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**ARTICLE 7. ENFORCEMENT PROCEEDINGS AND PENALTIES**

- Sec. 7-101. Enforcement responsibility.
- Sec. 7-102. Municipal code enforcement board/special master hearing procedures.
- Sec. 7-103. Remedies; penalties.
- Sec. 7-104. Appeals.
- Sec. 7-105. Prosecution under prior codes.
- Sec. 7-106. Removal of abandoned or inoperative motor vehicles.

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**Section 7-101. Enforcement responsibility.**

The terms and provisions of this Development Code shall be enforced in accordance with the provisions of this article. The municipal code enforcement board and/or a special master established in article 5 of this Development Code, the code inspector(s), code enforcement officers, the city attorney, and other appropriate staff of the city shall be responsible for enforcement. The provisions of this article are additional and supplemental means of enforcing city codes or ordinances and may be used for the enforcement of all codes and ordinances adopted by the city commission. Nothing contained in this article shall prohibit the city from enforcing its codes or ordinances by other available laws.

(Ord. No. 6526-00, § 1, 6-15-00)

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

A. *Notification of violation.* Violations of Section 3-1503, Nuisances, may be noticed as "nuisance cases" or "non-nuisance cases" under this Subsection.

1. *Non-nuisance cases.* Upon determining that a violation exists, the code inspector or other enforcement officer shall notify the violator of the violation of this development code or violation of the terms and conditions of any development approval and prescribe a reasonable time to correct the violation. The determination of the appropriate time period shall be based on considerations of fairness, practicality, ease of correction, ability to correct, severity of violation, nature, extent, and probability of danger or damage to the public, and other relevant factors relating to the reasonableness of the time period prescribed. The notice of violation shall be served upon the alleged violator as provided in Section 162.12, F.S.
2. *Nuisance cases.* Upon completion of a field investigation by a code enforcement officer and determination that a nuisance exists under Code of Ordinances Section 3-1503, the property shall be posted with

a notice advising of the existence and nature of the violation and requiring compliance within five days after the date of posting or the filing of a notice of appeal to the municipal code enforcement board during such five day period. In nuisance cases only, posting of notice shall be deemed legally sufficient to provide notice; the code enforcement officer may additionally attempt to obtain personal service upon and/or mail notice to the property owner within the five day period.

B. *Notice contents.*

1. The notice of violation shall include, but not be limited to, the following:
  - a. Date of issuance.
  - b. Name of code inspector and division or department issuing the notice.
  - c. Name and address of violator.
  - d. Section number or numbers of the code sections or ordinances violated.
  - e. Brief description of the nature of the violation, including location, date, and time of violation.
  - f. Time within which the violation must be corrected, except in the case of a repeat violation or recurring violation.
  - g. Notice that the violator may be liable for all costs incurred in enforcing the codes and all costs of repairs in certain instances, should the violator be found guilty of the violation.
2. In the event a violation continues beyond the time specified in a notice of violation, the code inspector shall notify the municipal code enforcement board or the special master and request a hearing. Notice of such hearing shall be given as provided in Section 162.12 F.S.

C. *Change of ownership prior to hearing.* If the real property upon which the violation is cited is transferred prior to the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

D. *Repeat violation.* In the event of a repeat violation, the code inspector shall notify the property owner or the violator and submit the violation to the special master or municipal code enforcement board for a hearing. At the next available meeting after receipt of the notice of violation, the special master or municipal code enforcement board shall conduct a hearing regardless of whether the violation has been corrected, and the notice shall so state.

E. *Immediate hearings for certain violations.* If the code inspector determines that a violation or the condition causing the violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the code inspector shall notify the violator and immediately transmit the notice of violation to the special master or the municipal code enforcement board for hearing.

F. *Conduct of hearing.*

1. When subpoenas are used, they shall be issued in the name of the special master or municipal code enforcement board and shall be signed by the city clerk. Both the code inspector and the alleged violator, or his designated representative, shall be entitled to request the issuance of subpoenas. The special master or municipal code enforcement board shall have the discretion to refuse to issue subpoenas which relate to witnesses or evidence not located within the city limits, in any situation where the requests for a subpoena would serve to prevent the expeditious enforcement of the codes, ordinances, and regulations within the jurisdiction of the special master or municipal code enforcement board or when the quantity of subpoenas requested is unreasonably burdensome. Persons subpoenaed shall be entitled to a witness fee and mileage compensation as provided for in F.S. § 92.142, as amended. The witness fee, mileage payment and any charge for the service of the subpoena shall be borne by the party requesting the subpoena and shall be paid in advance of the subpoena being issued. The names of

persons for whom subpoenas have been issued shall be deemed a matter of public record.

