

ORDINANCE NO. 1559

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES RELATED TO PUBLIC NUISANCES; DECLARING PROPERTIES UPON WHICH CERTAIN REPEAT VIOLATIONS OF LOCAL AND STATE LAW OCCUR TO BE PUBLIC NUISANCES; SETTING FORTH THE CITY MANAGER'S AUTHORITY TO REQUIRE PREEMPTIVE MEASURES TO ABATE THE NUISANCE; AUTHORIZING THE CITY TO TAKE PREEMPTIVE MEASURES UPON A VIOLATOR'S FAILURE TO COMPLY; PROVIDING THAT COMPLIANCE SHALL NOT BE STAYED DURING THE PENDENCY OF APPEAL; AUTHORIZING CODIFICATION; REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. From and after the effective date of this ordinance Section 15-17, of the Code of Ordinances of the City of Panama City Beach, related to public nuisance definitions is hereby amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

Sec. 15-17. - Definitions.

As used in this article, the following words and phrases shall have the meanings respectively ascribed to them:

Improved property shall mean land on which buildings or other structures are located, or which has been prepared for development by the installation, addition or construction of utilities or other improvements.

Inspector shall mean the Chief Building Inspector of the City or his designee. .

Nuisance or Public 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 of Florida or ordinances of the City of Panama City Beach.
- (2) Storage of junked automobiles: Unsheltered storage, or unenclosed storage under a carport, for a period of thirty (30) days or more within the corporate limits of the City, except in licensed junk yards, of old and unused stripped junk or automobiles not in good and safe operating conditions,

and of any other vehicles, machinery, implements or equipment or personal property of any kind which is no longer safe or usable for the purposes for which it was manufactured.

- (3) **Detrimental conditions or uses of property:** Any condition or use of premises or of building exteriors, including carports, 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, including, but not limited to, the keeping or depositing on or the scattering over the premises of lumber, junk, trash, debris, or abandoned, discarded, unused objects or equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers;
- (4) **Unfit or unsafe dwelling or structure:** Any dwelling or structure or any portion thereof, including accessory buildings, which is structurally unsafe, unstable, unsanitary, inadequately provided with exit facilities, constituting a fire hazard, unsuitable or improper for the use or occupancy to which they are put, constituting a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment, dangerous to life or property, or, by reason of fire, age, decay, deterioration, structural defects, improper design, unstable foundation, termites, acts of God or other causes, dangerous to the occupants thereof or to surrounding buildings and the occupants thereof, or a menace to the public health, or a fire hazard, or so unsafe as to endanger life or property or render the use of the public streets dangerous, or otherwise in material violation of the housing, building, electrical, plumbing, mechanical, health or fire codes of the City;
- (5) **Uses Causing Threat to Public Health and Safety:** Any accumulation of lumber, junk, trash, debris, or abandoned, discarded, unused objects, material, equipment, excessive grass, accumulation of weeds, vegetation, undergrowth or other plant life upon any lot, tract, or parcel of real property within the City if such lot, tract, or parcel (i) becomes or could become infested with rodents, vermin, mosquitoes, or other wild animal, or (ii) threatens the public health, safety, and welfare, or (iii) causes or tends to cause substantial diminution in value of other property in the neighborhood.
- (6) **Excessive growth:** Any grass, accumulation of weeds, vegetation, undergrowth, or other plant life on any lot, tract, or parcel within the City which is untended and which exceeds one (1) foot in height on improved property, or exceeds eighteen (18) inches in height on unimproved property.
- (7) **Stockpiling construction material:** Any accumulation of construction material including but not limited to crates, lumber, plywood, trusses, joists, nails, bricks, concrete, and sand which is not being used in active construction or the view of which is not blocked by a six (6) feet tall fence. Active construction means construction activity which is continuing from day to day or which is not interrupted by periods of physical inactivity longer than thirty (30) days.
- (8) **Attractive nuisance:** Any attractive nuisance which may prove detrimental to the health or safety of children and others whether in a building, on the premises of a building or upon an unoccupied lot. This includes, but is not limited to: abandoned wells, shafts, basements, excavations, unused ice boxes, refrigerators, abandoned motor vehicles and any structurally unsound fences or structures; or lumber, trash, fences, debris, or vegetation such as poison ivy, oak or sumac, which may prove a hazard for inquisitive persons. Abandoned buildings are attractive nuisances when they are unsecured or un-securable and when by reason of abandonment or neglect they contain unsound walls or flooring, unsafe wiring, fire hazards, or other unsafe conditions as further defined herein. Unsafe conditions may include such neglect of security that opportunities for criminal activity persist to the danger and detriment of the neighborhood.
- (9) **Physical or unsanitary conditions or conditions so lacking illumination or ventilation as to be dangerous to human life or detrimental to health of persons on or near the premises where the condition exists.**
- (10) **Major or minor violations of this Code which cumulatively impact upon the premises to the point whereby conditions endanger human life or substantially and detrimentally affect the safety or security of occupants, nearby occupants or passers-by.**

(11) Whatever renders air, food or drink unwholesome or detrimental to the health of human beings.

