

ORDINANCE NO. 2007-07

AN ORDINANCE OF THE TOWN OF GRANT- VALKARIA, BREVARD COUNTY, FLORIDA, RELATING TO CODE ENFORCEMENT; PROVIDING FOR THE ESTABLISHMENT OF A CODE ENFORCEMENT BOARD; PROVIDING FOR DEFINITIONS OF TERMS; PROVIDING FOR THE AUTHORITY, CREATION AND ORGANIZATION OF THE CODE ENFORCEMENT BOARD; PROVIDING FOR ENFORCEMENT PROCEDURES AND REQUIREMENTS FOR NOTICES; PROVIDING FOR CONDUCT OF HEARINGS AND PROCEDURES FOR APPEAL; PROVIDING FOR THE DESIGNATION OF POWERS OF THE CODE ENFORCEMENT BOARD; PROVIDING FOR THE DESIGNATION OF ADMINISTRATIVE FINES RECUPERATION OF COSTS AND LIENS; PROVIDING AUTHORITY TO ISSUE CITATIONS; PROVIDING FOR ENFORCEMENT OF ORDINANCES BY CITATION AND ASSESSING PENALTIES; PROVIDING PROCEDURES FOR PROCESSING VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to adopt provisions of the Local Government Code Enforcement Board Act to enforce the codes and ordinances of the town; and

WHEREAS, the addition of a code enforcement board is done to provide an equitable, expeditious, effective, and inexpensive method of enforcing town codes and ordinances; and

WHEREAS, code enforcement and administration is in the best interest of the public for the protection of health, safety and general welfare.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, FLORIDA, THAT:

SECTION 1.

Article I entitled CODE ENFORCEMENT PROVISIONS is adopted to read as follows:

“ARTICLE I. CODE ENFORCEMENT PROVISIONS

DIVISION 1. GENERALLY

Sec. 1-1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

(a) *Code inspector or code officer* means any designated employee or agent of the town whose duty it is to enforce the codes and ordinances enacted by the town.

(b) *Enforcement board* means the code enforcement board of the town.

(c) *Person* means any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, government agency, public subdivision, public officer, or any other entity whatsoever, or any combination of such, jointly or severally.

(d) *Repeat violation* means a violation of a provision of a code or ordinance by a person the Enforcement Board has previously found to have violated or who has admitted violating the same provision within five (5) years prior to the current violation, notwithstanding the violations occur at different locations.

(e) *Town* means the Town of Grant-Valkaria.

(f) *Attorney* means the legal counselor for the town, duly appointed as town attorney.

Sec. 1-2 Supplemental and Cumulative Remedies.

The remedies provided in this Article are supplementary and cumulative to any other remedies provided by law for the enforcement of municipal codes. Nothing herein shall be construed to abrogate, repeal or prohibit the right of the Town to bring criminal, civil or other administrative actions against a violator.

Sec. 2-1 Authority and intent.

(a) This article is adopted by the town council, upon authorization to create a code enforcement board pursuant to the authority granted municipalities in F.S. §162.

(b) It is the intent of this article to promote, protect, and improve the health, safety, and welfare of the citizens of the town, by creating a code enforcement system which gives enforcement boards authority to hold hearings and assess fines against violators of the town codes and ordinances providing an equitable, expeditious, effective, and inexpensive method of enforcing the codes and ordinances in force in the town, where a pending or repeat violation continues to exist.

DIVISION 2. CODE ENFORCEMENT BOARD

Sec. 3-1 Enforcement Board creation and organization.

(a) *Creation*; There is hereby created a code enforcement board of the town under authority of F.S. §162. The Enforcement board for Brevard County is hereby designated by the town to serve in this capacity. Said enforcement board shall have the authority to enforce the codes and ordinances of the town as provided in this article when violations of the codes are not corrected following initial action by the code inspector.

(b) *Appointment of the Enforcement Board, Qualifications*;

1. All members of the Enforcement Board shall be appointed by the Town Council

2. Membership on the Enforcement Board shall represent diverse segments of the community taking into account such things as, but not limited to, area of expertise, backgrounds, interests, and resident location.

3. None of the appointed members of the enforcement board shall hold any other public office or position in the town. All members shall be residents of and registered voters within the town.
4. No person may be appointed to the enforcement board unless they were a resident of the Town for at least six consecutive months prior to the date of their proposed appointment.

