

ORDINANCE NO. 12-2004

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF LAKE PARK, CHAPTER 2, ARTICLE IV, DIVISIONS 3 AND 4, AMENDING SECTION 2-80 ENTITLED "DEFINITIONS;" AMENDING SECTION 2-81 ENTITLED "QUALIFICATIONS, TERMS OF OFFICE OF BOARD;" AMENDING SECTION 2-82 ENTITLED "COMPLIANCE PROCEDURES;" AMENDING SECTION 2-85 ENTITLED "FINES, COST OF REPAIR AND LIENS;" AMENDING SECTION 2-88 ENTITLED "NOTICES;" MOVING SECTION 2-88.01 ENTITLED "ALTERNATE CODE ENFORCEMENT PROCEDURES" TO DIVISION 4; MOVING SECTION 2-88.02 ENTITLED "NOTICE TO APPEAR" TO DIVISION 4; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has adopted general provisions pertaining to the Town's Code Compliance Board and qualifications, requirements, terms of office of Board members of Code Enforcement, procedures, the imposition of fines and notices of violations of the Town's Code of Ordinances, which has been codified at Chapter 2 of the Code of Ordinances; and

WHEREAS, the Town's outside consultant, Municipal Code Corporation, has conducted a study and analysis of the codified provisions of the Town Code of Ordinances in order to determine which provisions of the Town's Code require amendment, repeal, modification, or revision; and

WHEREAS, Municipal Code Corporation has identified several provisions of the Code which require amendment in order to, among other things, comply with existing statutory and judicial law, to more accurately describe various aspects of the Town's Code enforcement procedures, to update the terminology of the Code, and to correct inconsistencies, errors, and misnomers presently contained in the Town's Code; and

WHEREAS, Municipal Code Corporation has recommended to the Town Commission that Sections 2-80, 2-81, 2-82, 2-85, 2-88, 2-88.01 and 2-88.02 of Chapter 2, Article IV, Divisions 3 and 4 of the Town's Code be amended; and

WHEREAS, the Town Commission has reviewed the recommendations of Municipal Code Corporation, and has determined that amending Sections 2-80, 2-81, 2-82, 2-85, 2-88, 2-88.01 and 2-88.02 of Chapter 2, Article IV, Divisions 3 and 4 of the Town's Code of Ordinances is necessary to further the public's health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the findings of the Town Commission.

Section 2. Chapter 2, Article IV, Divisions 3 and 4, of the Code of Ordinances of the Town of Lake Park, Florida is hereby amended to read as follows:

Sec. 2-80. Definitions.

Repeat violation means a violation of a provision of the code or ordinance by a person who has been previously found through the code enforcement, special master, or other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five (5) years prior to the violation, notwithstanding the violations occur at different locations, by a person whom the compliance board has previously found to have violated the same provision within five (5) years prior to the violation.

Sec. 2-81. Qualifications, terms of office of board.

(4) Duties of town's attorney. The town's attorney shall ~~either be~~ serve as counsel to the compliance board or staff town staff and may represent the town by presenting cases before the board, but in no case shall the town's attorney serve ~~in both capacities~~ as counsel to both town staff and the compliance board.

Sec. 2-82. Compliance procedure.

(b) *Notification of violator violation:* Except as provided in paragraphs (c) and (d), if a violation of the chapters and codes is found...

(e) If the owner of the property, which is subject to an enforcement proceeding, before the code compliance board, special master or court, transfers ownership of such property between the time the initial pleading is served and the time the hearing, such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferee.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issues in the code enforcement proceeding.

(4) File a notice with the code enforcement 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 the transfer.

A failure to make the disclosures in paragraphs (1), (2) and (3) 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.

Sec. 2-85. Fines, cost of repair and liens.

(a) *Fines for violations.* The compliance board, upon notification by the code inspector that an order of the compliance board has not been complied with by the set time or, upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the compliance board for compliance ~~of~~ or, in the case of repeat violation, for each day the repeat violation continues beginning with the date the repeat violation is found to have occurred by the code

inspector. In addition, if the violation is a violation described in subsection ~~2-82(e)~~ 2-82(d), the compliance board shall notify the town commission which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the town to make further repairs, or to maintain the property, and does not create any liability against the town for any damages to the property of such repairs where complied in good faith. If a finding of a violation or a repeal violation has been made as provided in this action, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a code compliance board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in paragraph (b).

(d) *Fine Reduction.* The compliance board and/or the special master may reduce a fine imposed pursuant to this section.

