

ORDINANCE NO. 2025- 8

AN ORDINANCE OF THE TOWN OF EATONVILLE, FLORIDA, AMENDING DIVISION 2 OF ARTICLE VI, CODE ENFORCEMENT, OF CHAPTER 2, ADMINISTRATION, OF THE TOWN'S CODE OF ORDINANCES, TO DISSOLVE THE CODE ENFORCEMENT BOARD AND ESTABLISH PROVISIONS FOR CODE ENFORCEMENT SPECIAL MAGISTRATE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 162.03, Florida Statutes, authorizes municipalities to create administrative boards, including a special magistrate, to hear alleged violations of municipal codes and impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force, where pending or repeated violation(s) continue to exist; and

WHEREAS, the Town Council of the Town of Eatonville finds that dissolving the Code Enforcement Board and establishing provisions for a Code Enforcement Special Magistrate advances a public purpose and promotes and protects the health, safety, and welfare of the citizens and residents of the Town of Eatonville.

NOW, THEREOFRE, be it ordained by the Town Council of the Town of Eatonville, Florida, as follows:

SECTION 1. Legislative Findings. The foregoing recitals are hereby adopted as the legislative findings of the Town Council of the Town of Eatonville.

SECTION 2. Division 2, Code Enforcement Board. Article VI, Code Enforcement, of Chapter 2, Administration, of the Code of Ordinances, is hereby amended as shown in Exhibit A, attached hereto and made a part hereof.

SECTION 3. Codification. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of the Town of Eatonville, as additions or amendments thereto.

SECTION 4. Severability. Should any word, phrase, sentence, subsection, or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection, or section so held shall be severed from this Ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION 5. Conflicts. All ordinances or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

SECTION 6. Effective Date. This ordinance shall take effect and be in full force and effect immediately upon its passage and adoption.

Upon motion duly made and carried, the foregoing Ordinance was approved and passed and transmitted upon the first reading on the ____ day of _____, 2025.

Upon motion duly made and carried, the foregoing Ordinance was approved and passed and transmitted upon the second reading on the ____ day of _____, 2025.

Attest:

TOWN OF EATONVILLE

Veronica King, Town Clerk

Angie Gardner, Mayor

Exhibit A

[Words in ~~strike through~~ type are deletions; words in underscore type are additions; asterisks (***) indicated an omission from the existing text which is intended to remain unchanged.]

ARTICLE VI. CODE ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 2-222. Code enforcement fee schedule.

The code enforcement fee schedule is adopted herein by reference and is on file in the town clerk's office.

Secs. 2-223 – 2.250. Reserved.

DIVISION 2. Code Enforcement Board Special Magistrate

Sec. 2-251. Board ~~created~~ dissolved.

- ~~(a) There is hereby created a code enforcement board for the Town of Eatonville, Florida, who shall be appointed by the town council. The code enforcement board shall be appointed to serve a term of three years, the terms of the board members will be staggered. Nothing shall prevent the town council from re-appointing members for a second term.~~
- ~~(b) The appointment of the code enforcement board shall be made solely on the basis of professional experience in the areas of law, zoning and building knowledge. The code enforcement board shall consist of residents of the Town of Eatonville and/or business owner in the Town of Eatonville.~~
- ~~(c) The appointment of the code enforcement board members shall be the recommendation of the mayor and town council members. The code enforcement board shall consist of five members, all of which shall be residents of the Town of Eatonville.~~
- ~~(d) The meetings of the code enforcement board members shall occur no less than frequently than once every two months to hear cases brought forth by the code enforcement officer, and/or as necessary as deemed. Special meetings may be convened by the code enforcement board upon giving notice thereof to the public. The notice of a special meeting shall be given at least 24 hours prior to the meeting time.~~
- ~~(e) Minutes shall be maintained of all meetings and hearings held by the code enforcement board, and all meetings, hearings and proceedings shall be open to the public.~~
- ~~(f) The town administration shall provide clerical and administrative support to the code enforcement board as may be reasonably required by the code enforcement board for the proper performance of the code enforcement board.~~

- ~~(g) Subject to the approval of the town council, the code enforcement board may adopt rules and regulations necessary to carry out provisions of this article that are consistent with this article or F.S. § 162.05.~~

The code enforcement board is hereby dissolved effective [INSERT DATE]; provided, all prior administrative actions, orders and liens imposed by such code enforcement board shall remain in full force and effect. No cases shall be referred to the code enforcement board on and after [INSERT DATE]. All cases remaining pending before the code enforcement board as of [INSERT DATE] shall be transferred to the special magistrate. All references to the code enforcement board occurring elsewhere within this Code, or within any other codes, ordinances, and resolutions of the Town Council shall hereafter be deemed to refer to the special magistrate appointed under the authority of this article.

