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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

ORDINANCE 02-03- 44

AN ORDINANCE AMENDING DIVISION 1 OF ARTICLE V OF CHAPTER 9 OF THE CODE OF ORDINANCES, HIGHLANDS COUNTY, FLORIDA, PERTAINING TO THE SUN 'N LAKE OF SEBRING IMPROVEMENT DISTRICT, BY ADDING THERETO A NEW SECTION 9-102; PROVIDING FOR MINIMUM MAINTENANCE STANDARDS, NUISANCE ABATEMENT, PARKING, AND KEEPING AND MAINTAINING ANIMALS; PROVIDING FOR PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR VARIANCES; PROVIDING FOR CONFLICT OF LAW; PROVIDING FOR RIGHT OF ENTRY; PROVIDING FOR IMMUNITY FROM TRESPASS; PROVIDING FOR MINIMUM MAINTENANCE STANDARDS; PROVIDING FOR PARKING; PROVIDING FOR KEEPING AND MAINTAINING ANIMALS; PROVIDING FOR DISTRICT CODE ENFORCEMENT OFFICER; PROVIDING FOR SPECIAL MASTERS; PROVIDING FOR NOTICES; PROVIDING FOR ISSUANCE OF CIVIL CITATIONS; PROVIDING FOR ENFORCEMENT PROCEDURE; PROVIDING FOR HEARINGS; PROVIDING FOR PENALTIES; PROVIDING FOR APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HIGHLANDS COUNTY, FLORIDA, after due notice and public hearing, that:

SECTION 1. Amendment and Adoption. Division 1 of Article V of Chapter 9 of the Code of Ordinances, Highlands County, Florida, is amended by the addition of a new Section 9-102 which is adopted to read as follows:

Section 9-102. Minimum Maintenance Standards, Nuisance Abatement, Parking, and Keeping and Maintaining Animals.

(a) *Purpose.* The purpose of this section is to protect the health, safety, morals and welfare of the residents residing within the boundaries of the district by establishing minimum standards governing the maintenance of buildings and living conditions of housing in the district, providing for the abatement of public nuisances, and providing regulations for parking motor

vehicles and vessels and for keeping and maintaining animals. Through such standards and regulations, the viable housing stock in the district shall be conserved and maintained to at least basic, adequate standards essential to make housing fit for occupancy and use. The basic viability of district neighborhoods shall be protected by minimizing blight and nuisance conditions. This section imposes certain responsibilities and duties upon owners and operators of property, authorizes inspections and hearings regarding the conditions on property and violations of this section, and provides for remedial measures. This section is hereby declared to be remedial and essential for the public interest and it is intended that this section be liberally construed to effectuate the purposes stated herein.

(b) *Definitions.* The following definitions shall apply for purposes of this section:

Abandoned property means wrecked or derelict property having no value other than nominal salvage value, if any, and which has been left abandoned and unprotected from the elements, and shall include inoperative or partially dismantled vehicles, vessels, machinery, white goods, plumbing fixtures, furniture and other similar articles.

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

District enforcement officer or officer means any employee of the district designated by the board of supervisors pursuant to this section to enforce the provisions of this section.

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.

Fowl means any guineas, peafowls, pheasants, pigeons or poultry.

Front yard means a front yard is the space on a lot, extending the full width of the lot and situated between the street line and the front line of the main structure on the lot. However, where a lot is located at the intersection of two or more streets, the front yard shall, in addition, include the space on the lot extending the full width or length of the lot and situated between the street line and the side line of the main structure on the lot.

Motor vehicle means an automobile, motorcycle, scooter, moped, sports utility vehicle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any

other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power.

Multiple dwelling means two or more dwelling units whose occupants are living independently of each other and doing their own cooking in the said building, and including flats and apartments.

Occupant means any person residing on the premises.

Owner means 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, and it shall also mean any person who, alone or jointly or severally with others:

- a. shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
- b. 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 section, and of 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.

Prepared surface means the prepared surface shall consist of any portion of a yard modified to accommodate the parking of motor vehicles, whether concrete, asphalt, shell rock, mulch, or other surface material, and may not exceed 30% of the front yard under any circumstance.

