

## **Article 15 Hearing Procedures, Appeals, Code Compliance and Enforcement, Violations, Penalties, Special Magistrate, Citations, Nuisance Abatement**

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### **15.01.00 Procedures for Review and Decision Making**

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A quasi-judicial hearing shall be held for consideration of applications for site development plans, preliminary and final plats, variances and special exceptions and rezoning.

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### **15.02.00 Notice Requirements**

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All meetings are public meetings that must be held in compliance with the provisions of the Sunshine Law and Florida Statutes.

Public Hearings for Annexations, City Ordinances, Comprehensive Plan Changes, Rezoning will comply with and Florida Statutes.

Public Hearings for Variances, Special Exceptions, Site Development Plans, Subdivisions and any other public hearing shall be posted on the site and noticed once in a newspaper of general circulation in the city at least seven (7) days prior to the public meeting. The city shall provide the notices which shall state the date, time, place, and purpose of the meeting as well a place within the city where the documents relating to the meeting may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposal.

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### **15.03.00 Determination of Completeness & Sufficiency**

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All applications are subject to a determination of completeness.

A determination of completeness is a determination that all required documents and plans has been submitted in sufficient number, and whether all fees have been paid. A determination of completeness is not a determination of compliance with substantive standards and criteria.

1. The City Administrator or his/her designee shall issue a determination of completeness to the applicant, within fourteen (14) working days of receipt of an application. When the application is not complete, the determination shall specifically identify the missing documents and/or plans.
  2. The applicant shall have thirty (30) days from the date of determination to correct the deficiencies. The application shall not be processed until deficiencies are corrected and the application is determined to be complete. If the applicant fails to correct the deficiencies within the thirty (30) day period, the application shall be deemed withdrawn.
  3. A determination of completeness is an administrative decision subject to appeal as set forth in Section 15.12.02.
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### **15.04.00 Material Changes to an Application**

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A determination by the City Administrator or his/her designee that the Applicant has made material changes to an application, not proposed by and/or approved by the Planning and Land Development Regulation Commission, will require a new Determination of Completeness and Determination of Sufficiency including the assignment of a new number for review and action in accordance with the procedures set forth below.

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### **15.05.00 Pre-Application Conference**

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A pre-application conference is a meeting between an applicant and the City Administrator or his/her designee for the purposes of:

1. Exchanging information on the potential development of a site;
2. Providing information on permissible uses of the site proposed for development;
3. Providing information to an applicant regarding the design standards set forth in this LDC that are applicable to a potential application;
4. Providing information to an applicant regarding standards of regional, state, or federal agencies that may be applicable to a potential application;
5. Determining the need and requirements for supporting plans, documents, and studies;
6. Providing information to an applicant regarding infrastructure requirements and the construction of required improvements; and
7. Providing information to an applicant regarding the appropriate procedures and schedules for receiving and reviewing applications and rendering decisions regarding a potential application.
8. It is the City's intent that all requirements be identified during the pre-application conference. However, no person may rely upon any comment concerning a proposed development, or any expression of any nature about the proposal, made by a participant at the pre-application conference, as a representation or implication that the proposal will be ultimately approved or rejected in any form.
9. Prior to the submission of an application for a local development order, an applicant shall submit a written request for a pre-application conference.
10. A pre-application conference shall be held not more than two (2) weeks following the date of submission of the written request for such conference.
11. A pre-application conference shall be held not more than six (6) months prior to submission of an application.
12. The pre-application conference may include representatives of City departments responsible for reviewing applications and independent reviewers hired by the City, and may include representatives of regional, State, or federal agencies with authority over specific aspects of the proposed development.

Following the Pre-Application Conference, the City Administrator or his/her designee will determine if the application shall be reviewed by the Development Review Committee (DRC).

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### **15.06.00 Development Review Committee**

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As determined by the City Administrator or his/her designee, applications reviewed by the Development Review Committee (DRC) shall follow the following:

The Development Review Committee will make a recommendation before a staff report is generated and submitted for review to the Planning and Land Development Regulation Commission (PLDRC) and City Commission. Official DRC members are the appointed representatives from the Planning Department, Public Works Department, Building Department, Fire Services and the City Engineer (list can vary depending on project and at the discretion of the City Administrator or his/her designee).

1. Upon a determination that an application is official or sufficient, the City Clerk shall call a meeting of the Development Review Committee for examination.
2. Development Review Committee. The Development Committee (DRC) shall consist of official and advisory members. All official and sufficient applications and amended plans shall be sent to both official and advisory members for review. Before the drafting of a staff report and transmittal of a site development plan, subdivision and/or plat to the PLDRC and City Commission, official DRC members shall have given a final recommendation of Approval, Approval with Conditions, or Denial. Although not giving a binding recommendation, the comments of advisory members shall be included in the Staff Report.
3. Timely review. The DRC shall forward a site development plan, subdivision and/or plat to the next scheduled PLDRC meeting within 60 days of an official DRC Review. In the event of large or complicated projects, the City Administrator or his/her designee may waive and/or extend length of the review time period necessary to get the project forward to public review before the PLDRC and City Commission as requested by a DRC member or the applicant.

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#### **15.07.00 Procedures for Action by the Planning and Land Development Regulation Commission**

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Consideration of applications by the Planning and Land Development Regulation Commission shall be for the purpose of making a recommendation to the City Commission.