Sec. 2-252. ~~Legal counsel~~ Authority to establish; Purpose.

- ~~(a) An attorney may be appointed by the town council to attend meetings of the code enforcement board and to assist the code enforcement board during the hearings.~~
- ~~(b) A member of the attorney's staff may represent the code enforcement attorney by presenting cases before the board.~~
- ~~(c) In no case shall the attorney or a member of their staff serve in both capacities.~~
- (a) This article is adopted by the Town Council to establish a code enforcement special magistrate and hearing process pursuant to the authority granted municipalities in Chapter 162, Florida Statutes.
- (b) It is the intent of this article to promote, protect and improve the health, safety and welfare of the citizens of the Town by authorizing the creation of a code enforcement special magistrate with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective and inexpensive method of enforcing the codes and ordinances in force in the Town where a pending or repeated violation of any provision of this Code continues to exist.

Sec. 2-253. Jurisdiction Definitions.

- ~~(a) The code enforcement board shall have the jurisdiction to hear and decide alleged violations of and may be issued violations of the following codes and ordinances of the Town of Eatonville:~~
- ~~(1) Florida Building Code;~~
- ~~(2) Occupational licenses;~~
- ~~(3) Land Development Code;~~
- ~~(4) Lot Clearing Code;~~
- ~~(5) Abandoned Vehicle Code;~~

~~(6) — Garbage, Trash and Weed Code;~~

~~(7) — Fire Code;~~

~~(8) — All other town adopted codes.~~

~~(b) — The jurisdiction of the code enforcement board shall not be exclusive. Nothing in this article shall be construed to prohibit the town from enforcing its codes and ordinances by any other means including, but not limited to, a summons, a notice to appear in county court, issuance of a citation, a civil action for injunctive relief, a stop work order, or demolition.~~

~~(c) — *Designation and authority of the code enforcement board.*~~

~~(1) — There shall be a code enforcement inspector whose responsibilities will be seeking violations of this article and to ensure compliance with the codes and ordinances of the town.~~

~~(2) — The code enforcement inspector shall be hired by the chief administrative officer of the town or their designee.~~

~~(d) — *Definitions.*~~

~~*Alterations* means any changes or modifications in construction or occupancy.~~

~~*Building* means any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind. A combination of materials to form a construction adapted to permanent or continuous occupancy for use for public, institutional, residence, business or storage purpose.~~

~~*Deterioration* means the condition or appearance of a building or parts thereof, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay of neglect, excessive use or lack of maintenance.~~

~~*Dwelling* means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants whether or not such building is occupied or vacant.~~

~~*Dwelling unit* means any room or group of rooms located within a dwelling and forming a single habitable unit for living, sleeping, cooking and eating whether or not such unit is occupied or vacant.~~

~~*Exposed to public review* means any premises, or parts thereof, or any building, or any part thereof which may be lawfully viewed by the public or any member thereof, from a sidewalk, street, alleyway, or from any adjoining or neighboring premises.~~

~~*Exterior of premises* means those portions of a building which are exposed to public view and the open spaces of any premises outside of any building erected thereon.~~

~~*Extermination* means the control and extermination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food, by poisoning, spraying, fumigating, trapping, or by any other recognized and legal elimination methods.~~

~~*Fire hazard* means anything or any act which increases or may cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by experts in preventing, suppressing, or extinguishing fire, or which may obstruct, delay or hinder or may~~

become the cause of an obstruction, a delay, a hazard or hindrance to the prevention, suppression or extinguishment of fire.

~~Garbage~~ is the animal, vegetable, fruit or other waste resulting from the handling, preparation, cooking and consumption of food.

~~Habitable room~~ means a space in a structure of living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility spaces, and similar areas are not considered habitable space.

~~Health officer~~ is the Director of the Health Department of Orange County Florida.

~~Infestation~~ is the existence in large numbers of insects, rodents or other pests so as to render unpleasant, unsafe or unsanitary.

~~Major violation~~ is a condition existing on a premises which is below minimum standards set forth in this article and which is dangerous to health, safety, or welfare of the occupants, passersby or persons in contiguous areas; or a serious of minor violations which when considered together present a hazardous or undesirable condition.

