

ORDINANCE 2018-5

AN ORDINANCE OF THE TOWN OF INTERLACHEN, FLORIDA, REPEALING ORDINANCE 2009-2; SETTING FORTH REGULATIONS PERTAINING TO CODES ENFORCEMENT WITHIN THE TOWN LIMITS OF INTERLACHEN AND PROVIDING FOR THE USE OF A SPECIAL MAGISTRATE OR CODES ENFORCEMENT BOARD; ESTABLISHING THE QUALIFICATIONS OF SAID MAGISTRATE OR BOARD MEMBERS; ESTABLISHING THE DUTIES AND POWERS; ENFORCEMENT PROCEDURES; CONDUCT OF HEARINGS; ADMINISTRATIVE FINES, LIENS AND APPEALS; PROVIDING FOR PURPOSE; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF INTERLACHEN, FLORIDA,

SECTION I REPEAL

2018-5-1.1 - Repeal.

Ordinance 2009-2, passed on second reading on August 14, 2009 is hereby repealed.

SECTION II RULES OF CONSTRUCTION

2018-5-2.1 – Rules of Construction.

For the purpose of administration and enforcement of this Ordinance, unless otherwise stated in this Ordinance, the following rules of construction shall apply to the text of this Ordinance.

- (1) The masculine gender includes the feminine gender and the neuter gender.
- (2) The word “shall” is always mandatory and not discretionary.
- (3) The word “must” is always mandatory and not discretionary.
- (4) The word “may” is to be construed as being permissible and not as being mandatory.
- (5) Words used in the present tense shall include the future and words used in the singular number shall include the plural and the plural singularly, unless the text clearly indicates the contrary.
- (6) The phrase “used for” includes “arrange for”, “maintained for”, or “occupied for”.
- (7) The word “person” includes an individual, corporation, a partnership and incorporated association or any other similar entity.
- (8) The word “C.E.O.” shall mean “Codes Enforcement Officer”.


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SECTION III
CODES ENFORCEMENT BOARD OR SPECIAL MAGISTRATE

2018-5 - 3.1 – Codes Enforcement Board or Special Magistrate.

It is the intent of this Section to promote, protect and improve the health, safety and welfare of the citizens of the Town of Interlachen by authorizing and creating a Special Magistrate and/or a Codes Enforcement Board to hear and decide code case enforcement proceedings with the authority to impose administrative fines and other non-criminal penalties and to provide an equitable, expeditious, effective and inexpensive method for enforcing the codes and ordinances in force in the Town where a pending or repeated violation continues to exist.

2018-5 - 3.2 – Establishment and Membership of the Codes Enforcement Board or a Special Magistrate.

A) Appointment of the Codes Enforcement Board.

(1) The Codes Enforcement Board is a citizen board, the formation and function of which is to be governed by the requirements of this Section and also Section 4 of this Ordinance. Its membership consists of five (5) voting members.

B) Appointment and Qualifications of the Special Magistrate.

(1) The Special Magistrate may be appointed by a majority vote of the Town Council. The Council may appoint one or more alternate special magistrates, or may contract with Putnam County to use their Special Magistrate.

(2) The Special Magistrate would first be appointed for a period of one (1) year and would thereafter be appointed for a term of three (3) years. A Special Magistrate may be reappointed upon approval of the Town Council. In the event of a vacancy, the Town Council shall appoint a replacement for the remainder of the unexpired term.

(3) The Special Magistrate would be compensated in the amount to be established by the Town Council, or pursuant to an agreement with Putnam County to use their Special Magistrate.

(4) The Special Magistrate would serve at the pleasure of the Town Council and could be suspended or removed by a majority vote of said Council.

(5) The Special Magistrate would be an attorney and a member in good standing with the Florida Bar for a minimum of five (5) years, and must live in Putnam County.

C) The Town of Interlachen may choose to utilize the County's Special Magistrate through an inter-local agreement instead of creating a Codes Enforcement Board or Special Magistrate of their own.


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**SECTION IV
GENERAL FUNCTIONS, POWERS AND DUTIES**

2018-5 – 4.1- General Functions, Powers and Duties.

