

ORDINANCE NO. 964

AN ORDINANCE OF THE CITY OF ARCADIA, FLORIDA, A MUNICIPAL CORPORATION, RELATED TO NUISANCES; AMENDING AND RESTATING ARTICLE IV OF CHAPTER 50 OF THE CODE OF ORDINANCES, CITY OF ARCADIA, FLORIDA; PROVIDING FOR THE REGULATION OF NUISANCES WITHIN THE CITY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

THE CITY OF ARCADIA, FLORIDA, HEREBY ORDAINS as follows:

Section 1. Amendment of the Code of Ordinances. The Code of Ordinances of the City of Arcadia, Florida, is amended to amend and restate in its entirety Article IV of Chapter 50 (Environment) to read as follows:

Article IV. NUISANCES

Sec. 50-101. Definition, enumeration of unlawful conditions or acts.

Every condition, substance, or activity within the city which exists or occurs in such manner and to such extent as to threaten or endanger the public health, safety, or welfare, or adversely affect and impair the economic welfare of adjacent property, is hereby declared to be a nuisance. Without in any way limiting the foregoing definition, the following conditions, substances, and activities are hereby specifically declared to be a nuisance within the intent and meaning of this section:

(a) Low places upon any lot, tract or parcel of land, improved or unimproved, within one hundred (100) feet of the boundary line of any improved property within the city to the extent and in the manner that such lot, tract or parcel of land is or may reasonably become a breeding place for mosquitoes, or may reasonably cause disease, or otherwise threatens or endangers the public health, safety or welfare, or is likely to adversely affect and impair the economic welfare of adjacent property.

(b) The accumulation or maintenance of trash, filth, rubbish, garbage, dead animals or fish, improperly treated sewage or other materials in such manner and to the extent as to cause infestation by rodents and other wild animals, the breeding of mosquitoes and vermin, or that threatens or endangers the public health, safety or welfare, or is likely to adversely affect and impair the economic welfare of adjacent property.

(c) The existence of excessive accumulation or untended growth of weeds, undergrowth or other dead or living plant life upon any body of water, lot, tract or parcel of land, improved or unimproved, within one hundred (100) feet of the boundary line of any improved property within the city to the extent and in the

manner that such lot, tract or parcel of land is or may reasonably become infested or inhabited by rodents, vermin or wild animals, or may furnish a breeding place for mosquitoes, or threatens or endangers the public health, safety or welfare, or may reasonably cause disease, or is likely to adversely affect and impair the economic welfare of adjacent property.

(d) Partition fences, buildings or other structures which have fallen into such a poor state of repair to the extent and in the manner that they may reasonably become infested or inhabited by rodents, vermin or wild animals, or may threaten or endanger the public health, safety or welfare, or is likely to adversely affect and impair the economic welfare of adjacent property.

(e) The unauthorized accumulation or maintenance of lumber, stone, concrete, sand or any other building or construction material on a lot, tract or parcel when construction activity is not actively taking place on the property, in such manner and to the extent as to threaten or endanger the public health, safety or welfare.

(f) Landscaping or other obstacles located in or protruding into a public right of way so as to create a traffic or pedestrian hazard, or otherwise threaten or endanger the public health, safety and welfare.

(g) Any foul, offensive or unlawful emissions, odors or stench and the causes thereof which threatens or endangers the public health, safety and welfare, or which is likely to adversely affect and impair the economic welfare of adjacent properties.

(h) The pollution of any well, water body or drainage system by sewage, dead animals, industrial waste, debris or any other substance so as to threaten or endanger the public health, safety and welfare.

(i) The partial or total blockage of any drainage inlets, outfalls, pipes, ditches, swales, canals, channels, culverts or streams so as to threaten or endanger the public health, safety and welfare.

(j) Tampering or interference with any public facilities maintained for the purpose of furnishing sewer, potable water, reclaimed water or telecommunication services to the public, so as to threaten or endanger the public health, safety and welfare.

(k) Any condition constituting a flood or fire hazard so as to threaten or endanger the public health, safety and welfare.

