

ORDINANCE NO. 138

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA, REORGANIZING THE MUNICIPAL CODE ENFORCEMENT BOARD; INCREASING MEMBERSHIP TO SEVEN (7) MEMBERS; CONFORMING PROCEDURES TO REQUIREMENTS OF CHAPTER 82-37, FLORIDA STATUTES; PROVIDING FOR INSERTION IN THE TOWN CODE; PROVIDING REPEAL OF ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH; PROVIDING FOR SEPARATION IN THE EVENT A SECTION OR PORTION IS DECLARED TO BE UNCONSTITUTIONAL; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Sewall's Point created a Code Enforcement Board under Ordinance No. 125, pursuant to Section 166.051, et seq., Florida Statutes (1980), known as the "Municipal Code Enforcement Boards Act;" and

WHEREAS, the legislature of the State of Florida, by Chapter 82-37, Laws of Florida, amended the Municipal Code Enforcement Boards Act to require an additional member and to modify certain powers and procedures of the Code Enforcement Board; and

WHEREAS, the Town Commission wishes to conform to the requirements of the amended statute, now known as the "Local Government Code Enforcement Boards Act."

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA, THAT:

1. Chapter 2, Article IV, Sections 2-101 through 2-108 of the Code of Ordinances, Town of Sewall's Point, Florida, is hereby amended to read as follows:

Sec. 2-101. Definitions.

Code inspector means any authorized agent or employee of the municipality whose duty it is to insure code compliance.

Town attorney means the legal counselor for the Town of Sewall's Point.

Enforcement board means the code enforcement board. (Ord. No. 125, §1, 4-8-81)

Sec. 2-102. Creation, appointment and organization.

(a) There shall be a board known as the code enforcement board of the Town of Sewall's Point, Florida, which shall consist of six (6) ~~seven~~ (7) members and legal counsel for the enforcement board appointed by the town commission. Members of the code enforcement board shall be residents of the town of Sewall's Point. Appointments shall be made in accordance with the Town of Sewall's Point Charter on the basis of experience or interest in the fields of zoning and building control.

(b) The membership of the enforcement board shall, whenever possible, consist of include an architect, a businessman, an engineer, a general contractor, a subcontractor, and a realtor.

(c) The initial appointments to the enforcement board shall be as follows:

(1) Two (2) members appointed for a term of one (1) year.

(2) Two (2) ~~Three (3)~~ members appointed for a term of two (2) years.

(3) Two (2) members appointed for a term of three (3) years.

(d) Commencing upon the expiration of the first members' terms, and thereafter, all appointments shall be made for a term of three (3) years. Any member may be reappointed from term to for one successive term upon approval of the town commission. Appointments to fill any vacancy on the enforcement board shall be for the remainder of the unexpired term of office. If any member who fails to attend two (2) of three (3) successive meetings without cause and without prior approval of the chairman shall automatically forfeit his appointment, the board shall declare the member's office vacant, and the town commission shall promptly fill such vacancy, as indicated in subsection (a) above. The members shall serve in accordance with the Town Charter ordinances and may be suspended and removed for cause as provided in the Town Code of Ordinances for removal of members of town boards.

(e) The members of the enforcement board shall elect a chairman from among its members. The presence of four (4) or more members shall constitute a quorum of the enforcement board. Members shall serve without compensation, but may be reimbursed for such travel, mileage and per diem expenses as may be authorized by the town commission.

(f) The town attorney shall be counsel to the code enforcement board. The town attorney shall not represent the town by presenting cases before the board. (Ord. No. 125, §2, 4-8-81)

Sec. 2-103. Enforcement procedure.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes; provided, however, no member of the enforcement board shall have the power to initiate such enforcement proceedings.

(b) Except as provided herein, if a violation of the codes 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 and request a hearing pursuant to the procedure herein set forth. Written notice shall be mailed to said violator as provided herein.

(c) If the code inspector has reason to believe the violation presents a serious threat to the public health, safety and welfare, the code inspector may proceed directly to the procedure contained in Section 2-104 without notifying the violator. (Ord. No. 125, §3, 4-8-81)

Sec. 2-104. Conduct of hearing.