- 1) The Enforcement Board shall have the jurisdiction and authority to hear and decide alleged violations of this code, other codes and ordinances enacted by the Town of Interlachen, including, but not limited to the following codes; building, electrical, fire, gas, housing, abatement of nuisances, plumbing, and any other similar type codes which may be passed by the Town of Interlachen in the future which regulates aesthetics, construction, environmental, health, safety or location of any structure on real property in the Town of Interlachen.
- 2) The provisions of this Section are supplemental and shall not prohibit the Town from enforcing its codes by other legal means.
- 3) The Codes Enforcement Board shall have the power to:
 - (a) Subpoena alleged violators and witnesses to its hearing. A sheriff or other authorized persons may serve subpoenas consistent with applicable State law and procedures, upon request by the Board Chairperson.
 - (b) Subpoena records, surveys, plats and other documentary materials.
 - (c) Take testimony under oath.
 - (d) Issue orders having the full force and effect of law to command whatever steps are necessary to bring a violation into compliance.
 - (e) Assess fines pursuant to the requirements of this Section pertaining to fines.
 - (f) Lien property pursuant to the requirements of this Section pertaining to liens.

**SECTION V
ENFORCEMENT PROCEDURES AND REMEDIES**

2018-5– 5.1- Enforcement Procedures and Remedies.

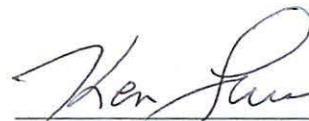
- 1) An alleged violation of any of codes or ordinances of the Town of Interlachen, as described herein, may be filed with the Town Office, and forwarded to the C.E.O.
- 2) The “Codes Enforcement Officer” is an authorized agent of the Town whose duty is to assure code compliance. It shall be the duty of the C.E.O. to initiate enforcement proceedings. A member of the Codes Enforcement Board shall not have the power to initiate enforcement proceedings.
- 3) Upon determination by the C.E.O. that there is a violation, a written courtesy notice shall be sent to the owner of the property and/or building involved and to the person responsible for the violation. This notice shall include:


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- (a) The section of the code or ordinance that is being violated.
 - (b) An order to cease such violation.
 - (c) A list of remedial actions indicating the necessary steps to abate such violation.
 - (d) Information concerning penalties for violation of this Ordinance.
- 4) To determine violations, the C.E.O. is authorized to conduct inspections and obtain inspection warrants as provided by *F.S., Chapter 933*.
- 5) If violations are not corrected in the time specified, the person or entity found to be in violation of this Ordinance may be prosecuted for said violation in the same manner as misdemeanors are prosecuted, as provided in *F.S., Section 166.22*. Alternatively, violations may also be prosecuted as provided in Section 14 of this Ordinance, or any other method provided by law.
- 6) Each day a violation continues after a notice shall constitute a separate violation and may be punished as set forth in the preceding paragraph.
- 7) Violations may be restricted by injunction, including a mandatory injunction, and otherwise abated in any manner provided by law, and such suit or action may be instituted and maintained by the Interlachen Town Council, or by any person, firm, or corporation, association or other group or body with standing to do so under the laws of Florida.
- 8) Reasonable costs, including attorney fees incurred by the Town, County or the Court in an enforcement action may be assessed against the landowner, violator, or both.
- 9) Except as provided in subsection (10) and (11) below, if a violation is found, the C.E.O. shall notify the violator and give him/her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the C.E.O. shall schedule a hearing before the Codes Enforcement Board and give notice to the violator pursuant to Section 10 of this Ordinance. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction, the hearing shall nevertheless take place, even if the violation has been corrected prior to the Board hearing and the notice shall state such.
- 10) If a repeat violation is found, the C.E.O. shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. "Repeat violation" means the violation of a provision of a code or ordinance by a person who has been previously found through the Codes Enforcement Board or any other quasi judicial or judicial proves to have violated, or who has admitted violating the same provision within five years prior to the violation. The C.E.O., upon notifying the violator of a repeat violation, shall schedule a hearing and shall provide notice in accordance with Section 10 of this Ordinance. The case may be presented to the Codes Enforcement Board even if the repeat violation has been corrected prior to the Board hearing and the notice shall state such. If the repeat violation has been corrected, the Codes Enforcement Board retains the right to impose costs and enforcement fees. The repeat violator may waive his/her right to this hearing and pay said costs as determined by the Board.


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11) If the C. E.O. has reason to believe a violation presents a serious threat to the public health, safety, and welfare, or if the violation is irreparable or irreversible in nature, the C.E.O. shall make a reasonable effort to notify the violator and may immediately notify the Codes Enforcement Board and request a hearing or follow the abatement procedures outlined in Section 7 of this Ordinance.

12) Nothing contained in these sections shall prohibit the Town of Interlachen from enforcing its codes by any other means.

