



## TOWN OF HIGHLAND BEACH

### ORDINANCE NO 16-005 O

**AN ORDINANCE OF THE TOWN OF HIGHLAND BEACH, FLORIDA AMENDING THE TOWN CODE OF ORDINANCES BY AMENDING CHAPTER 6, "BUILDINGS AND STRUCTURES", ARTICLE V, "SEAWALLS; BULKHEADS; RETAINING WALLS", SECTION 6-132, "ABATEMENT OF NUISANCES, INJURIOUS OR DANGEROUS CONDITIONS", TO CLARIFY WHO MAY PROVIDE TESTIMONY TO THE CODE ENFORCEMENT BOARD; AMENDING CHAPTER 17, "NUISANCES", TO CLARIFY THE DEFINITION OF A NUISANCE AND TO PROVIDE FOR AN ABATEMENT PROCEDURE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Commission wishes to clarify how a nuisance is defined and certain procedural aspects of declaring a nuisance and to also provide for an abatement procedure; and

**WHEREAS**, the Town Commission determines that the adoption of this Ordinance is in the best interests of the health, safety and welfare of the citizens and residents of the Town of Highland Beach.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Commission of the Town of Highland Beach, Florida, as follows:

**Section 1.** The foregoing Whereas clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

**Section 2.** The Town Commission hereby amends Chapter 6, "Buildings and Structures", Article V, "Seawalls; Bulkheads; Retaining Walls", Section 6-132, "Abatement of nuisances, injurious or dangerous conditions" of the Town Code of Ordinances to read as follows (additional language underlined and deleted language ~~stricken through~~):

**Sec. 6-132. - Abatement of nuisances, injurious or dangerous conditions.**

- (a) Whenever it comes to the attention of the town manager that any property, public or private, adjacent to any natural or artificial canal, stream or other body of water requires the construction of or maintenance or repair of a seawall, bulkhead or retaining wall on the property in order to abate a public nuisance, or abate a condition which is injurious to the health, safety or welfare of the neighborhood or community, or dangerous to the navigability of any canal, stream or other body of water, the town manager shall notify the code enforcement officer and the code

enforcement board. The code enforcement board, after a notice of violation and notice of hearing has been issued by a code enforcement officer, shall hold a hearing for the purpose of receiving the testimony of the town engineer, building official or other town staff and the testimony of the property owner or other person having a beneficial interest in the property, and such witnesses as may have evidence material to a proper decision by the code enforcement board. The code enforcement board shall provide the property owner or other person having a beneficial interest therein with at least ten (10) days' written notice of the date, time, place and purpose of such hearing as provided for in F.S. § 162.12. The code enforcement board shall, following the hearing, make a determination as to whether the condition of the real property which is the subject of this proceeding constitutes a public nuisance, or is injurious to the health, safety or welfare of the neighborhood or the community, or is dangerous to the navigability of any canal, stream or other body of water and shall either dismiss the matter or enter an order directing the person or persons upon whom notice of hearing was served to abate such public nuisance, injurious or dangerous condition within a reasonable time not to exceed thirty (30) days from the date of the order. The order shall forthwith be served upon the person upon whom notice of hearing was served either by personal service or by certified mail, return receipt requested.

**Section 3.** The Town Commission hereby amends Chapter 17, "Nuisances" of the Town Code of Ordinances to read as follows (additional language underlined and deleted language ~~stricken through~~):

#### **Chapter 17 - NUISANCES**

##### **Sec. 17-1. - Short title.**

This chapter shall be known as the nuisance ordinance.

##### **Sec. 17-2. - Definitions.**

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

*Nuisance* means any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial ~~diminution~~ deterioration in the value of the subject property or in the value of other property in the neighborhood in which such premises are located. This includes, but is not limited to, the keeping, the maintaining or the depositing on, or the scattering over the premises, of any of the following:



- (1) Lumber, junk, trash or debris;
- (2) Abandoned, discarded, unused or stored objects or equipment, whether operative or inoperative, such as automobiles, boats, trailers, furniture, stoves, refrigerators, freezers, cans or containers or the like.
- (3) Placing of certain obstructions in State Road A-1-A right-of-way shall be deemed a nuisance. These obstructions are reflectors, concrete pyramids, concrete rounds and wood and PVC poles. The term "concrete" shall include solid material of any kind and the term "rounds" shall include solid material of any shape and is not meant to be limited to a round shape.