(12) Fire hazards.

(13) Any property that has been used on more than three (3) incidents within a thirty (30) period as the site of any of the following:

a. Any misdemeanor or felony related to unlawful possession of use of a firearm or controlled substance which occurs in a parking lot;

b. Any violation of section 3-5 of this Code;

c. A "pop-up event" as that term is defined in section 4-19 of this Code;

d. Any violation of Chapter 16, Article VI of this Code; or

e. Any violation of section 22-25 of this Code.

f. Any violation of Section 16-2 of this Code which occurs in a parking lot.

Unimproved property shall mean land that is not improved property.

SECTION 2. From and after the effective date of this ordinance Section 15-20 of the Code of Ordinances of the City of Panama City Beach, related to Notice and order of abatement, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

Sec. 15-20. - Notice and order of abatement.

- (a) The notice and order may require the removal of rubbish, trash or junk or such measures as are reasonably necessary to abate the nuisance.
- (b) The notice and order may require the vacation, repair, restoration or replacement of any unfit or unsafe dwelling or structure or of any part or parts thereof, including accessory building(s), provided that if the inspector shall determine that the cost to repair, restore or replace any such dwelling or structure or part thereof, including accessory building(s) in compliance with all applicable building and life safety codes, would exceed fifty (50) percent of the value of the dwelling or structure or part thereof, including accessory building(s) (as determined by reference to the most recent, final *ad valorem* tax roll prepared by the Bay County Property Appraiser), he may only order the vacation and demolition and removal of the dwelling or structure.
- (c) In addition, due to a variety of reasons, including but not limited to abandonment, neglect, inadequate property management, or obsolescence, the condition(s) constituting a danger or nuisance to the public cannot be made safe, the notice and order shall require the vacation of the dwelling or structure involved and order the demolition and removal of the dwelling or structure or any part or parts thereof, including accessory building(s), contributing to the nuisance. Factors evidencing a determination that a property cannot be made safe may include, but not be limited to: a history of unsecured or unsecurable, dangerous conditions; a history demonstrating the property owner's failure to exercise reasonable control over the property to keep it secure or safe; a history showing that the property has become an attractive nuisance to children or transients; a history showing a proliferation of criminal activity due to dilapidated conditions and lack of management and control over the premises; a history showing that notwithstanding the reasonable efforts of law enforcement or code enforcement personnel, or both, the property remains in a condition which is imminently dangerous to the public health, safety and welfare.

