

ORDINANCE NO. 2022-015

AN ORDINANCE OF THE TOWN OF HOWEY-IN-THE-HILLS, FLORIDA, PERTAINING TO CODE ENFORCEMENT; REVISING CHAPTER 8 OF THE TOWN'S CODE OF ORDINANCES TO AUTHORIZE THE TOWN TO USE A CODE ENFORCEMENT CITATION PROGRAM; DESIGNATING CODE ENFORCEMENT OFFICIALS; PROVIDING FOR PROCEDURES, INVESTIGATION OF VIOLATIONS, AND THE ISSUANCE OF CITATIONS; PROVIDING FOR THE PAYMENT OF FINES, COURT HEARINGS AND ADOPTING A SCHEDULE OF CIVIL PENALTIES AND FINES; PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Whereas, Chapter 8 of the Town of Howey-in-the-Hill's Code of Ordinances provides for the use of a code enforcement board or special magistrate to hold hearings and assess fines against violators of the Town's codes and ordinances.

Whereas, Part II of Chapter 162 of the Florida Statutes provides the Town Council with the ability to use additional and supplemental means of enforcing the Town's codes and ordinances, such as issuing citations.

Whereas, Subsection 162.21(5) of the Florida Statutes provides that the Town may enact an ordinance establishing procedures for issuing citations, including adopting a schedule of violations and penalties to be assessed by code enforcement officers.

Whereas, the Town Council now desires to amend the Chapter 8 of the Town's Code of Ordinances to provide the Town with the ability to issue citations to violators of the Town's codes and ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF HOWEY-IN-THE-HILLS, FLORIDA:

Section 1. Recitals. The recitals set forth above are true and correct and constitute the legislative findings of the Town Council.

Section 2. Amendments to the Town of Howey-in-the-Hills' Code of Ordinances. Chapter 8 of the Town of Howey-in-the-Hills' Code of Ordinances is amended as shown by the addition of the underlined language and the deletion of the strike-through language as follows:

Chapter 8 - CODE ENFORCEMENT ~~BOARD AND SPECIAL MASTER PROCEDURE~~

Sec. 8-1. - Legislative findings.

The Town Council hereby makes the following legislative findings and declares them to be, in part, the legislative, legal, and public-policy basis for the enactment of this chapter:

(a) Pursuant to Chapter 162 of the Florida Statutes, the Town Council is empowered to create or abolish by ordinance local government code enforcement boards or special magistrates which have the authority to hold hearings and assess fines against violators of the Town's codes and ordinances.

(b) Additionally, pursuant to Chapter 162 of the Florida Statutes, the Town Council is empowered to use additional and supplemental means of enforcing Town codes and ordinances, such as issuing citations.

(c) It is the intent of this chapter to promote, protect and improve the health, safety and welfare of the citizens of the Town by (i) authorizing the creation of an Administrative Board and/or Special ~~Master~~ Magistrate with the authority to impose administrative fines and other non-criminal penalties, and/or (ii) enforce the Town's various codes and ordinances by citation 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 continues to exist, including but not limited to occupational license, fire, building, zoning and sign codes.

(c) The provisions of this chapter do not prohibit any alleged violation of the Town's ordinances or various codes from also being enforced in any court of competent jurisdiction.

Sec. 8-2. - Definitions.

In this chapter, the following terms shall have the meanings indicated:

Board Attorney means the Legal Counselor who represents the ~~board~~ Code Enforcement Board.

Code Enforcement Officer means any designated employee or agent of the Town whose duty it is to enforce codes and ordinances enacted by the Town.

Town Attorney means the Legal Counselor for the Town, including any assistant or designee.

Code Enforcement Board means the Town of Howey-in-the-Hills Code Enforcement Board or its Special ~~Master~~ Magistrate appointed by the Mayor and Town Council. Both have the same duties and functions.

Mayor means the Mayor of the Town of Howey-in-the-Hills or their designee.

Repeat violation means a violation of a provision of a code or ordinance by a person who has been previously found through a board or any other quasi-judicial or judicial process, to have

violated or who has admitted violating the same provision within five (5) years prior to the violation, notwithstanding the violations occur at different locations.

