

## ORDINANCE NO. 1030

AN ORDINANCE OF THE CITY OF MARIANNA, FLORIDA AMENDING ARTICLE II OF CHAPTER 22 OF THE CODE CLARIFYING THE DEFINITION OF A NUISANCE; CLARIFYING THAT NATURAL PERSONS CONTROLLING AN ARTIFICIAL PERSON THAT MAINTAINS A NUISANCE SHALL BE LIABLE UPON PROOF OF SCIENTER; PROVIDING ADDITIONAL AUTHORIZATION TO DEMOLISH AND REMOVE STRUCTURES CONSTITUTING A PUBLIC NUISANCE BY REASON OF ABANDONMENT, NEGLIGENCE, INADEQUATE MAINTENANCE OR OBSOLESCENCE, AND PROVIDING THAT ANY OF THOSE CONDITIONS MAY BE SHOWN BY A HISTORY OF UNSECURED DANGEROUS CONDITIONS, A HISTORY OF FAILURE TO KEEP THE PROPERTY SECURE OR SAFE, A HISTORY OF ATTRACTIVE NUISANCE TO CHILDREN, OR NOTWITHSTANDING THE REASONABLE EFFORTS OF CODE ENFORCEMENT PERSONNEL, THE PROPERTY REMAINING IN A CONDITION IMMINENTLY DANGEROUS TO THE PUBLIC HEALTH, SAFETY AND WELFARE; CLARIFYING THAT ORDERED OR OPTIONAL REPAIRS, ETC, MUST COMPLY WITH APPLICABLE BUILDING AND LIFE SAFETY CODES, AND REQUIRING COMPLIANCE WITH THE CITY'S LAND DEVELOPMENT CODE; ADDING THE FEES OF INDEPENDENT EXPERTS NEEDED TO PROVE AND ABATE AND COLLECT THE ABATEMENT COST OF A NUISANCE TO THE COSTS WHICH MAY BE CHARGED AGAINST THE PROPERTY UPON WHICH THE NUISANCE WAS LOCATED;; SHORTENING THE PERIOD OF FORBEARANCE OF FORECLOSURE FROM TWO YEARS TO THREE MONTHS; CLARIFYING THAT, ON APPEAL, THE CITY BEARS THE BURDEN OF PROOF THAT A CONDITION CONSTITUTES A NUISANCE AND THAT THE DETERMINATION OF A NUISANCE MUST BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE; REDEFINING THE COST OF ABATEMENT; REPEALING ALL ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MARIANNA, FLORIDA THAT:

Section 1. From and after the effective date of this Ordinance, Article II Chapter 22 of the City Code is amended to read as follows:

### **ARTICLE II. - NUISANCES**

- Sec. 22-26. - Definitions.
- Sec. 22-27. - Article supplemental to other city ordinances.
- Sec. 22-28. - Enumeration.
- Sec. 22-29. - Powers and duties of the inspector; determination of interested parties.
- Sec. 22-30. - Duties of other departments.
- Sec. 22-31. - Entry powers.
- Sec. 22-32. - Order of inspector.
- Sec. 22-33. - Publication of notice.
- Sec. 22-34. - Services of notice and order.
- Sec. 22-35. - Extension of time to comply.
- Sec. 22-36. - City action on failure to comply.
- Sec. 22-37. - Assessment of cost; lien.
- Sec. 22-38. - Appeals.
- Sec. 22-39. - Final appeal to circuit court.
- Sec. 22-40. - Appearance by counsel, in person or by agent; witnesses sworn.
- Secs. 22-41—22-60. - Reserved.

#### **Sec. 22-26. Definitions.**

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:

*Inspector* means any code enforcement officer, Municipal Development Director and/or his/her designee for the city.

*Nuisance* means any of the conditions described in section 22-28.

*Refuse* means leavings, dregs, rubbish, trash or waste material.

*Underbrush* means any undergrowth or brush conducive to the collection of insects and rodents.

