

LEE COUNTY ORDINANCE NO. 14-08

AN ORDINANCE REPEALING AND REPLACING LEE COUNTY ORDINANCE NO. 93-23, RELATING TO NUISANCE GRASSES AND WEEDS; PROVIDING FOR REPEALER, SHORT TITLE AND TERRITORIAL SCOPE; DEFINITIONS; NUISANCE DECLARED; NOTICE TO MAINTAIN PROPERTY; MOWING OF NUISANCE VEGETATION REQUIRED; NONCOMPLIANCE, NOTICE OF VIOLATION AND ACTION BY LEE COUNTY; PAYMENT OF ASSESSMENT AND INTEREST; PREPARATION AND RECORDING OF LIEN; PROCEDURES FOR OBJECTIONS, CONDUCT OF HEARING; REPEAT OFFENSES; RELEASE OF LIENS; ATTACHMENT; COLLECTION OF DELINQUENT PAYMENTS; CODIFICATION AND ERRORS; CONFLICTS OF LAW, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County ("Board") has determined that the excessive, uncontrolled growth of grasses and weeds in the Future Urban Areas of the County constitute a nuisance; and,

WHEREAS, the Board has the authority to adopt ordinances necessary for the exercise of its powers pursuant to Florida Statutes Section 125.01; and

WHEREAS, the Board finds that in order to ensure the prompt abatement of such nuisances and to secure the public health, welfare and safety of its citizens, it is necessary to repeal the Lee County Lot Mowing Ordinance and institute a new ordinance; and

WHEREAS, the Board intends to utilize the Lee County Hearing Examiner for any hearings requested pursuant to this Ordinance; and

WHEREAS, the Board finds that abatement of a nuisance violation by the County in accordance with this Ordinance will provide a direct and special benefit accruing to the property and serves a public purpose; and

WHEREAS, the Board desires to repeal and replace Lee County Lot Mowing Ordinance No. 93-23 to effect the purposes set forth herein and to benefit the public health, safety and welfare,

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Lee County, Florida:

SECTION ONE: REPEALER

Lee County Ordinance No. 93-23, otherwise known as the Lee County Lot Mowing Ordinance, is hereby repealed, declared void and without further effect, except as provided herein. Ordinance 93-23 is replaced by this legislation, however, any violations previously occurring under Ordinance No. 93-23 and resulting assessment liens will remain in full force and effect until fully paid and released.

SECTION TWO: SHORT TITLE AND TERRITORIAL SCOPE

This Ordinance will be known and cited hereafter as the Lee County Lot Mowing Ordinance and will be applicable in all unincorporated Lee County.

SECTION THREE: DEFINITIONS

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

Acreage means any tract or parcel of land more than one (1) acre in size.

Adjacent Property means the property immediately adjoining or contiguous to property that is subject to review under this Ordinance.

Board means the Board of County Commissioners of Lee County, Florida.

County Manager means the County Manager of Lee County or such person(s) as he or she may designate to carry out the administration and enforcement of this Ordinance.

Developed Property means any property that has been improved and is in use for Residential, Commercial, Industrial, Public or Quasi-Public purposes.

Future Urban Area means those land use categories designated as future urban areas in the Lee County Comprehensive Plan, as amended.

Hearing Examiner means the Lee County Hearing Examiner as established pursuant to Chapter 34 of the Lee County Land Development Code and Sections 1-81 et seq. of the Lee County Code.

Lot means any tract or parcel of land one (1) acre or less in size.

Nuisance Vegetation means grasses and weeds that are not regularly cared for and maintained, which exceed 12 inches in height and meet the locational requirements as further defined herein.

Owner means any holder of a recorded fee interest in land.

Platted Subdivision means those subdivisions with lot sizes of two acres or less created by Chapter 177, Florida Statutes.

