

AN ORDINANCE AMENDING THE CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE V, BOARDS AND COMMISSIONS, BY CREATING DIVISION 4.5, CITATION VIOLATION NOTICE PROCEDURES, REGARDING THE ESTABLISHMENT OF ALTERNATE CODE ENFORCEMENT PROCEDURES IN THE CITY; PROVIDING FOR CREATION, PURPOSE; PROVIDING FOR AUTHORITY OF CODE ENFORCEMENT OFFICERS; PROVIDING FOR ENFORCEMENT PROCEDURES; PROVIDING FOR CIVIL PENALTIES, ADMINISTRATIVE HEARING, FAILURE TO PAY/CORRECT; PROVIDING FOR SCHEDULING AND CONDUCT OF ADMINISTRATIVE HEARING; PROVIDING FOR COLLECTIONS AND FORECLOSURE; PROVIDING FOR PROVISIONS CONTAINED HEREIN ARE SUPPLEMENTAL; PROVIDING FOR SCHEDULE OF CIVIL PENALTIES; PROVIDING FOR APPEALS; AMENDING THE CAPE CORAL CODE OF ORDINANCES, CHAPTER 9, HEALTH AND SANITATION, ARTICLE III, DISPOSITION OF GARBAGE, SECTION 9-75, ENFORCEMENT AND PENALTIES, REGARDING APPLICABLE CODE ENFORCEMENT PROCEDURES; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. The City Council hereby amends Chapter 2, Administration, Article V, Boards and Commissions, by creating Division 4.5, Citation Violation Notice Procedures, Sections 2-97 through 2-105, as follows:

## CHAPTER 2: ADMINISTRATION

### ARTICLE V. BOARDS AND COMMISSIONS

#### DIVISION 4.5. – CITATION VIOLATION NOTICE PROCEDURES

##### § 2-97 - Creation; purpose.

The City of Cape Coral hereby adopts alternate code enforcement procedures pursuant to Sections 162.03 and 162.21, Florida Statutes. The City is creating this division as an equitable, expeditious, effective, and inexpensive method of enforcing City codes and ordinances where a pending or repeated violation continues to exist. The special magistrate established in Division 3 of this Code shall have the authority to hold administrative hearings and impose civil fines and other non-criminal penalties for violations of a code provision identified in Section 2-104.

##### § 2-98 - Authority of code enforcement officers.

- (a) The City may designate certain of its employees or agents as Code Enforcement Officers. The City shall determine the training and qualifications of the Code Enforcement Officers. Employees or agents who may be designated as Code Enforcement Officers may include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or fire safety inspectors. Designation as a Code Enforcement Officer does not provide the Code Enforcement Officer with the power of arrest or subject the Code Enforcement Officer to the provisions of Sections 943.085 through 943.255, Florida Statutes.
- (b) Code enforcement officers, Building Official, Deputy Building Officials, chief inspectors, building inspectors (regardless of designations), engineering inspectors, City ordinance inspectors, Solid Waste Manager, Solid Waste Inspectors, and landscape inspectors of the city's Department of Development Services, law enforcement officers and Public Service Aides of the City's Police Department, financial services director, customer billing services manager(s), business systems analyst(s), customer billing services research specialist(s), and field service representatives of the City's financial services department are hereby designated to be Code Enforcement Officers and are authorized to issue a citation violation notice as code inspectors and to request the City's special magistrate(s) to hear cases in which there has been non-compliance. Other employees or agents of the City may, by resolution of the City Council, be designated as Code Enforcement Officers.