~~Minor violation~~ is a condition which is below the minimum standards set forth in this article but which is not serious enough to be considered a major violation.

~~Mixed occupancy~~ is any building containing one or more dwelling units or rooming units and also having a portion thereof devoted to non-dwelling uses.

~~Nuisance~~ is any one or combination of the following:

- ~~(1) Any public nuisance known as common law or in equity jurisprudence or as provided in statutes of the State of Florida or ordinances of the town.~~
- ~~(2) Any attractive nuisance which may prove detrimental to the health, safety, or welfare of children and others whether in a building, on the premises of a building or upon an unoccupied lot. This includes, but is not limited to: abandoned wells, shafts, basements, excavations, unused ice boxes, refrigerators, abandoned motor vehicles and any structurally unsound fences and structures; lumber, trash, fences, debris, or vegetation such as poison ivy, oak and sumac, which may prove a hazard for inquisitive persons. Abandoned buildings are attractive nuisances when they are unsecured or unsecurable and when by reason of abandonment or neglect they contain unsound walls or flooring, unsafe wiring, fire hazards, or other unsafe conditions may include such neglect of security that opportunities for criminal activity persist to the danger and detriment of the neighborhood.~~
- ~~(3) Physical or unsanitary conditions or conditions so lacking illumination or ventilation as to be dangerous to human life or detrimental to health of persons on or near the premises where the condition exists.~~
- ~~(4) Major or minor violations of this Code which cumulatively impact upon premises to the point whereby conditions endanger human life or substantially and detrimentally affect the safety or security of occupants, nearby occupants, or passersby.~~
- ~~(5) Whatever renders air, food or drink unwholesome or detrimental to the health of human being.~~
- ~~(6) Fire hazards.~~

~~*Operator* is any person who has charge, care or control of premises or a part thereof, whether with or without the knowledge or consent of the owner.~~

~~*Owner* is the holder of the title in fee simple and any person, group of persons, company, association or corporation in whose name tax bills on the property are submitted. It shall also mean any person who, alone or jointly or severally with others.~~

~~(1) Shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or~~

~~(2) Shall have charge, care or control of any dwelling or dwelling unit, as owner, executor, executrix, administrator, trustee, guardian of the estate of the owner, mortgagee or vendee in possession, or assignee of rents, lessee, or other person, firm, or corporation in control of a building; or their duly authorized agents. Any such person thus representing the actual owner shall be bound to comply with the provisions of this article, and of the rules and regulations adopted pursuant thereto, to the same extent as if he were the owner. It is his responsibility to notify the actual owner of the reported infractions of these regulations pertaining to the property which apply to the owner.~~

~~*Person* includes any individual, firm, corporation, association or partnership.~~

~~*Plumbing* is all of the following supplies, facilities and equipment; gas pipes, gas burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bath tubs, shower baths, installed clothes washing machines, catch basins, vents and any other similar supplied fixtures, together with all connections to water, sewer, or gas lines and water pipes and lines; sanitary drainage or storm drainage facilities, the venting system and the public or private water supply systems, within or adjacent to any building, structure or conveyance; also the practice and materials used in the installation, maintenance, extension or alteration of stormwater, liquid waste or sewerage, and water supply systems of any premises to their connection with any point of public disposal or other acceptance terminal.~~

~~*Premises* is a lot, plot of land including the buildings or structures thereon.~~

~~*Public areas* are unoccupied open space adjoining a building and on the same property that is maintained accessible to the public and free of encumbrances that might interfere with its use by the public.~~

~~*Refuse* is all prescribed and non-prescribed solid wastes (except body waste), including, but not limited to, garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.~~

~~*Repeat violation* means a violation of town codes, or town ordinance, rules, resolution, or administrative or agency order by a person whom the board has previously found to have committed the same violation within five years prior to the present violation.~~

~~*Ventilation* is the process of supplying and removing air by natural and mechanical means to or from any space.~~

~~*Violator* means a town property owner whether as natural person, business entity, government or political agency or subdivision, any combination thereof, or otherwise who owns real property wherein or where upon a violation is known to exist, or when the alleged violation involves a person's act or any other these things, or when any natural person, business entity, or governmental or political agency or subdivision actually commits a code violation. Likewise, the tenant of any~~

~~building structure, premises or part thereof, and any architect, building contractor, agent or other person who commits, participates in, assists in or maintains a violation may also be defined as such.~~

