ORDINANCE NO. 20-02

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN OF ST. LEO CODE OF ORDINANCES PART III, ARTICLE XVII RELATING TO ENFORCEMENT, PENALTIES AND REMEDIES, AMENDING SECTION 17.1 THROUGH SECTION 17.6 PERTAINING TO PROCESSES AND PROCEDURES FOR THE ENFORCEMENT OF THE REGULATIONS AND STANDARDS OF THE LAND DEVELOPMENT CODE, PROVIDING FINDINGS FACT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article XVII of Part III of the Town of St. Leo Code of Ordinance contains regulations pertaining to the enforcement, penalties and remedies of the regulations and standards of the Land Development Code; and

WHEREAS, Article XVII is inconsistent with both State Statutes as well as the other provisions of the Land Development Code creating conflict within the Land Development Code; and

WHEREAS, the Town Commission finds that it is necessary to update these regulations to be consistent; and

WHEREAS, the Town Commission finds that establishing consistent and logical regulations would serve to further the public health, safety, and welfare.

NOW THEREFORE BE IT ENACTED BY THE TOWN COMMISSION OF THE TOWN OF ST. LEO, FLORIDA:

Section 1. Part III – Land Development Code, Article XVII, Code of Ordinances, Town of St. Leo, is hereby amended as follows:

ARTICLE XVII. - ENFORCEMENT, PENALTIES AND REMEDIES

Sec. 17.1. - Enforcing officer.

The provisions of this ordinance shall be administered and enforced by the Town staff or designee. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Town staff or designee has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building, structure, premises, electrical, gas, mechanical or plumbing system unsafe, dangerous or hazardous, the Town staff or designee may enter such building, structure or premises at all reasonable times to inspect the same. All entry shall be with the consent of the owner or occupant of the building, structure or premises or, in

the case of non-consent, by search warrant, inspection warrant or court order, except in the case of an emergency situation that appears to pose a serious threat to life, health, or safety. When the Town staff or designee has obtained a proper warrant, order, or consent to secure entry, it is a violation of this code for any person to prevent, refuse, or interfere with prompt entry therein by Town staff or designee for the purpose of inspection and examination pursuant to this chapter.

Sec. 17.2. - Enforcement procedure.

A. Under this division, it shall be the duty of the Town staff or designee to initiate enforcement proceedings. No member of the Town Commission shall have the power to initiate enforcement proceedings.

B. Except as provided in subsections D. and E. of this section, if a code violation is found to exist, the Town staff or designee shall notify the violator in writing and give them a reasonable time to correct the violation. The written notice of violation or citation shall contain a reference to the particular section of this Code or other ordinances alleged to have been violated and a short, plain statement of the matters asserted by the Town staff.

C. Except as provided in subsections D. and E. of this section, if the Town staff has reason to believe a violation still exists beyond the time specified for correction in the notice of violation, the Town staff shall notify the Town Commission and request a hearing. Written notice of such Town Commission hearing shall be hand delivered or sent by certified mail to the violator, as provided in F.S. § 162.12. Notice may also be served by publication or posting, as provided in F.S. § 162.12. The notice shall contain a statement of the time, place and nature of the hearing before the Town Commission. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the Town staff, the case may be presented to the Town Commission even if the violation has been corrected prior to the Town Commission hearing, and the notice of hearing shall so state.

D. If a repeat violation is found, the Town staff shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. The staff, upon notifying the violator of a repeat violation, shall notify the Town Commission, shall schedule a hearing and provide notice pursuant to F.S. § 162.12. The case may be presented to the Town Commission even if the repeat violation has been corrected prior to the hearing, and the notice of hearing shall so state. If the repeat violation has been corrected, the Town Commission retains the right to 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 such costs as determined by the Town Commission.

E. If the Town staff 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 staff shall make a reasonable effort to notify the violator and may immediately notify the Town Commission and set a hearing.

F. The date for the hearing contained in the notice shall not be less than 14 days from the date the notice of hearing is issued, unless the Town staff has reason to believe the violation presents a serious threat to the public health, safety and welfare, in

which case notice of less than 14 days shall be acceptable, provided the Town staff has made a reasonable effort to notify the violator of the pending hearing.

G. If an individual fails to appear at the Town Commission hearing, the Town Commission may enter an order against the individual requiring correction or abatement of the violation. However, the enforcement of such an order may be stayed if any individual who has failed to appear files a request for a rehearing within ten (10) days from the date the order is rendered and affirmatively alleges good cause for such failure to appear. In such case, the individual will be rescheduled for a hearing before the Town Commission at the next scheduled meeting or at such other set by the Town Commission, and if the Town Commission finds good cause existed for the individual's failure to appear, the previous order shall be rescinded and a new hearing conducted immediately. If the Town Commission finds a lack of good cause for the failure to appear, the previous order shall stand and the stay shall be lifted.

Sec. 17.3. - Hearing procedures.

A. Upon request of the Town staff or designee, or at such other times as may be necessary, the Mayor may call a meeting of the Town Commission regarding a code enforcement case; a hearing regarding a code enforcement case may also be called by written notice signed by at least three members of the Town Commission. Minutes shall be kept of all hearings by the Town Commission, and all proceedings shall be open to the public.

