



**MEMORANDUM**  
**Office of the City Attorney**

Legistar No.

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**TO:** Mayor and City Commission

**DATE:** July 24, 2000  
RESOLUTION

**FROM:** City Attorney

**SUBJECT:** A resolution of the City Commission of the City of Gainesville, Florida, amending the Rules of Procedure for the Gainesville Code Enforcement Board; and providing an effective date.

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Recommendation: The City Commission adopt the proposed resolution.

At its meeting of June 12, 2000, the Gainesville Code Enforcement Board amended its Rules of Procedure, creating a new section dealing with reduction or rescission of fines from board orders. Section 30-348 of the Code of Ordinances provides that "...the appropriate board shall by rule or by-laws adopt procedures for the conduct of quasi-judicial proceedings. These procedural rules shall be subject to review and approval of the city commission." This resolution relates to the Resolution (000204), which proposes to authorize the Mayor to execute satisfactions and releases of liens under certain circumstances.

Prepared by

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Approved and  
Submitted by:

Marion J. Radson,  
City Attorney

MJR:DSB:sw



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## GAINESVILLE CODE ENFORCEMENT BOARD

### RULES OF PROCEDURE

#### I. NAME

The name of this Board shall be the "**Gainesville Code Enforcement Board.**"

#### II. JURISDICTION

The Board has jurisdiction over those matters, which are set forth in Section 2-377 of the Code of Ordinances of the City of Gainesville.

#### III. OFFICERS AND THEIR DUTIES

A. The officers shall be a Chair, Vice-Chair, and Secretary. The City Attorney shall serve as counsel to the Board and shall provide a Clerk to the Board.

B. The Chair shall preside at all meetings (and hearings) of the Board and shall have the duties normally conferred by parliamentary rules on such officers.

C. The Chair shall be one of the members of the Board. The Chair shall have the privilege of discussing all matters before the Board and shall have the same voting rights as all Board members.

D. The Vice-Chair shall act in the absence of the Chair. In the absence of both the Chair and the Vice-Chair, the most senior member of the Board in time served on the Board shall act as Chair.

E. Although the Clerk to the Board shall perform the functions set forth in this paragraph, the Secretary is responsible for ensuring that notice of each meeting is sent to the Clerk of the Commission at least forty-eight (48) hours (excluding Saturdays, Sundays and Holidays) prior to the meeting. The Secretary shall ensure that the minutes of each meeting are made by the Clerk, and shall verify the attendance of board members at each meeting. The Secretary shall also ensure that the attendance record is filed with the Clerk of the Commission as soon as practicable after each meeting.

**IV. ELECTION OF OFFICERS**

A. Nomination of officers shall be made from the floor at the annual organizational meeting in October of each year, and the election shall be held immediately thereafter.

B. A candidate receiving a majority vote of the entire Board shall be declared elected and shall serve a term of one (1) year or until a successor shall take office.

C. Vacancies in office shall be filled immediately by regular election procedure.

**V. MEETINGS**

**A. Regular Meetings**

Regular meetings shall be held every month. The Board may set meetings more frequently if necessary. Regular meetings shall be held in the A. Clarence O'Neill Auditorium, City Hall, on the second Thursday of each month commencing at 9:00 A.M.

**B. Special Meetings**

Special meetings may be called by the Chair or by any three members of the Board by written notification to the Chair.

**C. Notice**

1. Notice of all meetings, both regular and special, shall be given to all Board members at least forty-eight (48) hours in advance of the meeting.

2. Notice of all meetings shall be provided to the Clerk of the Commission at least forty-eight (48) hours (excluding Saturdays, Sundays, and Holidays) prior to the meeting for inclusion on the City's weekly schedule of meetings and events.

**D. Attendance**

If a board member fails to attend four (4) or more consecutive meetings, or that the overall attendance record of the member is less than sixty-six and two-thirds (66 2/3%) percent for any six month period, that the board member is automatically removed from the Board upon the filing of the attendance record(s) with the Clerk of the Commission indicating the failure of the board member to meet the attendance requirements. Attendance means presence at the

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meeting no later than fifteen (15) minutes after the meeting is called to order as verified by the Secretary on the attendance record.

