

ORDINANCE NO. 06-12

AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, AMENDING CHAPTER 2, ARTICLE III, CODE OF ORDINANCES OF THE CITY OF DEBARY RELATING TO CODE ENFORCEMENT; CREATING A SPECIAL MASTER CODE ENFORCEMENT PROCESS REPLACING THE CODE ENFORCEMENT BOARD; PROVIDING FOR ENFORCEMENT PROCEDURES, CONDUCT OF HEARINGS, ADMINISTRATIVE FINES AND LIENS; SETTING FORTH DESIGNATION, QUALIFICATIONS, TRAINING AND AUTHORITY OF CODE ENFORCEMENT OFFICERS; AMENDING THE CODE ENFORCEMENT CITATION PROVISIONS AND SCHEDULE OF VIOLATION AND PENALTIES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, Article VIII, § 2, Constitution of the State of Florida, as revised in 1968, grants to municipalities those governmental, corporate and proprietary powers necessary to conduct municipal government, perform municipal functions, render municipal services, and further authorizes such municipalities to exercise any power for municipal purposes, except as otherwise provided by law;

WHEREAS, Chapter 166, Fla. Stat., the Municipal Home Rule Powers Act, further affirms the authority, police power, and jurisdiction granted to municipalities by the Florida Constitution;

WHEREAS, this Ordinance has been advertised as required by Chapter 166, Florida Statutes, and the required readings and public hearing have been held by the City Council in order to adopt this Ordinance; and

WHEREAS, the City Council finds that this Ordinance is in the best interests of the public health, safety and welfare of the citizens of the City of DeBary.

IT IS HEREBY ORDAINED BY THE CITY OF DEBARY AS FOLLOWS:

SECTION I: Article III of Chapter 2 of the Code of Ordinances for the City of DeBary is hereby amended to read as follows (~~struckout~~ text indicates deletions while underlined text indicates additions; provisions not referenced are not modified):

Article III. Code Enforcement

Division 1. Generally

Sec. 2-86. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Board attorney* means the attorney who shall represent the code enforcement board.~~

City means City of DeBary Florida.

City attorney means the legal counsel for the city, any of his or her assistants or his or her designee.

~~*Code enforcement board* means the city code enforcement board.~~

Code enforcement officer means any designated employee or agent of the city whose duty it is to enforce codes and ordinances enacted by the city.

Repeat violation means a violation of a provision of a code or ordinance by a person previously found to have violated the same provision within five years prior to the current violation by a code enforcement board or the code enforcement board established by the city

Special Master means a special hearing officer that is appointed by the city council, who has the authority to hold hearings and receive and evaluate evidence and testimony regarding alleged violations of City of DeBary Codes, including but not limited to the Code of Ordinances, Land Development Code Regulations, and any resolution duly enacted by the city council.

Sec. 2-87. Intent.

It is the intent of this article to promote, protect and improve the health, safety and welfare of the citizens of the city by authorizing the creation of ~~an administrative board~~ a special master with the authority to impose administrative fines and other noncriminal penalties, to provide an equitable, expeditious, effective and inexpensive method of enforcing the codes and ordinances in force in the city, where pending or repeated violation continues to exist, including but not limited to occupational license, fire, building, zoning and sign codes. The City shall utilize a special master code enforcement system with the option of using a citation system as a supplemental method of enforcing City codes.

Sec. 2-88. Enforcement by other means.

Nothing contained in F.S. ch. 162 and this article shall prohibit the city council from enforcing its codes or ordinances by any other means. It is the legislative intent of F.S. ch. 162 and this article to provide ~~an~~ additional options or supplemental means of obtaining compliance with local codes.

Sec. 2-89. Designation, qualifications and training of code enforcement officers.

The city manager is authorized to designate certain of its employees or agents as code enforcement officers. The training and qualifications of the employees or agents designated as code enforcement officers shall be determined by the city manager. Designation as a code enforcement officer does not provide the code enforcement officer with the power to arrest or

subject the code enforcement officer to the provisions of F.S. §§ 943.085 through 943.255 and amendments thereto.

Sec. 2-90 Authority of code enforcement officers.

All code enforcement officers are authorized to issue a courtesy notice, notice of violation and/or violation citation to a person or entity when, based upon personal observation or personal investigation, the code enforcement officer has reasonable cause to believe that the person or entity has committed a civil infraction in violation of a city code or ordinance.