1. After a determination of an application's completeness has been made by the City, the application shall be scheduled for consideration by the Planning and Land Development Regulation Commission (PLDRC) according to the published meeting schedule.
2. Notices shall comply with the requirements set forth in the Florida Statutes and City established policies, as may be amended from time to time.
3. The Planning and Land Development Regulation Commission (PLDRC) shall recommend to the City Commission that the application be approved, approved with conditions, or denied.

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#### **15.08.00 Procedures for Action by the City Commission**

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1. The City Commission shall consider applications for preliminary subdivision plat approval, final subdivision plat approval, rezoning, and amendments to this LDC at a public hearing.
2. Notices shall comply with the requirements set forth in the Florida Statutes and City established policies, as may be amended from time to time.
3. A quasi-judicial hearing shall be held for consideration of applications for site development plans, preliminary and final plats, variances and special exceptions and rezoning.
4. The City Commission shall approve, approve with conditions, or deny the application.
5. The City Commission shall issue a written local development order for approval or a written notice of denial.
6. The local development order shall not be final and enforceable until signed by the Mayor or Vice Mayor.

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### **15.09.00 Requests for Continuation of a Public Hearing**

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1. An applicant may request, in writing, a continuance of the public hearing regarding a specific application.
  - a. If the City Administrator or his/her designee receives the written request for a continuance at least seven (7) business days prior to the public hearing at which the application is scheduled to be heard, the applicant's request for a continuance will be automatically granted. An applicant shall be limited to one (1) such automatic continuance.
  - b. If the City Administrator or his/her designee receives the written request for a continuance less than seven (7) days prior to the public hearing at which the application is scheduled to be heard, the applicant is not entitled to an automatic continuance. The decision-making entity will consider the request for a continuance, and shall only grant such request upon a demonstration by the applicant of good cause for a continuance.
2. If an applicant receives a continuance, the applicant shall reimburse the City for all advertising costs associated with rescheduling the public hearing for the application. The public hearing will not be rescheduled until such payment is received.
3. If a public hearing is continued on the record, at the scheduled public hearing, to a date and time certain, no additional notice shall be required.

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### **15.10.00 Withdrawal of Pending Applications**

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An applicant may withdraw an application at any time prior to issuance of a local development order. The applicant shall provide written notice of the withdrawal to the City Administrator or his/her designee.

If the City Administrator or his/her designee receives an applicant's written notice of withdrawal less than seven (7) days prior to the public hearing at which the application is scheduled to be heard, the applicant shall be precluded from submitting the same or substantially same application for the subject property for a period of twelve (12) months.

The applicant shall reimburse the City for all outstanding and incurred costs associated with the application.

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### **15.11.00 Quasi-Judicial Hearings**

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1. A quasi-judicial hearing shall be scheduled when all required reports and procedures have been completed. A quasi-judicial hearing shall not be scheduled until an applicant has paid all outstanding amounts.
2. A quorum of the decision-making entity shall be present.
3. The hearing shall be conducted in a manner to protect the due process rights of the applicant and affected parties.
4. All testimony presented by the applicant, any affected party; any witness for a party, or the staff (other than legal advice given by the City Attorney or personal attorney) or the public shall be given under oath.
5. The applicant, any affected party, and the staff may cross-examine any person presenting information at the hearing.
6. An electronic record shall be made of the hearing.

7. All ex parte communications are presumed prejudicial, unless the approximate date and general substance of the ex parte communication is disclosed at the beginning of the quasi-judicial hearing at which the decision-making entity considers the pending application. The City may rebut the presumption of prejudice by demonstrating the absence of any actual prejudice to any party challenging the validity of a decision-making entity's decision on the basis of ex parte communications.
8. The decision-making entity may question the applicant, other parties, witnesses, and the City staff at any time during the hearing.
9. The decision-making entity may approve, approve with conditions, or deny the matters under consideration. The decision shall be based upon competent substantial evidence presented during the hearing.
10. The decision-making entity shall enter a written order which contains findings of fact and conclusions of law in support of its decision.
11. The decision-making entity's written order shall be transmitted and filed with the City Clerk as part of the official records of the City.

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#### **15.11.01 Conduct of Quasi-Judicial Hearings**

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All quasi-judicial hearings shall be conducted in the following order:

1. The chairperson of the decision-making entity shall call the hearing to order at the time specified on the public notice.
2. Each member of the decision-making entity shall disclose the existence and general substance of any conflicts and ex parte contacts.
3. The City Administrator or his/her designee shall present the compliance report regarding the pending application.
4. The applicant shall present evidence supporting the application and shall bear the burden of demonstrating that the application should be granted.
5. An affected party is entitled to present evidence opposing the application.
6. Public comment.
7. Rebuttal by the City Administrator or his/her designee, any affected party, and the applicant.
8. Conclusion of the evidentiary portion of the hearing.
9. Closing arguments by the City Administrator or his/her designee, any affected party, and the applicant.
10. Deliberation by the decision-making entity.

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#### **15.12.00 Procedure for Appealing Decisions**

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##### **15.12.01 Appeals**

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**15.12.02 Appeals to the City Commission**

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Any person or persons, jointly or severally adversely affected by a decision of any officer, administrative official, committee and/or board may appeal a final decision to the City Commission unless otherwise indicated in this Code. Appeals are made to the City Commission by filing a notice of appeal with the City Clerk within thirty (30) days of the decision.

