

ORDINANCE NO.: 2024-02

AN ORDINANCE AMENDING ORDINANCE NO. 2007-02 AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, THE TOWN OF LEE FLORIDA HAS NUMEROUS CODES AND ORDINANCES IN EFFECT INCLUDING ORDINANCE NO. 2007-02; AND

WHEREAS, SINCE ADOPTION OF SAID ORDINANCE, STATUTES AUTHORIZING CODE ENFORCEMENT BOARDS HAVE BEEN AMENDED INCLUDING PROVISIONS RELATING TO THE IMPOSITION OF FINES AND ENFORCEMENT OF THE SAME; AND

WHEREAS, THE TOWN COUNCIL DEEMS IT APPROPRIATE TO UPDATE ITS CODE ENFORCEMENT ORDINANCE TO BRING IT INTO COMPLIANCE WITH THOSE PROVISIONS OF CHAPTER 162, FLORIDA STATUTES, WHICH HAVE BEEN AMENDED SINCE INITIAL ENACTMENT OF ORDINANCES 2007-02.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LEE, FLORIDA, THAT ORDINANCE 2007-02 IS AMENDED TO READ AS FOLLOWS:

Section 1. Creation and Organization of the Board

1.1 There is hereby created a Code Enforcement Board of the Town of Lee, Florida.

1.2 The Code Enforcement Board shall have five (5) members, each of whom shall be a resident of the Town of Lee. All members of the Board shall be appointed by the Town Council or Town Manager and cannot be a Town employee. Appointments to the Board shall be based upon experience or interest of the appointees.

1.3 All members of the Board shall serve without compensation, but may be reimbursed for such reasonable travel, mileage and per diem expenses as may be authorized by the Town Council.

1.4 The initial appointments to the Board shall be as follows: one (1) member appointed for a term of one (1) year; two (2) members appointed for term of two (2) years each; and two (2) members appointed for a term of three (3) years each. Thereafter all appointments and reappointments shall be for a term of three (3) years. A member may be reappointed upon approval of the Town Council.

1.5 If any member fails to attend two (2) of three (3) successive meetings or hearings without cause or without prior approval of the Chairperson, the Board shall declare the member's office vacant, and the Town Council shall promptly fill such vacancy. An appointment to fill any vacancy on the Board shall be for the remainder of the unexpired term of office.

1.6 The Board shall elect from its members a Chairperson and Vice Chairperson, who shall serve in that capacity for a term of one (1) year, unless re-elected by the Board. The Chairperson and

Vice-Chairperson shall be voting members. The Town Clerk of the Town of Lee or their appointee, shall serve as the Clerk of the Board.

1.7 The presence of three (3) or more members shall constitute a quorum of the Board necessary to take action at meetings, hearings and proceedings of the Board. All meetings, hearings and proceedings of the Board shall be open to the public.

1.8 Regular meetings of the Board shall occur no less frequently than once every two (2) months, but the Board may meet as often as necessary. Special meetings of the board may be convened by the Chairperson upon giving notice thereof to each other member of the Board at least seventy-two (72) hours prior to such special meeting unless an emergency exists affecting the health, safety, or public welfare of the Citizens of the Town.

1.9 The Clerk of the Board shall take, maintain, and keep minutes of all meetings, hearings and proceedings of the Board, and the Clerk shall provide such clerical support as may be reasonably required by the Board for the proper performance of its duties.

Section 2. Legal Counsel

2.1 An attorney, other than the Town Attorney, may be appointed by the Board, subject to confirmation by the Town Council, to attend meetings and assist the Board in the conduct of its hearings if needed.

2.2 The Town Attorney shall represent the Town of Lee in all hearings and proceedings before the Board when needed.

Section 3. Jurisdiction of the Code Enforcement Board

3.1 The Code Enforcement Board shall have jurisdiction to hear and decide alleged violations of any codes and ordinances of the Town of Lee, together with any other code or ordinance that the Town Council has or will adopt in the future, including but not limited to the following:

- a. Building Code
- b. Electrical Code
- c. Fire Prevention Code
- d. Garbage, trash, and weeds
- e. Gas Code
- f. Housing Code
- g. Dredge and fill and flood prone area.
- h. Land subdivision
- i. Licensing

j. Trees and shrubs

k. Plumbing Code

l. Mechanical

m. Streets and sidewalks

n. Zoning

o. Cemetery

p. Livestock and animal control

3.2 The jurisdiction of the Board shall not be exclusive. Any alleged violation of any of the aforesaid codes and ordinances may be pursued by appropriate remedy in court at the option of the Town Council of the Town of Lee.