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

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

- b. *Nuisance cases.* Appeals from the issuance of a notice of violation in nuisance cases shall be presented by the appellant, who shall have the burden of showing that the condition described in the notice did not exist or of showing why the condition should not be remedied by the city at the expense of the appellant. If the owner, agent or representative, fails to appear before the board at the designated time to present the appeal, then the owner shall be deemed to have authorized the city to take such remedial action as is necessary to abate the nuisance including, but not limited to, the right to enter the property and take action to remedy the condition without further notice to the owner.

3. *Cases on an agenda for a particular day shall be heard.* All testimony shall be under oath and shall be recorded. The special master or municipal code enforcement board shall take testimony from the code inspector and the alleged violator, and may take testimony from any other person familiar with the case or having knowledge about the case. The special master or municipal code enforcement

board shall not be bound by formal rules of evidence; but, it shall act to ensure fundamental due process.

4. If the alleged violator fails to attend the hearing, such failure shall constitute a waiver of the violator's right to a hearing and shall be deemed an admission of the violation and the special master or municipal code enforcement board shall impose civil penalties and costs as provided in this article.
5. If the special master or municipal code enforcement board finds that the alleged violator did not commit the violation as alleged, the violation shall be dismissed. In such case, the alleged violator shall not be liable for the payment of any civil penalties or reasonable costs of the investigation, prosecution and the administrative hearing.
6. At the conclusion of each hearing, the special master or municipal code enforcement board, if the alleged violator is found to have committed the violation as alleged, shall issue findings of fact, based on evidence of record, and conclusions of law, and its order shall prescribe the corrections required and establish a compliance date. The order shall be mailed to the violator along with a notice of the violator's right to rehearing under the provisions of Section 7-102F(9) or the right to appeal under the provisions of Section 7-104.
7. A certified copy of such order may be recorded in the public records of the 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, shall be binding upon any subsequent purchasers, successors in interest or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the special master or municipal code enforcement board shall issue an order acknowledging compliance which shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.
8. If a party to the proceedings before the municipal code enforcement board or special master should decide to appeal the decision, a verbatim record of the proceedings may be required, or may be desirable. It shall be the sole responsibility of each party to the proceedings to ensure that a record is made which includes the testimony upon which an appeal may be taken.
9. Either the prosecutor or the violator may request a rehearing of the decision of the special master or municipal code enforcement board. A request for rehearing shall be made, in writing, and shall be delivered to the city clerk within ten days of the date that the special master or municipal code enforcement board mails the written order. A request for rehearing shall be based only on the ground that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law which was fundamental to the decision of the special master or municipal code enforcement board. The written request for rehearing shall specify the precise reasons therefor.
10. The special master or municipal code enforcement board shall make a determination as to whether or not to rehear the matter. If the special master or municipal code enforcement board determines that a rehearing will be granted, he or the board may:
  - a. Schedule a hearing where the parties will be given the opportunity of presenting evidence or argument limited to the specific reasons for which the rehearing was granted.
  - b. Modify or reverse the prior order, without receiving further evidence, provided that the change is based on

a finding that the prior decision resulted from a ruling on a question of law which was an erroneous ruling.

11. Until a request for rehearing has been denied or otherwise disposed of, the order of the special master or municipal code enforcement board shall be stayed; and the time for taking an appeal shall not commence until the date upon which the special master or municipal code enforcement board has finally disposed of the request for rehearing by denying the same, or otherwise.

(Ord. No. 6526-00, § 1, 6-15-00; Ord. No. 6573-00, § 8, 8-3-00; Ord. No. 6928-02, § 116, 5-2-02; Ord. No. 8211-10, § 13, 10-5-10)

**Section 7-103. Remedies; penalties.**

A. Upon the issuance of an order of the municipal code enforcement board finding a violation of Section 3-1503, Nuisances, any and all of the remedies and penalties provided in Subsections B. through K. of this Section may be imposed.

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

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

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

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

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

1. The gravity of the violation.
2. Any actions taken by the violator to correct the violation and the effectiveness of such actions.
3. Any previous violations committed by the violator.
4. Any danger to the public health, safety, and welfare posed by the violation.
5. The length of time the violation existed.
6. Whether the violation harmed persons legally on the property such as tenants.

C. *Repairs.* If the violation is one that poses a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the special master or municipal code enforcement board shall notify the city manager, who may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with any fine imposed pursuant to this Section.

