

**LEGISLATIVE #**  
**190201A**

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**ORDINANCE NO. 190201**

**An ordinance of the City of Gainesville, Florida, amending the Code of Ordinances to replace procedures currently in the code related to the Board of Adjustment, variances, nuisance abatement, and appeals procedures by amending Sections 2-213, 2-377, 16-22, 16-27, 16-28, 16-93; 16-95 through 16-99.2, 23-102, and 26-141; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.**

**WHEREAS**, the City of Gainesville Board of Adjustment (which also served as the Nuisance Abatement Board) is no longer in service, and its functions need to be reassigned to other boards or offices, and the City’s Code of Ordinances are in need of updating in regard to variances, nuisance abatement, and appeals procedures;

**WHEREAS**, at least 10 days’ notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of public hearings to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

**WHEREAS**, the public hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact heard.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE,**

**FLORIDA:**

**Section 1.** Section 2-213 of Division 2 and Section 2-377 of Division 8 of Chapter 2 of the Code of Ordinances are amended to read as set forth below. Except as amended herein, Chapter 2 remains in full force and effect.

DIVISION 2. – DEPARTMENT OF PLANNING AND DEVELOPMENT SERVICES

Sec. 2-213. - Duties and responsibilities.

1           The department of planning and development services shall be the administrative  
2 department of the city government charged with the responsibility of performing the several  
3 clerical, investigative, inspection and other administrative duties for the city plan board, ~~board~~  
4 ~~of adjustment~~, development review board, historic preservation board, ~~Gainesville Enterprise~~  
5 ~~Zone Development Agency~~ and such other boards or committees as the city manager may from  
6 time to time designate and shall relate their activities to making studies and recommendations  
7 on matters that are under the supervision of the department of planning and development  
8 services.

9 DIVISION 8. - CODE ENFORCEMENT BOARD; SPECIAL MAGISTRATE

10 Sec. 2-377. - Applicability; jurisdiction.

11           (a) The Gainesville Code Enforcement Board shall have jurisdiction to hear and decide  
12 cases in which violations are alleged of any provisions of the following provisions of this Code  
13 of Ordinances as they may exist or may hereafter be amended by ordinance:

- 14           (1) Chapter 6, Article II, "Building Code;"
- 15           (2) Chapter 6, Article III, "Electrical Code;"
- 16           (3) Chapter 6, Article IV, "Plumbing Code;"
- 17           (4) Chapter 6, Article V, "Gas Code;"
- 18           (5) Chapter 6, Article VI, "Mechanical Code;"
- 19           (6) Chapter 6, Article VII, "Swimming Pools;"
- 20           (7) Chapter 6, Article IX, "Downtown Minimum Property Standards;"
- 21           (8) Chapter 10, "Fire Prevention and Protection;"
- 22           (9) Chapter 13, "Housing and Commercial Building Codes;"

- 1 (10) Chapter 16, Article II, "Dangerous Building and Hazardous Land Code;"
- 2 (11) Chapter 16, Article III, "Perilous Land Code;"
- 3 (12) Chapter 16, Article IV, "Mosquito Breeding Grounds;"
- 4 (13) Chapter 16, Article V, "Public Nuisance Abatement;"
- 5 (~~14 13~~) Chapter 23, "Streets, Sidewalks and Other Public Places;"
- 6 (~~15 14~~) Chapter 25, Article III, "Business Tax;"
- 7 (~~16 15~~) Chapter 26, Article III, Division 5, "Abandoned, Wrecked, Nonoperating
- 8 Vehicles;"
- 9
- 10 (~~17 16~~) Chapter 27, Article III, "Solid Waste Disposal;"
- 11 (~~18 17~~) Chapter 27, Article IV, Sections 27-180 through 27-182.2, "Sewerage;"
- 12 (~~19 18~~) Chapter 30, "Land Development Code;"
- 13 (~~20 19~~) Chapter 14.5, Article I, "Landlord Permits;"
- 14 (~~21 20~~) Chapter 14.5, Article II, "Merchandising of Tobacco Products."

15 (b) Any alleged violation of the aforesaid provisions may also be enforced in any court  
 16 of competent jurisdiction.

17 **Section 2.** Sections 16-22, 16-27 and 16-28 of Article II of Chapter 16 of the Code of  
 18 Ordinances are amended to read as set forth below. Except as amended herein, the remainder  
 19 of Article II of Chapter 16 remains in full force and effect.