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**15.12.03 Notice of Appeal to the City Clerk**

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The notice of appeal shall contain:

- A. A statement of the decision to be reviewed, and the date of the decision.
- B. A statement of the interest of the person seeking review.
- C. The specific error alleged as the grounds of the appeal.

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**15.12.04 Appellate Hearing by the City Commission**

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When a decision is appealed to the City Commission, the Commission shall conduct the hearing in compliance with the following procedures as supplemented where necessary:

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**15.12.05 Appellate Hearing by the City Commission: Scope of Review**

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1. The City Commission shall set a reasonable time for hearing the appeal.
2. The City shall require proper advertised notice thereof, as well as notice to property owners in accordance with this Code.
3. The City Commission shall have the authority to review questions of law, including interpretations of this Code, and any constitution, ordinance, statute, law, or other rule or regulation of binding legal force.
4. The decision appealed shall be presumed correct and the appealing party has the burden of proof. The party appealing the decision must prove that the decision is not supported by substantial, competent evidence.
5. The appeal shall be conducted as a de novo appeal.

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**15.12.06 Authority of the City Commission during an Appeal**

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The City Commission shall have the authority:

1. To request briefs to be filed on behalf of any party and prescribe filing and service requirements.
2. To hear oral argument on behalf of any party.
3. To adjourn, continue, or grant extensions of time for compliance with these rules, either on their own motion or upon application of the party, provided no requirement of law is violated.
4. To dispose of procedural requests or similar matters including motions to amend and motions to consolidate.
5. To keep a record of all persons requesting notice of the decision in each case.

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**15.12.07 Decision of the City Commission and Final Action**

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1. City Commissioners shall be ruled by the Conflict of Interest requirement as established by the Sunshine Laws and Florida Statutes.

2. No officer or employee of the City who has a financial or other private interest in a proposal shall participate in discussions with or give an official opinion to the hearing body on the proposal without first declaring for the record the nature and extent of the interest.
3. The City Commission must affirm or remand as not supported by substantial competent evidence.
4. When the Commission affirms or reverses a contested decision pertaining to a final action of a decision-maker, that action shall be deemed to be the final action and be subject to no further review under this Code.
5. When the Commission finds any decision is remanded, that decision shall be referred back to the decision-maker for reconsideration in light of the Commission's opinion.

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#### **15.13.00 Code Compliance and Enforcement**

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This section establishes and references procedures through which the city seeks to ensure compliance with the provisions of this Code and obtain corrections for Code violations. It also sets forth the remedies and penalties that apply to violations of this Code. The provisions of this article are intended to encourage the voluntary correction of violations, where possible.

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#### **15.13.01 Compliance Required**

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Compliance with all the procedures, standards, and other provisions of this Code is required by all persons owning, developing, managing, using or occupying land or structures in the city. Compliance with federal, state, and local laws applicable to the use is required.

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#### **15.14.00 Violations and responsible persons.**

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#### **15.14.01 Failure to comply with code or term or condition of approval constitutes code violation.**

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Any failure to comply with a standard, requirement, prohibition, or limitation imposed by this Code, or the terms or conditions of any development order or authorization granted in accordance with this Code shall constitute a violation of this Code punishable as provided in this article.

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#### **15.14.02 Development order only authorized development approval.**

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A development order issued by a decision-making body or person authorizes only the use, arrangement, location, design, density or intensity, and development set forth in the development order.

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#### **15.14.03 Specific violations**

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It shall be a violation of this Code to undertake any activity contrary to the provisions of this Code, including but not limited to any of the following:

1. Develop land or a structure without first obtaining all appropriate development permits, and complying with their terms and conditions.
2. Occupy or use land or a structure without first obtaining all appropriate development permits, and complying with their terms and conditions.
3. Subdivide land without first obtaining all appropriate development permits required to engage in subdivision, and complying with their terms and conditions.

4. Excavate, grade, cut, clear, or undertake any land disturbing activity without first obtaining all appropriate development permits, and complying with their terms and conditions.
5. Remove existing trees from a site or parcel of land without first obtaining appropriate development permits, and complying with their terms and conditions.
6. Disturb any landscaped area or vegetation required by this Code.
7. Install, create, erect, alter, or maintain any sign without first obtaining the appropriate development permits, and complying with their terms and conditions.
8. Failure to remove any sign installed, created, erected, or maintained in violation of this Code, or for which the development permit has expired.
9. Create, expand, replace, or change any nonconformity, except in compliance with this Code.
10. Reduce or diminish the requirements for development, design, or dimensional standards below the minimum required by this Code.
11. Increase the intensity or density of development, except in accordance with the standards of this Code.
12. Through any act or omission, fail to comply with any other provisions, procedures, or standards as required by this Code.

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#### **15.14.04 Responsible persons**

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The owner, tenant, or occupant of any land or structure, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Code may be held responsible for the violation and be subject to the remedies set forth in this article.

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#### **15.15.00 Enforcement**

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##### **15.15.01 Responsibility for enforcement**

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City staff shall be responsible for enforcing the provisions of this Code. Enforcement authority may be assigned to code inspectors, other city officials involved with reviewing or inspecting development and law enforcement officers. All other officers and employees of the city shall have the duty to assist in enforcing this Code by reporting apparent violations of this Code to the code inspector or other city staff assigned responsibility for enforcement. Further references in this article to city staff shall include code inspectors or other city officials to whom code enforcement authority under this code has been assigned.