SECTION FOUR: NUISANCE DECLARED

It is hereby declared and determined by the Board of County Commissioners of Lee County, Florida:

- A. Grasses and weeds in excess of 12 inches in height and covering more than 50% of an unimproved Lot area, impair the economic welfare of property, contribute a fire hazard, or create a health hazard constituting a nuisance when any part of the growths are located within one hundred fifty (150) feet of the boundary of any Developed and Adjacent Property where the Developed and Adjacent Property is located in a Future Urban Area or Platted Subdivision of unincorporated Lee County. A property with an agricultural classification pursuant to Chapter 193, Florida Statutes, will not be considered as having Nuisance Vegetation.
- B. When Nuisance Vegetation is located on Acreage, only that part of the vegetation located within 150 feet of a Developed and Adjacent Property situated in a Platted Subdivision or a Future Urban Area will constitute a nuisance.

SECTION FIVE: NOTICE TO MAINTAIN PROPERTY

The County Manager will publish in a newspaper regularly published and in general circulation within Lee County; and, on the Lee County website during the months of April and October every year hereafter, one display advertisement during each of the named months, a notice to read substantially as follows:

Attention Real Property Owners, Agents, Custodians, Lessees and Occupants of Real Property in unincorporated Lee County:

You are required by law to maintain the grasses and weeds on property owned or controlled by you to a height that does not exceed 12 inches. If you fail to do so, Lee County is authorized to cut these grasses and weeds. The associated costs for mowing and administrative fees attendant thereto shall be assessed against the property. Nonpayment of these costs will result in a lien against your property. The Board of County Commissioners of Lee County, Lee County Ordinance No. _____(2014).

SECTION SIX: MOWING OF NUISANCE VEGETATION REQUIRED

- A. All real property Owners, agents, custodians, lessees and occupants of real property within unincorporated Lee County will, in accordance with the published notice set forth in Section Five, cut and keep cut, to a height not exceeding 12 inches, all grasses and weeds on any property owned, controlled or occupied by them except as provided for in Section 4.

- B. All Owners, agents, custodians, lessees and occupants are deemed to control the easements, alleys and rights-of-way adjoining or abutting such real property only for the purposes stated herein.

SECTION SEVEN: NONCOMPLIANCE; NOTICE OF VIOLATION; ACTION BY LEE COUNTY

- A. Upon failure of any Owner, agent, custodian, lessee or occupant to maintain grasses and weeds at a height not to exceed 12 inches on any property meeting the requirements in Section 4, thereby allowing Nuisance Vegetation to exist on the property, the County Manager can pursue compliance by written notice to an Owner or agent, via regular first class mail.
- B. The written notice must state that a violation of this Ordinance exists on the property and that the Owner has 21 days from the date of the written notice to abate the violation. The written notice must also provide that the Owner has 15 days from the date of the notice to make a written request for hearing to the County Manager to challenge the issuance of the notice and existence of the alleged violation.
- C. The notice will be sent to the address of the last known Owner, as designated by the Lee County Property Appraiser's records.
- D. If the violation is not abated within the time specified in the notice, the County Manager is authorized to cut the Nuisance Vegetation and to assess the actual cost or expense of the work against the property. On Acreage property, the County will only cut such Nuisance Vegetation located within 150 feet of a Developed and Adjacent Property that is situated in a Platted Subdivision or Future Urban Area.

SECTION EIGHT: PAYMENT OF ASSESSMENT; INTEREST

- A. The work performed to cut the Nuisance Vegetation on the property will be assessed for the actual cost of service plus an administrative fee. The established administrative fee is \$150, which represents the County's time for inspections and notice to the Owner.
- B. An invoice to the Owner will include the amount due for the work performed, the administrative fee and state that the Owner has 30 days from the date of the assessment invoice to pay the balance of the invoice. The invoice must also provide notice of the Owner's rights under Section Ten and state that if the balance is not paid within 30 days, interest on the unpaid balance will accrue at the maximum rate permitted by state law. The invoice will be sent to the Owner at the address designated by the Lee County Property Appraiser via regular first class mail.
- C. For the period of 30 days after the date of the assessment invoice, the outstanding balance may be paid without interest. If the invoice is not paid in

full on or before the 30th day, the County will file a lien in the public records. Thereafter, interest will accrue on the balance of the unpaid assessment invoice at the maximum rate permitted by state law.

