

ORDINANCE NUMBER 2008-02

AN ORDINANCE OF THE TOWN OF GREENWOOD, FLORIDA, ESTABLISHING PROCEDURES FOR CODE ENFORCEMENT, SETTING FINES AND FEES RELATED TO CODE ENFORCEMENT, REPEALING INCONSISTENT PRIOR ORDINANCE PROVISIONS, PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Town Council has determined that the promotion, protection, and improvement of the health, safety, and welfare of the citizens of the Town of Greenwood is best accomplished by the creation of a comprehensive code enforcement procedure providing for the imposition of administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing the codes and ordinances in force in the municipality; and

WHEREAS, The Code Enforcement Board envisioned and allowed for municipalities by Florida Statutes, Chapter 162, is impractical and uneconomical for a Town with a population as small as the Town of Greenwood; and

WHEREAS, the Charter of the Town of Greenwood provides that the Mayor shall see that all ordinances of the Town are enforced;

NOW THEREFORE, be it ordained and enacted:

I. GENERAL PROVISIONS

Sec. 1.1 TITLE. This ordinance shall be known as, and may be cited as, the Town of Greenwood Code Enforcement Ordinance.

Sec. 1.2 DEFINITIONS.

1. In construing this Ordinance, the terms and words hereinafter defined, unless the context clearly indicates otherwise, shall be given the meanings hereinafter set forth.
2. The term "Town" or "City" or "Greenwood" shall be defined to mean the Florida municipality known as Greenwood, Florida.
3. The term "County" shall be defined to mean the County of Jackson, State of Florida.
4. The term "Code Inspector" or "Code Enforcement Officer" means any authorized agent or employee of the Town of Greenwood whose duty it is to assure code compliance.
5. The terms "Enforcement Board" or "Code Enforcement Board" shall mean the Town Council of the Town of Greenwood..
6. The term "Repeat Violation" means a violation of a provision of a code or ordinance by a person who has been previously found through a Code Enforcement Board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations.

II. DESIGNATION OF CODE ENFORCEMENT OFFICER

Sec. 2.1 CODE ENFORCEMENT OFFICER DESIGNATION. There is hereby designated and established the position of Code Enforcement Officer for the Town of Greenwood, Florida, which officer shall have the authority to investigate code violations and assess fines against violators of municipal codes and ordinances as provided herein.

Sec. 2.2 POWERS. The powers and authority of the Code Enforcement Officer shall vest in the Mayor, or other agent or employee as designated by the Mayor; or, in his absence, the Town Clerk,

Sec. 2.3 DUTIES AND AUTHORITY. The Code Enforcement Officer shall have the authority and duty to issue citations and initiate enforcement proceedings of the various codes and ordinances of the Town of Greenwood.

III. ENFORCEMENT PROCEDURES

Sec. 3.1 INITIAL NOTICE. When there is reasonable cause to believe that a violation of the codes or ordinances exists within the Town of Greenwood, the code enforcement officer shall first notify the alleged violator and give such person a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officer may issue a citation and may notify the Town Council and request a hearing pursuant to the procedure set forth herein. Written notice of such hearing shall be provided to the alleged violator as set forth in Section VIII.

Sec. 3.2 EMERGENCY EXCEPTION. If the code enforcement officer has reason to believe a violation presents a serious threat to the public health, safety or welfare or if a repeat violation has occurred, the code enforcement officer may issue a citation immediately and may proceed directly to the hearing procedure set forth in Section IV without first notifying the violator and giving such person time to correct the violation.

Sec. 3.3 FORM OF CITATION. A citation issued by a code enforcement officer shall be in a form prescribed by the Town and shall contain:

1. The date and time of issuance.
2. The name and address of the person to whom the citation is issued.
3. The date and time the civil infraction was committed or the code violation was discovered to exist.
4. The facts constituting reasonable cause.
5. The number or section of the code or ordinance violated.
6. The name and authority of the code enforcement officer.
7. The procedure for the person to follow in order to resolve the violation, pay the civil penalty, or to contest the citation.
8. The applicable civil penalty if the person elects to contest the citation.
9. The applicable civil penalty if the person elects not to contest the citation.
10. A conspicuous statement that if the person fails to resolve the violation and to pay the civil penalty within the time allowed, or fails to appear at the hearing to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

Sec. 3.4 SUPPLEMENT PROCEDURES. In addition to the enforcement procedures set forth herein, the "Supplemental County or Municipal Code or Ordinance Enforcement Procedures" set forth in F.S. ch. 162, part II and F.S. § 125.69, as may be amended, are hereby incorporated herein by reference.