Various codes mean occupational license, fire, building, zoning, sign, and other similar technical codes.

ARTICLE I. CODE ENFORCEMENT BOARD AND SPECIAL MAGISTRATE

Sec. 8-3. - Code Enforcement Board created; composition; appointment; term of office; residency requirement; removal and vacancies; organization.

(a) The Town Council may appoint a five-member Code Enforcement Board (hereinafter the "Board"). All members shall be residents of the Town and shall serve without compensation, but may be reimbursed for such travel, mileage, and per-diem expenses as may be authorized by the Town Council or as otherwise provided by law. The Town Council may appoint up to two alternate members to serve on the Board in the absence of board members.

(b) Appointments to the Board shall be made on the basis of experience or interest in the subject matter jurisdiction of the Board, in the sole discretion of the Town Council. The membership shall whenever possible, include:

- (1) An architect;
- (2) A businessperson;
- (3) An engineer;
- (4) A general contractor;
- (5) A subcontractor;
- (6) A realtor.

(c) The initial appointments to the Board shall be as follows:

- (1) Two members shall be appointed for a term of one year each.
- (2) Two members shall be appointed for a term of two years each.
- (3) One member shall be appointed for a term of three years.

Thereafter, any appointment shall be made for a term of three years each. A member may be reappointed by the Town Council. Appointments to fill any vacancy on the Board shall be for the remainder of the unexpired term of office.

(d) If any member of the Board fails to attend two of three successive meetings without cause and without prior approval of the chairperson of the Board, the

- 111 Board shall declare that member's office vacant, and the Town Council shall
112 promptly fill such vacancy.
- 113 (e) Members of the Board may be suspended and removed from office for cause by
114 the Town Council.
- 115 (f) At the first meeting of the Board, the members thereof shall elect a chairperson
116 and a vice-chairperson, who shall both be voting members, from among its
117 members. The presence of three or more members shall constitute a quorum of the
118 Board necessary to take action.
- 119 (g) Minutes shall be maintained of all meetings and a record shall be maintained of
120 all evidence considered by the Board at its hearings, and all meetings, hearings
121 and proceedings shall be open to the public.
- 122 (h) The Town Council shall provide clerical and administrative support to the Board
123 as may be reasonably required by the Board for the proper performance of its
124 duties.

125 **Sec. 8-4. - Special ~~Master~~ Magistrate.**

- 126 (a) A Special ~~Master~~ Magistrate may be appointed as needed by the Town Council,
127 and shall have all the duties and responsibilities and shall carry out the same
128 functions and procedures as the Board.
- 129 (1) The Special ~~Master~~ Magistrate shall serve at a rate of compensation to be
130 determined by the Town Council.
- 131 (2) If the Special ~~Master~~ Magistrate fails to attend two of three successive
132 hearings without cause, the position shall be considered vacant, and the
133 Town Council shall promptly fill such vacancy.
- 134 (3) The Special ~~Master~~ Magistrate may be suspended and removed from
135 office for cause by the Town Council.
- 136 (b) Regular hearings before the Special ~~Master~~ Magistrate may be held as often as
137 necessary.
- 138 (c) Minutes shall be maintained of all hearings and a record shall be maintained of all
139 evidence considered by the Special ~~Master~~ Magistrate, and all hearings shall be
140 open to the public.
- 141 (d) The Town Council shall provide clerical and administrative support to the Special
142 ~~Master~~ Magistrate as may be reasonably required by the Special ~~Master~~
143 Magistrate for the proper performance of his or her duties.

144 **Sec. 8-5. - Jurisdiction.**

145 The Board and Special ~~Master~~ Magistrate shall have the jurisdiction to hear and decide
146 alleged violations of all various codes and ordinances of the Town of Howey-in-the-Hills
147 including all amendments thereto.

148 **Sec. 8-6. - Legal counsel.**

149 (a) An attorney may be appointed by the Town Council in accordance with applicable
150 law and ordinances to be counsel to the Board.

151 (b) The Town's Attorney shall represent the Town, when necessary.

152 (c) In no event may the Town's Attorney serve in both capacities.

