

# CHAPTER 6: LOCAL GOVERNMENT ENFORCEMENT BOARD

Section

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1. Each municipality may, at its option, create or abolish by ordinance local government code enforcement boards.
2. A municipality may, by ordinance, adopt an alternate code enforcement system which gives code enforcement boards the authority to hold hearings and assess fines against violators of the municipal codes and ordinances.
3. **Definitions.**
  - A. **Code Inspector.** Any authorized agent or employee of the municipality whose duty it is to assure code compliance.
  - B. **Municipal Codes and Ordinances.** Zoning ordinances and resolutions, ordinances and resolutions enacting subdivision regulations, environmental ordinances and resolutions, state minimum standard codes provided for in O.C.G.A. § 8-2-25, ordinances and resolutions enacted pursuant to O.C.G.A. § 8-2-25, other ordinances and resolutions regulating the development of real property, and ordinances and regulations providing for control of litter and debris, control of junked or abandoned vehicles, and control of overgrown vegetation. Notwithstanding the above, the term municipal codes and ordinances shall not include:
    - (1) Those codes and ordinances requiring a permit, unless the alleged violator has failed to secure all necessary valid permits under said codes and ordinances; or
    - (2) Any local amendments to the state minimum standard codes provided for in O.C.G.A. § 8-2-25 that have not been adopted in conformity with the requirements of subsection (c) of O.C.G.A. § 8-2-25.
  - C. **Enforcement Board.** A local government code enforcement board.
  - D. **Local Governing Body.** The governing authority of the municipality, however designated.
  - E. **Local Governing Body Attorney.** The legal counselor for the municipality.
  - F. **Violation Involving the Health or Safety of a Third Party.** A violation that creates a legitimate concern for the health and safety of a third party occupant of a dwelling place or that creates an immediate and substantial danger to the environment.
4. The Mayor and Council may appoint one (1) or more code enforcement boards and legal counsel for the enforcement boards. The Mayor and Council may appoint code enforcement boards consisting of three (3), five (5), or seven (7) members. The Mayor and Council may appoint up to two (2) alternate members for each code enforcement board to serve on the board in the absence of board members.
5. Members of the enforcement boards shall be residents of the municipality. In making appointments to an enforcement board, the Mayor and Council shall make good faith efforts to appoint one or more individuals who have experience or expertise relevant to one or more of the municipal codes that are within the subject matter jurisdiction of the respective enforcement board, including individuals with property management and litter control experience; provided, however, that the authority and jurisdiction of an enforcement board shall not in any way be limited due to the absence from its membership of one or more individuals with such experience or expertise.
  - A. The initial appointments to a seven (7) member code enforcement board shall be as follows:
    - (1) Three (3) members appointed for a term of two (2) years each; and
    - (2) Four (4) members appointed for a term of four (4) years each.
  - B. The initial appointments to a five-member code enforcement board shall be as follows:
    - (1) Two (2) members appointed for a term of two (2) years each; and
    - (2) Three (3) members appointed for a term of four (4) years each.

- C.** The initial appointments to a three (3) member code enforcement board shall be as follows:

  - (1) One (1) member appointed for a term of two (2) years; and
  - (2) Two (2) members appointed for a term of four (4) years each.
- D.** Upon the expiration of the initial terms specified in paragraphs (A), (B), and (C) all terms shall be for three (3) years.
- E.** The Mayor and Council may reduce a seven (7) member code enforcement board to five (5) members, upon the simultaneous expiration of the terms of office of two (2) members of the board.
- F.** A member may be reappointed upon approval of the Mayor and Council.
- G.** An appointment to fill any vacancy on an enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two (2) of three (3) successive meetings without cause and without prior approval of the chairperson, the enforcement board shall declare the member's office vacant, and the Mayor and Council shall promptly fill such vacancy.
- H.** The members shall serve in accordance with ordinances of the Mayor and Council and may be suspended and removed for cause as provided in such ordinances for removal of members of boards. The Mayor and Council may, with or without cause, refuse to reappoint any member of an enforcement board at the expiration of his or her term of office.
- 6.** The members of an enforcement board shall elect a chairperson, who shall be a voting member, from among the members of the board. The presence of four (4) or more members shall constitute a quorum of any seven-member enforcement board, the presence of three (3) or more members shall constitute a quorum of any five-member enforcement board, and the presence of two (2) or more members shall constitute a quorum of any three-member enforcement board. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as otherwise provided by law.
- 7.** The Town Attorney shall either be counsel to an enforcement board or shall represent the municipality by presenting cases before the enforcement board, but in no case shall the local governing body attorney serve in both capacities.
- 8.** It shall be the duty of the Code Inspector to initiate enforcement proceedings pursuant to the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.
- 9.** Except as provided in subsection (10) and (11), if a violation of any code or ordinance is found, the Code Inspector shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the Code Inspector shall proceed with enforcement through the appropriate court or shall proceed with enforcement through the appropriate code enforcement board. If the Code Inspector proceeds through a code enforcement board, the Code Inspector shall notify an enforcement board and request a hearing. The code enforcement board shall schedule a hearing, and written notice of such hearing shall be hand delivered or made as provided in O.C.G.A. § 36-74-12 to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in O.C.G.A. § 36-74-12. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the Code Inspector, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.
- 10.** 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 an enforcement board and request a hearing. The code enforcement board shall schedule a hearing and shall provide written notice pursuant to O.C.G.A. § 36-74-12. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state.
- 11.** If the Code Inspector has substantial reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the Code Inspector shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing.
- 12.** Upon request of the Code Inspector, or at such other times as may be necessary, the chairperson of an enforcement board may call a hearing of an enforcement board; a hearing also may be called by written notice signed by at least three (3) members of seven (7) member enforcement board or signed by at least two (2) members of a five-member enforcement board. Minutes shall be kept of all hearings by each enforcement board, and all hearings and proceedings shall be open to the public. The Mayor and Council