20 Chapter 16 – NUISANCES

21 ARTICLE II. – DANGEROUS BUILDING AND HAZARDOUS LAND CODE

22 Sec. 16-22. - Duties of the city attorney.

23 The city attorney shall:

1 (1) Prosecute all persons failing to comply with the terms of the notices provided  
2 for in section 16-25 and in the order provided for in section 16-23;

3 (2) Appear at all hearings before the special magistrate ~~board of appeals~~ in  
4 regard to dangerous buildings and hazardous lands;

5 (3) Bring suit to collect all municipal liens, assessments or costs incurred in  
6 repairing or causing to be vacated, demolished or repaired, altering or demolishing or cleaning  
7 up dangerous buildings and hazardous lands;

8 (4) Take such legal action as is necessary to carry out the terms and provisions  
9 of this article.

10 Sec. 16-27. – Special magistrate Appeals board; appeals.

11 (a) Special magistrate Appeals board.

12 ~~(1) Established. There is hereby established an appeals board for dangerous building,~~  
13 ~~hazardous land, unsafe equipment, or absent or malfunctioning grease trap or~~  
14 ~~grease interceptor violations. The board of adjustment of the city shall serve and~~  
15 ~~perform the duties of the appeals board for dangerous building, hazardous land,~~  
16 ~~unsafe equipment, or absent or malfunctioning grease trap or grease interceptor~~  
17 ~~violations under the procedure set forth in this article.~~

18 (1) A special magistrate (retained by the city pursuant to Sec. 2-391 of the code) shall  
19 hear appeals of violations under the procedures set forth in this article II.

20 ~~(2) Meetings, minutes, records, voting. Meetings shall be at the call of the chairperson~~  
21 ~~and at such other times as the board may determine. The chairperson, or in~~  
22 ~~his/her absence the vice chairperson, may administer oaths and compel the~~

1 attendance of witnesses. All meetings shall be open to the public. The  
2 appeals board shall keep minutes of its proceedings, including a summary of the  
3 testimony of each person appearing before it; it shall keep records of its findings  
4 and decisions. The vote of each member on each question shall be recorded, or if  
5 absence or failing to vote, the circumstance shall be noted. The concurrence of not  
6 less than three members of the appeals board shall be necessary to a  
7 decision of any question which the board has the power to determine. All such  
8 records shall be public records and the same shall be filed in the office of the  
9 appeals board, which shall, for the purpose of this article, be the office of the  
10 enforcing official.

11 (b) *Appeals procedure.* Appeals to the appeals board for dangerous building, hazardous  
12 land, unsafe equipment, or absent or malfunctioning grease trap or grease interceptor  
13 violations may be taken by any person aggrieved by any notice which has been issued in  
14 connection with the enforcement of this article or by any officer or bureau or the governing  
15 body of the city affected by any decision of the enforcing official. Appeals to the special  
16 magistrate shall be taken by the violator within 14 days after the notice of violation was  
17 served or action taken, by filing with the clerk for the special magistrate in the office of the  
18 enforcing official a written petition to the board of appeals for dangerous building, hazardous  
19 land, unsafe equipment, or absent or malfunctioning grease trap or grease interceptor  
20 violations setting forth the grounds therefor. Upon the receipt of the petition, the clerk for  
21 the special magistrate ~~appeals board~~ shall set a time and place for hearing the appeal, but in  
22 no case shall the hearing be less than ten days nor more than 40 days following the

1 receipt of the petition. The clerk for the special magistrate ~~enforcing official~~ shall promptly  
2 transmit to the special magistrate appeals board all papers constituting the record upon which  
3 the notice of violation was issued or action taken. Written notice of the time and place of the  
4 hearing shall be sent by certified mail, return receipt requested, to the person taking the  
5 appeal at least ten days prior to the date of the hearing and public notice of the hearing shall  
6 be published at least once ten days prior to the hearing in a newspaper of general circulation  
7 in the city. At the hearing, any party may appear in person or by agent or attorney.

8 (c) *Power to sustain, modify or withdraw notice of violation.* After public notice and  
9 public hearing, the special magistrate appeals board ~~for dangerous building, hazardous land,~~  
10 ~~unsafe equipment, or absent or malfunctioning grease trap or grease interceptor violations~~  
11 shall have the power to sustain, modify or withdraw the notice of violation. The special  
12 magistrate appeals board shall make findings in writing justifying the exercise of its authority  
13 and the same shall be a part of the permanent record of the case:

- 14 (1) *Sustaining.* If the special magistrate appeals board sustains the enforcing official, it  
15 shall find:
- 16 a. That the facts as stated in the written notice of violation are correct and that the  
17 situation covered by the notice is in fact, a violation of this ~~the~~ article; and
  - 18 b. That the remedy stated by the enforcing official in the written notice of violation is  
19 the minimum remedial action which will bring the building, premises or the land  
20 cited into compliance with this article.