~~Washrooms are enclosed spaces containing one or more sinks, tubs, showers, or basins and which shall also include toilets, urinals, or fixtures serving similar purposes.~~

~~Water closet compartment is an enclosed space containing one or more toilets which may also contain one or more lavatories, urinals, and other plumbing fixtures.~~

~~Weathering is deterioration, decay or damage caused by exposure to the elements.~~

~~Yard is an open space at grade between a building or structure and the adjoining lot lines unoccupied and unobstructed by any portion of a building or structure from the ground upward.~~

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Code Inspector. Any agent or employee of the town whose duty it is to assure code compliance. Said agent or employee shall be designated by the Mayor.

Local Governing Body. The Town Council of the Town of Eatonville.

Local Governing Body Attorney. The Town Attorney.

Person. Any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, government agency, public subdivision, public officer, or any other entity whatsoever, or any combination of such, jointly or severally.

Recurring Violation. A violation previously cited with a notice of violation and then cured before being presented to the special magistrate for a hearing within five years prior to the current violation.

Repeat Violation. A violation of a provision of a code or ordinance by a person the special magistrate has previously found to have violated or who has admitted violating the same provision within five years prior to the current violation, notwithstanding the violations occur at different locations.

Respondent or Violator. A person responsible for the code violation, which includes the perpetrator and/or the owner of the real property upon which the violation occurred, who has been issued a notice of violation and/or has been ordered to correct a violation consistent with this article.

Special Magistrate. A person authorized to hold hearings and assess fines for the violation of Town codes and ordinances in accordance with Chapter 162, Florida Statutes.

Town. The Town of Eatonville.

Sec. 2-254. Enforcement procedures Establishment of Code Enforcement Special Magistrate.

~~(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various~~

~~codes and ordinances. The hearing officer shall not have the power to initiate such enforcement proceedings.~~

- ~~(b) Except as provided in subsections (e) and (f) below, if a violation of the codes or ordinance is found, the code inspector shall notify the violator and give him/her a reasonable time to correct the violation.~~

- ~~(c) The notice shall:~~

~~(1) Be in writing.~~

~~(2) Include a description of the real estate or address sufficient for identification.~~

~~(3) Specify the violation(s) by code citation and factual description and the remedial action required.~~

~~(4) Include a schedule as to the time allowed for completion of the required corrective action(s) necessary to bring the property or violation into compliance with the town.~~

~~(5) The written notice referred to above shall be considered to be adequately delivered by depositing the notice in the United States Post Office addressed to the owner at his last known address with postage pre paid thereon, certified mail, return receipt requested.~~

~~(6) Indicate that if the violation is not corrected within the time specified, a hearing will take place before the hearing officer at the time and place indicated on the notice.~~

~~(7) Unless provided otherwise in the Code the time given to comply with minor violations as defined by the Code shall not exceed 120 days, and the time given to comply with major violations as defined in this ordinance shall not exceed 45 days.~~

~~(8) Any violation not corrected in the time and manner specified in the notice pursuant to this section may be referred to the Town of Eatonville Hearing Officer created pursuant to this article. Major or cumulative minor violations which are deteriorating into hazardous or nuisance conditions may also be subject to proceedings under Article IV of the Minimum Standards Code which is supplementary to proceedings by the code enforcement hearing officer.~~

- ~~(d) Should the violation continue beyond the time specified for correction the code inspector shall notify the hearing officer and request a hearing. The code enforcement board shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed to said violators as provided in section 2-258. If notice by personal service or mail is not feasible, the hearing officer may opt to serve notice by publication as provided in section 2-259. If the violation is corrected and then recurs, or of the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the hearing officer even if the violation has been corrected prior to the code enforcement board and the notice shall so state.~~

- ~~(e) If the code inspector has reason to believe a violation, or the conditions causing a violation, presents a serious threat to the public health, safety, and welfare of if the violation is irreparable or irreversible in nature, the code enforcement inspector shall make a reasonable effort to notify the violator and may immediately notify the code enforcement board and request a hearing. If the violation creates an emergency situation where the town action is necessary to eliminate an imminent public nuisance and where notice is impractical or impossible.~~

- ~~(f) If a repeat violation is found, the code enforcement officer shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation shall notify the code enforcement board to schedule a hearing and shall provide notice pursuant to section 2-258 of the Town Code. The case may be presented to the code enforcement board even if the repeat violation has been corrected prior to the hearing before the code enforcement board, and the notice shall so state.~~
- (a) There is hereby established a code enforcement special magistrate of the Town under authority of Chapter 162, Fla. Stat. The special magistrate shall act as the hearing officer for violations of the codes and ordinances of the Town as provided in this article when violations of the codes and ordinances are not corrected following initial action by the Code Inspector.
- (b) The Town Council shall select and appoint the special magistrate to such office. The special magistrate may be a licensed Florida attorney or retired judge of the State of Florida.
- (c) The special magistrate may be replaced when the Town Council, at its sole discretion, so desires.

