

ORDINANCE NO. 1247

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OKEECHOBEE, FLORIDA RELATING TO THE DEMOLITION OF BLIGHTED STRUCTURES; AMENDING THE CITY CODE OF ORDINANCES AT CHAPTER 30, ARTICLE II “NUISANCE” BY SPECIFICALLY AMENDING SECTION 30-31 “DEFINITIONS”; SPECIFICALLY AMENDING SECTION 30-43 “PUBLIC NUISANCES”; SPECIFICALLY AMENDING SECTION 30-74 “RESERVED”; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**WHEREAS**, the City has determined that as many as ten percent of the structures within its jurisdiction pose an imminent threat to the public health, safety, and welfare of its citizens; and,

**WHEREAS**, City Council has determined that the Chapter 30 of its Code of Ordinances should be amended and updated to provide a procedure for the demolition of blighted and dangerous structures; and,

**WHEREAS**, the City Council finds that this ordinance promotes the public health, safety and welfare of its citizens and inhabitants of the City, pursuant to Article VIII, Section 1(g), Florida Constitution.

**NOW, THEREFORE**, be it ordained before the City Council of the City of Okeechobee, Florida; presented at a duly advertised public meeting; and passed by majority vote of the City Council; and properly executed by the Mayor or designee, as Chief Presiding Officer for the City; that:

**Section 1: Recitals.**

The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

**Section 2:**

That the City Council for the City of Okeechobee, Florida amends herein Part II of the Code of Ordinances Chapter 30 - Environment, Article II – Nuisances, Sec. 30-31 – Definitions, to read as follows:

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

*Abandoned property* means wrecked or derelict items of property of little inherent value, including junk as defined in this section, that is placed, stored, or abandoned at a public place or right-of-way, or such items of property owned by a private person or business entity, and which are located or placed at a location other than the lands owned or leased by such private individual or business entity.

*Accumulate (store, keep, hold, and retain)* means the retention or storage of one item, as well as the amassing of more than one item.

*Blighted structure* means a structure which has deteriorated to such a degree that it impairs the sound growth of the City or impairs the public health, safety, or welfare of the general public.

*Dangerous structure* means a structure with one or more of the following criteria: (a) a structure that has been declared an unsafe structure by the City’s building official; (b) a structure that has been abandoned for more than one hundred and eighty (180) days; (c) a structure, or a portion thereof, that has been damaged by fire, flood, wind, or other natural phenomena such that the structure poses an a threat to the public health, safety or welfare of the general public or occupant; (d) a structure so

unsanitary that it is unfit for human habitation, or is likely to cause sickness; and (e) a structure, or a portion thereof, as a result of decay, deterioration, or dilapidation is likely to fully or partially collapse.

*Garbage* means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food items.

*Junk* means items that include but is not limited to, scrap metal, used tires, and those items such as dismantled or partially dismantled non-operative or discarded machinery, appliances, household items; equipment, motor vehicles, motorcycles, tractors, motors, farm implements, trailers, frames or parts thereof, and used boats and vessels. The intent of the City is to totally ban such items from public view as provided in this article. Accordingly, for purpose of this definition, it is immaterial whether the junk items are claimed to have inherent value; whether such junk is evidenced by a title or certificate or origin; whether it is accumulated for salvage, resale, or rehabilitation; or whether the items could eventually be made to be operative. This article shall not prevent authorized garage or yard sales, or displays at permitted non-profit events, or festivals.

*Refuse* means all putrescible and nonputrescible solid wastes (except bodily waste) including, but not limited to, garbage, rubbish, ash, street cleanings, dead animals, abandoned automobiles, junk, and solid market and industrial wastes.

*Rubbish* means nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard trash, wood, glass, bedding, crockery and similar materials.

*Street advertising* means the placement by a business owner, tenant, agent or custodian thereof, of signs or items for display to the general public outside of their building or structure, for advertising purposes on the grounds of the business.

*Untended vegetation* means grass, weeds or underbrush in excess of 12-inches in height from the ground, dead trees, hedges or any dense growth of trees, vines or other vegetation which tends to create a danger to the public health, safety and welfare by creating a fire hazard; by providing a nesting, breeding or feeding area for insects, rodents, snakes or other species of pest and vermin, or disease bearing organism; or such vegetation impairing the vision of motorists or bicyclists or impeding pedestrians to the extent that traffic and pedestrian safety is impaired; or by adversely affecting the aesthetic appearance to the property upon which the vegetation is located and adjacent properties.