1 (2) *Modification or withdrawal.* If the special magistrate appeals board shall modify or  
2 withdraw the notice of violation, it shall find the following, as may be applicable to  
3 the specific case:

4 a. That the facts as stated in the written notice of violation are not correct and that the  
5 situation as covered by the notice is not, in fact, a violation of the article, or that the  
6 procedures required of the enforcing official in this article have not been complied  
7 with; and

8 b. That the remedial action required by the enforcing official is not the minimum  
9 remedial action necessary to bring the building, structure or land into compliance  
10 with the article and that some other remedial action, to be stated by the special  
11 magistrate appeals board as a part of the record of the case, is the minimum action  
12 necessary to secure compliance with this article.

13 (d) *Failure of owner to comply with order.* If the owner fails to comply with the order  
14 entered by the special magistrate appeals board within the time therein allowed, the  
15 enforcing official shall cause the building, structure or land to be repaired, vacated,  
16 demolished or cleaned up, as the facts may warrant, and shall, with the repairs, vacation,  
17 demolition or clean-up to be paid for by suit at law or charged against the property as  
18 otherwise herein provided.

19 Sec. 16-28. - Status of special magistrate appeals board action; judicial review.

20 (a) If the special magistrate appeals board sustains or modifies the written notice  
21 of violation given by the enforcing official it shall be deemed an order and action shall be taken  
22 by the enforcing official to enforce the same. Any notice of violation served pursuant to this



1 article and in conformity with its provisions shall become an order if no appeal petition ~~for~~  
2 ~~review~~ has been filed with the special magistrate appeals board within the time limit set out  
3 in section 16-27.

4 (b) A violator ~~Any person or persons, or any board, taxpayer, department, board or~~  
5 ~~bureau of the city government~~ aggrieved by any decision of the special  
6 magistrate appeals board may seek review by a circuit court, in the manner provided by the  
7 laws of this state. It is the intent of this article that review of decisions of the special  
8 magistrate appeals board shall be by the courts as provided by law.

9 **Section 3.** Section 16-93 of Article V of Chapter 16 of the Code of Ordinance is hereby  
10 amended to read as set forth below. Except as amended herein, the remainder of Article V of  
11 Chapter 16 remains in full force and effect.

12 Chapter 16 – NUISANCES

13 ARTICLE V. – PUBLIC NUISANCE ABATEMENT

14 Sec. 16-93. – Definitions.

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

17 *Complainant* shall mean the City of Gainesville.

18 A complaint may be filed with the city by a resident of the city or any occupant of real property  
19 within the city who is aggrieved by an alleged nuisance.

20 *Controlled substance* shall have the same meaning as stated in F.S. §§ 893.02 and 893.138 and  
21 any other applicable provision of general law, as may be amended from time to time. Further, as  
22 used in this section, "controlled substance" includes any substance sold in lieu of a controlled  
23 substance in violation of F.S. § 817.563 or any imitation controlled substance defined in F.S. §  
24 817.564.

25 ~~*Nuisance abatement board* shall mean the City of Gainesville Nuisance Abatement Board which~~  
26 ~~is also referred to herein as "board".~~

1 *Operator* shall mean the person operating a place or premises subject to this article.  
2 *Owner* shall mean the owner of the place or premises that is alleged to be a public nuisance. In  
3 cases where the owner and the operator are the same person, the terms "owner" and "operator"  
4 are uses interchangeably.  
5 *Place or premises* shall mean the land and its appurtenances, structures and fixtures thereon, as  
6 such land is described or contained in a deed or instrument of conveyance and recorded in the  
7 official records of Alachua County.  
8 *Public nuisance* shall mean the conduct described in section 16-94 of this article.  
9 *Recurring public nuisance* shall mean a second or other additional occurrence of a public nuisance  
10 during the effective term of an order entered by the nuisance abatement board.  
11 *Special magistrate* shall mean the person retained by the city pursuant to section 2-391 to  
12 conduct quasi-judicial hearings under this article.

13 **Section 4.** Sections 16-95 through 16-99.2 of Article V of Chapter 16 of the Code of  
14 Ordinances are amended to read as set forth below. Except as amended herein, the remainder  
15 of Article V of Chapter 16 remains in full force and effect.

