

ORDINANCE NO. 2015-37

AN ORDINANCE OF THE CITY OF PORT ORANGE,  
VOLUSIA COUNTY, FLORIDA; AMENDING THE CODE OF  
ORDINANCES, CHAPTER 42, ARTICLE V, TO ESTABLISH  
A NEW DIVISION 3 RELATING TO THE ABATEMENT OF  
UNSAFE STRUCTURES, PROVIDING FOR  
CODIFICATION; PROVIDING FOR REPEAL OF  
CONFLICTING ORDINANCES; PROVIDING FOR  
SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council hereby finds and declares that in recent years and at present an increased number of unsafe structures exist; and

WHEREAS, such structures often become open, unsecured, vandalized, or used for illicit purposes by trespassers, resulting in conditions that are unhealthy, unsafe, unsightly, and a blight upon the neighborhood and community at large; and

WHEREAS, the abatement of unsafe structures will improve the security and quality of life in general of persons living nearby, will prevent blight and decay, and will safeguard the public health, safety, morals and welfare; and

WHEREAS, the City Council has determined that it is in the best interests of the citizens of the City of Port Orange to abate the nuisance created by unsafe structures as set forth hereinafter; and

WHEREAS, for purposes of this ordinance the newly established Division 3 set forth in Section 1 below shall constitute additions to the original ordinance text.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, AS FOLLOWS:

Section 1: The City Council of the City of Port Orange hereby amends Chapter 42, Article V of the Code of Ordinance to establish a new Division 3 as follows:

**DIVISION 3. – ABATEMENT OF UNSAFE STRUCTURES**

**Sec. 42-106. Purpose**

The intent and purpose of this division is to protect the health, safety, morals and welfare of all the people of the City of Port Orange by establishing standards governing the abatement of unsafe structures; authorizing and establishing procedures for the demolition of the same and setting forth a procedure for the enforcement of this division by ordering the abatement of structures found unsafe. This division is hereby declared to be remedial and essential to the public interest, and it is intended that this division be liberally construed to effectuate the purposes as stated above.

**Sec. 42-107. Inspections.**

The building official, or his or her designee, shall have the authority to inspect any structure for the purpose of determining whether the same is unsafe based on the conditions set forth herein. The building official, or his or her designee, is authorized to utilize the services of private engineers, architects or other professionals in order to determine the condition of the structure in question.

**Sec. 42-108. Unsafe Conditions; Nuisance.**

(a) A structure is unsafe when any of the following conditions exist:

- (1) The structure's interior walls or other structural members list, lean, or buckle or the support for the structure has become damaged or deteriorated to such an extent that there is a reasonable likelihood that the walls or other structural members may fall or give way.
- (2) The structure has improperly distributed loads upon the floor or roof or the floor or roof is overloaded or has insufficient strength to be reasonably safe for the purpose used.
- (3) The structure has been damaged by fire, wind, or other causes and has become dangerous to life, safety, or the general health and welfare of people within or near the structure.
- (4) The structure is so dilapidated, decayed, unsafe, insanitary, or so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation or is likely to cause sickness or disease so as to injure the health, safety, or general welfare.
- (5) The structure has connected parts that have become so detached from one another that there is a reasonable likelihood they may fall and injure members of the public or cause property damage in general.
- (6) The structure is vacant and not sufficiently secured to prevent easy access to trespassers and vagrants or is otherwise untended or unkempt to the extent that it poses a general health or safety hazard for neighboring people or property.

- (b) A structure that is unsafe constitutes a nuisance. No person shall permit an unsafe structure to exist on property under his or her ownership or control.

Sec. 42-109. Notice of violation and notice of hearing.

When the building official, or his or her designee, verifies the existence of a structure which is unsafe, an initial notice of violation and notice of hearing shall be provided to the owner of record and other known interested parties as set forth in section 42-110. Said notice shall describe the condition(s) found by the building official, or his or her designee, and relied upon in determining the structure is unsafe and state the requirements to secure and repair, or demolish the structure within a reasonable period of time along with a notice informing all interested parties of the date, time and location of the hearing before the special magistrate which may result in an order requiring the property owner or city to demolish the structure(s) on the property with any costs therefor being assessed against the property and constituting a lien thereon.

Sec. 42-110. - Manner of serving notice.