Recreational vehicle means any recreational vehicle, auto camper, boat, boat trailer, camping trailer, horse or cattle trailer, house boat, motor home, mud buggy, swamp buggy, dune buggy, race car, truck camper, pickup coach or camper, utility trailer, and other related or similar equipment.

Repeat violation means a violation of a provision of subsection (h), (i) or (j) of this section by a person who has been previously found through a special master or any other quasi-judicial or judicial process, to have violated or who has admitted

violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations.

Residential section means a residential street within the district that has four or fewer vacant cleared lots between residential structures within a unit in which development is prevalent.

Structure means a combination of any materials, whether fixed or portable, forming a construction, including buildings.

Underbrush growth means grass, weeds, or native vegetation occurring on a lot.

Unlicensed vessel or vehicle means any vessel or vehicle which does not have a valid, current registration certificate in effect.

Vacant cleared lot means a lot that has previously been cleared of all or a substantial portion of the trees or other native vegetation on the lot.

Vehicle means a machine propelled by power other than human power, designed to travel by use of wheels, treads, wings, runners or slides and transport persons or property or pull machinery and shall include, without limitation, automobiles, trucks, trailers, motorcycles, tractors, buggies, wagons and airplanes.

Yard means 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.

(c) *Applicability.* The provisions of this section shall apply to all properties within the geographical boundaries of the district.

(d) *Variances.* Where, by reason of unusual circumstances, the strict application of any provision of this section would result in undue economic hardship upon any owner a special master appointed pursuant to this section may vary or modify strict adherence to such provision so as to relieve the undue economic hardship, providing such variance does not distract from the general purpose and intent of this section. The granting of the variance must not create a conflict with any other law or ordinance.

(e) *Conflict of laws.* If any of the standards set out in this section impose a higher standard than set forth in any other applicable ordinance or state or federal laws then the standard as set forth herein shall prevail. If the provisions of this section impose a lower standard than any other applicable ordinance or state or federal law, then the higher standard contained in any such ordinance or law shall prevail.

(f) *Right of entry.* Subject to the requirements of applicable federal or state law, the code enforcement officer, upon presentation of proper identification to the owner, agent, or occupant in charge of such property, may enter any building, business, industrial premise, structure, dwelling, apartment, apartment house, or other premises regulated by this section within the district, during all reasonable hours to enforce this section, except that the above limitations shall not apply in cases of emergency where extreme hazards are known to exist which may involve the potential loss of life or severe property damage.

(g) *Immunity from trespass.* Any district code enforcement officer or any person authorized by a district code enforcement officer shall be immune from prosecution, civil or criminal, for reasonable good faith trespass upon real property while in the discharge of duties imposed by this section.

(h) *Minimum maintenance standards.* In addition to any other maintenance standards set forth in the Code of Ordinances of Highlands County, Florida, the following standards shall apply within the boundaries of the district. Any violation of the provisions of this subsection by an occupant or visitor shall be deemed to be a violation by both the occupant or visitor and the owner of the property on which the violation is located, except as may otherwise be specifically provided in this subsection.

- (1) *Structures.* No owner shall allow to remain on any property in the district any building or other structure which is in such a dilapidated condition that it is unfit for human habitation or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof and presents a more than ordinary danger of fire hazard in the vicinity where it is located. No owner or occupant of any property in the district shall allow to remain thereon any mailbox, fence, lighting device or retaining wall which is structurally unsound, deteriorating or in disrepair. No person shall erect, use or maintain, and no owner or occupant shall allow to remain, a tent on any property in the district for living quarters.
- (2) *Sanitation.* The unsanitary condition of any lot, parcel, building, or dwelling within the district represents a serious threat to the health, safety, and welfare of the district's inhabitants. Any such unsanitary condition is hereby prohibited. Every owner shall require every occupant of a dwelling or dwelling unit to keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which the occupant occupies or which is provided for the occupant's particular use. Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which the occupant occupies or which is provided for the occupant's particular use. No person shall create, and no owner occupant shall allow to remain, on any property in

the district any accumulation of trash, litter, debris, garbage, bottles, paper, cans, rags, dead or decayed fish, fowl, meat or other animal matter, fruit, vegetables, offal, bricks, concrete, scrap lumber or other building debris or other refuse of any nature.

