

ORDINANCE 2009-27

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MINNEOLA, FLORIDA, AMENDING CHAPTER 30 OF THE CITY CODE OF ORDINANCES ENTITLED "ENVIRONMENT" TO PROVIDE FOR A PROCEDURE FOR ABATEMENT OF UNSAFE AND DANGEROUS BUILDINGS AND NUISANCES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Minneola finds and determines that there are a number of unsafe and dangerous buildings within the City of Minneola; and

WHEREAS, the City Council of the City of Minneola finds and determines that it is necessary to adopt a procedure for the abatement of such unsafe structures and other nuisances; and

WHEREAS, the City Council of the City of Minneola hereby adopts this Ordinance to do so.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINNEOLA, FLORIDA:

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. Chapter 30 entitled "Environment" of the City of Minneola Code of Ordinances is hereby amended to add sections 30-33 - 30-49, as follows:

Sec. 30-33. Authority.

The City of Minneola, acting through the city council and/or its designee(s), shall have the authority pursuant to home rule and police powers under Article VIII, section 2, of the Florida Constitution to determine and declare the existence of a public nuisance and shall have the authority to provide for the abatement of the same. Abatement of such nuisances constitutes a municipal service, which specifically benefits the property upon which the nuisance is abated and all costs incurred by the city in abating such nuisances shall be levied as a special assessment pursuant to section 170.201, Florida Statutes and/or all other applicable law.

Sec. 30-34. City Council findings.

The city council finds that conditions exist within the City of Minneola, which violate public rights, subvert public order, decency, or morals, or cause inconvenience or damage to the public generally. Specifically, the accumulation of underbrush, weeds, rubbish, trash, and grass on improved property; the existence of unsafe dwellings and other structures on improved property; and the creation of pools, ponds, other bodies of water, or conditions which endanger the public health, welfare, property value, or safety of the community, has become an ever increasing menace in the city and constitutes a nuisance. It shall be unlawful for any person or entity to create a nuisance, or suffer or permit a nuisance to exist, upon property, which is under his, her, or its care, custody, or control.

The city acting at the direction of the city council shall have the authority to and shall take steps to ensure the abatement of public nuisances in the most aggressive manner provided by the Minneola City Code or

state law. The abatement of such nuisances protects the public health, safety, and welfare, enhances the value of the property, involves the furnishing of vital municipal services, and specifically benefits the property on which the nuisance is abated. The cost of any abatement, including administrative fees and costs, shall constitute a special assessment upon the benefited property.

Sec. 30-35. Public Nuisance Abatement Program established.

There is hereby established a City of Minneola Nuisance Abatement Program for the purpose of abating the public nuisances defined in section 30 of the City of Minneola Code of Ordinances. The owner of any property located within the City of Minneola who creates, suffers, or permits a nuisance to exist upon his or her property, shall be responsible for abating the nuisance and, if the owner fails to abate the nuisance in accordance with the notice given pursuant to this chapter, the city may abate the nuisance and the city shall be reimbursed for the costs associated with the abatement pursuant to the provisions of this chapter for the recovery of those costs.

Sec. 30-36. Public Nuisance Abatement Program Trust Fund established.

There is hereby established an interest bearing public nuisance abatement program trust fund for the deposit, maintenance, and distribution of any assessment funds collected or expended as a result of the public nuisance abatement program. The assessment imposed on a benefited property and collected by the city shall include the actual cost of abating the nuisance, the cost of serving notice, the cost of obtaining title information, the cost of lien recordation, the cost of inspections, and all other specifically related costs. Any funds in the trust fund may be used to abate public nuisances on property to which title is not clear, abate nuisances on government property, which may not be assessed, or for other purposes directly related to the abatement of nuisances.

Sec. 30-37. Definitions.