16 Chapter 16 – NUISANCES

17 ARTICLE V. – PUBLIC NUISANCE ABATEMENT

18 ~~Sec. 16-95. Nuisance abatement board.~~

19 ~~(a) The nuisance abatement board of the city is hereby created to serve as a quasi-~~  
20 ~~judicial forum in which controversies over the existence of public nuisances may be resolved in~~  
21 ~~the public interest with due process of law. Members of the board of adjustment shall serve ex~~  
22 ~~officio as members of the nuisance abatement board.~~

23 ~~(b) Each member of the board of adjustment shall be a member of the nuisance~~  
24 ~~abatement board during his or her term of office. Members shall serve without compensation.~~

1 ~~(c) Organization; hearings; quorum; administrative staff support, board case files, documents;~~  
2 ~~legal counsel.~~

3 ~~(1) The members of the board shall elect a chair who shall be a voting member from~~  
4 ~~among the members of the board. The member elected chair shall serve as chair~~  
5 ~~for a term of one year and may be re-elected to serve an additional term or terms~~  
6 ~~as chair.~~

7 ~~(2) The presence of four members shall constitute a quorum of the board. The~~  
8 ~~affirmative vote of at least four members shall be necessary to take action.~~

9 ~~(3) The board is authorized to establish its own rules of procedure.~~

10 ~~(4) The chair of the board may call hearings of the board. Hearings may also be called~~  
11 ~~by written notice signed by at least four members of the board. The clerk of~~  
12 ~~the board may also set hearing dates. Minutes shall be kept of all hearings and all~~  
13 ~~hearings shall be open to the public. The city commission shall budget and~~  
14 ~~appropriate necessary expenses that may be reasonably required by the board for~~  
15 ~~the proper performance of its duties.~~

16 ~~(5) The clerk of the board of adjustment shall serve as clerk of the nuisance~~  
17 ~~abatement board. The clerk shall be the custodian of all board case files and~~  
18 ~~documents pertaining thereto and shall have the authority to certify other~~  
19 ~~documents issued by the board; the clerk shall adopt and use an official seal for~~  
20 ~~this purpose; the clerk is also empowered to administer oaths to witnesses~~  
21 ~~appearing before said board, and to issue subpoenas in the name of the board for~~  
22 ~~service of process by any city police officer.~~

1           ~~(6) The city attorney or designee shall serve as legal counsel to the board. The city~~  
2           ~~manager or designee may present cases before the board or retain special counsel~~  
3           ~~to present cases before the board.~~

4   Sec. 16-~~95~~96. - Procedures.

5           (a) *Written complaint; reports.* Any police officer making an arrest or substantiating an  
6 incident or occurrence of any statutory violation(s) or violations of section(s) set forth herein  
7 or any public service aide substantiating an incident or occurrence of a breach of any  
8 section(s) set forth herein and pursuant to information or independent observation, shall  
9 submit a copy of every such report and/or offense incident report to the chief of police or  
10 designee who shall process all such reports and determine when the requisite number of  
11 occurrences or violation have taken place as set forth in section 16-94.

12           (b) *Processing; review of case.*

13           (1) In each case where such determination has been made in accordance with  
14 subsection (a) above, the case shall be processed through the office of the  
15 chief of police.

16           (2) The chief of police, when he or she believes that a public nuisance as defined  
17 in section 16-94 exists, shall ~~request the clerk of the board to prepare a case~~  
18 ~~folder for file~~ a complaint with the clerk for the special magistrate and request  
19 a hearing before the special magistrate ~~board~~.

20           (c) *Hearings; hearing notices.*

21           (1) The clerk for the special magistrate ~~enforcing clerk of the nuisance abatement~~  
22 ~~board~~ shall schedule the hearings and issue hearing notices: (a) by sending

1 written notice of the hearing to the owner and/or operator by certified mail,  
2 return receipt requested or (b) by hand delivering the written notice to the  
3 owner and/or operator of the premises at their last known address at least  
4 15 calendar days prior to the scheduled hearing. If an attempt to serve notice  
5 upon the owner(s) and/or operators(s) by hand delivery or certified mail is  
6 unsuccessful, service of the notice of the hearing may be made by posting as  
7 provided in F.S. § 162.12(2)(b), such posting to take place not less than ten  
8 days before the scheduled hearing date. The owner and/or operator shall be  
9 responsible for providing notice, to any tenant, lessee or lessor, of the  
10 hearing.

