

ORDINANCE 2021-1215L

AN ORDINANCE OF CITY OF WEWAHITCHKA, FLORIDA PERTAINING TO PUBLIC HEALTH AND SAFETY; DECLARING CERTAIN CONDITIONS ON LOTS, PARCELS, AND TRACTS WITHIN THE CITY OF WEWAHITCHKA BOUNDARIES TO BE A PUBLIC NUISANCE AND THREAT TO THE HEALTH, SAFETY AND WELFARE OF THE CITIZENS AND RESIDENTS OF THE CITY OF WEWAHITCHKA; PROHIBITING CERTAIN CONDITIONS THAT CONSTITUTE AN IMMINENT THREAT TO PUBLIC HEALTH; AUTHORIZING THE CITY OF WEWAHITCHKA TO UNDERTAKE IMMEDIATE ABATEMENT AND REMEDY OF IMMINENT PUBLIC HEALTH THREATS; AUTHORIZING THE CITY OF WEWAHITCHKA TO ABATE AND REMEDY PUBLIC NUISANCE AFTER PROPER NOTICE WHEN IMMINENT PUBLIC HEALTH THREATS EXIST; AUTHORIZING THE ENFORCEMENT OF THIS ORDINANCE BY GULF COUNTY, FLORIDA; AUTHORIZING THE IMPOSITION AND LEVY OF SPECIAL ASSESSMENTS BY THE CITY OF WEWAHITCHKA; ESTABLISHING THE CITY OF WEWAHITCHKA AS A SPECIAL ASSESSMENT DISTRICT; AUTHORIZING THE LEVY OF NON-AD VALOREM ASSESSMENTS IN CONNECTION WITH VIOLATIONS OF THIS ORDINANCE.

WHEREAS, the City of Wewahitchka City Board of City Commissioners has determined that many properties in the City of Wewahitchka have accumulations of junk, trash, debris, living and nonliving plant material, stagnant water, excessive overgrowth of weeds, grass, and other objectionable, unsightly or unsanitary materials; and

WHEREAS, by enactment of this ordinance City of Wewahitchka prohibits (i) the existence of excessive accumulations or untended growths of weeds, undergrowth, or other dead or living plant life, stagnant water, rubbish, debris, trash, and all other objectionable, unsightly, or unsanitary matter upon any lot, tract or parcel, (ii) conditions conducive to the infestation or inhabitation of rodents, vermin, or wild animals, (iii) conditions conducive to the breeding of mosquitoes, and (iv) untended property that threatens or endangers the health, safety, or welfare of City residents or adversely affects or impairs the economic welfare of adjacent properties; and

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WHEREAS, these prohibited conditions are declared public nuisances, and the failure of a property owner to abate and terminate the public nuisance results in (i) the “clean-up” of the property by the City of Wewahitchka and (ii) the imposition of a non-ad valorem special assessment on the property if the City of Wewahitchka is not timely reimbursed for the cost of the “clean-up”; and

WHEREAS, the City of Wewahitchka has the authority to use the uniform method for the levy, collection, and enforcement of non-ad valorem assessments as set forth in Chapter 197, Florida Statutes; and

WHEREAS, if not timely paid, the non-ad valorem assessment for clean-up of a lot will be included on the property owner's annual tax bill, to be paid at the same time that yearly ad-valorem taxes are paid; and

WHEREAS, if the non-ad valorem assessment is not paid timely, a lien may also be recorded against the property; and

WHEREAS, the City of Wewahitchka City Commissioners deem the use of a non-ad valorem special assessment to recover the costs associated with nuisance abatement to be in the best interests of the citizens and residents of the City of Wewahitchka.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COMMISSIONERS OF CITY OF WEWAHITCHKA, FLORIDA:

SECTION 1: Title

This Ordinance shall be known and may be cited as and commonly referred to as the “Nuisance Abatement Ordinance”.

SECTION 2: Purpose and Intent

The purpose and intent of this section is to prohibit the following:

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- a. Accumulation of trash, junk, or debris, living and nonliving plant material, and stagnant water;
- b. Excessive and untended growth of grass, weeds, brush, branches, and other overgrowth;
- c. The existence of all other objectionable, unsightly or unsanitary matter, materials, and conditions on property, whether improved or unimproved;
- d. Property being inhabited by, or providing a habitat for rodents, vermin, reptiles, or other wild animals;
- e. Property providing a breeding place for mosquitoes;
- f. Property being a place, or being reasonably conducive to serving as a place, for illegal or illicit activity;
- g. Property threatening or endangering the public health, safety or welfare of The City of Wewahitchka residents;
- h. Property reasonably believed to cause currently, or potentially to cause in the future, ailments or disease;
- i. Property adversely affecting and impairing the economic value or enjoyment of surrounding or nearby properties.

