

ORDINANCE NO. 2008-04

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF GLEN ST. MARY, FLORIDA, ESTABLISHING A MECHANISM FOR ENFORCEMENT OF THE CODES AND ORDINANCES OF THE TOWN OF GLEN ST. MARY; PROVIDING FOR APPOINTMENT OF A TOWN CODE INSPECTOR; PROVIDING FOR ENGAGEMENT IN AN INTER-LOCAL AGREEMENT WITH BAKER COUNTY, FLORIDA; ESTABLISHING THE SCOPE OF AUTHORITY FOR THE ENFORCEMENT BOARD; ESTABLISHING JURISDICTION FOR APPEALS; AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GLEN ST. MARY, FLORIDA, as follows:

Section 1: Intent

It is the intent of this article to promote, protect, and improve the health, safety, and welfare of the citizens of Glen St. Mary, Florida, by creating avenues to provide for the imposition of administrative fines and other noncriminal penalties, to provide an equitable, expeditious, effective and inexpensive method of enforcing the ordinances in force in Glen St. Mary where a pending or repeated violation continues to exist, as to all Glen St. Mary ordinances, including those which designate the violation thereof to be a criminal act, unless such ordinances expressly excludes the use of any procedure created by this article for enforcement of the same.

Section 2: Authority

This ordinance is enacted pursuant to F.S. ch. 162.

Section 3: Definitions

As used herein the following words or phrases shall have the meaning prescribed in this section unless clearly indicated otherwise by the context:

Board or Enforcement Board shall mean the Baker County Code Enforcement Board.

Town shall mean the Town of Glen St. Mary, Florida.

Town Attorney shall mean the duly appointed attorney for the town.

Town Council shall mean the duly constituted Town Council of the Town of Glen St. Mary, Florida.

Code Inspector or Code Enforcement Officer shall mean any authorized agent or employee of the Town who has been duly appointed to such office by the Town, and whose duty it is to enforce the codes and ordinances enacted by the Town.

Repeat Violation shall mean a violation of a provision of the Town code or ordinances by a person who has been previously found through the enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding that the violation occurred at different locations.

Violator shall mean any person who violates a provision of any of the codes or ordinances of the Town.

Section 4: Inter-local Agreement for Code Enforcement Board

(a) The Mayor of Glen St. Mary, Florida is hereby expressly authorized and directed to negotiate an inter-local agreement with the Board of County Commissioners of Baker County for the hearing of violations of the codes or ordinances of Glen St. Mary, Florida to the Code Enforcement Board of said county. Said Agreement shall be subject to approval and ratification of the Town Council. The Town Council of Glen St. Mary, Florida finds that said inter-local agreement is the most cost-effective manner of achieving enforcement of the Town's codes and ordinances and adopts use of an inter-local agreement in lieu of appointment of a separate Code Enforcement Board. The terms of said Inter-local Agreement, including the duration of the agreement and the agreed cost-splitting for enforcement proceedings shall be negotiated in good faith between the Mayor and County and presented in writing at a later date.

(b) Appointments to the Enforcement Board and its operation shall be as provided by County ordinance or code and the composition of the Enforcement Board's membership shall not be a matter of concern in the negotiation of the inter-local agreement.

Section 5: Enforcement procedure

(a) It shall be the duty of the code inspector appointed by and for the Town to initiate enforcement proceedings of the various ordinances of the Town; however, no member of the Town Council shall have the power to initiate such enforcement proceedings.

(b) Except as provided in subsection (c) hereof, if a violation of the ordinances of the town 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 notify the Enforcement Board and request a hearing. It shall then fall to the Enforcement Board, through its clerical staff, to schedule the requested hearing. Written notice of such hearing shall be hand delivered or mailed to the violator by the Code Inspector as provided for in Section 21 below. At the option of the Enforcement Board, notice may additionally be served by publication or posting as provided for in Section 21 below, or served by any other means of legal process. If the violation is corrected and then re-occurs, 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 enforcement board hearing, and the notice shall so state.

(c) 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 and request a hearing. It shall then fall to the Board, through its clerical staff, to schedule the requested hearing and the Code Inspector shall provide notice pursuant to Section 21 hereof. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the enforcement board hearing, and the notice shall so state. If the repeat violation has been corrected, the enforcement board may nonetheless schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat

violator may choose to waive his or her rights to this hearing and pay said cost as determined by the enforcement board.

(d) If the code inspector has reason to believe a violation presents a serious threat to the public health, safety, and welfare, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing.

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

(1) Disclose in writing the existence and the nature of the proceedings to the prospective transferee;

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

(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 proceedings;

(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 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (1), (2) and (3) above before the transfer creates a rebuttal 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 heard.

Section 6: Conduct of hearing

(a) The setting of hearings shall be within the sole discretion of the chairman of the Enforcement Board. The Code Inspector shall have no authority to call or set hearings, and the Town Council acknowledges and recognizes that in no event shall the Town, as participant in the Inter-local Agreement, have any authority to direct action by the County's appointed Enforcement Board.

(b) Each case before the Enforcement Board on behalf of the Town shall be presented by the Town Code Inspector or by another member of the administrative staff of the Town. If the Town prevails in prosecuting a case before the Enforcement Board, 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 under Section 8 of this ordinance.