11 (2) The notice of hearing shall include:

- 12 a. Statement of the time, place, and nature of the hearing;
- 13 b. Statement of the legal authority and jurisdiction under which the hearing is  
14 to be held;
- 15 c. Reference to the particular sections of the statutes and/or ordinances  
16 involved; and
- 17 d. Short and plain statement of facts summarizing the incidents complained.

18 Sec. 16-~~96~~97. - Conduct of hearings.

19 (a) City staff ~~The city manager, designee, or retained special counsel,~~ shall present  
20 evidence before the special magistrate

1 (b) ~~board on behalf of the city.~~ The violator and the city ~~All parties~~ shall have an  
2 opportunity to present evidence and argument on all issues involved, conduct cross  
3 examination, submit rebuttal evidence, and to be represented by legal counsel.

4 (b) The special magistrate board ~~board~~ may consider any evidence, including evidence of the  
5 general reputation of the place or premises. All testimony shall be given under oath and shall  
6 be recorded. Formal rules of evidence shall not apply, but fundamental due process shall  
7 govern the proceedings. Orders of the special magistrate board ~~board~~ shall be based upon competent  
8 and substantial evidence.

9 (c) The city shall have the burden of proving the existence of an unlawful public  
10 nuisance by the greater weight of the evidence.

11 (d) If the alleged violator(s) has been properly noticed in regard to the hearing before  
12 the special magistrate board ~~board~~ and fails to appear, the board may proceed with a hearing in  
13 absentia on the merits of the alleged violation. Any findings or orders resulting from such  
14 hearing are valid and binding upon the owner and/or operator.

15 Sec. 16-~~9798~~. - Orders.

16 (a) At the conclusion of the hearing and after considering all evidence presented at  
17 such hearing, the special magistrate board ~~board~~ is authorized to issue findings of fact based upon  
18 the evidence presented and made part of the record that a public nuisance does not exist or  
19 that an unlawful public nuisance does exist.

20 (b) Upon finding that an unlawful public nuisance does exist the special magistrate  
21 ~~board~~ shall enter an order requiring the owner of such place or premises to take ~~adopt~~ such

1 action procedure as may be appropriate under the circumstances to abate any such nuisance  
2 or it may enter an order immediately prohibiting:

3 ~~(1) The maintaining of the nuisance;~~

4 ~~(2) The operating or maintaining of the place or premises, including the closure of the~~  
5 ~~place or premises, or any part thereof; or~~

6 ~~(3) The conduct, operation, or maintenance of any business or activity which is~~  
7 ~~conducive to the maintenance of such nuisance. Any city business tax receipt~~  
8 ~~issued or renewed pursuant to the provisions of chapter 25 of this Code shall not~~  
9 ~~operate as authority to conduct business during any period in which the conduct~~  
10 ~~of any business or business activity is prohibited.~~

11 ~~(4) The special magistrate board may order any combination of subsections (b)(1), (2)~~  
12 ~~or (3), but shall endeavor to use the least restrictive method believed necessary to~~  
13 ~~abate the nuisance.~~

14 (c) An order entered pursuant to this section ~~16-98~~ shall expire after one year or at  
15 such earlier time as stated in the order. The special magistrate board ~~board~~ may retain jurisdiction  
16 to modify ~~the an~~ orders prior to its ~~the~~ expiration ~~of the orders~~, where just cause is found to  
17 exist.

18 (d) Before the special magistrate board ~~board~~ can order the closure of a place or premises or  
19 any part thereof, the special magistrate board ~~board~~ must make a factual finding that:

20 (1) The respondent did not abate the nuisance after being ordered by the special  
21 magistrate nuisance abatement board ~~board~~ to do so;

1 (2) The respondent did not substantially comply with an appropriate order issued by  
2 the special magistrate nuisance abatement board;

3 (3) The respondent continued to maintain an ongoing nuisance; or

4 (4) Closure is the only effective option in eradicating the nuisance. Such finding is to  
5 be supported by a written order setting forth the factual bases for this  
6 determination.