SECTION VI NOTICES

2018-5 - 6.1 – 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 paragraph 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 provide to the local government by such owner, and is returned as unclaimed or refused, notice may be provided by posting as described in Section (B)(3) below by first class mail directed to the addresses furnished to the local government 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, C.E.O., or 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 fifteen (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.

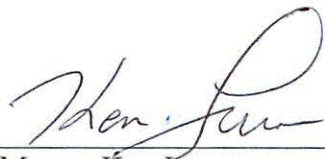
B) In addition to providing notice as set forth in Section (A), at the option of the Codes Enforcement Board, notice may also be served by publication or posting as follows:

(1) Such notice shall be published once during each week for four (4) consecutive weeks (*four publications being sufficient*) in a newspaper of general circulation in Putnam County. The newspaper shall meet the requirements prescribed under *F.S., Chapter 50*, for legal and official advertisements.

(2) Proof of publication shall be made as provided in *F.S., Section 50.041 and 50.051*.

(3) In lieu of such publication, the notice may be posted at least ten (10) days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in two (2) locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be on the bulletin board at the Interlachen Town Office.


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(4) 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.

(5) Notice by publication or posting may run concurrently with, or may follow an attempt to provide notice by hand delivery or by mail.

C) Evidence that an attempt has been made to hand deliver or mail notice, together with proof of publication or posting, shall be sufficient to show that the notice requirements of this Section have been met.

SECTION VII CONDUCT OF HEARINGS

2018-5 – 7.1- Conduct of Hearings.

The following requirements shall apply to the conduct of Codes Enforcement Board:

1) Schedule

(a) Regular meetings of the Codes Enforcement Board will convene at 5:05pm on the first (1st) Tuesday of the month as needed. Written notice and a formal agenda packet will be prepared and forwarded to each member of the Codes Enforcement Board. Special meetings of the Codes Enforcement Board may be convened by the Chair or Vice-Chair in the absence of or unavailability of the Chair, or by written notice signed by at least three (3) members of the Board. The Board may set by motion, additional meetings and locations as required.

(b) Upon the request of the C.E.O., or at such other times as may be necessary, the Codes Enforcement Board may call a hearing to hear and decide Codes Enforcement matters.


2) All Testimonies shall be under oath and mechanically recorded.

3) Each case before the Codes Enforcement Board shall be presented by the Town's authorized representative who is charged with the responsibility for enforcement of the specific code sections alleged to have been violated.

4) The formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceeding. All relevant evidence shall be admitted if, in the opinion of the Codes Enforcement Board, it is the type of evidence upon which reasonable and responsible persons would normally rely in the conduct of business affairs, regardless of the existence of any common law or statutory rule that might make such evidence inadmissible over objections in a civil action. The Chair of the Codes Enforcement Board may exclude irrelevant or unduly repetitious evidence. Any part of the evidence may be received in written form and noted during the meeting.

5) Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence.


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- 6) The alleged violator has the right, at his/her own expense to be represented by an attorney at any hearing.
- 7) The alleged violator who wishes to have a written verbatim transcript of the hearing shall be responsible for securing at their own expense a duly certified court reporter.
- 8) The burden of proof shall be with the C.E.O. to show by a preponderance of evidence that a code violation exists and that the alleged violator committed, or was responsible for maintaining the violation.
- 9) If the required notice of the Public Hearing has been provided to the alleged violator, the hearing may be conducted and an order rendered in the absence of the alleged violator.
- 10) At the conclusion of the hearing, the Codes Enforcement Board or the Special Magistrate 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 powers granted herein, including but not limited to corrective action to eliminate the violation. The findings of the Codes Enforcement Board shall be by motion, approved by a majority of those members present and voting, except that at least three members must vote in order for the action to be official. The order shall include a notice that the order must be complied with by a specified date and that a fine may be imposed if the order is not complied with by said date. The costs of any repairs made pursuant to Section 7(a) of this Ordinance shall also be assessed against the violator. If a violation is found, the Town shall be entitled to recover all costs incurred in prosecuting the case, and such costs shall be included in the lien authorized by Section 8 of this Ordinance. A copy of the order shall be mailed by certified mail to the owner of record at the most current address provided in the records of the Property Appraiser and, if applicable, his authorized agent or representative, and to the violator.
- 11) A certified copy of such order may be recorded in the public records of Putnam County 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 property, any subsequent purchasers, successors in interest, or assigns. If any such order is complied with by the date specified in the order, the Board shall, without a hearing issue an order acknowledging compliance.