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##### **15.15.02 Complaints regarding violations**

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Whenever a violation of this Code occurs, or is alleged to have occurred, any person may file a complaint with city staff. On receiving a complaint, city staff shall properly record such complaint and take appropriate action as provided by the Code. However city staff has the authority and duty to institute code enforcement against an observed violation without a complaint being received.

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##### **15.15.03 Inspections**

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On presenting proper credentials city staff may enter on land or inspect any structure to ensure compliance with the provisions of the Code. If the occupant or property owner objects to the entry

on the land or inspection of a structure, the city may seek an inspection warrant as provided by state law.

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**15.15.04 Investigation of complaints**

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On receiving a complaint about alleged noncompliance(s) with the provisions of this Code, city staff shall investigate the complaint and determine whether a violation of this Code exists. However a complaint is not required for city staff to investigate an observed potential violation by city staff.

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**15.15.05 Enforcement procedure**

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If city staff finds reasonable cause to believe a violation of this Code exists (whether from an investigation or a complaint or otherwise), the city may act to enforce compliance with this Code in accordance with the notice and hearing procedures authorized in this article.

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**15.15.06 Remedies and penalties**

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The city may use any lawful means to enforce the City's Codes and Regulations including but not limited any combination of the following remedies and enforcement powers.

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**15.15.07 Civil remedies and penalties**

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**15.15.08 Issuance of stop work order**

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Whenever a building or structure is being constructed, demolished, renovated, altered or repaired in violation of any applicable provision of this Code, the city may issue a stop work order. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation, and the action(s) necessary to lawfully resume work.

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**15.15.09 Revocation of development order or building permit**

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Any development order or building permit may be revoked by the issuing authority (defined as the person or body who made final approval) by written notice to the holder when false statements or misrepresentations were made in securing the development order or building permit, work is or has been done in substantial departure from the approved plan or conditions, there has been a failure to comply with the requirements of this Code, or a development order or building permit has been mistakenly issued in violation of this Code. Prior to revocation of a development order or building permit, city staff shall provide written notice to the holder of the development order outlining the basis for the revocation and the corrective action that is required to prevent revocation.

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**15.15.10 Denial or withholding of related authorization**

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1. The city may deny or withhold authorization to use or develop any land, structure or improvement until a violation related to such land, structure or improvement is corrected and any associated civil penalty is paid.
2. Unless necessary for purposes of correcting a violation of this Code or to avoid imminent peril to life or property, no officer, official, agent, employee or board of the city shall approve, grant, or issue any development order for any person where:
  - a. The property that is the subject of the requested development order is the site of an uncorrected violation of any provision of this Code, or an unpaid code enforcement, correction or abatement lien; or

- b. The applicant for the development order has any unpaid civil penalty or costs arising from a code enforcement action regarding the real property that is the subject of the request.

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**15.15.11 Citation and civil penalties**

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A fine shall be assessed for violation of this Code as allowed in this article.

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**15.15.12 Demolition**

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The City may seek authorization to demolish a structure as outlined in this Article or other procedures to abate or remedy the violation as allowed in this Article, including an order from the Special Magistrate or as allowed under State law.

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**15.15.13 Misdemeanor penalties**

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Any person violating any of the provisions of this Code or who fails to abide by or obey all orders and resolutions promulgated as herein provided, shall be subject to arrest for a municipal ordinance violation, and shall be subject to the same penalties as a second degree misdemeanor.

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**15.15.14 Cumulative remedies and penalties**

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The remedies and penalties provided for violations of this Code, whether civil or criminal, shall be cumulative and in addition to any other remedy or penalty provided by law, and may be exercised in any order.

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**15.16.00 Special Magistrate**

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It is the intent of this article to promote, protect, and improve the health, safety and welfare of the citizens of the city by providing an equitable, expeditious, effective and inexpensive method of enforcing the various codes of the city.

Further, the provisions of this article are intended to provide an additional and supplemental means of enforcing the various codes of the city, and nothing contained herein shall prohibit the city from enforcing its codes or ordinances by any other means.

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**15.16.01 Special Magistrate and Citation Code Enforcement System**

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The city hereby establishes a special magistrate/citation code enforcement system for the enforcement of its various codes. In order to avoid any potential conflict of interest, it is preferable for a special magistrate not be a resident of the city, own real property in the city or own a business with a location in the city. This requirement can be waived by the City Commission. Special magistrate shall be an active or retired lawyer, but an attorney who has been disbarred by any state bar association shall be disqualified to serve as the special magistrate. Furthermore, a person will be disqualified to serve as a special magistrate if the person has been convicted or has plead no contest to any felony, any crime involving personal gain or the crime of perjury. If a person is serving as special magistrate and is charged with a crime referenced above, the person shall automatically be suspended from serving as special magistrate until the final conclusion of the case. One (1) or more special magistrate shall be appointed by the City Commission based upon the joint recommendation of the City Attorney and City Administrator or his/her designee. The City Administrator or his/her designee shall have the authority to appoint a temporary special magistrate in the event of a conflict or other temporary absence of the appointed special magistrate. Special magistrate shall serve at the pleasure of the City Commission and may be removed at any time with or without cause by the City Commission. Special magistrate shall be

compensated based on budgetary appropriations and approved by the City Administrator or his/her designee.