## E. Quorum

A quorum of the Board shall consist of at least four (4) members and an affirmative vote of a majority of those present and voting shall be necessary to pass any motion or adopt any order; provided, however, that at least three (3) members of the Board must vote in favor of any action in order for the action to be official.

## F. Voting

Voting shall be by voice vote and shall be recorded by individual "aye" or "nay."

## G. Abstention

Each member present shall cast an "aye" or "nay" vote on each question before the Board, except that if any member has a conflict of personal interest as decided by law, that member may abstain from voting on that matter and must file a Memorandum of Voting Conflict with the Clerk of the Board as prescribed by Chapter 112, Florida Statutes.

## H. Procedure

Parliamentary procedure in Board meetings shall be governed by Robert's Rules of Order, as amended, and by these Rules of Procedure.

## VI. ORDER OF BUSINESS

1. Call to Order
2. Roll Call
3. Minutes of previous meetings
4. Compliances/Dismissals
5. Continuances - Insufficient Service

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6. Affidavits
7. Unfinished Business
8. Public Hearings
9. Requests for Reduction and/or Rescission of Fines from Board Orders.

~~A Respondent will have an opportunity to be heard under this category only twice on each case. However, a Respondent will not be heard under this category if a complaint for foreclosure on a Code Enforcement Board lien has been served 30 days or more prior to the request. (These requests must be made in writing, explaining what hardships the respondent endured in attempting to comply with the order(s) of the Board.)~~

10. Requests to Address the Board
11. New Business Other than Public Hearings
12. Old Business
13. Informational Items
14. Adjournment

The order of business may be suspended by a vote of the majority of those members present.

## VII. INITIATION OF ACTIONS BEFORE THE BOARD

All initial actions before the Board shall be initiated by a Code Enforcement Officer filing a Statement of Violation and Request for Hearing with the Clerk of the Board.

After a case is set for hearing, the Clerk shall send a Notice of Hearing to the alleged violator by certified mail, return receipt requested, or by personal service. If service cannot be achieved by either certified mail or personal service, the Notice of Hearing may be posted at the location of the subject property in violation and at City Hall and sent by regular U.S. Mail. The Clerk of the Board must then file an affidavit of posting and mailing.

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After a case is set for hearing, the Board shall be empowered to issue subpoenas as requested by the code officer and the alleged violator. The subpoenas shall be sent to the City Police Department or other duly authorized process server to be served.

Board members shall not initiate any actions before this Board.

## VIII. PUBLIC HEARINGS

A. The following procedures will be observed in public hearings before the Board.

1. The clerk shall read the case style and nature of the violation from the Request for Hearing.
2. All witnesses shall be sworn, including attorneys representing parties before the Board.
3. The City shall present its case and then, if present, respondents may present their case. Both parties will have an opportunity to cross-examine.
4. The Board may question any witness or call any witness it deems necessary.
5. Any respondent may present brief opening and closing statements.
6. The Board may, in its discretion, at any time during the hearing, continue the hearing and request further information from either party.
7. A continued hearing will be presented in its entirety when reconvened.
8. Upon completion of all the evidence, the chair shall close the hearing.
9. The Board may only consider evidence presented at the hearing.
10. The Board shall immediately deliberate in open public session.
11. The Board shall orally issue an Order approved by a majority of the Board (at least 3 members of the Board must vote in the affirmative). The order shall contain findings of fact and conclusions of law and state the affirmative relief granted by the Board. The Order shall be reduced to writing; executed by the Chair; and mailed to the respondent.

**IX. ENFORCEMENT**

A. After an Order has been issued by the Board with a scheduled date of compliance, the code officer shall make an inspection to determine if the alleged violation(s) have been corrected.