**§ 2-99 - Enforcement procedures.**

- (a) Code enforcement officers shall have the authority to initiate enforcement action by issuance of a citation violation notice whenever, based upon personal investigation, the code inspector has reasonable and probable grounds to believe that a violation of a code provision identified in Section 2-104 has occurred or exists. No board member or special magistrate shall have the authority to initiate or prosecute any enforcement action.
- (b) A code enforcement officer may not initiate enforcement proceedings for a potential violation of a duly enacted code or ordinance by way of an anonymous complaint. A person who reports a potential violation of a code or an ordinance must provide his or her name and address to the City before an enforcement proceeding may occur. This paragraph does not apply if the code enforcement officer has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources.
- (c) A code enforcement officer shall issue a written warning notice to the person who committed the violation or was responsible for maintaining or permitting the violation of a code provision in accordance with the method of providing notice in Section 2-85, with no civil penalty as a first response to a violation, except as provided in subsection (e). If the code enforcement officer finds that a violation is correctable, the code enforcement officer shall determine a reasonable time period within which the violator must correct the violation. The determination of the reasonable time period shall be based on consideration of fairness; practicality; ease of correction; ability to correct; severity of the 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. The warning notice shall state the time for correction of violation, amount of the civil penalty to be paid should the violation remain uncorrected after the time period determined by the code enforcement officer and that the violator shall contact the code enforcement officer upon complying with corrective action.
- (d) If upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period specified in the warning notice, or if the violation of the code is corrected and recurs, a code enforcement officer shall issue a citation violation notice to the person who has committed the violation or was responsible for maintaining or permitting the violation of a code provision in accordance with the method of providing notice in Section 2-85.
- (e) If a code enforcement officer determines that a violation or the condition causing a violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible, or if a repeat violation is found, or if the violator is engaged in violations of an itinerant or transient nature, the code enforcement officer does not have to provide the violator with a warning notice or a reasonable time to correct the violation prior to issuing a citation violation notice and may immediately notify the special magistrate and request a hearing. A repeat violation is a violation of a provision of code or ordinance by a person who has been previously found in violation by the City's special magistrate, or any other quasi-judicial or judicial process, to have violated, or who has admitted violating the same provision within five (5) years prior to the violation, notwithstanding the violations occur at different locations.
- (f) A citation violation notice issued by a code enforcement officer shall be in a form prescribed by the City and shall contain:
  - (1) The location, date and time of the violation.
  - (2) The name and address of the violator.
  - (3) A brief factual description of the nature of the violation.
  - (4) The date of issuance of the citation violation notice.
  - (5) The number or the section of the code or ordinance violated.
  - (6) The name of the code inspector issuing the citation violation notice.

- (7) The procedure for the violator to follow to pay the civil penalty, including the due date for payment of the civil penalty.
- (8) The procedure for the violator to follow to request an administrative hearing.
- (9) The amount of the civil penalty for an uncontested violation.
- (10) The amount of the civil penalty for a contested violation.
- (11) The specified time period to correct the violation.
- (12) A conspicuous statement that if the violator fails to pay the civil penalty within the time allowed, or fails to timely request an administrative hearing within fifteen (15) days of the date of the citation violation notice, the violator shall be deemed to have waived his/her right to an administrative hearing and that, in such case, judgment may be entered against the violator for an amount up to the maximum civil penalty.
- (13) Notice that the person may be liable for reasonable costs of the hearing should the violator be found guilty of the violation.
- (g) After providing notice of a citation violation notice to a person, the code enforcement officer shall submit the original citation violation notice to the Department of Development Services.
- (h) Any person who willfully refuses to sign and accept a citation violation notice issued by a Code Enforcement Officer shall be guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082 or 775.083, Florida Statutes.

**§ 2-100 - Civil penalties; administrative hearing; failure to pay/correct.**

- (a) If the violation is continuing or repetitive, a single violation will occur each day beyond the time for correction set forth in the citation violation notice.
- (b) For each day of a continued violation, an additional civil penalty in the same amount as that prescribed for in the original citation violation notice shall be added.
- (c) Continuing violation penalties shall accrue from the date of correction given in the citation violation notice until the correction is made, and compliance is obtained. If the violator requests an administrative hearing and loses such appeal, the special magistrate shall determine a reasonable time period within which correction of the violation must be made, based on the considerations set forth herein. If correction is not made within the time period set by the special magistrate, continuing violation penalties shall begin to accrue after the time allowed for correction by the special magistrate has run.
- (d) Civil penalties assessed pursuant to this article are due and payable to the Department of Development Services on or before the last day of the period allowed for the filing of an administrative hearing, or for the filing of an appeal from a special magistrate decision at an administrative hearing, or if proper appeal is made, when the appeal has been finally decided adversely to the violator.
- (e) A violator who has been served with a citation violation notice shall elect either to:
  - (1) Correct the violation and pay the civil penalty in the manner indicated on the citation violation notice; or
  - (2) Request an administrative hearing before a special magistrate to contest the citation violation notice.
- (f) A violator shall request an administrative hearing by filing a written request for such hearing with the Director of the Department of Development Services no later than fifteen (15) days after the date of the citation violation notice. The request shall include the name and address of the violator and the citation violation notice number.