SECTION NINE: PREPARATION AND RECORDING OF LIEN FOR LOT MOWING DONE BY THE COUNTY

- A. Upon expiration of the payment period outlined in Section Eight, the County Manager will prepare an assessment lien, showing:
 - 1. The name of the owner(s) of the property upon which the nuisance has been abated.
 - 2. A description of the property proposed to be assessed for the cost or expense of abating such nuisance, including the address of the property.
 - 3. The amount proposed to be assessed against each property.
- B. The assessment lien may include a listing of multiple properties that failed to pay the assessment invoice during the time period outlined in Section Eight.
- C. The lien will be recorded in the Public Records of Lee County, Florida and will constitute notice to the public of the lien against the property so assessed. Execution and recording of the lien may be done electronically, in accordance with the Florida Statutes.
- D. No error, omission or mistake in regard to the name of the Owner will be held to invalidate any assessment and lien.

SECTION TEN: PROCEDURE FOR OBJECTIONS; CONDUCT OF HEARING

- A. The Owner has 15 days from the date of the notice of violation to make a written request for hearing to the County Manager to challenge the issuance of the notice and alleged violation.
- B. Upon receipt of the written request for hearing, the County Manager will add the case to a regularly scheduled Hearing Examiner's agenda for code enforcement hearings. The County Manager will provide notice to the Owner of the date, time and place set for the hearing no less than 10 days before the date of the hearing.
- C. The Hearing Examiner is authorized to hear all objections and protests to a notice of violation of this Ordinance pursuant to Lee County Administrative Code AC-2-14, *Administrative Rules of Procedure and Governing Rules for the Hearing Examiner in Code Enforcement Hearings*.
- D. At such hearing, the Hearing Examiner will determine whether or not the property is in violation of this Ordinance. If the property is found in violation, then the Hearing Examiner may set a timeframe for abatement, direct the

County to abate the Nuisance Vegetation and assess the Owner accordingly, or any other remedy deemed appropriate as per Lee County Administrative Code AC-2-14.

SECTION ELEVEN: REPEAT OFFENSES

- A. Repeated notifications of violation of this Ordinance and subsequent abatement by the Owner within the timeframe specified in Section Seven(B) may result in the imposition of an administrative fee for the costs associated with repeated inspection, notice and review of the subject property for compliance with this Ordinance.
- B. An administrative fee may be assessed upon the third notice of violation within a 12 month time period that is issued to an Owner who has abated the violations previously within the required timeframe. The 12 month time period runs from the date of the first notice of violation to 12 months thereafter.
- C. The amount of the administrative fee assessed in Subsection Eleven(B) is \$450.00. The amount of the administrative fee after the third notice of violation will be \$150.00 for each subsequent failure to abide by the terms of this Ordinance within the time period described in Subsection Eleven(B).
- D. The administrative fee assessed by Subsection Eleven(B) will be invoiced to the Owner at the address designated by the Lee County Property Appraiser via regular first class mail. The Owner will have 30 days after the date of the invoice to pay the administrative fee without interest. Thereafter, the County Manager will prepare a lien showing the name of the Owner, the description of the property, and the amount of the administrative fee. Once complete, the lien will be recorded in the Public Records of Lee County, Florida and will accrue interest at the maximum amount permitted by state law until paid.
- E. An Owner will have 15 days from the date of the invoice to challenge the assessment for repeated violation. All requests for hearing under this section must be in writing to the County Manager.
- F. Upon receipt of a written request for hearing, the County Manager will add the case to a regularly scheduled Hearing Examiner's agenda for code enforcement hearings. The County Manager will provide notice to the Owner of the date, time and place set for the hearing no less than 10 days before the date of the hearing.
- G. At the hearing, the Hearing Examiner will review and determine the following:
 - 1. Has the Owner allowed Nuisance Vegetation to grow on the property;
 - 2. Has the County provided notice to the Owner ; and

3. Have the foregoing items 1 and 2 occurred three times within a 12 month time period, as further described in Subsection Eleven(B).