Section 4. Enforcement Procedure

4.1 For purposes of the ordinance, "Code Official" means any authorized agent, employee, or official of the Town of Lee whose duty it is to ensure compliance with the codes and ordinances of the Town.

4.2 It shall be the duty of the Code Official to initiate enforcement proceedings of the various codes and ordinances. No member of the Board shall have the authority to initiate such enforcement proceedings.

4.3 Except as provided in Subsection 4.4 below, if a violation or apparent violation of a code or ordinance of the Town of Lee is found, the Code Official shall first notify the violator and give the violator a reasonable time in which to correct the violation. Should the violation continue beyond the time specified for correction, the Code Official shall notify the Code Enforcement Board and request a hearing pursuant to the procedure set forth in Section 5 of this ordinance. The Code Enforcement Board shall schedule a hearing and written notice of the alleged violation and the aforesaid hearing shall be served on the alleged violator by certified United States mail, return receipt requested or by personal service. If the violation is corrected and then reoccurs or if the violation is not corrected by the time specified by the Code Official, the case may be presented to the Code Enforcement Board even if the violation has been corrected prior to the Board hearing and the notice shall so state.

4.4 If the Code Official has reason to believe a violation of a code or ordinance presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the Code Official may proceed directly to the hearing procedure set forth in Section 5 of this ordinance without first notifying the violator and giving the violator the opportunity to correct the violation.

4.5 Each case before an Enforcement Board shall be presented by the local governing body (Town Manager, Public Works Director, or Town Attorney) or by a member of the administrative staff of the local governing body. If the local governing body prevails in prosecuting a case before the Code Enforcement Board, it shall be entitled to recover all costs incurred in prosecuting the case before the Board and such costs may be included in any lien authorized by this ordinance.

4.6 If a repeat violation is found, the Code Official shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The Code Official, upon notifying the violator of a repeat violation, shall notify the Code Enforcement Board and request a hearing. The Code Enforcement Board, through its staff, shall then schedule a hearing and provide written notice of the alleged violation and the aforesaid hearing shall be served upon the alleged violator by certified United States mail, return receipt requested, or by personal service. The case may be presented to the Board even if the repeat violation has been corrected prior to the Board hearing and the notice shall so state. If the repeat violation has been corrected, the Code Enforcement Board retains the right to schedule a hearing to determine cost and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his or her right to said hearing and pay said costs as determined by the Board.

4.7 If the owner of the property that is subject to an enforcement proceeding before the Enforcement Board or Court transfers ownership of said property between the time of being served with the notice of initial violation and the time for the hearing, the owner shall:

- a. Disclose, in writing, the existence and nature of the proceeding to the prospective transferee.
- b. Deliver to the prospective transferee a copy of the pleadings, notices and other materials relating to the code enforcement proceeding received by the transferor.
- c. Disclose in writing to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
- d. File a notice with the Code Official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner within five (5) days after the date of transfer.
- e. Failure to make the disclosures described in paragraphs (a), (b), and (c) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

Section 5. Conduct of Hearings

5.1 The Chairperson of the Code Enforcement Board may call hearings of the Board and hearings may also be called by written notice signed by at least two (2) members of the Board. The Board at any hearing or meeting may set a future hearing date.

5.2 Upon scheduling a hearing, the Board shall cause notice of thereof to be furnished to the alleged violator by certified United States mail, return receipt requested, or by personal service. The notice of the hearing shall contain the date, time and place of the hearing and shall state the nature of the violation and reference the appropriate code or ordinance. Minutes shall be kept of all hearings, and all hearings and procedures shall be open to the public.

5.3 After service of the notice described in Subsection 5.2 of this ordinance, a violation hearing may proceed in the absence of the alleged violator.

5.4 At all violation hearings, the burden of proof shall be upon the Code Official to show, by a preponderance of the evidence that a violation does or did exist.

5.5 All testimony shall be taken under oath and shall be recorded. The Board may receive testimony from the Code Official, the alleged violator, and from such other witnesses as may be called by the Code Official or the alleged violator or by the Board.

5.6 Formal rules of evidence shall not apply at hearings conducted by the Board. However, fundamental due process shall be observed and govern such hearings.

5.7 Irrelevant, immaterial, or duly repetitive evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the State of Florida.