D. *Restoration of landscaping/trees.* In addition to the penalties provided in Chapter 1, Section 1.12 of the City of Clearwater's Code of Ordinances, any person who violates any provision of Article 3 Division 12 shall be required, as applicable, to:

1. Restore the vegetative buffer to its natural state; or
2. Pay to the city a civil penalty equal to the total value of those trees illegally removed or damaged as computed by the International Society of Arboriculture shade tree value formula. Such sum shall accrue to the city and may be recovered in a civil action brought by the city. Such sum so collected shall be placed in a fund for the tree bank and shall be expended for the purchase of trees for replacement in public properties within the city; and/or
3. Replace illegally removed trees at the owner's expense. Such replacement will be computed on an inch-for-inch basis according to the total inches of DBH of all illegally removed trees; and
4. Remove any prohibited trees installed in violation of this or any hazardous trees within 15 days of receipt of notice from the city that such trees are in violation of this Code. In the event such trees are not removed within the 15 day period, the city shall have the trees removed and shall charge the costs of removal to the property owner.

E. *Entry and repair/nuisances.* In the event a nuisance is determined by a code inspector to exist and notice has been provided as required by 7-102, and the violator has not appealed to the special master or municipal code enforcement board, and the nuisance continues unabated, or an appeal has been filed but is denied by the special master or municipal code enforcement board, then the city has the right to take such remedial action as is necessary to abate the nuisance including but not limited to the right to enter the property and have such work done on behalf of the owner at the owner's cost, including administrative costs, which shall become a lien against the property as provided in Section 7-103F.

F. *Agreements to abate nuisances.* In the event the violation constitutes a nuisance under the provisions of Article 3 Division 15, the special master or municipal code enforcement board may enter into an agreement with the violator to take certain measures to abate the nuisance. The agreement shall include the measures to be taken by the person and the time period within which such measure must be completed. If an agreement cannot be reached or an agreement is not followed, the city attorney, the special master or municipal code enforcement board may request the state attorney or the state attorney general to seek judicial relief for abatement of the nuisance pursuant to the provisions of F.S. § 60.05 or direct the city attorney to seek judicial relief for abatement of the nuisance. These remedies are in addition to the entry and repair remedy provided for in Section 7-103D.

G. *Liens.* A certified copy of an order imposing a fine and/or the costs of repair may be recorded in the public records of the county, and thereafter such order shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Such lien shall be superior to all other liens, except a lien for taxes. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a judgment of a court except for enforcement purposes.

1. A fine imposed pursuant to this section 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.
2. A lien arising from a fine imposed pursuant to this section runs in favor of the city commission, and the city commission may execute a satisfaction or release of lien entered pursuant to this section.
3. A property owner may petition the city commission to allow the property owner to invest an amount of money equal to one and one-half times the amount of the fine

which is due in the revitalization or improvement of the property which was the subject of the violation. Upon presentation of evidence to the city manager that such sum has been properly expended, the lien shall be released by the city commission.

4. Three months from the filing of any such lien which remains unpaid, the municipal code enforcement board may authorize the city attorney to foreclose on such lien in the manner provided by statute for the foreclosure of other municipal liens. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under the state constitution, Article X, § 4.
5. In an action to enforce an order or to foreclose on a lien, the prevailing party shall be entitled to recover all costs, including a reasonable attorneys fee. The city shall also be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

H. *Civil penalty/citation.* As an alternative to the special master and the municipal code enforcement board, a code enforcement officer may issue a citation for violation of a provision of the City's Code for prosecution in county court pursuant to Section 1.12 of the City's Code. A code enforcement officer may issue a notice to appear at any hearing conducted by a county court if the officer, based upon personal investigation, has reasonable cause to believe that the person has violated a code or ordinance. A notice to appear means a written order issued by a code enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. If a person issued a notice to appear under this section refuses to sign such notice, the code enforcement officer has no authority to arrest such person. A person convicted of violating a provision of this development code

through the use of this section may be ordered to pay a fine, not to exceed \$500.00. Prior to issuing a notice to appear, a code enforcement officer shall provide written notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no fewer than five days and no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the prescribed time period, a code enforcement officer may issue a notice to appear to the person who has committed the violation. A code enforcement officer is not required to provide the person with a reasonable time period to correct the violation prior to issuing a notice to appear and may immediately issue a notice to appear if a repeat violation is found, or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare or that the violator is engaged in violations of an itinerant or transient nature, as defined in Section 8-102, or if the violation is irreparable or irreversible.

I. *Revocation of occupational license.* In the event a violation of this development code is determined by the municipal code enforcement board, the special master, or the circuit court, the code enforcement officer shall commence revocation of any occupational license granted by the city to the violator pursuant to the terms of Chapter 29 Section 29.41 of the City Code. In the event the violation is determined to be an immediate threat to the public health safety and welfare, the occupational license shall be deemed immediately revoked notwithstanding the provisions of Section 29.41 of the City Code.

J. *Suspension or revocations of adult use permit.*

1. If an adult use permit was granted based upon materially false information or misrepresentation of material fact, then the city shall have just cause to suspend or revoke the adult use permit for the adult use establishment for up to one year. Suspension or revocation shall be by the city manager pursuant to the procedure set forth in this section.