As used in this chapter, the following terms shall have the meanings respectively ascribed to them in this section:

Nuisance shall mean any of the following:

1. Any public nuisance known at common law or in equity jurisprudence or as provided by the statutes of the state and ordinances of the city, including this chapter.
2. Any accumulation of trash, rubbish, refuse, junk and other abandoned materials, metals, lumber, or other things, which, based upon the facts and circumstances of the accumulation, has become a public nuisance in fact.
3. The existence of excessive accumulation or untended growth of weeds, grass, undergrowth, brush, or other dead or living plant life upon an improved lot, tract, or parcel of land, within one-hundred (100) feet of any improved property within the City of Minneola to the extent and in the manner that such improved lot, tract, or parcel of land is or may reasonably become infested or inhabited with rodents, vermin, wild animals, or snakes; or may become a breeding place for mosquitoes; may pose a fire hazard; threaten or endanger the public health and welfare; pose an attractive nuisance for children; may reasonably cause disease; or adversely affect and impair the economic welfare of any adjacent property.
4. Any "attractive nuisance" or condition which may prove detrimental to the health and safety of children, whether on an improved or unimproved lot, tract or parcel of land including, but not limited to, abandoned wells, shafts, excavations, abandoned appliances, abandoned or inoperable motor vehicles,

and any structurally unsound fences or structure, lumber, trash, debris, or vegetation such as poison ivy or oak, which may prove a hazard for minors.

5. Any unfit, unsanitary, abandoned, or unsafe dwelling, structure, or improvement upon real property.

6. Any underbrush, weeds, or untended grass which exceeds two feet in height located on improved property.

7. The carcasses of animals or fowl not disposed of within a reasonable time after death.

8. The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals, industrial wastes, or other substances.

9. Any building, structure, or other place or location where any activity in violation of local, state, or federal law is conducted, performed, or maintained, and which under the facts and circumstances surrounding the activity constitutes a public nuisance in fact.

10. Any accumulation of stagnant water or sewage permitted or maintained on any improved lot, premises, or piece of ground.

11. Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.

12. Unsheltered storage for a period of 30 days or more within the corporate limits of this city (except in licensed junkyards) of old and unused stripped junk and other automobiles not in good and safe operating condition; and of any other vehicles, machinery, implements, or equipment or personal property of any kind which is no longer safely usable for the purposes for which it was manufactured, is hereby declared to be a nuisance and a danger to public health, safety, and welfare.

13. For the purpose of this article, the term "nuisance" shall also include 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 in the value of other property in the neighborhood in which the premises are located.

14. Such other acts or conditions which are determined and declared by other ordinances or by resolution of city council to be or constitute public nuisances.

Nuisance Inspector shall mean the city manager or the designee thereof.

Refuse shall mean leavings, dregs, rubbish, trash, or waste material.

Underbrush shall mean any undergrowth or brush conducive to the collection of insects and rodents, which may be or become a fire hazard, or may negatively impact adjoining property.

Unfit or unsafe dwelling or structure shall mean any buildings or structures within the City of Minneola, Florida, which are unsafe, unsanitary, or not provided with adequate egress, or which constitute a fire hazard, or which are otherwise dangerous to human life, or which in relation to their existing use constitute a hazard to the safety or health of occupants of the general public by reason of inadequate maintenance, dilapidation, obsolescence or abandonment, are hereby found to be unsafe buildings or structures under the provisions of this article and are hereby declared to be public nuisances. For the purpose of making the determination that any building or structure is an unsafe building as defined herein, the standards and requirements of the adopted city building code(s), including all additions and

amendments and all other codes, statutes, ordinances, and laws regulating the construction of structures within the City of Minneola, shall be considered as standards.

Weeds shall mean any plants that are useless, invasive, or injurious to crops, grasses, landscaping scrubs, trees, or flowers.

Sec. 30-38. Nuisance abatement program: supplemental means of enforcement.

(1) Pursuant to section 162.13 and 166.0415(7), Florida Statutes, the nuisance abatement program is a supplemental means of enforcing city codes and ordinances. A public nuisance also constitutes a code violation and the city is not limited to a choice of remedy to ensure compliance with its codes. Code enforcement proceedings are punitive and involve fines levied against the subject property, which may be collected pursuant to section 162.09, Florida Statutes. In contrast, nuisance abatement pursuant to this chapter is remedial in nature and specifically designed to immediately, or as soon as practicable, bring the property into compliance, thereby protecting the public welfare and directly improving and benefiting the property upon which the nuisance is abated.