- (d) A notice and order requiring the repair, restoration or replacement of any dwelling, structure or part or parts thereof, including accessory building(s), shall require that the work meet the standards specified by all applicable building and life safety codes.
- (e) The notice and order shall be in writing, signed by the City Manager or his or her designee, with a description of the nuisance and a legal description of the realty where it is located, including the street address, and shall state what the City orders to be done about the condition and the date within which the work ordered to be done is to be completed. The notice and order shall state that it may be appealed within thirty (30) days by written application to the City Manager. The notice and order shall describe the condition(s) found by the inspector to constitute a public nuisance pursuant to this article. If the notice and order requires demolition and removal of an unfit or unsafe dwelling or structure, or part or parts thereof, including accessory building(s), it shall describe the condition(s) found by the inspector, upon consultation with the City Attorney, to constitute such a public nuisance pursuant to this chapter as to make demolition reasonable. A notice and order requiring demolition and removal shall also state that interested parties may elect to abate the nuisance by repair, restoration or replacement of the subject unfit or unsafe dwelling or structure, or part or parts thereof, including accessory building(s).
- (f) Except as otherwise provided below for unsafe or unfit dwellings or structures, the City Manager shall order any such work to be completed within such time as he may determine to be reasonable considering the nature of the nuisance, the danger to the public, and the amount of work involved to abate the nuisance.
- (g) In the case of an unfit or unsafe dwelling or structure or part or parts thereof, including accessory building(s), the notice and order shall require the owner or other interested parties to obtain a permit and begin specified repairs or improvements, or to begin to demolish and remove the dwelling or structure or portion thereof, within thirty (30) days after service of the notice and order. The notice and order shall require the work to be completed within thirty (30) days from the date of the permit for repair or demolition. Any repair or demolition permit necessary as a result of any notice and order shall not require a fee.
- (h) When the inspector verifies the existence of a rodent infestation in any dwelling or structure, or in any accumulation of rubbish, trash or junk, that is to be demolished or removed, in order to preclude the migration of rodents the notice and order shall require that effective rodent extermination methods be employed by a licensed structural pest control operator prior to demolition or removal. Extermination techniques shall include ectoparasite control measures.
- (i) An order to vacate, demolish and remove an unfit or unsafe dwelling or structure or any part or parts thereof, including accessory building(s), shall not preclude the immediate repair, restoration or replacement thereof by an interested party entitled to effect such work (herein collectively an applicant). In order to make the election available in this subsection and avoid the demolition and removal, within thirty (30) days after service of the notice and order of demolition, the applicant must submit a competent application for all or a material portion of the work needed to abate the nuisance and in good faith commence and diligently and continuously pursue all the work through completion. The work must meet the standards specified by all applicable building and life safety codes. In the event that the initial permit application does not cover all the work, the application must be accompanied by a description of the remainder of the work to be done and include a schedule of all the work with milestones reasonable and customary in the construction industry. The City Manager shall either accept or reject the application as covering a material portion of the work, the overall work described as sufficient to abate the nuisance and the schedule of work/milestones as reasonable. Should the City Manager find that the initial application does not cover a material portion of the work, that the overall work described is insufficient to abate the nuisance, or that the schedule of work/milestones is not reasonable, he or she shall advise the applicant who shall have ten days to correct the deficiency in writing or appeal in writing to the City Council which shall hear the matter at its next regular or special meeting. The only issues before the City Council shall be whether to accept or reject the matter(s) rejected by the City Manager. The City Council may not amend the application, description of work or schedule without the written consent of the applicant. The appeal shall be conducted as a quasi-judicial, de novo hearing pursuant the City's Land Development Code, except

that only the applicant and the City Manager, or their respective designees, shall be entitled to present evidence. No other persons shall be considered adversely affected persons. Public comment, but only as commentary, shall be permitted. The applicant shall bear the burden of proof. If the applicant's position is accepted then the applicant shall be required to immediately commence and diligently and continuously pursue the work to abate the nuisance strictly in accord with the schedule upon penalty of demolition as provided in Section 15-25(b). If the applicant's position is not affirmed, the applicant shall have thirty (30) days after entry of the City Council's order to comply with the initial notice and order of demolition and removal, and no permit to repair, restore or replace shall be issued.

(i) An order to abate a nuisance as defined by section 15-17(13) may place affirmative obligations on the property owner to take preemptive steps to prevent further nuisance activities from occurring on the property. The notice and order shall describe the condition(s) found by the Chief of Police or his or her designee to constitute a public nuisance pursuant to this article. If the notice and order requires preemptive measures to abate the nuisance on the property, or part or parts thereof, including the property's parking lot, it shall describe the condition(s) found by the Chief of Police, upon consultation with the City Attorney, to constitute such a public nuisance pursuant to this chapter as to make preemptive measures necessary. Preemptive measures proscribed by this section shall set forth the precise hours during which each measure shall be active, the duration of the order, which measures may include but not be limited to:

(i) The provision of security officers roaming the parking lot of the property who shall be certified law enforcement officers, licensed security guards under F.S. Ch. 493 (Class "D" or better), or in-house security professionally trained according to recognized standards;

(ii) The provision of persons professionally trained or experienced in vehicular traffic control who shall provide active, continuous and onsite supervision of the parking lot who at a minimum are authorized and responsible to control vehicular access to the lot, to maintain peace and order within the lot and require persons in the lot to obey the law, to require offenders to leave the lot and to immediately seek assistance from law enforcement if needed to maintain order or enforce the law;

(iii) Flood lighting at night for any parking or other open areas included in the nuisance area;

(iv) Any other measures reasonably designed to prevent the nuisance activities on the property.

SECTION 3. From and after the effective date of this ordinance Section 15-25 of the Code of Ordinances of the City of Panama City Beach, related to City action on failure to comply, is amended to read as follows (new text **bold and underlined**, deleted text ~~struck through~~):

Sec. 15-25. - City action on failure to comply.