SECTION VIII APPEALS

2018-5 - 8.1 – Appeals.

Any aggrieved party, including the Town of Interlachen, may appeal a final administrative order of the Codes Enforcement Board or the Special Magistrate to the Circuit Court in Putnam County, Florida. Such appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Codes Enforcement Board. An appeal must be filed within thirty (30) days of the execution of the order being appealed. The County may assess a reasonable charge for the preparation of the record to be paid by the petitioner in accordance with *F.S., Section 119.07*. A copy of all documents filed by the aggrieved party with the Court shall be filed at the Town Office.


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**SECTION IX
ADMINISTRATIVE FINES**

2018-5- 9.1 – Administrative Fines.

A) The Codes Enforcement Board, upon notification by the C.E.O. that an order of the Board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified below for each day the violation continues past the date set 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 C.E.O. In addition, if the violation is a violation described in Section 5(D) of this Ordinance, the Board shall notify the Town Council, which may direct that the Town shall make all reasonable repairs that 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 to make further repairs or to maintain the property and does not create any liability for any damages to the property if such repairs were completed in good faith. If finding of a violation or a repeat violation has been made as proved in this Section, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a violation is found irreparable or irreversible in nature, it may order the violator to pay a fine as specified in Subsection (B) below.

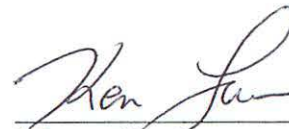
B) A fine imposed pursuant to this Section shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 a day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (A). However, the Codes Enforcement Board has the ability to impose fines in excess of those described above subject to the following criteria:

- (1) The gravity of the violation.
- (2) Any actions taken by the violator to correct the violation.
- (3) Inaction on the part of the violator to correct the violation.
- (4) Any previous violations by the violator.
- (5) The negative impact on the surrounding properties.
- (6) Whether or not the fine outlined above could be considered a “cost of doing business” by the violator.
- (7) Impact on the environment.

Such fines shall not exceed \$1,000.00 per day per violation for a first violation, \$5,000.00 per day per violation for a repeat violation, and up to \$15,000.00 per violation if the violation is found to be irreparable or irreversible in nature. Additional fines may be imposed to cover all costs incurred by the Town in enforcing its codes and all costs of repairs made.

C) The Codes Enforcement Board may reduce a fine imposed pursuant to this Section.


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SECTION X LIENS

2018-5 - 10.1 – Liens.

- 1) The Town may record a certified copy of an order imposing a fine (*including prosecution and repair costs*) in the public records of Putnam County, Florida, which shall constitute a lien against the land on which the violation exists, and upon any other real or personal property owned by the violator. Such order may be enforced in the same manner as a court judgment, including levy against the personal property of the violator. Such lien shall be superior to any mortgage lien or other encumbrance created or recorded subsequent to the recording of such lien. A fine imposed pursuant to this Section shall constitute to accrue until the violator comes into compliance or until judgment is rendered in a suit filed hereunder, whichever occurs first.
- 2) The Town shall have the authority to execute satisfactions of lien.

SECTION XI VIOLATIONS

2018-5 - 11.1 – Violations.

It is unlawful for any person or persons to violate any provisions of this Ordinance or any other Code or Ordinance adopted by the Interlachen Town Council.

SECTION XII PENALTIES

2018-5 - 12.1 – Penalties.

Penalties shall be allowed by Florida Law or as stated in this Ordinance and related Town codes and ordinance.

SECTION XIII CONFLICTS

2018-5 - 13.1 - Conflicting Ordinances.

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION XIV SEVERABILITY

2018-5 - 14.1 – Severability Clause.

If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.


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**SECTION XV
EFFECTIVE DATE**

2018-5 - 15.1 - Effective Date.

This Ordinance shall become effective immediately upon its final passage as provided by law.

Passed On First Reading January 8, 2019

Passed On Second Reading February 12, 2019

Approved by:

First Reading

Second Reading

Carolyn Meadows
Chairperson, Carolyn Meadows

YES

YES

Beverly Bakker
Vice-Chairperson, Beverly Bakker

YES

YES

Carolyn Bennett
Council, Carolyn Bennett

YES

YES

Joni Conner
Council, Joni Conner

YES

YES

Judi Costanzo
Council, Judi Costanzo

YES

YES

Attest:

Ken Larsen
By: Mayor, Ken Larsen

Pamela S. Wilburn
Town Clerk, Pamela S. Wilburn

(TOWN SEAL)