

ORDINANCE NO. 17-18- 06

AN ORDINANCE PERTAINING TO THE SUN 'N LAKE OF SEBRING IMPROVEMENT DISTRICT CODE ENFORCEMENT; AMENDING SECTIONS 9-102, 9-103, 9-104, AND 9-105 OF THE CODE OF ORDINANCES, HIGHLANDS COUNTY, FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; 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.** Section 9-102 of the Code of Ordinances, Highlands County, Florida, is hereby amended and adopted to read as follows:

**Sec. 9-102.** - Minimum maintenance standards, 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 and those persons conducting business within the district by establishing minimum standards governing the maintenance of land and structures 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 land and structures maintained to at least basic, adequate standards essential to make land and structures fit for occupancy and use. The basic viability of district neighborhoods and non-residential sections 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.* To the extent not inconsistent with this section, the definitions contained elsewhere in this article and in the Code of Ordinances, Highlands County, Florida, shall define the words contained in this section. 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.

*All-terrain vehicle or ATV* means any motorized off-highway vehicle 50 inches or less in width, having a dry weight of 1,200 pounds or less, designed to travel on three or more nonhighway tires, and manufactured for recreational use by one or more persons.

*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.

*Golf Cart* means a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

*Low-speed vehicle* means any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. Section 571.500 and Section 316.2122, Florida Statutes.

*Motor vehicle* means an automobile, motorcycle, scooter, moped, sports utility vehicle, golf cart, low-speed vehicle, utility vehicle, truck, trailer, semitrailer, truck-tractor and semitrailer combination, or any other vehicle operated on the roads of this ~~state~~district, 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:

- (1) Shall have legal title to any land or structure within the district, with or without accompanying actual possession thereof; or
- (2) Shall have charge, care or control of any land or structure within the district 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 structure, or their duly authorized agents. Any such person thus representing the actual owner shall comply with the provisions of this section and rules and regulations adopted pursuant thereto, to the same extent as if the representative were the owner, and shall notify the actual owner of the reported infractions of these regulations pertaining to the property which apply to the owner.

*Non-residential section* means any area within the district that is not in a residential section or used for district purposes and is zoned for non-residential use.

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

*Prepared surface* means the portion of a yard modified to accommodate the parking of motor vehicles; that complies with all the following conditions:

- (1) Does not exceed 30 percent of the surface area of the front yard;
- (2) Does not intersect with any district maintained road, right of way, or utility easement;
- (3) Does not consist of any area which is behind any structure nor any area constructed in such a manner that any portion of the prepared surface is behind the front line of the house;
- (4) Meets all setback requirements as defined within Highlands County Land Development Regulations;
- (5) Consists of concrete, concrete pavers, asphalt, crushed concrete, crushed shell, crushed limestone, rock, ~~mulch~~, or other substantially similar material with durability lasting greater than six months. Grass is and mulch are not appropriate for this application.
- (6) Is constructed to a minimum depth of two inches;
- (7) Is bordered by curbing, landscape timbers, or other substantially similar material designed for the purpose of preventing the scattering of fill material which delineates the parking area.

*Recreational vehicle* means any recreational vehicle, auto camper, boat, boat trailer, camping trailer, horse or cattle trailer, house boat, motorhome, mud buggy, swamp buggy, dune buggy, all-terrain vehicle, 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 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 five years prior to the violation, notwithstanding the violations occur at different locations.

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

*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.

*Utility vehicle* means a motor vehicle designed and manufactured for general maintenance, security, and landscaping purposes, but the term does not include any vehicle designed or used primarily for the transportation of persons or property on a street or highway, or a golf cart, or an all-terrain vehicle.

*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. every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway or upon the roads in the district, except devices used exclusively upon stationary rails or tracks.~~

*Vessel* is synonymous with boat as referenced in Section 327.02, Florida Statutes, and Section 1(b) of Article VII of the Constitution of the State of Florida and includes every description of watercraft, barge and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

*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~~ magistrate 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, to the extent permitted by law.

