



# **HISTORIC TOWN OF EATONVILLE, FLORIDA CODE ENFORCEMENT BOARD MEETING AGENDA**

**Monday, July 17, 2023 at 5:30 PM**

**Town Hall - 307 E Kennedy Blvd**

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**Please note that the HTML versions of the agenda and agenda packet  
may not reflect changes or amendments made to the agenda.**

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. INVOCATION AND PLEDGE OF ALLEGIANCE**
- IV. CITIZEN PARTICIPATION (Three minutes strictly enforced)**
- V. INTRODUCTIONS**
  - 1. Introduction of New Staff and Board Members
- VI. BOARD DISCUSSIONS**
  - 2. Code Enforcement Board Policy Procedures
  - 3. Re-establishing Code Enforcement Meetings
- VII. COMMENTS**
  - 4. Staff Comments
- VIII. ADJOURNMENT**

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**\*\*PUBLIC NOTICE\*\***

*This is a Public Meeting, and the public is invited to attend. This Agenda is subject to change. Please be advised that one (1) or more Members of any of the Town's Advisory Boards/Committees may attend this Meeting and may participate in discussions. Any person who desires to appeal any decision made at this meeting will need a verbatim record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is to be based – per Section 286.0105 Florida Statutes. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Town of Eatonville at (407) 623-8910 "at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority" - per Section 286.26*



# HISTORIC TOWN OF EATONVILLE, FLORIDA

## CODE ENFORCEMENT BOARD MEETING

### JULY 17, 2023 AT 05:30 PM

### Cover Sheet

**\*\*NOTE\*\*** Please do not change the formatting of this document (font style, size, paragraph spacing etc.)

**ITEM TITLE:** Discussion of Code Enforcement Board Policy Procedures

**BOARD ACTION:**

<b>BOARD DECISION</b>	YES	<b>Department:</b>
<b>CONSENT AGENDA</b>		<b>Exhibits:</b> <ul style="list-style-type: none"> <li>Code of Ordinance for the Code Enforcement</li> <li>Ordinances related to Code Enforcement <ul style="list-style-type: none"> <li>2016-11</li> <li>2010-16</li> <li>2003-08</li> </ul> </li> </ul>
<b>BOARD DISCUSSION</b>	YES	
<b>ADMINISTRATIVE</b>		

**REQUEST:** Requesting for the Code Enforcement Board to discuss the Code Enforcement Board Policy Procedures as outlined in the Code of Ordinances and Ordinances 2016-11, 2010-16, and 200-08.

**SUMMARY:** The Town of Eatonville, a municipality of the State of Florida, seeks the re-establish the Code Enforcement Board as an active board by introducing new staff, board members, and by establishing standard meeting dates for future Code Enforcement matters.

The Code of Enforcement will keep the Town of Eatonville free from hazards which pose a threat to the general health, safety, and welfare of the public that either resides and or visits in the Town’s city limits. This will be done by continued surveillance, following up on complaints, inspecting and re-inspecting, initiating of due process to enforce the Town’s codes, and pursue until the complete eradication of all hazards that are found to exist. Code Enforcement will also enhance the quality of life, preserve, and protect our community by strengthening civic responsibility, education and enforcement of the Town Codes and promote voluntary compliance by establishing partnerships with citizens, businesses, and other agencies.

Code Enforcement will assist the citizens of Eatonville in keeping our neighborhoods in compliance with Town Codes. Keeping properties code compliant protects and enhances property values and makes the Town a more attractive place to live, work, shop, and visit.

**RECOMMENDATION:** Recommending for the Code Enforcement Board to discuss the Code Enforcement Board Policy Procedures as outlined in the Code of Ordinances and Ordinances 2016-11, 2010-16, and 200-08.

**FISCAL & EFFICIENCY DATA:** N/A

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## **ARTICLE VI. CODE ENFORCEMENT<sup>1</sup>**

### ***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.  
(Ord. No. 2010-16, § 1, 10-5-2010)

#### **Secs. 2-223—2-250. Reserved.**

### ***Division 2. Code Enforcement Board<sup>2</sup>***

#### **Sec. 2-251. Board created.**

- (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 maybe 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.

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<sup>1</sup>State law reference(s)—Code enforcement procedures, F.S. ch. 162.

<sup>2</sup>Editor's note(s)—Ord. No. 2016-11, §§ 1—17, adopted Sept. 20, 2016, amended Divs. 2 and 3 in entirety to read as herein set out. Former Divs. 2 and 3, §§ 2-251—2-736, pertained to similar subject matter and derived from Ord. No. 2003-08, 8-19-2003.

- (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.
- (Ord. No. 2016-11, § 1, 9-20-2016)

### **Sec. 2-252. Legal counsel.**

- (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.
- (Ord. No. 2016-11, § 2, 9-20-2016)

### **Sec. 2-253. Jurisdiction.**

- (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 series 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 un-obstruct by any portion of a building or structure from the ground upward.

(Ord. No. 2016-11, § 3, 9-20-2016)

## **Sec. 2-254. Enforcement procedures.**

- (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 if 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.

(Ord. No. 2016-11, § 4, 9-20-2016)

### **Sec. 2-255. Conduct of hearing.**

- (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 as 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.

(Ord. No. 2016-11, § 5, 9-20-2016)

## **Sec. 2-256. Powers of the code enforcement board.**

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.

(Ord. No. 2016-11, § 6, 9-20-2016)

## **Sec. 2-257. Fines and penalties; cost of repair; liens.**

- (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.

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(Supp. No. 3)

(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.

(Ord. No. 2016-11, § 7, 9-20-2016)

**Sec. 2-258. Notices.**

- (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.

(Ord. No. 2016-11, § 8, 9-20-2016)

**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, a civil action for injunctive relief, a stop work order or demolition.

(Ord. No. 2016-11, § 9, 9-20-2016)

**Sec. 2-260. Designation of code enforcement officer.**

- (a) For the purpose of this article, the town council hereby designates all code enforcement officers, sworn law enforcement officers, fire inspectors, and building inspectors as code enforcement officers who shall have the powers and authority to enforce the codes and ordinances of the town as set forth in the town code.
- (b) The training and qualifications of the code enforcement officer shall be established by the town council.
- (c) Except as to sworn law enforcement officers, designation of a code enforcement officer does not confer the power of arrest or other law enforcement powers not subject to the code enforcement officer to the provisions of F.S. chapter 943.
- (d) Nothing in this article shall be construed to amend, alter, or contravene the provisions of any retirement or pension plan or system administered by the town.

(Ord. No. 2016-11, § 10, 9-20-2016)

**Sec. 2-261. Citation authority; violation as civil infraction; maximum civil penalty.**

- (a) Any code enforcement officer, designated pursuant to section 2-260, is hereby authorized to issue a citation to a person when based on personal investigation; the inspector has reasonable cause to believe that the person has committed a violation of any code or ordinance.
- (b) A code or ordinance violation, for which a citation may be issued pursuant to this article, shall be deemed a civil infraction.
- (c) The maximum civil penalty of such a civil infraction shall not exceed \$500.00 per violation plus all applicable costs of prosecution and legislative assessments plus court costs of \$10.00.
- (d) Each violation of a code or ordinance shall be a separate civil infraction. Each day such violations shall continue shall be deemed to constitute a separate civil infraction.

(Ord. No. 2016-11, § 11, 9-20-2016)

**Sec. 2-262. Notice prior to citation issuance; exception.**

- (a) Prior to issuing a citation, the code enforcement officer shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, the code enforcement officer finds that the person has not corrected the violation within the time period, the code enforcement officer may issue a citation to the person who has committed the violation.
- (b) An inspector shall not be required to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately use a citation if a repeat violation is found or if the 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.