- (a) For the purpose of providing notice, interested parties shall be the owner of the property as shown on the county tax rolls, other persons whose names appear on the county tax rolls as having an interest in the property, and the tenant or occupant, if any, of the property, as well as other persons of record interest, which may include the mortgagee, contract purchaser (if known), agent with power of attorney, and any person claiming an interest under a lis pendens.
- (b) Ten days or more prior to the hearing before the special magistrate, the notice of violation and notice of hearing shall be posted on the front of the property and shall be delivered to the interested parties either:
  - (1) By personally delivering a copy thereof to the party to be notified;
  - (2) By leaving such copy at such person's usual place of residence with some person of the household above 15 years of age and informing such person of the contents thereof; or
  - (3) By standard United States mail and either registered or certified United States mail with return receipt requested.

If the name of any interested party or their place of residence or their post office address cannot be ascertained after diligent search or in the event a notice sent by either registered or certified mail shall be returned undelivered, notice shall be given by publishing a copy thereof two times in a newspaper of general circulation in the city as set forth in subsection (d) of this section and, if the name of such interested party is known, mailing a copy thereof to such person's last known address, if known.

- (c) A copy of such notice of violation and notice of hearing shall be posted in a conspicuous place at City Hall.
- (d) If publication of notice is made, a notice of notice of violation and notice of hearing shall be published on two different days in a newspaper of general circulation in the city and the last publication of such notice shall be not less than 10 days prior to the date of hearing.

**Sec. 42-111. Hearing and authority to order secure and repair or demolition.**

- (a) In any hearing before the special magistrate pursuant to this division, formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of the State. Each interested party shall have the right to appear in person, by legal counsel or by an agent, to call and examine witnesses under oath, to introduce documentary evidence or exhibits, to cross-examine opposing witnesses on any relevant matter even though the matter was not covered under direct examination, to impeach any witness regardless of which party first called him to testify, and to submit rebuttal evidence.
- (b) Upon substantial competent evidence, the special magistrate may render his or her order requiring the owner to secure and repair, or cause to be demolished, the structure(s) which have been established as unsafe within a reasonable period of time not less than 30 days from the date of the order, and provide authority for the city to take the necessary steps to abate the condition(s) in the event the owner fails to do so and charging all expenses of the abatement against the property in accordance with this division. The order may also require vacating of the property if such action is necessary and has not already been accomplished.
- (c) All unsafe structures which have been secured as a result of an order to secure and repair shall be subject to inspection and the owner of the structure shall be assessed a fee for each and every such inspection. For the purpose of ensuring that the vacant and unfit or unsafe structure is locked and/or secured, inspections shall be conducted no less frequently than at 30-day intervals and the following fee collected in the manner provided by this division for each and every inspection conducted.
  - (1) Residential, commercial, institutional and industrial structures, per structure: \$50.00.
  - (2) Other structures (detached garages, accessory buildings, etc.), per structure: \$25.00.

**Sec. 42-112. - Appeal procedure.**

An aggrieved party, including the city, may appeal a final administrative order of the special magistrate to the circuit court in Volusia County. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed.

**Sec. 42-113. - Condition of lot after demolition.**

A lot from which a structure is demolished shall be properly filled, graded and seeded with grass seed or sodded within five days of the date of completion of the demolition. The lot shall comply with the established vegetation standards of the city.

**Sec. 42-114. - Assessment of cost of demolition; lien on property.**

- (a) Upon expiration of the 30-day right of appeal to the Circuit Court with no appeal having been taken, or, if appeal is taken, expiration of the 30-day period following the 30-day period for filing a claim of appeal to the District Court of Appeal, or following an emergency demolition authorized and conducted in accordance with section 42-115, unless otherwise ordered by a court of competent jurisdiction, the city manager or his or her designee, after proceeding under this division, shall assess the entire cost of such vacation, demolition, removal or securing against the real property upon which such cost was incurred by recording a lien. The costs which may be assessed include the cost of rodent extermination where employed, all administrative costs (which shall include all costs related to any hearing before the special magistrate and the lien recording and releasing fee), postal expense, newspaper publication and other costs reasonably and necessarily incurred by the city, including attorney's fees and costs. Such costs when assessed shall constitute a lien upon such property and such lien shall bear interest from such date at the rate established by the comptroller of the State pursuant to section 55.03, state statutes (F.S. § 55.03) and shall be enforceable if unsatisfied, after the expiration of one year from the date of recording such notice of lien, as other liens may be enforced by the City.
- (b) In those instances where the owner has repaired, secured or demolished a structure or caused such work to be done as the result of having been determined to be in violation of this division, all costs described in subsection (a) of this section reasonably and necessarily incurred by the City shall be assessed against the property and such lien shall bear interest from such date at the rate established by the comptroller of the State pursuant to section 55.03, state statutes (F.S. § 55.03) and shall be enforceable if unsatisfied, after the expiration of one year from the date of recording such notice of lien, as other liens may be enforced by the City..
- (c) The City shall record a notice of lien in the public records of Volusia County. The notice of lien shall show the nature of such lien, the amount thereof, the names of persons having an ownership or other property interest of record and an accurate legal description of the property, which lien shall date from the date of recording of the notice of lien. Such lien shall bear interest from such date at the rate established by the comptroller of the State pursuant to section 55.03, state statutes (F.S. § 55.03) and shall be enforceable if unsatisfied, after the expiration of one year from the date of recording such notice of lien, as other liens may be enforced by the City.

