ARTICLE III. LITTER*

***Cross references:** Litter enforcement officers, § 30-4; solid waste, ch. 90.
State law references: Florida litter law, F.S. § 403.413.

DIVISION 1. GENERALLY

Sec. 46-91. Unfinished, vacant, unoccupied or closed structures, construction sites or vacant lots; maintenance procedures required of owners.
(a) All owners of unfinished, vacant, unoccupied, closed or unfinished structures or buildings, construction sites or any other vacant lots shall comply with rules and regulations relating to such structures or buildings, construction sites or vacant lots as promulgated by the building official. These rules and regulations shall specify those actions and time limits within which owners shall beautify, secure and/or patrol their structures or buildings.
(b) Noncompliance with this section shall be punishable in a manner as provided in section 1-14. Noncompliance with this section may result in the city's taking such action as it deems appropriate under the circumstances, and a lien shall be imposed against the structure or building for recovery of all costs involved.
(c) If the owners or occupants of such lands within the city shall fail to comply with the requirements of this section, the city manager shall cause such work to be done and keep an account of the cost thereof, whereupon such cost shall be a charge and lien against the property so cleaned. Such existing liens or liens imposed hereafter shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved; the maximum rate of interest allowable by law shall accrue to such delinquent accounts. Such liens shall be enforced by any of the methods provided in F.S. ch. 86; or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions applicable to practice, pleading and procedure for the foreclosure of mortgages on real estate set forth in state statutes, or may be foreclosed per F.S. ch. 173, or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. The owner and/or operator shall pay all costs of collection, including reasonable attorney fees, incurred in the collection of fees, service charges, penalties and liens imposed by virtue of this article.
(Code 1964, §§ 25-92, 25-93)

Sec. 46-92. Prohibitions on litter; possession of glass or metal containers on beaches unlawful; sweeping or throwing litter in gutters; garbage containers required for take-out restaurants; rebuttable presumptions; civil fines for violations; seizure; removal; definitions; enforcement; appeals; liens.
(a) It shall be unlawful for any person or benefactor to throw, discard, place or deposit, or cause to be thrown, discarded, placed, or deposited, litter in any manner or amount

whatsoever in or on any public highway, sidewalk, road, street, alley, thoroughfare, beach, park, baywalk, beachwalk, cutwalk, or any other public place, except in containers or areas lawfully provided therefor. It shall be unlawful for any person to throw, discard, place or deposit any garbage, cans, bottles or containers in or on any freshwater lakes, rivers, streams, canals, or tidal or coastal waters within the city. In addition, it shall be unlawful for any person to throw, discard, place or deposit litter in any manner or amount whatsoever on any private real or personal property, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local laws, rules or regulations.

(b) It shall be unlawful for any person to carry onto any beach within the city a glass or metal bottle or other glass or metal container.

(c) It shall be unlawful for any person to sweep, cast or throw, or cause to be cast or thrown, into any of the gutters, drains or sewers within the city any garbage, litter, paper, handbill, trash, tree or grass cuttings or other objects or substances.

(d) All restaurants with take-out service shall have up to four garbage containers, as need requires, based on the determination of the city manager or his designee. The containers shall be located in front of and within 50 feet in each direction of the premises at locations approved by the city manager or his designee. These containers shall be kept in clean and sanitary condition at all times and shall be emptied daily or more frequently if necessary to prevent overflowing. The garbage containers required by this section are in addition to those required by chapter 90 of this Code.

(e) The following civil fines shall be imposed for violations of this section except as provided in subsections (f) below.

(1) First offense, $50.00 fine.

(2) Second offense, $100.00 fine.

(3) Third offense, $500.00 fine.

In lieu of a fine, the special master may accept voluntary community service removing litter in the city equivalent to one hour of community service for each $5.00 of an imposed fine. If the community service is not completed within six months of an adjudication of guilt, the fine shall be reinstated.

(f) If a violation of this section resulted from the throwing, discarding, placing, or depositing, or causing to be thrown, discarded, placed, or deposited, of commercial handbills as litter, then the following civil fines shall be imposed. The special master shall not have discretion to alter these prescribed penalties except as to the per handbill fine of $50.00 provided in (f)(1).