(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.
- (3) *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 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 7248 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 7248 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 7248 hours after receiving a warning notice issued pursuant to this section.
- (5) *Underbrush growth.* The owner of a vacant cleared lot within a residential or non-residential section of the district shall not allow undergrowth to grow higher than 12 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 428 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 feet and ten 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, 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 subsection (1) shall be effective and enforceable on and after July 1, 2004:~~
  - (1) *Parking motor vehicles on lawns restricted.*
    - a. ~~No~~Except as provided in subparagraph b of this paragraph (1), no person shall park any operational motor vehicle in the front yard on any area except the prepared surface. Unless on a prepared surface, and no owner or occupant shall allow to remain 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, and, unless on a prepared surface, No owner or occupant shall allow to remain any operational motor vehicle in the front yard on any area except the prepared surface. No, and 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 separate 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~~ other coverings. No person shall keep, and no owner or occupant shall allow to be kept, any vehicle under any tent ~~or canopy~~, canopy, blanket, sheet or similar covering, except a fitted vehicle or boat cover, 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~~ 12 feet or less in length and no more than four feet in average height ~~and/or~~ one utility trailer eight feet or less in length and no more than ~~six~~ four feet in average height may be parked in a ~~driveway~~ prepared surface not nearer than 7½ 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~~ prepared surface for a period of 24 hours, but not to exceed three times in any ~~30~~ 60 -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~~ prepared surface of a residential lot so long as it is not nearer than 7½ 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, except service animals registered as service animals with a state or federal agency. No animal shall be kept or maintained upon any vacant lot or premises.

**SECTION 2. AMENDMENT AND ADOPTION.** Section 9-103 of the Code of Ordinances, Highlands County, Florida, is hereby amended and adopted to read as follows:

**Sec. 9-103. - Enforcement of minimum maintenance standards, parking and keeping and maintaining animals—Generally.**

(a) *District code enforcement ~~officer~~officers.*

- (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 section 9-102 of this article. 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 article.
- (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 article.

(b) *Special magistrates.*

- (1) *Appointment of special magistrates.* The board of supervisors of the district may, from time to time, appoint and retain one or more special magistrates to conduct administrative hearings for nuisance abatement and on appeals of citations issued by district code enforcement officers for violations of section 9-102 of this article. Each of the special magistrates 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 years, and who has experience in land use law, litigation, local governmental law or administrative law.
- (2) *Term, compensation.* Each special magistrate shall serve at the pleasure of the board of supervisors of the district and shall be compensated at a rate or rates to be determined by the board of supervisors of the district.
- (3) *Support personnel.* The board of supervisors shall provide such clerical, administrative personnel and legal services as the board of supervisors shall deem to



be reasonably required to assist the activities of the special magistrate for the proper performance of the special magistrate's duties (i.e., assistance with mailing notices, recording hearings, taking minutes, etc.). Special magistrates shall not be authorized to engage or hire any person, except those provided by the board of supervisors, to assist the special magistrate in the performance of the special magistrate's duties.

- (4) *Ex parte communication.* The rules and procedures regarding ex parte communication as set forth below shall apply to special magistrates, district employees, district elected officials, alleged violators, attorneys, witnesses, and every other person who is or may, as a result of a currently outstanding notice of violation or citation, become a party to a nuisance abatement hearing or a citation appeal before a special magistrate pursuant to this article or a representative of such a party or a witness in such a proceeding:
- a. No district employee, district elected official, alleged violator, attorney, witness or other person who is or may, as a result of a currently outstanding notice of violation or citation, become's a party to a nuisance abatement hearing or a citation appeal or a representative of a party or a witness in any matter that is pending before a special magistrate shall engage in an ex parte communication with the special magistrate appointed pursuant to this section. However, the foregoing does not prohibit discussions between the special magistrate and district staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the hearing or appeal.
  - b. If a person engages in an ex parte communication with the special magistrate, the special magistrate 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 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 or her, the special magistrate may withdraw from the case.
  - c. Any person who makes an ex parte communication prohibited by subsection (4)~~b~~a of this section and any special magistrate who fails to place in the record any such communication, as required by subsection (4)~~b~~a of this section, shall be guilty of a violation of County Code enforced pursuant to the provisions of division 4 of article XII of chapter 2 of the Code of Ordinances, Highlands County, Florida, and shall be punishable as a Class IV violation as provided in sections 2-382-384 and 2-382 2-383 of the Code of Ordinances, Highlands County, Florida.
- (5) *Prohibited from acting as agent or attorney for subject matter.* A special magistrate, and any firm with which he or she is or may become associated, is prohibited for a period of three~~two~~ years after issuance of a decision regarding a nuisance abatement hearing or a citation appeal for enforcement of the provisions of Section 9-102 of the Code of Ordinances, Highlands County, Florida, from acting as an agent or attorney on any matter involving the alleged violator who was the subject of the nuisance abatement hearing or the citation appeal in which the special magistrate presided. Any person who violates this section shall be guilty of a violation of County Code enforced pursuant to the provisions of division 4 of article XII of chapter 2 of the Code of Ordinances, Highlands County, Florida, and shall be

