

ORDINANCE NO. 2024-17

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING CHAPTER 14 “CODE ENFORCEMENT” OF ITS CODE OF ORDINANCES BY ADOPTING ARTICLE I “IN GENERAL” TO INCLUDE EXISTING SECTIONS 14-1 THROUGH 14-4, AND BY ADOPTING ARTICLE II “CIVIL CITATION PROCEDURES” TO PROVIDE CITATION PROCEDURES; PROVIDING FOR CONFLICT, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Loxahatchee Groves, Florida (“Town”), is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town is empowered to provide for the health, safety, and welfare of the residents and visitors of the Town of Loxahatchee Groves; and

WHEREAS, the Town Council of the Town of Loxahatchee Groves wishes to adopt an ordinance to allow for the issuance of code enforcement citations for appropriate violations of the Code of Ordinances and the Unified Land Development Code; and

WHEREAS, in accordance with Section 166.041, Florida Statutes, the Town prepared a business impact estimate prior to final consideration of this ordinance and posted said estimate on the Town’s website no later than the date the notice of proposed adoption of the ordinance was published pursuant to subsection 166.041(3)(a), Florida Statutes (i.e., at least ten (10) days prior to the adoption of the ordinance); and

WHEREAS, the Town Council finds the adoption of the Ordinance serves a valid public purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance.

Section 2. The Town Council for the Town of Loxahatchee Groves hereby amends Chapter 14 “Code Enforcement” by adopting Article I “In General” to include existing sections 14-1, 14-2, 14-3, and 14-4 and to adopt Article II “Civil Citation Procedures” as follows:

ARTICLE I. – IN GENERAL

* * *

Secs. 14-5 – 14-14. – Reserved.

ARTICLE II. – CIVIL CITATION PROCEDURES

Sec. 14-15. – Generally.

(a) Authority. This article is adopted pursuant to F.S. §§ 162.03(2), 162.13, and 162.22, as an alternative method of code enforcement and is enacted to promote, protect, and improve the health, safety, and welfare of residents and visitors of the town.

(b) Special magistrate. This article authorizes the appointment of one (1) or more special magistrates with authority to hear appeals of civil citations issued pursuant to this article and to provide an equitable, expeditious, and inexpensive method of code enforcement. The special magistrate shall have the power to:

- (1) Adopt rules for the conduct of hearings not in conflict with this article;
- (2) Subpoena alleged violators and witnesses to special magistrate hearings.
Subpoenas may be served by the town’s law enforcement agency;
- (3) Subpoena evidence to special magistrate hearings;
- (4) Take testimony under oath; and
- (5) Issue orders having the full force of law to command whatever steps are necessary to bring a violation into compliance.

(c) Definitions.

- (1) When not inconsistent with the intent and purpose of this article, the definitions that apply in code section 14-1 shall apply herein.
- (2) A “code compliance officer” or “code inspector” means any designated employee or agent of the town whose duty it is to enforce the codes and ordinances enacted by the town. The town may designate appropriate town employees and agents as code inspectors including, but not be limited to, code compliance employees, building department employees, and law enforcement officers.
- (3) “Person” includes individuals, firms, associations, partnerships, estates, trusts, fiduciaries, corporations, and all other groups or combinations.

(d) Schedule of violations and civil penalties; costs. A violation for which a citation may be issued pursuant to this article shall constitute a civil infraction. The maximum penalty for a violation enforced pursuant to this article shall be five hundred dollars (\$500.00). A

penalty less than the maximum penalty shall apply if the person cited does not contest the citation and instead pays the penalty within the time indicated by the code inspector. Costs incurred by the town in the successful prosecution of a citation may be assessed by the special magistrate in his or her order. A schedule of violations and civil penalties shall be established by resolution of the town council.

(e) *Separate violations.* Each day on which a violation exists is a separate violation.

Sec. 14-16. – Citation procedure.

(a) *Issuance.* If a code inspector has reasonable cause to believe that a person has violated a code or ordinance of the town, the code inspector shall serve the person with a written warning prior to issuing a citation. The warning shall specify a reasonable time, not to exceed thirty (30) days from the date of issuance of the warning, within which the person must correct the violation. If the violation is not corrected within the deadline provided in the warning, the code inspector may issue a citation to the person.

(b) *Circumstances in which warning not required.* A code inspector is not required to provide a warning and may immediately issue a citation if a repeat violation is found, or if the code inspector 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.

(c) *Extension.* A code inspector may, in his or her discretion and upon a finding of good cause, administratively extend the deadline for corrective action set forth in a warning. The total of any extension(s) granted pursuant to this subsection shall not exceed ninety (90) days from the date of issuance of the warning.

(d) *Notice.* Warnings and citations shall be served in the manner prescribed by F.S. § 162.12.

(e) *Citation form.* A citation issued pursuant to this article shall include the following information:

- (1) The date and time of issuance.
- (2) The name and address of the person to whom the citation is issued.
- (3) The date, time, and location where the violation occurred.
- (4) A general statement of the facts supporting reasonable cause.
- (5) The number or section of the ordinance or code violated.

- (6) The name and title of the code inspector.
- (7) The procedure for the person to follow to pay the fine or appeal the citation.
- (8) The amount of the potential penalty and administrative costs if the person contests the citation.
- (9) The amount of the penalty if the person pays the citation and does not contest the citation.
- (10) A statement that if the person fails to pay the penalty or appeal the citation within the time allowed, or if the person appeals the citation but fails to appear before the special magistrate, he or she shall be deemed to have waived the right to contest the citation and an order may be entered against the person for an amount up to the maximum penalty plus administrative costs, if applicable. Such order may be entered by the special magistrate without a hearing.
- (11) If the citation fails to include any of the information set forth above or includes inaccurate information, the town may issue a corrected citation to the person by regular mail to the address provided to the town.