153 **Sec. 8-7. - Powers of the Code Enforcement Board and Special ~~Master~~ Magistrate.**

154 The Code Enforcement Board and Special ~~Master~~ Magistrate shall have the power to:

155 (a) Adopt rules for the conduct of their hearings.

156 (b) Subpoena alleged violators and witnesses to their hearings, which subpoenas shall
157 be served by the sheriff's office.

158 (c) Subpoena records, surveys, plats and other documentary evidence to its hearings,
159 which subpoenas shall be served by the sheriff's office.

160 (d) Take testimony under oath.

161 (e) Issue orders having the force and effect of law, commanding whatever steps are
162 necessary to bring a violation into compliance.

163 (f) Establish and levy fines.

164 **Sec. 8-8. - Enforcement procedures.**

165 (a) It shall be the duty of the Code Enforcement Officer to initiate enforcement
166 proceedings of the various codes and ordinances. No member of the Board or
167 Special ~~Master~~ Magistrate shall have the power to initiate such enforcement
168 proceedings.

169 (b) Except as provided in subsections (c) and (d) below, if a violation of the codes or
170 ordinances is found, the Code Enforcement Officer shall first notify the violator
171 and give him or her a reasonable time to correct the violation. Should the
172 violation continue beyond the time specified for correction, the Code
173 Enforcement Officer shall notify the Board or Special ~~Master~~ Magistrate and
174 request a hearing. The Board or Special ~~Master~~ Magistrate, through its clerical
175 staff, shall schedule a hearing, and written notice of such hearing shall be hand-
176 delivered or mailed as provided by this chapter to said violator. At the option of
177 the Board or Special ~~Master~~ Magistrate, notice may additionally be served by

publication or posting as provided pursuant to section 8-16 of this chapter. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the Code Enforcement Officer, the case may be presented to the Board or Special ~~Master~~ Magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state.

(c) If the Code Enforcement Officer has reason to believe a violation or the condition causing 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 Enforcement Officer shall make a reasonable effort to notify the violator and may immediately notify the Board or Special ~~Master~~ Magistrate and request a hearing.

(d) 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 Board or Special ~~Master~~ Magistrate and request a hearing. The Board or Special ~~Master~~ Magistrate, through their clerical staff, shall schedule a hearing and shall provide notice pursuant to section 8-16 of this chapter. The case may be presented to the Board or Special ~~Master~~ Magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state.

(e) If the owner of property which is subject to an enforcement proceeding before an enforcement Board, Special ~~Master~~ 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 Enforcement Official 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.

A failure to make the disclosures described in subsections (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. 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.

Sec. 8-9. - Hearing procedures.

- (a) Upon request of the Code Enforcement Officer or at such other times as may be necessary, the chairman of the Board may call a hearing of the Board, or the Special ~~Master~~ Magistrate may call a hearing. A hearing may also be called by written notice signed by at least two members of the Board.
- (b) Upon scheduling of a hearing, the Board or the Special ~~Master~~ Magistrate shall cause notice therefor to be furnished to the alleged violator by certified mail, return-receipt requested, by publication, or by personal service as further described in section 8-16 of this chapter. Said notice of hearing shall contain the date, time and place of the hearing and shall include the Code Enforcement Officer's sworn statement setting forth the nature of the violation and reference to the appropriate code or ordinance.
- (c) Assuming proper notice of the hearing has been provided to the alleged violator as provided in subsection (b) above, a hearing may proceed in the absence of the alleged violator.
- (d) 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 exists.
- (e) All testimony shall be under oath and shall be recorded. The Board or Special ~~Master~~ Magistrate shall take testimony from the Code Enforcement Officer and alleged violator and from such other witnesses as may be called by the respective parties.
- (f) Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern said 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) Any member of the Board or the Special ~~Master~~ Magistrate, or the attorney representing the Board or Special ~~Master~~ Magistrate, may inquire of any witness before the Board or Special ~~Master~~ Magistrate. The alleged violator, or his attorney, and the Code Enforcement Officer shall be permitted to inquire of any witness before the Board or Special ~~Master~~ Magistrate and shall be permitted to present brief opening and closing statements.
- (i) At the conclusion of the hearing, the Board or the Special ~~Master~~ Magistrate shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted by Chapter 162, Florida Statutes, and this chapter. In a Board hearing, the finding shall be by motion approved by a majority of those members present and voting; except that at least three members of the Board must vote in order for the action to