This definition does not limit the meaning of nuisance in section 17-3.

*Property* means any real property within the town which is not a street or highway.

**Sec. 17-3. - Generally; declared unlawful.**

It shall be unlawful for any person to erect, keep, maintain or permit on his property, or any property or in any place in or under his possession or control, any nuisance of any kind, nature or description, ~~which tends to annoy the community or any portion thereof, or which nuisance tends to injure the~~ public health, safety or welfare ~~health, morals or peace of the citizens of the town.~~

**Sec. 17-4. - Nuisances on private property.**

No person owning, leasing, occupying or having charge of any premises shall maintain or keep any nuisance thereon, ~~nor shall any such person cause diminution in the value of the other property in the neighborhood in which such premises are located.~~

**Sec. 17-5. - Enforcement.**

Enforcement of this chapter may be accomplished by the town utilizing the provisions of this chapter or in any manner authorized by law. With regard to the obstructions referred to in section 17-2(3) enforcement of that section concerning the placing of obstructions in State Road A-1-A right-of-way shall be by the town's code enforcement board and/or special magistrate. In addition, any person who by reason of another's violation of any provision of this chapter suffers special damage to himself different from that suffered by other property owners throughout the town generally, may bring an action to enjoin or otherwise abate an existing violation.

**Sec. 17-6. - Penalties.**

Any person who violates a provision of this chapter or any other chapter, article or section of this Code regarding nuisances, shall, upon a determination that a nuisance exists, be subject to the penalties be cited with a notice by the police department. Each day in which any violation occurs or continues shall be deemed a separate and distinct offense. Violations of this chapter shall be punished as provided in Chapter 1 of this Code. These enforcement procedures shall be in addition to any costs incurred by the town in abating the nuisance pursuant to the provisions of this chapter, which costs shall be charged to the owner as provided herein.

**Sec. 17-7. - Notice to owner to abate nuisance; service of notice; right of hearing.**

- (a) Upon the failure of an owner, tenant or other occupant to comply with the provisions of section 17-6, the town shall give written notice by regular and certified mail, return receipt requested, or by hand delivery to the record owner of such property at the address indicated in the records of the county property appraiser, that a nuisance exists in violation of this chapter. The service of such notice shall be deemed complete upon delivery and shall be deemed sufficient notice of violation.
- (b) The notice shall:
- (1) Advise the owner of the existence and nature of the violation;
  - (2) Specify what corrective action must be taken;
  - (3) Require the owner to remedy or abate the violation in a period of time as determined by the building official;
  - (4) State that failure to take the prescribed corrective action within the specified time will result in the town abating the violation, the cost of which action, plus all administrative costs incurred, shall constitute a lien against the property;
  - (5) State that a lien will be recorded against the property;
  - (6) Advise the owner of a right to request a hearing as provided in section 17-8;
  - (7) Advise the owner that upon reoccurrence of the nuisance, the town may without further notice to the owner enter the premises and take steps reasonably necessary to effect abatement, the cost of which, plus administrative charges, will be a lien against the property;
- (c) If a hearing is requested within seven (7) days from the date of receipt of the notice, enforcement shall proceed as provided in section 17-8.



- (d) If no hearing is requested within seven (7) days from the date of receipt and the owner has not commenced the corrective action required, the town shall have the right to enter upon the premises and take steps reasonably necessary to effect abatement.
- (e) If the notice sent is returned unclaimed or the return receipt is not received by the town within fifteen (15) days of the mailing and hand delivery cannot be made, a copy of the notice shall be posted in plain view upon the property; and if the nuisance is not abated within five (5) days of posting, the town shall have the right to enter upon the premises and take steps reasonably necessary to effect abatement. The town may post the property upon the mailing of the notice and upon the expiration of fifteen (15) days, if the nuisance is not abated, the town shall have the right to enter upon the premises and take steps reasonably necessary to effect abatement.