(Ord. No. 2016-11, § 12, 9-20-2016)

**Sec. 2-263. Service of warning notice or citation.**

- (a) Written warning notices, if applicable and citations shall be provided to the alleged violator by hand delivery by the officer. In the absence of the alleged violator, issuance of a written warning notice or citation maybe accomplished by leaving a copy at the alleged violator's residence with any person residing therein who is 15 years of age or older, and informing the person of the contents or by registered or certified mail, return receipt requested.
- (b) Issuance of a written warning notice of 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.

(Ord. No. 2016-11, § 13, 9-20-2016)

**Sec. 2-264. Form of contents of citations; filing with court.**

A citation issued by an inspector shall be in a form prescribed by the town council or promulgated by administrative order issued by the Chief Judge of the Ninth Judicial Circuit in the case of a uniform code citation, and shall contain:

- (1) The date and time of issuance;
- (2) The name and address of the person to whom he citation is issued;
- (3) The date and time the civil infraction was committed;
- (4) The facts constituting reasonable cause;
- (5) The number of the section of the code or ordinance violated;
- (6) The name and authority of the officer;
- (7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation;
- (8) The applicable civil penalty if the person elects to contest the citation;
- (9) The applicable civil penalty if he person elects not to contest the citation;
- (10) The conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he or shall be deemed to have waived his or her right to contest the citation and that in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

After issuing a citation to an alleged violator an inspector shall deposit the original and one copy of the citation with the county court, by filing the same with the clerk of the court.

(Ord. No. 2016-11, § 14, 9-20-2016)

**Sec. 2-265. Refusal to sign citation.**

- (a) Any person who willfully refuses to sign and accept a citation issued by an inspector shall be guilty of a misdemeanor of the second degree pursuant to F.S. § 162.21(6).

- (b) If the person cited so refuses to sign the citation, the inspector shall write the words "refused" or refused to sign" in the space provided for the persons signature and shall then leave a copy of the citation with the person cited, if possible.
- (c) Following such refusal to sign, the inspector shall contact the Eatonville Police Department to report such refusal as a violation of F.S. § 162.21(6).

(Ord. No. 2016-11, § 15, 9-20-2016)

### **Sec. 2-266. Payment of reduced civil penalty; court hearing.**

- (a) If the person elects not to contest the citation, the person shall pay in full the applicable reduced civil penalty, as set forth here to the clerk of the court within 14 calendar days after issuance of the citation.
- (b) If the person cited elects to pay the applicable reduced civil penalty set forth herein, the person shall be deemed to have admitted the infraction and waived the right to a hearing. If the person cited fails to pay the civil penalty by the 14th calendar day after issuance of the citation and a judgment shall be entered against the person cited in an amount up to the maximum civil penalty plus court costs of \$50.00. In addition, a rule to show cause may be issued by the county judge requiring the person cited to appear in county court to explain the person's failure to pay or request a court hearing. Failure to respond to the rule to show cause may result in issuance of an arrest warrant.
- (c) If the person elects to contest the citation, the person shall appear in court before a county judge within 21 calendar days of issuance of the citation to request a hearing.
- (d) If the person cited has been previously cited for the same violation at least two other times within a 12-month period, upon issuance of a third or subsequent citation, the person shall not have the option of paying a reduced civil penalty but instead shall appear before a county judge within 21 calendar days to answer the charge.
- (e) A county judge, after a hearing on the citation shall make a determination whether or not a violation of the Code of Ordinances cited has been committed. If a violation is found to have occurred, the county judge may order the violator to correct the violation and may impose a civil penalty up to the maximum civil penalty plus all applicable costs of prosecution and legislative assessments, plus court costs of \$50.00. In no event, however, shall such civil penalty imposed by a county judge be less than the reduced civil penalty set forth in section 2-267.
- (f) The county judge may provide for the civil penalty to be paid, and the violation to be corrected within such time as the county judge determines to be appropriate. If the person found to be in violation fails to pay the civil penalty or correct the violation with the time provided, a civil judgment shall be entered against that person in an amount up to the maximum civil penalty.
- (g) Should the person cited schedule a hearing as provided for herein and thereafter fail to appear at such hearing, the person shall be deemed to have waived the right to contest the citation; and a civil judgment shall be entered against the person in an amount up to the maximum civil penalty; provided however, that the court shall have the discretion to continue or reschedule any hearing when it determines that doing so will further the interest of justice. In such an event, the clerk of the court shall notify the code enforcement officer and the person cited of the date and time of the hearing. In addition, a rule to show cause may be issued by the county judge requiring the person cited to appear in county court to explain the person's failure to appear at the hearing. Failure to respond to the rule to show cause may result in issuance of an arrest warrant.

- (h) Should the person cited willfully fail to comply with a court order to abate or correct the violation, the court after due notice and hearing on the matter, may hold the violator in civil contempt and may enter an order to that effect.
- (i) In the event that a civil judgment is entered against the person cited as provided herein, the town may record a certified copy of the said judgment in the Official Records of Orange County, Florida and the same shall thereafter constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.
- (j) In the event that an order is entered finding that a violation of the ordinance cited has been committed, the town may record a certified copy of said order in the official records of Orange County, Florida and the same shall thereafter constitute notice to and be binding upon the violator and any subsequent purchasers, successors in the interest or assigns if the violation concerns real property.
- (k) At any hearing pursuant to this article, the commission of a violation of a code or ordinance must be proved by a preponderance of the evidence. The Florida Rules of Civil Procedure and the Florida Evidence Code shall be applicable to any such hearing.

(Ord. No. 2016-11, § 16, 9-20-2016)

### Sec. 2-267. Procedure for payment of civil penalty.

Payment of any civil penalty imposed by this article shall be to the clerk of the court, who shall forward the money collected to the town's finance director for deposit into the town's fund. If a judgment has been entered for the civil penalty, the clerk of the court shall notify the town when the judgment has been paid and the necessary satisfaction of judgment shall be prepared and recorded in the official records of Orange County.

#### Classes of Violation and Reduced Civil Penalty

- (1) Violations of town code and ordinances, and the applicable reduced civil penalties shall be as follows:

Violation Classifications	Reduced Civil Penalty		
	1st Offense	2nd Offense	3rd or Subsequent Offense
Class I	\$50.00	\$100.00	Mandatory Court Hearing
Class II	\$100.00	\$200.00	Same as above
Class III	\$150.00	\$300.00	Same as above
Class IV	\$200.00	\$400.00	Same as above

(Ord. No. 2016-11, § 17, 9-20-2016)

### Secs. 2-268—2-755. Reserved.

**ORDINANCE #2016-11**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, FLORIDA REPEALING ORDINANCE #2003-8, CREATING A CODE ENFORCEMENT BOARD, DO HEREBY CREATE A CODE ENFORCEMENT BOARD; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, the Eatonville Town Council desires to replace the Code Enforcement Hearing Officer, with a Code Enforcement Board; and

**WHEREAS**, the Town Council also desires to replace Ordinance #2003-8, with Ordinance #2016-11.

**NOW THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, FLORIDA AS FOLLOWS:**

**SECTION ONE: CODE ENFORCEMENT BOARD.**

1. 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 (3) years, ***the terms of the board members will be staggered.*** Nothing shall prevent the Town Council from re-appointing members for a second term.
2. 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.
3. 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 (5) members, all of which shall be residents of the Town of Eatonville.***
4. The meetings of the Code Enforcement Board members shall occur no less than frequently than once every two (2) months to hear cases brought forth by the Code Enforcement Officer, and/or as necessary as deemed. Special meetings maybe convened by the Code Enforcement Board upon giving notice thereof to the public. The notice of a special meeting shall be given at least twenty-four hours (24) prior to the meeting time.
5. 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.