SECTION 3: Definitions

These words, terms and phrases, when used in this section, will mean the following:

"Actual cost" means the actual cost to the City of Wewahitchka, and if by contract the amount plus interest, if any, as invoiced by an independent, private contractor for terminating and abating a violation of this Ordinance on a lot, tract, or parcel, plus the cost of serving notice of the violation, obtaining title information on the property, and all other identifiable costs incurred by the City in the clean-up of the lot, tract, or parcel.

"Compost bin" means a container designed for the purpose of allowing nonliving plant material to decompose for use as fertilizer. For purposes of this Ordinance, any such compost bin shall be constructed of wire, wood lattice or other material which allows air to filter through the structure. A compost bin shall not exceed an area of sixty-four (64) square feet or a height of five (5) feet.

"Excessive growth" means grass, weeds, rubbish, brush, branches, or undergrowth that has reached a height of eight inches or more.

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"Fill" means material such as dirt that is imported and deposited on property by artificial means.

"Grass, weeds, or brush" means grass or weeds or brush that, when allowed to grow in a wild and unkempt manner, will reach a height of eight (8) inches or more. This definition does not include bushes, shrubs, trees, vines, flowering plants, and other living plant life typically used and actually being used for landscaping purposes.

"Imminent public-health threat" means the condition of a lot, tract, or parcel of land that, because of the accumulation of trash, junk, or debris, such as broken glass, rusted metal, automotive and appliance parts, some of which may contain chemicals, such as freon, oils, fluids, or the like, may cause injury or disease to humans or contaminate the environment, or the condition of a lot, tract or parcel that, because of the excessive growth of grass, weeds, or brush, can harbor criminal activity, vermin, or disease.

"Levy" means the imposition of a non-ad valorem assessment against property found to be in violation of this section.

"Non-ad valorem assessment" means a special assessment that is not based upon millage and that can become a lien against a homestead as permitted in Section 4 of Article X of the Florida Constitution.

"Non-ad valorem assessment roll" means the roll prepared by the City of Wewahitchka and/or Gulf County and certified to the Gulf County Property Appraiser Tax Collector, as appropriate under Florida law, for collection.

"Nonliving plant material" means nonliving vegetation such as leaves, grass cuttings, shrubby cuttings, tree trimmings and other material incidental to attending the care of lawns, shrubs, vines and trees.

"Property" means a lot or tract or parcel of land and the adjacent unpaved and ungraded portion of the right-of-way, whether such lot or tract or parcel is improved or unimproved.

"Trash, junk, or debris" mean waste material, including, but not limited to, putrescible and non-putrescible waste, combustible and non-combustible waste, and generally all waste materials such as paper, cardboard, tin cans, lumber, concrete rubble, glass, bedding, crockery, household furnishings, household appliances, dismantled pieces of motor vehicles or other machinery, rubber tires, and rusted metal articles of any kind.

SECTION 4: Declaration of Nuisance and Menace

The (i) accumulation of trash, junk, or debris, living and nonliving plant material, or stagnant water upon property, (ii) excessive growth of grass, weeds, brush, branches, and other overgrowth upon property, and (iii) keeping of fill in an unsafe and unsanitary manner is declared to be a nuisance and menace to the public health, safety, and welfare of the residents of the City of Wewahitchka for the following reasons:

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a) The aesthetic appearance of property preserves the value of other properties within the City of Wewahitchka.

b) The aforementioned conditions are dangerous, unhygienic, unhealthy, visually unpleasant to the reasonable person of average sensibilities, and a visual nuisance because it depreciates, or potentially can depreciate, the value of neighboring property, that unless addressed properly in this Ordinances, City taxpayers could be and would be required to pay the cost of cleaning up such properties, and such clean-ups would have to be undertaken by the City several times a year, in some cases for the same properties.

SECTION 5: Accumulation of trash, junk, or debris, living and nonliving plant material, and stagnant water

Every owner and, if applicable, every agent, custodian, lessee, or occupant of property shall reasonably regulate and effectively control accumulations of trash, junk, or debris, living and nonliving plant material, and stagnant water on the property and on that portion of the adjoining public right-of-way between the property and the paved or graded street.

