the hearing. If all required notice has been given, the hearing may proceed in the absence of the alleged violator.
- H. At the conclusion of the hearing, the code enforcement board shall issue findings of fact and conclusions of law and its order shall provide relief consistent with this Part of this Article. The order shall establish a date by which compliance with the order must be attained. The order may establish a fine amount not to exceed two hundred and fifty dollars (\$250.00) for each day the violation continues past the compliance date established in the order. Repeat violations may be punished by a fine not to exceed five hundred dollars (\$500.00) for each day the violation continues after the compliance date established in the order.
- I. Findings shall be by motion approved by a majority of those present and voting. In order for the findings to be official, at least three (3) members of the code enforcement board must vote for the action.
- J. The order may be recorded in the Official Records of Volusia County and shall constitute notice to all purchasers, successors and assigns that a violation has been found on the subject property.

(Ord. 2002-01; § 21, 2-7-2002)

10.05.06 Powers of the Code Enforcement Board

- A. The code enforcement board shall have the power to:

1. Adopt rules for the conduct of the hearings.
2. Subpoena alleged violators and witnesses to its hearings. Such subpoenas may be served by the City's Police Department.
3. Subpoena evidence. Such subpoenas shall be served by the City's Police Department.
4. Take testimony under oath.
5. Issue orders following a hearing, which orders shall have the force of law and which orders shall set forth the steps necessary to be accomplished in order to bring a violation into compliance with the City Code or City ordinance that has been violated.
6. Enter orders finding compliance.

(Ord. 2002-01; § 22, 2-7-2002)

10.05.07 Fine, Lien and Foreclosure for the Code Enforcement Board

- A. Upon being notified by the code enforcement officer that the order issued pursuant to this Part of this Article has not been complied with within the time established in such order, the code enforcement board may issue an order imposing a penalty and lien and order the violator to pay a fine to the City not to exceed two hundred fifty dollars (\$250.00) per day that the violation continued past the compliance date established in its order, except that, for repeat violations the maximum fine shall be five hundred dollars (\$500.00) for each day the violation continues past the compliance date established in the order.
- B. The order shall constitute notice to any subsequent purchasers, successors in interest or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchases, successors in interest or assigns. The order may be recorded in the Official Records of Volusia County or any other county.
- C. Three (3) months from the date of the filing of any such lien which remains unpaid, the code enforcement board may authorize the City Attorney to foreclose on such lien in the manner provided by State law for the

foreclosure of other municipal liens. The City Commission must also authorize the filing of the foreclosure action. No lien created pursuant to the provisions of this Section may be foreclosed on real property which is homestead under Section 4, Article X of the Constitution of the State of Florida.

- D. No lien provided under this Part of this Article shall continue for a period of longer than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a Court of competent jurisdiction. In an action to foreclose on a lien, the prevailing parties are entitled to recover all costs, including a reasonable attorney's fee that incurs in the foreclosure.

(Ord. 2002-01; § 23, 2-7-2002)

10.05.08 Notices In Code Enforcement Proceedings

All notices required to be provided by this Part of this Article shall be by certified mail, return receipt requested, or by hand delivery of the code enforcement officer.

(Ord. 2002-01; § 24, 2-7-2002)

10.05.09 Appeals From Code Enforcement Board Orders

An aggrieved party, including the City, may appeal a final administrative order of the code enforcement board to the Circuit Court. An appeal shall be filed within thirty (30) days of the entry of the order to be appealed.

(Ord. 2002-01; § 25, 2-7-2002)

10.05.10 Provisions Not Applicable to Certain Building Codes

The provisions of this Part of this Article shall not apply to the enforcement pursuant to Section 553.79, *Florida Statutes*, and Section 553.80, *Florida Statutes*, of building codes adopted pursuant to Section 553.73, *Florida Statutes*, as they apply to construction, provided that a building permit is either not required or has been issued by the City. For the purpose of this Article, "building codes" means only those codes adopted pursuant to Section 553.73, *Florida Statutes*.

(Ord. 2002-01; § 26, 2-7-2002)

10.06.00 PROVISIONS RELATING TO NUISANCES

10.06.01 Weeds and Rubbish in Yards, Lots, Tracts or Parcels

The existence of excessive accumulation or untended growth of weeds,

undergrowth or other dead or living plant life; or stagnant water, rubbish, garbage, refuse, debris, trash including, but not limited to, household furnishings, and all other objectionable, unsightly or unsanitary matter upon any lot, tract or parcel of land within the City of Lake Helen, be it uncovered or under open shelter, to the extent and in the manner that such lot, tract or parcel of land is or may reasonably become infested or inhabited by rodents, vermin or wild animals, or may furnish a breeding place for mosquitoes, or threatens or endangers the public health, safety, or welfare, or may reasonably cause disease, or adversely affects and impairs the economic welfare of adjacent property, is hereby prohibited and declared to be a public nuisance and unlawful unless neatly arranged for removal in accordance with permitted solid waste collection practices.