6. 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.
7. Subject to the approval of the Town Council, the Code Enforcement Board may adopt rules and regulations necessary to carry out provisions of this Ordinance that are consistent with this Ordinance or Chapter 162.05 Florida Statutes.

## **SECTION TWO: LEGAL COUNSEL**

1. 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.
2. A member of the Attorney's staff may represent the Code Enforcement Attorney by presenting cases before the Board.
3. In no case shall the Attorney or a member of their staff serve in both capacities.

## **SECTION THREE: JURISDICTION**

1. 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.
  - a. Florida Building Code
  - b. Occupational Licenses
  - c. Land Development Code
  - d. Lot Clearing Code
  - e. Abandoned Vehicle Code
  - f. Garbage, Trash and Weed Code
  - g. Fire Code
  - h. All other Town adopted codes.
2. The jurisdiction of the Code Enforcement Board shall not be exclusive. Nothing in this ordinance 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.
3. Designation and authority of the Code Enforcement Board.
  - a. There shall be a Code Enforcement inspector whose responsibilities will be seeking violations of this Ordinance and to ensure compliance with the codes and ordinances of the Town.
  - b. The Code Enforcement inspector shall be hired by the Chief Administrative Officer of the Town or their designee.

## **4. Definitions**

- a. Alterations or any changes or modification in construction or occupancy.
- b. **Building-** 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.
- c. **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.
- d. **Dwelling-** 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.
- e. **Dwelling Unit-** 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.
- f. **Exposed of public review-** 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.
- g. **Exterior of premises-** means those portions of a building which is exposed to public view and the open spaces of any premises outside of any building erected thereon.
- h. **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.
- i. **Fire Hazard-** 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.
- j. **Garbage-** is the animal, vegetable, fruit or other waste resulting from the handling, preparation, cooking and consumption of food.
- k. **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.
- l. **Health Officer-** is the Director of the Health Department of Orange County Florida.
- m. **Infestation-** is the existence in large numbers of insects, rodents or other pests so as to render unpleasant, unsafe or unsanitary.
- n. **Major Violation-** is a condition existing on a premise which is below minimum standards set forth in this ordinance 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.

- o. **Minor violation-** is a condition which is below the minimum standards set forth in this ordinance but which is not serious enough to be considered a major violation.
- p. **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.
- q. **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. 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.
- r. **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.
- s. **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

ordinance, 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.

- t. **Person-** includes any individual, firm, corporation, association or partnership.
- u. **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 storm water, liquid waste or sewerage, and water supply systems of any premises to their connection with any point of public disposal or other acceptance terminal.
- v. **Premises-** is a lot, plot of land including the buildings or structures thereon.
- w. **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.
- x. **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.
- y. **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 (5) years prior to the present violation.
- z. **Ventilation-** is the process of supplying and removing air by natural and mechanical means to or from any space.
- aa. **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.
- bb. **Washrooms-** are enclosed space containing one or more sinks, tubs, showers, or basins and which shall also include toilets, urinals, or fixtures serving similar purposes.

- cc. **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.
- dd. **Weathering-** is deterioration, decay or damage caused by exposure to the elements.
- ee. **Yard-** is an open space at grade between a building or structure and the adjoining lot lines unoccupied and un-obstruct by any portion of a building or structure from the ground upward.

#### **SECTION: 4                    Enforcement Procedures**

1. 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.
2. Except as provided in subsection 6 and 7 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.

#### **Notice Shall:**

- a. Be in writing.
- b. Include a description of the real estate or address sufficient for identification.
- c. Specify the violation(s) by code citation and factual description and the remedial action required;
- d. 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;
- e. 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.
- f. 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.
- g. Unless provided otherwise in the Code the time given to comply with minor violations as defined by the Code shall not exceed one hundred (120) days, and the time given to comply with major violations as defined in this ordinance shall not exceed forty-five (45) days.
- h. 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 ordinance. 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.

5. 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 8. If notice by personal service or mail is not feasible, the Hearing Officer may opt to serve notice by publication as provided in Section 9. 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 Hearing Officer even if the violation has been corrected prior to the Code Enforcement Board and the notice shall so state.
6. 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.
7. If a repeat violation is found, the Code Enforcement Officer shall notify the violation, 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 8 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.

#### **SECTION: 5. Conduct of Hearing**

1. 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.
2. 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.
3. 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.
4. Assuming proper notice of the hearing has been provided to the alleged violator is provided in subsection 2 above a hearing may proceed in the absence of the alleged violator.

5. 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.
6. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings.
7. 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.
8. 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.
9. 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 Ordinance. The order shall be stated orally at the meeting and shall be reduced to writing and mailed to the alleged violator within ten (10) 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 4 and 7, 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 Chapter 162, Florida Statutes, for which a fine may be reactivated with the necessity for a hearing if the same violation is repeated by the violator.
10. 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.
11. If any order is recorded in the public records pursuant to 5 (10) and the order is complied with by the date specified in the order, the Code Enforcement Officer shall issue an order acknowledging compliance.
12. 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.

## **SECTION: 6                      Powers of the Code Enforcement Board**

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 10% 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 thirty (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.

#### **SECTION: 7                      Fines, and Penalties; Cost of Repair; Liens**

1. In the case of a first violation the Code Enforcement Officer may order the violator to pay a fine not to exceed two hundred fifty dollars (\$250.00) for each day the violation continues past the date set by the Code Enforcement Officers order of compliance.
2. 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 five hundred (\$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.
3. In determining the amount of any fine, the Code Enforcement Officer shall consider the following factors:
  - a. The gravity of the violation;
  - b. Any actions taken by the violator to correct the violation;
  - c. Any previous violations committed by the violator; and
  - d. Any previous violations committed on this property.
4. 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 ordinance 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 (3) months from the filing thereof. No lien created pursuant to these provisions of this Ordinance may be foreclosed on real property which is a homestead under Section 4, Article X of the State Constitution.

5. No lien provided by this Ordinance shall continue for a period longer than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the 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.
6. If the violation is a violation described in Section 5.04, 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.
7. A fine imposed pursuant to this section may include all costs pursuant to subsection 6.
8. The Town may charge the violator for all costs incurred in recording and satisfying a valid lien.
9. **Appeal**
  - a. 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 thirty (30) days of the execution of the order to be appealed.
  - b. The scope of review shall be limited to the record made before the Code Enforcement Board and not be trial de novo.
  - c. The Code Enforcement Board shall by rule, establish reasonable charges for the preparation of the record to be paid by the appealing party.

## **SECTION: 8 Notices**

1. All notices required by this Ordinance 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 fifteen (15) years of age and informing such person on the contents of the notice.

2. In addition to providing notice as set forth in subsection 1, at the option and direction of the Town Attorney, notice may also be served by publication as follows:
  - a. 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.
  - b. The newspaper shall meet all requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements
  - c. Proof of publication shall be made as provided in SS, 50.041 and 50.051, Florida Statutes.
  - d. 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 (1).
  - e. Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection 2, shall be prima facie proof that the notice requirements of this Ordinance have been met, without regard to whether or not the alleged violator actually received such notice.
3. In lieu of publication as described in subsection 2, such notice may be posted for at least ten (10) days at the property upon which the violation is alleged to exist and at the office of the Town Clerk

**SECTION: 9** Code Enforcement Citations

1. This article is adopted pursuant to Chapter 162, Part II, Florida Statutes, 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.
2. 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, a civil action for injunctive relief, a stop work order or demolition.

