

## Chapter 38 ENVIRONMENT<sup>1</sup>

### ARTICLE I. IN GENERAL

Secs. 38-1—38-30. Reserved.

### ARTICLE II. RESERVED<sup>2</sup>

Secs. 38-31—38-66. Reserved.

### ARTICLE III. NOISE<sup>3</sup>

#### Sec. 38-67. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All terminology used in this article, not specifically defined, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

Agricultural use means the use of land in horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, beekeeping, pisciculture and all forms of farm products and farm production as permitted by the applicable zoning district, means the land uses where agricultural activities are legally permitted.

Ambient sound means the all-encompassing background sound associated with a given environment, including all sources other than the specific sound being measured, such as wind, traffic, and natural sounds. For purposes of enforcement, ambient sound shall be measured using a sound level meter and, where applicable, shall be at least ten (10) decibels lower than the sound level of the source being evaluated, consistent with the measurement procedures set forth in Addendum A.

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated dBA.

**Commented [EH1]:** Updated definition to be consistent what is listed in Sec. 26-50

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<sup>1</sup>Cross reference(s)—Animals, ch. 14; buildings and building regulations, ch. 18; solid waste, ch. 50; streets, sidewalks and other public places, ch. 58; concurrency management, ch. 86; flood control, ch. 90; natural resources protection, ch. 98; subdivisions, ch. 106; zoning, ch. 110.

<sup>2</sup>Editor's note(s)—Ord. No. 16-98, § 1, adopted May 3, 1999, repealed §§ 31—35 in their entirety. Formerly, said sections pertained to abandoned vehicles. Further, said ordinance set out provisions pertaining to abandoned vehicles as Ch. 66, Art. III. See the Code Comparative Table.

<sup>3</sup>State law reference(s)—Motor vehicle noise, F.S. §§ 316.293, 403.415.

*Commercial* means ~~the~~ land uses where retail sales, ~~personal or and services,~~ professional services, lodging, dining, entertainment, tourist and or other similar commercial activities are ~~legally permitted~~conducted, whether for profit or non-profit, as allowed by the applicable zoning regulations.

*Construction* means any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition, for or on public or private rights-of-way, structures, utilities or similar property.

*Daylight hours* means one-half hour before sunrise and one-half hour after sunset.

*Decibel (dB)* means a unit for ~~measuring describing the amplitude of~~ sound intensity based on a equal to 20 times the logarithmic scale to the base 10 of the ratio of the comparing the measured sound pressure ~~of the sound measured to the to a standard~~ reference pressure, ~~which is of~~ 20 microwatts per square meter.

*Emergency work* means any work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

*Environmental control officer* means the director of the ~~e~~City ~~e~~Environmental ~~e~~Control ~~d~~Division.

*Measurement period* means the continuous time interval during which sound levels are measured for purposes of determining compliance with this article. Unless otherwise specified, the measurement period shall be not less than ten (10) minutes, during which the applicable sound level limits shall not be exceeded for more than ten (10) percent of the total measurement period, as set forth in Section 38-71.

*Noise* means any sound that ~~annoys or disturbs humans or causes or tends to cause an adverse psychological or physiological effect on humans~~exceeds the applicable sound level limits established in this article or that, based on its intensity, duration, time of occurrence, or repetition, unreasonably interferes with the use and enjoyment of property or the health, safety, or welfare of persons. The term is used synonymously with the term "sound."

*Noise disturbance* and *sound disturbance* means any sound in quantities that ~~are or may be potentially harmful or injurious to human health or welfare, animal or plant life or property, or unnecessarily interfere with the~~exceeds the applicable sound level limits established in this article or that, based on its intensity, duration, time of occurrence, or frequency, unreasonably interferes with the use and enjoyment of life or property, including outdoor recreation, or the health, safety, or welfare of a reasonable person with normal sensitivities.

*Pure tone* means any sound that can be distinctly heard as a single pitch or a set of single pitches. For the purposes of measurement, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by five decibels for center frequencies of 500 H<sub>z</sub> and above, and by eight decibels for center frequencies between 160 and 400 H<sub>z</sub>, and by 15 decibels for center frequencies less than or equal to 125 H<sub>z</sub>.

*Real property line* means an imaginary line along the surface, and its vertical plane extension, which separates the real property owned, rented or leased by one person from that owned, rented or leased by another person, excluding intrabuilding real property divisions.

*RMS (root mean square)* means the square root of the mean of a set of squared values.

*Sound* means an oscillation in pressure, stress, particle displacement, particle velocity or other physical parameter, in a medium with internal forces. The description of sound may include any characteristic of such sound, including duration, intensity and frequency. The term is used synonymously with the term "noise."

*Sound level* means the A-weighted sound pressure level, expressed in decibels (dBA), as measured by a sound level meter using the A-weighting network and applicable response settings, in accordance with the standards and measurement set forth in this article, obtained by the use of a metering characteristic and weighting A, B or C as specified in American National Standards Institute specifications for sound level meters, ANSI S1.4-1971, or in successor publications. If the weighting employed is not indicated, the A-weighting shall apply.

*Sound level meter* means an instrument used to measure sound pressure levels, that includes a microphone, amplifier, RMS detector, ~~integrator or time average~~and processing components, output meter and weighting

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~~network that is capable of measuring and displaying sound levels in decibels (dB) using A-weighting and fast or slow response settings used to measure sound pressure levels. The instrument shall meet or exceed the requirements, output meter reads sound pressure level when properly calibrated, and the instrument is of a Type 2 sound level meter, or better, as specified in the American National Standards Institute publication S1.4-1971, or its successor publications, and shall be calibrated in accordance with manufacturer specifications and the measurement procedures set forth in this article.~~

*Sound pressure* means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by the presence of sound energy.

*Sound pressure level* means ~~a measure of the intensity of sound, expressed in decibels (dB), calculated at 20 times the logarithm to the base 10 logarithm at of the ratio of the RMS-measured sound pressure to the a standard reference pressure of 20 micropascals ( $20 \times 10^{-6}$  N/m<sup>2</sup>).~~ The sound pressure level is denoted  $L_p$  or SPL and is expressed in decibels.

*Special variance* and *variance* mean an authorization, issued by the city manager or his duly authorized representative, to exceed the sound level limit for a specified period of time.

(Ord. No. 96-15, § I(50-491), 3-4-1996)

Cross reference(s)—Definitions generally, § 1-2.

### **Sec. 38-68. Penalty; confiscation of noise-creating equipment; responsibility for violations.**

- (a) Violations of this article are punishable as provided in ~~s~~Section 1-15. Any person who continues to violate the provisions of this article after having been previously cited may be subject to further citations, including ~~further additional~~ citations, ~~including multiple citations~~ issued on the ~~same~~ day upon which the original citation was issued.
- (b) Upon ~~conviction of being in a finding of~~ violation of this article three (3) times for the same offense within a ~~twelve (12)-~~ month period, when such sound is created by the same ~~sound emitter source or equipment~~, the noise-creating equipment may be confiscated by the court following such latest ~~conviction-finding of violation~~ until such time as the offender can satisfy the court that ~~the offender is prepared to and in fact will~~ operate the equipment within the limits of this article. Further violation shall result in the permanent confiscation by the court upon such ~~conviction-finding of violation~~.
- (c) The owner of property, a tenant, a lessee, a manager, an overseer, an agent, corporation or any other person entitled to lawfully possess or who claims unlawful possession of such property at a particular time involved shall each be responsible for compliance with this article, and each may be punished for violation of this article. It shall not be ~~a~~ lawful defense to assert that some other person caused such sound, ~~but and~~ each lawful possessor or ~~claimant person in control~~ of the premises shall be responsible for ~~operating or maintaining such premises in ensuring~~ compliance with this article ~~and shall be punishable~~, whether or not the person actually causing such sound is also punished.

(Ord. No. 96-15, § I(50-492), 3-4-1996)

### **Sec. 38-69. Additional remedies.**

The operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this article that endangers the comfort, repose, health and peace of residents in the city is declared to be a public nuisance; and the city is authorized to pursue any and all remedies. Nothing in this article shall be construed to limit any private right of action.

(Ord. No. 96-15, § I(50-493), 3-4-1996)

**Sec. 38-70. Enforcement standards.**

Authorized enforcement personnel may use a certified sound level meter to measure noise at or near the property line of the place receiving the noise, in a public right-of-way, or at another location allowed by the measurement procedures in this section. Standards for enforcement of this article shall be in accordance with those set forth in ~~a~~addendum A following this article. Amendments to the enforcement standards may be made by the city manager, based upon best professional information available to him, which are necessitated by changes in sound measuring equipment or changes in prevailing academic, technical or operational criteria. Such amendments shall become effective upon filing them in writing with the secretary of state.

(Ord. No. 96-15, § I(50-495), 3-4-1996)

**Commented [PM2]:** Include: Coordination with Volusia Sheriff Office in accordance with Ch.1 Sec. 15.

Authorized enforcement personnel may use a certified sound level meter to measure noise at or near the property line of the place receiving the noise, in a public right-of-way, or at another location allowed by the measurement procedures in this section.

**Sec. 38-71. Sound limitations established; applicability.**

- (a) *Classification of use occupancy.* For the purposes of defining the use occupancy under this article, all premises containing ~~habitually occupied dwelling units or~~ sleeping quarters intended for residential occupancy shall be considered residential use. All premises containing transient ~~commercial sleeping quarters/lodging~~ shall be considered tourist use. All premises containing business where sales, professional or other commercial uses ~~is are~~ legally permitted, including hospitals, shall be considered commercial use. All premises where manufacturing is legally permitted shall be considered manufacturing use. In cases of ~~multiple-mixed~~ use, the more restrictive use category shall prevail. Nursing homes, schools, libraries and ~~church places of worship uses~~ shall be considered residential uses. Any area not otherwise classified shall ~~conform be subject to the~~ commercial use standards.
- (b) *Measurement of sound.* Sound must be measured using a certified sound level meter (Certified Decibel Meter) that meets the standards listed in section noted above. The meter us to be kept in good working condition and calibrated regularly to ensure accurate readings.~~Standards, instrumentation, personnel, measurement procedures and reporting procedures to be used in the measurement of sound as provided for in this article shall be those as specified in section 38-70.~~
- (c) *Maximum permissible sound levels by use occupancy.* No person shall operate or cause to be operated any source of sound from any occupancy in such a manner as to create a sound level which exceeds the limits set forth for the use occupancy category in ~~Table I,~~ for more than ten percent (10%) of any measurement period, which shall not be less than ten (10) minutes when measured at or beyond the property boundary of the land use from which the sound emanates.

**Commented [PM3]:** Sound must be measured using a certified sound level meter (Certified Decibel Meter) that meets the standards listed in section noted above. The meter us to be kept in good working condition and calibrated regularly to ensure accurate readings.

**Commented [EH3R2]:** Code enforcement wants to use scientific measurements in lieu of subjective interpretation.

TABLE I

Use Occupancy Category	Time	Sound Level Limit (dBA)
Residential	7:00 a.m. to 10:00 p.m.	60
	After 10:00 p.m. to 6:59 a.m.	55
Commercial or tourist	7:00 a.m. to 10:00 p.m.	65
	After 10:00 p.m. to 6:59 a.m.	60
Manufacturing	At all times	75
Agricultural	At all times	75

(d) *Exceptions.* The following uses and activities shall be exempt from noise level regulations except as listed in table I:

- (1) Air conditioners are exempt from provisions of table I when this equipment is functioning in accord with the manufacturer's standard mufflers and noise-reducing equipment in use and in proper operating condition according to standards promulgated by the American Refrigeration Institute. The same exception shall apply to lawn mowers and agricultural equipment during daylight hours.
- (2) Nonamplified and amplified sound associated with crowd noises resulting from events or activities that are authorized, permitted or sponsored by the City, or otherwise conducted in compliance with a valid permit, including but not limited to: such as those planned by student government, community groups or racing/sport events are exempt.
  - a. Organized sporting events, athletic competitions and recreational activities
  - b. School, educational and institutional events
  - c. Religious services and related activities
  - d. Civic, cultural or community events and festivals
  - e. Entertainment events, including concerts, performances and public gatherings
  - f. Events conducted at or within facilities or venues designed or commonly used for such purposes, including but not limited to:
    1. Parks and recreational facilities
    2. Amphitheaters, bandshells and performance venues
    3. Stadiums, athletic fields and arenas
    4. Schools, churches and similar institutional properties
    5. Racetracks and similar specialized facilities; and
  - g. Other activities conducted on property where such use is otherwise permitted by applicable City ordinance
- (3) Construction operations for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of government, providing all equipment is operated in accord with the manufacturer's specifications and with all standard equipment, manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition. Such construction shall not begin prior to 7:00 a.m. and shall cease by 7:00 p.m. unless a special permit has been granted by the city.
- (4) Noises of safety signals, warning devices, pressure relief valves, and bells and chimes of churches are exempt, except as otherwise provided by this Code.
- (5) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency are exempt.
- (6) Noises resulting from emergency work are exempt.
- (7) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit has been granted by the city in accordance with subsection (e) of this section is exempt.
- (8) Noises made by persons having obtained a permit to use the streets are exempt.
- (9) All noises coming from the normal operations of railroad trains are exempt.