IV. HEARINGS

Sec. 4.1 WHEN AND HOW SET. The Mayor shall call special meetings of the Town Council, at which the Town Council will provide the alleged violator an opportunity to be heard and shall make the final determination of whether a violation or violations exist and the appropriate fine or civil penalty to be imposed, if any. These hearings may also be conducted during regular council meetings with proper notice to affected parties. The Town Council, at the request of any alleged violator, may call a special meeting for the purpose of hearing the matter and, at any hearing, may continue the hearing or set a future hearing date.

Sec. 4.2 NOTICE OF HEARING. Upon scheduling of a hearing as provided in Section 4.1, the Town Clerk shall cause notice thereof to be furnished to the alleged violator. Such notice of hearing shall contain the date, time and place of the hearing and shall state the nature of the violation and reference to the appropriate code or ordinance, and shall inform the alleged violator that if he or she desires to make a record of the proceeding, he or she will need to make prior arrangements to have a court reporter present at his or her expense or make prior arrangements to have the proceedings recorded in a manner agreeable to all parties.

Sec. 4.3 PRESIDING OFFICER. At the hearing, the Town Council shall designate a presiding official, other than the Mayor, who shall make final determinations of procedures and admission of evidence. The burden of proof shall be upon the code enforcement officer to show, by a preponderance of the evidence, that a violation does exist.

Sec. 4.4 ABSENCE OF ALLEGED VIOLATOR. Assuming proper notice of the hearing has been provided to the alleged violator as provided in Section 4.2 above, a hearing may proceed in the absence of the alleged violator.

Sec. 4.5 PRESENTATION OF EVIDENCE. The Code Enforcement Officer or his or her designee shall present evidence of the alleged code violation to the Town Council. The alleged violator may question the presenters and may testify or offer witnesses or documents in his or her defense. Formal rules of evidence shall not apply, but fairness and fundamental due process shall be observed and shall govern such proceedings.

Sec. 4.6 ADMISSION AND EXCLUSION OF EVIDENCE. Irrelevant, immaterial or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the state. A reasonable time limit may be placed on the presentation of evidence and argument. Repetitious or inappropriate argument may be disallowed.

Sec. 4.7 REPRESENTATION. The alleged violator shall have the right to be represented by council at the hearing, but at his or her own expense. The Town Attorney shall not represent the Code Enforcement Officer at the hearing, but any member of the Town Council, or the Town Attorney, may inquire of any witness at the hearing. The alleged violator, or his or her attorney, and the attorney representing the code enforcement officer, if any, shall be permitted to inquire of any witness at the hearing and shall be permitted to present brief opening and closing statements. The Town Council may provide for separate council for the Code Enforcement Officer, to be paid by the Town, when deemed necessary or appropriate.

Sec. 4.8 FINAL ADMINISTRATIVE ORDER. At the conclusion of the hearing, the Town Council shall issue findings of fact based on evidence in the record and conclusions of law, and shall issue a final administrative order on the matter. The order may be stated orally at the meeting and shall be reduced to writing and mailed to the alleged violator within a reasonable time after the hearing. The finding shall be by motion, approved by a majority of those present and voting.

V. FURTHER ENFORCEMENT

Sec. 5.1 BY COURT ACTION. If the violator does not comply with the Final Order of the Town Council, the Mayor may, on behalf of the Town of Greenwood, bring an action in the County or Circuit Court to enforce the Final Order of the Town Council. The Town shall be entitled to all costs and attorneys fees of the action. Election of remedies shall not apply and the Town may also use any other available legal means to enforce the ordinance.