- (c) *Garbage disposal.* Every owner shall require every occupant of a dwelling or dwelling unit to dispose of all garbage and any other organic waste which might provide food for rodents and all rubbish in a clean and sanitary manner by placing it in garbage cans, dumpsters, or garbage or rubbish storage containers. Every occupant of a dwelling or dwelling unit shall dispose of all garbage and any other organic waste which might provide food for rodents and all rubbish in a clean and sanitary manner by placing it in garbage cans, dumpsters, or garbage or rubbish storage containers. Because garbage attracts vermin and other disease-carrying animals, no person shall place any garbage container, other than multi-user dumpsters, in open public view for pickup earlier than twelve (12) hours prior to the designated pickup time. Garbage containers shall otherwise be kept in a secure and sanitary manner away from public view.
- (4) *Unlicensed vessels and vehicles and abandoned property.*
- a. No person shall dump or cause to be dumped or place or cause to be placed, leave or permit to accumulate any grass, solid waste, white goods, inoperative and derelict vessels and vehicles or obnoxious material of any kind on any lands or premises, improved or unimproved, within the district, so that the same shall or may afford feed or harborage or tend to be a breeding place or haven for snakes, rats or vermin of all kinds and character or which tend to create a fire hazard endangering the lives and property of the citizens of the district or which shall or may injure or adversely affect the safety, health and welfare of the residents and citizens of the district.
- b. No person shall abandon any vessel or vehicle within the district nor shall they leave any partially dismantled, nonoperating, wrecked, junked or unlicensed vehicle on any street or highway within the district.
- c. No owner shall allow to remain on any property in the district any partially dismantled, nonoperating, wrecked, junked, discarded or unlicensed vessel or vehicle longer than 72 hours. No person shall leave any partially dismantled, nonoperating, wrecked, junked, discarded or unlicensed vessel or vehicle on any property within the district for longer than 72 hours. No owner shall allow to remain on

any property in the district any partially dismantled, nonoperating, wrecked, junked, discarded or unlicensed vessel or vehicle in excess of 72 hours after receiving a warning notice issued pursuant to this section.

- (5) *Underbrush growth.* The owner of a vacant cleared lot within a residential section of the district shall not allow undergrowth to grow higher than eighteen (18) inches in height. The owner and the occupant of a lot in the district with a structure located thereon shall not allow any weeds, such as broom grass, jimson, burdock, ragweed, sandspur or other similar weeds or any other vegetation, other than trees, ornamental bushes, flowers, or other ornamental plants to grow higher than eighteen (18) inches in height.
 - (6) *Swimming pools.* Owners or occupants of property with a swimming pool located thereon, shall not allow that swimming pool to be unwholesome or unsanitary, hold stagnant water, or be in such condition as to be susceptible to producing disease, mosquitoes, or other disease bearing insects or vermin, and if any such condition is found to exist, shall drain, fill, or chemically treat such water so as to provide sanitary conditions.
 - (7) *Visibility at intersections.* On a corner lot in any residential section, nothing shall be erected, placed, planted or allowed to grow in such a manner as to materially impede vision between a height of two (2) feet and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along such street lines, fifty (50) feet from the point of the intersection.
- (i) *Parking.*
- (1) *Motor vehicles/parking on lawns.* The seepage and accumulation of gasoline, diesel fuel, oil and other toxic fluids commonly used in motor vehicles can lead to contamination of groundwater, destruction of plant life, and represents a serious fire hazard. Accordingly, the following regulations of this paragraph (1) shall be effective and enforceable on and after July 1, 2004:
 - (a) No person shall park any operational motor vehicle in the front yard on any area except the prepared surface. No person shall park any vehicle either behind a structure or to the side of a structure behind the front building line except on a temporary basis. No owner or occupant shall allow to remain any operational motor vehicle in the front yard on any area except the prepared surface. No owner or occupant shall allow to remain any vehicle either behind a structure

or to the side of a structure behind the front building line except on a temporary basis.

