



City of Gahanna

200 South Hamilton
Road
Gahanna, Ohio 43230

Signature

Ordinance: ORD-102-2020

File Number: ORD-102-2020

**ORDINANCE TO AMEND THE CODE OF ORDINANCES OF GAHANNA, OHIO:
Enacting Chapter 1308 Nuisance Abatement Code; WAIVING SECOND READING
AND DECLARING IT AN EMERGENCY.**

WHEREAS, it is imperative to move forward with this enactment for the preservation of the public peace, health, safety and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GAHANNA, COUNTY OF FRANKLIN, STATE OF OHIO:

Section 1. That Chapter 1308 Nuisance Abatement Code be and is hereby enacted as set forth in EXHIBIT A, attached hereto and made a part herein.

Section 2. That the second reading is hereby waived.

Section 3. That, for the reasons set forth in the preamble herein above, this ordinance is declared emergency legislation and shall be in full force and effect immediately upon passage by this Council and on date of signature approval by the Mayor.

President

Jamie Leeseberg

Date

Attest by

April Beggerow, MPA, CMC
Clerk

Date

11/18/20

Approved by the Mayor

Laurie A. Jadwin

Date

11.17.2020

Approved as to Form

Raymond J. Mularski
City Attorney

Date

11-18-2020

EXHIBIT A

1308.01 – Title.

This chapter shall be known as the "Nuisance Abatement Code" of the City of Gahanna, hereafter referred to as the Nuisance Abatement Code or this code.

1308.02 - Purpose.

The purpose of this code is to protect the public's health, safety and welfare and to prevent the blighting of the city's neighborhoods.

1308.03 - Relationship to other regulations.

This code shall not be construed to prevent the enforcement of other provisions of Gahanna City Codes or the Ohio Revised Code that prescribe standards other than are provided in this code.

1308.04 - Definition of Nuisance

A nuisance property shall be defined as any of the following:

- A. Any building, premises or real estate, including vacant land, or any appurtenance thereto which is not in compliance with any building, housing, nuisance abatement, air pollution, sanitation, health, fire, zoning or safety code;
- B. Any building, premises or real estate, including vacant land, or any appurtenance thereto on which a felony violation of Ohio Revised Code Chapters 2925 or 3719 has occurred;
- C. Any building, premises or real estate, including vacant land, or any appurtenance thereto as defined as a nuisance or public nuisance in Ohio Revised Code Chapter 3767.
- D. Any building, premises or real estate, including vacant land, or any appurtenance thereto that is used or occupied by a criminal gang (as defined in Ohio Revised Code 2923.41) on more than two (2) occasions within a one-year period to engage in a pattern of criminal gang activity (as defined in Ohio Revised Code 2923.41).
- E. Any building, premises or real estate, including vacant land, or any appurtenance thereto used in violation of Ohio Revised Code Chapter 2915.
- F. Any building, premises or real estate, including vacant land, or any appurtenance thereto on which a felony offense of violence as defined by Ohio Revised Code Section 2901.01 has occurred, except that it does not include any violation of sections 2919.25 or 2919.27 of the Revised Code.

1308.05 – Enforcement.

- A. The Director, or his or her delegate, in enforcing provisions of this code, is authorized and directed to make inspections either in response to a complaint alleging the existence of a public nuisance or when said Director has reasonable grounds to believe a public nuisance exists.
- B. Upon presentation of proper credentials and when permission is granted by a person who represents he or she has authority to grant permission, the Director, or his or her delegate, may enter any building, premises or real estate, including vacant land, or any appurtenance thereto, in the City of Gahanna to perform any duty imposed upon him or her by this code. Absent such permission, the Director, or his or her delegate, may apply to a judge of a court of record, pursuant to Ohio Revised Code Section 2933.21(F), for a search warrant to conduct an inspection.
- C. Every occupant of a building, premises or real estate or any appurtenance thereto shall give the owner access to any part of the building, premises or real estate or any appurtenance thereto at all reasonable times for the purposes of making an inspection or maintenance, repair or alteration of the

building, premises or real estate of any appurtenance thereto as are necessary to comply with this code.

D. The identification of a person who makes a complaint pursuant to this code shall be kept confidential and shall not be subject to disclosure under Ohio Revised Code Section 149.43

1308.06 - Inspection and Powers.