(f) *Compliance; appeal.* To comply with a citation, a person shall pay the penalty within the time provided in the citation. Alternatively, a person may appeal a citation by requesting a hearing before the special magistrate pursuant to code section 14-17(a).

(g) *Repeat violation.* Once a penalty is paid, it is deemed to be conclusive proof of the violation for the purpose of establishing a repeat violation under this article. If a penalty is unpaid and the citation is not appealed within the time provided for in the citation, it is also deemed to be conclusive proof of the violation for the purpose of establishing a repeat violation under this article.

Sec. 14-17. – Hearing before the special magistrate.

(a) *Hearing request.* A person who wishes to appeal a citation to the special magistrate shall deliver a written request for a hearing to the town's code compliance division on or before the time provided in the citation. The request shall include the person's name, citation number, code section/ordinance number allegedly violated, date of issuance, and the person's current telephone number and mailing address. The town will schedule a hearing before the special magistrate and will send the notice of hearing to the person by regular mail at the mailing address included in the request for hearing.

(b) *Waiver of rights.* If the person fails to pay the penalty and fails to request a hearing pursuant to code section 14-17(a), he or she shall be deemed to have waived the right to appeal the citation, and the special magistrate may automatically enter an order for the amount of the penalty without the need for a hearing. If the person requests a hearing pursuant to code section 14-17(a) but fails to appear before the special magistrate, he or she shall be deemed to have waived the right to further appeal the citation. The hearing may proceed without the person present, and the special magistrate may enter an order for an amount up to the maximum penalty in addition to administrative costs.

(c) *Hearing.*

(1) *Procedure.* All testimony at the special magistrate hearing shall be under oath and shall be recorded. The special magistrate shall take testimony from the code inspector and the alleged violator and may take testimony from any other witness he or she deems appropriate. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings. The town shall be responsible for proving the violation by a preponderance of the evidence standard.

(2) *Order.* The special magistrate, after a hearing on a citation, shall determine whether or not a violation occurred. If a violation is found to have occurred, the special magistrate may enter an order requiring payment of the applicable penalty and administrative costs by a date certain.

Sec. 14-18. – Failure to pay.

If a violator fails to pay a civil penalty and/or costs as ordered by the special magistrate, the town may use any means authorized by law to secure compliance, including but not limited to the filing of civil proceedings in a court of competent jurisdiction to compel payment.

Sec. 14-19. – Appeal of special magistrate’s order.

The town or the violator may appeal an order of the special magistrate to the circuit court. Such an appeal shall be limited to appellate review of the record created before the special magistrate. Such appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

Sec. 14-20. – Alternative means of enforcement.

The provisions of this article are additional and supplemental means of enforcing town codes and ordinances and may be used for the enforcement of any code or ordinance. Nothing

contained in this article shall prohibit the town from enforcing its codes or ordinances by any other method. Enforcement methods may include, but are not limited to, the issuance of a notice of violation or notice to appear in county court, arrest as authorized by law, injunctive relief, or any other available remedy at law or in equity.

Sec. 14-21. – Representation by town attorney.

The town attorney is authorized to represent the town in administrative and legal proceedings pursuant to this article.

Section 3: Conflicts. All Ordinances or parts of Ordinances, Resolutions, or parts of Resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 4: Severability. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 5: Codification. It is the intention of the Town Council of the Town of Loxahatchee Groves that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Loxahatchee Groves, Florida, and that the Sections of this ordinance may be re-numbered, re-lettered, and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase to accomplish such intention.

Section 6: Effective Date. This ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS 12TH DAY OF NOVEMBER 2024.

Councilmember Maniglia offered the foregoing ordinance. Councilmember

Danowski seconded the motion, and upon being put to a vote, the vote was as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
ANITA KANE, MAYOR	Aye		
MARGARET HERZOG, VICE MAYOR	Aye		
PHILLIS MANIGLIA, COUNCILMEMBER	Aye		
LAURA DANOWSKI, COUNCILMEMBER		Nay	
ROBERT SHORR, COUNCILMEMBER		Nay	

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS 3RD DAY OF DECEMBER 2024.

Councilmember Maniglia offered the foregoing ordinance. Vice Mayor Herzog seconded the motion, and upon being put to a vote, the vote was as follows:

**TOWN OF LOXAHATCHEE GROVES,
FLORIDA**

ATTEST:

Signed by:

Valerie Oakes

06E744C2F37F4A4...

Town Clerk

Signed by:

Anita Kane

A9C9C565B3A042F...

Mayor Anita Kane, Seat 3

Voted: Aye

Signed by:

Margaret Herzog

69ECD67738A6448...

Vice Mayor Margaret Herzog, Seat 5

Voted: Aye

Signed by:

Phillis Maniglia

AB631C751C9F4A9...

Councilmember Phillis Maniglia, Seat 1

Voted: Aye

APPROVED AS TO LEGAL FORM:

Signed by:

Glen J. Torcivia

16C58714DE0545B...

Office of the Town Attorney

Signed by:

Laura J Danowski

378F74307D6D4A6...

Councilmember Laura Danowski, Seat 2

Voted: Nay

Signed by:

Robert Shorr

1A49AD4C7AB143B...

Councilmember Robert Shorr, Seat 4

Voted: Nay