A special magistrate shall have the power to:

- (1) Adopt rules for the conduct of hearings.
- (2) Special magistrate shall have the authority to hold hearings and access fines against violators of the various codes of the city.
- (3) Subpoena alleged violators and witnesses to the hearings. Subpoenas may be served by any law enforcement officer of the city or as otherwise permitted by law.
- (4) Subpoena evidence to the hearings.
- (5) Take testimony under oath.
- (6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance with city codes or ordinances. However, any orders that require the city to expend money or directs city employees to perform work, i.e. demolition or repair of a structure, must be approved by the city administrator or City Commission.

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#### **15.16.02 Enforcement procedure**

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1. It shall be the duty of the code enforcement officer to investigate complaints of violations of city codes and to initiate enforcement proceedings relative thereto. Special magistrate shall not have any independent authority to conduct their own investigation of such complaints or to initiate enforcement proceedings.
2. Except as provided in subsections (4), and (5) of this section, if a violation of a code is found, the code enforcement officer shall notify the violator in writing and advise him or her of the nature of the violation and shall give the violator a reasonable time to correct the violation. However, a "fire safety inspector" as that term is defined in F.S. § 633.052, shall provide the violator a minimum time period of forty-five (45) days to correct the violation, except for major structural changes, which may be corrected within an extended adequate period of time. A Life Safety Code violation as per National Fire Prevention Codes may be ordered to comply in less than forty-five (45) days. In the event the violation continues to exist beyond the time specified for correction, the code enforcement officer shall issue a citation to the violator in accordance with the requirements of section 15.16.03.
3. The case may be presented to a special magistrate even if the violation has been corrected prior to the hearing but after the initial time period for compliance. The special magistrate shall have the right to levy a fine for each day the violation was in existence beginning with the date of the citation through the date the code enforcement officer confirms compliance. It is the responsibility of the violator to notify the city that the violation has been corrected. The violation will be deemed to have continued until the code enforcement officer has determined that the violation has been corrected.
4. If a repeat violation is found, the code enforcement officer shall notify the violator in writing and advise him or her of the nature of the repeat violation, but is not required to give the violator a reasonable time to correct the repeat violation. The code enforcement officer shall, upon notifying the violator of a repeat violation, issue a citation to the violator in accordance with the requirements of section 15.16.03. The case may be presented to a special magistrate even if the repeat violation has been corrected prior to the hearing. The special magistrate shall have the authority to levy a per day fine beginning on the day that

the violation was first observed by the code enforcement officer until the violation is corrected.

5. 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, a code enforcement officer shall make a reasonable effort to notify the violator of the same and may immediately issue a citation and schedule the matter for a hearing before a special magistrate.
6. Each day that a violation exists shall constitute a separate violation for the purpose of assessing a fine by a special magistrate.
7. All fines imposed pursuant to this article shall be paid to the city through its finance department and shall be paid by cash or check with coins only being accepted for any amounts which may require change to pay the exact amount.

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#### **15.16.03 Content of citations**

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A citation issued by a code enforcement officer shall be in the form prescribed by the city and shall contain:

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 violation was first observed.
4. The section of the code that has been violated and a description of the nature of the violation.
5. The necessary corrective action.
6. The maximum per day fine for each violation or repeat violation that may be levied by the special magistrate if found in violation. That the special magistrate has the authority to levy the per day fine starting on the date the citation was issued through the date the violation is corrected or from the day the violation was first observed by the code enforcement officer for repeat violations.
7. The name, work phone number and work address of the code enforcement officer. That it is the responsibility of the person to contact the city for an inspection when the violation is corrected. The violation will be deemed to be in existence until the code enforcement officer determines that the violation has been corrected.
8. The date, time and place the special magistrate hearing will be conducted.
9. A conspicuous statement that if the person fails to appear at the special magistrate hearing to contest the violation, the failure to appear shall be deemed an admission that the violation exists.
10. A statement that the alleged violator is responsible for providing a court reporter at the hearing if the violator intends to appeal the determination of the special magistrate.

After issuing a citation to an alleged violator, the code enforcement officer shall deposit the original citation in a file for the special magistrate, and shall deposit one (1) copy thereof with the city's finance director.

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 F.S. §§ 775.082 or 775.083.

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#### **15.16.04 Conduct of hearing**

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1. Special magistrate hearings should be held once a month, but may be held more or less often as the demand necessitates. Minutes shall be kept of all special magistrate hearings and all such hearings shall be open to the public. The City Administrator or his/her designee shall provide clerical and administrative personnel as may be reasonably required for the proper performance of his or her duties. At any hearing, a special magistrate may continue any matter to a future hearing date.
2. Each case before a special magistrate shall be presented by a code enforcement officer, a member of the city's administrative staff, or the City Attorney, any assistant City Attorney, or any special counsel. The City Attorney may present the case before the special magistrate or serve as advisor to the special magistrate, but cannot perform both functions on a single case. If the city prevails in prosecuting a case before a special magistrate, it shall be entitled to recover all costs incurred in prosecuting the said case, including attorney fees, and such costs may be added to the fine and become part of any lien authorized under section 15.17.00.
3. A special magistrate shall proceed to hear the cases on the agenda for the respective hearing. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, however, fundamental due process shall be observed and shall govern all proceedings. Both the city and the alleged violator shall have the right to subpoena witnesses to testify at the hearing.
4. A special magistrate shall advise the alleged violator of the section of the code of which he or she is accused of violating and the nature of the violation. A special magistrate shall first seek to determine whether or not the alleged violator admits the violation. If the alleged violator admits the violation, the special magistrate shall hear such testimony and evidence as he or she deems necessary to determine the extent of the violation and appropriate fine amount. If the alleged violator denies the violation, the special magistrate shall hear first from the city and any city witnesses and evidence, and the alleged violator shall have the right to cross-examine city witnesses. At the close of the presentation of the city's case against the alleged violator, the violator shall be permitted to present his evidence, testimony of other witnesses and his own testimony in his defense. The city shall have the right to cross-examine the alleged violator and his or her witnesses. The city shall have the burden of proving the violation by a preponderance of the evidence.
5. At the conclusion of the hearing, the special magistrate shall issue findings of fact, conclusions of law and order imposing fine based on the evidence of record, and shall issue an order affording the proper relief consistent with the powers granted herein. If the special magistrate finds the person in violation, the special magistrate shall establish a per day fine amount that may begin accruing on the date the citation was issued and shall continue accruing until the violation is corrected. A certified copy of such order may be recorded in the public records of Volusia County and 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 purchasers, successors in interest or assigns. Upon compliance and payment of the fine, the city shall record an order acknowledging compliance of the code violation and satisfaction of the fine. A hearing is not required for the issuance of such an order acknowledging compliance.