- (g) Failure of a violator to file a written request for an administrative hearing within fifteen (15) days after date of the citation violation notice shall constitute a waiver of the violator's right to an administrative hearing to contest the citation violation notice and is deemed an admission of the violation and civil penalties shall be assessed and costs may be assessed accordingly.
- (h) If a violator fails to correct the violation or pay the civil penalty by the specified time period as written on the citation violation notice, or timely request an administrative hearing, the special magistrate shall be informed of such failure by an affidavit of non-compliance executed by a code enforcement officer. The Department of Development Services shall send to the violator a notice of a hearing for non-compliance. Such notice of hearing shall be served in accordance with the method of providing notice in Section 2-85. At the date, time, and place set such hearing, the special magistrate shall order the fine be imposed as specified in the citation violation notice.
- (i) A certified copy of said order imposing the fine and enforcement costs may be recorded in the public records of the county and once recorded, it shall constitute a lien against any real or personal property owned by the violator.

**§ 2-101 - Scheduling and conduct of administrative hearing.**

- (a) Upon receipt of a violator's timely request for an administrative hearing, the Department of Development Services shall schedule the administrative hearing on the next available regularly scheduled special magistrate hearing date, or as soon thereafter as possible.
- (b) The Department of Development Services shall send a notice of hearing by certified and regular mail to the violator at the address provided by the violator on the request for an administrative hearing.
- (c) The notice of an administrative hearing shall include:
  - (1) Notice that the violator may be represented by an attorney.
  - (2) Notice that the violator to present witnesses and evidence.
  - (3) Notice that failure of the violator to attend the administrative hearing may result in a civil penalty being assessed in the absence of the violator.
  - (4) Notice that a request for a continuance will not be considered if not received in writing by the Director of the Department of Development Services at least five (5) calendar days prior to the scheduled hearing date.
  - (5) Notice that the violator will be responsible for a verbatim record of the hearing should they desire to appeal the special magistrate's decision.
- (d) The administrative hearing shall be conducted as provided in Section 2-86. The fact-finding determination of the special magistrate at the administrative hearing shall be limited to whether the violation alleged did occur and, if so, whether the person named in the citation violation notice can be held responsible for that violation. At the conclusion of the administrative hearing, the special magistrate shall issue an administrative order with findings of fact and conclusions of law and if the city prevails, impose the civil penalty as set forth in Section 2-104.
- (e) If the violator is found to have committed or responsible for committing the violation, the order of the special magistrate shall require the violator to pay a fine in the amount established in Section 2-104. Such order may also command a violator to take whatever steps are necessary to bring a violation into compliance. The order shall be announced orally at the hearing and shall be reduced to writing and served on the violator at the hearing or subsequent to the hearing shall be reduced to writing and served in accordance with the method of providing notice in Section 2-85.
- (f) For the first repeat violation, the amount of the civil penalty shall be double the amount of the penalty prescribed for the original violation in Section 2-104. The amount of civil penalty due for each subsequent repeat violation shall be double the amount of the immediately

proceeding violation, provided that the maximum penalty payable for any repeat violation shall be five hundred (\$500.00) dollars for each day beyond the time for correction set forth in the citation violation notice.

**§ 2-102 - Collections and foreclosure.**

- (a) The Department of Development Services may, for the purpose of collecting any delinquent civil penalties or costs from a violator, whether or not reduced to a lien, refer the delinquency to a debt collection agency. The collection fee, including any reasonable attorney's fee, paid to any collection agency shall be in accordance with Florida law.
- (b) After three months from the filing of any lien which remains unpaid, the special magistrate may authorize the City Attorney to foreclose on the lien or sue to recover a money judgment for the amount of the lien, plus accrued interest. No lien created pursuant to this section may be foreclosed on real property which is homestead protected from claims of creditors by the Florida Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under Article X, Section 4(a), of the Florida Constitution. In any action to foreclose on a lien, the prevailing party is entitled to recover all costs, including reasonable attorneys' fees, that it incurs in the foreclosure. The City shall be entitled to collect all costs incurred in recording and satisfying a valid lien.

**§ 2-103 - Provisions contained herein are supplemental.**

Nothing contained in this Division 4.5. shall prohibit the City from enforcing the Code by any other means. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filing suit for the enforcement of any section of the Code.

**§ 2-104 - Schedule of civil penalties.**

The following table sets forth the amount of the civil penalty for any code violation(s) that may be cited under this division. The descriptions of violations are provided for purposes of general identification only. References to "MC" shall mean the Municipal Code of Ordinances of the City of Cape Coral. References to "LDC" shall mean the Cape Coral Land Development Code. References to "FBC" shall mean the Florida Building Code.