*Unfit or unsafe dwelling or structure* means any dwellings or structures or portions thereof and accessory buildings which are structurally unsafe, unstable, or unsanitary; inadequately provided with exit facilities; constitute a fire hazard; unsuitable or improper for the use or occupancy to which they are put; constitute a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; dangerous to life or property of the occupant thereof or of the surrounding areas; unfit for human habitation, if so intended or used; or otherwise in violation of the housing, building, electrical, plumbing, mechanical, sanitation and fire codes of the city.

*Weeds* means underbrush or plants that are injurious to crops, grasses or flowers.

(Code 1986, § 11-1; Ord. No. 830, § 2(11-1), 9-6-94)  
Cross reference— Definitions generally, § 1-2.

## **Sec. 22-27. Article supplemental to other city ordinances.**

The provisions of this article shall be supplemental to all other ordinances of the city.  
(Ord. No. 830, § 2(11-15), 9-6-94)

## **Sec. 22-28. Enumeration.**

- (a) A nuisance is:
- (1) Any accumulation of rubbish, trash, junk and other abandoned materials, metals, lumber or other things.
  - (2) Any excessive accumulation of grass, weeds, undergrowth or other dead or living plant life upon a lot, tract or parcel of land, improved or unimproved, within 100 feet of any improved property within the city to the extent and in the manner that such lot, tract or parcel of land shall or may become infested or inhabited with rodents, vermin or snakes; may become a breeding place for mosquitoes; threaten or endanger the public health and welfare; may reasonably cause disease; or adversely affect and impair the economic welfare of the adjacent property.
  - (3) Any refuse of a height of more than one foot.
  - (4) Any underbrush which exceeds one foot in height.
  - (5) Any unfit or unsafe dwelling or structure.
  - (6) Any weeds which exceed one foot in height.

- (7) All unnecessary or unauthorized noises and annoying vibrations, including animal noises.
  - (8) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.
  - (9) The carcasses of animals or fowl not disposed of within 24 hours after death.
  - (10) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
  - (11) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.
  - (12) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
  - (13) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.
  - (14) 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.
  - (15) Such other acts or conditions which are declared by other ordinances to be or to constitute nuisances.
- (b) 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. This includes, but is not limited to, the keeping or depositing on or the scattering over the premises of any of the following:
- (1) Lumber, junk, trash, or debris; and
  - (2) Abandoned, discarded, unused objects or equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers.
- (c) It is unlawful for any owner or occupant of premises within the city to maintain a nuisance as described in this section. Any owner or occupant of premises knowingly maintaining a nuisance within the City shall be guilty of an offense. Where the nuisance is maintained by a fictitious person owning or occupying the premises, a natural person serving as an officer, manager or other agent of the owner or occupant who knowingly permits the nuisance to be maintained shall be guilty of the same offense as the fictitious person.
- (Code 1986, §§ 11-2, 11-3; Ord. No. 830, § 2(11-1(b), 11-2), 9-6-94; Ord. No. 955, § 2, 8-5-08)*

**Sec. 22-29. Powers and duties of the inspector; determination of interested parties.**

- (a) The inspector shall be charged with the duty of administering the applicable standards and securing compliance therewith, and, in furtherance of this responsibility, the inspector shall:
  - (1) Make such inspections as may be necessary to effectuate the purposes and intent of this article.
  - (2) Investigate any complaints of alleged violation of this article and maintain a log reflecting the resolution of such complaints. However, only matters or conditions pertinent to the existence of a nuisance shall be considered or reported by the inspector pursuant to this article.

- (b) When the inspector verifies the existence of a nuisance involving an unfit or unsafe structure, it shall be his duty to promptly prepare and submit to the city manager the notice and order required by this article. The city manager or his or her designee, with the assistance of the city attorney, shall determine the owner of record of the real estate upon which the nuisance is located, and send the owners a notice and order of abatement. In addition, the notice and order shall be given to the lessees or occupants, if any, and persons of interest, including a mortgagee, a contract purchaser, an agent with the power of attorney, and persons claiming an interest under lis pendens and the like. All such persons are referred to as the "interested parties" in this article.
- (c) The inspector shall serve the notice and order upon the record owner of the premises at the address reflected by the latest tax rolls.  
(Ord. No. 830, § 2(11-3), 9-6-94)