**SECTION: 10** Designation of Code Enforcement Officer

1. For the purpose of this Ordinance, the Town Council hereby designates all Code Enforcement Officers, sworn law enforcement officers, fire inspectors, and building inspectors as Code Enforcement Officers who shall have the powers and authority to enforce the codes and ordinances of the Town as set forth in the Town Code.
2. The training and qualifications of the Code Enforcement Officer shall be established by the Town Council.
3. Except as to sworn law enforcement officers, designation of a Code Enforcement Officer does not confer the power of arrest or other law enforcement powers not

subject to the Code Enforcement Officer to the provisions of Chapter 943, Florida Statutes.

4. Nothing in this Ordinance shall be construed to amend, alter, or contravene the provisions of any retirement or pension plan or system administered by the Town.

**SECTION: 11** Citation authority; violation as civil infraction; maximum civil penalty.

1. Any Code Enforcement Officer, designated pursuant to Section 10, is hereby authorized to issue a citation to a person when based on personal investigation; the inspector has reasonable cause to believe that the person has committed a violation of any code or ordinance.
2. A code or ordinance violation, for which a citation may be issued pursuant to this Ordinance, shall be deemed a civil infraction.
3. The maximum civil penalty of such a civil infraction shall not exceed \$500 per violation plus all applicable costs of prosecution and legislative assessments plus court costs of \$10.00.
4. Each violation of a code or ordinance shall be a separate civil infraction. Each day such violations shall continue shall be deemed to constitute a separate civil infraction.

**SECTION: 12** Notice prior to citation issuance; exception

1. Prior to issuing a citation, the Code Enforcement Officer shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than thirty (30) days. If, upon personal investigation, the Code Enforcement Officer finds that the person has not corrected the violation within the time period, the Code Enforcement Officer may issue a citation to the person who has committed the violation.
2. An inspector shall not be required to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately use a citation if a repeat violation is found or if the 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.

**SECTION: 13** Service of warning notice or citation

1. Written warning notices, if applicable and citations shall be provided to the alleged violator by hand delivery by the 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 therein who is fifteen years of age or older, and informing the person of the contents or by registered or certified mail, return receipt requested.

2. Issuance of a written warning notice of 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.

**SECTION: 14**      Form of contents of citations; filing with court

A citation issued by an inspector shall be in a form prescribed by the Town Council or promulgated by administrative order issued by the Chief Judge of the Ninth Judicial Circuit in the case of a uniform code citation, and shall contain;

1. The date and time of issuance;
2. The name and address of the person to whom the citation is issued;
3. The date and time the civil infraction was committed;
4. The facts constituting reasonable cause;
5. The number of the section of the code or ordinance violated;
6. The name and authority of the officer;
7. The procedure for the person to follow in order to pay the civil penalty or to contest the citation;
8. The applicable civil penalty if the person elects to contest the citation;
9. The applicable civil penalty if the person elects not to contest the citation;
10. The conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he or she shall be deemed to have waived his or her right to contest the citation and that in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

After issuing a citation to an alleged violator an inspector shall deposit the original and one copy of the citation with the County Court, by filing the same with the Clerk of the Court.

**SECTION: 15**      Refusal to sign citation

1. Any person who willfully refuses to sign and accept a citation issued by an inspector shall be guilty of a misdemeanor of the second degree pursuant to section 162.21 (6) Florida Statutes.
2. If the person cited so refuses to sign the citation, the inspector shall write the words "refused" or "refused to sign" in the space provided for the person's signature and shall then leave a copy of the citation with the person cited, if possible.
3. Following such refusal to sign, the inspector shall contact the Eatonville Police Department to report such refusal as a violation of section 162.21 (6) Florida Statutes.

**SECTION: 16**      Payment of reduced civil penalty; court hearing

1. If the person elects not to contest the citation, the person shall pay in full the applicable reduced civil penalty, as set forth here to the Clerk of the Court within fourteen (14) calendar days after issuance of the citation.
2. If the person cited elects to pay the applicable reduced civil penalty set forth herein, the person shall be deemed to have admitted the infraction and waived the right to a hearing. If the person cited fails to pay the civil penalty by the fourteenth (14) calendar day after issuance of the citation and a judgment shall be entered against the person cited in an amount up to the maximum civil penalty plus court costs of fifty dollars (\$50.00). In addition, a rule to show cause may be issued by the County Judge requiring the person cited to appear in county court to explain the person's failure to pay or request a court hearing. Failure to respond to the rule to show cause may result in issuance of an arrest warrant.
3. If the person elects to contest the citation, the person shall appear in court before a county judge within twenty-one (21) calendar days of issuance of the citation to request a hearing.
4. If the person cited has been previously cited for the same violation at least two (2) other times within a twelve (12) month period, upon issuance of a third or subsequent citation, the person shall not have the option of paying a reduced civil penalty but instead shall appear before a county judge within twenty-one (21) calendar days to answer the charge.
5. A county judge, after a hearing on the citation shall make a determination whether or not a violation of the Code of Ordinances cited has been committed. If a violation is found to have occurred, the County Judge may order the violator to correct the violation and may impose a civil penalty up to the maximum civil penalty plus all applicable costs of prosecution and legislative assessments, plus court costs of fifty dollars (\$50.00). In no event, however, shall such civil penalty imposed by a County Judge be less than the reduced civil penalty set forth in Section 17.
6. The County Judge may provide for the civil penalty to be paid, and the violation to be corrected within such time as the County Judge determines to be appropriate. If the person found to be in violation fails to pay the civil penalty or correct the violation with the time provided, a civil judgment shall be entered against that person in an amount up to the maximum civil penalty.
7. Should the person cited schedule a hearing as provided for herein and thereafter fail to appear at such hearing, the person shall be deemed to have waived the right to contest the citation; and a civil judgment shall be entered against the person in an amount up to the maximum civil penalty; provided however, that the court shall have the discretion to continue or reschedule any hearing when it determines that doing so will further the interest of justice. In such an event, the Clerk of the Court shall notify the Code Enforcement Officer and the person cited of the date and time of the hearing. In addition, a rule to show cause may be issued by the County Judge requiring the person cited to appear in County Court to explain the person's failure to appear at the hearing. Failure to respond to the rule to show cause may result in issuance of an arrest warrant.

8. Should the person cited willfully fail to comply with a court order to abate or correct the violation, the court after due notice and hearing on the matter, may hold the violator in civil contempt and may enter an order to that effect?
9. In the event that a civil judgment is entered against the person cited as provided herein, the Town may record a certified copy of the said judgment in the Official Records of Orange County, Florida and the same shall thereafter constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.
10. In the event that an order is entered finding that a violation of the Ordinance cited has been committed, the Town may record a certified copy of said order in the official records of Orange County Florida and the same shall thereafter constitute notice to and be binding upon the violator and any subsequent purchasers, successors in the interest or assigns if the violation concerns real property.
11. At any hearing pursuant to this Ordinance, the commission of a violation of a code or Ordinance must be proved by a preponderance of the evidence. The Florida Rules of Civil Procedure and the Florida Evidence Code shall be applicable to any such hearing.

#### **SECTION: 17            Procedure for payment of civil penalty**

Payment of any civil penalty imposed by this Ordinance shall be to the Clerk of the Court, who shall forward the money collected to the Town's Finance Director for deposit into the Town's fund. If a judgment has been entered for the civil penalty, the Clerk of the Court shall notify the Town when the judgment has been paid and the necessary satisfaction of judgment shall be prepared and recorded in the official records of Orange County.