Sec. 2-255. Conduct of hearing Powers.

- ~~(a) Upon request by the code enforcement officer, or at such times as may be necessary the code enforcement board may call a hearing. Minutes shall be kept of all hearings by the code enforcement officer, and all meetings shall be open to the public. The code enforcement board shall provide clerical and administrative personnel as may be reasonably required.~~
- ~~(b) Upon scheduling of a hearing, the code enforcement board shall cause notice thereof to be furnished to the alleged violator by certified mail, return receipt requested, by personal service, or by publication. Said notice of hearing shall contain the name of the violator, date, time, and place of the hearing and shall state the nature of the violation and reference to the appropriate code or ordinance.~~
- ~~(c) At the hearing, the burden of proof shall be upon the code enforcement officer to show by a preponderance of the evidence that a violation does exist.~~
- ~~(d) Assuming proper notice of the hearing has been provided to the alleged violator is provided in subsection (b) above, a hearing may proceed in the absence of the alleged violator.~~
- ~~(e) All testimony shall be under oath and shall be recorded. The code enforcement board shall take testimony from the code enforcement officer and alleged violator and from such other witnesses as may be called by the respective sides.~~
- ~~(f) Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings.~~
- ~~(g) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the State of Florida.~~

- ~~(h) The code enforcement board or any attorney appointed to represent the code enforcement officer may inquire of any witness before the code enforcement board. The alleged violator, or his attorney and the attorney representing the code enforcement officer shall be permitted to inquire of any witness before the code enforcement board and shall be permitted to present brief opening and closing statements.~~
- ~~(i) At the conclusion of the hearing, the code enforcement board shall issue findings of fact, based on evidence in the record and conclusions of law and shall issue an order affording the proper relief consistent with the powers granted by Florida Statutes and by this article. The order shall be stated orally at the meeting and shall be reduced to writing and mailed to the alleged violator within ten days after the hearing. Findings shall be made by the code enforcement board. The order may include a notice that it must be complied with by a specific date, that a fine may be imposed and that under the conditions specified in sections 2-254 and 2-257, the cost of repairs may be included in addition to the fine if the order is not complied with by said date. The order may also include a notice that a repeat violation provision has been invoked pursuant to F.S. ch. 162, for which a fine may be reactivated with the necessity for a hearing if the same violation is repeated by the violator.~~
- ~~(j) A certified copy of an order shall be recorded in the public records of Orange County, Florida and shall constitute notice to any subsequent purchasers, successors in interest, and assigns if the violation concerns real property. The finds therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, and successors in interest and assigns.~~
- ~~(k) If any order is recorded in the public records pursuant to subsection (j) of this section and the order is complied with by the date specified in the order, the code enforcement officer shall issue an order acknowledging compliance.~~
- ~~(l) If the town prevails in prosecuting a case before the code enforcement board, it shall be entitled to recover all costs incurred in said prosecution.~~

The code enforcement special magistrate shall have the power to:

- (a) Adopt rules for the conduct of code enforcement violation hearings;
- (b) Subpoena alleged violators and witnesses to code enforcement violation hearings. Subpoenas may be served by the County Sheriff or the Town's Police Department;
- (c) Subpoena evidence to code enforcement violation hearings;
- (d) Take testimony under oath; and
- (e) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Sec. 2-256. Powers of the code enforcement board Enforcement procedures; Notice.