(2) In addition to nuisance abatement proceedings, the city may institute code enforcement proceedings against a property for an occurrence of a violation. However, once the subject violation/nuisance is abated, that occurrence of the code violation has ceased and no further code enforcement penalties may accrue for that specific occurrence.

(3) Repeat nuisance violations. Following the first notice under this chapter to abate a nuisance as described herein, any subsequent violation of the same nuisance classification(s) on the same property within a 12-month period may be abated by the city without further notice so long as the initial notice and order of abatement specifically provides for such subsequent abatement therein. All costs of abating the repeat nuisance, including administrative fees and costs, shall constitute a special assessment against said property.

Sec. 30-39. Powers and Duties of the Nuisance Inspector.

1. The nuisance inspector and/or his/her designees (i.e., code enforcement personnel) shall be charged with the duty of administering the applicable standards and reporting non-compliance therewith and in furtherance of this responsibility, the nuisance inspector and/or designees shall make such inspections, compile such facts and evidence, **coordinate with the City Planning Department**, and prepare such reports as may be necessary to effectuate the purposes and intent of this chapter. The nuisance inspector's findings, evidence, and reports shall promptly be forwarded to the city attorney's office for review.

2. The nuisance inspector and his or her designees are hereby authorized to enter upon private property in order to enforce the provisions of this chapter and shall be immune from all civil and criminal liability while under the discharge of duties imposed herein. When necessary to obtain such entry, the nuisance inspector may institute appropriate proceedings to obtain a warrant.

3. In the case of an obvious unfit and unsafe dwelling, structure, or other condition which after inspection is determined to be uninhabited, the nuisance inspector shall cause to be posted a "No Trespassing" sign in an attempt to warn third parties who might be exposed to the risk of danger created by the unsafe condition. However, the City of Minneola does not assume any liability for harm to third parties caused by the unfit and unsafe dwelling, structure, or condition under any circumstances.

Sec. 30-40. Publication of annual notice.

The city council shall cause to be published in a newspaper regularly published and in general circulation within the City once a week for two consecutive weeks during the month of January each year hereafter a notice reading substantially as follows:

"ATTENTION PROPERTY OWNERS, AGENTS, CUSTODIANS, LESSEES, AND OCCUPANTS OF REAL PROPERTY WITHIN THE CITY LIMITS OF THE CITY OF MINNEOLA:

You are hereby notified that you are required by law to cut and prevent the excessive accumulation of weeds, underbrush, grass or other dead and living plant life upon your improved property; to remove any trash, debris, refuse, inoperable or abandoned vehicles or appliances, or other noxious matter located on any property owned, controlled or occupied by you in the City of Minneola; and also to repair, restore or demolish any unfit or unsafe structure located upon such property; and that upon your failure to do so, the City of Minneola will institute nuisance abatement proceedings against your property and cause such nuisance to be abated. The cost of such abatement will constitute a special assessment lien against the property on which the nuisance is located. Such special assessment lien shall be coequal with the lien of all state, county, district, and municipal taxes and superior in dignity to mortgages and all other liens, irrespective of the date of the recording of the municipal lien or the date of the recording of any mortgage or any other lien on real property. A failure to pay said lien, even such lien upon homestead property, may result in a loss of title to your property."

A failure to publish this notice as provided for herein shall not invalidate any nuisance abatement proceedings brought pursuant to this chapter.

Sec. 30.41. Resolution declaring property a threat and order to show cause.

(1) Upon receipt of the nuisance inspector's findings, evidence, and reports supporting the existence of a nuisance as defined herein, the city attorney, or his or her designee, shall review and determine the sufficiency therewith. If the facts and circumstances support a finding of a public nuisance, the city attorney or his or her designee, shall prepare a resolution for the city council declaring the property a threat to the public, health, safety and welfare with order to show cause.