### **Section 3:**

That the City Council for the City of Okeechobee, Florida amends herein Part II of the Code of Ordinances, Chapter 30 - Environment, Article II – Nuisances, Sec. 30-43- Public nuisances, to read as follows:

- (a) "Public nuisance" as defined in this section, means the existence of excessive accumulation of litter or untended vegetation, garbage, weeds, or other dead or living plant life; or places holding stagnant water, and all other objectionable, unsightly or unsanitary matter upon any lot, track of land within the City, whether uncovered or under shelter, to the extent and in the manner that such lot 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, including such condition causing or tending to cause disease, or by reason of such a condition, tends to impair the economic welfare of adjacent property; including abandoned or junk property as defined by this article; blighted structures and dangerous structures as defined in this article; unsightly, derelict or unsafe building or structure which may constitute a

hazard to safety, health, welfare or sense of public aesthetics by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

- (b) All nuisances are declared to be a public nuisance and illegal within the municipal boundaries of the City, and shall be removed, corrected, or otherwise satisfied at the direction of the City as provided in this article.
- (c) Any nuisance, except such nuisance as would be determined to be an emergency, existing within the City shall be brought before the ~~Code Enforcement Board~~ Special Magistrate of the City as provided in Florida Statue Chapter (F.S. Ch.) 162. Upon determination by the ~~board~~ Special Magistrate that a nuisance does in fact exist, the landowner or custodian thereof shall take whatever corrective measures as directed by the ~~board~~ Special Magistrate, within the time period provided by the ~~board~~ Special Magistrate. The remedies available to the ~~Code Enforcement Board~~ Special Magistrate, in addition to those set forth in F.S. Ch. 162, shall include the authority to authorize clean up or repair of the property to come into compliance; to recommend suspension or revocation of an ~~occupational license~~ Business Tax Receipt until the property comes into compliance; and such further remedies as provided by law. If the code enforcement officer or other official designated by the City Administer has reason to believe a violation or the condition causing the nuisance presents a serious threat to the public health, safety, or welfare, or is irreparable or irreversible in nature, he shall make a reasonable effort to notify the violator, and may immediately notify the ~~Code Enforcement Board~~ Special Magistrate and request a hearing.
- (d) If the owner, agent or person in custody of any property upon which such nuisance should exist, fail, neglect or refuse to comply with the direction of the ~~Code Enforcement Board~~ Special Magistrate within the time provided, and such is verified by the Code Enforcement Officer or City Administrator's designated official, and the Code Enforcement Officer or City Administrator's designated official confirms that the person responsible was noticed of the ~~board~~ Special Magistrate's action by certified mail, the Code Enforcement Officer or City Administrator's designated official is empowered to authorize the property to be cleaned and the nuisance abated by his own agents or authorized contractors. Prior to commencing such abatement, the Code Enforcement Officer or City Administrator's designated official shall obtain a reasonable estimate for such abatement and present the estimate to the City Administrator for approval. If in the opinion of the City Administrator the cost of abatement exceeds the reasonable value of the property or is otherwise not warranted, then enforcement of the order of the ~~Code Enforcement Board~~ Special Magistrate may proceed via other available alternatives under law. If abatement is approved, the Code Enforcement Officer or City Administrator's designated official, his agents or contractors are authorized to enter upon such property and take whatever remedial measures are necessary to abate the nuisance to comply with the order of the ~~Code Enforcement Board~~ Special Magistrate, and to protect the health, welfare, and safety of the citizens of the City. Notwithstanding this procedure, if the City Administrator should determine that the nuisance is in the nature of an emergency or of such an immediate danger or risk to the public as to imminently affect the public health, safety, or welfare of the general public, then the City may enter upon such property at any time to take whatever remedial action as is deemed reasonable and necessary to abate the nuisance to ensure the public health and safety. In such instance, the City shall attempt all reasonable means to give the landowner, agent, or person in custody of the

property advance notice of the proposed actions of the City, although failure to achieve actual notice shall not prevent such abatement.