~~The code enforcement board shall have the power to:~~

- ~~(1) Adopt rules for the conduct of its hearings.~~

- ~~(2) Subpoena alleged violators and witnesses to its hearings, subpoenas may be served by the Eatonville Police Department.~~
- ~~(3) Subpoena records, surveys, plats and other documentary evidence, which subpoenas shall be served by the Eatonville Police Department.~~
- ~~(4) Take testimony under oath.~~
- ~~(5) Issue orders having the force and effect of laws, commanding whatever steps are necessary to bring a violation into compliance including, but not limited to, securing, repairing, vacating, and or demolition of structures containing conditions hazardous to the public health, safety and welfare pursuant to the Florida Building Code.~~
- ~~(6) Establish, levy, reduce or alter fines by no more than ten percent of the total amount of fines due to the Town of Eatonville, without first securing a resolution of the Town Council of the Town of Eatonville.~~
- ~~(7) Hearing appeals to any person affected by a notice issued in connection with enforcement of the Florida Building Code, providing that such person shall have filed a notice of appeal with the code enforcement board within 30 days of the administrative determination or act sought to be challenged, and providing that said notice of appeal shall explain the basis of the challenge to the administrative determination or act.~~
- (a) It shall be the duty of the Code Inspector to initiate enforcement proceedings of violations of the Town codes and ordinances. The special magistrate shall not have the power to initiate such enforcement proceedings.
- (b) Except as provided in divisions (c) and (d) of this section, if a violation of a particular code is found, the Code Inspector shall notify the violator and give a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the Code Inspector shall set a hearing before the special magistrate and notify the respondent of the hearing pursuant to § 162.12, Fla. Stat., or as such section may be amended. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the Code Inspector, the case may be presented to the special magistrate even if the violation has been corrected prior to the hearing and the notice shall so state.
- (c) If a repeat violation is found, the Code Inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The Code Inspector, upon notifying the violator of a repeat violation, shall set a hearing before the special magistrate and notify the respondent of the hearing pursuant to § 162.12, Fla. Stat., or as such section may be amended. The case may be presented to the special magistrate even if the violation has been corrected prior to the special magistrate hearing and the notice shall so state.
- (d) If the Code Inspector 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, the Code Inspector shall make a reasonable effort to notify the violator and may immediately set a hearing before the special magistrate.
- (e) If the owner of property that is subject to an enforcement proceeding before the special magistrate, or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

- (1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.
 - (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.
 - (3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
 - (4) File a notice with the Code Inspector of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.
 - (5) If the property is transferred before 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. Nothing herein shall prevent the Town from continuing to prosecute the pending code enforcement proceeding to its conclusion against either the previous owner and/or the new owner.
- (f) All notices required to be made as part of the Town's code enforcement process shall be made as provided in § 162.12, Fla. Stat., or as such section may be amended.

Sec. 2-257. ~~Fines and penalties; cost of repair; liens~~ Conduct of hearing.

- ~~(a) In the case of a first violation, the code enforcement officer may order the violator to pay a fine not to exceed \$250.00 for each day the violation continues past the date set by the code enforcement officers order of compliance.~~
- ~~(b) In cases where the same violation(s) has been committed by the same violator on more than one occasion and where the code enforcement officer has found such violation(s) did occur, the code enforcement officer may order a repeat violator penalty not to exceed \$500.00 per day for each day the repeat violation is found by the code enforcement officer to have occurred and a hearing shall not be necessary for issuance of the order imposing the fine.~~
- ~~(c) In determining the amount of any fine, the code enforcement officer 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; and~~
 - ~~(4) Any previous violations committed on this property.~~
- ~~(d) A certified copy of an order imposing a fine shall be recorded in the public records of Orange County, Florida and thereafter shall constitute a lien against the land on which the violations exists and upon any 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 police of the Town of Eatonville including levy against the personal property, but shall not~~

~~be deemed otherwise to be a court judgment except for enforcement purposes. A fine imposed pursuant to this article shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever comes first. The code enforcement board may authorize the town's attorney to foreclose on any such lien which remains unpaid more than three months from the filing thereof. No lien created pursuant to these provisions of this article may be foreclosed on real property which is a homestead under section 4, article X of the State Constitution.~~

