

Legislative #

200431

1 (b) Except as provided in subsections (c) and (d), if a violation of the codes is found, the code
2 inspector shall notify the alleged violator and give him or her a reasonable time to correct the
3 violation. Should the violation continue beyond the time specified for correction, the code
4 inspector shall notify the board and request a hearing. The board, through its clerical staff,
5 shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed
6 as provided in section 2-390 to said alleged violator. In the case of notice provided under
7 section 2-390(a), such shall be given at least seven days in advance of the hearing, not
8 counting the day of the hearing. At the option of the board, notice may additionally be served
9 by publication or posting as provided in section 2-390. If the violation is corrected and then
10 recurs or if the violation is not corrected by the time specified for correction by the code
11 inspector, the case may be presented to the board even if the violation has been corrected
12 prior to the board hearing, and the notice shall so state.

13 (c) If a repeat violation is found, the code inspector shall notify the alleged violator but is not
14 required to give the alleged violator a reasonable time to correct the violation. The code
15 inspector, upon notifying the alleged violator of a repeat violation, shall notify the board and
16 request a hearing. The board, through its clerical staff, shall schedule a hearing and shall
17 provide notice pursuant to section 2-390. In the case of notice provided under section 2-
18 390(a), such shall be given at least seven days in advance of the hearing, not counting the day
19 of the hearing. The case may be presented to the board even if the repeat violation has been
20 corrected prior to the board hearing, and the notice shall so state. If the repeat violation has
21 been corrected, the board retains the right to schedule a hearing to determine costs and
22 impose the payment of reasonable enforcement fees upon the alleged repeat violator. The

1 alleged repeat violator may choose to waive his or her rights to this hearing and pay said
2 costs as determined by the board.

3 (d) If the code inspector has reason to believe a violation or the condition causing the violation
4 presents a serious threat to the public health, safety, and welfare or if the violation is
5 irreparable or irreversible in nature, the code inspector shall make a reasonable effort to
6 notify the alleged violator and may immediately notify the board and request a hearing.

7 (e) If the owner of property which is subject to an enforcement proceeding before the board
8 transfers ownership of such property between the time the initial pleading was served and the
9 time of the hearing such owner shall:

10 (1) Disclose, in writing, the existence and the nature of the proceeding to the prospective
11 transferee.

12 (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials
13 relating to the code enforcement proceeding received by the transferor.

14 (3) Disclose, in writing, to the prospective transferee that the new owner will be responsible
15 for compliance with the applicable code and with orders issued in the code enforcement
16 proceeding.

17 (4) File a notice with the code enforcement official of the transfer of the property, with the
18 identity and address of the new owner and copies of the disclosures made to the new
19 owner, within five days after the date of the transfer. A failure to make the disclosures
20 described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable
21 presumption of fraud. If the property is transferred before the hearing, the proceeding

1 shall not be dismissed, but the new owner shall be provided a reasonable period of time
2 to correct the violation before the hearing is held.

3 **Section 2.** Sec. 2-387 is amended to read as follows.

4 **Sec. 2-387. - Hearing; proceedings; orders.**

5 (a) Upon request of the code inspector, or at such other times as may be necessary, the chair
6 of the board may call a hearing of an enforcement board; a hearing also may be called by
7 written notice signed by at least three members of the seven-member board. Minutes
8 shall be kept of all hearings by the board, and all hearings and proceedings shall be open
9 to the public and any person whose interests may be affected by the matter before the
10 board shall be given an opportunity to be heard. The commission shall provide clerical
11 and administrative personnel as may be reasonably required by each board for the proper
12 performance of its duties. The chairperson of the board shall provide the clerk of the
13 board with sufficient signed and blank witness and document subpoenas to be provided
14 to alleged violators and the code inspector for the purpose of having witnesses and
15 records subpoenaed. The alleged violator shall pay the board for each subpoena served
16 at his or her request.

17 (b) The board shall proceed to hear the cases on the agenda for that day. Each case before
18 the board shall be presented by the city's code inspector. The board shall take testimony
19 from the code inspector and alleged violator. Formal rules of evidence shall not apply,
20 but fundamental due process shall be observed and shall govern the proceedings. All
21 relevant evidence shall be admitted if, in the opinion of the board, it is the type of
22 evidence upon which reasonable and responsible persons would normally rely in the

1 conduct of business affairs, regardless of the existence of any common law or statutory
2 rule which might make the evidence inadmissible over objections in civil actions. The
3 chairperson of the board may exclude irrelevant or unduly repetitious evidence. Hearsay
4 evidence may be accepted for the purpose of supplementing or explaining any direct
5 evidence, but such hearsay evidence shall not in and of itself be considered sufficient to
6 support a finding or decision unless the evidence would be admissible over objections in
7 a civil action. Each party to the hearing shall have the right to call and examine
8 witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and
9 rebut evidence. The alleged violator has the right to be represented by an attorney at any
10 board hearing. All testimony before the board shall be under oath and shall be recorded.
11 The alleged violator or the city may cause the proceedings to be recorded by a certified
12 court reporter or by a certified recording instrument. The burden of proof shall be with
13 the code inspector, to show by the greater weight of the evidence that a code violation
14 exists and that the alleged violator committed or was responsible for the violation.

15 (c) If notice has been provided to an alleged violator of the formal hearing, a hearing may be
16 conducted and an order rendered in the absence of the alleged violator. The board may,
17 for good cause shown, postpone or continue a formal hearing upon a majority vote of
18 those members present and voting. The board shall in every proceeding make a decision
19 without unreasonable or unnecessary delay.