<b><u>CODE SECTION</u></b>	<b><u>DESCRIPTION OF VIOLATION</u></b>	<b><u>CIVIL PENALTY - UNCONTESTED</u></b>	<b><u>CIVIL PENALTY - CONTESTED</u></b>
<u>4-32 MC</u>	<u>Non-domestic animals</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>5.1.18.A. LDC</u>	<u>Abandoned vehicles/watercraft</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>5.11.15. LDC</u>	<u>Mobile food vendors</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>5.11.16. LDC</u>	<u>Mobile food courts</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>6.2.1.A. LDC</u>	<u>Parking regulations for residential zoning districts (commercial vehicle/utility trailer)</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>6.2.1.D. LDC</u>	<u>Parking regulations for residential zoning districts (RV Parking)</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>6.2.2.B. LDC</u>	<u>Additional parking regulations for residential zoning districts – Grass Parking</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>6.2.6.A. LDC</u>	<u>Boats and boat trailers – Parking</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>6.2.6.B. LDC</u>	<u>Boats and boat trailers – Registration</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>6.2.6.D. LDC</u>	<u>Boats and boat trailers – Permit Required</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>6.2.7. LDC</u>	<u>Vacant Lots</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-15 MC</u>	<u>Littering (vacant lots/canals/improved property)</u>	<u>\$150.00</u>	<u>\$225.00</u>

<u>9-16(a) MC</u>	<u>Prohibited conditions on private real property (Obnoxious growth/litter)</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-16(b) MC</u>	<u>Prohibited conditions on private real property (Dangerous buildings)</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-16(e) MC</u>	<u>Prohibited conditions on private real property (Outdoor storage)</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-42 MC</u>	<u>Nuisance accumulations on private property</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-43 MC</u>	<u>Nuisance grass and weeds</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-67(b)(9) MC</u>	<u>Residential dwelling receptacles collection - Cans in View</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-71 MC</u>	<u>Non-compliant bulky or horticulture waste</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-103 MC</u>	<u>Timing of fertilizer application</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-104 MC</u>	<u>Fertilizer restricted zones</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-105 MC</u>	<u>Fertilizer application practices</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>9-107 MC</u>	<u>Management of grass clippings and vegetable matter</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>105.1 FBC</u>	<u>Unpermitted Construction – Permit required</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>105.4.1.1 FBC</u>	<u>If Work Has Commenced; Voided Permit – Expired Permit</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>11-12(a) MC</u>	<u>Local Business Tax Receipts (Delinquent)</u>	<u>\$150.00</u>	<u>\$225.00</u>
<u>5.9.3. LDC</u>	<u>Outdoor Display of Merchandise</u>	<u>\$250.00</u>	<u>\$325.00</u>
<u>6-14(f) MC</u>	<u>Unlicensed Contractors</u>	<u>\$250.00</u>	<u>\$325.00</u>
<u>5.1.10. LDC</u>	<u>Maintenance of City rights-of-way (Erosion Controls)</u>	<u>\$250.00</u>	<u>\$325.00</u>
<u>23-5 MC</u>	<u>Bald Eagle Protection - Protected Species Violation</u>	<u>\$250.00</u>	<u>\$325.00</u>
<u>23-13 MC</u>	<u>Burrowing Owl and Gopher Tortoise Protection - Protected Species Violation</u>	<u>\$250.00</u>	<u>\$325.00</u>
<u>5.2.15.B. LDC</u>	<u>Unsecured Swimming Pools</u>	<u>\$250.00</u>	<u>\$325.00</u>

## **§ 2-105 - Appeals.**

An aggrieved party, including the City Council, may appeal a final administrative order of the special magistrate to the Circuit Court within thirty (30) days of the date of the rendition of the order as provided by the Florida Rules of Appellate Procedure. 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.

SECTION 2. The City Council hereby amends Chapter 9, Health and Sanitation, Article III, Disposition of Garbage, Section 9-75, as follows:

§ 9-75 - Enforcement and penalties.

The failure to comply with any provision of this article shall constitute a violation of this article and subject the violator to the code enforcement provisions and procedures provided in Sections 2-81 through ~~2-96~~ 2-105, Cape Coral Code of Ordinances. Each violation, and each day thereof, shall constitute a separate offense under this article.

SECTION 3. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective on May 1, 2023.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 15<sup>th</sup> DAY OF March, 2023.

  
JOHN GUNTER MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:


GUNTER	<u>aye</u>
STEINKE	<u>aye</u>
SHEPPARD	<u>aye</u>
HAYDEN	<u>aye</u>

CUMMINGS	<u>aye</u>
WELSH	<u>aye</u>
LONG	<u>aye</u>
CODSEN	<u>aye</u>

ATTESTED TO AND FILED IN MY OFFICE THIS 21<sup>st</sup> DAY OF March, 2023.

  
KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:

  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
ord/CitationViolNoticeProcedures