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## **15.17.00 Administrative fines and liens**

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### **15.17.01 Amount of fine**

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A special magistrate may impose a fine up to the maximum amount described in this subparagraph as provided below:

1. A fine imposed pursuant to this section shall not exceed two hundred fifty dollars (\$250.00) per day for the first violation and shall not exceed five hundred dollars (\$500.00) per day for a repeat violation; and, in addition thereto, may include all costs of repairs pursuant to subsection (a) of this section. However, if a special magistrate finds the violation to be irreparable or irreversible in nature, he or she may impose a fine not to exceed five thousand dollars (\$5,000.00) per day per violation.
2. In determining the amount of the fine, if any, a special magistrate shall consider the following factors:
  - a. The gravity of the violation;
  - b. Any actions taken by the violator to correct the violation; and
  - c. Any previous violations committed by the violator.
3. Each day a violation exists shall constitute a separate violation for the purpose of assessing such fine.

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### **15.17.02 Reduction of fine**

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The special magistrate shall have the right to reduce a code fine pursuant to the following procedure:

1. The violation(s) for which the code fine is related must be corrected. The city staff must inspect the property and file with the special magistrate a notice of compliance.
2. The property owner or representative must submit in writing to the city a request to be placed on the special magistrate agenda for a fine reduction request.
3. City staff shall submit a written recommendation to the special magistrate regarding the requested fine reduction and set the fine reduction request on the special magistrate agenda. The special magistrate shall only consider a fine reduction that has been placed on the agenda unless the city otherwise consents.
4. In considering whether to grant a fine reduction and the amount of the reduction, the guiding principle should be the city's primary goal in code enforcement is to attain code compliance and to recoup the expenses incurred by the city. The special magistrate shall consider all factors considered relevant in making such a determination, including but not limited to, the following:
  - i. The costs incurred by the city in investigating and prosecuting the code violation, including staff time, recording costs and attorney fee.
  - ii. The responsiveness and cooperation of the property owner in correcting the violation and mitigating reasons for any lack of cooperation such as age, physical disabilities or financial limitations.

- iii. Prior code enforcement actions by the city against the same owner or an entity directly or indirectly under the control of the same person.
5. The City Administrator or his/her designee shall have the authority to issue lien releases without the special magistrate's approval as long as a fine reduction is not associated with the lien release. The City Administrator or his/her designee may require a portion of the lien to be paid as a condition of the lien release.
6. Any fine reduction shall be contingent on the reduced fine amount being paid within the time allowed by the Special Magistrate.

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#### **15.17.03 Lien for unpaid fine**

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A certified copy of the findings of fact, conclusions of law and order imposing fine may be recorded in the public records of Volusia County and shall thereafter 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 this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A lien arising from a fine imposed pursuant to this section runs in favor of the city and the City Administrator or his/her designee may authorize the execution of a satisfaction and release of lien entered pursuant to this article. No lien created pursuant to the provisions of this section may be foreclosed on real property that is a homestead under Section 4, Article X of the Florida Constitution.

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#### **15.17.04 Notices**

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1. All notices required by this article shall be provided to the alleged violator by certified mail, return receipt requested to the address listed in the tax assessor's office for tax notices, or by hand delivery by the sheriff or other law enforcement officer, or code enforcement officer, or by leaving the notice at the violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person of the contents of the notice. In the case of commercial property, the notice may be provided to the manager or other person in charge. Further, in the event notice is provided by certified mail, return receipt requested, and acceptance of such notice is refused or is returned to the city, or is not signed as received within 30 days from the postmarked date of mailing, the City may provide the notice as provided in (b)(2).
2. In addition to providing notice as set forth in subsection (a) notice may also be served by publication or posting, as follows:
  - a. Such notice shall be published once during each week for four (4) consecutive weeks (four (4) publications being sufficient) in a newspaper of general circulation in Volusia County. The newspaper shall meet such requirements as are prescribed under F.S. Ch. 50, for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.
  - b. In lieu of publication as described in paragraph (b)(1), such notice may be posted for at least ten (10) days in at least two (2) locations, one (1) of which shall be the property upon which the violation is alleged to exist and the other of which shall be at City Hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

- c. Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1). Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.
3. The provisions of this section shall not apply to the enforcement, pursuant to F.S. §§ 553.79 and 553.80, as amended from time to time, of the building codes adopted pursuant to F.S. § 553.73, as they apply to construction, provided that a building permit is either not required or has been issued. For purposes of this section, "building codes" means only those codes adopted pursuant to F.S. § 553.73.