2. If an operator or employee of an adult use establishment is convicted of three or more violations of Section 3-304 within a permitting year or three or more specified criminal acts occurring on the premises of the establishment within a permitting year, the city shall have just cause to suspend or revoke for up to one year the adult use permit for the adult use establishment. Suspension or revocation shall be by the city manager pursuant to the procedure set forth in this section. It shall be an affirmative defense if an owner of the adult use establishment imposed reasonable precautions to prevent an operator or employee from violating Article 3 Division 3 or committing specified criminal acts at the establishment.
3. If the community development coordinator determines that a violation of subsections (1) or (2) of this section has occurred, the community development coordinator shall schedule a hearing before the city manager. The permittee shall be given written notice of the hearing at least ten calendar days prior to the hearing and shall have an opportunity to present evidence on the permittee's behalf, to cross examine witnesses, and to be represented by counsel. The city shall have the burden of proof by a preponderance of the evidence. A written decision by the city manager shall be filed with the city clerk's office and served on the permittee within ten calendar days of the hearing. The written decision shall be based solely on the evidence presented at the hearing, shall contain findings of fact and conclusions of the legal basis for the decision, and shall be final and conclusive, subject to judicial review by common-law certiorari in the Circuit Court for Pinellas County. The city manager may delegate the authority to hold a hearing to a deputy city manager or an assistant city manager, whose decision shall be as final and conclusive as if made by the city manager. The filing by the permittee of a pleading seeking judicial review shall automatically stay the enforcement of the

decision by the city manager until judicial review has been exhausted unless the city obtains injunctive relief. Any person whose adult use permit was suspended or revoked shall be eligible to submit immediately an application for a new permit to conduct at a different location a business involving the sale of rental of materials protected by the first amendment or the performance of entertainment protected by the First Amendment so long as the applicant is otherwise in compliance with this development code and with other applicable laws.

*K. Stay of development approvals.*

1. Upon the entry of an order of violation by the municipal code enforcement board or special master, the community development coordinator shall notify the building official and other appropriate city departments that no further development approvals shall be processed or granted regarding the property which is the subject of the violation, except for permits necessary to correct the violation, until the violation is corrected and fines which have been imposed are paid.
2. If the violation involves a level one or level two approval (or previously approved conditional uses) which has been found as not having been conducted in accordance with the conditions imposed in the development approval, then the code enforcement officer shall commence a proceeding in front of the community development coordinator or the community development board, as the case may be, to revoke the development approval.

*L. Stopwork orders.* Upon notice from the building official, work on any building, structure or electrical, gas, mechanical or plumbing system that is being done contrary to the provisions of the standard codes adopted by the city's code or in a dangerous or unsafe manner or without proper permits shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, his agent or the person doing the work and shall state the conditions under which

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§ 7-103

COMMUNITY DEVELOPMENT CODE

work may be resumed. Where an emergency exists, the building official shall not be required to give a written notice prior to stopping the work.

*M. Revocation of permits.*

1. *Misrepresentation of application or change in circumstances.* The building official may revoke a permit or approval, issued under the provisions of the standard codes adopted by the City's Code in case there has been any false statement, change in circumstances or misrepresentation as to material fact in the application or plans on which the permit or approval was based.
2. *Violation of Code provisions.* The building official may revoke a permit upon determination that the construction, erection, alteration, repair, moving, demolition, installation or replacement of the building, structure or electrical, gas, mechanical or plumbing systems for which the permit was issued is in violation of, or not in conformity with, the provisions of the codes.

(Ord. No. 6526-00, § 1, 6-15-00; Ord. No. 8211-10, § 13, 10-5-10)

**Section 7-104. Appeals.**

Any aggrieved party, including the city, may appeal a final order of the municipal code enforcement board or special master by commencing appropriate proceedings in the Circuit Court of Pinellas County. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the municipal code enforcement board or special master. The appeal shall be filed within 30 days of entry of the order to be appealed.

(Ord. No. 6526-00, § 1, 6-15-00)

**Section 7-105. Prosecution under prior codes.**

Any prosecution arising from a violation of any prior code, ordinance or regulation of the city superseded by this Development Code, which prosecution was pending as of the date of adoption of this Development Code in consequence of any violation of any prior code, ordinance or

regulation superseded hereby, which violation was committed prior to the date of adoption of this Development Code, shall be tried and determined exactly as if such prior code, ordinance or regulation had not been superseded.

**Section 7-106. Removal of abandoned or inoperative motor vehicles.**

Notwithstanding the provisions of this article, abandoned or inoperative motor vehicles or boats found upon the public streets or public property within the city shall be subject to the notice and removal procedures set forth in F.S. §§ 705.102 through 705-104.