256 be official. The order may include a notice that it must be complied with by a
257 specified date and that a fine may be imposed and, under the conditions specified
258 in section 8-10 of this chapter, the cost of repairs may be included along with the
259 fine if the order is not complied with by said date. The order shall be reduced to
260 writing and mailed to the alleged violator within 15 working days after the
261 hearing. A certified copy of such order may be recorded in the public records of
262 the county and shall constitute notice to any subsequent purchasers, successors in
263 interest, or assigns if the violation concerns real property, and the findings therein
264 shall be binding upon the violator and, if the violation concerns real property, any
265 subsequent purchasers, successors in interest, or assigns. If an order is recorded in
266 the public records pursuant to this subsection and the order is complied with by
267 the date specified in the order, the Board shall issue an order acknowledging
268 compliance that shall be recorded in the public records. A hearing is not required
269 to issue such an order acknowledging compliance.

- 270 (j) Each case before the Board or the Special ~~Master~~ Magistrate may be presented by
271 the Code Enforcement Officer or a member of the Town's administrative staff. If
272 the Town prevails in prosecuting a case before the Board, the Town shall be
273 entitled to recover all costs incurred in prosecuting the case before the Board or
274 Special ~~Master~~ Magistrate, ~~the Town shall be entitled to recover all costs incurred~~
275 ~~in prosecuting the case before the Board or Special Master~~, and such costs may be
276 included in the lien authorized by section 8-13.

277 **Sec. 8-10. - Fine authorized.**

278 The Board, upon notification by the Code Enforcement Officer, through the Code
279 Enforcement Manager, that a previous order of the Board has not been complied with by the set
280 time, or upon finding that a repeat violation has been committed, may order the violator to pay a
281 fine in an amount specified in section 8-11 for each day the violation continues past the date set
282 by the Board for compliance or, in the case of a repeat violation continues beginning with the
283 date the repeat violation is found to have occurred by the Code Enforcement Officer. In addition,
284 if the violation is a violation described in F.S. § 162.06(4), the Board shall notify the Town
285 Council, which may make all reasonable repairs required to bring the property into compliance
286 and charge the violator with the reasonable cost of the repairs along with the fine. If a finding of
287 a violation or a repeat violation has been made, a hearing shall not be necessary for issuance of
288 the order imposing the fine. If after due notice and hearing the Board finds a violation to be
289 irreparable or irreversible in nature, it may order the violator to pay a fine as specified in section
290 8-11.

291 **Sec. 8-11. - Amount of fine.**

292 A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first
293 violation and shall not exceed \$500.00 per day for a repeat violation, and, in addition, may
294 include all costs incurred by the Town to enforce its code and all repairs pursuant to section 8-10.
295 However, if the Board finds the violation to be irreparable or irreversible in nature, it may
296 impose a fine not to exceed \$5,000.00 per violation.

Sec. 8-12. - Determination of fine amount.

(a) In determining the amount of the fine, if any, the Board shall consider the following factors:

(1) The gravity of the violation;

(2) Any actions taken by the violator to correct the violation; and

(3) Any previous violations committed by the violator.

(b) The Board may reduce a fine imposed pursuant to this chapter.

Sec. 8-13. - Recording of fine, lien.

A certified copy of an order imposing a fine/lien may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator. The Board may petition the Circuit Court for enforcement of the order in the same manner as a court judgment by the sheriffs of this state, including levy against the person's property; but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this chapter shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the Town Council, and the Town Council may execute a satisfaction or release of lien entered pursuant to this section. After three months from the filing of any such lien that remains unpaid, the Board may authorize the Town Attorney to foreclose on the lien. No lien created pursuant to the provisions of this section may be foreclosed on real property that is a homestead under Fla. Const., art. X, § 4.