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#### **15.17.05 Appeals**

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Except as otherwise provided herein, an aggrieved party, including the city, may appeal a final administrative order of a special magistrate by certiorari to the Circuit Court of Volusia County. 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. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

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#### **15.17.06 Duration of lien**

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No lien provided by this article shall continue for a period longer than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the city is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien.

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#### **15.18.00 Citation Enforcement**

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##### **15.18.01 City citation**

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1. Certain code violations shall be issued a city citation that provides the violator with the option of contesting the violation or paying the fine. The specific code violations that can be enforced through this procedure and the fine amount shall be established by resolution. In the event the person issued the city citation does not pay the fine amount or request a hearing within the required time, it shall be presumed that the violator is waiving the ability to contest the violation. In the event a violator elects to contest the violation and the special magistrate finds a violation, the special magistrate shall have the right to levy the maximum fine allowed under the law without regard to the fine amount set forth in the city citation.
2. A city citation issued by a law enforcement officer shall contain identifying information of the person issued the citation; the city regulation(s) alleged to have been violated; a description of the facts that constitute the basis of issuing the citation; the amount of the fine; the time within which the fine must be paid and where the fine can be paid; that the city citation can be challenged with the special magistrate; that failure to pay shall result in violation being referred to the special magistrate and that the special magistrate can levy a fine up to two hundred fifty dollars (\$250.00) for first-time violations and five hundred dollars (\$500.00) for repeat violations.

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**15.19.00 Abatement of Structures Used for Drugs, Prostitution, Stolen Property and Gang Related Activity**

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**15.19.01 Nuisance abatement**

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The city hereby adopts and incorporates all of F.S. § 893.138, as amended, as is specifically set forth herein. The city hereby authorizes and delegates to the special magistrate the right and authority to enforce all of the city's rights, duties and obligations as set forth in F.S. § 893.138, as amended.

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**15.19.02 Fines**

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The special magistrate shall have the authority to levy fines to the maximum extent allowed in F.S. § 893.138, as amended.

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**15.19.03 Continuing jurisdiction**

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The special magistrate shall retain continuing jurisdiction for a period of one (1) year over any place or premises that has been or is declared to be a public nuisance.

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**15.19.04 Recording of orders; foreclosure**

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Orders of the special magistrate on public nuisances shall be recorded in the public records to provide notice to subsequent purchasers, successors in interest, or assigns of the real property that it is subject to the order. Recorded orders shall become a lien against the real property that is the subject of the order and may be foreclosed as provided by law. The city shall be entitled to reimbursement of all costs, including reasonable attorney fees, associated with the recording of the orders and foreclosure.

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**15.20.00 Nuisance Abatement**

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**15.20.01 Abatement of nuisance by demolition**

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The city shall have the right to abate a nuisance by demolishing the structure or other property constituting such nuisance pursuant to the following procedure:

1. The city official shall provide a written notice to the property owner and tenant setting forth the following:
  - a. The violation(s) that exist on the premises and a cite to the Code section(s) that are in violation;
  - b. The corrective action to be taken;
  - c. A reasonable time for the corrective action to be performed; and
  - d. That if the corrective action is not taken within the time allowed, the City Commission will hold a public hearing to determine whether a public nuisance exists and if so, the appropriate remedy to abate the nuisance, including the demolition of the structure or property.
2. The city shall also perform a title search on the subject property to determine all lien holder(s) and shall provide the notice in subsection (1), above, to such lien holder(s).

3. If the corrective action is not performed within the time allowed, and any extensions thereto, the city official is authorized to request a public hearing before the City Commission for a determination as to whether or not a public nuisance exists on the subject property and if so, the remedy that the city official deems appropriate, including the demolition of the structure. The property owner(s), tenant(s) and all lien holders shall receive a copy of the notice of public hearing. At such public hearing, the City Commission shall hear testimony and receive other forms of evidence from all interested parties and shall make its determination based on the evidence presented.

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#### **15.20.02 Notice requirements**

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All notices required by this article shall be provided to the required party in one of the following methods:

- (1) By certified mail, return receipt requested, to the last known address of the alleged violator pursuant to the tax rolls;
- (2) By hand delivery by the code inspector, by a city police officer or other person designated by the city;
- (3) By publishing the notice once a week for four consecutive weeks in a paper of general circulation in the county, with the proof of publication made in compliance with F.S. §§ 50.041 and 50.051, as amended;
- (4) By posting for at least ten days in two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at City Hall, along with a proof of posting by affidavit which shall include a copy of the notice posted and the date and place of posting;
- (5) Evidence that an attempt has been made to hand deliver or mail the notice as provided in subsections (1) and (2), above, together with proof of publication or posting as provided in subsections (3) and (4), above, shall be sufficient to establish that the notice requirements have been met, without regard to whether or not the party actually received such notice.

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#### **15.21.00 Chronic Nuisance Premises**

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Any premises that has generated more than the [monthly allowance of] calls for police service or code enforcement responses for nuisance activities found in section 15.21.02, has received more than the level of general and adequate police service and code enforcement activity and has placed an undue and inappropriate burden on the taxpayers of the city.

The intent of this section is to encourage the appropriate management of properties, to ensure that properties are maintained in a high-quality manner as required of all properties and to ensure that properties are maintained with the care necessary to ensure code compliance as evident in the throughout the city.