punishable as a Class IV violation as provided in sections ~~2-382-384~~ and ~~2-382 2-383~~ of the Code of Ordinances, Highlands County, Florida.

- (6) *Powers.* The special magistrate shall have the power to:
- a. Adopt rules for the conduct of hearings by the special magistrate;
  - b. Subpoena alleged violators and witnesses and evidence to the hearings. Subpoenas may be 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, fines and administrative costs as provided in sections 9-104 and 9-105 of this article, including costs incurred by the district for the investigation and prosecution of the matter, for the administrative hearing, and for the recording of orders and satisfactions of liens;
  - g. Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance with section 9-102 of this article, and to order the respondent or authorize the district to take the steps which are necessary to correct the violation or to ensure public safety so as to protect persons or property;
  - h. Assess and order the payment of the reasonable expenses incurred by the district for correcting any violation or complying with any order of the special magistrate issued under this section;
  - i. Impose liens as provided in this article; and
  - j. Determine whether the violation has been corrected.

(c) *Notices.*

- (1) All notices and citations required or authorized by sections 9-102, 9-103, 9-104, and 9-105 of this article shall be provided to the alleged violator by:
- a. Certified mail, return receipt requested, ~~provided if such notice is sent under this section 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 or to the address listed in the County property appraiser's database, if different. The district may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subsection (c)(2) b. 1. and 2. of this section 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; or~~

- b. Hand delivery by the sheriff or other law enforcement officer, district code enforcement officer, or other person designated by the district ~~general manager;~~ board of supervisors; or
- 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 subsection (c)(1) of this section, at the option of the special magistrate or the district ~~general manager~~ board of supervisors, notice may also be served by publication or posting, as follows:

- a. 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 Highlands County, Florida. The newspaper shall meet such requirements as are prescribed under ~~F.S. ch. Chapter~~ 50, Florida Statutes, for legal and official advertisements.
- 2. Proof of publication shall be made as provided in ~~F.S. §§Sections~~ 50.041 and 50.051, Florida Statutes.
- b. 1. In lieu of publication as described in subsection(c)(2) a., such notice may be posted at least ten 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 on the notice board near the front door of the Highlands County Government Center (County Commission Building) 600 South Commerce Avenue, Sebring, Florida and one of which shall be at the front door of the main office of the district located in Towne Hall, 5306 Sun ~~Hi~~ Lake Boulevard, Sebring, Florida.
- 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 subsection (c)(1) of this section.

(3) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection(c)(1) of this section, together with proof of publication or posting as provided in subsection (c)(2) of this section, 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.

(34) All notices of hearing shall be in a form prescribed by the district general manager and shall contain, at minimum, 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 with the requirements of ~~F.S. ch. Chapter~~ 286, Florida Statutes, that a person deciding to appeal any decision of the special ~~master~~ magistrate 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.