Whenever the Director, or his or her delegate, determines a building or structure, including those that are vacant, constitutes a public nuisance, or hazardous building or structure, the Director, or his or her delegate, shall affix to such building or structure upon or adjacent to the door or entrance thereto, a placard on which shall be printed a declaration that such building or structure is a public nuisance or hazardous building, and the Director, or his or her delegate, may do any of the following:

- A. Serve notice pursuant to G.C.C. Section 1308.07; and/or
- B. Notwithstanding other enforcement actions that have been undertaken pursuant to Chapter 1308 or other provisions of Gahanna City Codes or Ohio Revised Code, cause to be filed in the Environmental Division of the Franklin County Municipal Court a civil complaint for injunctive relief seeking abatement of the public nuisance building or structure; and/or,
- C. Notwithstanding other enforcement actions that have been undertaken pursuant to Chapter 1308 or other provisions of Gahanna City Codes or Ohio Revised Code, cause to be filed in the Environmental Division of the Franklin County Municipal Court a criminal complaint; and/or,
- D. Notwithstanding other enforcement actions that have been undertaken pursuant to Chapter 1308 or other provisions of Gahanna City Codes or Ohio Revised Code, enter onto the property and cause the conditions that create the public nuisance or hazardous buildings or structures to be abated by city personnel or private contractor and may charge the costs of such correction as a lien upon the owner's building, structure, premises, or real estate, to include vacant land.

1308.07 - Notice of violation.

A. Whenever the Director, or his or her delegate, determines there exists a public nuisance as defined in Section 1308.04, he or she may issue a notice of violation to the owner and/or occupant of the building, structure, premises or real estate, including vacant land, or appurtenance thereto setting forth the conditions that cause the building, premises or real estate, including vacant land, or appurtenance thereto to be a public nuisance and advising the owner and/or occupant that such conditions must be corrected. Such notice of violation shall:

- 1. Be in writing;
- 2. Describe the building, structure, premises or real estate, including vacant land, or appurtenance thereto alleged to be a public nuisance;
- 3. Identify the sections of the Ohio Revised Code or the International Property Maintenance Code whose violation creates a condition or conditions on the building, structure, premises or real estate, including vacant land, and appurtenances thereto that cause the building, structure, premises or real estate, including vacant land, or appurtenance thereto, to be a public nuisance;
- 4. Order the owner and/or occupant to abate the conditions;
- 5. Specify a reasonable time for compliance with the order to abate;
- 6. Advise the owner and/or occupant of the right to appeal the notice of violation pursuant to Section 1308.09 of this chapter, and that the owner and/or occupant has the right to have a hearing before the Property Appeals Board in connection with their appeal.
 - a. Except as otherwise specified in Section 1308.08, upon the owner or occupant appealing a Notice of Violation, any enforcement action seeking compliance with an order shall be stayed until after the initial hearing in connection with the owner's appeal. Property Appeals

Board hearing dates, times, and locations shall be established in compliance with the Rules of Procedure adopted by the Board.

7. Advise the owner and/or occupant that if the order to abate the conditions indicated in the notice of violation is not complied with by the specified date of compliance, the Director, or his or her delegate may:

a. Initiate a civil and/or criminal action against the owner, or

b. Cause the conditions indicated in the notice of violation to be corrected by city personnel or private contractor and charge the costs of such correction as a lien upon the owner's building, structure, premises or real estate, to include vacant land, or appurtenance thereto.

B. When a notice of violation is served it shall be served upon the owner and/or occupant by any one of the following methods:

1. Personal service;

2. Certified mail, return receipt requested;

3. Residence service at their last known address by leaving a copy of the suitable age and discretion then residing therein;

4. Publication in a newspaper of general circulation in the City of Gahanna:

a. The notification shall be published a minimum of once per week for three (3) consecutive weeks.

b. A copy of the newspaper with a copy of the notice marked, shall be mailed to the party at the last known address and the notice shall be deemed received as of the date of the last publication;

5. Regular mail service to an address that is reasonably believed to be a place of residence of the owner or a location at which the owner is reasonably believed to receive mail regularly;

6. Posting of the notice of violation on the building, premises or real estate, or appurtenance thereto, except that if the building, premises or real estate is vacant or vacant land, then the notice shall be posted on the building, premises or real estate or vacant land and one of the above methods of service shall also be used.

C. When the notice of violation has been served, it shall be effective as to anyone having any interest in the building, premises or real estate whether recorded or not at the time the order was issued, and shall be effective against any subsequent owner as long as the conditions causing the building, premises or real estate, including vacant land, or appurtenances thereto exist and there remains a city record of the notice of violation in a public file maintained by the Director.

D. Written or oral acknowledgement by the owner of receipt of a notice of violation shall be evidence that the owner received the notice. An appeal of the notice by the owner pursuant to Section 1308.09 shall constitute evidence of written acknowledgement by the owner of service of the notice of violation.

E. For the purposes of this Chapter, "Owner" shall mean the owner of record as shown in the County Auditor's records, the mortgage holder of record, if any, as shown in the records of the County Recorder, or any purchaser under a land contract, whether recorded or otherwise. "Owner" shall also mean any person who has a freehold or lesser estate in the premises, a mortgagee or vendee in possession, or any person who has charge, care, or control of the premises as an agent, executor, administrator, assignee, receiver, trustee, guardian, or lessee.

F. For purposes of this Chapter, "Occupant" shall mean any person living, sleeping, or cooking in, or having actual possession of, a dwelling unit, rooming unit, or other building or part or fraction thereof. "Occupant" shall mean, for any commercial purposes, the person or persons occupying, having possession, or working in any building or structure, or upon any unimproved land.