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#### **15.21.01 Definitions**

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As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended and the definitions set forth in F.S. §§ 509.242 and 320.01(2)(b), shall apply to the interpretation of this article as shall the terms defined otherwise in the land development regulations of the city.

Monthly period means any consecutive thirty-day period.

Nuisance activity means any activity, behavior or conduct whenever engaged in by premises owners, operators, occupants or persons associated with a premises that could be enforced by means of a proceeding before the city's special magistrate, through citation as set forth in this Code, through nuisance abatement, or relating to any actions or offenses relating to the following subject matter:

- (1) Firearms and weapons;
- (2) Harassment of a neighbor, disorderly conduct, or disturbing the peace;
- (3) Battery, substantial battery or aggravated battery;
- (4) Indecent exposure;
- (5) Keeping a place of prostitution, or otherwise using the premises for the purpose of prostitution;
- (6) Littering, solid waste or public health;
- (7) Arson;
- (8) Possession, manufacture or delivery of a controlled or illegal substance or related offenses;
- (9) Gambling;
- (10) Trespass to land or criminal trespass to a dwelling;
- (11) Production or creation of excessive noise or vibration;
- (12) Loitering;
- (13) Public drinking and other matters relating to alcoholic beverages;
- (14) Intoxicating beverages;
- (15) Unpermitted or illegal business;
- (16) Selling or giving away tobacco products to underage persons;
- (17) Illegal sale, discharge and use of fireworks;
- (18) Junk vehicles;
- (19) Action deemed a nuisance under state law;
- (20) Any action that is a violation of this Code which could be enforced by the through the city's code enforcement procedure;
- (21) Act of aiding and abetting of the activities, behaviors or conduct enumerated in this article;  
or
- (22) Conspiracy to commit or attempt to commit any of the activities, behaviors or conduct enumerated in this article.

Person associated with means any person who, whenever engaged in a nuisance activity, enters, patronizes, visits or attempts to enter, patronize or visit, or waits to enter, patronize or visit, a premises or person present on a premise including, but not limited to, any officer, director, customer, agent, employee or independent contractor of a premises owner.

Service call means each time one (1) or more city police officer(s) or city code enforcement officer(s) commences and completes a response to an identifiable unit of property as recorded by the Volusia

County Sheriff's Communication Center's computer aided dispatch system or a written report of a police officer or code enforcement officer which sets forth the time the officers were present upon the property. Responses caused by false reports of nuisance activity or for criminal activity that commences elsewhere and subsequently comes upon a unit of property despite reasonable efforts of persons responsible for the unit of property to exclude it, will not constitute a service call. Excluded from this definition are courtesy inspections, criminal investigations of matters not arising from or connected with the property, paid off-duty details of police officers, follow-up police officer activity to investigate a previous criminal violation, such as interviewing witnesses, or follow-up code enforcement activity to a previously cited code violation, such as inspections to determine if code violations are corrected. Also, excluded is police or code enforcement activity when it is determined that no criminal or code violation exists. If the city receives more than one (1) call related to the same circumstance or event and the multiple calls do not result in the city dispatching more police officers to the scene, all calls shall be deemed one (1) service call regardless of the number of calls received.

Unit of real property means any contiguous lands within the city which are under common ownership or are devoted to a single use, whichever is greater. Common ownership shall include all entities from which the same natural or fictitious person or people have ultimate benefit. Contiguous land shall include those separated by easements, sidewalks, alleys, rights-of-way and water bodies.

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**15.21.02 Monthly allowance of services**

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The City Commission has determined that the below schedule is a reasonable and permissible number of nuisance activities calls for city law enforcement and/or code enforcement personnel to respond to any property in the city. The monthly allowance shall be the combined total of both law enforcement and code enforcement service calls.

1—50 living units	3 service calls per month
Commercial	4 service calls per month
Gas Stations	5 service calls per month
MHC Zoning (Lake Helen Villas)	5 service calls per month

In the event the property owner or agent can establish to the satisfaction of the city staff or the special magistrate that sufficient corrective action has been taken to correct the problem that created the service call, the service call shall not be counted to the monthly allowance. Corrective action may include, but is not limited to, commencement of eviction proceedings of the source of the service call or retaining on-site security.

The City Commission has determined that nuisance activity calls in excess of the monthly allowance of nuisance activity calls as set forth in this article shall be a violation of this regulation. Each service call in excess of the monthly allowance shall be a separate violation.

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**15.22.00 Utility services**

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Should the city determine that the use of city water utility services facilitates, contributes to or exacerbates a nuisance activity, the city may, consistent with any controlling provisions of state law,

terminate the provision of such utility services to the property on which the nuisance activity is occurring.

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**15.23.00 Inspections**

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External inspections of properties subject to this article shall occur based upon complaints, or as initiated by code inspectors.

Internal inspections by the city shall occur based upon complaints or as initiated by code inspectors to ensure that such properties are in compliance with the provisions of all applicable codes and ordinances; provided, however, that this provision shall not be interpreted as authorizing the city to conduct inspections of properties without the consent

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**15.24.00 Attorney fees and costs**

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In the event the city must institute legal action to collect money owed to the city, the city shall be entitled to receive attorneys' fees and costs incurred in such action. The city shall have the authority to record a lien against real property for lot clearing charges and demolition charges. Such lien shall include the cost of recording the lien. This lien shall accrue interest at a rate of one percent (1%) per month.