(l) Any activity or condition that is declared elsewhere in this Code of Ordinances or other applicable law to be a nuisance.

(m) Any trees, shrubs, or other landscaping material, or parts thereof, that threaten or endanger the public health, safety or welfare, or adversely affect and

impair the economic welfare of adjacent properties, as a result of either of the following conditions:

(1) A contagious disease or infestation is found on a tree, shrub or other landscaping material; or

(2) Disease, vines, insects, age or other defect has caused a tree, shrub or other landscaping material, or part thereof, to be unstable such that there exists a reasonable likelihood that it will fall upon any sidewalk, street or building, or result in injury to person or property.

(n) Any unauthorized disturbance of land where a permit for such activity is required, including but not limited to alteration of the grade or contour of land, or the removal of vegetation from land, that may increase surface water runoff onto neighboring properties or otherwise threaten the public health, safety or welfare.

(o) Any activity or condition which is manifestly injurious to the morals or manners of the public, as described in F.S. § 823.01.

(p) Any noise or vibration which unreasonably and substantially interferes with the comfort, health, repose, or safety of the general public, giving consideration to factors such as the time of day, the nature of the noise or vibration, the existence of background noises and vibrations, and the locality from which the noise or vibration is emanating.

Sec. 50-102. Prohibition and enforcement.

(a) Nuisances are hereby prohibited. It shall be unlawful for any person to cause such nuisance to come into existence anywhere within the city, or to permit the same to exist on property owned, leased, occupied or otherwise under the control of such person.

(b) This article may be enforced against any violator, which may include the owner of the premises on which a nuisance exists, or the person or persons generating the nuisance.

(c) This article shall be enforced as provided for by Florida law, including referral or citation to the city's code enforcement board, issuance of a citation as may be provided for by city ordinance, the entering onto the property and the abatement of the nuisance by the city, or the filing of an action in a court of competent jurisdiction to obtain civil remedies, including a restraining order, injunction and damages. Any enumeration of enforcement mechanisms set forth herein is supplemental and not exclusive.

Sec. 50-103. Sanitary nuisance.

(a) A sanitary nuisance is the commission of any act, by an individual, municipality, organization, or corporation, or the keeping, maintaining, propagation, existence, or permission of anything, by an individual, municipality, organization, or corporation, by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused. Not all nuisances are sanitary nuisances.

(b) Abatement of sanitary nuisances shall occur in the same manner as provided for all other nuisances pursuant to this article, except that the city is required to give only ten (10) days' notice to abate the sanitary nuisance or request a hearing.

Sec. 50-104. Notice.

(a) If the city administrator, city marshal, or any designee of either finds and determines that a nuisance exists, he shall so notify the record owner or owners of the property on which the nuisance exists in writing and demand that the owner cause the condition to be remedied. All notices required by this section shall be provided to the alleged violator either by:

(1) Certified mail, return receipt requested, sent to a property owner at the address listed in the county tax collector's records for tax notices. Mailed notice to a person who is not owner of the property where the violation is located shall be to the street address of the property where the violation is located; or

(2) Regular mail sent to a property owner at the address listed in the county tax collector's records for tax notices, and posting for at least ten (10) days in at least two (2) locations, one (1) of which shall be the property upon which the violation is alleged to exist and the other of which shall be at city hall. Mailed notice to a person who is not owner of the property where the violation is located shall be to the street address of the property where the violation is located. 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.

(b) The notice shall be sufficient if in substantially the following form:

NOTICE OF NUISANCE

[Date: __]

[Name of Owner]

[Address of Owner]

Our records indicate that you are the owner(s) of the following property in the City of Arcadia, DeSoto County, Florida:

[Description of property]

An inspection of this property discloses, and I have found and determined, that a nuisance exists thereon so as to constitute a violation of the City of Arcadia Nuisance Law (Chapter 50, Article IV of the City of Arcadia Code of Ordinances) by virtue of the following condition or activity:

[Description of condition which places the property in violation]

You are hereby notified that you must remedy the above described condition so as to bring it into compliance with the City of Arcadia Code of Ordinances or request a hearing pursuant to the City of Arcadia Code of Ordinances, section 50-105, within twenty (20) days from the date hereof, or within such time as the city administrator, city marshal, or the designee of either shall determine to be reasonable. Failure to remedy the nuisance or request a hearing within the specified time period will be deemed a waiver of your right to a hearing and the city may proceed thereafter to remedy this condition. The cost of the work, including abatement and/or removal costs, noticing costs and other expenses, will be imposed as a lien on the property if said costs are not paid within thirty (30) days after receipt of billing by the city.