Should the Hearing Examiner determine that the foregoing has occurred, the Hearing Examiner will issue an order confirming the proper administrative fee, as provided for in Subsection Eleven(C), and assessing costs for hearing in an amount not to exceed \$285.

- H. The Owner will have 30 days from the date of the hearing to pay the administrative fee and costs contained in the Hearing Examiner's order. Should the Owner fail to make the required payment within the requisite timeframe, the unpaid fee and costs, if any, will become a lien upon the subject property to be recorded in the Public Records of Lee County, Florida.
- I. The County Manager is authorized to mitigate or reduce any administrative fee levied pursuant to this Section for good cause shown.

SECTION TWELVE: RELEASE OF LIENS

- A. Upon payment in full of the outstanding balance of any lien imposed as provided for herein, the County Manager will prepare and execute a release of lien. The release of lien will be recorded in the Public Records of Lee County, Florida.
- B. The County Manager is hereby granted the authority to consider objections to any assessment for work performed by the County to abate the Nuisance Vegetation and to mitigate or reduce the amount of the assessment and any interest that may have accrued for good cause shown.

SECTION THIRTEEN: COLLECTION OF DELINQUENT PAYMENTS

- A. If any payments required as a result of work performed by the County, or its designee, are not paid within 3 months of the date the lien was filed for the work, any unpaid balance may be collected by the County in any manner provided by law including, but not limited to, an action for foreclosure or an action for money judgment. Lee County is entitled to collect all costs in recording and satisfying a valid lien, along with reasonable attorney's fee and all costs of any necessary action.
- B. In the proceeding provided for in this section, the Owner of the property, and any person interested therein, if they can be ascertained, will be defendant(s). If the Owner, or parties interested, cannot be ascertained after diligent inquiry, the proceedings will be against the property on which the lien is claimed without mentioning any party as defendant. In such case, service is by publication as provided by law in other chancery suits.

SECTION FOURTEEN: RULES AND REGULATIONS

The Board is authorized and empowered to adopt and promulgate, by administrative code, such reasonable rules and regulations as may be necessary to carry out and enforce the purposes of this Ordinance.

SECTION FIFTEEN: CODIFICATION AND SCRIVENER'S ERRORS

The Board intends that this Ordinance be made part of the Lee County Code of Ordinances; and that sections of this Ordinance can be renumbered or re-lettered and the word "Ordinance" can be changed to "Section", "Article", or some other appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the County Manager without the need for a public hearing.

SECTION SIXTEEN: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION SEVENTEEN: SEVERABILITY

It is the Board's intent that if any section, subsection, clause or provision of this Ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will be considered a separate provision and will not affect the remaining provisions of this Ordinance. The Board further declares its intent that this Ordinance would have been adopted if such invalid or unconstitutional provision was not included.

SECTION EIGHTEEN: EFFECTIVE DATE

This Ordinance takes effect immediately upon its filing with the Office of the Secretary of the Florida Department of State.

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Commissioner John Manning made a motion to adopt the foregoing ordinance. The motion was seconded by Commissioner Cecil L Pendergrass. The vote was as follows:

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Brian Hamman	Aye
Frank Mann	Absent

DULY PASSED AND ADOPTED THIS 1st day of April, 2014.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

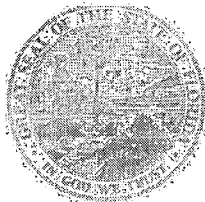
By: Marcia Wilson
Deputy Clerk

By: J. Manning
For: Larry Kiker, Chair
Commissioner



APPROVED AS TO FORM:

By: Kaysa Bah
Assistant County Attorney
Office of the County Attorney



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

April 7, 2014

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Lisa Pierce, Deputy Clerk

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic scrivener's error correction for Lee County Ordinance No. 14-08, which was filed in this office on April 3, 2014.

Sincerely,

Liz Cloud
Program Administrator

LC/mrh

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MINUTES OFFICE
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