may provide or assign clerical and administrative personnel to assist the enforcement board in the proper performance of its duties.

- 13.** Each case before an enforcement board shall be presented by the Town Attorney or by a Code Inspector or other member of the administrative staff of the local governing body.
- 14.** An enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the Code Inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- 15.** At the conclusion of the hearing, the enforcement 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 in this Chapter. The findings and conclusions shall be by motion approved by a majority of those members present and voting, except that at least four (4) members of a seven-member enforcement board, or three (3) members of a five-member enforcement board, or two (2) members of a three-member enforcement board, must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by said date. 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 if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the enforcement 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.
- 16.** Each enforcement board shall have the power to:
  - A.** Adopt rules for the conduct of its hearings, which rules shall, at a minimum, ensure that each side has an equal opportunity to present evidence and argument in support of its case;
  - B.** Subpoena alleged violators and witnesses to its hearings, with the approval of the court with jurisdiction over a criminal violator of the municipal code or ordinance. Subpoenas may be served by the Oglethorpe County Sheriff or by any other individual authorized by O.C.G.A. § 24-10-23 to serve subpoenas;
  - C.** Subpoena evidence to its hearings in the same way as provided in paragraph (B) of this Section, with the approval of the court with jurisdiction over a criminal violator of the municipal code or ordinance;
  - D.** Take testimony under oath; and
  - E.** Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
  - F.** Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
- 17.** An enforcement board, upon notification by the Code Inspector that an order of the enforcement board has not been complied with by the set time may order the violator to pay an administrative fine in an amount specified in this Section.
  - A.** An administrative fine imposed for a violation involving the health or safety of a third party shall not exceed one thousand dollars (\$1,000.00) per day.
  - B.** An administrative fine imposed for a violation that is not a violation involving the health or safety of a third party shall not exceed a total of one thousand dollars (\$1,000.00).
  - C.** In determining the amount of the fine, if any, the enforcement board shall consider the following factors:
    - (1) The gravity of violation;
    - (2) Any actions taken by the violator to correct the violation; and
    - (3) Any previous violations committed by the violator.
  - D.** An enforcement board may reduce a fine imposed pursuant to this Section.
- 18.** A certified copy of an order imposing an administrative fine may be recorded in the public records of any county and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the superior court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the

personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three (3) months from the filing of any such lien which remains unpaid, the enforcement board may request the Mayor and Council attorney to foreclose on the lien.

- 19.** If an environmental court is in existence with jurisdiction over ordinances subject to the jurisdiction of the enforcement board, the violator may object to the fine imposed and submit to the jurisdiction of the environmental court. The case shall be transferred to the environmental court and handled de novo as an ordinance violation.
- 20.** No lien imposed under this Chapter shall continue for a period longer than twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.
- 21.** An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the Oglethorpe County Superior Court. Such an appeal shall be a hearing de novo. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.
- 22.** All notices required by this Section shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the Sheriff or other law enforcement officer, Code Inspector, or other person designated by the local governing body; or by leaving the notice at the violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person of the contents of the notice.
- 23.** In addition to providing notice as set forth in the above paragraph, at the option of the code enforcement board, notice may also be served by publication or posting, as follows:
  - A.** Notice may be published once during each week for four (4) consecutive weeks (four publications being sufficient) in the newspaper in which the Sheriff's advertisements are printed in the city where the code enforcement board is located. Proof of publication shall be made by affidavit of a duly authorized representative of the newspaper.
  - B.** If there is no newspaper of general circulation in the city where the code enforcement board is located, three (3) copies of such notice shall be posted for a least twenty-eight (28) days in three (3) different and conspicuous places in such city, one of which shall be at the front door of the city hall in said city. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting; or
  - C.** Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (22) of this Section. Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (22) of this Section, together with proof of publication or posting as provided in subsection (23) of this Section, shall be sufficient to show that the notice requirements of this Code Section have been met, without regard to whether or not the alleged violator actually received such notice.