#### **Classes of Violation and Reduced Civil Penalty**

1. Violations of Town Code and Ordinances, and the applicable reduced civil penalties shall be as follows:

Violation Classifications	<u>Reduced Civil Penalty</u>		
	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> or subsequent offense
Class I	\$50.00	\$100.00	Mandatory Court Hearing
Class II	\$100.00	\$200.00	Same as above
Class III	\$150.00	\$300.00	Same as above
Class IV	\$200.00	\$400.00	Same as above

#### **SECTION 18:            CONFLICTS**

Any Ordinance or part thereof in conflict with this Ordinance is hereby repealed

**SECTION 19: SEVERABILITY**

If any section, part of a section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative, void, such holdings if invalidity shall not affect the remaining portion of this Ordinance and it shall be construed to have been legislative intent to pass this Ordinance without such unconstitutional, invalid, or inoperative part therein; of if this Ordinance or any provision thereof shall be held inapplicable to any person, group or persons, property, kind of property, circumstances or set of circumstances, such hold shall not affect the applicability thereof to any other person or property or circumstances.

**SECTION 20: EFFECTIVE DATE:** This Ordinance shall take effect immediately upon passage and adoption.

**FIRST READING HELD this** 6<sup>TH</sup> **day of** September **, 2016**

	AYE:	NAYE:	ABSENT:
Eddie Cole, Mayor:	<u>X</u>	<u>      </u>	<u>      </u>
Rodney Daniels, Vice Mayor:	<u>X</u>	<u>      </u>	<u>      </u>
Angela Thomas, Councilwoman:	<u>      </u>	<u>X</u>	<u>      </u>
Theo Washington, Councilman:	<u>X</u>	<u>      </u>	<u>      </u>

**SECOND AND FINAL READING HELD this** 20<sup>th</sup> **day of** September **, 2016**

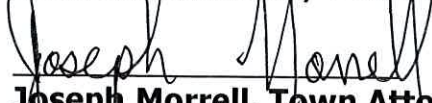
Eddie Cole, Mayor:	<u>X</u>	<u>      </u>	<u>      </u>
Rodney Daniels, Vice Mayor:	<u>X</u>	<u>      </u>	<u>      </u>
Angela Thomas, Councilwoman:	<u>X</u>	<u>      </u>	<u>      </u>
Theo Washington, Councilman:	<u>X</u>	<u>      </u>	<u>      </u>

**PASSED AND ADOPTED THIS** 20<sup>TH</sup> **day of** September **. 2016**

  
**Eddie Cole, Mayor**

**ATTEST:**

  
**Cathlene Williams, Town Clerk**

  
**Joseph Morrell, Town Attorney**  
**Approved as to Form and Legality**

ORDINANCE 2010-16

AN ORDINANCE OF THE TOWN OF EATONVILLE CREATING A FEE SCHEDULE FOR CODE ENFORCEMENT IN THE TOWN OF EATONVILLE FLORIDA, PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town recognizes the need to resolve and clarify the Code Enforcement Fees for the Town of Eatonville’s Code Enforcement Department; and

WHEREAS, the Town’s Administration has directed the Code Enforcement Department to research and develop fair and equitable fees; and

WHEREAS, such fees have been developed, submitted, reviewed, and approved by the Administration for implementation.

NOW, THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, FLORIDA AS FOLLOWS:

SECTION ONE: The Town Council of the Town of Eatonville, Florida hereby approves the Code Enforcement Fee Schedule for the Town of Eatonville Code Enforcement Department. This Code Enforcement Fee Schedule is listed below. Ordinance 2003-08 should be read in conjunction with this Ordinance.

I. Administrative:

a. Administrative Fees	\$ 150.00
b. Copies per page	\$ .15
c. Copies Certified/Sealed	\$ 3.00
d. Fine/Lien Research	\$ 20.00
e. Postage	\$ .44 – and up

II. Hearing:

a. Scheduled Hearing	\$ 80.00
b. Re-Scheduled Request by Respondent	\$ 25.00
c. Appeal Abandoned/Vehicle Action/Tow	\$ 50.00
d. Appeal Hearing Action	\$300.00
e. Document Recording Fees first page	\$ 10.00 – the total cost we pay
f. Request for a Reduction of Penalty or Extension of Compliance Date	\$ 40.00
g. Legal Review	\$ 100.00 at applicant expense



### III. Lot Cleaning:

**Town reserves the right to contract out the services listed below.**

- |                                    |   |
|------------------------------------|---|
| a. Administrative                  | \$ 150.00                                   |
| b. Equipment/Machinery Rental Fees | \$ 20.00 and up                             |
| c. Hauling Fees                    | \$ 20.00 –<br>pending load, and dumping fee |
| d. Labor per hour                  | \$ Staff pay at time and ½                  |
| f. Filing/Recording Fee (s)        | \$ 10.00 –<br>plus the total cost we pay    |
| g. Legal Review                    | \$ 60.00 –<br>at applicant expense          |

### IV. Violations:

- |   |                                   |
|---|-----------------------------------|
| a. Civil Penalties are based upon Classifications, and Levels of Offense as stated in the Town of Eatonville's Ordinance # 2003-8 |                                   |
| b. Garbage Container Violation  | \$10.00 Posted on your Water Bill |
| c. Parking on Grass   | \$35.00                           |

All fees are subject to change without notice due to market rates, other departmental fees, equipment rental fees, economy, etc. All fees can also be subject to an increase based on the imposition of the Hearing Magistrate.

\* If payment is not received within 30 days, the town may file a civil action against the check writer for three times the amount of the check, but in no case less than \$50.00, in addition to the payment of the check plus any court costs, reasonable attorney fees, and any bank fees incurred by the Town in taking the action.

**SECTION TWO: CONFLICTS:** Any and all Ordinances and/or Resolution in conflict herewith shall be considered repealed.

**SECTION THREE: SEVERABILITY:** In the event that any portion or section of this Ordinance is determined to be invalid, unlawful or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance, which shall remain in full force and effect.

**SECTION FOUR: EFFECTIVE DATE:** This Ordinance shall take effect upon its passage.

First Reading held this 21<sup>st</sup> day of September, 2010. A.D.


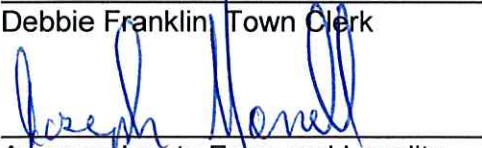
	YES	NO	ABSENT
Mayor Bruce Mount:	<u>X</u>	<u>      </u>	<u>      </u>
Vice Mayor Eddie Cole:	<u>X</u>	<u>      </u>	<u>      </u>
Councilman Rodney Daniels:	<u>X</u>	<u>      </u>	<u>      </u>
Councilman Alvin Moore:	<u>      </u>	<u>      </u>	<u>X</u>
Councilwoman Marilyn Davis Sconions:	<u>X</u>	<u>      </u>	<u>      </u>

Second and Final Reading held this 5<sup>th</sup> day of October, 2010.  
A.D.

	YES	NO	ABSENT
Mayor Bruce Mount:	<u>X</u>	<u>          </u>	<u>          </u>
Vice Mayor Eddie Cole:	<u>X</u>	<u>          </u>	<u>          </u>
Councilman Rodney Daniels:	<u>X</u>	<u>          </u>	<u>          </u>
Councilman Alvin Moore:	<u>X</u>	<u>          </u>	<u>          </u>
Councilwoman Marilyn Davis Sconions:	<u>X</u>	<u>          </u>	<u>          </u>

PASSED AND ADOPTED this 5<sup>th</sup> day of October, 2010.