(d) *Hearings.*

- (1) All hearings shall be open to the public. All testimony shall be under oath, and the proceedings shall be recorded and minutes taken by support personnel provided by the district pursuant to subsection (b)(3) of this section.
- (2) Each case before the special magistrate shall be presented by the district code enforcement officer or his designee.
- (3) 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.
- (4) 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 magistrate.
- (5) 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.
- (6) If the district prevails in the hearing before the special magistrate, the special magistrate may order the violator to pay to the district all reasonable costs incurred by the district in the case before the special magistrate.
- (7) The special magistrate must find by a preponderance of the evidence that the respondent was responsible for the violation of section 9-102 as alleged. Within 30 days after the conclusion of the hearing, the special magistrate 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 and sections 9-104 and 9-105 of this article. The order shall include the amount of the fines and costs assessed pursuant to section 9-104 of this article or civil penalty imposed which shall not exceed the maximum civil penalty for that offense determined pursuant to subsection 9-105(d) of this article and costs awarded to the district. In determining the amount of the fine or civil penalty, the special magistrate 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.

(e) *Recording and enforcement of lien and satisfaction.*

- (1) A certified copy of an order of the special magistrate may be recorded in the public records of any county within the state and shall constitute notice to any subsequent purchasers and successors in interest, and the findings and orders therein shall be binding upon the violator and any subsequent purchasers and successors in interest.
- (2) A certified copy of the order imposing the fine or assessing costs or assessing the reasonable expense incurred by the district for correcting any violation or complying with any order of the special magistrate may be recorded in the public records of any county. Upon recording, the order shall constitute a lien against any real and personal property owned by the violator. That lien shall ~~be superior to all other liens, except a lien for taxes, and shall bear interest at the maximum rate allowed by law as set forth in F.S. §Section 687.03, Florida Statutes,~~ as amended from time to time, from the date of its filing. Upon petition to the circuit court, that order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the real or personal property, but that order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this section or sections 9-104 or 9-105 of this article shall continue to accrue until the violator corrects the violation or until a judgment terminating the accrual of the fine is rendered in a suit filed pursuant to this section, whichever occurs first. The district is authorized to foreclose any lien established pursuant to this section or sections 9-104 or 9-105 of this article in the same manner as is provided by law for the foreclosure of municipal liens, or, alternatively, as provided by law for the foreclosure of mortgages or to sue to recover a money judgment for the amount of the lien, plus accrued interest after three months from the filing of the lien, if it remains unpaid. No lien created pursuant to this division may be foreclosed on real property which is homestead under Section 4, Article X of the Florida Constitution. The money judgment provisions of this section shall not create a lien on real property or personal property which is protected by Section 4(a), Article X of the Florida Constitution.
- (3) In an action to enforce an order or to foreclose on a lien, or for a money judgment, as provided in this section, the district shall be entitled to recover all costs, including reasonable attorneys' fee, that it incurs in that action.
- (4) No lien provided under this section shall continue for a period longer than 20 years after the certified copy of an order imposing a fine or costs has been recorded, unless within that time an action is commenced pursuant to this section in a court of competent jurisdiction. The district shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.
- (5) If an order is recorded in the public records pursuant to this section and the order is complied with by the date specified in the order, the special magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

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

(g) This section incorporates and shall be construed in accordance with Chapter 162, Part I, Florida Statutes, as may be amended from time to time. To the extent that there may be a conflict, or a matter not covered in this section, that Chapter and the case law interpreting that Chapter shall apply.

**SECTION 3. AMENDMENT AND ADOPTION.** Section 9-104 of the Code of Ordinances, Highlands County, Florida, is hereby amended and adopted to read as follows:

**Sec. 9-104. - Nuisance abatement.**

(a) *Notice of violation.*

- (1) Initiation of enforcement proceedings pursuant to this section for violations of section 9-102 of this article shall solely be the duty of the district code enforcement officer.
- (2) To initiate enforcement proceedings pursuant to this section if a violation of section 9-102 is found, the district code enforcement officer shall provide a written notice of violation to the respondent. Except as provided by subsections (a)(3) and (a)(5) of this section, that notice of violation shall give the respondent a reasonable time to correct the violation. The determination of reasonable time to correct shall be based on considerations of fairness; practicality; prior notices of the violation; ease of correction; ability to correct; severity of violation; nature, extent, and probability of danger or damage to the public; and other relevant factors relating to the reasonableness of the time period prescribed. In the event the violation continues beyond the time specified for correction, the district support personnel shall schedule a hearing and written notice of the hearing shall be provided to the respondent. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the district code enforcement officer, the case may be presented to the special magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state. The violator may choose to waive his or her rights to this hearing and pay those costs as determined by the special magistrate.
- (3) If a repeat violation is found, the district code enforcement officer shall provide a written notice of violation to the respondent. The notice of violation for a repeat violation is not required to give the respondent a reasonable time to correct the violation. Upon providing the written notice of violation to the respondent, the district support personnel shall schedule a hearing and written notice of the hearing shall be provided to the respondent. The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the special magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement costs upon the repeat violator. The repeat violator may choose to waive his or her rights to this hearing and pay those costs as determined by the special magistrate.
- (4) The notice of violation shall be in a form prescribed by the district general manager and shall contain, at minimum, the following:

- a. Date and time of issuance;
  - b. Name and address of the person to whom the notice of violation is issued;
  - c. Place, date and time the violation was committed;
  - d. A brief description of the nature of the violation including the facts constituting reasonable cause;
  - e. Subsection number(s) of section 9-102 violated;
  - f. Name of district code enforcement officer issuing the notice of violation;
  - g. Time within which the violation must be corrected;
  - h. Notice that the respondent may be liable for fines, costs of correction, and the reasonable costs of the investigation, prosecution and the administrative hearing should the respondent fail to correct the violation and be found guilty of the violation.
- (5) If the district code enforcement officer has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety and welfare or if the violation is irreparable or irreversible in nature, the district code enforcement officer shall provide a written notice of violation to the respondent requesting immediate compliance and the district support personnel shall schedule an emergency hearing, which shall be held as soon as possible after providing the respondent with written notice of the hearing.
  - (6) The respondent may appear pro se at the hearing or be represented by legal counsel.

(b) *Administrative penalties.*

- (1) Upon finding that a violation or repeat violation has been committed, the special magistrate may, at the district's request, order the violation to be corrected by the district, or an independent contractor employed by the district, at the expense of the violator and may impose a fine up to the maximum fine plus reasonable costs of investigation, prosecution, and administrative hearing. Performing that work does not create a continuing obligation on the part of the district to perform further work or to maintain the property and does not create any liability against the district for any damages to the property if that work has been completed in good faith.
- (2) Upon finding that a violation has been committed, the special magistrate may, in the alternative to subsection (b)(1) of this section, order the violator to correct the violation within such time as is determined to be appropriate by the special magistrate. The special magistrate, upon notification by the district code enforcement officer that an order of the special magistrate, ordering the violator to correct the violation, has not been complied with by the set time may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the special magistrate for compliance and, at the district's request, may order the violation to be corrected by the district, or an independent contractor employed by the district, at the expense of the violator and may impose a fine up to the maximum fine plus reasonable costs of investigation, prosecution, and administrative hearing.