7 (e) A nuisance shall be deemed to be or have been abated when the special magistrate  
8 ~~board~~ finds by a preponderance of the evidence that the nuisance has been abated  
9 ~~causes of the nuisance have been eliminated or suppressed to such a degree that an~~  
10 ~~additional predicate violation as set forth in section 16-94 is not likely to reoccur.~~

11 Sec. 16-~~9899~~. - Administrative fines; costs and liens.

12 (a) In addition to the actions provided in subsection 16-~~9798~~(b) above, the special  
13 magistrate board may assess fines not to exceed \$250.00 per day, and for recurring public  
14 nuisances fines not to exceed \$500.00 per day. The order assessing fines shall be recorded in  
15 the public records of the county and shall become a lien against the real property that is the  
16 subject of the order. The total fines imposed pursuant to this section shall not exceed  
17 \$15,000.00. In determining the amount of the fine, if any, the special magistrate nuisance  
18 ~~abatement board~~ shall consider the following factors:

19 (1) The gravity of the public nuisance;

20 (2) Any actions taken by the owner to correct the public nuisance; and

21 (3) Any previous public nuisance created, maintained or otherwise occurring in or on  
22 the premises.



1       ~~The city attorney is authorized to foreclose on the property subject to the lien and~~  
2 ~~recovery of all costs, including reasonable attorney fees, associated with the recording of the~~  
3 ~~order and foreclosure. No lien created pursuant to this section may be foreclosed on real~~  
4 ~~property which is a homestead under Section 4, Article X of the State Constitution.~~

5       (b) In the event that the special magistrate board declares a place or premises to be a  
6 nuisance and issues an order pursuant to section 16-~~9798~~ above, the special magistrate board  
7 shall assess against the owner of the place or premises the cost which the city has incurred in  
8 the preparation, investigation and presentation of the case, including reasonable attorney  
9 fees. These costs shall be due and payable ten days after the written order of the special  
10 magistrate board has been ~~filed~~ executed. A certified copy of an order imposing costs may be  
11 recorded in the public records and thereafter shall constitute a lien against the land on which  
12 the violation exists or, if the violator does not own the land, upon any other real or personal  
13 property, owned by the violator; and it may be enforced in the same manner as a court  
14 judgment by the sheriffs of this state including levy against the personal property, but shall  
15 not be deemed to be a court judgment except for enforcement purposes. After one year from  
16 the filing of any such lien which remains unpaid, the city attorney is authorized to ~~may~~  
17 foreclose on the property or otherwise execute on the lien and to recover all recording and  
18 litigation costs, including reasonable attorney fees. However, no lien created pursuant to this  
19 section may be foreclosed on real property which is a homestead under Section 4, Article  
20 X of the State Constitution. Interest shall accrue on the unpaid costs at the legal  
21 rate of interest set forth in F.S. § 55.03, as may be amended from time to time.

1 (c) The special magistrate board may recommend that the city file a complaint under F.S.  
2 § 60.05 seeking temporary and permanent injunctive relief against any nuisance described  
3 herein.

4 Sec. 16-~~98.199.1~~. - Enforcement of orders.

5 (a) The city attorney is authorized to initiate proceedings in the circuit court for willful  
6 disobedience or failure to comply with any order of the special magistrate board.

7 (b) The city attorney is authorized to initiate proceedings in any county, state or federal  
8 forum for the suspension or revocation of any permits, licenses, concessions or contracts held  
9 or awarded to the violator including contracts awarded under F.S. § 24.112 (lottery retailers)  
10 and including licenses for the sale of beverages issued under F.S. § 561.19, where the  
11 existence of such permits licenses, concessions or contracts is conducive to the  
12 maintenance of such nuisance.

13 (c) Orders of the special magistrate nuisance abatement board issued pursuant to this  
14 chapter shall be posted at the place, building, or premises where the public nuisance exists,  
15 existed or is occurring, in violation of the law and shall be sent by certified mail to the  
16 owner of record and/or operator of such ~~place~~ building, or premises within two business  
17 days of the posting.

18 Sec. 16-~~98.299.2~~. - Appeals.

19 An aggrieved party, including the city, may appeal a final administrative order of the  
20 special magistrate nuisance abatement board to the circuit court. Such an appeal shall not be  
21 a hearing de novo but shall be limited to appellate review of the record created before the

1 special magistrate ~~nuisance abatement board~~. An appeal shall be filed within 30 days of the  
2 date of the ~~written~~ order being appealed.