Sec. 8-14. - Duration of lien.

No lien provided by this chapter shall continue for a longer period than 20 years after the certified copy of an order imposing a fine/lien 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 incurred in the foreclosure. The Town Council shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice unless a notice of lis pendens is recorded.

Sec. 8-15. - Appeals.

(a) An aggrieved party, including the Town Council, may appeal a final administrative order of the Board or Special ~~Master~~ Magistrate to the circuit court. Any such appeal shall be filed within 30 days of the execution of the order to be appealed.

- (b) Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Board or Special ~~Master~~ Magistrate.

Sec. 8-16. - Notice requirements.

- (a) All notices required by this chapter shall be provided to the alleged violator by certified mail, return receipt requested, or by hand-delivery by the Town's law enforcement agency, Code Enforcement Officer, or other person designated by the Town Council, or by leaving the notice at the violator's usual place of residence with any person residing there who is above 15 years of age and informing such person of the contents of the notice.
- (b) In addition to providing notices as set forth in subsection (a), notice may also be served by publication or posting, 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 county. The newspaper shall meet such requirements as are prescribed under Chapter 50 of the Florida Statutes for legal and official advertisements.
- (2) Proof of publication shall be made as provided in sections 50.041 and 50.051 of the Florida Statutes.
- (3) In lieu of publication as described in subsection (b)(1) such notice may be posted for at least ten days in at least 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 Town hall.
- (c) 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.
- (d) 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 (a) of this section.
- (e) Evidence that an attempt has been made to hand-deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection (b), shall be sufficient to show that the notice requirements of this section have been met, without regard to whether the alleged violator actually received such notice.

Sec. 8-17. – Reserved

Sec. 8-18. - Conflict of interest provisions.

The following conflict of interest provisions shall apply to the members of the Board and to the Special ~~Master~~ Magistrate; failure on the part of a Board member or the Special ~~Master~~ Magistrate to comply with the provisions of this section shall constitute grounds for removal by the Town Council:

- (a) Upon appointment, each member of the Board and the Special ~~Master~~ Magistrate shall comply with the disclosure requirements imposed by Florida law; including sections 112.313 and 112.3145, of the Florida Statutes.
- (b) Additionally, each member of the Board and each Special ~~Master~~ Magistrate shall comply with the voting requirements imposed by Florida law; including sections 286.012 and 112.3143, of the Florida Statutes.
- (c) For a period of one year from the date of termination of office as a member of the Board or as Special ~~Master~~ Magistrate, such person is hereby expressly prohibited from acting as agent or attorney in any proceedings, petition or other matter before the Board or Special ~~Master~~ Magistrate.
- (d) No person who is or may become a party to a hearing before the Board or Special ~~Master~~ Magistrate shall communicate ex parte with any member of the Board or the Special ~~Master~~ Magistrate concerning that violation. This restriction shall extend to any person appearing or interceding on behalf of a party, whether or not such said person may have a direct personal or financial interest in the property subject of the alleged violation.
- (e) Nor shall any member of the Board or Special ~~Master~~ Magistrate communicate ex parte on his own volition with any party, representative of a party, or interceding person concerning an alleged violation; however, a member of the Board or the Special ~~Master~~ Magistrate may consider a request regarding the scheduling or continuance of hearings when such request is made in writing.

ARTICLE II. CODE ENFORCEMENT CITATION PROGRAM

Sec. 8-25. - Authorization of the code enforcement citation program.

The Town hereby creates a supplemental and additional method of enforcing its codes and ordinances by the issuance of citations for violation of various codes and ordinances. Nothing contained herein shall prohibit the Town's enforcement of its codes or ordinances by any other means.

Sec. 8-26. – Designation of code enforcement officers.

- (a) The Mayor is hereby authorized to designate agents and certain employees as code enforcement officers. Code enforcement officers so designated shall have the powers and limitations prescribed herein and by statute.

- (b) The training and qualifications of the code enforcement officers shall be established by the Mayor.

Sec. 8-27. – Applicable codes and ordinances.