- ~~(e) No lien provided by this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, which it incurs in the foreclosure. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers of valuable consideration without notice, unless a notice of lien pending is recorded.~~
- ~~(f) If the violation is a violation described in section 2-254(d), the code enforcement board shall notify the town which may make all reasonable repairs in order to bring the property into compliance, and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section.~~
- ~~(g) A fine imposed pursuant to this section may include all costs pursuant to subsection (f).~~
- ~~(h) The town may charge the violator for all costs incurred in recording and satisfying a valid lien.~~
- ~~(i) Appeal.~~
 - ~~(1) An aggrieved party, including the town council may appeal a final administrative order of the code enforcement board to the circuit court. Such an appeal shall not be a hearing do novo, but shall be limited to, appellate review of the record created before the code enforcement board. An appeal shall be filed within 30 days of the execution of the order to be appealed.~~
 - ~~(2) The scope of review shall be limited to the record made before the code enforcement board and not be trial de novo.~~
 - ~~(3) The code enforcement board shall by rule, establish reasonable charges for the preparation of the record to be paid by the appealing party.~~
- (a) Administrative procedures. Upon request of the Code Inspector, or at such other time as may be necessary, the special magistrate or Town Chief Administrative Officer, through clerical staff, may call a hearing. The special magistrate shall cause minutes to be kept of all hearings and all hearings and records shall be open to the public. The Town Council shall provide clerical and administrative personnel as may be reasonably required by the special magistrate for the proper performance of designated duties. The special magistrate may, at any hearing, set future hearing dates and may postpone or continue any matter before the special magistrate to a future date.
- (b) Representation. Each case before the special magistrate shall be presented either by the Town Attorney, by the Code Inspector or by the Town Chief Administrative Officer or designee. If the Town prevails in prosecuting a case it shall be entitled to recover all costs incurred in

prosecuting the case before the special magistrate and such costs may be included in the lien authorized by § 162.07(2), Fla. Stat. Any person accused of a violation may be represented by counsel at the hearing.

- (c) Order of procedure and rules of evidence. At any given hearing, the special magistrate shall first take testimony and receive evidence from the Town, and the Town shall have the burden of proving the existence of the alleged violation by the preponderance of the evidence. At the conclusion of the presentation of the evidence of the Town, the alleged violator may present a case and submit evidence. Formal rules of evidence shall not apply, but fundamental procedural due process shall be observed and shall govern the said proceedings. All testimony shall be under oath and recorded.
- (d) Findings and orders. At the conclusion of the hearing, the special magistrate shall make a finding of fact, based on the evidence of record, and conclusions of law, and shall issue an order affording such relief as may be consistent with the powers granted herein. The findings and order shall be presented in written form and shall be served personally or by certified mail/return receipt requested upon the violator. The order may include a notice that the order must be complied with by a specific date and that a fine may be imposed if the order is not complied with by said date as provided in § 162.09(1), Fla. Stat. The order may specify the amount of the fine to be imposed and the date on which the fine will commence if the violation is not corrected. If the Town prevails in prosecuting a case before the special magistrate, the cost of prosecution shall be included in the initial order and in any lien authorized under § 2-258 if not paid prior to recording of the lien. The cost of repairs, along with the fine, shall be included in any lien authorized under § 2-258 if the order is not complied with by said date. A certified copy of the initial order may be recorded in the public records of the county and shall constitute notice to all subsequent purchases, successors in interest, or as assigned, if the violation concerns with real property and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchases, successors in interests, 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 magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance provided by the general laws of Florida applicable to code enforcement.

Sec. 2-258. Notices Administrative fines; Cost of repairs; Liens; Appeals.

- ~~(a) All notices required by this article shall be provided to the alleged violator by certified mail, return receipt requested; or hand delivery by the towns' police department or other law enforcement officer, code enforcement officer, or other person designated by town council; or by leaving the notice at the alleged violators usual place of residence with any person residing therein who is above 15 years of age and informing such person on the contents of the notice.~~
- ~~(b) In addition to providing notice as set forth in subsection (a), at the option and direction of the town attorney, notice may also be served by publication as follows:~~