**Commented [PM4]:** Expand exception to include wide range of **authorized events** permitted by the City:

Organized sporting events  
Religious events  
Education events  
Other group activities

When conducted on improved property exempt crowd noise that may be designed for generally used for:

Bandshells  
Amphitheaters  
Stadiums  
Parks  
Schools  
Churches  
Athletic fields  
Racetracks  
Uses of property that are otherwise permitted by applicable city ordinance.

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- (10) All noises coming from the normal operations of aircraft (not including scale model aircraft) are exempt.
- (11) Those motor vehicles controlled by F.S. § 316.293 are exempt, but not those motor vehicles exempted from coverage.
- (12) Motor vehicles defined in F.S. § 316.293(6)(a) and (b) are exempt.
- (e) *Special permits.* Applications for a permit for relief from the maximum allowable noise level limits designated in this article may be made in writing to the city manager or ~~his duly~~ authorized representative. Any permit granted by the city manager under this subsection must be made in writing and shall contain all conditions upon which the permit shall be effective. The city manager or ~~his duly~~ authorized representative may grant the relief as applied for under the following conditions:
- (1) The city manager may prescribe any reasonable conditions or requirements as ~~he the city manager~~ deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound-attenuating devices.
  - (2) Permits may be granted for the purpose of entertainment under the following conditions:
    - a. The function must be open to the public (admission may be charged).
    - b. The function must take place on public property.
    - c. The permit ~~will be given~~shall be issued only for four (4) hours in one 24-hour day.
    - d. The function must be staged between the hours of 9:00 a.m. and 12:00 midnight.
  - (3) Special permits for nonentertainment special purposes may be issued under the following conditions:
    - a.
      1. ~~\_\_\_~~If the special purpose relates to the operation of a trade or business, ~~that the special purpose not be~~the activity shall not occur in the ordinary course of that trade or business;
      2. If the special purpose does not relate to the operation of a trade or business, ~~that the special purpose not be~~the activity shall not be a routine or recurring, an ordinary event in the affairs of the applicant; and
    - b. If the special purpose ~~be is~~ a recurring purpose, that it not recur more often than four times each calendar year;
    - c.
      1. ~~That the special purpose be absolutely~~The activity shall be reasonably necessary to the operation of the applicant's trade or business; or
      2. If the special purpose does not relate to the operation of the trade or business, ~~that the special purpose~~activity shall be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur;
    - d. Except in emergency situations, as determined by the city manager, the special permit may be issued only for four hours between 7:00 a.m. and 11:00 p.m. on weekdays; and
    - e. Special permits may be issued for no longer than 15 consecutive days, renewable by further application to the city manager.
  - (4) No permit may be issued to permit the use of any loudspeaker or sound-amplifying device on the exterior of any building that at any time exceeds the sound level limits in table I of this section, except those used for emergency warnings.

(Ord. No. 96-15, § I(50-496), 3-4-1996; Ord. No. 12-00, § 1, 8-7-2000; Ord. No. 16-01, § 1, 6-4-2001)

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### Sec. 38-72. Exceeding sound limitations.

It shall be unlawful, except as expressly permitted in this article, to make, cause or allow the making of any noise or sound that exceeds the limits set forth in this article.

(Ord. No. 96-15, § I(50-497), 3-4-1996)

### Sec. 38-73. Loud, disturbing or unnecessary noises.

- (a) Some sounds may be such that they are not measurable or may not exceed the limits set out in this article, but they may be excessive, ~~unnatural~~, prolonged, ~~or~~ unusual and are a detriment to the public health, comfort, convenience, safety, welfare or prosperity of the residents of the city.
- (b) With the exception of those exemptions provided by state law, noises prohibited by this article are unlawful notwithstanding the fact that no violation of section 38-71 is involved, and notwithstanding the fact that the activity complained about is exempted in section 38-71(d), unless expressly authorized by permit pursuant to this article.
- (c) Thus, the following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article; ~~but this enumeration shall~~ list is not be deemed intended to be exclusive:
  - (1) The sounding of any horn or signaling device on any automobile or other vehicle, except as a danger warning;
  - (2) Construction. Operating or permitting the operation of any tools or equipment used in construction, drilling, or demolition work between the hours of 7:00 p.m. and 7:00 a.m., in such a manner as to cause a noise disturbance ~~to any resident or guest~~ across a residential or tourist use property boundary, except for emergency work by public service utilities, by government agencies, or by special permit approved by the city;
  - (3) The sounding of any signaling device for any unnecessary or unreasonable period of time;
  - (4) The unreasonable use of any signaling device;
  - (5) The using, or operating operation or permitting ~~to be played, he used~~ or operated operation of any radio, television, tape or record player, amplifier, musical instrument or other machine or device used for the production, reproduction or emission of sound;
  - (6) Any prolonged sounds made by people; and
  - (7) The keeping of any animal that causes frequent or long, continuous noise in such a manner as to disturb the public peace, quiet and comfort of the neighboring inhabitants, ~~or at any time with greater intensity than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such sound emitter is operated and who are voluntary listeners thereto. Quieter standards are expected during nighttime hours. Sound from such animals shall not unreasonably exceed levels necessary for the comfort of persons on the premises and shall be subject to more restrictive standards during nighttime hours.~~

(Ord. No. 96-15, § I(50-498), 3-4-1996; Ord. No. 16-01, § 2, 6-4-2001; Ord. No. 25-2025, § 2(Exh. A), 6-16-25)

### Sec. 38-74. Loudspeakers and public address systems.

Loudspeakers or public address systems used to produce sound signals from any source for either advertising or other purposes may not be operated on or over public property and public rights-of-way unless a license has

been issued by the officer. A fee established by resolution of the city commission in the appendix A fee schedule shall be paid for such license. The permit may be canceled for noncompliance with this article. Such systems may be used Monday through Saturday during daylight hours only.

(Ord. No. 96-15, § I(50-499), 3-4-1996)

#### ADDENDUM A. ENFORCEMENT STANDARDS

##### I. General.

1.1. *Purpose.* These enforcement standards establish uniform guidelines for measuring, ~~and recording~~ and evaluating noise sound levels for the administration and enforcement of the noise control ordinance of the city provisions of this article.

1.2. *Standards.* These enforcement standards should be used in conjunction with applicable and generally accepted acoustical standards and recommended practices of the American National Standards Institute (ANSI), the International Organization for Standardization (ISO), or other recognized professional organizations, as may be amended from time to time.

References to specific standards, including but not limited to ANSI S1.1 (Acoustical Terminology), ANSI S1.4 (Sound Level Meters), ANSI S1.11 (Octave Band Filters, when applicable), and ANSI S1.13 (Measurement of Sound Pressure Levels), shall be deemed to include the most current version of such standards.

These standards shall govern the measurement, calibration, and reporting of sound levels for purposes of enforcement of this article. In the event of any conflict between referenced standards and the provisions of this article, the provisions of this article shall control.

The City Manager or designee is authorized to adopt and implement updated technical standards, methodologies, and procedures consistent with current professional practices without requiring amendment to this Code.

the following standards and recommended practices:

- (1) Acoustical Terminology, American National Standards Institute Incorporated (ANSI) S1.1-1960.
- (2) Specification for General Purpose Sound Level Meters, ANSI S1.4-1971.
- (3) Preferred Frequencies and Band Numbers for Acoustical Measurements, ANSI S1-1967.
- (4) Method for Calibration of Microphones, ANSI S1.10-1966.
- (5) Specification for Octave, Half-Octave and Third-Octave Band Filter Sets, ANSI S1.11-1966.
- (6) Specifications for Laboratory Standard Microphones, ANSI S1.12-1967.
- (7) Preferred Reference Quantities for Acoustical Levels, ANSI S1.8-1969.
- (8) Recommended Practice Qualifying a Sound Data Acquisition System, Society of Automotive Engineers, Incorporated, J184.
- (9) Standard Method for the Measurement of Sound Pressure Levels, ANSI S1.13-1971.

1.3. *Definitions.* Unless otherwise defined here in this Code or within the noise control ordinance, all acoustical terminology used in this article shall be interpreted conformance-in accordance with applicable publication of the American National Standards Institute, Incorporated (ANSI) or its successor body equivalent standards.

##### II. Instrumentation.

2.1. *Requirements.* Instrumentation used in making sound level measurements shall meet the following requirements:

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- (1) *Sound level meter.* Sound level meters shall ~~be of at least~~ meet or exceed the requirements of a type Type 2, or equivalent, as specified in meeting-applicable ANSI S1.4-1971 requirements standards or successor standards. Alternately, a microphone or sound level meter may be used with a magnetic tape recorder and/or graphic level recorder or indicating meter, providing the system meets at least ~~type-Type 2 ANSI requirements standards or successor standards.~~ For measurements requiring octave band analysis, the equipment will additionally meet ~~ANSI S1-11-1966 standards or successor standards.~~
  - (2) *Sound level calibrator.* The entire sound measurement system shall be calibrated with an acoustic calibrator recommended by the manufacturer and ~~according to the~~ in accordance with manufacturer's ~~recommended procedures specifications.~~
  - (3) *Windscreen.* An open-cell, foam windscreen recommended by the manufacturer ~~of the sound level meter shall be used~~ shall be used to reduce wind interference during measurements.

2.2. *Calibration.* The instruments used for acoustical measurements shall be serviced in accordance with the manufacturer's instructions. Before and after a series of measurements, the instrumentation shall be calibrated acoustically according to the manufacturer's instructions and at intervals not exceeding two hours when the instrument is used longer than a two-hour period.

2.3. *Meter operation.* Unless expressed otherwise in this Code, the sound level meter shall be operated in accordance with the instrument manufacturer's instruction and as follows:

- (1) *Microphone location.* The microphone shall be located at a height of four feet above the ground level and a location to accurately capture sound levels at or near the noise receiver or measurement point. All microphone positions shall be described in the recording of all data.
- (2) *Microphone orientation.* The microphone shall be oriented ~~in relation~~ to the source of the sound in accordance with the instrument manufacturer's instructions. Where the instruction manual is vague or does not include adequate information, a specific recommendation shall be obtained from the manufacturer.
- (3) *Meter setting.* The meter shall be set for the A-weighted network and fast response.
- (4) *Ambient sound.* Measurements shall be made only when the A-weighted ambient sound level, including wind effects and all sources other than that being measured, is at least ten decibels (10 dB) lower than the sound level of the source. (Methodologies are available for determining source levels when the source-ambient difference is less than ten decibels (10 dB). These methodologies should be covered in a training course.)

### III. Personnel.

3.1. *Personnel.* Persons selected to conduct sound measurement tests shall have received training in the techniques of sound measurement and the operation of sound measurement instruments.

3.2. *Technician location.* The technician making direct readings of the meter shall be positioned in relation to the microphone in accordance with the instrument manufacturer's instructions. Where the instruction manual is vague or does not include adequate information, a specific recommendation shall be obtained from the manufacturer.

3.3. *Bystander location.* During sound measurements, bystanders shall not be within ten feet of the microphone or noise source, except for a witness or trainee, who may be positioned behind the technician on a line with the technician and the microphone.

### IV. Measurement procedures.

4.1. *Measurement procedures.* The following procedure shall be used to determine if a violation exists pursuant to section 38-71:

(1) *Sound level meter location.*

- a. The sound level meter shall be located on the adjacent boundary closest to the noise source or on a lot from which the complaint arises, unless otherwise specified in the noise control ordinance.
- b. If a complaint arises from a multistory structure, the height of the sound level meter shall be adjusted so that it is on a direct line between the noise source and noise receiver.
- c. The microphone shall be at least three (3) feet from any adjacent structures.

(2) *Sound level exceeded ten percent (10%) of the time.*

- a. Every ten (10) seconds read the level from the sound level meter.
- b. Record this level on the data sheet (Figure 1) as a check mark at the appropriate level.
- c. After sixty (60) samples, test by the confidence criterion discussed below. If the samples meet the criterion, then the measurement is complete. If not, then forty (40) more samples must be taken and the confidence test repeated. If the confidence criterion is still not met, additional groups of fifty (50) samples must be completed until the confidence criterion is met.
- d. The confidence criterion is as follows:
  1. Counting down from the top of the data sheet (and from left to right within each level), circle the "test samples" shown in table 1. For instance, after 60 samples have been taken, then the second, the sixth, and the 12th samples from the top are circled. (See figure 1, example 1.)
  2. If these three test samples fall into three contiguous levels, the measurement is complete. Otherwise, another group of samples must be taken and tested again. (Sometimes the test samples will be even more closely packed, falling into only one or two contiguous levels. In these cases, the criterion is also met.)
  3. If 100 or more samples have been taken, skewing is allowed. The two outer test samples (the error limits) can be shifted by one sample (not one level) both in the same direction. (See Figure 1, example 2.) This sometimes provides the necessary accuracy without requiring further sampling. However, if the criterion is still not met after skewing, then fifty (50) more samples must be taken and tested.
- e. Once the confidence criterion has been met, the level exceeded ten percent of the measurement period (the second sample circled), has been determined with dB with 95 percent (95%) confidence.

(3) *Maximum sound level.*

- a. As noise source radiates sound, read the maximum deflection of the needle of the sound level meter.
- b. If possible, determine and record the minimum sound level during the period of observation.

V. Reporting measurements.

5.1. *Information.* The following information shall be obtained and reported for each sound measurement period:

- (1) Dimensioned sketch or photograph of the test area showing location of sound sources and receivers.
- (2) Note any possible reflecting objects within the test area.
- (3) Physical and topographical description of the ground surface.

- (4) Meteorological conditions, including temperature, relative humidity, wind direction and speed.
- (5) Equipment and settings used for sound measurement.
- (6) Date, time and length of measurement period.
- (7) Measured sound levels.
- (8) Background sound level.

(Ord. No. 96-15, § I(add. A), 3-4-1996)

Editor's note(s)—The data sheets, figures and examples referred to in these standards are not printed in this article.

**Secs. 38-75—38-105. Reserved.**

#### **ARTICLE IV. UNSIGHTLY, UNSANITARY OR UNSAFE CONDITIONS<sup>4</sup>**

##### **Sec. 38-106. Definitions.**

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

*Abandoned property* means personal or real property that is no longer in active use and appears to be discarded, neglected or left without intent to reclaim. ~~includes, but is not limited to, wrecked or derelict property which has been left behind when it appears that the former owner does not intend to come back, pick it up, or use it.~~ Examples may include, but are not limited to, possessions left in a house, possessions left outside a structure, vehicles, vessels, etc., left behind or beside a road for a period not to exceed ten days.

*Abandoned vehicle* means, but is not limited to, any wrecked or derelict property which has been left abandoned and unprotected from the elements and shall include, but is not limited to, a vehicle in a state of disuse, neglect, a vehicle without a license plate, a vehicle with a license plate that is not registered to that vehicle, a vehicle that does not have a registration sticker affixed to the license plate, a vehicle that has a registration sticker affixed to the license plate which has expired. Evidence of disuse, neglect or abandonment may include, but is not limited to, factors such as: Refuse or debris collected underneath or the vehicle being used solely for storage purposes; if it is partially dismantled, having no engine, transmission or other major and visible parts; having major and visible parts which are dismantled; incapable of functioning as a motor vehicle in its present state; having nominal salvage value; or being in any physical state rendering it inoperable. A vehicle will be considered abandoned or derelict if it is in an evident state of extended disuse or neglect and which has been left abandoned.

*Abate* means to repair, replace, remove, destroy or otherwise remedy the condition in ~~question by such means and in such manner and to such an extent as necessary in the interest of the general health, safety and welfare of the community as determined by the city manager, or his/her designee~~ violation of this article.

*Actual cost* means the actual contract amount plus interest, if any, as invoiced by an independent, private contractor for terminating and abating a violation of this section on a lot, tract, or parcel, plus the cost of serving notice of the remedy, obtaining title information on the property, administrative costs of \$250.00, and all other identifiable costs incurred by the city of the abatement of the public nuisance on the lot, tract, or parcel.

<sup>4</sup>Editor's note(s)—Ord. No. 04-99, § 1, adopted March 15, 1999, retitled Art. IV to read as herein set out. See the Code Comparative Table.

**Commented [PM5]:** Provide for a definition for "Unsightly"

A clear definition will avoid ambiguity and ensure a consistent interpretation and support enforcement / legal decisions

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*Attractive nuisance* means, ~~but is not limited to, leaving a piece of equipment or other~~ any condition on the property which would be that is likely to attractive and dangerous to the safety of curious children and poses a risk to their safety. This would include, but is not limited to, unguarded swimming pools, open pits, abandoned personal and real property, ~~refrigerators, abandoned equipment,~~ and ~~unsecured structures or~~ buildings which have been boarded up for longer than 30 days.

*Adjacent lot and lot adjacent* mean the lot immediately adjoining or contiguous to the lot that is subject to review under this article.

*Building* means any structure as defined within the Florida Building Code, section 202 adopted in section 18-36. The word "building" includes the word "structure."

*City* means the incorporated municipality of Deltona, with definite boundaries and legal powers as set forth in the City Charter, including any subsequent annexation.

*Developed lot-property* means any lot that has a building or mobile home on it and is in an area zoned for residential, mobile home, commercial, industrial or public use, including the swale area or parcel containing a principal structure or use.

*Enforcement official* means the enforcement services director or his/her designee.

*Excessive growth of grass, weeds, or brush and other overgrowth/vegetation* means grass, ~~or~~ weeds, ~~or~~ brush, ~~or bushes, or shrubs, or trees, or vines, or flowering plants and~~ other living plant life that is allowed to grow in a wild and unkempt manner not in keeping with the neighborhood.

*Hazard tree* means, but is not limited to, any tree or portion of tree that is dead, diseased or dying, or ~~has a structural defect that predisposes it to failure~~ structurally unsound and the tree is located near an area where personal injury or property damage could occur if a tree or portions of the tree fails. This target area includes, but is not limited to, sidewalks, walkways, roads, vehicles, structures, or a place where people gather (for example, a backyard).

*Imminent public health threat* means the condition of a lot, tract, or parcel of land that, because of the accumulation of trash, junk, or debris, which includes but is not limited to, broken glass, rusted metal, automotive and appliance parts, abandoned or inoperable vehicles, some of which may contain chemicals, such as Freon, oils, fluids or the like, capable of causing injury or disease to humans or animals or a contaminate to the environment; or the condition of a lot, tract or parcel that, because of excessive growth of grass, weeds or brush, hazard tree(s), or stagnant water, can harbor criminal activity, create a habitat for rodents, vermin, reptiles or other wild animals, become a breeding ground for mosquitoes, or become a place to conduct illegal activity, a place that threatens or endangers the public health, safety or welfare of the city residents; a place that is reasonably believed to cause currently or potentially to cause in the future, ailments or disease.

*Levy* means the imposition of a non-ad valorem assessment against property found to be in violation of this section.

*Natural state* means a vacant lot that has never been cleared or has not been maintained for a period of three years or more.

*Non-ad valorem assessment roll* means the roll prepared by the city and certified to the Volusia County Property Appraiser and Tax Collector, as appropriate under Florida law, for collection.

*Nuisance* means (i) the excessive growth of grass, weeds, brush, branches, and other overgrowth; (ii) the creation of a habitat for rodents, vermin, reptiles, or other wild animals; or (iii) creating a breeding ground for mosquitoes; (iv) creating a place conducive to illegal activity; (v) maintaining a place that threatens or endangers the public health, safety or welfare of city residents; (vi) develop a place that is reasonably believed to cause currently, or potentially to cause in the future, ailments or disease; or (vii) a condition on the property that adversely affects and impairs the economic value or enjoyment of surrounding or nearby properties; (viii) failure to replace or repair with similar or improved material in a reasonable period, not to exceed 30 days, broken or

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missing building components, including but not limited to, doors, windows, roofing materials, siding, and drives/walkways outside the right-of-way which detract from the aesthetics of the neighborhood, shopping area, industrial area or other commercial area within the service district; (ix) failure to repair, replace or remove broken fencing, screening or decorative elements on a developed parcel or lot, is declared to be a nuisance and menace to the public health, safety, and welfare of the citizens of the city, including, but not limited to, abandoned property, abandoned vehicle(s), inoperable vehicles, or any other attractive nuisance.

*Owner* means the owner of record of a lot as such appears in the official records of the clerk of the circuit court in and for the county.

*Trash, junk, or debris* means waste materials including, but not limited to, putrescible and non-putrescible waste, combustible and non-combustible waste, and generally all waste materials including, but not limited to, paper, cardboard, tin cans, lumber, concrete rubble, glass, bedding, crockery, household furnishings, household appliances, inoperable vehicle(s), dismantled pieces of motor vehicles or other machinery, abandoned vehicles, tires, rusted metal articles, and abandoned property of any kind.

*Rubble and debris* mean waste materials resulting from the construction or demolition of structures or buildings not usable as a part of or for the construction or demolition of structures or buildings.

*Swale area* means that portion of land between the traveled roadway and the sidewalk or property line.

*Unightly* means a condition that is visible from a public right-of-way or adjacent property and is characterized by disorder, neglect, or lack of maintenance such that it negatively impacts neighborhood appearance.

*Yard trash* means abandoned vegetative material from landscaping, maintenance or land clearing operations, and includes such materials as tree and shrub trimmings, grass clippings, palm fronds, tree limbs, tree stumps and similar materials.

(Ord. No. 03-97, § 1(2), 3-3-1997; Ord. No. 04-99, § 2, 3-15-1999; Ord. No. 15-02, § 1, 8-5-2002; Ord. No. 30-2006, § 1, 11-6-2006; Ord. No. 02-2018, § 2, 2-27-2018)

Cross reference(s)—Definitions generally, § 1-2.

### **Sec. 38-107. Penalty for violation of article.**

If the enforcement official shall find that any of the provisions of this article are being violated, he shall notify the property owner of such violations, in writing, indicating the nature of the violation and ordering any action necessary to correct it. The enforcement official shall, at the same time, post a notice of violation on the affected property. Violations of this article shall be subject to penalties as provided in Chapter 1 and Chapter 2 of this Code, including fines and other remedies authorized by law.

(Ord. No. 03-97, § 1(3), 3-3-1997; Ord. No. 30-2006, § 2, 11-6-2006)

### **Sec. 38-108. Civil remedies.**

The city ~~commission~~ may institute in any action in a court of competent jurisdiction, or before any administrative board of competent jurisdiction, ~~action~~ to prevent, restrain, correct or abate any violation of this article or of any order ~~or regulations~~ made in connection with its administration or enforcement; and the court or administrative board shall adjudge to the plaintiff grant such relief, ~~by way of including injunction injunctive relief, mandatory injunction,~~ or any other remedy allowed by law ~~or otherwise, to include mandatory injunction,~~ as may be proper under all the facts and circumstances of the case, in order to fully effectuate the regulations adopted and orders and rulings made pursuant to the regulations provisions of this article and any orders issued pursuant hereto.

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(Ord. No. 03-97, § 1(4), 3-3-1997)

**Sec. 38-109. Exempt areas.**

Notwithstanding any other provision of this article to the contrary, this article shall not apply to any property within the city which is used for agricultural purposes pursuant to the zoning regulations or on any lot, or portion of a lot, in an undisturbed natural state or condition; however, this exemption shall not apply to lots in a natural state that contain rubbish, waste, rubble, debris, yard trash or nuisance trees.

(Ord. No. 03-97, § 1(6), 3-3-1997; Ord. No. 30-2006, § 3, 11-6-2006)

**Sec. 38-110. Declaration of nuisance.**

(a) The City of Deltona prohibits the existence of any nuisance as defined herein. ~~Such conditions are declared to be detrimental for the following reasons: The property is dangerous, unhygienic, unhealthy, visually unpleasant to the reasonable person of average sensibilities, and a visual nuisance because it depreciates, or potentially can depreciate, the value of, to the public health, safety, and welfare and may adversely affect neighboring surrounding property properties.~~

(1) It shall be the duty of the owner of property to eliminate on the ~~is~~ lot, tract or parcel of land any public nuisance known at common law or in equity jurisprudence or as provided by ~~the Statutes of the State laws of the state of~~ Florida or the City Code of Ordinances including, but not limited to, excessive growth of grass, weeds, brush, hazard trees, and other overgrowth on the property and that portions of the adjoining public right-of-way between the property and paved or graded street ~~as required by this Code~~; conditions which endanger human life or substantially and detrimentally affect the utility, livability, safety or security of occupants, nearby occupants or passersby; conditions which render air, food or drink unwholesome or detrimental to the health of human beings; fire hazards; structurally unsound fences or structures; abandoned buildings ~~when they that~~ are unsecured or ~~un-securable and when by reason of abandonment or neglect they~~ contain hazardous or other unsafe conditions ~~due to abandonment or neglect~~; and any attractive nuisance which may prove detrimental to the health and safety of children or others whether in a building, on the premises of a building or upon an unimproved lot.

(2) Properties subject to this section shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, ~~any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state or local law, and~~ abandoned personal ~~items-property~~ including ~~inged~~, but not limited to, furniture, clothing, large and small appliances, printed materials ~~or any other items that give create~~ the appearance ~~that the property is of abandoned abandonment~~.

The property shall be maintained free of graffiti or similar markings by removal or painting over with paint that matches the color of the exterior structure. ~~Where conditions constitute an imminent public health threat exists when as determined by~~ the city manager or ~~his/her~~ designee, ~~determines that conditions on a property constitute an imminent public health threat and the situation calls for abatement sooner than the abatement procedures in the code permit,~~ the city manager may order and cause the summary abatement of ~~those such~~ conditions without the prior notice or hearing requirements prescribed herein. ~~After the fact n~~ Notice of such abatement ~~will shall~~ be provided by the city to the owner no later than ten working days after the abatement. The owner shall have 30 days from the date the invoice is mailed to reimburse the city; or 15 days to appeal. If the property is secured by locks or otherwise, the city shall have the authority to enter said property for purposes of remedying the condition creating the nuisance or violation and any additional costs incurred by the city

in gaining access to the property including, but not limited to, judicial action, or in re-securing the property after cleaning and clearing, shall be considered expenses of remedying the condition.

- (b) It is declared and determined by the city ~~commission~~ that the following shall each individually or in any combination be considered a nuisance when they exist upon any right-of-way, lot, tract or parcel of land or adjacent lots in the incorporated area of the city:
- (1) Excessive and untended growth of grass, weeds, brush, branches, and other overgrowth, where the greater portion of the weeds on the lot exceeds ~~twelve (12)~~ inches in height, which impair the economic welfare of the property, contribute to a fire hazard, and/or create a health hazard when any part of those growths are located on any lot adjacent to the boundary of any developed lot.
  - (2) Accumulations of waste, yard trash, ~~or rubble, and or~~ debris.
  - (3) Accumulations of waste, yard trash, ~~or rubble, and~~ debris, living and non-living plant material, hazard trees ~~and or~~ stagnant water that may harbor rats or snakes or ~~that may contain pools of water that may serve as breeding grounds for insects or other disease transmitters/vectors.~~
  - (4) Nuisance trees determined to be a public hazard when it has been determined by the enforcement official and the city engineer in consideration of the following standards:
    - a. ~~a.~~ Sand Pines leaning 45 degrees or more from vertical are a nuisance subject to immediate removal.
    - b. ~~b.~~ Sand Pines leaning less than 45 degrees from vertical may be declared a nuisance following an inspection by a professional forester, botanist or landscape architect.
    - c. ~~c.~~ Sand Pines leaning less than 25 degrees from vertical are not a nuisance absent special conditions making them a hazard in the opinion of a professional forester, botanist or landscape architect.
    - d. ~~d.~~ Any dead, damaged or diseased trees, located within 35 feet of any public roadway, public or private sidewalk that is adjacent to a public roadway, or any developed public property, may be declared a nuisance following an inspection by a professional forester, botanist or landscape architect and are subject to immediate removal.
  - (5) The existence of all other ~~objectionable, unsightly, objectionable~~ or unsanitary ~~matter, conditions or materials, and conditions~~ on improved property.
  - (6) Property providing a breeding place for mosquitoes.
  - (7) Property being inhabited by, or providing a habitat for rodents, vermin, reptiles, or other wild animals.
  - (8) Property being a place, or being reasonably conducive to serving as a place, for illegal or illicit activity.
  - (9) Property conditions that are threatening or endangering the public health, safety, or welfare of city residents.
  - (10) Property reasonably believed to cause currently, or potentially to cause in the future, ailments, or disease.
  - (11) Property adversely affecting and impairing the economic value or enjoyment of surrounding or nearby property, more particularly described ~~at in chapter~~ Chapter 18 - Property Maintenance Code.
  - (12) Failure to replace or repair with similar or improved material in a reasonable period, not to exceed ~~sixty (60)~~ days, broken or missing building components, including but not limited to, doors, windows, roofing material, siding, and drives/walks outside the right-of-way which detract from the aesthetics of the neighborhood, shopping area, industrial area or other commercial area within the service district. See ~~e~~Chapter 18 - Property Maintenance Code.

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- (13) Failure to repair, replace, or remove broken fencing, screening or decorative elements on a developed parcel or lot.
  - (14) ~~See section 18-112 where the city, in its entirety is declared a~~ Properties subject to special assessment district for the purposes of abating abatement and remedying of unfit and or unsafe structures and a non-ad valorem assessment may be levied under this as provided in section ~~Section 18-112.~~

(Ord. No. 03-97, § 1(7), 3-3-1997; Ord. No. 04-99, § 3, 3-15-1999; Ord. No. 30-2006, § 4, 11-6-2006; Ord. No. 28-2007, § 1, 10-1-2007; Ord. No. 02-2018, § 2, 2-27-2018)

### **Sec. 38-111. Nuisance abatement requirements.**

It is determined by the city commission that any nuisance declared by this article that is found upon any lot, lots, ~~or~~ adjacent lots or parcels, as the case may be, in the incorporated area of the city, shall be abated in the following manner:

- (1) If the nuisance consists of a nuisance tree or nuisance trees, accumulations of waste, yard trash, or rubble and debris, it shall be abated in its entirety.
- (2) If the nuisance consists of nuisance weeds, it shall be abated in its entirety, provided that the nuisance lies upon a previously cleared or improved lot adjacent to a developed lot; or
- (3) If the nuisance consists in part or combination of any of the nuisances declared in section 38-110, then the provisions of section 38-111 shall apply.

(Ord. No. 03-97, § 1(8), 3-3-1997; Ord. No. 04-99, § 4, 3-15-99)

### **Sec. 38-112. Nuisance prohibited.**

It is unlawful for any person owning property in the city to allow his lot to exist in nuisance condition as described in this article.

(Ord. No. 03-97, § 1(9), 3-3-1997)

### **Sec. 38-113. Public rights-of-way.**

- (a) It shall be the responsibility of every owner, agent or tenant of improved property in the city to, at all times, maintain those rights-of-way~~s~~ most nearly abutting their property. These responsibilities shall include removing litter and debris, and cutting ~~the~~ grass and weeds to maintain a neat and trimmed appearance.
- (b) It is declared that the placement of plantings, except grass, and the placement of structures in the publicly owned right-of-way is prohibited and is declared to be a nuisance and a violation. The city manager or ~~his~~ designee or the enforcement official is authorized to remove (abate) plantings or structures placed in the public right-of-way without prior permission.
- (c) For the purpose of this section, right-of-way shall be defined as that area from the property line to the edge of the pavement of a roadway, including any grassy or unpaved areas.
- (d) Waste deemed to be a public health or safety hazard placed in the city right-of-way shall be declared to be a nuisance and the city is authorized to remove the nuisance, after posting the property with notice requiring the property owner to abate the violation within 24 hours of the posting of the notice. The property owner shall be responsible for any costs incurred by the city for abatement of the nuisance and a lien shall be imposed on the property.

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- (e) The city manager or ~~their~~ designee shall be authorized to declare waste deemed to be a public health or safety hazard to be a nuisance on public rights-of-way.
- (f) Notice required under this section shall:
- (1) Be hand-delivered to a person in possession of the property or be posted in a conspicuous place on the front door and/or on the garage door of the structure, if one exists;
  - (2) Be posted on a stake on undeveloped properties, not less than five (5) feet from the nuisance to be abated and visible from the street;
  - (3) Include the property address, violation, and corrective measure to be taken;
  - (4) Be signed by the enforcement officer and include the date and time of the posting.
- (g) Fees and costs to abate such nuisance shall be declared to be a debt to the city and a lien shall be authorized upon such real property where such abated nuisance existed. Such amount shall be recoverable in any court of competent jurisdiction and shall constitute a lien against the premises to the same extent and character as the lien for property taxes and special assessments and with the same penalties and with the same rights of collection, foreclosure, sale, and forfeiture as obtained for special assessment liens and may be handled in the same manner by the city.
- (h) Within 30 days after the posting of the notice from the enforcement official pursuant to this section, the owner of the lot may make written request for a hearing before the city's special magistrate to ~~appeal~~ ~~contest the decision of the enforcement official~~ ~~notice of violation~~ and to show that the condition alleged in the notice did not exist or that such condition did not constitute a public health or safety hazard. Filing such ~~appeal request for hearing~~ shall toll the recording of a lien against the subject property until the decision of the special magistrate is rendered. Failure to notify or to timely appear for the hearing shall be deemed a waiver of the lot owner's right to ~~appeal~~ ~~request a hearing~~. The enforcement official shall give the owner seeking such hearing written notice of the date and location of the scheduled hearing. At the hearing before the special magistrate, the city and the lot owner may introduce such competent, substantial evidence as is deemed relevant and necessary. Thereafter, the special magistrate shall render a decision ~~on the hearing~~. In order to defray the expense of processing an ~~appeal~~ ~~a request for hearing~~ to the special magistrate the fee ~~for appeal~~ shall be established by resolution of the city commission in the Appendix A fee schedule; however, the city shall refund the ~~appeal hearing~~ fee to the applicant if the special magistrate ~~concurs with finds in favor of~~ the applicant ~~in its decision~~. Following review by the special magistrate, or waiver of the right to ~~appeal~~ ~~request a hearing~~ by the owner, the owner shall have exhausted ~~his~~ ~~all~~ administrative remedies.

(Ord. No. 16-97, § 1, 9-8-1997; Ord. No. 34-2008, § 1, 9-15-2005; Ord. No. 28-2007, § 2, 10-1-2007; Ord. No. 34-2008, § 1, 9-3-2008)

### **Sec. 38-114. Outdoor storage.**

Storage of building materials, commercial and industrial equipment, materials, objects or waste relating to commercial or industrial uses, or any equipment, materials or objects that are not incidental to a residential use, ~~shall be is~~ prohibited on residential property. Furniture ~~outside must be designed to be~~ placed outdoors shall be designed and intended for outdoor use or shall be stored inside within a covered structure. In addition, storage of materials relating to residential use, children's play ~~toys~~ equipment, firewood, brush, logs or any other material intended to be used in fireplaces or other permitted burning facilities, shall be permitted only within the rear yard and shall be located next adjacent to or behind the rear wall of the ~~home~~ principal structure.

(Ord. No. 28-2007, § 3, 10-1-2007)

### Sec. 38-115. Enforcement official.

The enforcement official is hereby designated as the investigating and enforcing authority pursuant to the provisions of this article ~~and Chapter 2 of this Code and Florida Statutes Chapter 162, as may be amended~~. The enforcement official is directed and empowered to inspect land on which a nuisance is suspected to exist, to receive all complaints of a violation of this article, and to enter upon any real property ~~in the conduct of official business at reasonable times and in a lawful manner in the conduct of official duties~~ pursuant to this article. The enforcement official shall be responsible for providing ~~fall~~ notices to affected property owners required by this article and to take such other action as is reasonably necessary to accomplish the purpose of this article, ~~including initiating enforcement proceedings before the special magistrate or code enforcement board in accordance of Chapter 2 of this Code.~~

(Ord. No. 03-97, § 1(10), 3-3-1997)

### Sec. 38-116. Notice to ~~correct~~ ~~Correct violation~~ Violation.

The enforcement official is empowered to enter upon and inspect any lot ~~at reasonable times and in a lawful manner~~ on which a nuisance declared by this article is suspected to exist. If inspection reveals the presence of a nuisance, the enforcement official shall notify the record owners by registered or certified mail, return receipt requested, ~~of such nuisance~~, or by hand delivery by the enforcement official or deputy sheriff. The notice shall be sent to the last available address of the owners of record as found in the county public records. At the same time, a notice of violation shall be posted on the property, which shall advise the owner that a nuisance exists on the owner's lot; and the nuisance shall be abated by the owner. The notice shall specify what corrective action shall be taken by the owner to abate the nuisance and that failure to abate the nuisance will result in the enforcement official abating the nuisance and that a lien for the costs of the abatement shall be recorded against the property ~~for failure to abate the nuisance~~. The owner shall have seven (7) days from the mailing or hand delivery of the notice and posting on the property to correct the nuisance except that an owner of a lot that is unimproved, undeveloped or in its natural state shall have ~~fifteen (15)~~ days to correct the nuisance. Such notice shall also state that if a similar condition constituting a nuisance occurs on the same lot within the following ~~twelve (12)~~ months, the city shall have the right, but not the obligation, to abate that nuisance with only a 24 hour posting as notice and no mailed notice, and record a lien for the costs of that abatement which can occur no earlier than 24 hours after such posting. The notice shall also state that the owner has the right to ~~appeal the determination of the enforcement official to the city commission~~ request a hearing before the special magistrate or code enforcement board in accordance with Chapter 2 of this Code and that the ~~appeal request for hearing~~, upon payment of the fee in accordance with section 38-117, shall be filed within seven (7) days of the mailing or hand delivery of the notice from the enforcement official, and the posting of a notice on the property.

(Ord. No. 03-97, § 1(11), 3-3-1997; Ord. No. 30-2006, § 5, 11-6-2006; Ord. No. 35-2008, § 1, 10-6-2008; Ord. No. 16-2016, § 1, 7-5-2016)

### Sec. 38-117. Appeals.

Within seven (7) days after the mailing or hand delivery of the notice from the enforcement official pursuant to section 38-115, and except for ~~section 38-110, conditions constituting an~~ imminent public health threat, the owner of the lot may make a written request for a hearing before the ~~city commission~~ special magistrate or code enforcement board in accordance with Chapter 2 of this Code to appeal the ~~decision of the enforcement official notice of violation~~ and to show that the condition alleged in the notice does not exist or that such condition does not constitute a nuisance. Filing such ~~appeal shall request for hearing shall~~ toll the seven (7)-day period to correct the nuisance until the decision of the ~~city commission~~ special magistrate or code enforcement board is rendered. Failure to notify or to timely appear for the hearing shall be deemed a waiver of the lot owner's right to

**Commented [PM6]:** Include strengthening language to ensure this section aligns with State Statute 162 and established Deltona Ordinance Ch. 2

Aligning the text with these regulations will help ensure enforcement actions are legally supported, consistent, and clearly defined.

**Commented [EH7]:** Keep or no?

appeal. The enforcement official shall give the owner seeking such hearing written notice of the date and location of the scheduled hearing. At the hearing ~~before the city commission~~, the city and the lot owner may introduce such competent, substantial evidence as is deemed relevant and necessary. Thereafter, the ~~city commission~~ special magistrate or code enforcement board shall render a decision ~~on the hearing~~. In order to defray the expense of processing an ~~appeal to the city commission~~ request for hearing, the fee ~~for appeal~~ shall be established by resolution of the city commission in the ~~appendix~~ Appendix A fee schedule; however, the city ~~commission~~ shall refund the appeal fee to the applicant if the ~~city commission concurs with the applicant in its decision~~ prevails. Following review by ~~the city commission~~ special magistrate or code enforcement board, or waiver of the right to appeal by the owner, the owner shall have exhausted his administrative remedies.

(Ord. No. 03-97, § 1(12), 3-3-1997; Ord. No. 35-2008, § 2, 10-6-2008; Ord. No. 02-2018, § 2, 2-27-2018)

### **Sec. 38-118. Abatement of nuisance by city.**

If no appeal is filed or the notice is returned undelivered, upon the expiration of the seven ~~(7-)~~ day period after the mailing or hand delivery of the notice of violation and posting of the property, the enforcement official shall reinspect the lot to ascertain whether ~~or not~~ the nuisance has been abated. Should the enforcement official determine that the subject lot still constitutes a nuisance ~~and has notified the owner as such~~, and the owner has failed to abate the nuisance within the allowed time, the enforcement official shall abate the nuisance no earlier than ~~seven days from the mailing or hand delivery of the notice and the posting of the property~~ the expiration of the applicable compliance period set forth in this article. The enforcement official, through ~~his~~ the enforcement official's agents or authorized contractors, is authorized to enter upon the lot at reasonable times and in a lawful manner and take such steps as are reasonably necessary to effect abatement.

(Ord. No. 03-97, § 1(13), 3-3-1997; Ord. No. 35-2008, § 3, 10-6-2008)

### **Sec. 38-119. Assessment of costs of abatement; imposition of lien.**

As soon as practicable after abatement ~~is feasible~~, the actual cost of abatement shall be calculated. Thereupon, the city shall ~~levy-impose~~ a municipal lien in the amount of such cost against such lot. Such lien shall describe the lot and show the total cost assessed. Until payment is complete, such lien shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator in Volusia County, Florida. The lien shall become due and payable to the city as of the date of the mailing of the notice of lien. Interest shall begin to accrue at the rate of ~~18~~ eighteen percent ~~(18%)~~ per annum on any unpaid portion beginning thirty (30) days after the mailing of the notice of lien.

(Ord. No. 03-97, § 1(14), 3-3-1997; Ord. No. 04-99, § 5, 3-15-1999; Ord. No. 15-02, § 2, 8-5-2002; Ord. No. 30-2006, § 6, 11-6-2006; Ord. No. 10-2010, § 3, 9-20-2010)

### **Sec. 38-120. Notice of lien.**

The city shall mail a notice to the record owner of each lot by certified mail, return receipt requested, to the last available address of record for such owners as found in the county public records, which notice shall include the following information:

- (1) The name and address of the lot owner;
- (2) A legal description of the lot where the nuisance has been abated;
- (3) The date of mailing of the notice ~~of the lien~~;
- (4) A brief description of the nuisance;

- (5) The date that the notice was originally sent to abate the nuisance;
- (6) A statement of actual costs of abatement and any interest due;
- (7) The date of the municipal lien ~~imposed for the~~ costs of abatement ~~of the nuisance~~;
- (8) Instructions regarding payment and removal of the lien; and
- (9) Any Additional information deemed as necessary and appropriate by the city.

(Ord. No. 03-97, § 1(15), 3-3-1997; Ord. No. 04-99, § 6, 3-15-1999; Ord. No. 30-2006, § 7, 11-6-2006; Ord. No. 10-2010, § 3, 9-20-2010)

**Sec. 38-121. Recording of lien.**

As soon as possible after the assessment for abatement of a nuisance has been made, a certified copy of the municipal lien shall be recorded in the official records of the county in the office of the clerk of the circuit court in and for the county.

(Ord. No. 03-97, § 1(16), 3-3-1997; Ord. No. 04-99, § 7, 3-15-1999; Ord. No. 15-02, § 3, 8-5-2002; Ord. No. 30-2006, § 8, 11-6-2006; Ord. No. 10-2010, § 3, 9-20-2010)

**Sec. 38-122. Effect of lien.**

The municipal lien created under the provisions of this article shall become effective as of the date of recording such copy in the official records of Volusia County by the Clerk of the Circuit Court. Such lien, together with interest, may be enforced by civil action in the appropriate court of the county. The liens created under this article shall be a first lien equal to a lien for nonpayment of property taxes on any property against which a lien for costs to abate the nuisance has been filed, and shall continue in full force from the date of recording until discharged by satisfaction.

(Ord. No. 03-97, § 1(17), 3-3-1997; Ord. No. 30-2006, § 9, 11-6-2006; Ord. No. 10-2010, § 3, 9-20-2010)

**Sec. 38-123. Satisfaction of lien.**

Upon satisfaction of the lien created under this article, the city shall file an order of satisfaction, release and dismissal of lien with the clerk of the circuit court.

(Ord. No. 03-97, § 1(18), 3-3-1997; Ord. No. 10-2010, § 3, 9-20-2010)

**Sec. 38-124. Alternate method of enforcement.**

- (a) In addition to the enforcement procedures set forth in this article, violations of this article may be enforced through the issuance of a civil citation or by proceedings before the City's special magistrate or code enforcement board, in accordance with Chapter 2 of this Code.
- (b) Any person found to be in violation of this article shall be subject to the penalties provided in Section 1-15 (General Penalty; Continuing Violations) of this Code.
- (c) Each day that a violation continues shall constitute a separate offense, as provided in Section 1-15.
- (d) In addition to the penalties provided in Section 1-15, any condition caused or permitted to exist in violation of this article is hereby declared to be a public nuisance and may be abated by the City as

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provided by this Code and applicable law. The costs of such abatement may be recovered in accordance with this article.

- (e) The remedies provided in this section are cumulative and not exclusive, and the City may pursue any and all remedies authorized by law. As an alternative to the procedures of this article at the option of the enforcement official, violations of this article which occur on occupied properties, and repeat violations, may be referred to the special magistrate for enforcement action pursuant to article II of chapter 2. In such cases, notice shall be given to the property owner by registered or certified mail, return receipt requested and the property shall simultaneously be posted. The time period for compliance with the notice of violation shall not exceed seven days. The special magistrate shall set a minimum fine for such violations of \$250.00, plus \$10.00 per day. The \$250.00 fine shall be assessed on the day following the required compliance date set by the special magistrate, or on the day following the date of the mailing or hand delivery of the notice of violation for repeat offenses. The \$10.00 fine shall accumulate for each day that the violation continues from the second day following the required compliance date determined by the Special Magistrate or from the second day following date of the notice of violation to the date of compliance for repeat violations.

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(Ord. No. 03-97, § 1(19), 3-3-1997; Ord. No. 30-2006, § 10, 11-6-2006; Ord. No. 35-2008, § 4, 10-6-2008)

#### Sec. 38-124A. Assessments for public nuisance.

- (a) *Purpose and intent.* The purpose and intent of this section is to establish a special assessment district to abate and remedy violations of ~~Article IV~~ of this chapter.
- (1) Establishment of a special assessment district for the City of Deltona in its entirety, as its city boundaries exist on the date of the enactment of this section and as they may expand or contract from time to time. The special assessment district is declared for the purposes of abating and remedying violations of ~~Article IV~~ of this chapter. Individual properties within the city's boundaries, as they may exist from time to time, may be assessed for the costs incurred by the city in abating and remedying violations of ~~Article IV~~ of this chapter. Such costs on a particular property may be cumulatively added over multiple fiscal years in order to meet any yearly assessment limitation as required by the county property appraiser and/or tax collector under F.S. § 197.3632, as may be amended.
  - (2) *Levy of non-ad valorem assessments.* There is hereby levied, and the city commission is authorized to levy from time to time, a non-ad valorem assessment against ~~each and every property properties~~ within the city; (i) on which there has occurred a violation of section 38-110; and (ii) on which the city undertakes or has undertaken action pursuant to sections 38-113 and 38-116 to abate and/or remedy the violation and, thereby incurs or has incurred costs; and (iii) the property owner of the property failed or refused, ~~for whatever reason~~ to pay timely pay the amount owed to the city under section 38-119 for the costs incurred by the city in carrying out such abatement and remedy.
  - (3) *Collection of non-ad valorem assessments.* The city commission elects to use the uniform method to impose and collect non-ad valorem assessments against properties on which violations of section 38-110 occur or have occurred. The non-ad valorem assessments collected pursuant to this section will be included in the combined notice for ad-valorem taxes and for non-ad valorem assessments as provided in F.S. § 197.3635, as may be amended. Non-ad valorem assessments collected pursuant to this section are subject to all collection provisions in F.S. § 197.3632, as may be amended, including discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment.
  - (4) *Agreement to reimburse the county property appraiser and the county tax collector.* In order to use the uniform method for the levy, collection, and enforcement of the non-ad valorem assessments, the city is authorized to enter into a written agreement with the county property appraiser and county tax

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collector providing for the reimbursement of their costs incurred in the administration and collection of the non-ad valorem assessments levied under this section.

- (5) *Adoption of a resolution.* The city will comply with all statutory notice prerequisites set forth in F.S. § 197.3632. The city commission will adopt a resolution at a public hearing ~~prior to March 1, 2018~~ in accordance with ~~the deadline established in~~ F.S. § 197.3632(3), ~~as may be amended~~, which resolution shall state the following: (a) The city's intent to use the uniform method of collecting non-ad valorem assessments; (b) The city's need for the imposition of the non-ad valorem assessments; (c) The entire city is declared a special assessment district, with individual properties being subject to the non-ad valorem assessments from time to time if and when violations of section 38-110 occur.
- (6) *Annual non-ad valorem assessment roll.* Each year, the city commission will approve a non-ad valorem assessment roll at a public hearing between January 1 and September 15. The non-ad valorem assessment roll will be comprised of properties that have had levied against them non-ad valorem assessments under this section, and such assessments have not otherwise been paid in full prior to approval on the roll: (a) The city manager, or ~~his/her~~ designee, is authorized and directed each year to prepare the notice that must be sent by first class United States mail, as required by F.S. § 197.3632(4)(b) ~~as may be amended~~; (b) The notice is to be sent by first class United States mail and will be sent to each person owning property that will be on the non-ad valorem assessment roll and will include the following: (i) the purpose of the assessment; (ii) the total amount to be levied against the parcel, which includes the actual cost incurred by the city; (iii) a statement that failure to pay the assessment will cause a tax certificate to be issued against the property, which may result in a loss of title; (iv) a statement that all affected property owners have a right to appear at the hearing and to file written objections with the city commission within 20 days of the notice; (v) the date, time and place of the hearing.
- (7) Upon its approval by the city commission, the non-ad valorem assessment roll will be certified to the tax collector as required by law.

(Ord. No. 02-2018, § 2, 2-27-2018; Ord. No. 16-2018, § 2, 10-15-2018)

## **ARTICLE V. GRAFFITI<sup>5</sup>**

### **Sec. 38-125. Definitions.**

For the purpose of this article the following terms apply:

*Actual cost* means the actual contract amount, as invoiced by an independent contractor, for terminating and abating a violation of ~~the this~~ article on any building, structure or other property pursuant to an order of the enforcement services director or his/her designee, plus the cost of serving notice, obtaining title information, advertising and recording any liens imposed hereunder.

*Code compliance inspector* shall mean the chief code compliance officer of the code compliance division (or successor division) of the city department of development services or any of his/her authorized inspectors.

*Corrective action* means an act required to remove or effectively ~~and appropriately~~ obscure graffiti.

*Enforcement services director* shall mean the enforcement services director, or his or her designee.

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<sup>5</sup>Cross reference(s)—Administration, ch. 2.

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*Graffiti* means the unauthorized writing, painting, marking, moving, drawing, defacing or etching of any inscription ~~or otherwise defacing that has been placed upon~~ any public or private property, real or personal, by any means or substance, including but not limited to through the use of paint, ink, dye, or indelible marker, ~~or any other substance~~ capable of marking property or through the use of any implement that can be used to deface, mar or etch on property without the permission of the property owner.

*Graffiti nuisance property* means property that has had a notice of violation issued pursuant to section 38-128 of this chapter or a citation issued on it by a code compliance officer pursuant to chapter 2, article II, "Code Enforcement", of this Code, and the graffiti for which the citation or notice of violation was issued has not been corrected.

*Indelible marker* means any felt tip marker, or similar implement, which contains a fluid which is not water soluble.

*Owner* with respect to real property means any and all persons with legal and/or equitable interest or title to real property in the city as their names and addresses are shown in the Volusia County public records. With respect to personal property, the term "owner" means any individual or entity having a legal and/or equitable interest in such personal property.

*Property* means any real or personal property and that which is affixed, incidental or appurtenant to real property, including but not limited to any structure, fence, wall, sign, or any separate part thereof, whether permanent or not.

(Ord. No. 31-98, § 1, 12-7-1998; Ord. No. 15-02, § 4, 8-5-2002)

#### **Sec. 38-126. Graffiti prohibited.**

No person shall write, paint, mar, deface, draw, or etch any inscription figure, or mark of any type on any public or private building or structure or other property owned, operated or maintained by any person, firm or corporation or by a government entity or any agency or instrumentality thereof, unless the express prior written permission of the owner, owner's agent, manager or operator of the property has been obtained.

(Ord. No. 31-98, § 1, 12-7-1998)

#### **Sec. 38-127. Possession of spray paint and markers.**

Possession of spray and/or indelible markers with intent to make graffiti or allow the same to be used to make graffiti is prohibited. No person shall carry an aerosol spray paint can or indelible marker with the intent to violate the provisions of section 38-126.

#### **Sec. 38-128. Penalties.**

Any person violating section 38-126 or 38-127 shall be punished by a fine of \$250.00 for the first offense; \$500.00 for the second offense and \$1,000.00 for each subsequent offense or by imprisonment in the county jail for a term not to exceed 60 days or by both fine and imprisonment at the discretion of the court. Nothing in this section shall be construed to limit enforcement under applicable state law, including Florida Statute 806.13, as may be amended.

- (1) In the case of a minor, the parents or legal guardian shall, with the exceptions found in subsection (c) below, be ordered to be responsible for payment of all fines. When the court imposes such responsibility, the failure of the parents or legal guardian to make payment will result in the filing of a lien upon the parent's or legal guardian's property and the amount of the lien shall include the fine and any applicable administrative fees, legal fees or court costs.

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- (2) In addition to any punishment, the court shall order any person found in violation of section 38-126 or 38-127, to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense. Such restitution shall be made in a reasonable amount or manner as determined by the court. Where the defendant is a minor, the parent's or legal guardian of the defendant shall be ordered by the court to be jointly and severally liable with the minor to make such restitution.
  - (3) The court may reduce the fines and administrative costs imposed in subsection (1) above upon a showing by the parent or guardian of an inability to pay the full fine and administrative fees or costs. If the court finds it appropriate, the minor's parent or guardian, together with the minor, may participate in a community work project as an alternative to monetary restitution or fines and costs imposed. In addition, if, after a hearing, the court finds that the parent or guardian has made diligent and good faith efforts to prevent the juvenile from engaging in the act of graffiti the parent or guardian shall be absolved of liability by subsection (2) above.

(Ord. No. 31-98, § 1, 12-7-1998)

### Sec. 38-129. Enforcement; abatement of graffiti.

- (a) It shall be unlawful for the owner of any private real or personal property, including structures or improvements, to permit graffiti to remain on any such property within the city, ~~providing provided that~~ the city has given the property owner, or the property owner's agent, manager, operator or representative written notice as set forth in subsections (b) and (c) below.
- (b) The city enforcement services department shall be the primary liaison with the community regarding graffiti removal and requests for graffiti removal shall emanate from ~~one of those offices~~ such department. Whenever the enforcement services director is notified ~~by the enforcement services department~~ of the existence of graffiti on any property, the enforcement services director shall direct that a notice of violation be served upon the owner, agent, custodian, lessee or occupant directing such owner, agent, custodian, lessee or occupant to terminate and abate the violation within ~~15~~ calendar days ~~of the date~~ after receipt of such notice ~~is received~~ by certified mail, hand-delivered or posted. For purposes of this article, the term "notice is received" shall mean the date the owner, agent, custodian, lessee or occupant initials or otherwise indicates his receipt of the notice of violation. However, in the event the notice of violation is not accepted or is returned, the term "notice is received" shall mean ~~15~~ calendar days after the ~~later of the date~~ of the notice of violation ~~is posted~~ in a conspicuous and easily visible location ~~on the property~~. The enforcement services director shall, within five ~~(5)~~ days of the date the notice is mailed, cause a sign to be placed upon the property in violation in a conspicuous and easily visible location. The sign shall be at least ~~eighteen (18)~~ inches by ~~twenty-four (24)~~ inches in dimension. Notice of violation shall include a sufficient description by address and/or legal description to identify the property upon which the violation exists; a description of the violation to be terminated and abated; and a statement that if the described violation is not terminated and abated within ~~fifteen (15)~~ calendar days after notice as ~~herein~~ provided ~~herein, the~~ enforcement services director may order the code compliance inspector to cause the violation to be terminated and abated, and to impose a lien upon the property for the actual cost of such termination and abatement. A preliminary, nonbonding, minimum estimate of the cost of abatement shall be provided as part of the notice of violation to provide notice to the owner, agent, custodian, lessee or occupant of the minimum estimated cost of abatement if the enforcement services director is required to cause the violation to be terminated and abated. The estimated cost of ~~a~~ abatement shall be based upon the then current rate as may be established by the city commission.
- (c) The notice of violation shall further state in bold and conspicuous letters that if such violation, within the ~~fifteen (15)~~-day period prescribed by subsection (a) of this section:
  - (1) Has not been terminated and abated by the owner, agent, custodian, lessee or occupant; or

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- (2) Has not been timely appealed in accordance with ~~section 38-129 of~~ this chapter; then the enforcement services director shall direct those actions necessary to cause the violation to be terminated and abated. The actual cost of such termination and abatement shall constitute a lien on the property in accordance with section 38-130 of this chapter.

(Ord. No. 31-98, § 1, 12-7-1998; Ord. No. 15-02, § 5, 8-5-2002)

### Sec. 38-130. Appeals.

- (a) Within the 15-day period prescribed by section 38-129 after notice is received, an aggrieved party ~~may appeal the enforcement services director determination that a notice of violation is warranted~~ request a hearing regarding the notice of violation for the property in question.
- (b) An appeal ~~by an aggrieved party~~ request for hearing:
- (1) Shall be accompanied by a filing fee as determined by the city commission;
  - (2) Shall be addressed to the enforcement services ~~director~~ department;
  - (3) Shall be either hand-delivered to the enforcement services ~~director~~ department or postmarked within the 15-day period after notice is received.
- (c) Upon receipt of a timely appeal, the enforcement services director shall schedule a hearing date before the code enforcement board in accordance with Chapter 2 of this Code. The hearing shall be scheduled on the agenda for the next available code enforcement board meeting, but in no event longer than 45 days.
- (d) At the hearing, the code enforcement board shall allow the enforcement services director and the aggrieved party an opportunity to present evidence and to examine and cross-examine witnesses. After considering the evidence and testimony, the code enforcement board shall make a factual determination as to whether the property is graffiti nuisance property in violation of this article. If the code enforcement board makes a factual determination that the property is graffiti nuisance property in violation of this article, it shall affirm ~~the enforcement services director issuance of~~ the notice of violation and issue an order stating that the graffiti is to be removed immediately within the time specified by the board by the aggrieved party. If the graffiti has not been removed by the aggrieved party within five calendar days after the date of the code enforcement board's written order holding that this article has been violated, then the enforcement services director may have the graffiti removed. If the code enforcement board makes a factual determination that the property is not in violation of this article, then the filing fee as set forth in subsection (b)(1) above shall be returned to the aggrieved party.
- (e) Any appeal of the code enforcement board's decision shall be made to the circuit court in and for Volusia County.

(Ord. No. 31-98, § 1, 12-7-1998; Ord. No. 15-02, § 6, 8-5-2002)

### Sec. 38-131. Liens.

- (a) The actual cost of ~~a termination and abatement of~~ terminating and abating a violation of this chapter when such termination and abatement is accomplished under the direction of the enforcement services director shall be ~~levied-imposed~~ and shall constitute a special assessment lien against the ~~benefited-subject~~ property as set forth in subsection (b).
- (b) The enforcement services director shall prepare a lien against the ~~benefited-subject~~ property. The lien shall state that if it is not paid within fifteen (15) calendar days, then the lien, or certified copy thereof, shall be recorded in the official records of the county and shall constitute a special assessment lien against the

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property. The lien shall ~~at maximum state~~include, at a minimum the name and address of the last known owner as shown on the county tax record, a description of the property, the amount of the assessment, and the date of service ~~to the property or posting of the notice~~. A copy of such notice shall be mailed to the owner at ~~his the owner's~~ last known address. No assessment shall be levied against any property for graffiti removal on such property more than three ~~(3)~~ times in any calendar year.

(Ord. No. 31-98, § 1, 12-7-1998; Ord. No. 15-02, § 7, 8-5-2002)

#### **Sec. 38-132. Additional remedies for abatement.**

- (a) *Abatement remedies.* The abatement remedies afforded by this article are not exclusive and are supplemental to other remedies available for enforcing codes and ordinances, including the code enforcement board procedure and the code enforcement citation program set forth in chapter 2 of this Code. However, only liens ~~collectable~~collectible under section 38-131 of this chapter shall be special assessment liens.
- (b) *Code enforcement citation procedure.* Whenever a code compliance officer personally observes the existence of graffiti on any property, such code compliance officer may issue a citation to the property owner in the manner provided by and consistent with the procedures set forth in chapter 2 of this Code. Failure to abate graffiti nuisance property shall be subject to a fine ~~with a civil penalty of \$200.00 as provided in Section 1-15 of this Code.~~
- (c) *Mitigation of fines.* In the event a remedy other than this article is chosen to abate graffiti nuisance property, it shall be an affirmative defense preventing any fine from issuing if the owner proves at a hearing that, at the subject location, he or she has been victimized by graffiti three or more times within the calendar year of the violation and had removed or effectively obscured the graffiti within 15 days ~~of after~~ its appearance. This mitigation provision applies only to fines and shall not prevent the city from taking corrective action.

(Ord. No. 31-98, § 1, 12-7-1998)

#### **Secs. 38-133—38-139. Reserved.**

### ***ARTICLE VI. FUNERALS AND MEMORIAL SERVICES***

#### **Sec. 38-140. Interference and picketing of funerals, burials, memorial services and funeral processions prohibited.**

- (a) *Scope.* This subsection does not apply to a person who conducts a viewing, visitation, funeral, burial, memorial service, or funeral procession.
- (b) *Interference.* A person may not knowingly obstruct, hinder, impede, or block another person's entry to or exit from a viewing, visitation, funeral, burial, memorial service, or funeral procession.
- (c) *Prohibited speech.* A person may not address speech to a person attending a viewing, visitation, funeral, burial, memorial service, or funeral procession that is likely to incite or produce an imminent breach of the peace.
- (d) *Prohibited picketing.* A person may not engage in picketing activity within 1,000 feet of a viewing, visitation, funeral, burial, memorial service, or funeral procession that is targeted at one or more persons attending the viewing, visitation, funeral, burial, memorial service, or funeral procession or the deceased.

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~~(e) *Consistency with State Law.* This section is intended to be consistent with and supplemental to Florida Statute 871.01, as may be amended.~~

~~(f) *Enforcement and Penalties.* Violations of this section shall be enforced in accordance with Chapter 2 of this Code and shall be subject to penalties as provided in Section 1-15 of this Code.~~

(Ord. No. 11-2011, § 1, 6-6-2011)

**Secs. 38-141—38-149. Reserved.**

## **ARTICLE VII. STORMWATER DISCHARGE POLLUTANT CONTROL**

### **Sec. 38-150. Definitions.**

For the purposes of this ~~regulation~~ **article**, the following definitions shall apply; words used in the singular shall include plural, and the plural, singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use.

*Best management practices (BMPs)* are schedules of activities, prohibitions ~~of practices~~, maintenance procedures, treatment methods and other management practices to prevent or reduce pollutants from entering the city's stormwater system ~~or being discharged from the city stormwater system~~.

*Clean Water Act* ~~or (CWA) is Public Law (PL) 92-500, as amended PL95-217, PL95-576, PL6-483, PL97-117 and means~~ 33 U.S.C. 1251 et seq., as amended ~~by the Water Quality Act of 1987, PL100-4.~~

*Construction activities* means the alteration of land during construction and include such activities as clearing, grading, and excavation.

*Discharge* means the release of liquid, solid, or gaseous material and includes, but is not limited to, ~~a release~~, spilling, leaking, seeping, pouring, emitting, emptying, and/or dumping of any substance ~~of or~~ material.

*Illicit connection* means ~~point source discharge~~ **a connection or conveyance** to the city's stormwater system or to waters of the United States, which is not composed entirely of stormwater and/or which is not authorized by a permit.

*Illicit discharge* is a discharge to the city's stormwater system or to waters of the United States which is not composed entirely of stormwater, unless exempted pursuant to this ~~regulation~~ **article**, and/or ~~the discharge to the city's stormwater system or to waters of the United States and which~~ is not in compliance with federal, state, and local permits.

*Municipal separate storm sewer system (MS4)* describes the city's stormwater system which is a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds and other structural BMPs) owned or operated by a local government that discharges to waters of the United States or to other MS4s, that is designed solely for collecting, treating or conveying stormwater, and that is not part of a publicly owned treatment works (POTW), as defined by 40 Code of the Federal Register 122.2, or any context may require.

*Point source* means any discernible and confined conveyance including, but not limited to, any pipe, ditch, channel, conduit, well, container, rolling stocks, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are discharged. This term does not include return flows from irrigated agriculture.

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*Pollutant* includes, but is not limited to, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.), heat, wrecked or damaged equipment, rock, sand and industrial, ~~(excepting the city's discharges)~~ and agricultural waste discharged into the MS4, and not excluding other materials which the city manager or designee, federal or state regulatory agencies may deem appropriate to be included.

*Reclaimed water* is water that has received at least advanced secondary treatment and basic disinfection and is reused after flowing out of a wastewater treatment facility.

*Reuse* means the deliberate application of reclaimed water, in compliance with Florida Department of Environmental Protection and/or St. Johns River Water Management District rules, for a beneficial purpose.

*Runoff* is the surface flow of water which results from, and occurs following, a rainfall event.

*Significant construction activities* means construction activities which result in the disturbance of five acres or more of total land area.

*Significant redevelopment* means the alteration of an existing development which results in the increase and in the discharge of a stormwater facility beyond its previously designed and constructed capacity, or increased pollution or changed points of discharge, except emergency repairs.

*Spill* is a type of illicit discharge.

*Stormwater* means surface runoff and the discharge of runoff water resulting from rainfall.

*Waters of the United States* means surface and groundwaters as defined by 40 Code of the Federal Register 122.2.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

#### **Sec. 38-151. Findings and declaration.**

- (a) It is hereby found, determined, and declared as follows:
- (1) The contribution of pollutants through discharges from stormwater systems has a significant impact on receiving waters in the city.
  - (2) Improperly treated discharges from industrial or commercial activities, interconnected ~~city~~ stormwater systems, illicit discharges and discharges from spilling, dumping or disposal of material other than stormwater to the stormwater system of the city adversely affects the quality of water receiving such discharges.
  - (3) The United States Environmental Protection Agency, pursuant to ~~Title 40 C.F.R. §Section 122.26 of the Code of Federal Register~~, has mandated, through the issuance of a National Pollution Discharge Elimination System (NPDES) permit, that the city oversee discharges to the city stormwater system, to waters of the State of Florida, and to waters of the United States.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

#### **Sec. 38-152. Discharges to the city stormwater system.**

- (a) No discharge to the city's stormwater system ("MS4") shall be permitted to impair the operation of the MS4 or contribute to the failure of the MS4 to meet any local, state, or federal requirements, including, but not limited to applicable NPDES permits.

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- (b) Stormwater discharges to a MS4 from industrial, commercial or construction activities or from new development or redevelopment projects are required to obtain appropriate local, state, and/or federal permits prior to discharging to the MS4.
  - (c) Any person determined by the city to be responsible for a discharge contributing to the failure of the city's MS4 shall provide corrective measures as determined necessary by the city ~~official manager~~ and/or designee, and shall be liable for resulting fines and damages.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-153. Stormwater discharges from industrial, commercial and construction activities.**

- (a) Stormwater discharges from industrial and commercial activities shall be treated or managed on-site, in accordance with appropriate federal, state, or local permits and regulations, prior to discharge to the city's MS4.
- (b) Stormwater discharges from significant construction activities shall be treated or managed on-site in accordance with appropriate federal, state, or local permits and regulations, prior to discharge to the city's MS4. Erosion, sediment, and pollution control for the construction site shall be properly implemented, maintained, and operated according to a pollution prevention plan required by an NPDES permit for the discharge of stormwater from construction activities, or according to a state permit issued by the Federal Department of Environmental Protection ([FDEP](#)) or St. Johns River Water Management District ([SJWMD](#)).
- (c) Construction activity which is not defined as significant is still characterized as an illicit connection or illicit discharge if the activity causes an impairment of the operation of the MS4 or contributes to the failure of the MS4 to meet any local, state or federal requirements, including, but not limited to NPDES permits.
- (d) The owners or operators of industrial facilities, commercial entities, and construction sites which discharge stormwater to the city's MS4, shall provide prior written notification to the city of the discharge and ~~shall obtain have received prior~~ all required approvals of the discharge from the city.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-154. Control of pollutant contributions from interconnected stormwater systems.**

- (a) The discharge of stormwater between state, county, or other MS4s shall not be permitted to cause the city's MS4 to be in violation of the provisions of an NPDES permit. Owners of any portion of the interconnected MS4 shall be responsible for controlling the quality and quantity of discharge of stormwater to the city's MS4.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-155. Prohibition of illicit discharges and illicit connections.**

- (a) Illicit discharges and illicit connections to the city's MS4 are prohibited.
- (b) Failure to report a connection to the city's MS4 or to waters of the United States from industrial activities, commercial entities or construction activities constitutes an illicit connection.
- (c) Failure to report to the city a discharge to the city's MS4 or to waters of the United States from industrial activities, commercial entities or construction activities constitutes an illicit discharge.
- (d) Any discharge to the city's MS4 or to waters of the United States which is in violation of federal, state or local permits or regulations constitutes an illicit discharge.

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(Supp. No. 30)

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- (e) Persons responsible for illicit discharges or illicit connections shall immediately cease the illicit discharge or illicit connection, obtain appropriate approvals from applicable regulatory agencies prior to resuming the discharge or connection, and shall be liable for resulting fines and damages [as provided in Section 1-15 and Chapter 2 of this Code](#).