The City estimates the total cost of abatement and/or removal to be approximately \$_____/_____/_____, but in no way represents or guarantees that actual costs will not exceed this amount.

City of Arcadia

By: [Name & title]

[Address & phone number]

(c) If the city administrator, city marshal, or the designee of either finds and determines that a nuisance exists which presents an immediate danger or threat to the health or life of an individual, he shall provide the record owner or owners of the property on which the nuisance exists with written notice personally served by a law enforcement officer upon the owner or owners of the property or upon an occupant of the property that is fifteen (15) years of age or older, and demand that the owner cause the condition to be immediately remedied. If the condition or activity constituting a nuisance which presents an immediate danger or threat to the health or life of an individual is not remedied within twenty-four (24) hours of the provision of notice hereunder, or within such other time period deemed reasonable by the city administrator, city marshal, or the designee of either, the city may cause the condition or activity to be remedied by the city at the expense of the property owner.

(d) If the city administrator, city marshal, or the designee of either is unable to locate within twenty-four (24) hours the owner or owners of the property upon which there exists a nuisance which presents an immediate danger or threat to the health or life of an individual, the city administrator, city marshal, or the designee of either may cause the condition or activity to be remedied by the city at the expense of the property owner, and provide the property owner with notice thereof subsequent to such action. The failure of the city

administrator, city marshal, or the designee of either to provide prior or subsequent notice to a property owner, after reasonable efforts to locate such owner have been unsuccessful, shall not cause remedial action taken pursuant to this subsection to be invalid or unlawful.

(e) If the cost of abating the nuisance, and the subsequent filing of a city lien in accordance with section 50-106, would act to severely and drastically diminish the interest of a lien holder on the property, the city shall notify, in the same manner as the owner of the property, the lien holders whose interest in the property is properly recorded with the clerk of the circuit court.

Sec. 50-105. Hearing.

Within such time period as indicated in the provision of notice to abate, as required by sections 50-103 and 50-104 herein, the owner of the property may make written request to the city recorder for a hearing before the code enforcement hearing officer, on a form provided by the city, to show that the condition or activity alleged in the notice does not exist or that such condition or activity does not constitute a nuisance. At the hearing, the city administrator, city marshal, or the designee of either and the property owner may introduce such evidence as is deemed necessary. The property owner shall have the right to be represented by counsel. The hearing shall be open to the public and may be held at any regular or special meeting of the code enforcement hearing officer. Following a review by the code enforcement hearing officer, the owner will have exhausted his administrative remedies.

Sec. 50-106. Abatement by city; expenses; lien.

(a) If a hearing has not been requested within the timeframes set forth in sections 50-103 and 50-104 herein, and the condition or activity described in the notice has not been remedied, the city administrator, city marshal, or the designee of either may cause the condition or activity to be remedied by the city at the expense of the property owner. If the hearing has been held and concluded adversely to the property owner, the city administrator, city marshal, or the designee of either may cause the condition or activity to be remedied by the city at the expense of the property owner.

(b) After causing the condition or activity to be remedied, the city administrator, city marshal, or the designee of either shall certify to the city recorder the expense incurred in remedying the condition or activity and shall include a copy of the notice above described, and a copy of the decision of the code enforcement hearing officer, if any, whereupon such expense shall become payable within thirty (30) days after the date of such certification, after which a special assessment lien and charge will be made upon the property, which shall be payable with interest from the date of such certification until paid.