- ~~(1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the town.~~
- ~~(2) The newspaper shall meet all requirements as are prescribed under F.S. chapter 50, for legal and official advertisements.~~
- ~~(3) Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.~~
- ~~(4) Notice by publication may run concurrently with or may follow an attempt or attempts to provide notice by hand delivery or by mail as required by subsection (a).~~
- ~~(5) Evidence that an attempt has been made to hand deliver or mail notice as provided in this subsection, shall be prima facie proof that the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.~~
- ~~(c) In lieu of publication as described in subsection (b), such notice may be posted for at least ten days at the property upon which the violation is alleged to exist and at the office of the town clerk.~~
- (a) The special magistrate, may either in the initial order or upon notification by the Code Inspector that an order has not been complied with or finding that a repeat violation has been committed, order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the special magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the Code Inspector. In addition, if the special magistrate finds that the violation is a violation described in § 2-256(d), the special magistrate shall notify the Town of such findings. The Town shall then have the right and power to 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 the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the Town to make further repairs or to maintain the property and does not create any liability against the Town for any damages to the property if such repairs were completed in good faith. If a finding of a violation or repeat violation has been made as provided by this part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, the special magistrate finds a violation to be irreparable or irreversible in nature, the special magistrate may order the violator to pay a fine as specified in subsection (b) of this section.
- (b) Fines.
 - (1) A fine imposed pursuant to this section shall not exceed \$250 per day per each individual violation cited for a first violation and shall not exceed \$500 per day per each violation cited for a repeat violation, and in addition, may include all cost of repairs pursuant to this subsection and cost of prosecution provided in § 2-257(d). However, if the special magistrate finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.
 - (2) In determining the amount of the fine, if any, the 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) The special magistrate shall be authorized to consider aggravating and mitigating factors when determining the amount of fines and administrative costs associated with code violations. Such factors include, but are in no way limited to, the following:
- (A) Mitigating factors.
 - 1. The violation was caused by circumstances beyond the control of the violator, such as a weather event;
 - 2. The violation has a limited impact on the surrounding community due to its nature or location;
 - 3. The amount the fine has accrued to in comparison to the nature of the violation and the value of the property in which the violation has occurred;
 - 4. The violator has violated the Code, at most, only once in the last five years and said violation did not pose a threat to the community;
 - 5. The violator does not have the ability to address the violations due to health issues; inability to enter the property; lack of legal authority; and/or financial reasons;
 - 6. The length of time it took for the violator to bring the property into compliance; or
 - 7. The property has a homestead exemption.
 - (B) Aggravating factors.
 - 1. The violator is a repeat offender of the same provision of the Code;
 - 2. The violator has created an unsafe condition that threatens public health, safety, and/or welfare;
 - 3. The violation has a high impact on the surrounding community;
 - 4. The length of time it took for the violator to bring the property into compliance; or
 - 5. The subsequent purchaser had or should have had actual and/or constructive knowledge of the fine(s) and/or lien(s).
 - (C) The special magistrate may reconsider and reduce a fine imposed pursuant to this section. If a violator desires to request reconsideration of a fine, the following procedures must be followed:
 - 1. Any code violation for which an order has been rendered, must be in compliance;
 - 2. A written request must be made to the Code Inspector for an inspection to verify compliance of the violation subject to the order;

3. After the Code Inspector has certified in writing that the violation for which an order has been rendered is in compliance, the violator must, within 20 days of such certification by the Code Inspector, request in writing to the Code Inspector a reconsideration of the fine imposed by the special magistrate; and
4. The special magistrate may refer to the factors outlined in subsections (b)(2) and (b)(3) of this section in reconsidering whether a fine previously imposed should be reduced. If any fine imposed pursuant to this article has not been formally imposed and recorded as a lien, the special magistrate's decision on a request for reconsideration shall be deemed final. If any fine imposed pursuant to this article has been formally imposed and recorded as a lien in the public records of Orange County, the special magistrate shall issue a recommendation to the Town Council as to whether the fine formally imposed as a lien should be reduced. The Town Council is not bound by the recommendation of the special magistrate and shall have the sole authority to determine for itself whether a fine formally imposed as a lien should be reduced.
- (D) A certified copy of an order formally imposing an accruing fine, or an accruing fine plus repair cost and costs of prosecution as a lien may be recorded in the public records, and thereafter, said 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. Regardless of the formal imposition and recording of a lien, any fine imposed pursuant to § 2-257(d) shall continue to accrue until compliance of the violation has been acknowledged. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgement 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 court judgement except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgement is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the Town, and the Town may execute a satisfaction or release of lien entered pursuant to this section. After three months from the filing of any such lien which remains unpaid, the special magistrate may authorize the Town Attorney to foreclose on the lien. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead.
- (c) Appeals. An aggrieved party, including the Town and/or Town Council, may appeal any final administrative order of the special magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special magistrate. An appeal shall be filed within 30 days of the rendition of the order to be appealed.

Sec. 2-259. Code enforcement citations.

- (a) This article is adopted pursuant to F.S. chapter 162, part II, as a supplemental method of enforcing certain codes and ordinances of the Town of Eatonville, and is enacted to protect the public health, welfare and safety of the citizens of said Town.

- (b) Nothing in this article shall be construed to prohibit the town from enforcing its codes and ordinances by any other means including, but not limited to, a summons, a notice to appear in the county court, an arrest, an action before the ~~code enforcement board~~ special magistrate, a civil action for injunctive relief, a stop work order or demolition.