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-156. Inspection and monitoring for compliance.**

- (a) City personnel shall be granted access for inspection [at reasonable times and in a lawful manner](#) of facilities discharging or suspected of discharging to the city's MS4 or waters of the United States in order to effectuate the provisions of this article and to investigate violations or potential violations of any of the terms herein.
- (b) All structures, facilities, and activities which allow discharges to the city's MS4, as well as records concerning them, shall be made accessible to the city's personnel for this purpose [upon request](#).

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-157. Operational maintenance of structures and other stormwater facilities.**

- (a) Structural control and other BMPs used for controlling the discharge of pollutants to the city's MS4 or to waters of the United States shall be operated and maintained so as to function in accordance with permitted design and performance criteria and in compliance with federal, state, or local permit conditions and regulations.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-158. Exemptions; exceptions.**

- (a) The following activities shall not be considered an illicit discharge or illicit connection, unless such activities cause, or significantly contribute to, the impairment of the use of the city's MS4 or the violation of the conditions of the city's NPDES permit:

- (1) Discharges from:
  - a. Water line flushing;
  - b. Flushing of reclaimed water lines;
  - c. Street cleaning;
  - d. Sidewalk ~~or~~ building power washing;
  - e. Construction dust control;
  - f. Landscape, lawn, and irrigation waters;
  - g. Diverted stream flows or lake waters;
  - h. Foundation, footing and roof drains;
  - i. Uncontaminated groundwater infiltration (as defined at 40 [Code of Federal Register C.F.R. § 35.2005\(20\)](#)) [as amended](#);
  - j. Discharges from potable water sources;
  - k. Air conditioning condensate or cooling water;

- l. De-chlorinated swimming pool water;
- m. Springs;
- n. Individual residential car washing;
- o. Flows from riparian habitat and wetlands; and
- p. Discharges or flow from emergency fire-fighting activities and emergency response activities done in accordance with adopted spill response/action plan.

(2) Discharges for which all appropriate federal, state, and local permits have been obtained and which are in compliance with the conditions of said permits.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-159. Discharges of polluting matter in stormwater systems prohibited.**

(a) It shall be unlawful for any person to drain, deposit, place or otherwise discharge pollutants into any stormwater system within the city, or to cause or permit to be drained, deposited, placed or otherwise discharged into such stormwater systems any organic or inorganic matter which causes pollution, pursuant to the water quality standards established by all applicable federal, state and local regulatory agencies. Polluting matter includes, but is not limited to the following:

- (1) Petroleum products, including, but not limited to, oil, gasoline and grease;
- (2) Solid waste;
- (3) Paints;
- (4) Steam cleaning waste;
- (5) Pesticides, herbicides or fertilizers;
- (6) Degreasers, solvents;
- (7) Sanitary sewage;
- (8) Chemically treated cooling water;
- (9) Antifreeze and other automotive products;
- (10) Lawn clippings, leaves, branches, etc.;
- (11) Animal carcasses;
- (12) Recreational vehicle waters;
- (13) Dyes;
- (14) Construction materials;
- (15) Any liquids in quantity or quality which are capable of causing a violation of the city's NPDES stormwater permit; and
- (16) Solids in such quantities or of such size capable of causing interference or obstruction to the flow in the city's stormwater system.

(b) It shall be unlawful to wash any public or private streets, building, sidewalks, or parking areas, unless all visible debris and sediments have been removed prior to such washing.

**Commented [PM9]:** Engage with Public Works to provide input and technical guidance. Their expertise will help determine appropriate infrastructure and operation consideration to these activities.

Code Enforcement utilizes this information to monitor compliance standards for washing machines and garbage truck discharge.

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- (c) Notwithstanding other requirements of law, as soon as any person has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into private stormwater management systems, the City of Deltona's MS4, state waters, or waters of the U.S., said person shall take all necessary steps to ensure the ~~discovery~~identification, containment, and reporting of such a release.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

### **Sec. 38-160. Enforcement, penalties and legal proceedings.**

- (a) All persons in violation of this regulation shall remedy such violations immediately. ~~All Such persons in violation shall, in addition to all other required remedial actions, upon detection and/or written notification notice~~ by the city, provide a written response outlining the temporary and permanent measures that will be taken to correct the violation and a proposed schedule for completion of the corrective measures. All such proposals for corrective action are subject to the approval of the city manager or designee.
- (b) The city code enforcement official is authorized to issue cease and desist orders in the form of written official notices hand delivered or sent by registered mail to the person(s) believed to be responsible for the violation and/or the owner of the property from, or on which the violation is believed to be occurring. Specific activities and operations may be ordered to cease based upon the following conditions:
- (1) In a situation that may have a serious effect on the health, safety or welfare of the public or the environment, including the quality of stormwater in the city's MS4; or
  - (2) When irreversible or irreparable harm may result, in the reasonable opinion of the city manager or designee, and immediate cessation of the activity is necessary to protect the quality of the stormwater in the city's MS4, the public or the environment.
- (c) Violations of this article are punishable as provided in the city's Part II - Code of Ordinances, Chapter 2, Article II and Section 1-15 of this Code. Nothing herein shall preclude the city from electing one or more of these remedies concurrently.
- (d) Should any person responsible for a violation of this regulation fail to take the remedial action as required by the city, the city may take such remedial action, and all costs incurred by the city shall be the responsibility of the person or persons responsible for the violation, and the city may record a lien against the personal and/or real property of the violators to recover said costs and to collect all fines and penalties imposed in accordance with this Code.
- (e) In addition to the remedies provided herein, the city may make application to a court of competent jurisdiction for injunctive relief to restrain any person from violating or continuing to violate the provisions of this regulation. In addition, the city may also seek entry of a court order requiring restoration and mitigation of any impacted facilities, land, or waters, and may request any other appropriate legal remedy, including reimbursement of court costs. The city shall be entitled to an award of attorney's fees in prosecuting such actions, together with all attorney's fees and costs on appeal.
- (f) Any fines or other funds received as a result of enforcement action under this regulation and which are not used for the specific purposes enumerated herein shall be deposited into the stormwater utility fund, established under City Code.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

### **Secs. 38-161—38-169. Reserved.**

**ARTICLE VIII. FLORIDA-FRIENDLY FERTILIZER USE ON URBAN LANDSCAPES**

**Commented [EH10]:** Recently reviewed at the request of a Commissioner; changes not needed.

**Sec. 38-170. Definitions.**

For this article, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

*Administrator* means an administrative official of the City of Deltona designated by the city to administer and enforce the provisions of this article.

*Application or apply* means the actual physical deposit of fertilizer to turf or landscape plans.

*Applicator* means any person who applies fertilizer on turf and/or landscape plants in the City of Deltona.

*Approved best management practices training program* means a training program approved per F.S. § 403.9338, or any more stringent requirements set forth in this article that includes the most current version of the Florida Department of Environmental Protection's "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," as revised, and approved by the City of Deltona Administrator.

*Board or governing board* means the Board of City Commissioners of Deltona, Florida.

*Best management practices* means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

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

*Commercial fertilizer applicator*, except as provided in F.S. § 482.1562(9), means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.

*Fertilize, fertilizing, or fertilization* means the act of applying fertilizer to turf, specialized turf, or landscape plants.

*Fertilizer* means any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

*Groundcover* means plants used in mass as alternative to turf or lawn and/or to create variety in landscape; usually not having a mature height over two feet tall.

*Guaranteed analysis* means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

*Heavy rain* as defined by the World Meteorological Organization, rainfall greater than or equal to 50mm (two inches) in a 24-hour period.

*Institutional applicator* means any person, other than a private, non-commercial or a commercial applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional applicators shall include, but shall not be limited to, owners, managers

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or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

*Landscape plant* means any native or exotic tree, shrub, or groundcover (excluding turf).

*Low maintenance zone* means an area a minimum of ten feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

*Person* means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

*Prohibited application period* means the time period during which a flood watch or warning, or a tropical storm watch or warning, or a hurricane watch or warning is in effect for any portion of the City of Deltona, issued by the National Weather Service, or if heavy rain is likely.

*Saturated soil* means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this article, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.

*Slow release, controlled release, timed release, slowly available, or water insoluble nitrogen* means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.

*Turf, sod, or lawn* means a piece of grass-covered soil held together by the roots of the grass.

*Urban landscape* means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in [F.S.] § 570.02.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

### **Sec. 38-171. Findings and declaration.**

As a result of impairment to the City of Deltona's surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers or springs within the boundaries of the City of Deltona, the governing body of the City of Deltona has determined that the use of fertilizers on lands within the City of Deltona creates a risk to contributing to adverse effects on surface and/or ground water. Accordingly, the governing board of the City of Deltona finds that management measures contained in the most recent edition of the "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008" may be required by this article.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

### **Sec. 38-172. Applicability.**

This article shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of the City of Deltona, unless such applicator is specifically exempted by the terms of this article from the regulatory provisions of this article. This article shall be prospective only, and shall not impair any existing contracts.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

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**Sec. 38-173. Timing of fertilizer application.**

No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the prohibited application period, or to saturated soils.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-174. Fertilizer-free zones.**

Fertilizer shall not be applied within ten feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of three feet shall be maintained. If more stringent City of Deltona Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. Newly planted turf and/or landscape plants may be fertilized in this zone only for a 60-day period beginning 30 days after planting if need to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-175. Low maintenance zones.**

A voluntary ten-foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent City of Deltona Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material may be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-176. Fertilizer content and application rate.**

- (a) Fertilizers applied to turf within the City of Deltona shall be formulated and applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements for Urban Turf Fertilizers*.
- (b) Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first 30 days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the stormwater pollution prevention plan for that site.
- (c) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in (a) above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

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**Sec. 38-177. Application practices/mode of application.**

- (a) Spreader deflector shields are required when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands.
- (b) Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.
- (c) Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.
- (d) Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.
- (e) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-178. Management of grass clippings and vegetative matter/debris.**

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-179. Exemptions.**

- (a) Sections 38-174, 38-177, 38-178, 38-180 & 38-181 of this article shall not apply to golf courses; provided, however, fertilizer shall not be applied to golf courses in excess of provisions of the Florida Department of Environmental Protection ("FDEP") document, "BMPs for the Enhancement of Environmental Quality on Florida Golf Courses, January 2007."
- (b) This article shall not apply to any bona fide farm operation that the City of Deltona is without authority to regulate with regard to fertilizer application pursuant to the Florida Right to Farm Act, F.S. § 823.14 et seq. (2007), or other applicable state law.
- (c) This article shall not apply to sports turf areas at parks and athletic fields.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-180. Training.**

- (a) All commercial and institutional applicators of fertilizer within the incorporated area of the City of Deltona, shall abide by and successfully complete the six-hour training program in the "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries" offered by the Florida Department of Environmental Protection through the University of Florida Extension "Florida-Friendly Landscapes" program, or an approved equivalent.
- (b) Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida IFAS "Florida Yards and Neighborhoods" program when applying fertilizers.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

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**Sec. 38-181. Licensing of commercial applicators.**

- (a) Prior to 1 January 2014, all commercial applicators of fertilizer within the incorporated area of the City of Deltona, shall abide by and successfully complete training and continuing education requirements in the "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries," offered by the Florida Department of Environmental Protection through the University of Florida IFAS "Florida-friendly Landscapes" program, or an approved equivalent program, prior to obtaining a City of Deltona Local Business Tax Receipt for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial fertilizer applicators shall provide proof of completion of the program and valid license to the City of Deltona within 180 days of the effective date of this article.
- (b) After 31 December, 2013, all commercial applicators of fertilizer within the incorporated area of the City of Deltona, shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per 5E-14.117(18) F.A.C.
- (c) All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has a "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" training certificate prior to the business owner obtaining a local business tax receipt. Owners for any category of occupation which may apply any fertilizer to turf and/or landscape plants shall provide proof of completion of the program and valid license to the City of Deltona.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Sec. 38-182. Enforcement and penalty.**

Funds generated by penalties imposed under this section shall be used by the City of Deltona for the administration and enforcement of F.S. § 403.9337, and the corresponding sections of this article and to further water conservation and nonpoint pollution prevention activities.

(Ord. No. 12-2013, § 1(Exh. A), 10-7-2013)

**Secs. 38-183—38-189. Reserved.**