**Sec. 22-30. Duties of other departments.**

- (a) Members of the fire department, police department, public works and sanitation departments shall make written reports to the inspector of all dwellings or structures or the properties which appear to be a nuisance within the terms of this article. Such reports shall be submitted to the inspector as soon as practicable.
- (b) In carrying out his responsibilities under this article, the inspector may request assistance from the city, to determine violations of municipal ordinances, state law, and other applicable departments within rules and regulations.  
(Ord. No. 830, § 2(11-13), 9-6-94)

**Sec. 22-31. Entry powers.**

The inspector and his designees are hereby authorized to enter upon private property in order to enforce the provisions of this article. When necessary to obtain such entry, the inspector and his designees may institute appropriate proceedings to obtain a search warrant or inspection warrant whichever is necessary.  
(Ord. No. 830, § 2(11-14), 9-6-94)

**Sec. 22-32. Notice and order of abatement.**

- (a) The notice and order may require the cutting of grass, weeds or underbrush or the removal of rubbish or such other measures as are reasonably necessary to abate the nuisance.
- (b) The notice and order may require the vacation, demolition or removal of any unfit or unsafe dwelling or structure, or may order the repair, restoration or replacement of any part of the same; provided, however, that no building or structure shall be subject to repair, restoration or replacement where the cost of repairing, restoring or replacing any part or parts thereof would exceed 50 percent of the value (as determined by reference to the most recent, certified advalorem tax roll of the Jackson County Property Appraiser of such structure after repair, restoration or replacement).
- (c) The notice shall include:
  - (1) The description of the location of the buildings and/or land involved either by street address or by legal description.

- (2) A statement providing an accurate description of the nuisance for which the notice is issued.
  - (3) Specification of the sections of this article upon which the notice of violation is based.
  - (4) If the nuisance does not involve an unfit or unsafe structure, a statement ordering what shall be done to abate the nuisance.
  - (5) If the nuisance does involve an unfit or unsafe structure, a statement of the nature and extent of such repairs or alterations necessary to comply with this article.
  - (6) If the nuisance involves an unfit or unsafe structure and is of such a character that repairs or alterations cannot bring the building into compliance, a statement to that effect and an order of demolition of the building indicating fully the reason therefore.
  - (7) If abatement of the nuisance or demolition of a structure is necessary for compliance, a specification of time for performing such abatement or demolition shall be stated in the notice which shall not be less than ten days, nor more than 120 days.
  - (8) The name of the person upon whom the notice is served, as stated in section 22-29(b).
  - (9) A statement advising that upon the owner's failure to comply with the notice, the city may vacate, demolish, or remove or otherwise abate the nuisance in accordance with the order stated in the notice, and the expense of such performance by the city shall be charged against the real property. The assessment, when made, shall constitute a lien upon the property by the city.
  - (10) A statement advising of the procedures for review of the action of the inspector, as set out in section 22-38
- (d) In the case of an unfit or unsafe dwelling or structure, the notice and order shall require the owner and other interested parties within 30 days after service to obtain a permit and begin specified repairs or improvements, or begin to demolish and remove the dwelling or structure or portion of such dwelling or structure. This work shall be completed within 60 days from the date of the permit for repair or demolition. Any demolition permit necessary as a result of any condemnation in this section shall not require a fee.
  - (e) Except as otherwise provided in this article for unsafe or unfit dwellings or structures, the inspector may order such work to be completed within such time as he 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.
  - (f) When the city inspector verifies the existence of a rodent infestation in any dwelling or structure that is to be demolished and removed, in order to preclude the migration of rodents, the notice and order of the inspector shall require that effective rodent extermination methods be employed by a licensed structural pest control operator prior to demolition. Extermination techniques shall include ectoparasite control measure.
  - (g) In the case of an unfit and unsafe dwelling or structure, which after inspection is determined to be uninhabited, the inspector shall cause to be posted a no trespassing sign to prevent entry into the premises by third parties who might be exposed to the risk of danger created by the unsafe structure.