The following uses are permissible:

1. Storage of trash, junk, debris, and living and nonliving plant material in garbage cans that comply with applicable ordinances relating to solid-waste collection.
2. The storage of nonliving plant material in compost bins, except that no property may have more than two compost bins.
3. Keeping wood on the property for use as fire or fuel, provided, such wood shall be piled, stacked, bundled, or corded and the area surrounding the piles, stacks, bundles, or cords shall be free of excessive growth of grass, weeds, brush, branches, and other overgrowth.

SECTION 6: Excessive growth of grass, weeds, brush, and other overgrowth

Every owner and, if applicable, every agent, custodian, lessee, or occupant of property, shall reasonably regulate and effectively control the excessive growth of grass, weeds, brush, and other overgrowth on the property. Excessive growth of grass, weeds, brush, and other overgrowth is prohibited.

SECTION 7: Keeping of fill on property

Every owner and, if applicable, every agent, custodian, lessee, or occupant of property, shall reasonably regulate and effectively control the property so as to prevent the keeping of fill on it to prevent the creation of (i) a habitat for rodents, vermin, reptiles, or other wild animals, (ii) breeding ground for mosquitoes, (iii) a place conducive to illegal activity, (iv) a place that threatens or endangers the public health, safety or welfare of the City of Wewahitchka residents, (v) a place that is reasonably believed to cause currently, or potentially to cause in the future,

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ailments or disease, or (vi) a condition on the property that adversely affects and impairs the economic value or enjoyment of surrounding or nearby properties.

SECTION 8: Imminent public-health threat

An accumulation of trash, junk, debris, living and nonliving plant material, or stagnant water, an accumulation of excessive growth of grass, weeds, brush, or other overgrowth, or the keeping of fill on property that presents an imminent public health threat may be remedied by the City immediately without notice to the owner or, if applicable, the agent, custodian, lessee, or occupant. The City of Wewahitchka and/or the Gulf County Code Enforcement department shall determine whether, under the provisions of this section, an imminent public-health threat exists.

After-the-fact notice will be provided by the City of Wewahitchka and/or the Gulf County Code Enforcement department to the owner and, if applicable, the agent, custodian, lessee, or occupant, within a reasonable time after the abatement. After-the-fact notice shall be sent as set forth below, and the owner and, if applicable, the agent, custodian, lessee, or occupant, shall have fifteen (15) days from the date notice is received to (i) reimburse the City or (ii) appeal the City's determination to the City Commissioners that an imminent public-health threat existed on the property.

SECTION 9: Enforcement

9.1 Violations. Failure or refusal by the owner and/or, if applicable, the agent, custodian, lessee or occupant of property, to comply with the requirements of this Ordinance is considered a violation. The existence of an imminent public health threat on a property is a violation of this Ordinance.

9.2 Enforcement by Gulf County. By agreement, this Ordinance may be enforced by Gulf County, Florida acting through its Code Enforcement Department.

9.3 Notice of violation. Whenever the City of Wewahitchka and/or the Gulf County Code Enforcement department determines there is a violation of this section, the City of Wewahitchka and/or the Gulf County Code Enforcement department shall serve, or cause to be served, a "notice of violation" on the owner and, if applicable, the agent, custodian, lessee, or occupant of the property. The "notice of violation" shall direct the owner and, if applicable, the agent, custodian,

lessee, or occupant, to terminate and abate the violation within twenty calendar days of the date the "notice is received." If the "notice of violation" pertains to an imminent public health threat abated by the City, the notice shall direct the owner and, if applicable, the agent, custodian, lessee, or occupant to pay to the City of Wewahitchka cost of such abatement. If the notice of violation is sent or delivered to the owner and the owner's agent, custodian, lessee, or occupant, they shall be jointly and severally responsible to remedy the violation.

9.4 Notice is received. The "notice of violation" shall be sent by United States certified mail with a return receipt requested. "Notice is received" on the date the owner or, if applicable, the agent, custodian, lessee, or occupant of the property initials or otherwise indicates receipt of

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the notice on the return receipt. In the event that (i) certified-mail delivery cannot be accomplished, and after reasonable search by the City for such owner or, if applicable, the agent, custodian, lessee, or occupant of the property, or (ii) the notice is not accepted or is returned to the City of Wewahitchka, a physical posting of the "notice of violation" on the property shall be deemed the date the "notice of violation" is received.