Each of the various codes and ordinances of the Town may be enforced pursuant to the supplemental code enforcement citation procedures contained in this article. The various codes and ordinances shall include such codes and ordinances as they may be from time-to-time amended, renumbered, codified or recodified including codes and ordinances enacted subsequent to the adoption of this Article.

Sec. 8-28. - Procedures; investigation of violations; issuance of citations.

- (a) A code enforcement officer is authorized to issue a citation to any person for violation of any town code or ordinance when, based upon personal investigation, the code enforcement officer has reasonable cause to believe that a violation has occurred. The word “person” includes individuals, sole proprietorships, partnerships, companies, corporations, and all other business entities of all kinds.
- (b) Except as provided by subsection (c) below, the code enforcement officer shall provide notice to the person that the person has committed a violation of such code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period to correct the violation shall not exceed thirty (30) days.
- (c) 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 if the violation is irreparable or irreversible, a code enforcement officer is not required to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation.
- (d) Written warning notices, if applicable, and citations shall be provided to the alleged violator by hand delivery by the code enforcement officer. In the absence of the alleged violator, issuance of a written warning notice or citation may be accomplished by leaving a copy at the alleged violator’s residence with any person residing in it who is above 15 years of age and informing the person of the contents, or by registered or certified mail, return receipt requested.
- (e) Issuance of a written warning notice or citation to a business may be accomplished by leaving a copy at the business during regular business hours with any employee and informing the employee of the contents, or by registered or certified mail, return receipt requested. Each employee of the business shall be deemed to be an agent of the business for service of warning notices and citations.
- (f) If upon personal investigation the code enforcement officer finds that the violation has not been corrected within the specified time period, a code

enforcement officer may issue a citation for a civil infraction to the person accused of committing the violation.

- (g) A citation shall include but not be limited to the following:
- (1) Date and time of issuance;
 - (2) Name of the code enforcement officer and jurisdiction;
 - (3) Name and address of the violator;
 - (4) Code section that has been violated;
 - (5) Brief description of the nature of the violation, including location, date and time of violation;
 - (6) Amount of the applicable civil penalty;
 - (7) Procedure for the person to follow to pay the civil penalty, or to contest the citation;
 - (8) Notice that if the person fails to pay the civil penalty within the time allowed, and fails to appear in court (if assigned to county court), or fails to request an administrative hearing within ten (10) calendar days of service (if the case is assigned to a special magistrate), then the person shall be deemed to have waived his or her rights to contest the citation and that, in such case, judgment may be entered up to the maximum civil penalty; and
 - (9) Notice that the person may be liable for reasonable costs of the hearing should the violator be found guilty of the violation.
- (h) Each violation of a Town code or ordinance is a separate civil infraction. Each day that such violation continues shall be deemed to constitute a separate civil infraction.
- (i) The maximum civil penalty or fine for each violation shall not exceed five hundred dollars (\$500.00).
- (j) After issuing a citation to an alleged violator, the code enforcement officer shall:
- (1) Provide the person cited with 1 copy;
 - (2) Retain 1 copy in the code enforcement officer's department or division file; and
 - (3) Deposit the original citation and 1 copy of the citation with the Lake County Clerk of Court.
- (k) If the person cited refuses to sign the citation, the code enforcement officer shall write the words "refused" or "refused to sign" in the space provided for the person's signature. The code enforcement officer shall then leave a copy of the citation with the person cited, if possible, and shall notify the Town's law enforcement and request filing of the necessary reports alleging a violation of Subsection 162.21(6) of the Florida Statutes, which provides that a person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

- 493
- 494 (l) Each person issued a citation shall have the following options: (i) to correct the
- 495 violation and pay the civil penalty in the manner indicated on the citation, if not
- 496 timely corrected; or (ii) Appear on the designated court date and contest the
- 497 citation before a Lake County judge. Failure to appear in county court on the
- 498 designated court date shall be deemed a waiver of the rights of the person to
- 499 contest the citation and may result in the imposition of a fine against the violator
- 500 for an amount up to the maximum civil penalty.
- 501