*(Code 1986, § 11-4; Ord. No. 830, § 2(11-4), 9-6-94)*

### **Sec. 22-33. Publication of notice.**

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

"Attention owners, agents, custodians, lessees and the occupants of real property within the city limits and all other interested parties:

You are hereby notified that you are required by law to cut and keep cut to a height of not exceeding 12 inches all weeds, grass or underbrush; to remove any trash, debris, refuse or noxious matter located on any property owned, controlled or occupied by you in the city; 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 will cause the nuisance to be abated, and the cost of the nuisance will be assessed against the property upon which the nuisance is located."

*(Ord. No. 830, § 2(11-5), 9-6-94)*

#### **Sec. 22-34. Services of notice and order.**

It shall be the duty of the city manager or his or her designee to see to it that the required notice and order is delivered to the interested parties by personal delivery of a copy to the party to be notified, or by leaving such copy at his usual place of abode with some person of the family above 15 years of age and informing such person of the contents of the notice and order, or by either registered or certified United States mail, with return receipt requested, or, if the name of any such party or his place of residence or his post office address cannot be ascertained after diligent search, or if a notice and order sent by either registered or certified mail shall be returned undelivered and the person to be notified is not residing within the city, by publishing a copy thereof once a week for two consecutive weeks in a newspaper of general circulation within the city. A copy of such notice and order shall be posted in a conspicuous place at city hall and the county courthouse and upon such dwelling or structure. The subsequent removal or illegibility of the notice and order posted upon the dwelling or structure shall not render the posting invalid.

*(Ord. No. 830, § 2(11-6), 9-6-94)*

#### **Sec. 22-35. Extension of time to comply.**

- (a) In the case of an unfit or unsafe building or structure, if the interested parties shall have obtained a building or demolition permit within the 30-day period and, in good faith and in due time, begun work to comply with the notice and order, but it appears that they will not be able to complete the work by the date ordered, they may file a written request stating the reasons they have been unable to complete compliance; and, if reasonable grounds are shown therefore, the inspector is authorized to issue an amended notice and order authorizing an extension of time, not to exceed 60 days, in which to complete compliance with the original order.
- (b) In the case of a nuisance which is not an unfit or unsafe dwelling or structure, the building official may grant extensions of up to 60 days to abate the nuisance as are reasonably necessary under the circumstances, upon a written request from the interested parties, stating the reasons they have been unable to complete compliance and showing reasonable grounds for such failure to complete compliance.
- (c) The code enforcement board, in exceptional cases, upon written request, may extend the completion date required by the notice and order and extensions, as merited by special hardship, unusual difficulty, or uniqueness of the situation. However, in no event shall the completion date extend beyond a maximum period of 180 days.

*(Ord. No. 830, § 2(11-7), 9-6-94)*

**Sec. 22-36. City action on failure to comply.**

- (a) If the owner or other parties in interest fail to repair, restore or replace such parts of the dwelling or structure within the time permitted by the notice and in the absence of extenuating circumstances as would justify an extension of the time period therefore, the city manager may order a vacation of the premises until compliance or a demolition of the structure.
- (b) If the owner or other parties in interest shall fail to comply with a notice and order made pursuant to the provisions of this article within the time therein fixed, the city, acting through the city manager, is authorized to vacate, demolish or remove or otherwise abate the nuisance in accordance with such notice and order, either with city forces or by independent contractor selected through the City's procurement process.  
(Ord. No. 830, § 2(11-8), 9-6-94)