9.5 Form of notice. The notice shall be in substantially the following form:

NOTICE OF VIOLATION

Name of owner:

Address of owner:

Name of agent, custodian, lessee, or occupant (if applicable):

Address of agent, custodian, lessee, or occupant (if applicable):

Our records indicate that you are the owner, agent, custodian, lessee or occupant of the following property in the City of Wewahitchka, Florida:

[description of property]

An inspection of this property discloses, and I have found and determined, that a public nuisance exists on this property. This public nuisance violates [description of section violated] of the Code of Ordinances of the City of Wewahitchka, Florida in that:

[description of the violation in this section]

YOU ARE HEREBY NOTIFIED THAT IF, WITHIN TWENTY DAYS (20) FROM THE DATE OF THIS NOTICE:

a. THE VIOLATION DESCRIBED ABOVE IS NOT REMEDIED AND ABATED IN ITS ENTIRETY AT WHICH TIME THE NOTICE SHALL BE PROVIDED TO THE GULF COUNTY CLERK AND NOTICE OF HEARING ISSUED FOR A SPECIAL MASTER HEARING DATE, AND

b. THIS VIOLATION SHALL BE NOTICED FOR A HEARING TO BE HEARD WITH THE SPECIAL MASTER, THE CITY OF WEWAHITCHKA WILL CAUSE THE VIOLATION TO BE HEARD BEFORE THE GULF COUNTY SPECIAL MASTER SEEKING THE APPROPRIATE ORDER FOR REMEDIATION, AND THE COSTS INCURRED BY THE CITY IN CONNECTION WITH THE CLEANUP WILL BE ASSESSED AGAINST THE PROPERTY IN THE ORDER AS WELL. TO APPEAL THIS NOTICE OF VIOLATION, YOU MUST FILE YOUR NOTICE OF

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APPEAL NO LATER THAN 15 DAYS AFTER RECEIPT OF ANY AND ALL ORDER FROM THE GULF COUNTY SPECIAL MASTER.

CITY OF WEWAHITCHKA/GULF COUNTY

By: _____
Title: _____

If the notice is an after-the-fact notice of an imminent public-health threat, the capitalized portions shall be deleted and, in their place, the information regarding levy of assessment on the property for the costs of abatement incurred by the City of Wewahitchka shall be substituted.

SECTION 10: Appeals

10.1 Time to Appeal. Within fifteen (15) days after any and all order is received, the owner or, if applicable, the agent, custodian, lessee, or occupant of the property may appeal to the City of Wewahitchka that a "notice of violation" and the order was not warranted for the property or that the property did not pose an imminent public-health threat that required immediate cleanup.

10.2 Content of Appeal. The owner or, if applicable, the agent, custodian, lessee, or occupant of the property must appeal the notice of violation by written notice to the City Clerk. The written notice must be accompanied by a reasonable filing fee, as determined by the City Commissioners, and shall be either hand delivered to the City of Wewahitchka City Hall, or mailed to the City Clerk and postmarked, within the fifteen-day (15) period after the order is received.

10.3 Hearing. Upon timely receipt, the City Clerk will schedule the appeal for a public hearing before the City Commissioners. At the public hearing, the appellant shall be afforded due process and may present such evidence as is probative of the appellant's case. The Gulf County Code Enforcement department or other County staff shall present such evidence as is probative of the alleged violation. Members of the public shall be afforded the opportunity to present germane testimony and evidence. Thereafter, the hearing shall be closed, and the City Commissioners shall rule on the appeal.

10.4 Unsuccessful appeal. If the appeal is unsuccessful, the property must be "cleaned up" and the violation remedied and removed within fifteen days (15) from the date of the City Commissioners' decision.

SECTION 11: Special Assessment Imposed

In the event an appeal is not made within fifteen days (15) after notice is received and the violation is not remedied, or a timely appeal is made, but is unsuccessful and the violation is not remedied, the City may undertake such action as is necessary or useful to remedy the violation. The costs incurred by the City to remedy the violation, including the actual cost of clean-up, all administrative expenses, and all other identifiable costs incurred by the City, shall be assessed against the property as authorized by the City Code. All assessments shall be paid in full no later than the close of City business on the twentieth (20th) business day after the property owner has received notice of the assessment. Thereafter, the unpaid amount of the assessment will accrue interest at the rate of 10% per annum or at the maximum rate allowed by law, whichever is less.

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SECTION 12: Notice of assessment

Upon completion of the actions undertaken by the City of Wewahitchka to remedy the violation on the property, the City shall notify in writing the owner and, if applicable, the agent, custodian, lessee, or occupant that a special assessment has been imposed on the property. The notice shall be delivered to them in the same manner set forth for delivery of the notice of violation.