3 ~~Notwithstanding the foregoing, if the nuisance abatement board orders the closing of a~~  
4 ~~place or premises, or any part thereof, such order may be appealed to the city commission by~~  
5 ~~the city manager or designee or the owners or operators of the premises within ten days of the~~  
6 ~~rendition of the order by the nuisance abatement board prior to the order becoming a final~~  
7 ~~administrative order of the nuisance abatement board. The appeal to the city commission shall~~  
8 ~~not be a de novo review but a review based upon the record of the board. The commission~~  
9 ~~may hear oral argument upon majority vote of the commission.~~

10 **Section 5.** Section 23-102 of Article IV of Chapter 23 of the Code of Ordinances is  
11 amended to read as set forth below. Except as amended herein the remainder of Article IV of  
12 Chapter 23 remains in full force and effect.

13 Chapter 23 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

14 ARTICLE IV. – CONSTRUCTION AND REMOVAL OF DRIVEWAYS

15 Sec. 23-102. - Variances.

16 (a) *Definition.* A variance is hereby defined as a relaxation of the terms of this article  
17 where the variance will not be contrary to the public interest and where, owing to conditions  
18 peculiar to the property, and not the result of the actions of the applicant, or his/her  
19 predecessors, a literal enforcement of this article would result in unnecessary and undue  
20 hardship. As further defined for the purpose of this article, a variance is authorized only for  
21 driveway widths, street line corner clearances, and property line edge clearances.

1           (b) *Authorization.* The city plan board ~~of adjustment~~ created by section 30-3.3 of the  
2 City code 30-354(a) is hereby authorized to grant variances from the provisions of this article  
3 only under the provisions of this section. ~~The variance may be granted only when the granting~~  
4 ~~of same will not be contrary to the public interest, and where, owing to specific conditions, a~~  
5 ~~literal enforcement of the provisions of this article relating to driveways would result in~~  
6 ~~unnecessary hardship, not created by the applicant or his/her predecessor in title, use, or~~  
7 ~~possession.~~

8           (c) *Procedures.* A variance as authorized by this section shall not be granted unless and  
9 until a written application for a variance is submitted demonstrating that:

- 10           (1) Special conditions and circumstances exist which are peculiar to the physical or  
11           topographical features of the land or structures or buildings which are not  
12           applicable to other lands or structures within the city;
- 13           (2) Literal enforcement of the provisions of this article would deprive the applicant  
14           of rights commonly enjoyed by other properties in the same district under the  
15           terms of this article;
- 16           (3) The special conditions and circumstances in subsection (c)(~~12~~) above do not  
17           result from the action of the applicant or his/her predecessors;
- 18           (4) Granting the variance requested will not confer on the applicant any special  
19           privilege that is denied by this section to other lands or structures or buildings  
20           in the city.
- 21           (5) That the variance is the minimum variance that will make possible the  
22           reasonable use of the land, building or structure;

1           (6) That the granting of the variance will be in harmony with the general intent and  
2           purpose of this article, will not be injurious to the neighborhood, or otherwise  
3           detrimental to the public welfare.

4           (d) *Public hearings; notices.* Public hearings and notices thereof shall be as required by  
5 subsections ~~30-354(f), (i) — (l)~~ 30-3.8 and at the public hearing any party may appear in person  
6 or by his/her duly authorized agent or attorney.

7           (e) *Findings of city plan board ~~board of adjustment~~.* Before granting a variance as  
8 authorized by this section, the board ~~of adjustment~~ shall make ~~the following~~ findings:

9           ~~(1) That the requirements of criteria in subsection 23-102(c)(1) through (6) ~~30-~~~~  
10           ~~354(d)(3)e.1.~~ have each been met by the applicant;

11           ~~(2) That the reasons set forth in the application justify the granting of the variance,~~  
12           ~~and that the variance is the minimum variance that will make possible the~~  
13           ~~reasonable use of the land, building or structure;~~

14           ~~(3) That the granting of the variance will be in harmony with the general intent and~~  
15           ~~purpose of this article, will not be injurious to the neighborhood, or otherwise~~  
16           ~~detrimental to the public welfare.~~

17           (f) *Conditions.* In granting any variance, the board ~~of adjustment~~ may prescribe  
18 appropriate conditions and safeguards in conformity with this article. Violation of such  
19 conditions and safeguards, when made a part of the terms under which the variance is  
20 granted, shall be deemed a violation of ~~the chapter 30,~~ of the City Land Development Code  
21 and punishable under sections 30-1.7 through 30-1-9 ~~30-362.~~

1 (g) *Prohibitions.* Under no circumstances shall the board ~~of adjustment~~ grant a  
2 variance under this article that would permit back-out parking on a public street, a driveway  
3 in a street radius, reduced driveway width to permit two or more nonstandard driveways,  
4 reduce the number of parking spaces required in the zoning requirements or variances which  
5 would affect the safety of a public street, sidewalk or bike route.