- b. Social invitees may temporarily park motor vehicles on lawns not more than two (2) separate twenty-four (24) hour periods in any calendar month. Except as just provided, no person shall park any motor vehicle on the lawn of any residence.
- (2) *Tents and canopies.* No person shall keep, and no owner shall allow to be kept, any vehicle under any tent or canopy as a garage substitute.
 - (3) *Parking of commercial vehicles within the district.* A commercial vehicle of not over one ton rated capacity may be parked on a lot whose principal use is residential and where the commercial vehicle is used by a resident of the premises. A commercial vehicle of not over two tons rated capacity may be parked in an enclosed garage on a lot whose principal use is residential and where the commercial vehicle is used by a resident of the premises. Permitted nonresidential uses may utilize and park on their premises such commercial or other vehicles as may be necessary and customary for such uses, but this provisions shall not be construed to permit the parking of school buses used by public, private or parochial schools.
 - (4) *Storage and parking of recreational vehicles, travel trailers and camping trailers.* The parking and storage of recreational vehicles in the district shall be permitted subject to the following:
 - a. Recreational vehicles shall not be located in any front, side or rear yard except that one boat 18 feet or less in length and no more than six feet in average height and one utility trailer eight feet or less in length and no more than six feet in average height may be parked in a driveway not nearer than 7 ½ feet to any property line.
 - b. Recreational vehicles shall be parked or stored only on property which is occupied, either temporarily or permanently, by the vehicle owner. Recreational vehicles shall not be parked or stored on vacant residentially zoned property.
 - c. The recreational vehicle shall be stored and maintained in a condition which would allow for its safe and effective use.
 - d. Recreational vehicles may be parked in a driveway for a period of twenty-four (24) hours, but not to exceed three (3) times in any thirty (30) day period, for the purpose of loading and unloading the vehicle.

- e. Recreational vehicles which are used and licensed as the primary means of transportation for physically disabled may be parked or stored in a driveway of a residential lot so long as it is not nearer than 7 ½ feet to any side or rear lot line.
- f. Recreational vehicles shall be permitted to be parked in an enclosed structure such as a garage or carport.
- g. A recreational vehicle shall not be used for living, sleeping or business purposes. However, a recreational vehicle may be used, on a temporary basis, for sleeping and living purposes for a period not to exceed one week in any 30-day period where the owner or occupant of the vehicle is a guest of the owner or occupant of the property involved.
- h. Recreational vehicles shall not be connected to any utilities such as water, sewer, electric, phone, etc., except that a temporary connection for purposes of battery charging or repairs shall be permitted.
- i. Recreational vehicles shall not be used as an accessory structure or utility building.
- j. Recreational vehicles shall not be parked or stored on any right-of way.

(j) *Keeping and maintaining animals.* No person shall keep or maintain any hoofed animal, fowl or livestock regardless of number, or permit them to be on any lot or premises within the limits of the district.

(k) *District code enforcement officer.*

- (1) The board of supervisors of the district may, from time to time, appoint one or more code enforcement officers to be known as the district code enforcement officers, who shall be employees of the district.
- (2) The district code enforcement officers shall be the designated code enforcement officers for enforcement of violations of subsections (h), (i) and (j) of this section. County code enforcement officers shall enforce all other ordinances enacted by Highlands County which are applicable within the district boundaries but shall have no responsibility to enforce the additional regulatory provisions of this section.

(3) No person shall oppose, obstruct or resist any district code enforcement officer or any person authorized by a district code enforcement officer in the discharge of his duties as provided in this section.

(l) *Special masters.*

(1) *Appointment of special masters.* The board of supervisors of the district may, from time to time, appoint and retain one (1) or more special masters to conduct administrative hearings on appeals of citations issued by district code enforcement officers for violations of subsections (h), (i), and (j) of this section. Each of the special masters shall be an attorney licensed to practice in the state of Florida as a member of the Florida Bar who has practiced law in Florida for at least five (5) years, and who has experience in land use law, litigation, local governmental law or administrative law. None of the special masters, or the law firms with which they may be associated, shall represent clients before any agency of the county government or the district during the period in which they serve as special masters.

(2) *Term, compensation.* Each special master shall serve at the pleasure of the board of supervisors of the district and shall be compensated at a rate or rates to be fixed by the board of supervisors of the district.