(2) Such resolution or order to show cause shall:

- (a) Identify the property at issue;
- (b) Identify the owner or owners of the property as ascertained by a reasonable search of the property appraiser's records or search of the public records;
- (c) Describe the condition or activity which may constitute a public nuisance;
- (d) Set the date, time, and place for the show cause hearing at which the owner(s) shall have the opportunity to present such evidence and or argument as to why said building, structure or condition should not be by the city council or board condemned as a nuisance and its abatement, removal, or destruction required;
- (e) Include a statement providing that a failure to respond or appear at the hearing shall be deemed an admission of the existence of a public nuisance on the property at issue which may result in abatement of the nuisance by the city and levy of an assessment against the property pursuant to this chapter.

(3) Notice of such hearing shall be made by serving a certified copy of said resolution and/or order to show cause upon the owner if able to be located within the city by the nuisance inspector or his designee, or process server in the manner as near as practicable to the manner in which a summons is served as provided by the laws of the State of Florida. In the event that it is determined that the owner is not available for service within the city, service shall be perfected by at least one of the following:

- (a) Mailing, via registered or certified mail, a certified copy of the resolution and/or order to show cause at least ten days prior to the date of the hearing, to the owner(s) and mortgagee(s) of record; or
- (b) Publication of the resolution and/or order to show cause. Such notice shall be published once for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in Lake County. The last date of publication shall be at least one day prior to the hearing. The newspaper shall meet such requirements as are prescribed under Chapter 50 of the Florida Statutes for legal and official advertisements; or
- (c) If the property is in foreclosure proceedings and has been abandoned by the owner(s) as evidenced by the property being vacant and the owner has not provided a forwarding address nor is participating in the foreclosure proceedings by filing an answer or has otherwise been unable to be served; service by certified mail to the owner(s) last address of record and service upon the bank or mortgage company of record in the foreclosure proceedings by certified mail shall be deemed sufficient notice.

Sec. 30.42. Resolution declaring a public nuisance or order of abatement.

- (1) The show cause hearing shall be a public hearing of the city council. At or after such hearing, if no good and sufficient cause be shown to the contrary, the city council shall pass a resolution declaring a public nuisance and requiring the owner of the property to abate the nuisance condition(s) within a reasonable time to be determined by the city council in the resolution and provide for abatement of the nuisance by city forces if such conditions are not corrected as of the time determined by the city council.
- (2) The city council may require any or all measures as are reasonably necessary to abate the nuisance. These measures may include, but are not necessarily limited to, the cutting of vegetation, removal of debris or abandoned materials, repair or maintenance of structures, and/or the demolition of unfit or unsafe structures.
- (3) At minimum, the resolution shall:
 - (a) Identify the property;
 - (b) Identify the owner or owners of the property and any interested parties upon whom notice was served;
 - (c) Set forth the conditions supporting the finding of a public nuisance and/or specify the sections of this chapter upon which the finding of a public nuisance was based;
 - (d) Require the abatement of the nuisance within such time as the city council determines to be reasonable considering the nature of the nuisance, the danger to the public, and the amount of work involved to abate the nuisance.
 - (e) Include a statement advising that upon the owner's failure to comply with the resolution by removing the nuisance, the city may vacate, demolish, or remove, or otherwise abate the nuisance in accordance with the resolution and the expense of such performance by the city or its independent contractor shall be charged against the real property as a special assessment and such special assessment lien shall be coequal with the lien of all state, county, district, and municipal taxes and superior in dignity to mortgages and all other liens, irrespective of the date of the recording of the municipal lien or the date of the recording of any mortgage or any other lien or real property. A failure to pay said lien, even such lien upon homestead property, may be collected pursuant to any manner specified by law and may result in a loss of title to the property.
 - (f) The resolution may include notice that any reoccurrence of the nuisance within a 12-month period may be abated by the city without the need for further proceedings and the cost to abate the repeat nuisance shall constitute a special assessment against the property.

Sec. 30.43. Extension of time to comply.

In the event of extenuating circumstances such that the property owner(s) is/are unable to complete abatement within the time provided within the resolution, the owner(s) may file a written request for an extension of time to comply stating the reasons they have been unable to complete compliance. If reasonable grounds are shown, the city council is authorized to extend the time within which to complete compliance with the original order.

Sec. 30.44. City action on failure to comply.