(c) *Composition and Term of office*; The board shall consist of seven members including the chairperson and two alternates. The members shall be appointed by the town council no later than the first Tuesday of December. Each of the voting members shall be appointed for a term of four years, except that when the first enforcement board is created by the Town Council, the terms of four members shall be established to expire January 1, 2011, and the terms of three members shall be established to expire January 1, 2009. The alternates shall be designated as alternate one (1) and two (2) and shall be appointed to two year terms, except that when the first enforcement board is created by the Town Council, the terms of both alternates shall be established to expire January 1, 2009. The alternate members shall regularly attend meetings of the code enforcement board and shall have the right to participate in all public hearings and deliberations of the board. The alternates shall not normally cast a vote as a member of the board; provided, however, that:

- (i) The first and second alternate shall be entitled to vote on any matter in which the vote of the voting members of the code enforcement board results in a tie. For example, if there are six voting members present, and a vote results in a 3 to 3 tie, then the first alternate shall cast a vote, and
- (ii) The first and second alternate shall be counted to establish a quorum as the case may be. For example, if there are only three voting members of the board present, the first alternate shall be counted to establish a quorum and he or she may also cast a vote. If there are only two voting members present both the first and second alternate members shall be counted to establish a quorum and each may cast a vote.

(d) *Removal from office*; A member of the enforcement board may be removed for good cause upon a majority vote of the Town Council. If a member of the enforcement board fails to attend two of three consecutive meetings of the board without cause and without prior approval of the chairperson, the chairperson shall declare the member's seat vacant.

(e) *Filling vacancies*; All vacancies shall be filled by the Town Council for the unexpired term of the vacant seat.

Sec. 3-2. Legal Representation.

The Town attorney or assistant Town attorney shall be counsel to the enforcement board or represent the Town by presenting cases before the enforcement board. In no case shall the Town attorney serve in both capacities.

Sec. 3-3. Rules of procedure.

(a) *Meetings.* The enforcement board shall hold meetings as required, but not more often than once a month. All meetings shall be open to the public. A written record of the proceedings of the board shall be kept and shall be open to the public for inspection.

(b) *Quorum; voting.* Five voting members of the enforcement board shall constitute a quorum, and the affirmative vote of five members of the board present shall be necessary for any action of the board. A vote of less than five shall be sufficient to reschedule any proceedings of the board which cannot be held for lack of a quorum.

(c) *Chairman and Officers* The members of the enforcement board shall elect a chairman and vice-chairman and may elect other officers as they ~~may~~ deem necessary from among its members who shall preside over its meetings. The officers shall be elected annually. After the appointment of the first enforcement board by the Town council, the enforcement board members shall elect officers at its first regular meeting who shall serve until the first regular meeting in 2009. At the first regular meeting of 2009 the enforcement board shall elect officers and thereafter the enforcement board shall elect officers at the first regular meeting in succeeding years.

Sec. 3-4. Powers of the enforcement board with respect to hearings.

With respect to any hearing the enforcement board shall have the following powers:

- (a) Adopt rules for the conduct of the hearing.
- (b) Subpoena alleged violators and witnesses to the hearing. Pursuant to F.S. §162.08.
- (c) Subpoena evidence to its hearing.
- (d) Take testimony under oath.
- (e) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

DIVISION 3. PROCEDURE

Sec.4-1. Enforcement procedures and notices.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes and ordinances of the town. At no time may a member of the Enforcement Board initiate Enforcement Proceedings.

(b) Except as provided in subsections (c) and (d), if the violation of the code is found, the code inspector shall notify the violator and give him a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify the enforcement board, through clerical staff, and request a hearing. The enforcement board, through clerical staff, shall schedule a hearing, and written notice of such hearing shall be mailed to or served upon the violator as provided in this chapter and F.S. §162.12. At the option of the enforcement board, through clerical staff, notice may additionally be served by publication or posting as provided by law in accordance with F.S. §162.12. If the violation is corrected and then reoccurs 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 hearing, and the notice shall so state.

(c) *Repeat violation*; 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 the enforcement board, through clerical staff, and request a hearing. The enforcement board, through clerical staff, shall provide notice as prescribed by this code and F.S. §162.12. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the enforcement board retains the right to schedule a hearing to determine the cost and impose a payment of reasonable enforcement fees upon repeat violator. The repeat violator may choose to waive his or her right to this hearing and pay said cost as determined by the enforcement board.

(d) *Emergency actions*; If the code inspector has reason to believe that 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, through clerical staff, and request a hearing.

(e) *Transfer of property*; If the owner of the property which is subject to an enforcement proceeding before the enforcement board or a court transfers ownership of such property between the time the initial pleading was served and the time of hearing, such owner shall:

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

(2) Deliver to prospective transferee a copy of the pleading notices and other materials relating to the Code Enforcement Proceedings 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 issued in the Code Enforcement Proceeding.

(4) File a notice with the code enforcement official of the transfer of property, with the identity and address of the new owner, copies of the disclosures made to the new owner, within 5 days after date of the transfer. A failure to make the disclosure described in Paragraphs 1-3 creates a rebuttal assumption of fraud. If the property is transferred before a hearing, the proceedings shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct violation before said hearing is held.

(f) All notices required by this part shall be provided to the alleged violator pursuant to F.S. §162.12.

Sec. 5-1 Conduct of hearing and appeal.