Division 2. Special Master Enforcement Process.

Sec. 2-91. Special Master

- (a) The City hereby establishes a special master code enforcement system for the enforcement of its various codes. Special masters shall have the authority to hold hearings and assess fines against violators of the various codes of the city. One (1) or more special masters shall be appointed by the city council based upon the joint recommendation of the city attorney and city manager. Special masters shall serve at the pleasure of the city council and may be removed at anytime with or without cause by the city council. Any retired judge or retired lawyer who was licensed to practice law in the State of Florida at the time of retirement, or any lawyer who is licensed to practice law in the State of Florida may be appointed and may serve as special master.
- (b) A special master shall have the power to:

 - 1. The special master shall have jurisdiction to hear and decide cases in which violations are alleged and any provisions of the city code and city ordinances except as specifically excluded herein;
 - 2. Adopt rules for the conduct of hearings;
 - 3. Subpoena alleged violators and witnesses to its hearings. Subpoena evidence to its hearings. The Volusia County Sheriff's Office may serve subpoenas;
 - 4. Subpoena evidence to hearings;
 - 5. Administer oaths and take testimony under oath;
 - 6. Issue orders that have the force of law finding a violation of the city code or city ordinances and commanding whatever steps are necessary to bring the violation into compliance;
 - 7. Enter orders finding compliance or non-compliance; and
 - 8. Exercise any powers granted to an enforcement board under Chapter 162, Florida Statutes.
- (c) Special masters shall serve for terms established by the city council. Special masters shall be subject to removal, with or without cause, from their positions at any time during their terms, by the city council. Special masters shall not be considered to be city employees, although for such travel, mileage and per diem expenses as may be authorized.

(d) The jurisdiction of the special master shall not be exclusive. Any alleged violation of the City Code or City Ordinances may be pursued by any appropriate remedy in court of competent jurisdiction at the option of the city council or administrative official whose responsibility it is to enforce the city code or city ordinances.

Section 2-92. Enforcement Procedures.

- (a) It shall be the duty of the responsible city departments, through the code enforcement officer, to initiate enforcement proceedings of the City Code and City Ordinances through the special master process. The special master shall not have the power to initiate such enforcement proceedings. Any violations presented to the special master shall be administered by the code enforcement officer.
- (b) The city attorney may act as legal counsel to the code enforcement officer as he or she presents cases to the special master or shall present the case for the code enforcement officer, if necessary. Because only attorneys or judges may hold the position of special master, the city council shall not be required to retain an attorney to represent the special master.
- (c) In the case of a first time violation of the City Code or a City ordinance(s), the code enforcement officer shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified to correct the violation, the code enforcement officer shall request a hearing before the special master and provide notice to the alleged violator. All notices required by this section shall be provided to the alleged violator in accordance with the provision of F.S. §162.12 and in accordance with controlling legal precedent.
- (d) If a repeat violation is found, the code enforcement officer shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, shall request a hearing. The code enforcement officer shall schedule a hearing before the special master and shall provide notice to the violator. The case may be presented to the special master even if the repeat violation has been corrected prior to the special master hearing and the notice shall so state.
- (e) If the code enforcement officer has reason to believe that a violation presents a serious threat to the public health, safety, morals, or welfare, or if the violation is irreparable or irreversible in nature, said decision being made in conjunction with the city manager, the code enforcement officer shall make a reasonable effort to notify the violator and may immediately request an emergency hearing thereon.

Section 2-93. Procedures and Conduct of Hearing.