The notice of assessment shall set forth the following:

- a. A description of the violation, a description of the actions taken by the City of Wewahitchka to remedy the violation, and the fact that the property has been assessed for the costs incurred by the City of Wewahitchka to remedy the violation.
- b. The aggregate amount of such costs and an itemized list of such costs.
- c. The intent of the City of Wewahitchka to record the assessment as a lien against the property if not paid timely, within the period of twenty (20) business days.
- d. The intent of the City of Wewahitchka to place the assessment on the tax roll as a non-ad valorem assessment if not paid by the following June 1.
- e. The potential for the property to be subject to the sale of a tax certificate, bearing interest by law at a rate as high as 18% per annum, if the non-ad valorem assessment is not paid as part of the tax bill on the property.
- f. The potential for the property to be sold and conveyed by tax deed if the tax certificate is not redeemed by payment of the non-ad valorem assessment in full, plus interest, as required by Florida law.

SECTION 13: Assessment for lot maintenance and clean-up

- a. Establishment of special assessment district. City of Wewahitchka in its entirety, as its City of Wewahitchka boundaries exist on the date of enactment of this article and as they may be expanded or contracted from time to time, is hereby declared a special-assessment

district for the purposes of abating and remedying violations of this Ordinance. Individual properties within the City's boundaries, as they may exist from time to time, may be assessed for the costs incurred by the City in abating and remedying violations of this Ordinance.

- b. Levy of non-ad valorem assessments. There is hereby levied, and the City Commissioners are authorized to levy from time to time, a non-ad valorem assessment against each and every property in the City (i) on which there occurs or has occurred a violation of this article, (ii) where the City undertakes or has undertaken action pursuant to this Ordinance to abate and/or remedy the violation and, thereby, incurs or has incurred costs, and (iii) where the property owner of the property fails or refuses or has failed or refused, for whatever reason, to pay timely the amount owed to the City under this Ordinance for the costs incurred by the City in carrying out such abatement and remedy.
- c. Collection of non-ad valorem assessments. The City Commissioners elects to use the uniform method to impose and collect non-ad valorem assessments against properties on which violations of this article occur or have occurred. The non-ad valorem assessments

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collected pursuant to this section will be included in the combined notice for ad-valorem taxes and non-ad valorem assessments as provided in Florida Statute § 197.3635. Non-ad valorem assessments collected pursuant to this section are subject to all collection provisions in Florida Statute § 197.3632, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment.

- d. Annual non-ad valorem assessment roll. Each year, the City Commissioners will approve a non-ad valorem assessment roll at a public hearing between January 1 and September 25. The non-ad valorem assessment roll will be comprised of properties that have had levies against them for non-ad valorem assessments under this Ordinance, and such assessments that have not otherwise been paid in full prior to approval of the roll.

The City Clerk is authorized and directed each year (i) to prepare the notice that must be provided as required by Florida Statute § 197.3632(4)(b), and (ii) to prepare and publish the newspaper notice required by Florida Statute § 197.3632(4)(b).

The notice to be sent by first-class mail will be sent to each person owning property that will be on the non-ad valorem assessment roll and will include the following:

1. The purpose of the assessment;
2. The total amount to be levied against the parcel, which includes the actual cost incurred by the City of Wewahitchka;
3. A statement that failure to pay the assessment will cause a tax certificate to be issued against the property, which may result in a loss of title;
4. A statement that all affected property owners have a right to appear at the hearing and to file written objections with the local governing board within 20 days of the notice; and
5. The date, time, and place of the hearing.

Upon its approval by City Commissioners, the non-ad valorem assessment roll will be certified to the tax collector as required by law.

SECTION 14: Severability

If any provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance and the applications of the provisions to other persons not similarly situate shall not be affected thereby and shall remain in full force and effect.

SECTION 15: Repealer

All ordinances or parts of ordinances governing, controlling, or relating to the subjects addressed herein are repealed upon the effective date of this Ordinance.

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SECTION 16: Codification in the Code of Ordinance

It is the intention of the City Commissioners and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the City of Wewahitchka Code of Ordinances and that the sections of this Ordinance may be renumbered to accomplish that intent.

SECTION 17: Effective Date

This Ordinance, if adopted the City Commissioners, shall take effect immediately and enforcement of said Ordinance shall commence on _____, 2021.

Enacted this _____ day of _____ 2021.

PASSED and ADOPTED in regular session by the Board of City Commissioners of Wewahitchka, Florida, on this _____ day of _____, 2021.

CITY OF WEWAHITCHKA, FLORIDA

ATTEST:

RACHEL JACKSON, CLERK

By: _____
City Clerk

By: _____
Phillip Gaskin, Mayor

APPROVED AS TO FORM:

By _____
Michelle Blankenship Jordan, City Attorney