20 (d) At the conclusion of the hearing, the board shall issue findings of fact, based on evidence
21 of record and conclusions of law, and shall issue an order affording the proper relief
22 consistent with powers granted herein. The finding shall be by motion approved by a
23 majority of those members present and voting, except that at least four members of the

1 board, must vote in order for the action to be official. Every enforcement order shall be
2 signed by the chairperson, or in his/her absence, the vice-chairperson, and shall be filed
3 in the office of the clerk of the board. A copy of the signed order shall be sent by regular
4 mail, within five working days of the hearing, or where hand delivery would be effective,
5 by hand delivery by the code inspector, to the alleged violator, within five working days
6 of the hearing. If the city prevails in prosecuting a case before the board, it shall be
7 entitled to recover all costs incurred in prosecuting the case before the board and such
8 costs may be included in the lien authorized under section 2-388.1. The order may
9 include a notice that it must be complied with by a specified date and that a fine may be
10 imposed and, under the conditions specified in section 2-388.1, the cost of repairs and/or
11 other remedy may be included along with the fine if the order is not complied with by
12 said date. A certified copy of such order may be recorded in the public records of the
13 county and shall constitute notice to any subsequent purchasers, successors in interest, or
14 assigns if the violation concerns real property, and the findings therein shall be binding
15 upon the violator and, if the violation concerns real property, any subsequent purchasers,
16 successors in interest, or assigns. If an order is recorded in the public records pursuant to
17 this subsection and the order is complied with by the date specified in the order, the
18 board shall issue an order acknowledging compliance that shall be recorded in the public
19 records. A hearing is not required to issue such an order acknowledging compliance.

20 **Section 3.** Sec. 2-388.1(a) is amended to read as follows. Except as amended herein, the
21 remainder of Sec. 2-388.1 remains in full force and effect.

22 **Sec. 2-388.1. - Administrative fines; costs of repair; liens.**

1 (a) The board, upon notification by the code inspector and upon conducting a hearing in
2 which the board finds that an order of the board has not been complied with by the set
3 time or ~~upon finding~~ in which the board finds that a repeat violation has been committed,
4 may order the violator to pay a fine in an amount specified in this section for each day
5 the violation continues past the date set by the board for compliance or, in the case of a
6 repeat violation, for each day the repeat violation continues, beginning with the date the
7 repeat violation is found to have occurred by the code inspector. In addition, if the
8 violation is a violation that presents a serious threat to the public health, safety, and
9 welfare or if the violation is irreparable or irreversible in nature, the board shall notify the
10 city manager through the commission, which may make all reasonable repairs or
11 undertake such other remedies which are required to bring the property into compliance
12 or eliminate the violation, and the board charge the violator with the reasonable cost of
13 such along with the fine imposed pursuant to this section. Undertaking such repairs or
14 remedies does not create a continuing obligation on the part of the city to make further
15 repairs or to maintain the property and does not create any liability against the city or its
16 agents or assigns for any damages to the property if such repairs or other remedies were
17 completed or undertaken in good faith.

18 **Section 4.** Sec. 2-390(a)(3) is amended as follows. Except as amended herein, the
19 remainder of Sect. 2-390 remains in full force and effect.

20 **Sec. 2-390. - Notices.**

21 (a) All notices required by this part shall be provided to the alleged violator by:

1 (3) Leaving the notice at the alleged violator's usual place of residence with any person
2 residing therein who is above 15 years of age and informing such person of the
3 contents of the notice; or

4 **Section 5.** Secs. 30-8.44.A.7 and 30-8.44.C are amended as follows. Except as amended
5 herein, the remainder of Sec. 30-8.44. remains in full force and effect.

6 **Sec. 30-8.44. - Violations, enforcement and penalties.**

7 A. Stormwater management. As regards the provisions of the stormwater management
8 sections of this chapter:

9 7. Should any person violate the provisions of this section, the city manager or designee
10 shall require the alleged violator to take corrective measures. In the event the alleged
11 violator does not immediately correct the violation, the city may, depending upon the
12 severity of the violation, take the following actions:

13 C. Surface waters and wetlands; natural and archaeological resources. The city manager or
14 designee shall be responsible for the enforcement of these regulations. Should any person violate
15 the provisions of the surface waters and wetlands or the natural and archaeological resources
16 sections of this chapter, in addition to the provisions, requirements, and penalties stated at article
17 I, division 2 of this chapter, the city will require appropriate corrective measures be taken by the
18 alleged violator. In the event the violation is not corrected by the alleged violator, the city may,
19 depending upon the severity of the violation, take the following actions:

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21 **Section 6.** It is the intention of the City Commission that the provisions of Sections 1
22 through 5 of this Ordinance shall become and be made a part of the Code of Ordinances of the

1 City of Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be
2 renumbered or relettered in order to accomplish such intentions.

3 **Section 7.** If any word, phrase, clause, paragraph, section or provision of this ordinance
4 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
5 finding shall not affect the other provisions or applications of this ordinance that can be given
6 effect without the invalid or unconstitutional provision or application, and to this end the
7 provisions of this ordinance are declared severable.

8 **Section 8.** All ordinances or parts of ordinances in conflict herewith are to the extent of
9 such conflict hereby repealed.

10 **Section 9.** This ordinance shall become effective immediately upon adoption.

11 **PASSED AND ADOPTED THIS ____ DAY OF _____, 2020.**

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LAUREN POE
MAYOR

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ATTEST:

Approved as to form and legality

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OMICHELE D. GAINES
CLERK OF THE COMMISSION

NICOLLE M. SHALLEY
CITY ATTORNEY

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This ordinance passed on first reading this ____ day of _____, 2020.

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This ordinance passed on second reading this ____ day of _____, 2020.

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