- (a) The code enforcement officer shall coordinate the calling of hearings by the special master. The city shall provide scheduling of a hearing room and clerical staff as may be reasonably required by the special master to conduct hearings and perform his or her duties. All hearings by the special master shall be open to the public and minutes shall be kept of all hearings.
- (b) Each case before the special master shall be presented by the code enforcement officer and if necessary with the assistance of the city attorney or by the city attorney as the case may be. All relevant evidence shall be admitted. When appropriate, the code enforcement officer or city attorney may call as witnesses' property owners within the community who are adversely affected by the alleged code violation.
- (c) The special master shall not be bound by formal rules of evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type of commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in a court of law within the state. The special master shall be bound by the interpretations of the city council concerning the provisions of the codes, ordinances, resolutions and regulations.
- (d) Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence. The general public shall not be entitled to present evidence although members of the general public may be called as witnesses by either party.
- (e) The alleged violator has the right, at his/her own expense, to be represented by an attorney at any hearing.
- (f) All testimony before the special master shall be under oath and shall be recorded. The alleged violator or the city may cause a verbatim record of the proceedings to be made.
- (g) The burden of proof shall be with the code enforcement officer and/or city attorney to show by greater weight of evidence that a code violation exists and that the alleged violator committed, allowed, or was responsible for maintaining the violation.
- (h) If notice has been provided to the violator of the hearing (which shall be as required by F.S. Ch. 162), the hearing may be conducted and an order rendered in the absence of the alleged violator.
- (i) At the conclusion of the hearing, the special master shall issue an order setting forth findings of fact, based on evidence of record, and issue conclusions of law.

and shall render relief in the order affording the proper relief consistent with powers granted in this division and with Chapter 162, Florida Statutes. A written order shall be issued within a reasonable period of time subsequent to the hearing. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by that date. A second hearing shall be scheduled by the city at which the special master shall determine when compliance has been attained in accordance with controlling legal precedent.

(j) A certified copy of an order imposing the fine provided for herein may be recorded in the public records of Volusia County or any other county, and thereafter such order shall constitute a lien against the property on which the violation exists or, if the violator does not own the land involved in the violation, upon any other real or personal property owned by the violator and may be enforced in the same manner as a court judgment by the sheriffs of this state including levy against personal property, but shall not be deemed otherwise to be a judgment of a court except for enforcement purposes.

(k) When an order is recorded in the public records pursuant to this part of this article and the order is complied with by the dates 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 if such is an order acknowledging compliance prior to the date set for compliance; provided, however, that the alleged violator shall have the right to request a hearing to determine when compliance has been attained.

Section 2-94. Administrative Fines and Liens

(a) A lien arising from a fine imposed pursuant to this section runs in favor of the city council, and the city council may execute a satisfaction or release of lien entered pursuant to this section.

(b) A fine imposed pursuant to this part of this article shall not exceed \$250.00 per day per violation for a first violation, shall not exceed \$500.00 per day per violation for a repeat violation and up to \$5,000.00 per violation if the special master finds the violation to be irreparable or irreversible in nature. In determining the amount of the fine, if any, the special master shall consider the factors set forth in Section 162.09(2)(b), Florida Statutes, as may be amended from time to time.

(c) In addition, if the violation is a violation described in Section 162.06(4), Florida Statutes, the special master shall notify the city council, which may make all reasonable repairs and corrective action required to bring the property into partial or full compliance, including without limitation, mowing and maintaining an unkempt yard and securing a structure or swimming pool. The violator shall be charged with the reasonable cost of such actions taken by the city along with the fine imposed pursuant to this section. Funds expended by the city to make repairs and correction action to correct, in whole or part, a

violation of the code shall: (i) constitute a lien against the real property where the violation exists having the same priority under Florida law as non-ad valorem special assessments, and (ii) constitute a lien against all other real property and personal property owned by the violator(s) having the same priority as code enforcement fines/liens under this division.

(d) In formulating the provisions of the order, the special master should be consistent in the imposition of fines, paying special attention to the gravity of the violation, any actions and the timeliness of actions taken by a violator to correct the violation and any previous violations committed by the violator. The special master shall include in the order establishing a fine that the violator shall pay all costs of the proceedings incurred by the city.

(e) The fine imposed pursuant to this part of this article by the special master shall be final and may be appealed only to the circuit court in accordance with the controlling provisions of law. The violator may make arrangements through the city manager to pay the fine in monthly payments; provided, however, if the violator fails to timely perform under the agreement, the city shall have and maintain all enforcement rights relative to the fine imposed as reduced by payments that have been made.

(f) A certified copy of an order imposing a fine may be recorded in the public records of Volusia County or any other county and, therefore, shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of the state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part of this article shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. After three months from the filing of any such lien which remains unpaid, the city council may authorize the city attorney to foreclose on the lien. However, no lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under article X, section 4 of the State Constitution.

(g) Notwithstanding the processes set forth relative to presentation of matters before the special master, the city may negotiate a stipulated order prior to a hearing and submit the order to the special master for his or her execution.