(3) *Ex parte communication.* The rules and procedures regarding ex parte communication as set forth below shall apply to special masters, district employees, district elected officials, and every other person who is or may, as a result of a currently outstanding citation, become a party to a citation appeal before a special master pursuant to this section.

a. No district employee, district elected official, or other person who is or may, as a result of a currently outstanding citation, become a party to a citation appeal before a special master shall engage in an ex parte communication with the special master appointed pursuant to this section. However, the foregoing does not prohibit discussions between the special master and district staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the appeal.

b. If a person engages in an ex parte communication with the special master, the special master shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed

on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten (10) days after notice of such communication. If he or she deems it necessary due to the effect of an ex parte communication received by him, the special master may withdraw from the case.

- c. Any person who makes an ex parte communication prohibited by subparagraph a of this paragraph (3) and any special master who fails to place in the record any such communication, as required by subparagraph b of this paragraph (3) shall be guilty of a civil infraction enforced pursuant to the provisions of Division 5 of Article VI of Chapter 2 of the Code of Ordinances, Highlands County, Florida, and shall be punishable as a Class IV Violation as provided in Sections 2-246 and 2-247 of the Code of Ordinances, Highlands County, Florida.
- (4) *Prohibited from acting as agent or attorney for subject matter.* A special master, and any firm with which he or she is or may become associated, is prohibited for a period of three (3) years after issuance of a decision regarding a citation appeal from acting as an agent or attorney on any matter involving the alleged violator who was the subject of the citation appeal in which the special master presided. Any person who violates this paragraph shall be guilty of a civil infraction enforced pursuant to the provisions of Division 5 of Article VI of Chapter 2 of the Code of Ordinances, Highlands County, Florida, and shall be punishable as a Class IV Violation as provided in Sections 2-246 and 2-247 of the Code of Ordinances, Highlands County, Florida..
 - (5) *Powers.* The special master shall have the power to:
 - a. Adopt rules for the conduct of hearings by the special master.
 - b. Subpoena alleged violators and witnesses and evidence to the hearings. Subpoenas maybe served by the Highlands County Sheriff's Department.
 - c. Take testimony under oath.
 - d. Determine whether cited violations occurred.
 - e. Determine whether a reasonable time period for compliance was given.

- f. Assess and order the payment of civil penalties and administrative costs as provided in this section.
- g. Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
- h. Impose liens as provided in this section.

(m) *Notices.*

- (1) All notices required by this section shall be provided to the alleged violator by:
 - a. Certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the district by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraph b of paragraph (2) of this subsection and by first class mail directed to the addresses furnished to the district with a properly executed proof of mailing or affidavit confirming the first class mailing,
 - b. Hand delivery by the sheriff or other law enforcement officer, district code enforcement officer, or other person designated by the district general manager,
 - c. Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice, or
 - d. In the case of commercial premises, leaving the notice with the manager or other person in charge.
- (2) In addition to providing notice as set forth in paragraph (1) of this subsection (1), at the option of the district general manager, notice may also be served by publication or posting, as follows:
 - a. 1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Highlands County, Florida. The newspaper shall meet such requirements as are prescribed under Chapter 50, Florida Statutes, for legal and official advertisements.

2. Proof of publication shall be made as provided in Sections 50.041 and 50.051, Florida Statutes.
- b.
 1. In lieu of publication as described in subparagraph a, such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least three locations, one of which shall be the property upon which the violation is alleged to exist and one of which shall be at the front door of the Highlands County Courthouse and one of which shall be at the front door of the main office of the district.
 2. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.
 - c. Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under paragraph (1). Evidence that an attempt has been made to hand deliver or mail notice as provided in paragraph (1), together with proof of publication or posting as provided in paragraph (2), shall be sufficient to show that the notice requirements of this section have been met, without regard to whether or not the alleged violator actually received such notice.