6 **Section 6.** Section 26-141 of Division 5 of Article III of Chapter 26 of the Code of  
7 Ordinances is amended to read as set forth below. Except as amended herein the remainder of  
8 Article III of Chapter 26 remains in full force and effect.

9 Chapter 26 – TRAFFIC AND MOTOR VEHICLES

10 ARTICLE III. – STOPPING, STANDING AND PARKING

11 DIVISION 5. – ABANDONED, WRECKED, NONOPERATING VEHICLES

12 Sec. 26-141. - Extension by city manager ~~board of adjustment~~ of time for compliance.

13 (a) *Grounds; written request required.* For good cause based upon a hardship that will  
14 continue only temporarily, the city manager or designee ~~board of adjustment~~ is hereby  
15 authorized to grant an extension of time ~~in the nature of a special exception~~ to allow  
16 compliance with the requirements of this division, provided a written request for the  
17 extension of time is presented to the city manager or designee ~~board of adjustment~~ prior to  
18 the expiration of time otherwise allowed for compliance with the provisions of sections 26-  
19 136 through 26-140.

20 (b) ~~Copy of request to city manager; report by city manager.~~ The city manager, or  
21 ~~his/her designated representatives, shall be immediately furnished with a copy of the written~~  
22 ~~request for any extension of time and shall immediately file a written report regarding the~~

1 request, which shall be considered by the board of adjustment at the same time the requested  
2 extension shall be considered.

3 ~~(e)(b)~~ Authority of city manager or designee board of adjustment. The authority of  
4 the city manager board of adjustment in hearing requests for extensions of time as provided  
5 for in this section shall in each instance be limited to either granting or denying the request  
6 for the extension (although the requested time may be altered) and the request shall not be  
7 considered as an appeal under ~~presented to the board of adjustment as provided in section~~  
8 26-140(c), 30-3.57C or 30-3.58C ~~30-350~~, nor shall the city manager or designee board of  
9 ~~adjustment~~ be authorized to modify or vary the terms or conditions of the requirements of  
10 this division, except as specifically herein permitted.

11 ~~(d) Hearings; notice.~~ All requests for extensions of time shall be considered at the next  
12 meeting of the board of adjustment occurring not less than three days after the filing of the  
13 request and the person seeking the extension of time, as well as the city manager or his/her  
14 designated representatives, shall be notified of the time and place of the hearing. No other  
15 notices shall be required.

16 ~~(c)(e)~~ Basis of extension; stipulations. In granting or denying the request for an  
17 extension of time the city manager or designee board of adjustment shall in each instance  
18 state its reasons and ~~therefor and before granting the request the board of adjustment shall~~  
19 ~~first~~ determine that no actual danger or hazard to the public health, welfare and safety exists,  
20 or may exist, because of the granting of the extension special exception; that the owner  
21 seeking the extension special exception will comply with the provisions of this division within  
22 a reasonable time not to exceed ~~to be determined by the board of adjustment, but not in~~

1 ~~excess of~~ the period of time allowed pursuant to this section, and that the granting of the  
2 extension special-exception is in fact required because of the peculiar hardship of the person  
3 unlike that experienced by others. The extension special-exception, when granted, shall  
4 contain such stipulations, conditions and time limits for compliance with this division as  
5 the city manager or designee board of adjustment shall determine, but in no event shall any  
6 extension special-exception be granted for a period of time greater than 60 days, and no  
7 further extensions special-exception may be granted again renewed or otherwise extended.

8 **Section 7.** It is the intention of the City Commission that the provisions of Sections 1  
9 through 6 of this Ordinance shall become and be made a part of the Code of Ordinances of the  
10 City of Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be  
11 renumbered or relettered in order to accomplish such intentions.

12 **Section 8.** If any word, phrase, clause, paragraph, section or provision of this ordinance  
13 or the application hereof to any person or circumstance is held invalid or unconstitutional, such  
14 finding shall not affect the other provisions or application of the ordinance which can be given  
15 effect without the invalid or unconstitutional provisions or application, and to this end the  
16 provisions of this ordinance are declared severable.

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

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

20 **PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

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LAUREN POE



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MAYOR

ATTEST:

Approved as to form and legality

\_\_\_\_\_  
OMICHELE D. GAINEY  
CLERK OF THE COMMISSION

\_\_\_\_\_  
NICOLLE M. SHALLEY  
CITY ATTORNEY

This ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2019.

This ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2019.