(h) Costs of the proceedings, as used in this section, means all costs incurred by or on behalf of the city from the first discovery of a code or ordinance violation through the appeal process and until compliance is achieved including, but not limited to, staff time in investigating the violation, inspecting the property where the violation occurred, preparing investigation reports, issuing and distributing notices, preparing for and attending any appeal hearing, and fees paid to the special master.

(i) No lien by this section shall continue for a longer period than 20 years after the certified copy of an order imposing a fine/lien has been recorded, unless within that time an action

to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The city council shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

Section 2-95. Appeal.

An aggrieved party, including the city, may appeal a final administrative order of the 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. A failure to file a timely appeal results in a waiver of defenses that might have been raised therein. A dispute with the special master's findings, fine determination and other legal defenses to the special master's actions cannot be raised for the first time in defense of a foreclosure suit or collection action brought by the city.

Section 2-96. Pending Cases.

The special master shall have jurisdiction to hear and render orders on any code enforcement matter that was pending before the code enforcement board prior to the repeal of the provisions of the code governing the code enforcement board.

Division 2. Code Enforcement Board

~~Sec. 2-106. -- Appointment of members of the board, a board attorney and special master.~~

~~The city council shall appoint a seven-member code enforcement board and may appoint up to two alternate members to serve in the absence of board members. The city council may appoint additional code enforcement boards as it deems necessary. Members of the code enforcement board shall be residents of the city. Appointments shall be made in accordance with applicable law and ordinances on the basis of experience or interest in the subject matter jurisdiction of the code enforcement board, in the sole discretion of the city council. The membership of the code enforcement board shall, whenever possible, include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.~~

~~Sec. 2-107. -- Term; vacancies; removal.~~

~~All appointments shall be made for a term of three years. A member may be reappointed upon approval of the city council. Appointments to fill any vacancy on the code enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chairperson, the board shall declare the member's office vacant, and the city council shall promptly fill such vacancy. The members shall serve in accordance with ordinances of the city council, and may be suspended and removed for cause as provided by law for the removal of members of the board.~~

~~(Ord. No. 94-36, § 4(1), 7-6-94; Ord. No. 95-09, § 4(1), 5-3-95)~~

~~**State law reference**—Similar provisions, F.S. § 162.05(3)(d)–(f).~~

Sec. 2-108.—Organization, quorum; expenses.

~~The members of the code enforcement board shall elect a chair, who shall be a voting member from among the members of the board. The presence of four or more members shall constitute a quorum of the code enforcement board. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the city council, or as otherwise provided by law.~~

~~(Ord. No. 94-36, § 4(3), 7-6-94; Ord. No. 95-09, § 4(3), 5-3-95)~~

~~**State law reference**—Similar provisions, F.S. § 162.05(4).~~

Sec. 2-109.—Counsel to the board.

~~The city attorney shall serve as counsel to the code enforcement board.~~

~~(Ord. No. 94-36, § 4(4), 7-6-94; Ord. No. 95-09, § 4(4), 5-3-95)~~

~~**State law reference**—Similar provisions, F.S. § 162.05(5).~~

Sec. 2-110.—Powers.

~~The code enforcement board shall have the power to:~~

- ~~(1) — Adopt rules for the conduct of its hearings.~~
- ~~(2) — Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the Department of Public Safety (Sheriff) of the county or the police department of the city.~~
- ~~(3) — Subpoena evidence to its hearings.~~
- ~~(4) — Take testimony under oath.~~
- ~~(5) — Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.~~

~~(Ord. No. 94-36, § 7, 7-6-94; Ord. No. 95-09, § 7, 5-3-95)~~

~~**State law reference**—Similar provisions, F.S. § 162.08.~~

Sec. 2-111.—Special masters.