(a) Chairman of the enforcement board may call hearings of the enforcement board and hearings may also be called by written notice signed by at least three (3) members of the enforcement board. The enforcement board at any hearing may set a future hearing date. The enforcement board should shall attempt to convene no less frequently than once every two (2) months, but it may meet more or less often as the demand necessitates.

an action to foreclose is commenced in a court of competent jurisdiction. 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.

Sec. 2-107 2-108. Appeal.

An aggrieved party, including the Town, may appeal a ruling or final administrative order of the enforcement board by certiorari in to the circuit court in and for Martin County. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed. (Ord. No. 125, §7, 4-8-81)

SEPARATION.

If any section, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this Ordinance, and it shall be construed to have been the intent of the Board to adopt this Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts, shall be deemed and held to be valid as if such part or parts had not been included herein. If this Ordinance or any provision thereof shall be held to be inapplicable to any person, groups of persons, property, kind of property, circumstances or set of circumstances, such holdings shall not affect its applicability to any other person, property or circumstances.

REPEAL.

Town ordinances and Town resolutions, or parts thereof, in conflict with this Ordinance are hereby abolished and repealed to the extent of such conflict.

INCORPORATION IN TOWN CODE.

Provisions of this Ordinance shall be incorporated in the Town Code and the word "Ordinance" may be changed to "section," "article," or other appropriate word, and the sections of this Ordinance may be renumbered or relettered to accomplish such intention.

EFFECTIVE DATE.

This Ordinance shall become effective immediately upon the date of its passage according to law.

Minutes shall be kept of all hearings by the enforcement board and all hearings and proceedings shall be open to the public. The town commission shall provide clerical and administrative personnel as may be reasonably required by the enforcement board for the proper performance of its duties.

(b) Each case before the enforcement board shall be presented by a member of the administrative staff of the Town of Sewall's Point.

(c) The enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern said proceedings.

(d) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record, and conclusions of law and shall issue an order affording the proper relief consistent with the powers granted herein. The finding shall be by motion approved by a majority of those present and voting, except that at least three (3) four (4) members of the enforcement board must vote for the action to be official. The record shall be presented to the court on appeal and shall be subject to review. (Ord. No. 125, §4, 4-8-81)

Sec. 2-105. Powers of the enforcement board.

The enforcement board shall have the powers to:

- (a) Adopt rules for the conduct of its hearings.
- (b) Subpoena alleged violators and witnesses to its hearings. Subpoenas shall be served by the police department of the Town of Sewall's Point.
- (c) Subpoena evidence.
- (d) Take testimony under oath.
- (e) Issue orders having the force of law commending whatever steps are necessary to bring a violation into compliance. (Ord. No. 125, §5, 4-8-81)

Sec. 2-106. Fines.

The enforcement board, upon notification by the code inspector that a previous order of the enforcement board has not been complied with by the set time, may order the violator to pay a fine not to exceed five hundred dollars (\$500.00) two hundred fifty dollars (\$250.00) for each day the violation continues past the date set for compliance. A certified copy of the order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land upon which the violation exists, or if the violator does not own land, upon any other real or personal property owned by the violator and may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against personal property, but shall not be deemed otherwise to be a judgment of a court except for enforcement purposes. After one (1) year from the filing of any such lien which remains unpaid, the enforcement board may authorize the town attorney to foreclose on the lien. (Ord. No. 125, §6, 4-8-81)

Sec. 2-107. Duration of Lien.

No lien provided under this ordinance shall continue for a longer period than two (2) years after the certified copy of an order imposing a fine has been recorded, unless within that time

Passed first reading at the regular meeting of the Town Commission held on the 13th day of April, 1983.

Passed second reading at the regular meeting of the Town Commission held on the 11th day of May, 1983.

ATTEST:

Joan Barrow
JOAN BARROW, Town Clerk

Approved as to form and correctness:

M. Lanning Fox
M. LANNING FOX,
Town Attorney

Gilbert C. Strubell
GILBERT C. STRUBELL,
Mayor-Commissioner

Helena B. Towl
HELENA B. TOWL, Commissioner

William E. Barton III
WILLIAM E. BARTON, III,
Commissioner

Dana de Windt
DANA deWINDT, Commissioner

Edward H. Gluckler
EDWARD H. GLUCKLER, Commissioner