  
\_\_\_\_\_  
Bruce B. Mount, Mayor

ATTEST:  
  
\_\_\_\_\_  
Debbie Franklin, Town Clerk  
  
\_\_\_\_\_  
Approved as to Form and Legality  
Joseph Morrell, Town Attorney

**An ordinance repealing ordinance #97-12 of the Town of Eatonville, creating a code enforcement hearing officer, providing for the qualifications, term, removal, appointment, jurisdiction, and powers of the hearing officer; providing for enforcement procedures, payment method, court hearings, and providing for conflicts and severability and an effective date.**

**Whereas**, the Eatonville Town Council desire to replace the Code Enforcement Board with a Code Enforcement Hearing Officer, and

**Whereas**, the Town Council also desires to make other changes to Ordinance #97-12; and

**Whereas**, the Town Council desire to replace Ordinance #97-12 with this ordinance.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, FLORIDA AS FOLLOWS:**

**Section One: Hearing Officer**

1. There is hereby created a Code Enforcement Hearing Officer for the Town of Eatonville, Florida, who shall be appointed by the Town Council. The Hearing Officer shall be appointed to serve a term of three (3) years. Nothing shall prevent the Town Council from re-appointing a hearing officer for a second term.
2. The appointment of the Code Enforcement Hearing Officer shall be made solely on the basis of professional experience in the areas of law, zoning and building. The Hearing Officer shall not be a property owner in the Town, a resident of the Town, or related by family ties, or business to any property owner in the Town of Eatonville.
3. Appointments to fill a vacancy of the Hearing Officer shall be for the remainder of the unexpired term of office.
3. The Hearing Officer shall only be suspended and/or removed for cause by the Town Council.
4. Regular meetings of the Hearing Officer shall occur no less frequently than once every two (2) months, but the Hearing Officer may hear cases as often as necessary. Special meetings may be convened by the Hearing Officer upon giving notice thereof to the public. The notice of a special meeting shall be given at least twenty-four hours (24) prior to the meeting time.

5. Minutes shall be maintained of all meetings and hearings held by the Hearing Officer, and all meetings, hearings and proceedings shall be open to the public.
6. The Code Enforcement Inspector shall provide clerical and administrative support to the Hearing Officer as may be reasonably required by the Hearing Officer for the proper performance of his/her duties.
7. Subject to approval by the Town Council, the Hearing Officer may adopt rules and regulations necessary to carry out provisions of this Ordinance as are not inconsistent with this ordinance or Chapter 162, Florida Statutes.
8. The Hearing Officer shall be compensated for his/her time; not to exceed twenty (20) hours in any month. Payment shall be paid by the Town of Eatonville within thirty days of the submission of a monthly invoice to the Finance Department. The Hearing Officer is not an employee of the Town of Eatonville for purposes of benefits, leave or other enumeration.

**Section Two: Legal Counsel**

1. An attorney may be appointed by the Town Council, to attend meetings of the Hearing Officer and to assist the Hearing Officer in the conduct of hearings.
2. A member of the attorney's staff shall represent the inspector, when necessary, by presenting cases before the Hearing Officer.
3. In no event shall the attorney or a member of their staff serve in both capacities.

**Section Three: Jurisdiction**

1. The Hearing Officer 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.
  - A. Florida Building Code
  - B. Occupational Licenses
  - C. Land Development Code
  - D. Lot Cleaning Code
  - E. Abandoned Vehicle Code

Code Enforcement Ordinance  
Ordinance #2003-08

Section VI. Item #1.

- F. Garbage, Trash and Weed Code
  - G. Fire Code
  - H. All other Town adopted codes.
2. The jurisdiction of the Hearing Officer shall not be exclusive. Nothing in this ordinance 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.
3. Designation and authority of the Code Enforcement Inspector
- a. There shall be a code enforcement inspector whose responsibilities will be seeking violations of this ordinance and to ensure compliance with the codes and ordinances of the Town.
  - b. The code enforcement inspector shall be hired by the Chief Administrative Officer of the Town or their designee.
4. Definitions
- a. **Alter or alteration** any change or modification in construction or occupancy.
  - b. **Building** 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.
  - c. **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 or neglect, excessive use or lack of maintenance.
  - d. **Dwelling** 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.
  - e. **Dwelling unit** 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.
  - f. **Exposed of public view** 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.

- g. **Exterior of premises** means those portions of a building which is exposed to public view and the open space of any premises outside of any building erected thereon.
- h. **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.
- i. **Fire hazard** 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.
- j. **Garbage** is the animal, vegetable, fruit or other waste resulting from the handling, preparation, cooking and consumption of food.
- k. **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.
- l. **Health officer** is the Director of the Health Department of Orange County Florida.
- m. **Infestation** is the existence in large numbers of insects, rodents or other pests so as to render unpleasant, unsafe or unsanitary.
- n. **Major violation** is a condition existing on a premise which is below minimum standards set forth in this ordinance and which is dangerous to health, safety, or welfare of the occupants, passers by or persons in contiguous areas; or a serious of minor violations which when considered together present a hazardous or undesirable condition.
- o. **Minor violation** is a condition which is below the minimum standards set forth in this ordinance but which is not serious enough to be considered a major violation.
- p. **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.
- q. **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 passers-by.
  5. Whatever renders air, food or drink unwholesome or detrimental to the health of human beings;
  6. Fire hazards.
- r. **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.
- s. **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 ordinance, 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.
- t. **Person** includes any individual, firm, corporation, association or partnership.
- u. **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 storm water, liquid waste or sewerage, and water supply systems of any premises to their connection with any point of public disposal or other acceptance terminal.
- v. **Premises** is a lot, plot of land including the buildings or structures thereon.
- w. **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.
- x. **Refuse** is all putrescible and nonputrescible 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.
- y. **Repeat violation** means a violation of Town code, 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 (5) years prior to the present violation.
- z. **Ventilation** is the process of supplying and removing air by natural and mechanical means to or from any space.
  - aa. **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 of these things, or when any natural person, business entity, or government 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.
  - bb. **Washrooms** are enclosed space containing one or more sinks, tubs, showers, or basins and which shall also include toilets, urinals, or fixtures serving similar purposes.
  - cc. **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.
  - dd. **Weathering** is deterioration, decay or damage caused by exposure to the elements.
  - ee. **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.

#### Section 4: Enforcement Procedures

1. 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.
2. Except as provided in subsection 6 and 7 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.

Notice shall:

- a. Be in writing;

- b. Include a description of the real estate or address sufficient for identification;
  - c. Specify the violation(s) by code citation and factual description and the remedial action required;
  - d. 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;
  - e. 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.
  - f. 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.
  - g. Unless provided otherwise in the Code, the time given to comply with minor violations as defined by the Code shall not exceed one hundred (120) days, and the time given to comply with major violations as defined in this ordinance shall not exceed forty-five (45) days.
  - h. 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 ordinance. 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.
5. Should the violation continue beyond the time specified for correction, the Code Inspector shall notify the Hearing Officer and request a hearing. The Hearing Officer shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed to said violators as provided in section 8. If notice by personal service or mail is not feasible, the Hearing Officer may opt to serve notice by publication as provided in section 9. 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 Hearing Officer even if the violation has been corrected prior to the Hearing Officer's hearing and the notice shall so state.

6. 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, 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 notify the Hearing Officer 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.
7. 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 inspector, upon notifying the violator of a repeat violation, shall notify the Hearing Officer shall schedule a hearing and shall provide notice pursuant to section 8 of the Town code. The case may be presented to the Hearing Officer even if the repeat violation has been corrected prior to the hearing before the Hearing Officer, and the notice shall so state.