~~The city council may appoint one or more special masters to adjudicate any matter which could be brought before the code enforcement board. The special master shall have all powers granted to the code enforcement board and shall be subject to all the provisions unless specified in the order of appointment.~~

~~(Ord. No. 94-36, § 4(5), 7-6-94; Ord. No. 95-09, § 4(5), 5-3-95)~~

~~Sec. 2-112. Presentation of cases by attorney for the city.~~

~~The city council may appoint an attorney to serve as counsel to the city by presenting cases or assisting in the presentation of cases before the board.~~

~~(Ord. No. 94-36, § 4(5), 7-6-94; Ord. No. 95-09, § 4(5), 5-3-95)~~

~~Secs. 2-113—2-130. Reserved~~

DIVISION 3. ENFORCEMENT PROCEDURES

~~Sec. 2-131. Duties of code enforcement officers.~~

~~It shall be the duty of the code enforcement officer to initiate enforcement proceedings of alleged violations of the various codes or ordinances of this city; provided, however, no member of the board shall have the power to initiate such enforcement proceedings.~~

~~(Ord. No. 94-36, § 5(1), 7-6-94; Ord. No. 95-09, § 5(1), 5-3-95)~~

~~*State law reference*—Similar provisions, F.S. § 162.06(1).~~

~~Sec. 2-132. Notice of violation; hearing scheduled.~~

~~Except as provided in sections 2-133 and 2-134, if a violation of the codes or ordinances of this city is found, the code enforcement officer shall notify the violator and give him a reasonable time to correct the violation. If the violation continues beyond the time specified for correction, the code enforcement officer shall notify the code enforcement board and request a hearing. The code enforcement board, through its clerk, shall schedule a hearing, and written notice of such hearing shall be provided as stated in section 2-141 to the violator. At the option of the code enforcement board, notice may additionally be served by the publication or posting as provided in section 2-141. If the violation is corrected and then recurs, or if the violation is not corrected by the time specified for correction by the code enforcement officer, the case may be presented to the board even if the violation has been corrected prior to the board hearing; and the notice shall so state.~~

~~(Ord. No. 94-36, § 5(2), 7-6-94; Ord. No. 95-09, § 5(2), 5-3-95)~~

~~*State law reference*—Similar provisions, F.S. § 162.06(2).~~

~~Sec. 2-133. Repeat violation.~~

~~If a repeat violation is found, the code enforcement officer shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, shall notify the code enforcement board and request a hearing. The code enforcement board, through its clerk, shall schedule a hearing and shall provide notice pursuant to section 2-141. The case may be presented to the code~~

enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state.

~~(Ord. No. 94-36, § 5(3), 7-6-94; Ord. No. 95-09, § 5(3), 5-3-95)~~

~~State law reference—Similar provisions, F.S. § 162.06(3).~~

~~Sec. 2-134.— Serious, irreversible or irreparable violations.~~

~~If the code enforcement officer has a 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 code enforcement officer shall make a reasonable effort to notify the violator and may immediately notify the code enforcement board and request a hearing.~~

~~(Ord. No. 94-36, § 5(4), 7-6-94; Ord. No. 95-09, § 5(4), 5-3-95)~~

~~State law reference—Similar provisions, F.S. § 162.06(4).~~

~~Sec. 2-135.— Hearings of the code enforcement board.~~

- ~~(a) — Upon request of the code enforcement officer, or at such other times as may be necessary, the chairperson of the code enforcement board may call a hearing of the code enforcement board. Hearings may also be called by written notice signed by at least three members of the code enforcement boards. Minutes shall be kept of all hearings by the code enforcement board, and all hearings and proceedings shall be open to the public. The city council shall provide clerical and administrative personnel, supplies and equipment as may be reasonably required by the code enforcement board for the proper performance of its duties.~~
- ~~(b) — Each case before the code enforcement board may be presented by special counsel, a code enforcement officer, a member of the administrative staff of the city, or by the staff of the county where such service has been contracted by the city. If the city prevails in prosecuting a case before the code enforcement board, the city shall be entitled to recover all costs incurred in prosecuting the case before the code enforcement board and such costs may be included in the lien authorized under section 2-138~~
- ~~(c) — The code enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The code enforcement board shall take testimony from the code enforcement officer and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern such proceedings.~~
- ~~(d) — At the conclusion of the hearing, the code enforcement board shall issue findings of fact, based on evidence of record, and conclusions of law and shall issue an~~

~~order affording the proper relief consistent with powers granted herein. The findings shall be by motion approved by a majority of those present and voting, except that at least four members of the code enforcement board must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date, and that a fine may be imposed and, under the conditions specified in section 2-136, the cost of repairs may be included along with the fine if the order is not complied with by such date. A certified copy of such order may be recorded in the public records of the county and shall constitute a lien superior to all other liens and mortgages, except for tax liens and mortgages recorded prior to the effective date of this ordinance. A certified copy of such order shall constitute notice to any subsequent purchasers, successors in interest, or assigned if the violation concerns real property, and subsequent purchasers, successors in interest, or assigns. 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 code enforcement board 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.~~

~~(Ord. No. 94-36, § 6, 7-6-94; Ord. No. 95-09, § 6, 5-3-95; Ord. No. 10-03, § 2, 7-2-03)~~

~~**State law reference**—Similar provisions, F.S. § 162.07.~~

Sec. 2-136.—Repeat or continuing violations; repairs; fines.