(n) *Issuance of civil citations.*

- (1) Any district code enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of subsection (h), (i) or (j) of this section and that the special master will hear the charge.
- (2) Prior to issuing a citation, a district code enforcement officer shall provide a written warning notice of violation to the person that the person has committed a violation of subsection (h), (i) or (j) of this section 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, a district code enforcement officer finds that the person has not corrected the violation within the time period, the district code enforcement officer may issue a citation to the person who has committed the violation. A district code enforcement officer does not have 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 district

code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

- (3) All citations and notices issued by a district code enforcement officer shall be in a form prescribed by the district general manager and shall contain, at minimum, the following information:
 - a. The date and time of issuance.
 - b. The name and address of the person to whom the citation is issued.
 - c. The date and time the civil infraction was committed.
 - d. The facts constituting reasonable cause.
 - e. The number or section of the code or ordinance violated.
 - f. The name and authority of the district code enforcement officer.
 - g. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
 - h. The applicable civil penalty if the person elects to contest the citation.
 - i. The applicable civil penalty if the person elects not to contest the citation.
 - j. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear before the special master to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, the special master may, without a hearing, enter an order against the person for an amount up to the maximum civil penalty.
- (4) After issuing a citation to an alleged violator, a district code enforcement officer shall deposit the original citation with the district general manager.
- (5) Violations of subsections (h), (i), and (j) of this section shall be civil infractions enforceable and punishable as provided in this section.
- (6) Each violation of subsections (h), (i), and (j) of this section shall be a separate civil infraction. Each day a violation of subsections (h), (i) or (j) of this section continues shall be deemed to constitute a separate violation and civil

infraction. However, a citation must be issued to the alleged violator for each day an alleged violation continues to exist in order for a separate fine to be imposed.

- (7) The maximum civil penalty for each violation of subsection (h), (i) or (j) of this section shall not exceed five hundred dollars (\$500.00) per violation.
- (8) The civil penalty shall not exceed \$375.00 if the person who has committed the civil infraction does not contest the citation.
- (9) A citation enforced pursuant to this section must be issued by a district code enforcement officer who has reasonable cause to believe that the person has committed an act in violation of subsection (h), (i) or (j) of this section and that a special master appointed pursuant to this section will hear the charge.
- (10) A citation enforced pursuant to this section may be contested in a hearing held by a special master appointed pursuant to this section.

(o) *Enforcement procedure.*

- (1) If a person elects not to contest the citation, the person shall correct the violation and pay 75% of the applicable civil penalty set forth in this section to the district at the office of the district general manager within ten (10) days after issuance of the citation, exclusive of weekends and legal holidays. If a person cited elects to correct the violation and pay the applicable civil penalty set forth herein, the person shall be deemed to have admitted the infraction and waived the right to a hearing.
- (2) If a person elects to contest a citation issued pursuant to this section, the person shall, within ten (10) days after issuance of the citation, exclusive of weekends and legal holidays, the person shall make a request in writing for an administrative hearing before a special master appointed pursuant to this section to challenge the issuance of the citation. Such written request must be filed at the office of district general manager.
- (3) Failure by the alleged violator to challenge the issuance of a citation within ten (10) days after issuance of the citation, exclusive of weekends and legal holidays, shall constitute a waiver of the alleged violator's right to a hearing. The waiver of the alleged violator's right to a hearing shall be deemed an admission of the violation and the special master shall enter an order ordering the violator to pay the civil penalty set forth on the citation and a hearing shall not be necessary for the issuance of such order.

(p) *Hearings.*

- (1) Upon receipt of a timely filed written request for a hearing to contest the citation, the district general manager shall set the matter for hearing to be held within thirty (30) days after receipt of such request, and the district general manager shall cause a notice of hearing to be hand delivered or mailed to the alleged violator, as provided in subsection (m) of this section, which notice shall include, but not be limited to, the following:
 - a. Place, date and time of the hearing;
 - b. Right of alleged violator to be represented by an attorney;
 - c. Right of alleged violator to present witnesses and evidence and conduct cross examination;
 - d. A conspicuous statement consistent the requirements of Section 286, Florida Statutes, that a person deciding to appeal any decision of the special master will need to ensure that a verbatim record of the proceedings is made; and
 - e. A conspicuous statement consistent with the requirements of the Americans With Disabilities Act that a person with a disability needing a special accommodation to participate in the proceeding should contact the office of the district general manager, at a designated street address or telephone number not later than seven days prior to the proceeding and also that, if hearing impaired, contact may be made for (TDD) at 1-800-955-8771 and, if voice impaired, for (V) at 1-800-955-8770, via Florida Relay Services.
- (2) No hearing shall be scheduled on a date sooner than ten (10) days from the date of service of the citation on the alleged violator unless there is reason to believe that the alleged violation presents a serious threat to the public health, safety and welfare. All hearings shall be administratively scheduled by the district general manager.
- (3) If the person cited, or his or her designated representative, shows that the citation is invalid on its face or that the violation has been corrected prior to appearing before the special master, the special master may dismiss the citation unless the violation is irreparable or irreversible.
- (4) All hearings shall be open to the public. All testimony shall be under oath, and the proceedings shall be recorded by the district. Minutes shall be kept of all hearings by the special master.