(e) *Filing of lien: foreclosure .* 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. Such lien shall be superior to all other liens and shall bear interest at the rate of ten (10) percent per annum from the date the order is entered by the board. Upon petition to the circuit 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. 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 to foreclose on a lien filed pursuant to this division, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the town commission and the town commission may execute a satisfaction or release of lien entered pursuant to this section. After three (3) months from the filing of any such lien which remains unpaid, the compliance board, or special master, may authorize the town attorney to foreclose on the lien. 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.

Sec. 2-88. Notices.

(1) *Methods of providing.*—All notices required by this division shall be provided to the alleged violator by: (a) certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the town by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraphs (b)(1) and (2), and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing; ~~(b) or~~ by hand delivery by a law enforcement officer, code inspector or other person designated by the town; ~~(c) 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; or (d) in case of commercial premises, leaving the notice with the manager or other person in charge.

~~(2) Service of notice by publication or posting:~~ In addition to providing notice as set forth in subsection ~~(a)~~ (1), at the option of the code compliance board, notice may also be served by publication or posting as follows:

~~(1)(a) Publication.~~ such notice shall be published...

~~(2)(b) Posting.~~ In lieu of publication as described in paragraph ~~(b)(1)~~ (2)(a), such notice may be posted for at least ten (10) days prior to the hearing or prior to the expiration of any deadline contained in the notice in at least two (2) locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the Lake Park Town Hall. 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.

~~(c) — [More than one (1) method.]~~

(3) 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 (1).

~~(d) — Evidence of attempts to serve notice.~~

(4) Evidence that an attempt has been made to hand delivery or mail notice as provided under subsection (1), together with proof of publication or posting as provided in subsection (2) it shall be sufficient to show that the not requirements of this division have been that, without regard to whether or not the alleged violator actually received such notice.

~~Sec. 2-88.01. Alternative code enforcement procedures.~~

~~Sec. 2-88-03. Notice to appear.~~

~~DIVISION 4. RESERVED*~~

Sec. 20-88.01 Alternate code enforcement procedures.

Text has been unmodified.

Sec. 2-88-03. Notice to appear.

(a) No change to text.

(b) Prior to issuing a notice to appear, a code enforcement officer shall provide written notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no fewer that five (5) days and no more then thirty (30) days. If, upon

personal investigation, a code enforcement officer finds that the person has not corrected the violation within the prescribed time period, a code enforcement officer finds that the person has not corrected the violation within the prescribed time period, a code enforcement officer may issue a notice to appear to the person who has committed the violation. A code enforcement is not required to provide the person with a reasonable time period to correct the violation prior to issuing a notice to appear and may immediately issue a notice to appear if a repeat violation is found, or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or if the violation is irreparable or irreversible that the violation is engaged in violations of an itinerant or transient nature, as defined by local code of ordinances within jurisdiction, or if the violation is irreparable or irreversible.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Codification. The sections of the Ordinance may be made a part of the Town Code of Laws and Ordinances and may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 6. Effective Date. This Ordinance shall take effect immediately upon adoption.

Upon First Reading this 21st day of April, 2004 the foregoing ORDINANCE was offered by Vice Mayor Balius who moved its approval. The motion was seconded by Commissioner Ed Daly, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	X	
VICE MAYOR CHUCK BALIUS	X	
COMMISSIONER PAUL GARRETSON		ABSENT
COMMISSIONER JEFF CAREY	X	
COMMISSIONER ED DALY	X	

Upon Second Reading this 5th day of May, 2004 the foregoing ORDINANCE was offered by Commissioner *DALY* who moved its adoption. The motion was seconded by Commissioner *CAREY* and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	X	
VICE MAYOR CHUCK BALIUS	X	
COMMISSIONER PAUL GARRETSON	X	
COMMISSIONER JEFF CAREY	X	
COMMISSIONER ED DALY	X	

The Mayor thereupon declared Ordinance No. 12-2004 duly passed and adopted this 5th day of May, 2004


TOWN OF LAKE PARK, FLORIDA

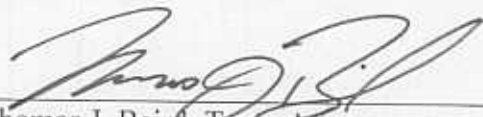
BY: 

Mayor Paul Castro

ATTEST:

Approved as to form and legal sufficiency:


Carol Simpkins, Town Clerk
(Town Seal)


Thomas J. Baird, Town Attorney