~~The code enforcement board, upon notification by the code enforcement officer, that a previous order of the code enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in section 2-137 for each day the violation continues past the date set by the code enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in section 2-134, the code enforcement board shall notify the city council, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. If a finding of a violation or a repeat violation has been made as provided in this division, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, the code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in section 2-137.~~

~~(Ord. No. 94-36, § 8(1), 7-6-94; Ord. No. 95-09, § 8(1), 5-3-95)~~

~~**State law reference**—Similar provisions, F.S. § 162.09(1).~~

Sec. 2-137.—Administrative fine.

- (a) ~~—A fine imposed pursuant to section 2-136 shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to section 2-136. However, if~~

~~the code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.~~

~~(b) — In determining the amount of the fine, if any, the code enforcement board shall consider the following factors:~~

~~(1) — The gravity of the violation;~~

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

~~(3) — Any previous violations committed by the violator.~~

~~(c) — The code enforcement board may reduce a fine imposed pursuant to this section.~~

~~(Ord. No. 94-36, § 8(2), 7-6-94; Ord. No. 95-09, § 8(2), 5-3-95)~~

~~**State law reference** — Similar provisions, F.S. § 162.09(2).~~

~~Sec. 2-138. — Order recorded; lien.~~

~~A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. The code enforcement board may petition the circuit court for enforcement of the order. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city council, and the city council may execute a satisfaction or release of lien entered pursuant to this section. After three months from the filing of any such lien which remains unpaid, the code enforcement board may authorize the city attorney to foreclose on the lien. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under article X, section 4 of the State Constitution.~~

~~(Ord. No. 94-36, § 8(3), 7-6-94; Ord. No. 95-09, § 8(3), 5-3-95)~~

~~**State law reference** — Similar provisions, F.S. § 162.09(3).~~

~~Sec. 2-139. — Duration of liens.~~

~~No lien by this section shall continue for a longer period than 20 years after the certified copy of an order imposing a fine/lien has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The city council shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien affected by the commencement of the action~~

~~shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.~~

~~(Ord. No. 94-36, § 9, 7-6-94; Ord. No. 95-09, § 9, 5-3-95)~~

~~*State law reference*—Similar provisions, F.S. § 162.10.~~

~~Sec. 2-140. Appeal.~~

~~An aggrieved party, including the city council, may appeal a final administrative order of the code enforcement board 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 code enforcement board. An appeal shall be filed within 30 days of the execution of the order to be appealed.~~

~~(Ord. No. 94-36, § 10, 7-6-94; Ord. No. 95-09, § 10, 5-3-95)~~

~~*State law reference*—Similar provisions, F.S. § 162.11.~~

~~Sec. 2-141. Notices.~~

- ~~(a) All notices required by this article shall be provided to the alleged violator by certified mail, return receipt requested, or by hand delivery by the sheriff or other law enforcement officer, code enforcement officer, or other person designated by the city council, or by leaving the notice at the violator's usual place or residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice.~~
- ~~(b) In addition to providing notices as set forth in subsection (a), notice may also be served by publication or posting, as follows:~~
 - ~~(1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50, for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.~~
 - ~~(2) In lieu of publication as described in subsection (1), such notice may be posted for at least ten days in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at city hall. 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 (a).~~

~~(d) — Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection (b), shall be sufficient to show that the notice requirements of this article have been met, without regard to whether the alleged violator actually received such notice.~~

~~(Ord. No. 94-36, § 11, 7-6-94; Ord. No. 95-09, § 11, 5-3-95)~~

~~State law reference — Similar provisions, F.S. § 162.12.~~

~~Secs. 2-142 — 2-145. — Reserved.~~

Secs. 2-96 - 2-145. Reserved.

DIVISION 4 3. CODE ENFORCEMENT CITATIONS

Sec. 2-146. - Intent.