- (3) Upon finding that a repeat violation has been committed, the special magistrate may, in the alternative to subsection (b)(1) of this section, order the violator to pay a fine in an amount specified in this section for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the district code enforcement officer, plus reasonable costs of investigation, prosecution, and administrative hearing, and may order the violator to correct the violation within such time as is determined to be appropriate by the special magistrate. The special magistrate, upon notification by the district code enforcement officer that an order of the special magistrate, ordering the violator to correct the violation, has not been complied with by the set time may, at the district's request, order the violation to be corrected by the district, or an independent contractor employed by the district, at the expense of the violator.
- (4) If a finding of a violation or a repeat violation has been made as provided in this section, ~~a hearing shall not be necessary for issuance of the order imposing the penalty,~~ following an order providing the violator additional time to correct the violation, unless specifically a notice and an opportunity for a hearing shall be provided before issuance of the order imposing the fines. If requested by the violator, within ten days after service of the notice, the penalty hearing will be held within thirty days after receipt of the request. If a penalty hearing is held, testimony shall be limited to the issue of compliance with the previous order of the special magistrate. No new evidence as to whether there was a violation shall be allowed. After the conclusion of the penalty hearing or after the time to request a penalty hearing has lapsed, the special magistrate shall issue the order imposing fine.
- (5)
  - a. Except as otherwise provided in this section, a fine imposed pursuant to this section shall not exceed ~~\$250.00~~100.00 per day for the first violation and shall not exceed ~~\$500.00~~200.00 per day for a repeat violation, and, in addition, may include all costs of work performed pursuant to subsections (b)(1), (2), and (3) of this section and all costs incurred by the district in enforcing- section 9-102 of this article. If after due notice and hearing, the special magistrate finds a violation to be irreparable or irreversible in nature, the special magistrate may order the violator to pay a fine not to exceed \$5,000.00 per violation.
  - b. In determining the amount of the fine, if any, the special magistrate shall consider the following factors:
    1. The gravity of the violation;
    2. Any actions taken by the violator to correct the violation; and
    3. Any previous violations committed by the violator.
  - c. Upon recommendation of the district code enforcement officer, and upon consideration at the penalty hearing of the additional factors provided below, the special magistrate may impose a fine up to \$1,000.00 per day for the first violation and \$5,000.00 per day for a repeat violation, and up to \$15,000.00 per violation if the special magistrate finds the violation to be irreparable or irreversible in nature.
    1. The potential harm to the public or the environment threatened by continued noncompliance; and
    2. The amount of the fine necessary to discourage continuing violation.
- (6) A certified copy of an order imposing a fine, or a fine plus costs, shall be recorded and enforced as provided in section 9-103 of this article. A lien arising from a fine



imposed pursuant to this section runs in favor of the board of supervisors of the district, and the board of supervisors of the district may execute a satisfaction or release of lien entered pursuant to this section.

**SECTION 4. AMENDMENT AND ADOPTION.** Section 9-105 of the Code of Ordinances, Highlands County, Florida, is hereby amended and adopted to read as follows:

**Sec. 9-105. - Civil citations.**

(a) *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 section 9-102 of this article and ~~that the special magistrate 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 section 9-102 of this article 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. The determination of reasonable time to correct shall be based on considerations of fairness; practicality; prior notice of the violation; ease of correction; ability to correct; severity of violation; nature, extent, and probability of danger or damage to the public; and other relevant factors relating to the reasonableness of the time period prescribed. If, upon personal investigation, a district code enforcement officer finds that the person has not corrected the violation within that 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 respondent 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 ~~a warning was issued to the violator for a violation of the same provision within one year prior to the violation without a citation having been issued 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 that the violator is engaged in a violation of an itinerant or transient nature, or if the violation is irreparable or irreversible.~~ Continuing violation penalties shall accrue from the date the citation is provided to the respondent until correction is made or until further order of the special magistrate. Continuing repeat violation penalties shall accrue from the date the citation is provided to the respondent until correction is made or until further order of the special magistrate. The accrual of those penalties for a continuing violation but not a continuing repeat violation shall be tolled by a timely request for an administrative hearing, as provided for in this section, unless the respondent fails to appear at the scheduled hearing before the special magistrate.
- (3) All citations and notices issued by a district code enforcement officer pursuant to this section 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 or notice is issued;
  - c. The place, date and time the civil infraction was committed;