#### **Section 5: Conduct of Hearing**

1. Upon request by the inspector, or at such other times as may be necessary, the Hearing Officer may call a hearing. Minutes shall be kept of all hearings by the Hearing Officer and all hearings and proceedings shall be open to the public. The Code Inspector shall provide clerical and administrative personnel as may be reasonably required by the Hearing Officer for the proper performance of its duties.
2. Upon scheduling of a hearing, the Hearing Officer 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.
3. At the hearing, the burden of proof shall be upon the code inspector to show, by a preponderance of the evidence that a violation does exist.
4. Assuming proper notice of the hearing has been provided to the alleged violator is provided in subsection 2 above, a hearing may proceed in the absence of the alleged violator.
5. All testimony shall be under oath and shall be recorded. The Hearing Officer shall take testimony from the code inspector and alleged violator and from such other witnesses as may be called by the respective sides.

6. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings.
7. 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.
8. The Hearing Officer, or any attorney appointed to represent the Hearing Officer, may inquire of any witness before the Hearing Officer. The alleged violator, or his attorney, and the attorney representing the code inspector shall be permitted to inquire of any witness before the Hearing Officer and shall be permitted to present brief opening and closing statements.
9. At the conclusion of the hearing, the Hearing Officer 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 ordinance. The order shall be stated orally at the meeting and shall be reduced to writing and mailed to the alleged violator within ten (10) days after the hearing. Findings shall be made by the Hearing Officer. 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 4 and 7, 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 Chapter 162, Florida Statutes, for which a fine may be reactivated with the necessity for a hearing if the same violation is repeated by the violator.
10. 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 findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, and successors in interest, and assigns.
11. If any order is recorded in the public records pursuant to 5 (10) and the order is complied with by the date specified in the order, the Hearing Officer shall issue an order acknowledging compliance which shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

12. If the Town prevails in prosecuting a case before the Hearing Officer, it shall be entitled to recover all costs incurred in said prosecution.

**Section 6: Powers of the Code Enforcement Hearing Officer**

The Hearing Officer 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 10 % 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. Hear 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 Hearing Officer within thirty (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.

**Section 7: Fines, and Penalties; Cost of Repair; Liens**

1. In the case of a first violation the Hearing Officer may order the violator to pay a fine not to exceed two hundred fifty dollars (\$250.00) for each day the violation continues past the date set by the Hearing Officer's order of compliance.
2. In cases where the same violation(s) has been committed by the same violator on more than one occasion and where the Hearing Officer has found such violation(s) did occur, the Hearing Officer may order a repeat violator penalty not to exceed five hundred dollars (\$500.00) per day for each day the repeat violation is found by the code inspector to have

- occurred, and a hearing shall not be necessary for issuance of the order imposing the fine.
3. In determining the amount of any fine, the Hearing Officer shall consider the following factors:
    - a. The gravity of the violation;
    - b. Any actions taken by the violator to correct the violation;
    - c. Any previous violations committed by the violator; and
    - d. Any previous violations committed on this property.
  4. 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 ordinance 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 Hearing Officer may authorize the Town attorney to foreclose on any such lien which remains unpaid more than three (3) months from the filing thereof. No lien created pursuant to these provisions of this ordinance may be foreclosed on real property which is a homestead under Section 4, Article X of the State Constitution.
  5. No lien provided by this ordinance shall continue for a period longer than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the 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 lis pendens is recorded.
  6. If the violation is a violation described in Section 5.04, the Hearing Officer 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.

7. A fine imposed pursuant to this section may include all costs pursuant to subsection 6.
8. The Town may charge the violator for all costs incurred in recording and satisfying a valid lien.
9. Appeal
  - a. An aggrieved party, including the Town Council may appeal a final administrative order of the Hearing Officer 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 Hearing Officer. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.
  - b. The scope of review shall be limited to the record made before the Hearing Officer and not be trial de novo.
  - c. The Hearing Officer shall, by rule, establish reasonable charges for the preparation of the record to be paid by the appealing party.

#### **Section 8: Notices**

1. All notices required by this ordinance shall be provided to the alleged violator by certified mail, return receipt requested; or hand delivery by the Town police or other law enforcement officer, code inspector, or other person designated by Town Council; or by leaving the notice at the alleged violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person on the contents of the notice.
2. In addition to providing notice as set forth in subsection 1, at the option and direction of the Town Attorney, notice may also be served by publication as follows:
  - a. 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.
  - b. The newspaper shall meet all requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements.
  - c. Proof of publication shall be made as provided in SS. 50.041 and 50.051, Florida Statutes.

- d. 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 1.
  - e. Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection 1, together with proof of publication as provided in subsection 2, shall be prima facie proof that the notice requirements of this ordinance have been met, without regard to whether or not the alleged violator actually received such notice.
3. In lieu of publication as described in subsection 2, such notice may be posted for at least ten (10) days at the property upon which the violation is alleged to exist and at the office of the Town Clerk.

#### **Section 9: Code Enforcement Citations**

1. This article is adopted pursuant to Chapter 162, Part II, Florida Statutes, 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.
2. 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 Hearing Officer, a civil action for injunctive relief, a stop work order or demolition.

#### **Section 10: Designation of Code Enforcement Inspectors**

1. For the purpose of this ordinance, the Town Council hereby designates all code inspectors, sworn law enforcement officers, fire inspectors, and building inspectors as code enforcement inspectors who shall have the powers and authority to enforce the codes and ordinances of the Town as set forth in the Town code.
2. The training and qualifications of the code enforcement inspectors shall be established by Town Council.
3. Except as to sworn law enforcement officers, designation of a code enforcement officer does not confer the power of arrest or other law enforcement powers not subject to the code enforcement officer to the provisions of Chapter 943, Florida Statutes.



4. Nothing in this ordinance shall be construed to amend, alter or contravene the provisions of any retirement or pension plan or system administered by the Town.

**Section 11: Citation authority; violation as civil infraction; maximum civil penalty.**

1. Any code enforcement inspector, designated pursuant to section 10, is hereby authorized to issue a citation to a person when based on personal investigation; the inspector has reasonable cause to believe that the person has committed a violation of any code or ordinance.
2. A code or ordinance violation, for which a citation may be issued pursuant to this ordinance, shall be deemed a civil infraction.
3. The maximum civil penalty of such a civil infraction shall not exceed \$500 per violation plus all applicable costs of prosecution and legislative assessments plus court costs of \$10.00.
4. Each violation of a code or ordinance shall be a separate civil infraction. Each day such violations shall continue shall be deemed to constitute a separate civil infraction.

**Section 12: Notice prior to citation issuance; exception**

1. Prior to issuing a citation, an inspector shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than thirty (30) days. If, upon personal investigation, an inspector finds that the person has not corrected the violation within the time period, the inspector may issue a citation to the person who has committed the violation.
2. An inspector shall not be 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 if a repeat violation is found or if the 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.

**Section 13: Service of warning notice or citation**

1. Written warning notices, if applicable, and citations shall be provided to the alleged violator by hand delivery by the 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 therein who is fifteen years of age or older and informing the person of the contents or by registered or certified mail, return receipt requested.
2. Issuance of a written warning notice of 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.