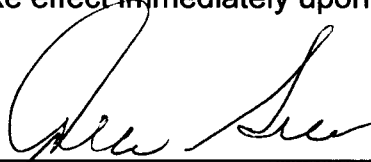
**Sec. 42-115. - Emergency condemnations, authority to take action; lien on property.**

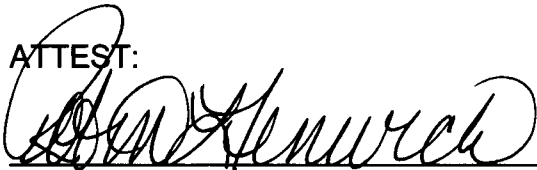
- (a) In cases where there is imminent peril to the public safety or general welfare or immediate danger to the life or safety of any person or where the public is endangered by weather conditions, fire, other natural disasters or the particular location of the subject property, unless an unfit or unsafe structure is immediately repaired, demolished, or removed, the city manager or his or her designee shall promptly cause such structure to be made safe or removed. For this purpose the city manager or his or her designee may at once enter such a structure or land on which it stands, or abutting land or structures, to perform an inspection with such assistance and at such cost as may be deemed necessary.
- (b) Upon inspection, the city manager or his or her designee shall determine whether or not the structure requires immediate emergency demolition in order to maintain the safety and welfare of the owner, tenants, or public. A written report will document results of these inspections. Exterior and interior photographs of the building, structure, or portion thereof will be taken when feasible.
- (c) The city manager or his or her designee may order the vacation of adjacent structures and may require the protection of the public by appropriate fencing or such other means as may be necessary, and for this purpose may close any public or private way.
- (d) If the city manager or his or her designee determines that sufficient time exists, prior to demolition, to reasonably and safely serve a notice of intent to demolish, it will be sent via priority mail or courier delivery and by attempting to telephone the owner or interested parties (if listed in the current phone directory) giving notice of the emergency demolition. This written notification must state the findings of the city manager or his or her designee, documenting cause for demolition or removal. Where the owner or other interested party fails to take immediate corrective action as ordered by the city manager or his or her designee, the city manager or his or her designee shall have the authority to promptly proceed with the abatement of the unsafe structure in accordance with this division. Failure to effect personal notice upon the individual owner or interested parties shall not prevent the city from performing the emergency demolition or removal and assessing a lien on the property. All costs incurred in the evaluation, vacation, securing and emergency demolition are the responsibility of the property owner, and the city manager shall place a lien on the property as set forth in section 42-114.

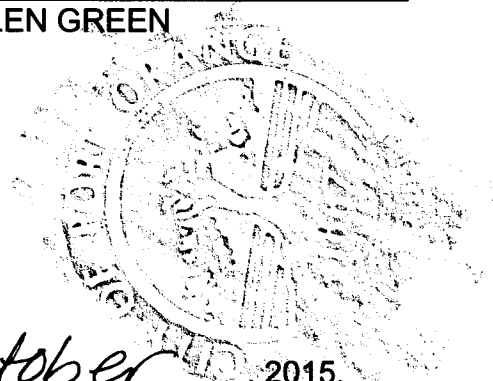
Section 2: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 3: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 4: This ordinance shall take effect immediately upon adoption.

  
MAYOR ALLEN GREEN

ATTEST:  
  
Robin L. Fenwick, CMC, City Clerk



Passed on first reading on the 20 day of October, 2015.

Passed and adopted on second and final reading on the 3 day of Nov., 2015.

Reviewed and Approved:   
Assistant City Attorney