B. The code officer shall then file with the Clerk of the Board an Affidavit of Compliance or Non-Compliance. A copy of the Affidavit shall be mailed to the violator by the Clerk.

C. The Board shall hold hearings as necessary to ensure the effectiveness of any Order issued by the Board.

**X. REHEARING**

A party (City or Respondent) may move for a new hearing on the matter by filing with the Clerk a written motion or affidavit within ten (10) days after the code enforcement order is filed with the Clerk. After timely service of a motion, the time to file a notice of appeal runs from the date of rendition of the order on the motion, not from any code enforcement order that has been entered. The motion shall be heard at the next regularly scheduled meeting of the board or at a special meeting called for that purpose. An order approving a motion for rehearing must set the time and date for rehearing. The rehearing may be held at the same meeting where the motion for rehearing is heard if the movant and the other party agree. If a notice of appeal is filed by the moving party before the motion for the new public hearing or for rehearing is heard, the motion is waived. The ground(s) of the motion for rehearing or new public hearing shall fall into one (1) or more of the following categories:

- (1) Errors on the face of the record;
- (2) Errors committed during the public hearing;
- (3) Misconduct of the code enforcement board;
- (4) Misconduct of a party;
- (5) Misconduct of a third person;
- (6) Misconduct of a witness;



- (7) Newly discovered evidence;
- (8) The verdict is contrary to the evidence;
- (9) The verdict is contrary to law.

**XI. REDUCTION OR RESCISSION OF FINES FROM BOARD ORDERS**

- A. An individual subject to a fine imposed by the Board may petition the Board to reduce or rescind the fine.
- B. There must be an Affidavit of Compliance issued by a code officer before the Board may consider a reduction or rescission of the fine. An exception could occur where the petitioner is not in compliance but has entered into a written agreement with staff giving assurances that the property will be brought into compliance within a reasonable time. The Board shall approve any such agreement;
- C. A request for reduction/rescission shall not be considered more than twice on each case.
- D. A request for reduction/rescission shall be made in writing, shall acknowledge that the petitioner is in compliance, shall agree to release the City and Board from any liability regarding the case, and should explain the reasons petitioner was unable to timely comply with the Board's order.
- E. Factors the Board may consider in deciding whether to reduce or rescind a fine include, but are not limited to:
  - 1. The nature of the violation and the inherent complexities involved in bring the property into compliance;
  - 2. Hardships encountered by petitioner hindering or preventing timely compliance with the Board's order;
  - 3. The length of time it took petitioner to comply as compared to the nature of the violation;

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4. Ordinary care and prudence exercised by petitioner in attempting to timely comply with the Board's order;
  5. The reasons for petitioner's inability to timely comply with the Board's order.
    - a. Reasonable excuses may include difficulties with third parties; difficult to control outside influences, such as the weather; slight negligence; inadvertence; oversight, or mistake on the part of petitioner.
    - b. Unreasonable excuses may include petitioner's own negligence (above slight negligence); willful neglect and lack of diligence; willful refusal to attempt to comply until convenient for petitioner.
  6. Whether the petitioner has any pending code enforcement violations on any property;
  7. Petitioner's history in complying with code enforcement violations.
- F. Requests for a release of lien must be directed to the local governing body.

## XII. MISCELLANEOUS

A. These Rules and Regulations may be altered, in a manner not inconsistent with the City Code of Ordinances, during a regular meeting by the affirmative vote of at least four (4) members of the Board, provided notice of the proposed change is given to the Board at a preceding regular meeting.

B. The provisions of these Rules of Procedure shall be discussed and/or adopted, or re-adopted by the Board annually at its regular organizational meeting.

C. All meetings, regular or special, and all hearings shall be open to the public in accordance with the provisions of the Florida "Sunshine Law" (Chap. 286, Florida Statutes).

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D. All Records of the Board shall be open to public examination, inspection and copying in accordance with the provisions of the Florida "Public Records Law" (Chap. 119, Florida Statutes).