**Section 14: Form of contents of citations; filing with court**

A citation issued by an inspector shall be in a form prescribed by the Town Council, or promulgated by administrative order issued by the Chief Judge of the Ninth Judicial Circuit in the case of a uniform code citation, and shall contain:

1. The date and time of issuance;
2. The name and address of the person to whom the citation is issued;
3. The date and time the civil infraction was committed;
4. The facts constituting reasonable cause;
5. The number of the section of the code or ordinance violated;
6. The name and authority of the officer;
7. The procedure for the person to follow in order to pay the civil penalty or to contest the citation;
8. The applicable civil penalty if the person elects to contest the citation;
9. The applicable civil penalty if the person elects not to contest the citation;
10. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he or she shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

After issuing a citation to an alleged violator, an inspector shall deposit the original and one copy of the citation with the County Court, by filing same with the Clerk of the Court.

**Section 15: Refusal to sign citation**

1. Any person who willfully refuses to sign and accept a citation issued by an inspector shall be guilty of a misdemeanor of the second degree pursuant to section 162.21 (6) Florida Statutes.
2. If the person cited so refuses to sign the citation, the inspector shall write the words "refused" or "refused to sign" in the space provided for the person's signature and shall then leave a copy of the citation with the person cited, if possible.
3. Following such refusal to sign, the inspector shall contact the police department to report such refusal as a violation of section 162.21 (6) Florida Statutes.

**Section 16: Payment of reduced civil penalty; court hearing**

1. If the person elects not to contest the citation, the person shall pay in full the applicable reduced civil penalty, as set forth here, to the Clerk of the Court within fourteen (14) calendar days after issuance of the citation.
2. If the person cited elects to pay the applicable reduced civil penalty set forth herein, the person shall be deemed to have admitted the infraction and waived the right to a hearing. If the person cited fails to pay the civil penalty by the fourteenth (14) calendar day after issuance of the citation and a judgment shall be entered against the person cited in an amount up to the maximum civil penalty plus court costs of fifty dollars (\$50.00). In addition, a Rule to Show Cause may be issued by the County Judge requiring the person cited to appear in county court to explain the person's failure to pay or request a court hearing. Failure to respond to the Rule to Show Cause may result in issuance of an arrest warrant.
3. If the person elects to contest the citation, the person shall appear in court before a county judge within twenty-one (21) calendar days of issuance of the citation to request a hearing.
4. If the person cited has been previously cited for the same violation at least two (2) other times within a twelve (12) month period, upon issuance of a third or subsequent citation, the person shall not have the option of paying a reduced civil penalty but instead shall appear before a county judge within twenty-one (21) calendar days to answer the charge.
5. A county judge, after a hearing on the citation, shall make a determination whether or not a violation of the code of ordinances cited has been committed. If a violation is found to have occurred, the county judge may order the violator to correct the violation and may impose a civil penalty up to the maximum civil penalty plus all applicable costs of prosecution and legislative assessments, plus court costs of fifty dollars (\$50.00); in no event, however, shall such

- civil penalty imposed by a county judge be less than the reduced civil penalty set forth in Section 17.
6. The county judge may provide for the civil penalty to be paid, and the violation to be corrected within such time as the county judge determines to be appropriate. If the person found to be in violation fails to pay the civil penalty or correct the violation with the time provided, a civil judgment shall be entered against that person in an amount up to the maximum civil penalty.
  7. Should the person cited schedule a hearing as provided for herein and thereafter fail to appear at such hearing, the person shall be deemed to have waived the right to contest the citation; and a civil judgment shall be entered against the person in an amount up to the maximum civil penalty; provided, however, that the court shall have the discretion to continue or reschedule any hearing when it determines that doing so will further the interest of justice. In such an event, the Clerk of the Court shall notify the code enforcement officer and the person cited of the date and time of the hearing. In addition, a Rule to Show Cause may be issued by the county judge requiring the person cited to appear in County Court to explain the person's failure to appear at the hearing. Failure to respond to the Rule to Show Cause may result in issuance of an arrest warrant.
  8. Should the person cited willfully fail to comply with a court order to abate or correct the violation, the court, after due notice and hearing on the matter, may hold the violator in civil contempt and may enter an order to that effect.
  9. In the event that a civil judgment is entered against the person cited as provided herein, the Town may record a certified copy of said judgment in the Official Records of Orange County, Florida and the same shall thereafter constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.
  10. In the event that an order is entered finding that a violation of the ordinance cited has been committed, the Town may record a certified copy of said order in the official records of Orange County, Florida and the same shall thereafter constitute notice to and be binding upon the violator and any subsequent purchasers, successors in interest or assigns if the violation concerns real property.
  11. At any hearing pursuant to this ordinance, the commission of a violation of a code or ordinance must be proved by a preponderance of the evidence. The Florida Rules of Civil Procedure and the Florida Evidence Code shall be applicable to any such hearing.

**Section 17: Procedure for payment of civil penalty**

Payment of any civil penalty imposed by this ordinance shall be to the Clerk of the Court, who shall forward the money collected to the Town's Finance Director for deposit into the Town's fund. If a judgment has been entered for the civil penalty, the Clerk of the Court shall notify the Town when the judgment has been paid and the necessary satisfaction of judgment shall be prepared and recorded in the official records of Orange County.

**Classes of Violation and Reduced Civil Penalty**

1. Violations of Town Code and ordinances, and the applicable reduced civil penalties, shall be as follows:

Violation Classifications	1st Offense	Reduced Civil Penalty	
		2 <sup>nd</sup> Offense	3 <sup>rd</sup> or subsequent offense
Class I	\$50.00	\$100.00	Mandatory Court Hearing
Class II	\$100.00	\$200.00	Same as above
Class III	\$150.00	\$300.00	Same as above
Class IV	\$200.00	\$400.00	Same as above

2. Violations of the Town's codes and ordinances which constitute civil infractions for which citations may be issued are as follows:

***(Remainder of text missing from adopted ordinance)***

**Section 18: Conflicts:** Any ordinance or part thereof in conflict with this ordinance is hereby repealed.

**Section 19: Severability:** If any section, part of a section, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held or declared to be unconstitutional, inoperative, void, such holdings if invalidity shall not effect the remaining portion of this ordinance and it shall be construed to have been legislative intent to pass this ordinance without such unconstitutional, invalid, or inoperative part therein; and the remainder of this ordinance, after exclusion of such part or parts, shall be deemed to be held valid as if such part or parts had not been included

Code Enforcement Ordinance  
Ordinance #2003-08

Section VI. Item #1.

therein, or if this ordinance or any provision thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such hold shall not affect the applicability thereof to any other person or property or circumstance.

**Section 20: Effective Date:** This ordinance shall take effect immediately upon passage and adoption.

**First reading held this** 5<sup>th</sup> **day of** August , 2003.

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Marilyn Davis	<u>X</u>	<u>      </u>	<u>      </u>
Franklin	<u>X</u>	<u>      </u>	<u>      </u>
James Randolph	<u>X</u>	<u>      </u>	<u>      </u>
Frances Sealey	<u>X</u>	<u>      </u>	<u>      </u>
Anthony Grant	<u>X</u>	<u>      </u>	<u>      </u>


**Second reading and adoption held this** 19<sup>th</sup> **day of** August , 2003.

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Marilyn Davis	<u>X</u>	<u>      </u>	<u>      </u>
Kelvan Franklin	<u>X</u>	<u>      </u>	<u>      </u>
James Randolph	<u>X</u>	<u>      </u>	<u>      </u>
Frances Sealey	<u>      </u>	<u>      </u>	<u>X</u>
Anthony Grant	<u>X</u>	<u>      </u>	<u>      </u>

  
Anthony Grant, Mayor

**ATTEST:**

  
Cathlene Williams, Town Clerk

  
Approved for form and legality  
Joseph Morrell, Town Attorney

Ordinance History:

Ordinance #97-12 adopted October 7, 1997 by Eatonville Town Council.  
Ordinance #2003-08 adopted August 19, 2003 by Eatonville Town Council.