The city hereby creates a supplemental and additional method of enforcing its codes and ordinances by the issuance of citations for violation of city codes and ordinances. The provisions of this article may be used for the enforcement of any city code or ordinance, including amendments and revisions thereof, or for the enforcement of all city codes and ordinances, including amendments and revisions thereof, unless prohibited by law. Nothing contained in this division shall prohibit the city from enforcing its codes or ordinances by any other means.

Sec. 2-147. - Definitions.

For purposes of this division the following definitions shall apply:

City means the City of DeBary.

Code enforcement officer means any employee or agent of the City of DeBary who has been designated by the city manager to enforce the city's codes and ordinances.

~~Sec. 2-148. — Designation, qualifications and training of code enforcement officers.~~

~~The city manager is authorized to designate certain of its employees or agents as code enforcement officers. The training and qualifications of the employees or agents designated as code enforcement officers shall be determined by the city manager. Designation as a code enforcement officer does not provide the code enforcement officer with the power to arrest or subject the code enforcement officer to the provisions of F.S. §§ 943.085 through 943.255 and amendments thereto. Nothing in this division amends, alters or contravenes the provisions of any~~

~~state-administered retirement system or any state-supported retirement system established by general law.~~

Sec. 2-1498. - Authority of code enforcement officers.

All code enforcement officers are authorized to issue a citation to a person when, based upon personal observation or personal investigation, the code enforcement officer has reasonable cause to believe that the person has committed a civil infraction in violation of a city code or ordinance, and provides that the county court will hear the charge.

Sec. 2-15049. - Citation procedure.

Prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code enforcement officer finds that a person has not corrected the violation within the time period, a code enforcement officer may issue a citation to the person who has committed the violation. A 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 the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or if the violation is irreparable or irreversible.

Sec. 2-1510. - Delivery of warning notices and citations.

- (a) A copy of warning notices and citations shall be provided to the alleged violator by hand delivery by the code enforcement officer. In the absence of the alleged violator, the warning notice or citation shall be delivered to the alleged violator by leaving a copy of the warning notice or citation at the alleged violator's usual place of residence with any person residing therein who is 18 years of age and informing such person of the contents of the warning notice or citation, or by registered or certified mail, return receipt requested.
- (b) Issuance of a warning notice or citation to a person doing business may be accomplished by leaving copies at the person's place of business, during regular business hours, with and the owner or manager of the business and by registered or certified mail, return receipt requested to the owner of the property. Property owners shall be determined by latest tax roll provided by the Volusia County Property Appraiser.
- (c) Whenever an alleged violator has a right or is required to do some act within a prescribed period after a notice of other paper and the notice or paper is served by mail, three days shall be added to the prescribed period.

Sec. 2-152~~1~~. - Violation of classification and civil penalty.

- (a) Pursuant to section 162.21(5), Florida Statutes, the City is authorized to adopt a schedule of violations and penalties to be assessed by the code enforcement officer. Violations of city codes and ordinances and the applicable civil penalties shall be classified as follows:

CIVIL PENALTY

Violation Classification	1st Offense	2nd Offense	3rd and Subsequent Offense
Class I	\$50.00	\$100.00	court hearing mandatory
Class II	\$100.00	\$200.00	court hearing mandatory
Class III	\$200.00	\$300.00	court hearing mandatory
Class IV	\$300.00	\$400.00	court hearing mandatory

City codes and ordinances subsequently enacted or amended may set forth the applicable civil penalty for violations by designating the appropriate violation classification as provided in this subsection.

- (a) All violations of codes and ordinances not listed herein shall be penalized as class I violations.
- (b) Each violation of a city code or ordinance in the schedule of violations in this section is a separate civil infraction. Each day such violation continues shall be deemed to constitute a separate civil infraction.
- (c) Court costs in the amount of \$10.00 per citation as well as other applicable court fees and surcharges collected shall be retained by the clerk of the circuit court. Civil penalties received by the county court for violator of the city codes or ordinances shall be paid into the general fund of the city. Court costs and other surcharges imposed pursuant to law shall be in addition to the penalties or fines imposed against the violator. The civil penalties set forth above include said court costs.

Sec. 2-152. Reserved.

Sec. 2-153. - Schedule of violations and penalties.