502 **Sec. 8-29. - Payment of fines; court hearings.**

- 503 (a) If the person elects not to contest the citation, the person shall pay in full the
- 504 applicable civil penalty within 14 days after issuance of the citation.
- 505
- 506 (b) If the person elects to pay the civil penalty the person shall be deemed to have
- 507 admitted the infraction and waived the right to a hearing.
- 508
- 509 (c) If the person cited fails to pay the civil penalty by the 14th day after issuance of
- 510 the citation or fails to request a court hearing within the time prescribed, the
- 511 person shall have waived any right to contest the citation and a judgment shall be
- 512 entered against the person cited in an amount up to the maximum civil penalty,
- 513 which shall not exceed \$500.00 per citation.
- 514
- 515 (d) If the person elects to contest the citation, the person shall appear in court before a
- 516 county court judge within 21 days of issuance of the citation to request a hearing
- 517 date.
- 518
- 519 (e) A county judge, after a hearing on the citation, shall make a determination
- 520 whether or not a violation of this article has been committed. If a violation is
- 521 found to have occurred, the county judge may impose a civil penalty up to the
- 522 maximum civil penalty in an amount not to exceed \$500.00 per citation, plus all
- 523 applicable court costs.
- 524
- 525 (f) The judge may provide for the civil penalty to be paid within such time as the
- 526 judge determines to be appropriate. If the person found to be in violation fails to
- 527 pay the fine within the time provided, a civil judgment shall be entered against
- 528 that person in the amount up to the maximum civil penalty, not to exceed \$500.00
- 529 per citation.
- 530
- 531 (g) Should the person cited schedule a hearing as provided for herein, and thereafter
- 532 fail to appear at such hearing, the person shall be deemed to have waived the right
- 533 to contest the citation and a civil judgment shall be entered against the person in
- 534 an amount up to the maximum civil penalty; provided, however, that the court
- 535 shall have the discretion to continue or reschedule any hearing when it determines
- 536 that doing so will further the interest of justice. In such an event, the clerk shall

notify the code enforcement officer and the person cited of the date and time of the new hearing.

Sec. 8-30. – Procedures for payment of civil penalty.

Payment of any civil penalty and applicable court costs imposed by civil judgment or county judge shall be made to the Clerk of the Court for Lake County. Thereafter, the clerk of the court shall remit the remaining balance to the Town. Once a judgment has been satisfied and all violations of the code or ordinance are brought into compliance, the necessary satisfaction of judgment shall be prepared by the code enforcement department for the Town and recorded in the Official Records of Lake County.

Sec. 8-31. - Violations and penalties.

Violations of the Town's codes or ordinances and the applicable civil penalties shall be classified as follows:

<u>Violation</u> <u>Classification</u>	<u>First</u> <u>Offense</u>	<u>Second (repeat)</u> <u>Offense</u>	<u>Third (repeat)</u> <u>Offense</u>
<u>Class I</u> <u>Property Maintenance</u>	<u>\$50.00</u>	<u>\$100.00</u>	<u>\$150.00</u>
<u>Class II</u> <u>Permits</u>	<u>\$100.00</u>	<u>\$200.00</u>	<u>\$300.00</u>
<u>Class III</u> <u>Environment</u>	<u>\$150.00</u>	<u>\$300.00</u>	<u>\$450.00</u>
<u>Class IV</u> <u>Life & Fire Safety</u>	<u>\$200.00</u>	<u>\$350.00</u>	<u>\$500.00</u>

Section 3. Severability. The provisions of this Ordinance are declared to be separable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Codification. The provisions in Section 2 of this Ordinance shall become and be made a part of the Town's Code of Ordinances.

Section 5. Effective Date. This Ordinance takes effect immediately upon final adoption by the Town Council.

PASSED AND ORDAINED on _____, 2022, by the Town Council of the Town of Howey-in-the-Hills, Florida.

Martha MacFarlane, Mayor

ATTEST:

APPROVED AS TO FORM AND LEGALITY
for use and reliance by the Town of Howey-in-the-Hills, Florida, only.

John Brock, Town Clerk

Thomas J. Wilkes, Town Attorney

First Reading held _____, 2022

Second Reading, Public Hearing and Adoption held _____, 2022

Advertised _____, 2022