5.8 Any member of the Board, and the attorney representing the Board, may inquire of any witness before the Board. The Code Official and the alleged violator or any attorney representing either of them, shall be permitted to inquire of any witness before the Board, and shall be permitted to make brief opening statements and closing arguments.

5.9 At the conclusion of a hearing, the Board shall issue findings of fact based upon the evidence in the record, and conclusions of law and shall issue an order affording the proper relief consistent with the powers granted by Florida Statutes and by this ordinance. The order shall be stated orally at the hearing, or an adjournment thereof, and shall be reduced to writing and mailed to the alleged violator within ten (10) days after the order is orally stated. The finding shall be by motion approved by a majority of those present and voting; provided, however, that at least three (3) members of the Board must vote in order for the action to be official.

5.10 A certified copy of an order of the Board may be recorded in the public records of Madison County, Florida and shall constitute a 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 Code 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 such compliance.

Section 6. Powers of the Code Enforcement Board

6.1 The Board shall have the power and authority to:

- a. Adopt rules for the conduct of its hearings.
- b. Subpoena alleged violators and witnesses to its hearings.
- c. Subpoena records, surveys, plats and other documentary evidence, which subpoenas shall be served as authorized by law.
- d. Take testimony under oath.
- e. Issue orders having the force and effect of law, commanding whatever steps are necessary to bring a violation into compliance.
- f. Establish and levy fines pursuant to Section 7 of this ordinance.
- g. Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Section 7. Penalties

7.1 The Board, upon notification by the Code Official that a previous order of the Board has not been complied with by the set time, may order the violator to pay a fine not to exceed two hundred and fifty dollars (\$250.00) per day for a first offense and not to exceed five hundred dollars (\$500.00) per day for repeat violations and all subsequent offenses for each day the violation continues past the date set by the Board's order for compliance. In determining the amount of the fine, if any, the Board shall consider the following factors: a. The gravity of the violation; b. Any actions taken by the violator to correct the violation; and c. Any previous violations committed by the violator.

7.2 A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into

compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section. After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien 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 part may be foreclosed on real property which is a homestead under s. 4, Art. 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 s. 4(a), Art. X of the State Constitution.

7.3 No lien provided by this ordinance shall continue for a longer period of twenty (20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose upon the lien is commenced in a court of competent jurisdiction.

7.4 In any action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorneys' fee that it incurs in the action. The local governing body shall also be entitled to collect all costs incurred in recording and satisfying a valid lien.

Section 8. Appeals

8.1 Any aggrieved party, including the Town of Lee, may appeal any final order of the Board to the Circuit Court in and for Madison County, Florida. Any such appeal shall be filed within thirty (30) days after the date of the order to be appealed. Such an appeal shall not be a hearing de novo but shall be limited to an appellate review of the record created before the Board.

8.2 The Board shall, by rule, establish reasonable charges for the preparation of the record on appeal, such charges to be paid by the appealing party.

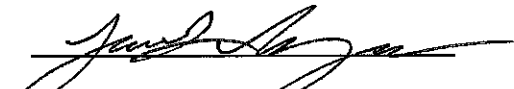
Section 9. Savings Clause and Effective Date

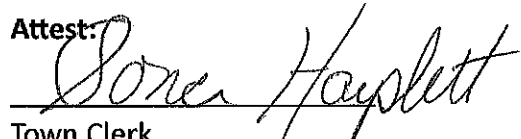
9.1 This ordinance shall take effect immediately upon final passage hereof.

9.2 If any section, subsection, sentence, clause, or provision of this ordinance is held invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be affected.

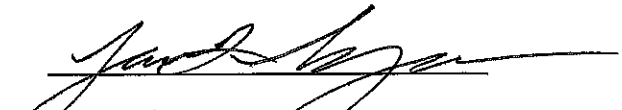
9.3 This ordinance shall apply to all code violations existing on the date of its enactment regardless of whether said violations may have been created or in existence prior to the adoption of this ordinance. This ordinance shall also apply to the enforcement of all code violations and any orders recorded prior to the enactment of this ordinance.


THE ABOVE AND FOREGOING ORDINANCE WAS DULY PASSED upon first reading in a regular meeting of the Town Council of the Town of Lee, Florida on this 5th day of December, 2023.


Mayor/Councilman

Attest:

Town Clerk

THE ABOVE AND FOREGOING Ordinance was duly **PASSED AND ADOPTED** after proper publication and second reading in a regular meeting of the Town Council of the Town of Lee, Florida on this 6th day of February, 2024.


Mayor/Councilman

Attest:

Town Clerk