**Sec. 22-37. Assessment of cost and abatement; lien.**

- (a) Upon expiration of the 30-day appeal period with no appeal having been taken, the city manager, after proceeding under this article, shall, as often as may be convenient, report the action taken toward abatement of the nuisance by the city, and the City Commission shall assess the entire cost of such action against the real property, which assessment, when made, shall constitute a lien upon the property in favor of by the city. The lien of the city shall encompass, in addition to the cost of determining the nuisance, effecting the vacation, securing of the property removal or abatement of the nuisance, and demolition and removal of the dwelling or structure and accessories when applicable, all administrative, legal, postal and publication expenses, as well as rodent extermination when employed, the fees of independent experts offering opinions, reports or testimony concerning the nuisance or abatement, as well as all other direct or indirect costs associated therewith. All such costs and expenses are collectively referred to herein as the abatement cost. The lien upon the property for the abatement cost shall be superior to the interest of all others receiving notice and an opportunity to administratively appeal the notice and order, except taxes.
- (b) The city clerk shall record a notice of the lien in the county's official record book showing the nature of such lien, the amount of the lien, an accurate legal description of the property, including the street address, and the names of all interested parties known to the city. Such municipal lien shall bear interest from the date at the rate of 18 percent per annum and enforceable by foreclosure against the property if unsatisfied after the expiration of three months from the date of recording the notice of lien, or enforceable as other liens may be enforced by the city. Additionally, the city may enforce the lien upon the real property of the owner, as provided for in F.S. ch. 173, as amended from time to time.  
(Code 1986, § 11-6; Ord. No. 830, § 2(11-9), 9-6-94)  
State law reference— Manner of making special assessments and foreclosure of liens by cities, F.S. § 173.15.

**Sec. 22-38. Appeals.**

- (a) Any interested party may appeal the decision of the inspector or city manager to the code enforcement board upon the filing, within 30 days after service of the inspector or city manager's notice and order, of an application to the inspector, setting forth the grounds for

the appeal. Upon receipt of the notice of appeal, the inspector shall forthwith transmit a copy of the notice of appeal, together with all related documents of his department, to the code enforcement board. Within ten days after the filing of notice of appeal, the code enforcement board shall schedule a date for the hearing of the appeal and give notice of the date for the hearing to the interested parties, in a manner as would afford them not less than ten days' notice. Under no circumstances shall the code enforcement board establish a hearing date beyond 60 days from the filing of the notice of appeal.

- (b) All appeals proceedings shall be public, and notice of such appeals shall be published in a newspaper of general circulation within the city at least ten days prior to the date of the hearing. The findings of the code enforcement board shall be encompassed in a resolution stating with particularity the grounds for the code enforcement board's decision.
- (c) The resolution of the code enforcement board shall be subject to the approval of the legislative body, and, upon approval of the legislative body, all interested parties shall have 30 days within which to comply. The legislative body shall have the right and power to modify, change or amend the resolution of the code enforcement board as in their discretion is deemed best.

*(Code 1986, § 11-5; Ord. No. 830, § 2(11-10), 9-6-94)*

#### **Sec. 22-39. Final appeal to circuit court.**

An interested party, having exhausted his administrative remedies before the code enforcement board, may appeal to the circuit court the decision of the board, or alternatively, that of the legislative body, in like manner of appeals from county courts.

*(Ord. No. 830, § 2(11-11), 9-6-94)*

#### **Sec. 22-40. Appearance by counsel, in person or by agent; witnesses sworn.**

Any interested party appearing before the code enforcement board may appear in person, by counsel, or by an agent possessing the power of attorney, provided the agency's instrument appears in the county's official records book, but may not appear through any person otherwise a stranger to the record. All witnesses appearing before the board in proceedings under this article shall be sworn by the chairman or, in his absence, by the person acting in his stead, except a counsel representing a client.

Section 2. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

Section 3. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the City of Marianna Code, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and changed whenever necessary or convenient.

Section 4. This Ordinance shall take effect immediately upon passage.

#### **Secs. 22-41—22-60. - Reserved.**



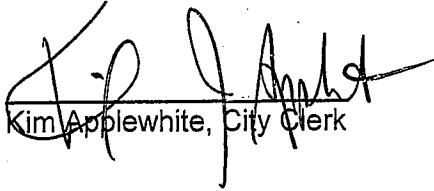
Passed, Approved and Adopted at the regular meeting of the City Commission of the City of Marianna, Florida, this 3rd day of February, 2015.

CITY OF MARIANNA



Rico Williams, Mayor/Commissioner

Attest:



Kim Applewhite, City Clerk