(1) If the owner or other parties in interest fail to comply with an order made pursuant to the provisions of this chapter within the time therein fixed, the city is authorized to vacate, demolish, remove, or otherwise abate the nuisance in accordance with such order, either with city forces or by an independent contractor and neither shall be held liable for trespass, conversion, or other damages while abating the nuisance in a reasonable manner.

Sec. 30.45. Emergency order.

Whenever, in the opinion of the city council, any nuisance in violation of this chapter is an immediate threat to life, limb, health, welfare, or property, the city council may issue an emergency order and immediately terminate or abate the nuisance.

Sec. 30.46. Appeals.

Any person adversely affected or aggrieved by a final resolution of the city council pursuant to this chapter shall file an appeal to the Circuit Court of Lake County. Such appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before city council. The appeal shall be filed within 30 days of the execution of the resolution to be appealed.

Sec. 30.47. Attorneys' fees.

The prevailing party in any legal action, appeal, or proceeding instituted to contest any city council action pursuant to this chapter shall be entitled to reasonable attorneys' fees and costs.

Sec. 30.48. Assessment of cost.

(1) The public works director or such other authorized party as determined by the city manager shall certify such costs that are incurred in abating the public nuisance as specified in this section. A copy of such certification shall be sent by certified mail to the owner at his last known address, if known, which copy shall constitute a demand for the payment of such cost by the owner within thirty (30) days of such mailing.

(2) If payment of the costs incurred for the abatement of the public nuisance is not made within thirty (30) days of mailing as provided in 30.48(1), the city council shall assess the entire cost of city abatement action upon the affected property as a special assessment, which assessment, when made, shall constitute a lien upon such property by the city. The lien of the city shall encompass, in addition to the abatement cost for the vacation or removal of the facility, all administrative, legal, postal and publication expenses, as well as all other direct or indirect costs associated therewith. The lien upon the property shall be superior to all others except taxes as previously set forth herein.

(2) The city shall file such lien in the Official Records of Lake County showing the nature of such lien, the amount thereof, an accurate legal description of the property, including the street address, which lien shall date from the date of the filing and recite the owners of the property. Such municipal lien shall bear interest from such date at the rate of eight percent per annum. The city may enforce the lien upon the real property of the owner, as provided for in Chapter 173, Florida Statutes as amended from time to time.

(3) In the alternative, the city may collect all such liens assessed pursuant to section 197.3632, Florida Statutes as authorized pursuant to section 197.3632(9).

Sec. 30.49. Right to hearing on assessment.

Prior to the expiration of the thirty (30) days provided in section 30.48(1) of this Chapter, any owner shall have the right to have the hearing before the city council to show cause, if any, why the cost and charges incurred by the city under this article are excessive or unwarranted.

Section 3. All ordinances in conflict with the provisions of this ordinance are hereby repealed. The City's Abandoned and Foreclosed Properties Ordinance 2009-02 shall remain in full force and effect.

Section 4. The provisions of this ordinance are intended to be incorporated into the Code of Ordinances of the City of Minneola, Florida and the sections of this ordinance may be renumbered, relettered, and the word "ordinance" may be changed to "section," "article," or such other word or phrase in order to accomplish such intention.

Section 5. If any section, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portion of this ordinance.

Section 6. This ordinance shall become effective upon passage.

PASSED AND ORDAINED this 15th day of December, 2009, by the City Council of the City of Minneola, Florida.



PAT KELLEY, MAYOR

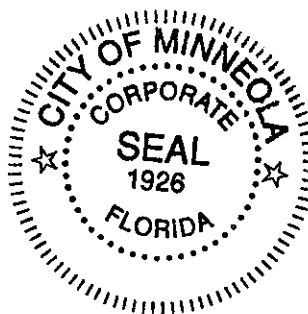
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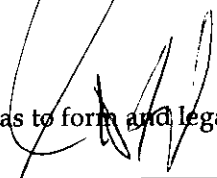
JANET McDANIEL, CITY CLERK

Passed First Reading 12-01-09

Passed Second Reading 12-15-09



Approved as to form and legality:



Scott Gerken, City Attorney