- d. The facts constituting reasonable cause;
  - e. The subsection number of section 9-102 that was violated;
  - f. The name and authority of the district code enforcement officer;
  - g. The procedure and due date 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 not to contest the citation;
  - i. ~~Date by which the violation must be corrected;~~ The applicable civil penalty if the person elects to contest the citation;
  - j. ~~Notice that each day of continued violation shall be deemed a separate violation or separate repeat violation subject to additional fine in the same amount per day, without need to issue additional citations due to the continuing nature of the violation;~~
  - k. ~~Notice that the filing of a request for a hearing before the special master will toll the accrual of continuing violation penalties, but not the accrual of continuing repeat violation penalties; l. Notice that the respondent may be liable for the reasonable costs of the investigation, prosecution, and administrative hearing should the respondent be found guilty of the violation; and~~
  - m. k. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, fails to request an administrative hearing before the special magistrate to contest the citation, or fails to appear at the requested administrative hearing before the special magistrate, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, the special magistrate may, without a hearing, enter an order against the person for an amount up to the maximum civil penalty, including continuing violation penalties as determined by the special magistrate, reasonable costs of the investigation, prosecution, and administrative hearing.
- (4) After issuing a citation to an alleged violator, a district code enforcement officer shall deposit the original citation with the district general manager or designee.
  - (5) Violations of section 9-102 of this article shall be civil infractions enforceable and punishable as provided in this section.
  - (6) Each violation of section 9-102 of this article shall be a separate civil infraction. Each day a violation of section 9-102 of this article continues shall be deemed to constitute a separate violation and civil infraction.
  - (7) The maximum civil penalty for each violation of section 9-102 of this article shall not exceed ~~\$500.00~~200.00 per violation.
  - (8) The civil penalty shall not exceed ~~\$375.00~~150.00 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, based upon personal investigation, has reasonable cause to

believe that the person has committed an act in violation of section 9-102 of this article, ~~and that the special magistrate will hear the charge.~~

- (10) A citation enforced pursuant to this section may be contested in a hearing held by the special magistrate.

(b) *Enforcement procedure.*

- (1) If a person elects not to contest the citation, the person shall correct the violation and pay 75 percent of the applicable civil penalty set forth in this section to the district at the office of the district general manager within ten 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 15 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 magistrate appointed pursuant to section 9-103 of this article 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 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 magistrate 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.

(c) *Hearings.*

- (1) Upon receipt of a timely filed written request for a hearing to contest the citation, the district support personnel shall set the matter for hearing to be held within 30 days after receipt of such request, and the district support personnel shall cause a notice of hearing to be hand delivered or mailed to the alleged violator, as provided in section 9-103 of this article.
- (2) No hearing shall be scheduled on a date sooner than ten 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 support personnel.
- (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 magistrate, the special magistrate may dismiss the citation unless the violation is irreparable or irreversible.
- (4) 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 magistrate, the special magistrate 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.

(d) *Penalties.*

(1) The following civil penalties shall be assessed for violation of section 9-102 of this article:

1st Offense ..... ~~\$ 50.00~~ 2nd Offense ..... 100.00  
3rd Offense ..... 250.00  
4th or more Offense ..... 500.00  
Repeat Violation ..... \$ 200.00

(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 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.

**SECTION 5. 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 6. Inclusion in Code.** When the text of this Ordinance is published for inclusion in the Code, the text included for deletion by strike-through text shall be deleted and the additions appearing as underlined shall be added so that the text of the Code shall be as amended rather than in the legislative format used in this Ordinance to highlight the changes being made, and the sections of this Ordinance may be renumbered or re-lettered for such inclusion.

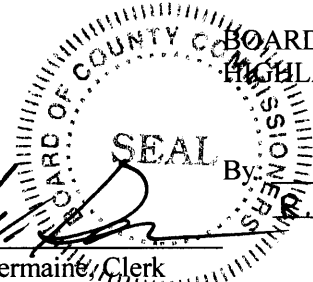
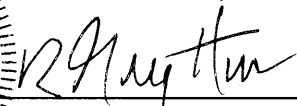
**SECTION 7. Severability.** The sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, subsection or section of this Ordinance shall be declared invalid, unconstitutional or unenforceable by the valid judgment 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 8. Effective Date.** This Ordinance shall take effect immediately upon filing with the Florida Department of State.

DONE AND ADOPTED this 5<sup>th</sup> day of DECEMBER, 2017.

(SEAL)

ATTEST:  Robert W. Germaine, Clerk

 By:  GREG HARRIS, Chairman



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

December 6, 2017

Honorable Robert W. Germaine  
Clerk of the Circuit Court  
Highlands County  
590 South Commerce Avenue  
Sebring, Florida 33870-3867

Attention: Pamela Gamez, Deputy Clerk

Dear Mr. Germaine:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Highlands County Ordinance No. 17-18-06, which was filed in this office on December 6, 2017.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb