

LEON COUNTY

**CODE ENFORCEMENT BOARD AND NUISANCE
ABATEMENT BOARD HANDBOOK**



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PART ONE
GENERAL INFORMATION

I. PURPOSE OF THIS HANDBOOK

This Handbook sets out the rules of procedure for the Code Enforcement Board and the Nuisance Abatement Board and provides other useful information for the Board members, staff and citizens of Leon County. This Handbook is to be interpreted as implementing the Leon County Code of Laws and nothing herein overrides any provision of the Code.

II. GLOSSARY

As used in this Handbook, the words and abbreviations set out below have the following meaning:

Alleged Violator	The individual or individuals charged with a violation of the Leon County Code of Laws
Board	In Part Two, "Board" means the Code Enforcement Board; in Part Three, "Board" means the Nuisance Abatement Board
CMT	See Communications Media Technology below
CEB	Code Enforcement Board
Code	See LCC below
Communications Media Technology	An electronic communication method that includes both video and audio capability (Zoom, or other comparable electronic medium)
Days	For purposes of computing time, "days" means calendar days unless noted otherwise
F.S.	Florida Statutes
NAB	Nuisance Abatement Board
LCC	Leon County Code of Laws, including the Charter, County ordinances and any codes adopted by reference therein
Respondent	The Alleged Violator or Violator, as the context requires
Violator	A person or entity found to be in violation of the LCC
Subject Property	The property on which a violation of the LCC has occurred

PART TWO
THE LEON COUNTY CODE ENFORCEMENT BOARD

I. STATUTORY AUTHORITY

The Local Government Code Enforcement Board Act ("Act") is found at Sections 162.01-162.13, Florida Statutes. The Act authorizes creation of administrative/quasi-judicial boards which may be given authority to impose administrative fines and other non-criminal penalties where a violation of a code provision has occurred, with the goal of obtaining code compliance. The purpose of such boards is to provide an equitable, expeditious, effective and inexpensive method for enforcement of local laws. The intent of the Act as a whole is to promote, protect and improve the health, safety and general welfare of the public.

The Act specifies the number, qualifications and terms of office of Code Enforcement Board ("CEB" or "Board") members which may be appointed by a local government. It also specifies enforcement procedures to be used, and the basic manner in which CEB hearings are to be conducted. The Act provides that fundamental due process must be observed, but does not require that formal rules of evidence be applied at CEB hearings. Each CEB is given the power to adopt its own rules of conduct for its hearings, beyond the basic requirements of the statute, to subpoena witnesses and evidence, and to issue orders having the force of law to command whatever steps are reasonably necessary to bring a violation into compliance with the law. This order may include a fine of up to \$250 per day for each day that each Code violation continues beyond the date set by the CEB for compliance, or, where a violation is repeated by the same violator, a fine of up to \$500 per day for each day the repeat violation continues past the date the Code Inspector notified the violator of the repeat violation.

The Act specifies certain factors to be considered by the CEB in determining the amount of a fine, such as gravity of the violation (the damage caused to the environment and to other persons), the violator's efforts prior to hearing to correct the violation, and any previous violations by the violator. Once the per day fine amount is determined and ordered, the Act provides that the fine shall accumulate each day from its effective date (i.e., the ordered compliance date) until the violator notifies the County (and the County verifies) that the violation has been corrected, or until such time as a judgment is rendered in a suit to foreclose on a CEB lien.

II. THE LEON COUNTY CODE ENFORCEMENT BOARD

Pursuant to Chapter 162, Florida Statutes, the Board of County Commissioners of Leon County has enacted a local ordinance establishing the Leon County Code Enforcement Board, for the purpose of conducting hearings and entering orders to enforce County laws listed in Section 6-31, LCC,

including Chapters 5 (building code, article II, technical standards and article IV, property maintenance code), 10, 11, and 14, and any provision of the LCC in which the CEB is specifically granted enforcement jurisdiction. See Chapter 6, LCC.

III. CODE ENFORCEMENT BOARD OPERATIONS

A. OFFICERS AND DUTIES

1. The officers shall be a Chair and a Vice-Chair, both of whom shall be members of the Board. The County shall provide a staff Administrator to the Board.

2. The Chair shall preside at all meetings and hearings of the Board, and shall have all duties normally conferred by parliamentary procedures upon such an officer.

3. The Vice-Chair shall preside at all meetings and hearings at which the Chair is absent, and shall preside in such instances as the Chair announces intention to abstain from voting on any particular matter.

4. In the absence of the Chair and Vice-Chair, the most senior member of the Board shall serve as the Chair Pro Tem to preside during that meeting/hearing. If there is no most senior member, the Board's attorney shall call the meeting/hearing to order and announce the absence of the Chair, Vice-Chair, and lack of a most senior member, and shall announce that the Board should immediately elect a Chair Pro Tem to preside during that meeting/hearing. The Chair Pro Tem's service shall be terminated by the entrance of the Chair or Vice-Chair, or by the election of another Chair Pro Tem. The Chair Pro Tem (or Vice-Chair, as applicable) shall fulfill all duties of the Chair, to include signing of the orders and minutes related to service as acting Chair.

5. The Chair and Vice-Chair shall have the privilege at the public hearing of discussing all matters before the Board, and shall have the same voting rights as each other Board member.

B. ELECTION OF OFFICERS

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

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

3. Any vacancy in office shall be filled immediately by regular election procedure at any meeting of the Board. The elected candidate shall serve the remainder of the original one (1) year term which has been vacated.

C. MEETINGS

1. Regular Meetings

Regular meetings shall be held at least once each month, on the third Thursday of each month

at 1:00 p.m. EST at a location as designated in advance by the Board Administrator. The Board may set meetings more frequently, if necessary.

2. Special Meetings

Special meetings may be called by the Chair or by joint request by any three (3) members of the Board by written notification to the Board Administrator.

3. Notice

Notice of all meetings, regular and special, shall be given to all Board members at least twenty-four (24) hours in advance of the meeting.

4. Attendance

(a) Members shall notify the Board Administrator, if they cannot attend a meeting.

(b) Any member of the Board who fails to attend two out of three successive meetings during any calendar year shall automatically forfeit such appointment and the Board of County Commissioners shall promptly fill such vacancy. Members may also be removed for cause by the Board of County Commissioners.

(c) Upon the determination of a majority of the members present in the meeting room and voting, that extraordinary circumstances exist to justify the physical absence of a member or members from said meeting, and assuming a quorum of the Board is otherwise physically present as provided in Section III. C. 5, the Board may, by motion made and approved, allow the participation of the physically absent member or members by communications media technology ("CMT") that includes both video and audio communication (Zoom, or other comparable electronic medium). In such case, the CMT must be configured so that interactive access by members of the public is available to see and hear the physically absent member or members. The decision of the Board shall either be made at the immediately preceding meeting of the Board or at the beginning of the meeting where participation by CMT is anticipated to be used and shall be based upon the facts and circumstances of each request. The physically absent member or members may not vote on any motion authorizing such participation. A physically absent member must take all steps necessary to provide the interactive communication between the meeting location and the member's location.

5. Quorum

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

6. Voting

Voting shall be by voice vote, and shall be recorded by individual "aye" for those in favor and "nay" for those opposed.

7. Abstention

Each member present shall cast a vote on each question before the Board, except that if any member has a conflict pursuant to Chapter 112, Florida Statutes, the member shall abstain from voting on that matter and must file a Memorandum of Voting Conflict with the Board Administrator as prescribed by Chapter 112, Florida Statutes.

8. Conduct of Business

Parliamentary procedures in Board meetings/hearings shall be guided by Roberts' Rules of Order and by the procedures set forth in this Handbook. The Board attorney serves as the parliamentarian.

9. Order of Business

- (a) Call to order
- (b) Roll call
- (c) Minutes of previous meetings
- (d) Unfinished business
- (e) Continuances
- (f) Compliance/Dismissals
- (g) Public Hearings:
 - (1) Swearing of witnesses
 - (2) Prosecution's case-in-chief
 - (3) Alleged Violator's defenses
 - (4) Board discussion
 - (5) Entry of order.
- (h) Requests for Extensions of Time for Compliance for Legitimate Reasons: These requests must be submitted in writing, explaining reasons and hardships, prior to the ordered date for compliance and at least one (1) week prior to any scheduled public hearing.
- (i) Requests for Reduction and/or Rescission of Fines for Legitimate Hardship: These requests must be submitted to the Board Administrator in writing after compliance has been achieved and at least two (2) weeks before any scheduled public hearing, explaining what hardships the Respondent has endured in

attempting to comply.

- (j) Requests to address the Board
- (k) Old business
- (l) New business other than public hearings
- (m) Informational items
- (n) Adjournment

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

IV. THE PROCESS LEADING UP TO THE PUBLIC HEARING

A. DISCOVERY OF VIOLATION

Enforcement proceedings must be initiated by a Code Inspector. Violations are usually discovered as a result of: (1) a citizen complaint; (2) routine inspection of an area; (3) annual maintenance inspection of premises; or (4) a Code Inspector noticing a violation while engaged in inspection of some other site. CEB members have no power to initiate CEB proceedings. However, CEB members retain their prerogative as citizens of the County to contact the Code Inspection Department and lodge any complaint(s) they may have as to possible LCC violations of which they may become aware. It would then be the Code Inspector's duty to investigate the matter and institute proceedings as necessary where a violation is found to exist.

A Code Inspector may not initiate enforcement proceedings for a potential violation of the LCC by way of an anonymous complaint. Persons who reports a potential violation of the LCC must provide their names and addresses to the respective local government before an enforcement proceeding may occur. This paragraph does not apply if the Code Inspector has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources. In the event a Code Inspector receives an anonymous complaint, the Code Inspector will document the information provided for the record.

In order to constitute an "imminent threat" to public health, safety or welfare, the violation must be alarming in nature and the Code Inspector must be able to articulate facts as to why the Code Inspector has reason to believe there is an imminent threat to public health, safety or welfare. By way of example and without limitation, a complaint of a dilapidated structure which is at risk of collapse and presents a significant fire hazard would constitute articulable facts showing that the Code Inspector has reason to believe there is an imminent threat to public health, safety or welfare.

B. NOTICE OF VIOLATION

The next step is determination of ownership of the site in violation. This is necessary in order

to provide notice to the owners of the property, as well as any other persons responsible for the violation. The notice will include a demand that the violation be corrected within a reasonable time, unless the violation is a repeat violation, in which case the Code Inspector may demand that the violation be immediately corrected and a hearing scheduled as soon as practicable before the CEB. Where the Code Inspector has reason to believe the violation presents a serious threat to the public, or if the violation is irreparable or irreversible in nature, the Code Inspector need make only a reasonable effort to notify the owner(s) and may immediately request a hearing before the CEB. In order to place the Alleged Violator, also referred to herein as the "Respondent," on notice of future consequences of continued non-compliance, the following text will appear in each Notice:

We ask that you make every effort to comply within this time frame. Should the violation continue beyond the time specified for the correction in this Notice, the Code Inspector shall notify the Code Enforcement Board ("Board"). A hearing will be scheduled before the Board even if the violation has been corrected prior to the Board hearing. If the Board finds a violation occurred, a fine may be imposed for up to \$250 per day for a first violation or up to \$500 per day for a repeat violation. This fine shall constitute a lien against the land on which the violation exists and upon any other real property owned by you.

C. CODE INSPECTOR'S REQUEST FOR HEARING

If the owner or Alleged Violator fails to correct a violation within the time specified in the initial notice, if the violation is a repeat violation, or if the violation is a threat to public health, safety, or welfare or is irreparable/irreversible (as discussed above), the Code Inspector will notify the CEB and request a hearing by filing a Notice of Violation and Request for Hearing with the Board Administrator at the Development Support and Environmental Management Office. The Code Inspector's filing, which will be in the form of an affidavit, should specifically identify each Code section that is allegedly being violated by activities or circumstances on the particular site, and should indicate "repeat violation" where such is the basis for the hearing request.

D. INITIATION OF ACTIONS

All actions before the Board shall be initiated by a Code Inspector filing a Request for Hearing and Affidavit of Violation with the Board Administrator as provided in Section C above. The Board Administrator shall then set the case for hearing, and shall send out a Notice of Hearing to each Alleged Violator, including but not limited to the property owner(s), by certified mail, return receipt requested, or by personal service as provided in the Leon County Code Enforcement Board Act. A copy of the Notice of Hearing shall also be provided to the County's Prosecuting Attorney, the Code Enforcement

Supervisor, and the Code Inspectors involved.

E. NOTICE OF HEARING; PARTICIPATION BY CMT; EXTENSION OF TIME

1. Notice of Hearing

Once a date for hearing is scheduled, the Board Administrator must send a Notice of Hearing to the Alleged Violator, who will be referred to in the Notice of Hearing as the "Respondent," and to the property owners(s), if different, by certified mail or hand delivery. A copy of the Code Inspector's formal Notice of Violation and Request for Hearing, and a copy of the meeting agenda (when available), are also sent to the Alleged Violator with the Notice of Hearing.

The Notice of Hearing will provide the Alleged Violator and property owner(s), if different, the option to appear at the evidentiary hearing either in person or by CMT. To qualify for participation with CMT, the participants must provide at their own expense an electronic communication method that includes both video and audio capability (Zoom, or other comparable electronic medium). The Notice will include the steps to be taken to participate by CMT described in Section 2 below.

2. Participation by Communications Media Technology

To appear by CMT, the Alleged Violator and property owner(s), if different, must request a meeting link from the Development Support and Environmental Management Office at least 10 days before the scheduled hearing. The Alleged Violator must ensure that both video and audio capabilities exist adequate to be clearly heard and seen by the Board. The link will be emailed to the Alleged Violator and property owner(s), if different, seven (7) days before the hearing. If an Alleged Violator or property owner(s), if different, requests a link and the Alleged Violator's CMT does not function during the hearing so as to permit the Alleged Violator or property owner(s), if different, to be seen and heard, the case will be continued to the next Code Board public hearing and the Alleged Violator and property owner(s), if different, will need to attend in person to be heard.

3. Extension of Time

After the Alleged Violator/owner receives Notice of Hearing, the Alleged Violator/owner may make an effort to remedy the violation or may request more time to do so. The Board Administrator, the County Attorney's office, and the Code Inspectors are always willing to work with Alleged Violators/owners towards resolving the violation(s) prior to the hearing. Where an Alleged Violator/owner has contacted the Board Administrator or the Code Inspector after receiving Notice, and has indicated a sincere willingness to remedy the violation, the Board Administrator may recommend that the hearing be continued to allow additional time for negotiation, remedial effort, and possible resolution of the violation. Where the CEB approves such a request for continuance, a notice to that effect will be sent to the Alleged Violator and the property owner, if different. Where the

violation is corrected prior to the hearing and is not a repeat violation, the Board Administrator may recommend that the CEB remove the case from its agenda.

The authority for these actions is found in **Leon County Code of Laws Sec. 6-30. - Enforcement procedure**, which reads as follows:

If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the code enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to [Section 6-36](#). The case may be presented to the code enforcement board even if the repeat violation has been corrected prior to the code enforcement board hearing, and the notice shall so state.

F. STAFF PREPARATION FOR HEARING

1. Agenda Packets

The Board Administrator is responsible for preparing the agenda for each hearing. The Code Inspectors and the Code Enforcement Supervisor review the cases, and prepare staff reports, including staff recommendations for each case, which are submitted to the Board Administrator for inclusion in the CEB "agenda packet" for each meeting. Agenda packets usually include the agenda, minutes of prior meeting for review by the CEB, a site map, a Staff Report and any other documentary evidence and correspondence available relating to each case to be heard, status reports on compliance with orders entered at prior hearings, and informational copies of Orders entered at the preceding meeting. An agenda packet is customarily sent to each CEB member for review at least 48 hours prior to the meeting date.

The staff recommendation will include a request that the final order include text as follows:

Respondent has been found to be in violation of Section _____, Leon County Code (LCC). If at any time within the next five years, Respondent is found by the Board to have violated the same provisions of the LCC cited in this Order, either at the Subject Property or at any other location, any such new violation will be treated as a repeat violation. In accordance with Section 6-34, LCC, if the Board finds that a repeat violation has occurred, Respondent will be subject to a fine of up to \$500 per day to run from the date Respondent is provided notice of the repeat violation until it is resolved. If the Board finds the violation to be irreparable or irreversible in nature, it may impose a one-time fine not to exceed \$5,000.00 per violation.

2. Photographs, Videotapes, or Other Illustrative Evidence

The Code Inspector for each case will generally have visited the site 1 to 2 weeks before the CEB hearing for purposes of preparing photographic or videotaped evidence of the alleged violation to be presented before the CEB. Drawings and file records are also pulled and highlighted to specify the alleged violations. The Respondent may present additional photos, videotapes or other illustrative evidence. County evidence will be admitted into the record of the proceedings as County Composite Exhibit 1. The Respondent's evidence provided to the Board will be entered into the record as Respondent's Exhibit 1 or Respondent's Composite Exhibit 1, as applicable.

G. SUBPOENAS

The Board is empowered to issue subpoenas, as requested by the Code Inspector or the Alleged Violator, or upon its own initiative. The following protocol shall be followed:

1. Request for Subpoena

Requests for subpoena(s) by any party shall be made not later than fourteen (14) days prior to the noticed evidentiary hearing for the case. Consideration of a request for subpoena shall come before the Board at the next scheduled public hearing and, if the request for subpoena(s) is granted, the evidentiary hearing for the case will be continued to the following meeting of the Board. Without objection, the Board will issue the subpoena.

2. Objection to Issuance of Subpoena

A party or any individual proposed to be subpoenaed may object to the issuance of a subpoena and present objection to the Board at the time that the request for subpoena is heard. In such case, the Board may hear evidence and argument as to the necessity of the evidence to be adduced from the person who would be subpoenaed. The Board will reject issuance of a subpoena if the evidence presented indicates that the individual does not have information germane to the case, the evidence sought will be provided by other witnesses, the subpoena is being requested purely for harassment, or for other good cause. Failure of a person subpoenaed to object prior to the issuance of a subpoena shall not preclude the subpoenaed person from filing a motion to quash a subpoena.

3. Service of a Subpoena

The subpoena will be executed by the chair of the CEB in the form provided in Attachment 3. The party who requested the subpoena(s) shall send the subpoena to the Leon County Sheriff's Department or other process service approved by the CEB within 5 days of issuance and shall be responsible for directly paying any costs and charges incurred in the service of process. It is the responsibility of each party to secure attendance by its witnesses at the evidentiary hearing.

Proof of service of a subpoena shall be provided to the Board Administrator not later than 2

working days prior to the hearing. If proof of service is not provided or the person subpoenaed does not appear and the party requesting the subpoena does not excuse the witness from testifying, the Board may continue the hearing to allow the party to seek enforcement of the subpoena as provided below.

The failure of a subpoenaed witness to appear at the hearing is not grounds to invalidate the ultimate Board action, provided that the party is otherwise afforded due process. Subject to the foregoing, if a witness fails to appear, a party may seek enforcement of a subpoena by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena resides within 20 days of the failure to appear at hearing. Notice of the filing of the petition must be served on all parties.

V. PUBLIC HEARINGS

The order of presentation shall be as provided in Section VI below. As an option in lieu of appearance in person at the public hearing, Respondents and other members of the public may participate by means of communications media technology. The decision to appear by CMT will be purely at the option of the person seeking to appear using such media. Nothing herein precludes participation in person at the hearing. Persons appearing via CMT must comply with all the requirements set forth in Section IV. E. 1 and 2. If the CMT of a person using such a medium does not function during the hearing so as to permit the person to be both seen and heard, the case will be continued to the next Code Enforcement Board public hearing and the Respondent or member of the public will need to attend the hearing in person to be heard.

VI. FORMAT FOR THE PUBLIC HEARING

A. INTRODUCTION BY THE CHAIR OR STAFF

The Chair or designated staff shall open each meeting by providing an introduction in basically the following form:

Welcome to this meeting of the Code Enforcement Board of Leon County. The purpose of this meeting is to provide a hearing as to allegations of Code violations which have been filed by Leon County.

The Code Enforcement Board was established to obtain compliance with County Code provisions. The Board has no authority to change the ordinances; that can only be done by the Board of County Commissioners. The Code Enforcement Board is empowered to determine whether a violation has occurred or has been repeated, to order actions as it deems reasonably necessary to bring about compliance with the Code, to levy a fine if compliance is not achieved as ordered or if a repeat violation has occurred, and to modify or rescind a fine after compliance is achieved where circumstances warrant. Decisions of the Code Enforcement Board may be appealed to the Circuit Court. They are not appealable to the Board of County Commissioners.

Each case will be called by number and by Alleged Violator's name. Any witnesses proposed

by the County and those proposed by each Respondent, including the Respondent, will be sworn or will affirm to tell the truth. The County's Prosecuting Attorney may present a brief opening statement, and the Code Inspector will present the County's case. Each Respondent will then have an opportunity to present defenses to the case. Each party may cross-examine the other party's witnesses. At the close of all testimony and evidence on the case, the Board will make a decision and an Order will be entered.

Each person appearing before the Board must present testimony and evidence while observing proper decorum and respect for the proceedings. No use of foul language or threatening words will be permitted. Individuals who fail to observe these requirements will be escorted out of the hearing room.

We will follow the sequence of the printed agenda.

B. PROCEDURES FOR EACH CASE

1. The Chair will read the case number and name of the Alleged Violator of the case and ask if the Respondent or a representative of the Respondent is present and wishes to contest the charges, to testify or to call witnesses. If so, the Board will proceed to hear that case after swearing in all anticipated witnesses. Alternatively, instead of *en masse* swearing in, particularly but not exclusively in case of CMT participation, individual witnesses may be sworn or affirm to tell the truth one by one as they come up to testify.

2. The County will present its case:

- (a) A brief opening argument, summarizing the nature of the alleged violations may be presented.
- (b) Testimony, evidence, and pictures, as available, are presented.
- (c) The Respondent is allowed to ask questions of the County's witnesses.
- (d) The Board members may ask questions.
- (e) The County presents its staff recommendation to the Board.

3. The Respondent may present his/her defense(s) or plea for time:

- (a) A brief opening argument, summarizing the Respondent's position, may be presented by Respondent or counsel.
- (b) Testimony, evidence, and pictures, as available, are presented by the Respondent.
- (c) The County may ask questions of the Respondent and any witnesses providing testimony on Respondent's behalf.
- (d) The Board may ask questions.
- (e) The Respondent may voice objections or concerns as to the staff's

recommended order on the case. The County will be given an opportunity to amend its recommendation if desired.

4. Counsel for each party may present a brief closing argument to the Board.

5. Board discussion and motion:

The Board will openly deliberate and discuss the case at the close of all evidence. Each Board member should speak clearly into the microphone at all times. (The quasi-judicial hearing being subject to government in the Sunshine Law, the public has a right to hear all discussion ensuing at the presentation of the case).

6. Continuances. The Board may, in its discretion, at any time during the hearing, continue the hearing to the next meeting date and request further information from either party.

7. Motions. When a Board member desires to make a motion before the Board for a finding that the Respondent has committed the alleged violations, that member should address the Chair and make a motion in substantially the following manner:

"Based upon the testimony and evidence presented, I move to find that violations of Sections ____ of the Leon County Code exist on the cited premises, that the Respondent has responsibility for the occurrence or presence of such violations, and that the Respondent has therefore committed the violation(s), allowing ____ days to bring the violation(s) into compliance as recommended by the County, and assessing a fine of \$__ per day for each day thereafter until Respondent brings the property into compliance."

Alternatively, the Board member may make a motion in this manner:

"I move the staff recommendation."

If the latter option is used, the Board member may add exceptions by referencing the specific paragraphs of the staff recommendation that the member wishes to amend.

At this stage the Chair should ask for a second to the motion. If there is a second, then the Board should discuss the motion. The Chair may recognize Board counsel or the prosecuting attorney if they request to advise the Board. Once discussion is complete the Chair should call for a vote on the motion.

If no member takes the initiative to make a motion, the Chair may suggest that "the Chair will entertain a motion." Failing a response, the Chair may request that the County repeat its recommendation, which may serve as a model for a motion. The Chair may also make a motion.

The following motions, in addition to the previously mentioned motion to find for the

County, may serve as models:

(a) TO FIND FOR THE RESPONDENT

"Based upon the testimony and evidence presented, I move to find the Respondent has not committed the alleged violation."

(b) TO CONTINUE THE CASE

"Based upon the testimony and evidence presented, I move to continue the case until the next public hearing of the Board."

(c) TO FIND A REPEAT VIOLATOR

"Based upon the testimony and evidence presented, I move to find the Respondent is a repeat violator of _____ of the County Code, and to assess a fine of \$_____ per day for each day the repeat violation has been shown to have continued beyond _____, the date of initial notice to Respondent, through such date as Respondent has brought the property into compliance."

(d) TO DISMISS FOR COMPLIANCE

"Based upon the representation by the County and the Respondent that a violation has occurred but has been corrected prior to this hearing in a manner consistent with the County Code, I move to dismiss this case for compliance."

(e) TO EXTEND TIME FOR COMPLIANCE

"Based upon the testimony and evidence presented, I move to find that the Respondent has shown reasonable and sufficient hardship requiring an extension of time within which to comply with the previous Order of this Board as entered on (date), and that the Board therefore grant Respondent an extension of time for compliance to the date of _____, after which the daily fine as set forth in the previous Order will be imposed for each day until the violation has been brought into compliance. The date expressed in this motion shall replace the due date listed in the prior Order of the Board."

(f) TO REDUCE FINE

"Based upon the evidence and testimony presented, I move to find that the Respondent has complied with this Board's Order of (date), as of (date), that Respondent has made a sufficient showing of reasonable effort to comply and sincere hardship endured in attempting to comply, and therefore that this Board reduce the accrued fine amount of \$__ to \$__, provided that such reduced sum be paid within___ days of the date of this order. If not paid within___ days of this Order as above mentioned, the fine amount shall revert to the sum otherwise due."

(g) TO RESCIND FINE

"Based upon the evidence and testimony presented, I move to find that Respondent has complied with this Board's Order of (date) as of (date), that Respondent has shown reasonable and good faith effort to comply and sufficient hardship endured in attempting to comply, and therefore that this Board rescind

the accrued fine and lien of \$ _____ in this case and file a satisfaction of lien in the public records."

VII. WRITTEN ORDER

The Violator is informed of the CEB's decision at the conclusion of the case, if present at the hearing, which will be followed up with a written order.

After the hearing, the Board Administrator prepares a written order on each case where a violation is found, which is signed by the CEB Chair or another CEB member acting as Chair. A copy of the Order is then mailed or delivered to the Respondent, and to the property owner(s), if different. A certified copy of the order is recorded in the public records of Leon County and thereafter constitutes notice to any subsequent purchasers, successors in interest or assigns concerning real property owned by the Respondent of the finding of violation and the potential for fine and lien. In the case of a repeat violation, a lien should also be filed in the public records simultaneously with the filing of the order or as soon thereafter as possible. The order will include this text:

Respondent has been found to be in violation of Section _____, Leon County Code (LCC). If at any time within the next five years, Respondent is found by the Board to have violated the same provisions of the LCC cited in this Order, either at the Subject Property or at any other location, any such new violation will be treated as a repeat violation. In accordance with Section 6-34, LCC, if the Board finds that a repeat violation has occurred, Respondent will be subject to a fine of up to \$500 per day to run from the date Respondent is provided notice of the repeat violation until it is resolved. If the Board finds the violation to be irreparable or irreversible in nature, it may impose a one-time fine not to exceed \$5,000.00 per violation.

VIII. POST-HEARING EXTENSION OF TIME

A Respondent who makes a good faith effort to achieve compliance but who encounters difficulties beyond the Respondent's control may contact the CEB through its Administrator prior to the ordered compliance date, and at least one week prior to any scheduled public hearing, to request an extension of time for compliance. The CEB will give due consideration to the request at its public hearing, and a notice of its action on the request will be provided thereafter to the Respondent. If the extension of time is granted, the new date will replace the compliance date listed in the order.

IX. COMPLIANCE AND ENFORCEMENT OF ORDERS

Unless specified otherwise in the order, the time for compliance begins to run from the date the written order is entered by the Board. It is the Respondent's responsibility to contact the Code Inspector to request a compliance inspection immediately upon the violation having been corrected in order to avoid accumulation of the fine imposed.

After an order has been issued by the Board with a scheduled date for compliance, the Code Inspector shall make an inspection to determine if the violation has been corrected as required.

Whenever possible, such inspection shall occur within seven (7) days of the date of request for compliance inspection by the violator, or, when no such request is made by the violator, within ten (10) days after the ordered date for compliance.

The Code Inspector shall issue an Affidavit of Compliance or Non-Compliance, as appropriate, after completing a compliance inspection as specified above. Such Affidavit shall be filed with the Board through the Board Administrator, and a copy shall be mailed to the violator, and to the property owner(s) if different.

In the event compliance is not achieved by the required date, the Board's previous order imposing a fine in a specific amount of up to \$250 per day for each day the violation continues shall automatically become effective, retroactive to the required compliance deadline date as established by the previous Board order on the case, and the Board Administrator shall request the Board to order that a Notice of Lien in favor of Leon County be filed in the public records as soon as possible. A copy of the notice of lien shall be furnished to the violator, and to the property owner(s) if different.

The Board shall hold hearings as necessary to ensure the effectiveness of any Order issued by the Board. Status reports on violator's progress towards meeting requirements of any Board Order shall be included as appropriate as part of old business at any regular meeting of the Board, until such time as compliance is achieved. Approximately three (3) months after filing of a lien, the existence of the First Notice of Possible Foreclosure Action Letter should be brought to the Board's attention by the Board Administrator. All existing liens should be brought to the Board's attention during the review and approval of the Board's Annual Report.

X. FINES AND FILING OF LIEN; FORECLOSURE

Upon receipt of Affidavit of Non-Compliance, the Board Administrator shall prepare a lien to secure the per day fine amount, which will accrue retroactively from the ordered compliance date. Maximum fines are \$250 per day per violation for a first offense, or \$500 per day per violation for a repeat offense. No additional hearing on the matter is required for imposition of the fine and filing of the lien, although the violator, and the property owner(s) if different, should be furnished with a copy of all filings. The fine amount continues to accrue each day until either:

1. the Violator notifies the Code Inspector, and the Code Inspector verifies that the violation has been corrected; or
2. a judgment is rendered in a suit to foreclose the lien imposed by the CEB order.

The County Attorney's Office may be directed by the CEB to file suit to foreclose an unpaid lien on property at any time after three (3) months, but within twenty (20) years, of the time the lien is filed. Issues such as the amount of the lien, homestead exemption, existing mortgages, and existence of

other liens are taken into consideration in determining whether to pursue foreclosure. If a fine is relatively small, or if the property is homestead, it may not be economically feasible for the County to pursue a lien by foreclosure. Liens should be filed to prevent transfer of the property without payment of the fine amount, even if the property is homestead or if for some other reason it would not be feasible to proceed with foreclosure.

When a lien on a non-homestead property has been filed for more than three months, the Board Administrator will bring the case to the CEB and request permission to send a letter advising the Respondent(s) that the property has not been found in compliance, that it has been more than three months since the lien was filed, and that the CEB has the authority to authorize the County Attorney's Office to start foreclosure procedures. This letter will include a deadline date for the Respondent(s) to contact the Board Administrator for a compliance inspection. If the Respondent(s) does not contact the Board Administrator by the deadline date, the Board Administrator will schedule a date for the CEB to consider foreclosure of the lien and will send a letter to the Respondent(s) informing them of the date the CEB will consider beginning foreclosure proceedings. After the CEB considers whether to begin foreclosure proceedings and the CEB recommends foreclosure of the lien, the County Attorney's Office will be authorized to begin foreclosure procedures.

XI. MISCELLANEOUS

1. Amendments. The Handbook may be amended in any manner not inconsistent with the County Code during a regular meeting by the affirmative vote of a majority of at least four (4) members of the Board, provided that notice of the proposed change is given to the Board at a preceding regular meeting.

2. Open Meetings. All meetings and all hearings shall be open to the public, in accordance with the provisions of Florida's "Sunshine Law," Chapter 286, Florida Statutes.

3. Public Records. All records of the Board shall be open to public examination and copying, in accordance with the provisions of the Florida "Public Records Law," Chapter 119, Florida Statutes.

4. Emergency Conditions. In the event of an emergency condition that has been acknowledged by emergency order entered pursuant to law by the Governor or Board of County Commissioners, the Board may alter the procedures set forth herein consistent with the terms of such emergency order and direction by the Board of County Commissioners.

XII. ATTORNEY GENERAL GUIDANCE

Attorney General Opinions with information pertaining to the workings of code enforcement boards are provided for informational purposes in Appendix 1.

XIII. GUIDE TO THE SUNSHINE AMENDMENT AND CODE OF ETHICS

A copy of the Ethics and the Sunshine Laws, published by the Florida Commission on Ethics, will be provided to each CEB member. As to government ethics and disclosure in particular, a provision for CEB members to note is Section 112.3143, Florida Statutes, which relates to voting conflicts. Provisions of that Section apply to CEB members, as appointees to a governmental quasi-judicial body, with regard to conflicts and their effect on a member's ability or choice to vote in particular cases. Information can also be found here: <http://cms.leoncountyfl.gov/committees/Training.asp>

XIV. FINANCIAL DISCLOSURE FORM

All members of the Code Enforcement Board are required to complete a yearly financial disclosure form provided by the Commission on Ethics. The filing deadline for the form is July 1st of each year. All forms must be filed with the Leon County Supervisor of Elections office.

If a member leaves prior to or after the member's term expires, a Final Statement of Financial Interests form, Form 1F, must be filed within 60 days after leaving.

Further information is available on the [Commission on Ethics](http://www.ethics.state.fl.us/) website: <http://www.ethics.state.fl.us/>

PART THREE

LEON COUNTY NUISANCE ABATEMENT BOARD

I. PURPOSE OF THE NUISANCE ABATEMENT BOARD AND PROCESS

The purpose of the Nuisance Abatement Board and of the process created to address nuisance abatement in Leon County is to promote, protect, and improve the health, safety, and welfare of the citizens of the County by creating an administrative board with the authority to determine whether a building or premises presents a serious and continuing danger to the public and/or occupants and enter an order allowing said nuisance to be abated by the County.

II. MEMBERSHIP, OFFICERS, TERM AND QUORUM

Members of the Code Enforcement Board serve as the members of the Nuisance Abatement Board. The terms of office of the members of the Nuisance Abatement Board coincide with the terms of office of the Code Enforcement Board. The Chair and Vice-Chair of the Code Enforcement Board serve as Chair and Vice-Chair of the Nuisance Abatement Board, respectively. Four or more members of the Nuisance Abatement Board physically present at any meeting shall constitute a quorum in order to conduct business.

III. PROVISIONS OF THE CODE ENFORCEMENT BOARD HANDBOOK ADOPTED BY REFERENCE

The provisions of the Code Enforcement Board Handbook listed below are adopted by reference for use by the Nuisance Abatement Board. Any references to the Code Enforcement Board in said rules shall be read to mean the Nuisance Abatement Board for purposes of this Section. If any conflict exists between the provisions adopted by reference and other portions of this Part Three, Part Three shall prevail.

- III. A. Officers and Duties
- III. C. 4. (d) Participation by Members Via Communications Media Technology
- III. C. 6. Voting
- III. C. 7. Abstention
- III. C. 8. Conduct of Business
- III. C. 9. Order of Business (to the extent applicable)
- IV. E. 1 and 2. Notice of Hearing and Participation by Communications Media Technology
- IV. G. Subpoenas
- XI. Miscellaneous

IV. POWERS OF THE NUISANCE ABATEMENT BOARD

The Nuisance Abatement Board has the power to: (1) Adopt rules for the conduct of the hearings it holds pursuant to Section 14-52, LCC; (2) Notice and/or subpoena Alleged Violators and witnesses to its hearings; (3) Take testimony under oath; and (4) Issue orders following a hearing, which orders shall have the force of law, including ordering the demolition of a dilapidated structure, the repair of a building to render the building safe, the removal of junk, litter, or junked or abandoned motor vehicles from premises, or the mowing or cutting of overgrowth on premises, should compliance not be achieved within the allotted time.

V. FUNCTIONS OF THE NUISANCE ABATEMENT BOARD

1. The Nuisance Abatement Board may consider cases that have an order from the Code Enforcement Board finding a violation of Sections 14-21, 14-31, 14-41, or 5-314, LCC, and remain in violation of the Code Enforcement Board's order. Appendix 2 provides a useful summary of the progression of a case from the Code Enforcement Board to the Nuisance Abatement Board and what happens afterwards.

2. The County may abate violations of Sections 14-21, 14-31, or 5-314, LCC, if the Nuisance Abatement Board determines that a building or premises presents a serious and continuing danger to the public and/or occupants. A building or premises presents a serious and continuing danger to the public and/or occupants when it is not safe. Factors evidencing a determination that a property is not safe may include, but are not limited to: unsecured or unsecurable dangerous conditions; a history

demonstrating the property owner's failure to exercise reasonable control over the property, to keep it secure or safe; a history showing that the property has become an attractive nuisance to children or transients; a history showing a proliferation of criminal activity due to dilapidated conditions and lack of management and control over the premises; a history showing that notwithstanding the reasonable efforts of code compliance staff and/or the code enforcement board, the property remains in a condition which is dangerous to the public health, safety and welfare.

3. The County may abate violations of Section 14-41, LCC, if the premises upon which the overgrowth exists is determined to be abandoned, and the Nuisance Abatement Board determines that the prohibited conditions at the premises present a serious and continuing danger to the public as set forth in Section 14-40, LCC. As used herein, the term "abandoned" means any premises that is not lawfully occupied or inhabited as evidenced by non-homestead status; overgrown and/or dead vegetation; nonpayment of taxes; electricity, water, or other utilities turned off or otherwise non-operational; stagnant swimming pool; statements by neighbors, passersby, delivery agents or government agents; or other conditions which would indicate that the property is not lawfully inhabited.

4. The burden is on the County to show by preponderance of the evidence that the building, premises, or overgrowth presents a serious and continuing danger to the public and/or occupants.

VI. NOTICE AND HEARING PROCEDURE

A. NOTICE

If a Code Inspector determines that a building or premises previously found to be in violation of Sections 14-21, 14-31, 14-41, or 5-314 , LCC, by the Code Enforcement Board remains in violation and believes it to present a serious and continuing danger to the public and/or occupants of the building, the Code Inspector shall notify the violator of the public nuisance and provide a reasonable time to abate the public nuisance. Should the violation continue beyond the reasonable time specified for abatement, the Code Inspector shall notify the Nuisance Abatement Board and request a hearing. The Nuisance Abatement Board, through its clerical staff, shall schedule a hearing, and notice of such hearing shall be as provided in Section 6-36 of the Leon County Code of Laws.

1. Notice of the public nuisance shall be provided to the owner and occupant and shall include:

- (a) A description of the public nuisance and the steps needed to be performed to abate the public nuisance;
- (b) A reasonable time for the violator to abate the public nuisance;

(c) That upon failure to abate the public nuisance as specified in the notice, the case may be referred to the Nuisance Abatement Board for a hearing;

(d) That the County may take all necessary steps to abate the public nuisance, including, but not limited to, the demolition of a dilapidated structure or the repair of the building to render it safe, the removal of junk, litter, or junked or abandoned motor vehicles from the premises, or the mowing or cutting of overgrowth at the premises;

(e) That the cost of any abatement action by the County will be imposed as a lien on the subject property and said lien may be subject to foreclosure.

2. Notice of the Nuisance Abatement Board hearing shall be provided to the owner and occupant and shall include:

(a) That the County may take all necessary steps to abate the public nuisance, including, but not limited to, the demolition of a dilapidated structure or the repair of the building to render it safe, the removal of junk, litter, or junked or abandoned motor vehicles, or the mowing or cutting of overgrowth;

(b) That the Nuisance Abatement Board has the power to order the property to be vacated;

(c) That the owner and occupant may participate by communications media technology as provided in Part III of the Nuisance Abatement Handbook.

3. If the County is seeking to demolish the public nuisance, such notice of the Nuisance Abatement Board hearing shall be served not only upon the property owner of record, but shall also be served upon mortgage holders and lien holders of record.

B. HEARING PROCEDURE

1. The Chair of the Nuisance Abatement Board may call Nuisance Abatement Board hearings and such hearings may also be called by a written notice signed by three members of the Nuisance Abatement Board. The Nuisance Abatement Board may, at any hearing, set a future hearing date.

2. The Nuisance Abatement Board shall convene as often as demand dictates.

3. Minutes shall be kept of all hearings held by the Nuisance Abatement Board and all such hearings shall be open to the public.

4. Each case before the Nuisance Abatement Board shall be presented by a representative of the County.

5. The County will provide legal counsel to the Nuisance Abatement Board, and in no case shall the County Attorney's staff present a case and represent the Nuisance Abatement Board in the same case. The attorney representing the Code Enforcement Board shall represent the Nuisance Abatement Board.

6. All cases scheduled for a particular day shall be heard. All testimony shall be under oath and shall be recorded. The Nuisance Abatement Board shall take testimony from the Code Inspector, the Alleged Violator and any other person familiar with the case and/or property or having knowledge about the case and/or property. The Nuisance Abatement Board shall not be bound by any formal rules of evidence; however, it shall act to ensure fundamental due process in each case brought before the Nuisance Abatement Board.

7. At the conclusion of the hearing, the Nuisance Abatement Board shall issue findings of fact based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those members present and voting, except that at least four members of the seven-member Nuisance Abatement Board must vote in order for the action to be official. The order shall indicate that it must be complied with by a specified date and, if the order is not complied with by such date, that the nuisance may be abated by the County and a lien may be imposed for the cost of the abatement pursuant to Section 14-54 of the Leon County Code of Laws.

8. A certified copy of such order may be recorded in the public records of the County and shall constitute notice to any subsequent purchasers, successors in interest, or assigns, and the findings therein shall be binding upon the violator and any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this Section and the order is complied with by the date specified in the order, the Nuisance Abatement Board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

9. In the event the owner fails to comply with the time set forth in the order issued by the Nuisance Abatement Board, the County may take such action as authorized by the Nuisance Abatement Board. A second hearing is not required if the Code Inspector files an affidavit of non-compliance with the Nuisance Abatement Board affirming that the order was not complied with by the specified date.

C. EXTENSION OF TIME

The Nuisance Abatement Board may grant an extension of time to comply with the order, if the owner has in good faith begun to comply with the order within the time set forth in the order. A request

for an extension of time shall be, in writing, and shall state the reasons the owner has been unable to fully comply. The owner requesting the extension of time must be present at the Nuisance Abatement Board public hearing considering the extension. Failure to appear at the Nuisance Abatement Board hearing may constitute forfeiture of the request for extension of time. Extensions of time shall total no more than one year from the date of the order.

D. PROCEDURE FOR VACATING BUILDINGS OR PREMISES; PENALTY

1. Notice to vacate a building or premises declared to be a serious and continuing danger to the public and/or occupants shall be in accordance with Section 6-36, LCC. The property shall be kept posted with the notice to vacate until the property is rendered safe.

2. Any person who fails to abide by the notice to vacate or tampers with the posted notice to vacate shall be punished as provided in Section 1-9 of the Leon County Code of Laws.

E. ABATEMENT BY THE COUNTY

The information provided in this Part E is for the information of the Nuisance Abatement Board. Section 14-54, LCC, provides for abatement by the County as follows:

1. The County and/or agents or contractors hired by the County shall be authorized to enter the subject property for the purpose of inspecting and abating the nuisance.

2. In the event the owner fails to comply with the order issued pursuant to Section 14-51, LCC, within the time fixed therein, the County, through the County Administrator or designee and/or agents or contractors hired by the County Administrator or designee, is authorized to abate the conditions at the expense of the property owner.

3. Upon having the nuisance abated, the County shall mail, by certified mail, return receipt requested, to the owner a notice of the cost of abating the conditions. If payment is not received within 30 days after the mailing of the notice of assessment for the work together with all costs of inspection and administration, the County may file a lien against the property for the actual cost of the work, inspection and administration costs, interest, plus reasonable attorney's fee, and other costs of collecting the sums. Nothing herein shall be construed to prevent the County from exercising its discretion to increase or decrease charges based on cost considerations, or utilizing means other than that contemplated in the notice provided for in this article, to abate the conditions violative of this chapter.

4. The lien shall be recorded in the public records and, thereafter, shall constitute a lien against the land on which the public nuisance existed. A lien arising from a fine imposed pursuant to this article runs in favor of the County, and the County may execute a satisfaction or release of lien entered pursuant to this Section. The County Attorney may foreclose on any lien that remains unpaid or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created

pursuant to the provisions of this Section may be foreclosed on real property which is a homestead under Section 4, Article X of the state constitution. The money judgment provisions of this Section shall not apply to real property or personal property which is covered under Section 4(a), Article X of the state constitution.

5. Making such repairs or abatement does not create a continuing obligation on the part of the County to make further repairs, abate, or to maintain the property and does not create any liability against the County for any damages to the property if such repairs or abatement were completed in good faith.

F. EMERGENCY SITUATIONS

1. If a public nuisance presents imminent peril to the public health or general welfare or immediate danger to the life or safety of any person, unless the public nuisance is immediately rendered safe or demolished, the County Administrator or designee may cause such building to be made safe or demolished, junk, litter, or junked or abandoned motor vehicles to be removed, or overgrowth to be mowed or cut, prior to a hearing before the Nuisance Abatement Board.

2. For this purpose, the County Administrator or designee and building official may at once enter such building or land to perform an inspection. Upon inspection, the County Administrator or designee and building official shall determine if the building requires immediate demolition or repair in order to maintain the safety and welfare of the owner, occupant, or public. A written report will document the results of the inspection and include photographs documenting the public nuisance when feasible.

3. If the County Administrator or designee determines there is sufficient time prior to demolition or repair action, a notice of intent to demolish or repair will be provided by certified mail, return receipt requested, hand delivery, or telephone to the owner and occupant. The County shall also notify any lien holders. Failure to perfect personal notice upon the owner, occupant, or lien holder shall not prevent the County from performing the emergency demolition, repairs, mowing, or removal and assessing a lien on the property.

4. All costs incurred during the inspection, vacation, securing and emergency demolitions, repairs, or removal are the responsibility of the property owner and shall constitute a lien on the property as set forth in Section 14-54, LCC.

5. The owner, occupant, or other interested parties may request a hearing with the Nuisance Abatement Board in writing, if the abatement action has not already occurred. The written notice for the request must include the requestor's contact information, including cellular phone number and electronic mail address. The hearing will be scheduled as soon as possible. Notice of the hearing

will be mailed to the owner, occupant, and any other interested parties at least five days prior to the hearing.

6. If no notice was sent prior to the abatement of the public nuisance, the Nuisance Abatement Board shall hear the case within a reasonable period of time. Notice advising of the County's actions and the Nuisance Abatement Board hearing shall be sent to the owner and lien holder, if any, of the property pursuant to Section 6-36, LCC.

VII. APPEALS

1. An aggrieved party and/or the County may appeal a final administrative order of the Nuisance Abatement Board to the circuit court by writ of certiorari. An appeal shall be filed within 15 days of the entry of the order to be appealed. As used in this Section, the term "aggrieved party" means a person who possesses a present legal right of present or future enjoyment of the property by virtue of a deed, title, mortgage, fully executed contract for purchase, lien on estate in the property, judgment of court, being named a beneficiary in a will or trust of a deceased owner or the legal spouse of the property owner.

2. The filing of an appeal stays the order of the Nuisance Abatement Board until the appeal is resolved unless the building or premises presents imminent peril to the public health or general welfare or presents immediate danger to the life or safety of any person.

APPENDIX 1

ATTORNEY GENERAL GUIDANCE

Several Attorney General Opinions have been issued over the years that are of interest to the topic of Code Enforcement. For instance, Attorney General Opinions have provided that the procedures set forth in Chapter 162, Florida Statutes, are the exclusive method for enforcing local codes and ordinances. (AGO 85-17 and AGO 85-84). Section 162.09, Florida Statutes, sets forth the exclusive procedure to be followed for administrative fines and liens. The Section contains no provision for the establishment of a "schedule" of fines for particular offenses.

Section 162.09, Florida Statutes, provides in part:

- (2)(b) in determining the amount of the fine, if any, the enforcement board shall consider the following factors:
1. The gravity of the violation;
 2. Any actions taken by the violator to correct the violation; and
 3. Any previous violations committed by the violator.

The word "shall" has been statutorily interpreted to mean mandatory. Therefore, the three criteria provided in Section 162.09(2), Florida Statutes, are mandatory criteria. There is no discussion of other guidelines or setting a schedule of fines in the statute.

Section 162.08, Florida Statutes, sets forth the powers of the Code Enforcement Board. None of these powers include the establishment of a schedule of fines or guidelines for determining fines. However, this does not mean that fines should be set arbitrarily. The three criteria in Section 162.09, Florida Statutes, do provide some general guidelines to be used on a case by case basis.

Also, the CEB should keep in mind that if cases in their entirety are factually very similar, including the Respondent's own history as to past code violations, then there should be some consistency in the fines applied. A suggestion was made at a November, 1988 CEB workshop that statistics might be developed to show what fines had been applied in the past for particular violations. A review of the Attorney General Opinions [AGO 85-84 (10125/85)] indicates that use of such statistical data is not recommended, because it could be viewed as an inappropriate "schedule" of fines unless all facts of each case are given with the statistics. A summary of Attorney General Opinions relating to various topics of interest follows below.

A. AGO 84-55: IMPOSITION OF FEES AND/OR COSTS

QUESTION: May a local government that has established a local CEB pursuant to Chapter 162,

Florida Statutes, require that the CEB impose an administrative charge or fee on individuals, businesses or other entities found to have committed a violation of one or more of the government's technical codes?

ANSWER: A local governmental body may not by ordinance authorize or require that a CEB impose an administrative charge or fee on individuals, businesses or other entities found to have violated one or more of that government's technical codes.

B. AGO 85-17: FINES AND LIENS

QUESTION 1: May a CEB refuse to extinguish a lien against property cited and fined for a violation of an ordinance where the fine imposed by the CEB has been paid but the property remains in noncompliance?

ANSWER: A CEB is not authorized to refuse to extinguish a lien against property cited and fined for a violation of an ordinance where the fine amount which has been imposed by lien has been paid, even though the property remains in noncompliance. [NOTE: The Legislature amended Chapter 162 in 1989 to provide that fines shall continue to accrue, and the corresponding lien shall continue to exist, until the violator comes into compliance or until a judgment is rendered in a suit to foreclose. This amended language appears to eliminate any possibility of a violator "extinguishing" a lien by payment prior to bringing the property into compliance.]

QUESTION 2: May a CEB levy a fine against a person who is cited for a code violation but who brings the property into compliance before the case is heard?

ANSWER: A CEB may not levy a fine against a person who is cited by who brings the property into compliance prior to the case being presented to the CEB. [NOTE: This restriction does not apply to repeat violations, which may be fined retroactively for the days the repeat violation existed, even if the violation is brought into compliance prior to CEB hearing. See AGO 86-76 and 1989 Amendments to Chapter 162, Florida Statutes.]

QUESTION 3: Is a CEB authorized to impose an initial fine on a violator based solely on its finding that a violation has occurred and before the CEB has actually ordered compliance and before the compliance period has expired?

ANSWER: A CEB possesses no authority to impose an initial fine on a violator based solely on its finding that a violation has occurred and before the board has actually ordered compliance and the compliance period has expired. [NOTE: This restriction does not apply as to repeat violations. See AGO 86-76 and 1989 Amendments to Chapter 162. Florida Statutes.]

C. AGO 85-26: HOMESTEAD PROPERTY

SUMMARY: A CEB lien is not enforceable against homestead property by foreclosure. The liens created pursuant to Section 162.09, F.S., are neither a "tax" nor an "assessment" within the constitutional meaning of those terms.

NOTE: Although the County cannot foreclose against homestead property, it can preserve its lien for a longer time period (prior to automatic extinguishment 20 years after filing of the lien) by obtaining a

final judgment against the owner and the property. Then if the homestead property were sold, the County would become a judgment creditor and the judgment would have to be paid before clear title could pass to the purchaser.

D. AGO 85-27: REQUESTS FOR REHEARING

QUESTION: May a CEB grant a violator a rehearing after entry of an order finding a violation and ordering corrective action and, if so, what is the time limit for such rehearing request?

ANSWER: A CEB has the authority to rehear or reconsider a matter which is the subject of one of its orders, and to modify its order if necessary. Such rehearing or reconsideration request must be made before an appeal has been taken as provided in Section 162. 11, F.S., and before the 30-day time period provided by that statute for taking an appeal to the circuit court has expired. A local governing body has no power to remove or restrict the right of a CEB to rehear or reconsider a matter, or to set by ordinance the time period for the rehearing application other than as provided in Chapter 162, F.S.

E. AGO 85-33: MAJORITY VOTE; INTERMITTENT CODE VIOLATION; COMMUNITY SERVICE AS A PENALTY; FINES

QUESTION 1: May a CEB take action on the affirmative vote of three members where only four members are present and voting?

ANSWER 1: Yes.

QUESTION 2: In the case of an intermittent code violation, what authority does a CEB have to provide that:

- (a) A fine shall be assessed for each day that a Code Inspector observes noncompliance, even though compliance may be observed on other days?
- (b) Upon future determination by a Code Inspector that a violation exists, notice shall be given to the violator by posting on property or by certified mail that the violation is presumed to continue until proof is given to the Code Inspector that the violation has ceased?
- (c) A fine shall be assessed in the event of future noncompliance, even though at the time of such provision by the board the violator has come into compliance?

ANSWER: A CEB has no authority to take action with respect to an intermittent code violation unless the Code Inspector initiates proceedings, and the CEB determines at a hearing, that such violation has not been brought into compliance at the time of the hearing. Moreover, a CEB has no authority to delegate the power to assess a fine for noncompliance to a Code Inspector, nor to establish any presumptions relative thereto, and may levy a fine against a violator only pursuant to the provisions of Section 162.09, Florida Statutes. [Note: But see AGO 86-76, Question/Answer 2, relating to repeat violations, and 1989 Amendments to Chapter 162, Florida Statutes, allowing quicker imposition of fine on repeat violations.]

QUESTION 3: May a CEB require community service rather than payment of a monetary fine as a method of assuring continued compliance?

ANSWER: In the absence of any provision of law authorizing a CEB to impose a penalty other than the fine provided for in Section 162.09, F.S., such a board may not require community service rather than payment of the monetary fine prescribed by Section 162.09, F.S., as a method of assuring

continued compliance with applicable codes.

NOTE: Although "community service" may not be required by CEB order, there appears to be authority to order other mitigation-related measures specifically relating to the environmental damage done to a site, which may benefit the public (such as providing seedling trees for replacement), pursuant to the language of Chapter 162, F.S., and Leon County's ordinances.

QUESTION 4: What flexibility does a CEB have under Chapter 162, F.S., in assessing one fine for noncompliance during a brief period after the order is given, and then no fine or a lesser fine for another period of time?

ANSWER: A CEB has no flexibility to assess one fine for noncompliance during a brief period after the order is given, and then no fine or a lesser fine for another period of time.

QUESTION 5: Where a person is found to have been in violation, but to have corrected the violation by the time of the hearing before the CEB, may a fine or an administrative fee be assessed for the past violation?

ANSWER: A CEB has no authority to assess any fine or administrative fee for a violation which has been corrected by the time of the hearing of the board.

NOTE: There is an exception in the current statute and local ordinance for assessing fines for violations that have been corrected at the time of hearing where the violation is found not only to have occurred but to have been a repeat of a violation for which an order has previously been entered against the violator. In case of a repeat violation, fine may be imposed retroactively for days the violation is shown to have existed subsequent to the date of the Code Inspector's initial notice of violation even though the violation has been corrected at the time of hearing.

F. AGO 85-84: REPEAT VIOLATIONS; CONSENT AGREEMENTS; NOTICE

QUESTION 1: Is a CEB authorized after an initial hearing to issue an order demanding compliance with a code provision within some set period, whereby said order specifically requires that if the violator is in noncompliance, either at the conclusion of the 30 day period or at any time within 1 year or other reasonable time period from the date of the CEB's original order, then the CEB shall meet again to certify a fine for the time period during which the violator was in noncompliance with the CEB's prior order?

ANSWER: A CEB must find that the same violation has been repeated by the same violator before it may impose a fine for each day the repeated violation continued. (NOTE: But see AGO 86-76, Question/Answer 2, discussing 1986 amendments to Chapter 162, Florida Statutes, which allows fine for repeal violation without additional hearing; See also 1989 Amendments to ,Chapter 162, Florida Statutes.)

QUESTION 2: May a CEB establish a plan involving a schedule of fines for particular offenses which a violator of a code provision may consent to pay to avoid the initial hearing before the code enforcement board?

ANSWER: A CEB is not authorized to establish a plan involving a schedule of fines for particular offenses whereby a violator of a code provision may consent to pay a designated fine in order to avoid

the initial hearing before the board.

QUESTION 3: Is a CEB authorized to post or publish notices required by Chapter 162, F.S., where the methods specified in the act are impossible or impractical?

ANSWER: A CEB may not authorize an alternative method of delivering notice than that prescribed in Chapter 162, F.S., as amended. [NOTE: 1989 Amendments to Chapter 162, Florida Statutes, allow alternative service methods where regular notice methods are impossible under circumstances as specified.]

G. AGO 86-10: LIENS; FINES

SUMMARY: A CEB is not authorized to provide for the continued running of a fine against a property owner for noncompliance after the lien has been recorded, nor may a particular lien be amended to add additional fines. [NOTE: 1989 Amendments to Chapter 162, Florida Statutes, provide that fines continue to accrue, even after lien is filed, until the property is brought into compliance or until a judgment is rendered in a suit of foreclose such a lien.]

H. AGO 86-76: SETTING FINES; NOTICE

QUESTION 1: May a CEB set fine for noncompliance at the time an order is entered requiring compliance with an ordinance within some specified period?

ANSWER: No. The initial order should set forth required remedial action to achieve compliance, with some specified time within which compliance must result, and should include notice that CEB may order a fine to be imposed upon the violator for each day noncompliance continues beyond the ordered compliance date. If the Code Inspector later notifies CEB by affidavit that the order has not been complied with, CEB may then issue another order setting a per day fine amount, retroactive from the originally required compliance date, without further hearing being required. [NOTE: The fine amount may be set, retroactive from the date of the Code Inspector's notice of a repeat violation to the violator, in the initial order all a repeat violation, as set forth in 1989 Amendments to Chapter 162, Florida Statutes.]

QUESTION 2: May a CEB at the time an order is entered requiring compliance set a fine for any subsequent repeat violation by the violator?

ANSWER: As discussed in the preceding question, two orders are necessary --one setting a required compliance date, and another setting the per day fine amount for a violation a Code Inspector reports as remaining unremedied by the date set by a CEB order for compliance. However, a second hearing is not necessary as a precedent to the second order, and upon notification to CEB that, although the violation was corrected within the time specified, the violation has been repeated, the CEB may order the violator to pay a fine up to \$500 per day for each repeated occurrence of the violations without additional hearing. [NOTE: 1986 Amendments to 162.09 lead to this result, which is a change from previous AG opinion requiring separate hearing as to each alleged repeat violation. But see 1989 Amendments, which allow a retroactive fine of up to \$500 per day in the initial CEB order, after hearing, on a repeat violation.]

QUESTION 3: May proper service of notice of CEB hearing be obtained by posting the property where

the violation occurs and by posting said notice in a conspicuous place in City Hall at least five (5) days prior to the hearing date if methods of service set forth in Section 162.12, Florida Statutes (certified mail or hand-delivery by Code Inspector), have failed?

ANSWER: No; the statute does not authorize notice to be served by posting as an alternative service method. However, the amended statute does permit the sheriff or other law enforcement officer or other person designated by the local governing body, in addition to the Code Inspector, to serve the notice. [NOTE: The Legislature amended Section 162.12, Florida Statutes, in 1989 to provide for alternative methods of service (i.e. posting and/or publication) where warranted under the circumstances of a case.]

I. AGO 87-24: CEB ALTERNATE MEMBER APPOINTMENTS

QUESTION: May a local governing body appoint one or more individuals to serve as alternate members of CEB, in addition to the Board's seven regular members?

ANSWER: No, there is no authority under Chapter 162, Florida Statutes, for appointment of alternate CEB members. [NOTE: Chapter 162, Florida Statutes, was amended in 1989 to specifically provide for appointment of up to two alternate CEB members.]