(1) If the offense is the first offense, $100.00 fine plus $50.00 per handbill;

(2) If the offense is the second offense within the preceding 12 months, $500.00 fine plus $50.00 per handbill;

(3) If the offense is the third or subsequent offense within the preceding 12 months, $1,500.00 fine plus $50.00 per handbill.

(4) Notwithstanding subsections (f)(1)--(3), no person or benefactor shall receive more than one offense within any one-day period, however, the $50.00 per handbill fine shall apply to all littered handbills found during that one-day period.

(g) At any prosecution for violation of this section when the litter involved is a commercial handbill, if ten or more commercial handbills advertising the same business are found in plain view as litter under circumstances that make it more likely than not that

the commercial handbills were placed there, or caused to be placed there, by an agent, employee, contractor, promoter, or other representative of the business advertised on the face of the commercial handbills, the special master shall apply a rebuttable presumption that the business advertised on the face of the handbills threw, discarded, placed or deposited the commercial handbills as litter.

(h) If a person is found littering with commercial handbills, the code compliance officer is authorized to seize, for use as evidence in the prosecution of the violator before the special master, all commercial handbills in the possession of the violator.

(i) The city may cause the removal, at the violator's expense, of all litter distributed or placed in violation of this section.

(j) Definitions:

(1) *Benefactor* means the owner of the business advertised in the commercial handbill whose agent, employee, contractor, promoter, or other representative did or caused the throwing, discarding, placing or depositing.

(2) *Business* means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.

(3) *Handbill* means any handbill, flyer, paper, document, dodger, circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter or object that conveys any information, except that "handbill" shall not include a newspaper or its contents.

(4) *Commercial handbill* means any handbill that conveys any information about any good or service provided by a business.

(5) *Litter* means any paper, handbill, commercial handbill, garbage, bottle caps, chewing gum, tobacco products, including, but not limited to, used and unused cigarettes, cigars, pipe or chewing tobacco, or other waste that has been placed or deposited on a public sidewalk, street, road, avenue, beach, swale, median, building, fence, wall, boardwalk, beachwalk, baywalk, cutwalk, park, or any other public place, or on any object located on public property, or on the kneewall, window ledge or sill of any public or private building, or on a motor vehicle, or on any other type of private real or personal property. Handbills and commercial handbills attached to a trash receptacle, but not within the trash receptacle in the usual manner, shall also be considered litter.

(6) *One day* means a 24-hour period from noon to noon.

(7) *Person, benefactor,* or *owner* include, within their respective meanings, either an individual or an entity.

(k) Enforcement by code compliance officers; notice of violation. If a code compliance officer finds a violation of this article, such code compliance officer shall issue a notice of violation to the violator as provided in chapter 30. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within 20 days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to a hearing.

(l) Rights of violators; payment of fine; right to appeal; failure to pay civil fine or to appeal.

(1) A violator who has been served with a notice of violation shall elect either to:

a. Pay the civil fine in the manner indicated on the notice; or
b. Request an administrative hearing before a special master appointed by the city commission upon recommendation of the city manager to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation.
(2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 102-384 and 102-385 of the City Code.
(3) If the named violator after notice fails to pay the civil fine or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violators right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.
(4) Any party aggrieved by the decision of the special master may appeal the decision in accordance with law.
(m) Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.
(1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
(2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.
(n) Nothing in this article shall limit or restrict any condition or limitation imposed by the planning board.
(o) Injunctive relief. As an additional means of enforcement, the city may seek injunctive relief and/or follow procedures to revoke a business tax receipt and/or certificate of use as set forth in chapters 14, 18 and 102 of the City Code when there are more than three offenses by the same violator within a calendar year.
(Code 1964, § 3-7; Ord. No. 94-2913, § 1(3-7), 3-16-94; Ord. No. 2007-3560, § 1, 6-6-07; Ord. No. 2009-3644, § 1, 7-15-09)
Cross references: Public property, ch. 82; beaches generally, § 82-436 et seq.
Secs. 46-93--46-115. Reserved.