- (e) All costs incurred under this section for the abatement of the nuisance, including administrative ~~code-enforcement~~ expenses; labor, equipment, and material expenses; and any costs reasonably related to the abatement shall be the responsibility of the landowner. The total costs as calculated by the Code Enforcement Officer or City Administrator's designated official shall be included in a resolution presented to the City council, who shall levy a special assessment lien against such lot. Such resolution shall describe the landowner, parcel number, legal description of parcel or lot, and provide the total cost assessed. Until payment is made in full, such assessment shall be a legal valid and binding obligation and lien upon the property. The assessment shall become due and payable to the City as of the date of mailing a copy of the resolution by certified mail by the Code Enforcement Officer or City Administrator's designated official. Thirty (30) days after mailing, interest shall commence to accrue on the assessment at the rate of 12 percent per annum on any unpaid portion thereof.
- (f) As soon as possible after the assessment has been levied, a certified copy of the resolution shall be recorded in the official records of the county clerk of court. The lien shall become effective as of the date of filing such copy with the clerk of the circuit court.
- (g) The property lien created under the provisions of this article, together with interest thereon, may be enforced by civil action, including foreclosure in the appropriate court in the county. The liens created by this article shall be a first lien equal in dignity and priority to a lien for nonpayment of property taxes, on any property against which an assessment of costs to abate the nuisance has been filed, and shall continue in full force from the date of recording until discharged by satisfaction or foreclosure.
- (h) Notwithstanding the procedures available to the City by this article, the City retains the right and ability to proceed against the lot or parcel for abatement of a nuisance by F.S. Ch. 60, or any other applicable provision of state laws.

#### **SECTION 4:**

That the City Council for the City of Okeechobee, Florida amends herein Part II of the Code of Ordinances, Chapter 30 - Environment, Article II – Nuisances, Sec. 30-47- Demolition of blighted and dangerous structures, to read as follows:

- (a) Legislative Intent and findings. The City declares blighted structures and dangerous structures as defined in Section 30-31 to be a public nuisance and subject to regulation. The City pursuant to the authority granted by law is empowered to make regulations and take actions to promote the general health, safety, and welfare of the general public and to present, abate and remove nuisances, including the condemnation, demolition, and clearance of blighted structures and dangerous structures.
- (b) Procedure for Demolition of blighted structures and dangerous structures.
  - (1) Inspection; Initiation of enforcement proceedings. The Code Enforcement Officer or City Administrator shall designated officials, who shall inspect any structure, or portion thereof, to determine if it is a blighted structure or dangerous structure. If the said official determines that the structure, or portion thereof, meets the definition of a blighted structure or dangerous structure, the official shall initiate proceedings to cause the abatement of the public nuisance through condemnation, demolition, and removal.

- (2) Notice of Violation and Order to Demolish. Upon determination that a structure, or portion thereof, is a blighted structure or dangerous structure, the City shall promptly issue a Notice of Violation and Order to Demolish to the property owner of record. The Notice of Violation and Order to Demolish shall contain, but not be limited to, the following:
- a. The street address and legal description of the blighted structure or dangerous structure.
  - b. A statement indicating that the blighted structure or dangerous structure is a public nuisance, with the specific code sections cited and a copy of the statement of conditions leading to that determination.
  - c. A statement indicating the date by which the owner of record must demolish the blighted structure or dangerous structure and a date by which the blighted structure or dangerous structure must be vacated (if applicable).
  - d. A statement advising that if the owner of record does not demolish the blighted structure or dangerous structure, that the City will seek to cause it to be demolished and that demolition and clearance may include the removal and disposal of all associated debris, accessory structures, vehicles, and tangible personal property from the parcel.
  - e. A statement advising that failure to complete the required demolition within the timeframe specified by the City will result in a hearing before the Special Magistrate; the entry of an order authorizing demolition, the imposition of a lien; and/or foreclose on the property itself to recover the fines and costs incurred.
  - f. Further, the Order to Demolish shall contain, at a minimum, language substantially similar to the following:

#### ORDER TO DEMOLISH STRUCTURE

This structure shall be demolished pursuant to Section 30-47 of the City of Okeechobee's Code of Ordinances. THIS STRUCTURE MUST BE VACATED AND SHALL NOT BE OCCUPIED. Persons inhabiting this structure should vacate immediately, but in no case more than 48 hours after posting of this notice. The owner(s) of this structure shall demolish this structure immediately or the City of Okeechobee may cause the structure to be demolished and cleared at the owner's expense. Demolition and clearance will include all tangible personal property on the site, such as vehicles, appliances, etc. IT IS UNLAWFUL TO REMOVE OR TO MUTILATE THIS NOTICE.

#### (c) Posting of the Notice of Violation and Order to Demolish.

- (1) In addition to the requirements for the serving and posting of Notices of Violation cited in the City's Code of Ordinances, the Notice of Violation and Order of Demolition shall also be posted at each exit and entrance of the blighted structure or dangerous structure along with a statement advising that the structure is unsafe, and its use or occupancy has been prohibited by the City. Such Notice of Violation and Order of Demolition shall remain posted until the demolition is complete. It shall be unlawful for any person to remove such notice or enter the structure without written permission of the City after the Notice has been posted. It shall be further unlawful for any person to enter the structure for the purpose of demolishing it, or portions thereof, without the necessary permits.