1308.08 - Emergencies.

A. Whenever the Director, or his or her delegate, finds that an emergency exists which requires immediate action to protect the public health and safety, he or she shall issue a written order to the owner and/or occupant reciting the existence of such an emergency and requiring that such action as he or she deems necessary be taken to meet the emergency.

B. Such action as the Director or his or her delegate, deems necessary to abate the emergency may include:

1. The immediate vacating of a building, premises or real estate by all inhabitants with the condition that the building, premises or real estate not be reoccupied until the Director, or his or her delegate, determines that the emergency no longer exists.
2. The Director, or his or her delegate, may utilize city or private contractor resources to abate the conditions causing the emergency. If in the opinion of the Director such action includes demolition of the building or premises or appurtenances thereto because the building or premises or appurtenances thereto pose an imminent threat of collapse, which has a high probability of causing injury or death to persons, the Director, or his or her delegate, shall immediately file a request for a Temporary Restraining Order or such other Court Order from the Environmental Division of the Franklin County Municipal Court seeking judicial approval to demolish the building or premises or appurtenances thereto. The Director, or his or her delegate shall charge the costs of abatement as a lien against the building or premises or appurtenances thereto and/or may recover the costs against the owner in a civil action.

C. The written order issued by the Director, or his or her delegate, shall be posted on the building, premises or real estate, to include vacant land, or appurtenances thereto, where the emergency is alleged to exist. Additionally, the Director, or his or her delegate, shall make every reasonable effort to personally serve the owner with the order.

D. Notwithstanding other provisions of this Code, such order shall be effective immediately and shall be complied with immediately.

E. The owner has the right to immediately appeal the emergency order to the Environmental Division of the Franklin County Municipal Court, but such appeal does not waive the owner's requirement to immediately comply with the order.

F. If the owner appeals the emergency order, the burden is on the Director, or his or her delegate, to prove by clear and convincing evidence that an emergency existed which required immediate action on the part of the owner. The owner has not the burden to prove there was not an emergency. If the Environmental Division of the Franklin County Municipal Court has issued to the Director a Temporary Restraining Order or other Court Order approving demolition, an owner's appeal will not stay the court's order.

1308.09 - Appeals of notice of violations.

A. Appeals of any notice of violation for an alleged violation of this Nuisance Abatement Code issued by the Director shall be made in writing within fifteen (15) days of the date service of the notice of violation, pursuant to the requirements prescribed in Gahanna City Code Chapter 1308. Any person affected by a notice of violation in connection with this Nuisance Abatement Code may request and shall be granted a hearing before the Property Appeals Board on all matters set forth in such notice of violation.

Upon the filing of a timely notice of appeal, the Property Appeals Board shall conduct a hearing on the appeal within forty-five (45) days unless a continuance is requested by either party and granted by the chair of the board. At such hearing, the burden shall be on the Director, or his or her delegate, to prove by the preponderance of reliable, and probative evidence that the structure identified in the notice of violation is a public nuisance. The Property Appeals Board shall render its decision in

writing, including conclusions of fact and law, within five (5) days of the date of the hearing. The decision of the Property Appeals Board may reverse, modify or affirm the order and action of the Director.

Decisions of the Property Appeals Board issued pursuant to this section may be appealed by either party to the Environmental Division of the Franklin County Municipal Court pursuant to Ohio Revised Code Chapter 2506.

B. Nothing in this section shall be construed to prohibit the Director, or his or her delegate, from pursuing the enforcement of any provision of this Nuisance Abatement Code or the Ohio Revised Code through any other remedy available by law, including but not limited to causing to be filed in the Environmental Division of the Franklin County Municipal Court a civil complaint for injunctive relief or a criminal misdemeanor complaint.

1308.10 - Prohibition against failure to comply with notice of violation.

No owner or occupant shall fail to comply with any notice of violation, and no owner, occupant, or other person shall obstruct or interfere with the enforcement of the notice.

1308.99 - Criminal and civil penalties.

A. Whoever violates any provision of this code is guilty of a misdemeanor of the first degree.

B. Each calendar day a violation occurs or is permitted to continue shall constitute a separate offense.

C. Strict liability is intended to be imposed for violation of this code.

D. In addition to any criminal penalties a court may impose on an owner, an owner who fails to comply with a notice of violation shall incur a civil forfeiture of One Hundred Dollars (\$100.00) for each calendar day that the owner fails to comply. The Director, or his or her delegate, may cause to be filed on his or her behalf a civil action styled "Complaint for Civil Forfeiture" in the Environmental Division of the Franklin County Municipal Court seeking a court order to recover any accumulated civil forfeiture penalties.

E. Nothing in this chapter shall be construed to prohibit the Director, or his or her delegate, from pursuing the enforcement of any provision of this Nuisance Abatement Code or the Ohio Revised Code through any other remedy available by law, including but not limited to causing to be filed in the Environmental Division of the Franklin County Municipal Court a civil complaint for injunctive relief or a criminal misdemeanor complaint.