(c) All testimonies given shall be under oath and shall be recorded. The Code Inspector shall testify on behalf of the town and the Enforcement Board may hear testimony of the alleged violator pursuant to applicable statutes, as well as from any other witnesses proffered by either the code inspector of the alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) At the conclusion of the hearing, the Enforcement Board's findings of fact, based on evidence of record, and conclusions of law, shall issue to the Town with an order affording the proper relief consistent with powers granted to the Enforcement

Board herein. The finding shall be by motion approved by a majority of those members present and voting where a quorum of members is present. The order may include a notice that it must be complied with by a specified date, and that a fine may be imposed and, under the conditions specified in subsection 8(a), 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 Baker County, Florida, 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 shall not be required to issue such an order acknowledging compliance.

Section 7: Powers of enforcement board

The enforcement board shall have the power to:

- (a) Adopt rules for the conduct of its hearing;
- (b) Subpoena alleged violators and witnesses to the hearings. Subpoenas may be served by the Sheriff of Baker County, or any other lawful process server.
- (c) Subpoena evidence;
- (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.

Section 8: Administrative fines; costs of repairs; liens

(a) The enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the time set 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 enforcement board for compliance 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 section 5(d), the enforcement board shall notify the Town Council, 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 Council to make further repairs, or to maintain the property, and does not create any liability against the Town or the Town Council for any damages to the property if such repairs are completed in good faith. If a finding of a violation or a repeat violation has been made as provided for in this section, 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, it may order the violator to pay a fine as specified in subsection (b)(1) of this section.

(b) (1) A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (a) of this section. However, if the enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.

(2) In determining the amount of the fine, if any, the enforcement board shall consider one or more of the following factors:

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

(3) The Town Council may reduce a fine imposed by this section at any time after a recommendation by the enforcement board.

(c) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records of Baker County, Florida, 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 Sheriff of Florida, 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 section 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 Town, and the Town Council may execute a satisfaction or release of lien entered pursuant to this section. After three 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. 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. The money judgment provisions of this section shall not apply to real property or personal property which is covered under Section 4 (a), Article X of the State Constitution.

Section 9: Duration of lien

No lien provided under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to subsection 8(b)(2)c in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including reasonable attorneys' fees that it incurs in the action. The Town shall be entitled to collect all costs incurred in recording and satisfying a valid lien. 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.

Section 10: Appeals

An aggrieved party, including a local governing body, may appeal a final administrative order of the enforcement board to the Town Council. Such an 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 30 days of the execution of the order to the appeal. The enforcement board shall, by rule, establish reasonable charges to be paid by the appealing party for preparation of the record to be appealed.

Section 11: Notices

(a) All notices required by this ordinance shall be provided to the alleged violator by:

(1) Certified mail, return receipt requested, provided if such notice is sent under this section 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 F.S. ch. 162 and by first-class mail directed to the addresses furnished to the Town with a properly executed proof of mailing or affidavit confirming the first-class mailing;

(2) Hand delivery by the sheriff or other law enforcement officer, code inspector, or any other person designated by the town;

(3) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(4) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(b) In addition to providing notice as set forth in subsection (a), at the option of the enforcement board, notice may also be served by publication or posting as follows:

(1) a. Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Baker County, Florida. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50, for legal and official advertisements.

b. Proof of publication shall be made as provided for in F.S. §§ 50.041 and 50.051.

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

b. 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.

(3) Notice of 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 (a).

a. Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication

or posting as provided in subsection (b), shall be sufficient to show that the notice requirements of this section have been met, without regard to whether or not the alleged violator actually received such notice.

Section 12: Jurisdiction

The enforcement board shall have jurisdiction to hear and decide alleged violations of all ordinances in force in the Town, unless such ordinances expressly exclude the use of the procedure created by this ordinance for enforcement of the same. The jurisdiction of the enforcement board shall not be exclusive. Any alleged violation of any of the ordinances of the Town may be pursued by appropriate remedy in court or by enforcement of the criminal penalty provided for in such ordinance, at the option of the administrative official whose responsibility it is to enforce that respective ordinance.

Section 13: Area embraced

All territory within the legal boundaries of the Town, which are established from time to time, shall be embraced by the provisions of this ordinance.

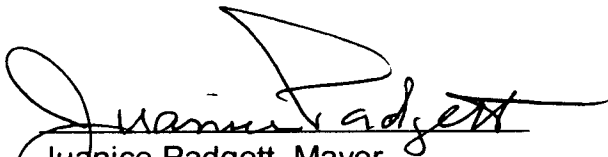
Section 14: Effective date

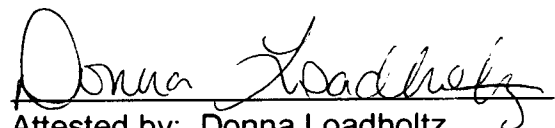
This ordinance shall become effective upon becoming law.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF GLEN ST. MARY, BAKER COUNTY, FLORIDA, at its regular meeting held this 16th day of September 2008.

PASSED ON THE FIRST READING this 19th day of August 2008.

PASSED AND ADOPTED ON THE SECOND AND FINAL READING this 16th day of September 2008.


Juanice Padgett, Mayor
Town of Glen St. Mary


Attested by: Donna Loadholtz
Town Clerk