(a) *Administrative procedures*. Upon request of the code inspector, or at such other time as may be necessary, the enforcement board, through its clerical staff, may call a hearing. The enforcement board shall cause minutes to be kept of all hearings by the enforcement board and all hearings and records of the enforcement board shall be open to the public. The town council shall provide clerical and administrative personnel as may be reasonably required by the enforcement board for the proper performance of designated duties. The enforcement board may, at any hearing, set future hearing dates

and may postpone or continue any matter before them to a future date.

(b) *Representation.* Each case before the enforcement board shall be presented either by the town attorney, by the code inspector or by the town administrator or his designee. If the town prevails in prosecuting a case it shall be entitled to recover all costs incurred in prosecuting the case before the enforcement board and such costs may be included in the lien authorized by F.S. §162.07 (2). Any person accused of a violation may be represented by counsel at the hearing.

(c) *Order of procedure and rules of evidence.* At any given hearing, the enforcement board shall first take testimony and receive evidence from the town, and the town shall have the burden of proving the existence of the alleged violation by the preponderance of the evidence. If the evidence presented by the town establishes a prima facie case, the enforcement board shall then proceed to receive evidence and testimony from the alleged violator. Formal rules of evidence shall not apply, but fundamental procedural due process shall be observed and shall govern the said proceedings. All testimony shall be under oath and recorded.

(d) *Findings and orders.* At the conclusion of the hearing, the enforcement board shall make a finding of fact, based on the evidence of record, and conclusions of law, and shall issue an order affording such relief as may be consistent with the powers granted herein. The findings and order shall be presented in written form and shall be served personally or by certified mail/return receipt requested upon the violator. The order may include a notice that the order must be complied with by a specific date and that a fine may be imposed if the order is not complied with by said date as provided F.S. §162.09 (1), the order may specify the amount of the fine to be imposed and the date on which the fine will commence if the violation is not corrected. If the town prevails then the cost of prosecution shall be included in the lien authorized under section 7-1. The cost of repairs may be included along with the fine 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 all subsequent purchases, successors in interest, or as assigns, if the violation concerns with real property and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchases, successors in interests, 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 provided by the general laws of Florida applicable to code enforcement.

(e) An aggrieved party, including the town council may appeal a final administrative order of the enforcement board to the circuit court. Such appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

Sec. 6-1. (Reserved)

Sec. 7-1. Administrative fines; cost of repairs; liens.

(a) The enforcement board, may either in the initial order or upon notification by code enforcement officer that an Order has not been complied with or finding that a repeat violation has been committed, 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 enforcement board for compliance or, in the case of a 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 enforcement board finds that the violation is a violation described in sec. 4-1 (d), the enforcement board shall notify the town of such findings. The town shall then have the right and power to 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 if such repairs were completed in good faith. If a finding of a violation or repeat violation has been made as provided by this part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, the enforcement board finds a violation to be irreparable or irreversible in nature, he may order the violator to pay a fine as specified in subsection (b).

(b) *Fines.*

(1) A fine imposed pursuant to this section shall not exceed two hundred fifty dollars (\$250.00) per day for a first violation and shall not exceed five hundred dollars (\$500.00) per day for a repeat violation, and in addition, may include all cost of repairs pursuant to this subsection and cost of prosecution provided in section 5-1(d). However, if the enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed five thousand dollars (\$5000.00) per violation.

(2) In determining the amount of the fine, if any, the enforcement board shall consider the following factors;

- (a) The gravity of the violation;
- (b) Any actions taken by the violator to correct the violation;
- (c) Any previous violations committed by the violator;

(c) The enforcement board may reduce a fine imposed pursuant to this section. If a violator desires to request reconsideration of a fine, the following procedures must be followed:

(1) Any order issued to the violator must be complied with.

(2) A written request must be made to the code inspector for an inspection for compliance with the order issued.

(3) After the code inspector has certified in writing that the prior order of the enforcement board has been complied with, the violator must, within twenty (20) days of such certification by the code inspector, request in writing to the code inspector, reconsideration of the fine by the enforcement board.

(d) A certified copy of an order imposing a fine, or a fine plus repair cost 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 judgement 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 judgement except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgement is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the town, and the town 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 enforcement board may authorize the town attorney to foreclose on the lien. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead.

SECTION 2. Severability.

In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of this ordinance shall not be affected and it shall be presumed that the Town Council of the Town of Grant-Valkaria did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 3. Conflicts.

All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 4. Effective Date.

This Ordinance shall take effect thirty (30) days from its adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, FLORIDA, ON THIS 4th DAY OF APRIL, 2007.

(Signature on File)

Del Yonts, MAYOR

ATTEST:

(Signature on File)

TOWN CLERK

1ST READING: 3/21/07

2ND READING: 4/4/07

Reviewed by:

(Signature on File)

Karl W. Bohne, Jr., Town Attorney