- (a) If the interested party(s) shall fail to comply with an order made pursuant to the provisions of this article within the time therein fixed or extended, the City, acting through the City Manager, is authorized to abate the nuisance in accordance with the notice and order, either with City forces or by independent contractor(s) selected through the City's procurement process.
- (b) If the interested party(s) respecting an unfit or unsafe dwelling or structure or any part or parts thereof, including accessory building(s) which are the subject of an order to demolish and remove shall timely elect repair, restoration or replacement as provided in this article but fail to timely obtain the required

permits, or fail to timely commence and continuously and diligently pursue the work, the City, acting through the City Manager, is authorized to effect the ordered demolition and removal (including work in progress if work has been commenced) either with City forces or by independent contractor(s) selected through the City's procurement process.

(c) If the interested party(s) shall fail to comply with an order issued pursuant to section 15-17(13) which shall require preemptive steps to prevent further nuisance activities or shall fail to continuously and diligently pursue the required activities, the City, acting through the City Manager, is authorized to put such measures in place either with City forces or by independent contractor(s) in accordance with the City's procurement process.

(e d) In the event of any failure to comply specified in this section or under this article, the City Manager and City Attorney are authorized to commence on behalf of the City an action in Circuit Court against the interested party(s) to determine the validity of this article on its face and as applied, to require the interested party(s) to comply with the notice and order and, in the absence of compliance within a time specified by the court, to authorize the City to abate the nuisance as specified in the notice and order or as pleases the court, and to determine the amount and validity of the lien or assessment to be imposed or levied against the subject property to pay the cost of abatement. In the event the City Council shall by resolution determine to borrow the funds required to pay the cost of abatement and to pledge the proceeds of the lien or assessment to repay the loan, the City Manager and City Attorney are authorized to seek on behalf of the City pursuant to Chapter 75, Florida Statutes, validation of the City's authority to incur the debt, issue the certificates or bonds evidencing the debt and the legality of all the proceedings in connection therewith. In the event validation proceedings are commenced, the City Manager is directed to serve upon the interested parties notice of their right to intervene in those proceedings.

SECTION 4. From and after the effective date of this ordinance Section 15-27 of the Code of Ordinances of the City of Panama City Beach, related to Appeals, generally, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

Sec. 15-27. - Appeals generally.

- (a) Any interested party may appeal to the City Council the interpretation or application of the code section, ordinance, statute, regulation or common law principle on which the notice and order of the City Manager is based by filing with the City Clerk, within thirty (30) days after service of the City Manager's notice and order, a notice of appeal setting forth the grounds for the appeal. Upon receipt of the notice of appeal, the City Clerk shall forthwith transmit a copy of the notice of appeal, together with all related documents of the inspector's department, to the City Council members. Within ten (10) days after the filing of a notice of appeal, the City Clerk shall schedule a date for the hearing thereof and give notice of the date for the hearing to the interested parties in a manner as would afford them not less than ten (10) days notice. Under no circumstances shall the City Clerk establish a hearing date beyond sixty (60) days from the filing of the notice of appeal.
- (b) All such appeals shall be pursuant to the procedures specified in Section 10.13.00 of the City of Panama City Beach Land Development Code, as amended from time to time. In the event of an irreconcilable conflict between the procedures specified in this article and in said Section 10.13.00, this article shall control. Each interested party, as defined in this chapter, shall be deemed an "applicant" for purposes of the hearing. The City Council's decision must be supported by competent, substantial evidence and the inspector shall have the burden of proof.

(c) Any appeal of an order issued pursuant to section 15-17(13) shall not stay the interested party's compliance with abatement actions required by that order during the pendency of the appeal. In the event that the City Council reverses the City Manager's order or any portion thereof pursuant to section 15-17(13), the City Council shall order that the costs directly associated with compliance with the City's reversed order be reimbursed upon the prevailing party's submission of written proof of costs paid. The prevailing party costs provided in this subsection shall not include the costs of any abatement measures upheld by the City Council, any costs associated with any appeal or any attorney's fees.

SECTION 5. From and after the effective date of this ordinance Section 25-37 of the Code of Ordinances of the City of Panama City Beach, related to Schedule of Penalties, generally, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

Sec. 25-37. - Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections.

The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this Chapter 25, regardless of whether all activities proscribed or required within that particular section are described in the "Description of Violation" column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

Code/Appendix Section	Description of Violation	Civil Penalty
<u>Code Section 15-17(13)</u>	<u>Chronic nuisance property</u>	<u>\$500.00</u>

SECTION 6. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 7. 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 Panama City Beach 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 8. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 10th day of June, 2021.


MAYOR

ATTEST:


CITY CLERK

EXAMINED AND APPROVED by me this 10th day of June, 2021.


MAYOR

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