The city manager is hereby authorized to establish and implement a schedule of violations and penalties. Revisions, alternation, deletions and amendments to the schedule of violations and penalties may hereafter be approved via resolution by the city council.

Chapter/Section	Code Requirement	Class
Section 811*	Parking and storage of vehicles, shelters or watercraft	Class I
<u>Section 30-36</u>	Property maintenance, weeds, accumulation of waste, rubble, debris, <u>storage of junk, trash debris or litter.</u>	Class I
<u>Section 30-104</u>	Abandoned vehicles prohibited	Class I
Section 14	Buildings and building regulations	Class I
Ordinance 11-99, sections 5 and 6 and <u>LDC, Sec. 5-34 and Sec. 5-35</u>	<u>Violations of the City of DeBary Sign Regulations; Prohibited and temporary signs</u>	Class I
Code of Ordinance Section 30-13 through 30-170	<u>Noise: Violation of City of DeBary Noise Ordinance</u>	<u>Class I</u>
<u>LDC, per zoning and any applicable overlay districts</u>	<u>Exterior storage or display in commercial/industrial zoning districts not permitted per City code</u>	<u>Class II</u>
Code of Ordinances, Sec. 30-111	<u>Major repairs of boats and motor vehicles in a residential area</u>	<u>Class II</u>
<u>LDC, Sec. 3-127</u>	<u>Violations of Section 3-127, LDC, Home Occupations</u>	<u>Class II</u>
<u>Code of Ordinance Sec. 10-46</u>	<u>Animals: Barking dogs, birds or other animals creating a nuisance.</u>	<u>Class II</u>
<u>Code of Ordinances, Chapter 18, Article I</u>	<u>Conducting a business, profession or occupation without a valid Business Tax Receipt</u>	<u>Class II</u>
<u>LDC, per zoning designation of property</u>	<u>Operating an illegal designated use</u>	<u>Class III</u>
<u>LDC, zoning regulations</u>	<u>Residential Zoning: Using a single-family residence as a rooming house or multi-family dwelling.</u>	<u>Class III</u>
<u>LDC, Sec. 3-130</u>	<u>Occupancy or storage of a mobile home or motor home, other than permitted by code.</u>	<u>Class III</u>
<u>Code or Ordinances, Chapter 30, Article 7</u>	<u>Illegal discharges into a drainage system</u>	<u>Class IV</u>
<u>F.S. 515 & Code of Ordinances Sec. 14-73</u>	<u>Swimming pool not completely enclosed by a fence or screen enclosure.</u>	<u>Class IV</u>
<u>Code of Ordinance, Sec. 14-87</u>	<u>Excavation and/or fill operation without valid permit or approval.</u>	<u>Class IV</u>
<u>Code of Ordinance, Sec. 30-224</u>	<u>Hazardous/unsanitary/unsafe conditions of buildings or structures; as well as electrical, gas, mechanical and plumbing systems</u>	<u>Class IV</u>

Sec. 2-154. - Procedures to pay or contest citations.

- (a) Any person cited for a violation under subsection 2-1521(a) shall be deemed to be charged with a civil infraction and cited to appear in county court.

SECTION II: Conflicts. In the event of a conflict or conflicts between this Ordinance and other ordinances, this Ordinance shall control to the extent that any such conflict exists.

SECTION III: Severability. The provisions of this Ordinance are declared to be separable and if any section, paragraph, sentence or word of this Ordinance or the application thereto any person or circumstance is held invalid, that invalidity shall not affect other sections or words or applications of this Ordinance. If any part of this Ordinance is found to be preempted or otherwise superseded, the remainder shall nevertheless be given full force and effect to the extent permitted by the severance of such preempted or superseded part.

SECTION IV: Effective Date. After the second reading and final adoption this Ordinance shall take effect on November 1, 2012.

SECTION V: Codification. Section I of this Ordinance shall be codified and made a part of the City of DeBary Code of Ordinances. The provisions of this Ordinance may be renumbered or relettered to accomplish such intention. Furthermore, the word "*Ordinance*" may be changed to "*Section*", "*Article*", or other word as required.

First reading held on the 18th day of July, 2012.

PASSED AND ADOPTED on second reading this **1st day of August, 2012.**

**CITY COUNCIL
CITY OF DeBARY, FLORIDA**

By: BOB GARCIA, Mayor

ATTEST:

STACY TEBO,
City Clerk