**Sec. 17-8. - Appeal procedure.**

- (a) The owner may appeal the notice of nuisance by filing a written request with the town clerk for a hearing within seven (7) days of the date of receipt of the notice with the town. The code enforcement board shall hear the appeal on its regularly scheduled agenda, or sooner if so determined by the town manager, and the owner shall be notified in writing of the time and place of the hearing.
- (b) At the hearing, the code enforcement board shall determine whether the condition described in the notice does or does not exist and whether it constitutes a public nuisance. At the hearing, the town and the property owner or his representative may introduce such witnesses as deemed necessary. Such determination by the code enforcement board shall be final.
- (c) If the code enforcement board determines that the condition described in the notice to owner does exist, the property owner shall take the corrective action required in the notice within five (5) days of the hearing or as otherwise ordered by the board. If the property owner does not comply, the town shall have the right to enter the premises and take steps reasonably necessary to effect abatement without further notice to the owner.
- (d) Nothing in this chapter shall preclude the town from taking immediate action to abate the nuisance if in the opinion of the town manager the nuisance constitutes an imminent danger to human life or health.

**Sec. 17.9. – Assessment of costs, interest and attorney's fees; lien.**

As soon after the abatement as feasible, the town manager shall report to the town commission the cost of the abatement, including the cost of inspection and administration. Thereafter, the Commission shall by resolution assess the cost against the subject parcel. This resolution shall describe the property assessed, show the actual cost of abatement, costs of inspection and administration, and indicate that the assessment shall bear interest at the rate of eight (8) percent per annum plus, if collection proceedings are necessary, that the property owner would be required to pay the cost of the proceedings including a reasonable attorney's fee. This resolution shall provide that payment must be made in thirty (30) days from the date of adoption. In the event that payment has not been received within thirty (30) days after the mailing date of the notice of assessment, the resolution shall be recorded in the public records and shall constitute a lien on the property.

**Sec. 17.10. – Enforcement of assessment; priority of lien.**

- (a) The Town may enforce the abatement assessments by an action at law, injunctive relief, foreclosure of the lien, which shall be foreclosed in the same manner as mortgages are foreclosed under State law, or any other lawful means. In the above types of action, the Town shall be entitled to interest at the rate of eight (8) percent from the date of assessment, collection costs and reasonable attorney's fees. Such liens shall be on parity with general town taxes and shall have priority over all other liens and encumbrances, including mortgages.
- (b) The Town may alternatively enforce the action through the code enforcement process.

**Section 4.** It is the intention of the Town Commission of the Town of Highland Beach that the provisions of this Ordinance shall become and made a part of the Code of Ordinances of the Town of Highland Beach, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section", "Article" or other word or phrase in order to accomplish such intention.

**Section 5.** All Ordinances or parts thereof and Resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6.** Should any section, provision, paragraph, sentence, clause or word of this Ordinance or portion thereof be held or declared by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall be considered as eliminated and shall not affect the validity of the remaining portions or application of this Ordinance.

**Section 7.** This Ordinance shall take effect immediately upon adoption.

**PASSED AND ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF  
HIGHLAND BEACH ON THIS 1<sup>ST</sup> DAY OF March, 2016.**

**TOWN OF HIGHLAND BEACH, FLORIDA**

ATTEST:

By: Valerie Oakes  
Valerie Oakes, Town Clerk

02-02-2016  
First Reading

02-02-2016  
Posted after First Reading

02-14-2016  
Published

03-01-2016  
Final Reading

03-01-2016  
Posted after Final Reading

Bernard Featherman  
Bernard Featherman, Mayor

William A. Weitz  
William A. Weitz, Ph.D, Vice Mayor

Carl Feldman  
Carl Feldman, Commissioner

Louis P. Stern  
Louis P. Stern, Commissioner

Rhoda Zelniker  
Rhoda Zelniker, Commissioner

APPROVED AS TO FORM AND LEGALITY:

By: Glen J. Torchia  
Glen J. Torchia, Town Attorney  
Town of Highland Beach, Florida