(Ord. No. 2002-01; § 27, 2-7-2002)

10.06.02 Duty of Property Owners Generally

- A. It shall be the duty of the owner of each lot, tract, or parcel of land within the City to reasonably regulate and effectively control excessive growths and accumulations, as enumerated in Section 27, on the property and on the portion of the adjoining public right-of-way between the property and the street. It shall also be the duty of the owner to lawfully drain, regrade or fill any lot, tract, or parcel, including swimming pools thereon, which shall be unwholesome or unsanitary, have stagnant water thereon, or be in such other condition as to be susceptible to producing disease.

- B. It shall also be the duty of each owner of each lot, tract or parcel of land within the City to eliminate on their lot, tract or parcel of land any public nuisance known at common law or in equity jurisprudence or as provided by the Statutes of the State of Florida or the City Code or City ordinances physical or unsanitary conditions or conditions so lacking illumination or ventilation as to be dangerous to human life or detrimental to health of persons on or near the premises where the condition exists; conditions endanger human life or substantially and detrimentally affect the safety or security of occupants, nearby occupants or passers-by; conditions which render air, food or drink unwholesome or detrimental to the health of human beings; fire hazards; and any attractive nuisance which may prove detrimental to the health or safety of children and others whether in a building, on the premises of a building or upon an unoccupied lot. This requirement includes, but is not limited to: abandoned wells, shafts, basements, excavations, unused ice boxes, white goods, refrigerators, junked or abandoned motor vehicles and any structurally unsound fences or structures, lumber, trash, fences, debris, or vegetation such as poison ivy,

oak or sumac, which may prove a hazard for inquisitive persons. As an example of the duty set forth in this Subsection, it shall be the duty of persons with unused or abandoned refrigerators, freezers or other similar appliances to ensure that the doors of such appliances are removed to prevent a child from entering an appliance and thereby endangering his or her life. Abandoned buildings are attractive nuisances when they are unsecured or unsecurable and when by reason of abandonment or neglect they contain unsound walls or flooring, unsafe wiring, fire hazards, or other unsafe conditions. Unsafe conditions may include such neglect of security that opportunities for criminal activity persist to the danger and detriment of the neighborhood. A junked or abandoned vehicle is one that is nonoperating, dismantled, wrecked, or derelict property having no value other than nominal salvage value which is left unprotected from the elements. Additional provisions relating to abandoned vehicles are set forth at Sections 23.05.00 and 23.06.00 of this Code.

(Ord. No. 2002-01; § 28, 2-7-2002)

10.06.03 Notice to Remove and Appeal Process

- A. If the code enforcement officer, after consulting with the City Administrator, finds and determines that a public nuisance as described and declared in Sections 10.06.01 and 10.06.02 hereof exists, he or she shall so notify the record owner of the offending property and demand that such owner cause the condition to be remedied. The notice shall be given by both physical posting on the property in the name of the property owner and by certified mail or personal delivery to the owner or owners as their names and addresses are shown upon the records of the Volusia County Property Appraiser. Notice shall be deemed complete and sufficient when so physically posted and personally delivered or mailed.

- B. The notice required by Subsection 10.06.03 A. shall contain the following:
 - 1. Name(s) and address(es) of the owner(s) of the property, according to the public records of Volusia County, Florida.

 - 2. Location of the property on which the violation exists.

 - 3. A statement by the code enforcement officer that the property has been inspected pursuant to this Part of this Article and that a violation of this Part of this Article has been determined to exist on the property, which violation constitutes a public nuisance.

4. A description of the condition which causes the property to be in violation.
 5. A requirement that the record owner of the property remedy the violation within no more than fifteen (15) days from the date of the notice, unless unusual circumstances exist and the City Administrator approves an extended or a reduced period of time failing which the City will remedy the condition and assess against the record owner the costs thereof plus an administrative charge.
 6. A statement that, if the costs and administrative charge are not paid within thirty (30) days of invoice date, a lien will be placed on the property which is enforceable by foreclosure on the property, or enter an agreement with the City negotiated by the City Administrator and approved by the City Commission providing for a schedule of payments.
 7. A schedule of the charges which may be assessed against the record owner if the City has to remedy the violation.
 8. An estimate of the total cost, based on the schedule of charges, if the violation is remedied by the City. Such estimate is not to be interpreted or construed as the final cost which may be assessed, but only as a good-faith approximation of such cost. The final assessable cost may be greater or lesser than the estimate.
 9. A statement that the record owner of the property may, within fifteen (15) days from the date of the notice, or sooner if the public health, safety or welfare so require, submit a written appeal, from the determination of a public nuisance, which must contain all reasons, evidence and argument that the cited condition does not constitute a violation.
- C. Within fifteen (15) days from the date of the notice, or sooner if the public health, safety or welfare so require, the owner of the property may appeal the determination of nuisance by submitting a written appeal to show that the condition does not constitute a public nuisance. Such appeal shall be addressed to the City Clerk and shall state the name of the property owner, the location of the cited property, and the specific grounds upon which the owner relies in order to show that the cited condition does not constitute a

public nuisance. The City Commission shall hear the appeal and render a written decision.