J. AGO 88-36: AGGREGATION OF SEPARATE PROPERTIES INTO SINGLE CEB ACTION: NOTICE TO OWNERS

QUESTION 1: May properties with different physical locations/addresses, but owned by one owner, be aggregated into one action for a code violation hearing pursuant to Chapter 162, Florida Statutes?

ANSWER: No. Chapter 162 appears to contemplate that each code violation will be treated as a separate cause of action to be considered by the CEB, and does not authorize consolidation of all properties with violations owned by one person into a single action.

QUESTION 2: If property is held jointly or by two or more persons, should notification and service required by Sections 162.06 and 162.12, Florida Statutes, be achieved as to all persons owning an interest in such property?

ANSWER: Chapter 162, Florida Statutes, requires notice to be given to the violator of an ordinance. In the absence of any legislative or judicial direction otherwise, the Attorney General cannot conclude that written notice of a violation should be given to all persons owning an interest in property upon which a violation has occurred. [NOTE: In the sense that all property owners can be considered "violators" under Leon County Code provisions, and to ensure that liens filed are not subjected to challenge, it is recommended that all record owners of a parcel in violation be provided with notice as to CEB actions. In addition, 1989 Amendments to Chapter 162, Florida Statutes, provide for filing of initial CEB orders on violations in the public records to provide notice to all subsequent owners or other persons interested in property owned by a violator.]

K. AGO 88-62: CEB MEMBERS ABSTAINING FROM VOTE: ATTENDANCE REQUIREMENTS

QUESTION 1: May a CEB member disqualify himself from considering a matter before the CEB, pursuant to Chapter 38, Florida Statutes, and if not, is there any basis for disqualification for the reasons

set forth in Chapter 38?

ANSWER: A CEB member may not disqualify himself from considering a matter pursuant to Chapter 38, Florida Statutes (relating to disqualification of judges). If the CEB adopts rules relating to the conduct of meetings, such rules must conform to Section 286.012, Florida Statutes, which requires a CEB member to vote regarding any official act to be taken or adopted at a CEB meeting unless there appears to be a conflict of interest pursuant to Sections 112.311, 112.313, or 112.3143, Florida Statutes, in which case the member shall comply with disclosure requirements of Section 112.3143, Florida Statutes. Any question as to what constitutes a "conflict of interest" as used in Chapter 112, Florida Statutes, must be submitted to the Florida Commission on Ethics.

QUESTION 2: Are the provisions of Section 162.05(1), Florida Statutes, regarding absence from 2 of 3 consecutive meetings, applicable to regular meetings only?

ANSWER: The provisions of Section 162.05(1), Florida Statutes, apply to all meetings of the CEB, in the absence of a legislative or judicial determination otherwise. Nothing in the language of Section 162.05(1), Florida Statutes, defines or limits the term "meetings" to particular types of meetings of the CEB.

L. AGO 91-28: FORECLOSING ON A CEB LIEN

SUMMARY: An opinion by the Attorney General's Office (AGO 91-28) expressing the opinion that local governments are authorized to recover all costs incurred in foreclosing on a code enforcement board lien; and, that Section 170.10, Florida Statutes, authorizes a local government to foreclose against a property owner for unpaid special assessments and to include legal costs incurred in such a foreclosure.

APPENDIX 2

Description of the Progression of a Case from the Code Enforcement Board to the Nuisance Abatement Board and What Happens Afterwards

1. When a case is heard by the Code Enforcement Board and the Respondent is found in violation, the Respondent is notified and advised to correct the violation within a specified timeframe.
2. If the Respondent fails to comply by the ordered deadline date, an Order Imposing Fine is filed against the Respondent and a daily fine will begin to accrue.
3. A follow up site inspection is conducted and the Code Inspector determines whether the conditions observed indicate the building or premises may present a serious and continuing danger to the public or occupants. Inspections are conducted within a reasonable time.
4. If the Code Inspector concludes that the conditions may present a serious and continuing danger to the public or occupants, a Notice of Public Nuisance is mailed to the owner by certified mail, return receipt requested; establishing a timeframe by which compliance is to be obtained.
5. If the owner fails to comply within the established time frame, the case is referred to the Nuisance Abatement Board. Notice of Hearing is sent to the owner by certified mail, return receipt requested.
6. If seeking to demolish a structure, a title/lien search is conducted to determine if there are any lien holders. A Notice of Hearing is mailed to any lien holders by certified mail, return receipt requested.
7. The case is then heard by the Nuisance Abatement Board, which may find a present a serious and continuing danger to the public's health, safety, and welfare, including any occupants of the property. If such a finding is made, the Respondent is notified and advised to correct the nuisance within a specified timeframe.
8. If the owner fails to comply by the ordered deadline date, staff takes steps to hire a contractor to abate the property as authorized by the Nuisance Abatement Board. If the abatement involves demolishing of a structure, a Notice to Vacate is posted at the property and mailed to the Respondent.
9. Quotes outlining the costs to abate are obtained from 3 contractors (approved by County).
10. The approved contractor takes necessary steps to bring the property into compliance. These steps may vary based by case type (i.e., building, junk and mowing).

11. Once compliance is obtained, a Notice of Abatement Costs is mailed to the Respondent by certified mail, return receipt requested.

12. If payment is not received within 30 days after the mailing of the Notice of Abatement Costs, a lien is filed against the property for all costs associated with the abatement.

Appendix 3 Subpoena Forms

**LEON COUNTY CODE ENFORCEMENT BOARD
Subpoena/Subpoena Duces Tecum**

Leon County,)
Petitioner,)
vs.)
_____,)
Respondent)
_____ /

TO: _____
ADDRESS: _____

YOU ARE SUMMONED TO APPEAR IN PERSON OR BY COMMUNICATIONS MEDIA TECHNOLOGY BEFORE THE LEON COUNTY CODE ENFORCEMENT BOARD AT:

DATE: _____ **TIME:** _____

LOCATION IF APPEARING IN PERSON:
Renaissance Center, 2nd Floor
435 N. Macomb Street
Tallahassee, FL 32301

IF APPEARING BY COMMUNICATIONS MEDIA TECHNOLOGY (Zoom or similar): Request a meeting link from the Code Compliance Supervisor via email within 24 hours of receipt of the subpoena/subpoena duces tecum. You must ensure that you have both video and audio capabilities adequate to be clearly heard and seen by the Board. The link will be emailed to you before the hearing.

Send your request for a link to the Code Compliance Supervisor at: _____.

FOR SUBPOENA DUCES TECUM:

If a list of requested information appears below, you will need to submit said documentation in person or in PDF format via email to the Code Compliance Supervisor at least 24 hours before the hearing.

Documentation to be submitted:

None required

WITNESS my hand and seal of the Code Enforcement Board this ____ day of _____, 20__.

Chair

Note: Only the Code Enforcement Board may release you from this subpoena/subpoena duces tecum. Inquiries regarding your obligations under this subpoena/subpoena duces tecum may be directed to the Code Compliance Supervisor at the email address set forth above or via telephone at: (850) 606-1300.

This subpoena/subpoena duces tecum was requested by: _____

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this proceeding should contact the Code Compliance Supervisor at least 24 hours before the scheduled hearing.

LEON COUNTY NUISANCE ABATEMENT BOARD
Subpoena/Subpoena Duces Tecum

Leon County,)
 Petitioner,)
vs.)
_____,)
 Respondent)
_____ /

TO: _____
ADDRESS: _____

YOU ARE SUMMONED TO APPEAR IN PERSON OR BY COMMUNICATIONS MEDIA TECHNOLOGY BEFORE THE LEON COUNTY NUISANCE ABATEMENT BOARD AT:

DATE: _____ **TIME:** _____

LOCATION IF APPEARING IN PERSON:
Renaissance Center, 2nd Floor
435 N. Macomb Street
Tallahassee, FL 32301

IF APPEARING BY COMMUNICATIONS MEDIA TECHNOLOGY (Zoom or similar): Request a meeting link from the Code Compliance Supervisor via email within 24 hours of receipt of the subpoena/subpoena duces tecum. You must ensure that you have both video and audio capabilities adequate to be clearly heard and seen by the Board. The link will be emailed to you before the hearing.

Send your request for a link to the Code Compliance Supervisor at: _____.

FOR SUBPOENA DUCES TECUM:

If a list of requested information appears below, you will need to submit said documentation in person or in PDF format via email to the Code Compliance Supervisor at least 24 hours before the hearing.

Documentation to be submitted:

None required

WITNESS my hand and seal of the Nuisance Abatement Board this ____ day of _____, 20__.

Chair

Note: Only the Nuisance Abatement Board may release you from this subpoena/subpoena duces tecum. Inquiries regarding your obligations under this subpoena/subpoena duces tecum may be directed to the Code Compliance Supervisor at the email address set forth above or via telephone at: (850) 606-1300.

This subpoena/subpoena duces tecum was requested by: _____

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this proceeding should contact the Code Compliance Supervisor at least 24 hours before the scheduled hearing.