

LEE COUNTY ORDINANCE NO. ____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, CHANGING LEE COUNTY ORDINANCE NO. 08-15, PURSUANT TO THE PROVISIONS OF SECTION 125.80, FLORIDA STATUTES, ET SEQ., "THE OPTIONAL COUNTY CHARTER LAW"; RELATING TO THE LEE COUNTY CHARTER AND THE PROVISIONS THEREOF RELATING TO NON-PARTISAN ELECTION OF THE SUPERVISOR OF ELECTIONS; PROVIDING FOR CONFLICTS OF LAW; SEVERABILITY; CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; AND AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 1.(c) & (g), Florida Constitution, provides that a county government may, pursuant to general law be established by charter, as adopted by vote of the electors of the county; and,

WHEREAS, Florida Statutes Section 125.80, et al., provides a statutory method whereby a county not having a charter form of government may locally initiate a county Home Rule Charter; and,

WHEREAS, the Board of County Commissioners, on January 3, 1996, duly passed and adopted Ordinance No. 96-01, which called for an election referendum to determine whether the Charter should be adopted; and,

WHEREAS, on November 5, 1996, the Proposed Charter of Lee County, Florida was presented to the qualified Lee County electorate by placing the question of whether to adopt same on the Ballot at a Special Referendum Election; and,

WHEREAS, the Proposed Charter was voted for adoption by Ballot at the Special Referendum Election and became effective on January 1, 1997; and,

WHEREAS, in November 2008, an amendment to the charter of Lee County was presented to the qualified Lee County electorate by placing the question of whether the Supervisor of Election shall be non-partisan on the Ballot at a Special Referendum Election; and

WHEREAS, the amendment was voted for adoption by Ballot at the Special Referendum Election and became effective January 1, 2009; and

WHEREAS, on April 18, 2019, the Florida Supreme Court in the case of Orange County v. Singh ruled that home-rule counties are prohibited from enacting Charter Ordinances regulating non-partisan elections for county constitutional officers because that subject matter is preempted to the Legislature.

WHEREAS, Article III of the Charter pertaining to Elected County Constitutional Offices is in conflict with the Florida Supreme Court decision that the county charter regulating non-partisan elections for county constitutional officers is prohibited because that subject matter is preempted to the Legislature; and,

WHEREAS, the proposed change brings the Charter into compliance with the Florida Supreme Court ruling.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that:

SECTION ONE:

This Ordinance changes Lee County Ordinance No. 08-15, as set forth herein. The change set forth in the following Section are hereby adopted.

SECTION TWO:

Article III, Elected County Constitutional Offices, of Lee County Ordinance No. 08-15, is hereby further changed as follows:

**ARTICLE III
ELECTED COUNTY CONSTITUTIONAL OFFICES**

Section 3.1: Elected County Constitutional Offices

The offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court and Supervisor of Elections shall remain as independent, elected constitutional officers and the

powers, duties and functions shall not be altered by this Home Rule Charter, **except as provided in Section 3.2: Non-Partisan Elections (below)*. The Constitutional officers shall perform their executive and administrative functions as specified by general law.

**Section 3.2: Non-Partisan Elections*

The Supervisor of Elections shall be non-partisan.

A. Non-Partisan Election Procedures

If three (3) or more candidates, none of whom is a write-in candidate, qualify for such office, the names of those candidates shall be placed on a non-partisan ballot at the first primary election. If no candidate for such office receives a majority of the votes cast for such office in the first primary election, the names of the two (2) candidates receiving the highest number of votes for such office shall be placed on the general election ballot.

B. Qualification by Petition

A candidate for non-partisan office may qualify for election to such office by means of the petitioning process as provided by general law.

C. Legislative Intent

It is the intent of the people of Lee County that the provisions of this section with respect to the election of the Supervisor of Elections on a non-partisan basis is an exercise of their constitutional prerogative to choose this county officer in another manner as provided in Article VIII, section 1 (d) of the Constitution of Florida. This section will not otherwise be construed to alter, transfer, diminish or abolish any of the powers, duties or responsibilities of said office now or hereafter existing under the Constitution and general laws of Florida.

SECTION THREE: CONFLICTS OF LAW

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

SECTION FOUR: SEVERABILITY

If any provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, it is the Board's intention that such portion will become a separate provision and will not affect the remaining provisions of the ordinance. The Board further declares that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FIVE: CODIFICATION AND SCRIVENER’S ERRORS

The Board intends that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that 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 relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

SECTION SIX: MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION SEVEN: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

[*Non-partisan language relating to the Supervisor of Elections in Section 3.1 and all of Section 3.2 are no longer effective based on the ruling in Florida Supreme Court case Orange County v. Singh, 268 So.3d 668 \(Fla. 2019\) finding non-partisan elections for Constitutional Officers unconstitutional.](#)

Commissioner ____ made a motion to adopt the foregoing ordinance, seconded by Commissioner _____. The vote was as follows:

John Manning	___
Cecil Pendergrass	___
Vacant	___
Brian Hamman	___
Frank Mann	___

DULY PASSED AND ADOPTED this ____ day of _____ 20__.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Brian Hamman, Vice Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

Office of the County Attorney

CAO Draft 071819