(Ord. No. 2002-01; § 29, 2-7-2002)

10.06.04 Removal by City

- A. If after fifteen (15) days from the date of the notice of a nuisance, or sooner if the public health, safety or welfare so require, no written appeal has been filed and the condition described in the notice has not been remedied, the City Administrator or his or her designee shall cause the condition to be remedied by the City at the expense of the property owner. If a written appeal has been filed and the finding of public nuisance is upheld, the City Administrator or his or her designee may cause the condition to be remedied by the City at the expense of the property owner unless the City Commission otherwise directs.
- B. If a written appeal has been filed and the finding of public nuisance is reversed, the City will not assess any costs or administrative penalties against the property, although such administrative penalties would otherwise be authorized by this Part of this Article.
- C. In cases involving major nuisance conditions requiring immediate, direct action to abate hazards imminently dangerous to the health, welfare or safety of the public, the City may, upon authorization by the Mayor, cause the conditions to be immediately remedied by City-authorized lot cleaning. Notice of said lot cleaning shall be given within five (5) days after the lot cleaning and according to the procedures set forth in this Part of this Article, except that the notice shall explain that the property contained hazards requiring immediate remedy, that the lot has already been cleaned, and that the property owner has fifteen (15) days from the date of the notice to apply to City Commission to show why costs of cleaning should not be assessed against his or her property. Said emergency lot cleaning shall be at the expense of the property owner; provided, however, the property owner may make a written request for a hearing before City Commission as above provided within fifteen (15) days from the date of notice that his lot had to be cleaned and that a charge is being assessed therefore.

(Ord. No. 2002-01; § 30, 2-7-2002)

10.06.05 Collection of Costs and Records; Secured Property

- A. After causing the condition to be remedied, the City Administrator shall

certify the expenses incurred by the City in remedying the condition whereupon such expense, plus a charge to cover City administrative expenses, plus any administrative penalty as provided in this Part of this Article, shall become payable within thirty (30) days, after which a lien and charge will be made upon the property, which shall be payable with interest at the highest lawful rate of interest per annum from the date of such certification until paid.

- B. Such lien shall be enforceable in the same manner as a judgment or tax lien in favor of the City of Lake Helen and may be satisfied at any time by payment thereof including accrued interest. Notice of such lien may be filed in the office of the Clerk of the Circuit Court and recorded among the public records of Volusia County, Florida.
- C. If the subject property is secured by locks or otherwise, the City shall have the authority to enter said property for purposes of remedying the violative condition, and any additional costs incurred by the City in gaining access to the property, including, but not limited to, judicial action, or in re-securing the property after cleaning shall be considered expenses of remedying the condition.

(Ord. No. 2002-01; § 31, 2-7-2002)

10.06.06 Administrative Charge; Administrative Penalty

- A. In addition to the actual cost of remedying the violation cited under this Part of this Article, the City may also assess a charge to cover administrative expenses incurred in securing and monitoring the services of a private contractor to remedy the violation. Said administrative charge shall be reviewed and approved by City Commission at least on an annual basis.
- B. If a second violation of this Part of this Article is cited against the same property and property owner within twelve (12) months from the date of the first citation, all administrative penalty of one hundred dollars (\$100.00) shall additionally be assessed five (5) days after the second citation. If the condition is abated by the owner during that five (5) day period, the penalty will not be assessed. If a third violation of this Part of this Article is cited against the same property and property owner within twelve (12) months from the date of the first citation, an administrative penalty of two hundred dollars (\$200.00) shall additionally be assessed five (5) days after the third citation. If the condition is abated by the owner during that five (5) day period, the penalty will not be assessed. Subsequent Violations cited against

the same property and property owner shall be referred to the City Attorney for appropriate legal action including, but not limited to, injunctive relief, in addition to enforcement as provided in this Part of this Article.