- (2) The Notice of Violation and Order to Demolish shall also be recorded in the Public Records of Okeechobee County, Florida. The recording of same shall constitute constructive notice to any subsequent purchasers, transferees, grantees, mortgagors, mortgagees, lessees, lienors, and all persons having, claiming, or acquiring any legal or equitable interest in the blighted or dangerous structure that the subject of the Order to Demolish.
- (3) Upon the recording of the Notice of Violation and Order to Demolish, no permits regarding the blighted structure or dangerous structure will be issued (except for the necessary permits required for demolition) unless and until authorized by a Special Magistrate or court of competent jurisdiction after appeal, or unless a City official withdraws the Order to Demolish.
- (d) Administrative Hearing Before the Special Magistrate.
- (1) If the blighted structure or dangerous structure has not been demolished by the date established by the City in its Notice of Violation and Order of Demolition, the matter shall proceed to hearing before the Special Magistrate. At the conclusion of the hearing, the Special Magistrate shall issue a Final Order which shall contain findings of fact determining if the Notice of Violation and Order of Demolition is justified and supported by competent substantial evidence along with detailed requirements that the owner of record must comply with.
- (2) If the owner of record is aggrieved by the decision of the Special Magistrate, the owner may appeal the decision to the Courts sitting in the 19th Judicial Circuit within thirty (30) days of the record owner's receipt of the Special Magistrate's Order.
- (3) The Order to Demolish shall automatically become a final order by operation of law in the event that no written appeal of the order is timely filed.
- (4) When an Order to Demolish becomes final, either by operation of law or by judgment or court ruling, the Order to Demolish shall be conspicuously posted on the blighted or dangerous structure.
- (e) Recovery of costs and fines.
- (1) The demolition and clearance by owner of record or by the City in the manner provided for in this Section is deemed to constitute an activity performed for the protection, benefit, and welfare of the general public and also for the benefit of the property itself. As a result, the owner of record shall be responsible for the costs of demolishing and clearing the blighted structure or dangerous structure, whether the owner of record or the City completes the demolition and clearance.
- (2) If it is necessary for the City to demolish a blighted structure or dangerous structure in accordance with this Section, the City may perform the work itself or may contract with an individual, firm, or other legal entity for such services. An invoice shall be submitted to the owner of record for payment of the costs incurred by the City or its contractor. The owner of record shall be required to pay all costs incurred, including any administrative costs, within thirty (30) days of the date of the invoice. It is a violation of this Section to fail to timely pay an invoice.
- (3) If payment is not made by the owner(s) within thirty (30) days of the date of the invoice, the City shall impose a lien/special assessment upon the property for the costs of demolition, clearance, administrative costs, and recording fees. The lien/special assessment shall be of the same priority as liens/special assessments for ad valorem taxes, and as it represents costs expended for the benefit of the property itself, the lien/special

assessment shall be superior to all other encumbrances, whether secured and regardless of priority. Such lien/special assessment shall be duly recorded in the official records of the county and shall accrue interest at the statutory rate from the date of recording. Upon foreclosure of the lien/special assessment, the City shall be entitled to all costs and attorney's fees incurred as a result.

**SECTION 5: SEVERABILITY.**

If any section, subsection, clause, or provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

**SECTION 6: CONFLICT.**

All sections or parts of sections of the City of Okeechobee Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

**SECTION 7: Inclusion in the Code of Ordinances.**

It is the intention of the City Council of the City of Okeechobee, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the City of Okeechobee Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word “ordinance” may be changed to “Section” or other appropriate word.

**SECTION 8: EFFECTIVE DATE.**

This Ordinance shall become effective immediately after its adoption at the second and final City Council Public Hearing

**INTRODUCED** for First Reading and set for Final Public Hearing on this 21<sup>st</sup> day of December 2021.

ATTEST:

Dowling R. Watford Jr., Mayor

Lane Gamiotea, CMC, City Clerk

**PASSED AND ADOPTED** after Second and Final Public Hearing this 18<sup>th</sup> day of January 2022.

ATTEST:

Dowling R Watford Jr., Mayor

Lane Gamiotea, CMC, City Clerk

**REVIEWED FOR LEGAL SUFFICIENCY:**

John J. Fumero, City Attorney