- (5) Each case before the special master shall be presented by the district code enforcement officer or his designee.
- (6) Formal rules of evidence shall not apply, but fundamental principles of due process shall be observed and govern the proceedings. All 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 state of Florida court.
- (7) Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross examine opposing witnesses on any relevant matter, as determined by the special master.
- (8) Provided that proper notice of the hearing has been served upon the owner of the place or premises, such hearing may proceed in the absence of the owner.
- (9) If the district prevails in the hearing before the special master, the special master may order the violator to pay to the district all reasonable costs incurred by the district in the case before the special master.
- (10) In order to make a finding affirming the district code enforcement officer's decision to issue the citation, the special master must find by a preponderance of the evidence that the alleged violator was responsible for the violation of the relevant code provision as cited. Within thirty (30) days after the conclusion of the hearing, the special master shall issue a written decision including findings of fact, based on evidence of record, conclusions of law, and an order consistent with the powers granted by this section. The order shall include the amount of the civil penalty imposed which shall not exceed the maximum civil penalty for that offense determined pursuant to subsection (q) of this section and costs awarded to the district. In determining the amount of the civil penalty, the special master shall consider the gravity of the violation, any actions taken by the violator to correct the violation and any previous violations committed by the violator. A certified copy of that order may be recorded in the public records of Highlands County, Florida, and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the special master shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

- (11) Upon written notification by the district code enforcement officer that an alleged violator has not contested the citation or paid the civil penalty within the time frame allowed on the citation, or if a violation has not been corrected within the time frame set forth by the special master, the special master shall enter an order ordering the violator to pay the civil penalty set forth on the citation and a hearing shall not be necessary for the issuance of such order.
- (12) No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under Section 4, Article X of the Constitution of the State of Florida. The civil penalty provisions of this section shall not attach to real property or personal property which is covered under Section 4(a), Article X of the Constitution of the State of Florida.

(q) *Penalties.*

- (1) The following civil penalties shall be assessed for violation subsections (h), (i), and (j) of this section:

1 st Offense After Warning	2 nd Offense After Warning	3 rd Offense After Warning	4 th or more Offense After Warning
\$50.00	\$100.00	\$250.00	\$500.00

- (2) The district shall provide for the appropriate guidelines and procedures for the administration, collection, record keeping, reporting, and accountability of penalties assessed under this section.
- (3) The district may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.
- (4) The revenue received by the district from the payment of civil penalties pursuant to this section, less any costs of collection, shall belong to the district and may be used by the district to offset costs associated with district code enforcement functions and for such other purposes as the board of supervisors of the district deems appropriate.

(r) *Appeals.* An aggrieved party, including the district, may appeal a final administrative order of a special master to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special master. An appeal shall be filed within 30 days of the execution of the order to be appealed.

SECTION 2. Severability. The sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, subsection or section

of this Ordinance shall be declared invalid, unconstitutional or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unconstitutionality or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, and sections of this Ordinance.

SECTION 3. Conflict. Any ordinance or part thereof in conflict with this Ordinance or any part hereof is hereby repealed to the extent of the conflict.

SECTION 4. Effective Date. This Ordinance shall take effect immediately upon filing with the Department of State.

DONE AND ADOPTED this 22nd day of July, 2003.



(SEAL)

BOARD OF COUNTY COMMISSIONERS
HIGHLANDS COUNTY, FLORIDA

By: Edgar E. Stokes
Edgar E. Stokes, Chairman

ATTEST: [Signature]
L.E. "Luke" Brooker, Clerk