(c) Upon receipt of the certification of expense, the city recorder shall notify the record owner or owners of the property in writing of the amount of such

expense. The notice shall be given in like manner as provided in section 50-104, except that if the notice is returned by postal authorities, no further notice shall be required. Such notice shall advise the owner or owners of the amount of expense, the date of certification to the city recorder, the date by which the expense is due and payable, and a statement that the expense shall become a lien after said date. The property owner may, at any time prior to the date on which the expense becomes a lien, make written request to the city recorder for a hearing before the code enforcement hearing officer to contest the amount of the expense. Upon filing of such request, the expense shall not become a lien until a final decision is made by the code enforcement hearing officer. The hearing on the amount of the expense shall be conducted substantially as provided for in section 50-105. At the hearing, the property owner and the city administrator, city marshal, or the designee of either may present evidence only as to the reasonableness of the expense amount under the circumstances. Provided, however, that if the expense resulted from the city performing abatement measures pursuant to subsection 50-104(d) of this division, the parties also may present evidence showing that the condition or activity alleged in the notice did or did not exist, or that such condition or activity did or did not constitute a nuisance. Following review by the code enforcement hearing officer, the owner will have exhausted his administrative remedies. The code enforcement hearing officer shall enter a written order either affirming the certified expenses or reducing them, or, where city action was taken pursuant to subsection 50-104(d) and no violation is found to have occurred, declaring that there is no basis for imposition of expenses. Upon entry of such order, the amount of charges approved therein shall become a lien and bear interest as provided in subsection (b) of this section.

(d) All liens created by action of this division shall be a first lien equal to a lien for nonpayment of property taxes, on any property against which an assessment for costs to abate the nuisance has been filed, and shall continue in full force from the date of recording until discharged by satisfaction. The lien shall be enforceable in the same manner as a special assessment lien in favor of the city as provided in F.S. ch. 173, and may be satisfied at any time by payment thereof, including accrued interest. Upon payment of the lien, including accrued interest, the city recorder shall, by appropriate means, evidence the satisfaction and cancellation of the lien upon the record thereof. Notice of the lien shall be filed in the office of the clerk of the circuit court and recorded among the public records of DeSoto County within five (5) days of the charges under this section becoming a lien.

(e) Administrative costs and applicable attorney's fees for abating the nuisance shall be included in the total cost for abating the nuisance and such total costs shall comprise the lien which may be imposed upon the property by action of this division.

Sec. 50-107. Notification of owner and other interested parties upon removal of property by city.

(a) *Notice.* Upon taking possession of the nuisance, if an object or thing, the city shall furnish notice in accordance with this section by regular mail to the owner of the property upon which such nuisance was located and to the owner of the object or thing, if known to be different, at the last known address, within ten (10) days of the date when possession of the object or thing was taken.

(b) *Notice by publication.* If there is inability to identify the current owner of the object or thing constituting nuisance, it shall be sufficient notice under this section to publish the notice described above once in a newspaper of general circulation in the city. Such notice by publication may include multiple listings of objects and things.

Sec. 50-108. Immunity of city personnel.

The city administrator, city marshal, or the designee of either shall be immune from prosecution, civil or criminal, for trespass upon real property while discharging his duties pursuant to this chapter.

Sec. 50-109. Remedies cumulative.

Any action taken pursuant to this chapter, in regard to the disposal, abatement or removal of the conditions declared nuisances shall be considered cumulative and in addition to penalties and other remedies provided elsewhere in this article, in other ordinances of the city, and under the laws of the state and the United States of America.

Section 2. *Severability.* If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of this ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 3. *Effective Date.* This ordinance shall be effective immediately upon final passage by the City Council.

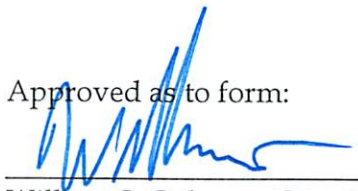
SO DONE this 15th day of MARCH 2011.

By: 
Robert W. Heine, Mayor

ATTEST:


Dana L.S. Williams, CMC, City Recorder

First Reading: 3/1/11
Second Reading: 3/15/11

Approved as to form:

William S. Galvano, City Attorney