VI. PENALTIES

Sec. 6.1 CIVIL PENALTY. If the Town Council determines, after a hearing as provided in Section IV above, that a code violation has occurred, the Town Council may assess a civil penalty in an amount not to exceed \$500.00, and not to exceed the amount of the possible fine as stated in the notice to the violator.

Sec. 6.2 PENALTY FOR CONTINUING OR REPEAT VIOLATIONS. The Town Council, upon notification by the code enforcement officer that a previous order of the Town Council has not been complied with by the time set, or upon finding that a repeat violation has been committed, may order:

(1) In the case of a first violation, the violator will pay a fine in an amount not to exceed Two Hundred and fifty dollars (\$250.00) per day per violation for each day the violation continues past the date set by the Town Council's order for compliance;

(2) Up to five hundred dollars (\$500) per day per violation for a repeat violation; and

(3) In addition to such fines, the Town may make corrections, repairs, removals or perform maintenance reasonably required to bring the property into compliance and charge the violator with the reasonable cost of the repairs or actions 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 if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this ordinance, a hearing shall not be necessary for issuance of the order imposing the fine or authorizing the actions necessary to bring the property into compliance.

Sec. 6.3 AMOUNT OF FINES. In determining the amount of the fine, if any, the Town Council shall consider the following factors:

(1) The gravity of the violation;

(2) Any actions taken by the violator to correct the violation;

(3) Any previous violations committed by the violator; and

(4) The adverse economic or environment impact of the violation on the community.

Sec. 6.4 LIEN CREATED. A certified copy of an order imposing a fine, or a fine plus repair or corrections costs, may be recorded in the public records of the county 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 in the county; 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 judgment of a court, 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 ordinance, whichever occurs first. After 3 months from the filing of any such lien which remains unpaid, the Town Council may authorize the Town attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest, court costs, and attorney's fees. Nothing in this section shall abridge the constitutional or statutory protection extended to homestead property.

VII. APPEALS

Sec. 7.1. APPEAL, TIME LIMIT AND EFFECT ON LIEN. An aggrieved party may appeal a final administrative order of the Town Council to the Circuit Court of the County. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Town Council. An appeal shall be filed within 30 days of the rendition of the order to be appealed; and if not, shall be deemed untimely and disallowed. An appeal shall not stay enforcement thru court action by the Town as provided in Section 6.4 above unless a supersedeas bond sufficient to cover the lien is posted.

VIII. NOTICES

Sec. 8.1 REQUIREMENT TO INFORM TOWN OF ADDRESS CHANGE; MANNER OF NOTICES. All interested parties to any citation or enforcement proceeding are required to keep the Town Clerk informed of any change of address. Such information may be delivered to the Town Hall or mailed to P. O. Drawer 9, Greenwood, FL 32443. All notices required by this ordinance shall be by certified mail to the address of record with the Town Clerk. When the alleged violation concerns real property and an accurate address is not available, notice may be effectuated by prominent posting of the notice on the property that is the subject matter of the alleged violation.

IX. CONFLICTING ORDINANCES REPEALED.

Sec. 9.1 All ordinances or parts of ordinances in conflict herewith are hereby repealed.

X. SEVERABILITY.

Sec. 10.1 If any word, phrase, sentence, part, section, subsection, or other portion of this law or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

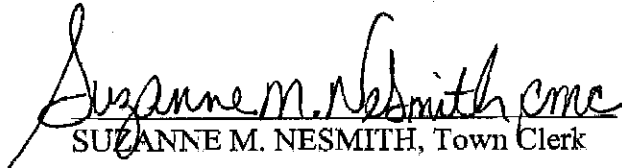
XI. EFFECTIVE DATE. This Ordinance is effective upon adoption.

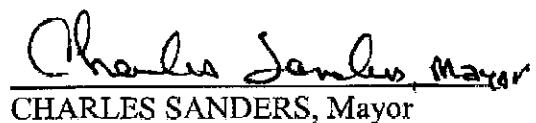
Adopted at a duly advertised public hearing at which a quorum was present and a majority voted in favor, this 10th day of June, 2008.

ATTEST:

TOWN COUNCIL OF THE

TOWN OF GREENWOOD, FLORIDA


SUZANNE M. NESMITH, Town Clerk


CHARLES SANDERS, Mayor