(Ord. No. 2002-01; § 32, 2-7-2002)

10.07.00 MISCELLANEOUS PROVISIONS

10.07.01 Provisions of Ordinance Supplemental Means

The provisions of this Article are additional and supplemental means of enforcing City Code or City ordinances and may be used for the enforcement of all codes and ordinances duly adopted by the City Commission. Nothing contained in this Part of this Article shall prohibit the City from enforcing its codes or ordinances by other means.

(Ord. No. 2002-01; § 33, 2-7-2002)

10.07.02 Applicable Codes and Ordinances

All provisions of the City Code and City Ordinances, not excluded herein, may be enforced pursuant to the supplemental procedures contained in this Article.

(Ord. No. 2002-01; § 34, 2-7-2002)

10.08.00 PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION

10.08.01 Legislative Findings and Intent, Ordinance Number 2009-06

WHEREAS, the City Commission of the City of Lake Helen discussed the need and desire for amendments to the City's regulations regarding the Planning and Land Development Regulation Commission (PLDRC) at the City Commission's Regular Meeting of June 18, 2009; and

WHEREAS, the City Commission specifically indicated a need to clarify the term of office for PLDRC members.

(Whereas, Ord. No. 2009-06, §1, 8-6-09)

10.08.02 Organization

A. Membership

The PLDRC shall have seven (7) members appointed by the City Commission. Members shall serve staggered terms of three (3) years. The three (3) year term of office shall, regardless of actual date of a member's appointment or reappointment, be considered to commence on October 1st and to expire on September 30th in the third year of the term in accordance

with the schedule of terms that has been implemented by the City Commission. No elected official or employee of the city government shall be appointed to serve on the PLDRC.

B. Place of Residence. Removal From Office Vacancies

Each PLDRC member shall reside within the City of Lake Helen. Any vacancy occurring during the unexpired term of office of any member shall be filled by the City Commission for the remainder of the term. The vacancy shall be filled by the City Commission in as timely a period as is practicable. Any member of the PLDRC may be removed from office for cause by the City Commission, upon written charges and after public hearing in accordance with controlling State law.

C. Officers, Employees

The PLDRC shall elect a chairman, vice-chairman and secretary from among its members. The city shall provide clerical and staff assistance.

D. Rules of Procedure

The PLDRC shall meet at regular monthly intervals as needed to accomplish its assigned duties, and at such other times as it may deem necessary, for the transaction of its business. A quorum shall be four (4) members. No recommendations for approval of any application may be made unless four (4) members concur.

(Ord. No. 2009-06, §2, 8-6-2009)

10.08.03 Powers and Duties.

A. The PLDRC shall hear applications from the City Commission, any department or agency of city government, or from any person for amendment to the Comprehensive Plan or Land Development Regulations and make recommendations to the City Commission. If the proposed amendment or special exception relates to a specific area of land, it shall be heard only if it is presented by the person owning fifty-one (51) percent or more of that land, or by the owner's designee; provided, however, that any agreement relating to such action or development order relating to such action, when containing commitments or covenants which run with the property that is the subject of the application, must be executed by all persons and entities necessary to bind the property.

B. The PLDRC is hereby designated as the local planning agency as required by Section 163.3161, Florida Statutes, et seq. and Section 163.3174, Florida Statutes of the Local Government Comprehensive Planning and Land Development Regulation Act. It shall prepare, or cause to be prepared, the elements of the comprehensive plan required in Section 163.3177, *Florida*

Statutes, and any other appropriate elements, and shall make recommendations regarding the comprehensive plan to the City Commission. It shall have the general responsibility for the conduct of the comprehensive planning program. It shall comply with all requirements of the Local Government Comprehensive Planning and Land Development Regulation Act and shall monitor and oversee the effectiveness and status of the comprehensive plan, and recommend to the City Commission, such changes in the comprehensive plan as may from time to time be required. It shall perform any other duties assigned by the City Commission and may prepare and recommend to the City Commission any other proposals to implement the comprehensive plan.

- C. As the local planning agency, the PLDRC is hereby also designated as the land development regulation commission in accordance with the provisions of Section 163.3161, et seq. and Section 163.3194, Florida Statutes of the Local Government Comprehensive Planning and Land Development Regulation Act. The PLDRC shall develop and recommend to the City Commission land development regulations which implement the comprehensive plan and review land development regulations or amendments for consistency with the adopted plan.

(Ord. No. 2009-06, §2, 8-6-2009)

10.08.04 Zoning Enforcement Officer

An employee, or contractor, of the City of Lake Helen assigned to enforce the provisions of the City's Land Development Regulations.

(Ord. No. 2009-06, §2, 8-6-2009)

10.09.00 HISTORIC PRESERVATION BOARD

A Board established as a citizen board for the purposes of administering Article 34, Historic Preservation. The organization of the board can be found in Section 34.02.00 of Article 34.

(Ord. 97-6 § 3-20-97)