B. Each code enforcement case before the Town Commission shall be presented by the Town staff or their designees.

C. The Town Commission shall hear testimony under oath and it shall be audio recorded pertaining to code enforcement cases. The Town Commission shall take testimony from the Town staff or designee and the alleged violator. Formal rules of evidence shall not apply; however, fundamental due process shall be observed and all parties shall have an opportunity to respond; to present evidence, witnesses and argument on all issues involved; to conduct cross examination; and to submit rebuttal evidence.

D. At the conclusion of the hearing, the Town Commission shall, by motion and vote, issue findings of fact based on evidence of record and conclusions of law, and issue an order affording the proper relief consistent with the powers granted herein. The Town Commission's finding shall be by motion and approved by a majority of those members present and voting, except that at least three (3) members of the Town Commission must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be subsequently imposed, and, under the conditions specified in F.S. § 162.09(1), the cost of repairs may be included along with the fine if the order is not complied with by said date. The order shall be written and a certified copy of such order shall be recorded in the public records of Pasco 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 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 Town Commission shall issue an order acknowledging compliance that should be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

Sec. 17.4. Administrative fines; costs of repair; liens.

A. Upon notification by the Town staff or designee that an order of the Town Commission regarding a code enforcement case has not been complied with within the time set or upon finding that a repeat violation has been committed, the Town Commission may order the violator to pay a fine in an amount specified in subsection B. of this section for each day the violation continues past the date set for compliance or, for a repeat violation, for each day the repeat violation continues past the date of notice to the violator of the repeat violation. In addition, if the violation is a violation described in Section 17.2.E., the Town Commission may authorize the completion of all reasonable repairs required to bring the property into compliance and charge the violator with the reasonable cost, along with the fine imposed, pursuant to subsection B. of this section. If a finding of a violation or a repeat violation has been made as provided in this section, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, the Town Commission finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine pursuant to subsection B. of this section. The Town Commission may also assess an administrative fee for the actual amount of expenses incurred by the Town in prosecuting the violation, including costs of mailing and publication.

B. Determination of the amount of the fine shall be as follows:

   (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 the costs of repairs described in subsection (a) of this section; however, if the Town Commission 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 Town Commission shall consider the following factors:

      a. The gravity of the violation;

      b. Any actions taken by the violator to correct the violation; and

      c. Any previous violations committed by the violator.

   (3) The Town Commission board may reduce a fine imposed pursuant to this section at its discretion when requested by the violator or the City staff.

C. A certified copy of an order imposing a fine may be recorded in the public records of Pasco County 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 may be enforced in the same manner as

a court judgment by the sheriffs of this state, including levy against personal property, but such order shall not be deemed otherwise to be a judgment of a court, except for enforcement purposes. A lien arising from a fine imposed pursuant to this section runs in favor of the Town of St. Leo, and the Town Commission may execute a satisfaction or release of lien entered pursuant to this section. 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 to foreclose on a lien filed pursuant to this section, whichever occurs first. The Town Commission may authorize the Town Attorney to foreclose on the lien; however, no lien may be foreclosed on real property which is a homestead under Fla. Const. art. X, § 4.

D. No lien created by this section shall continue for a longer period than 20 years after the certified copy of an order imposing a fine has been recorded in the public records of Pasco County, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that the party incurs in the foreclosure. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers for value consideration without notice, unless a notice of lis pendens is recorded.

Sec. 17.5. - Remedies.

A. If any other ordinance in the Code of Ordinances provides an alternate remedy for the prosecution of a violation, the Town staff or its designee shall have the discretion to use the alternate remedy in lieu of the remedies provided in this Article.

Sec. 17.6. – Appeals

A. An aggrieved party may appeal a final order of the Town Commission to the circuit court of the county. An appeal shall be filed within 30 days of the execution of the order to be appealed and shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Town Commission.

Section 2. If the event of a conflict with any other Town ordinances or part of ordinances, the provisions of this Ordinance shall control.

Section 3. If any section, subsection, sentence, clause, phrase, word or other part of this Ordinance is for any reason declared unconstitutional or invalid by any court of competent jurisdiction, such part shall be deemed separate, distinct and independent and the remainder of this Ordinance shall continue in full force and effect.

Section 4. This ordinance shall take effect on March 9, 2020.

Read for first reading on January 13, 2020.

Read for second reading on March 9, 2020.

Adopted and certified as to passage on March 9, 2020.

The foregoing ordinance was adopted by the St. Leo Town Commission vote as follows:

Richard H. Christmas, Mayor
Gregory P. Smith, Mayor Pro Tem
James Hallett, O.S.B.
Donna DeWitt, O.S.B.
Curtis Dwyer

PASSED AND APPROVED IN REGULAR SESSION ON THIS 9th DAY OF MARCH 2020.

ATTEST:

Andrea Calvert, MMC, Town Clerk

TOWN OF ST. LEO MAYOR

Richard H. Christmas, Mayor

Approved as to form by:

Thomas A. Thanas

Thomas Thanas, Esquire, Town Attorney