

Introduced by: Council Member Chris Hoffinan

1st Reading: August 17, 2020

2nd Reading: September 8, 2020

ORDINANCE NO. 2020-8147

AN ORDINANCE TO AMEND AND REVISE CHAPTER 19 – NUISANCES OF THE CITY OF JACKSONVILLE BEACH CODE OF ORDINANCES, TO REFLECT BEST PRACTICES, REGULATIONS, STANDARDS, AND PROCEDURES FOR CODE ENFORCEMENT OF PUBLIC NUISANCE ABATEMENT; PROVIDING FOR LEGISLATIVE FINDINGS, REPEAL OF CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Jacksonville Beach (“City”) has the authority to adopt this Ordinance pursuant to Art. VIII, § 2 of the Constitution of the State of Florida; and Chapter 166, Florida Statutes; and

WHEREAS, the City Code of Ordinances Chapter 19 – Nuisances, codified in the 1950s, is outdated, unfitting and lacking elements vital to the Code Enforcement Department to control and abate public nuisances; and

WHEREAS, the current Chapter 19 places significant responsibility of nuisance abatement and enforcement upon the City Manager and City Council, rather than the building official, code enforcement officer(s), and Special Magistrate; and

WHEREAS, the City Council desires to retitle, amend, and revise Chapter 19 of the City Code of Ordinances to reflect best practices, regulations, standards, and procedures for public nuisance abatement and enforcement; and

WHEREAS, a new Chapter 19 will: (a) correct conflicts between code enforcement nuisance abatement processes and the Special Magistrate hearing process; (b) eliminate lengthy processes designated to be handled by the City Manager and City Council; (c) create the Special Magistrate enforcement hearing procedure; and (d) provide clarification, modern practices, and additionally empower code enforcement officers to secure compliance and enforcement of public nuisance abatement; and

WHEREAS, the City Council hereby finds that this Ordinance serves legitimate government purposes, it is a permissible exercise of the City’s powers and authority, and benefits the health, safety, and welfare of the citizens of the City of Jacksonville Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF JACKSONVILLE BEACH, FLORIDA:

SECTION 1. RECITALS AND LEGISLATIVE FINDINGS. The above recitals and legislative findings are ratified, correct, and made a part of this Ordinance.

SECTION 2. THAT THE TITLE AND SEC. 19-1 OF CHAPTER 19 – NUISANCES OF THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA, ARE HEREBY AMENDED TO READ AS FOLLOWS.¹

Chapter 19 – PUBLIC NUISANCES ABATEMENT

ARTICLE I. - IN GENERAL

Sec. 19-1. – Public nuisance ~~D~~defined.

(1) For the purposes of this chapter, the word “public nuisance” is hereby defined as any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1)~~(1)~~a. Injures or endangers the comfort, repose, health or safety of others; or
- (2)~~(2)~~b. Offends decency; or
- (3)~~(3)~~c. Is offensive to the senses; or
- (4)~~(4)~~d. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch, or drainage; or
- (5)~~(5)~~e. In any way renders ~~other person insecure in life or the use of property, or~~ poses a hazard to people or property; or
- (6)~~(6)~~f. Essentially interferes with comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

(2) The maintaining, using, placing, storing, keeping, depositing, leaving, or permitting to be or remain on any public or private property or appurtenances, structures, or fixtures of any of the following items, conditions or actions are hereby declared to be and constitute a public nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- a. Noxious growth and other rank vegetation such as weeds, grass, vines, palmetto scrub, or other similar vegetative growth to a height of 10 inches (10”) or more upon any property premises or land within a developed area of the City. For the purposes of this subsection, developed area shall mean any platted or occupied section of the City abutting a public right-of-way in which 25 percent (25%) of the lots in a block or tract have been developed by the building of a residential or commercial structure. In addition to the declaration of a nuisance in a developed area, the fire marshal may declare a lot a nuisance in an undeveloped area under the regulations of the Fire and Life Safety Code of the City of Jacksonville Beach, Florida as adopted by chapter 10 of this Code;
- b. Accumulation of trash, litter, debris, garbage, bottles, paper, cans, rags, dead or decayed animal matter; fruit, vegetables, bricks, concrete, scrap lumber or other building debris or other refuse of any nature;

¹ Revisions to the Code are indicated with ~~strikethrough~~ text to indicate deletions and underline text to indicate additions.

- c. Any condition which provides harborage for rats, mice, snakes, and other vermin;
- d. Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located;
- e. All unnecessary or unauthorized noises and annoying vibrations, including animal noises;
- f. 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;
- g. The carcasses of animals not properly disposed after death;
- h. The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals wastes, or other substances;
- i. 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;
- j. Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;
- k. Dense smoke, noxious fumes, gas, soot, or cinders;
- l. Neglect or failure to keep in a state of good repair any sidewalk, footway, or foot pavement situated upon any public lands lying immediately adjacent to the abutting private property by the party owning, occupying or having the custody of such abutting premise; or
- m. Stores, allows, or causes waste, debris, materials, or hazardous products in an open yard that is visible to the public.

SECTION 3. THAT SEC. 19-2 OF CHAPTER 19 – NUISANCES OF THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA, IS HEREBY AMENDED TO READ AS FOLLOWS.

Sec. 19-2. ~~–Illustrative enumeration~~ Enforcement official; right of entry.

~~The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:~~

- (1) ~~Noxious growth and other rank vegetation such as weeds, grass, vines, palmetto scrub, or other similar vegetable growth to a height of ten (10) inches or more upon any premises or land within a developed area of the city. For the purposes of this subsection, developed area shall mean any platted or occupied section of the city abutting a public right of way in which twenty-five (25) percent of the lots in a block or tract have been developed by the building of a residential or commercial structure. In addition to the declaration of a nuisance in a developed area, the fire chief may declare a lot a nuisance in an undeveloped~~

area under the regulations of the fire prevention code as adopted by section 10-1 of this Code;

- ~~(2) Accumulation of trash, litter, debris, garbage, bottles, paper, cans, rags, dead or decayed fish, fowl, meat or other animal matter; fruit, vegetables, offal, bricks, concrete, scrap lumber or other building debris or other refuse of any nature;~~
- ~~(3) Any condition which provides harborage for rats, mice, snakes and other vermin;~~
- ~~(4) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located;~~
- ~~(5) All unnecessary or unauthorized noises and annoying vibrations, including animal noises;~~
- ~~(6) 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;~~
- ~~(7) The carcasses of animals or fowl not disposed of within a reasonable time after death;~~
- ~~(8) 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;~~
- ~~(9) 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;~~
- ~~(10) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;~~
- ~~(11) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities;~~
- ~~(12) Neglect or failure to keep in a state of good repair any sidewalk, footway or foot pavement situated upon any public lands lying immediately adjacent to the abutting private property by the party owning, occupying or having the custody of such abutting premises.~~

The building official and code enforcement officer(s) are designated as the enforcement officials of this section and the building official or designee are delegated the authority to enforce the provisions of this section, including the authority to inspect, issue orders to cause any violation of this chapter to be terminated, suppressed, and abated, and impose a lien upon any lot, tract, or parcel of benefited property for the actual costs of terminating, suppressing, and abating such violation.

- (1) *Right of entry.* The building official, designees, and code enforcement officer(s) shall have the right of entry upon real property and shall be immune from prosecution, civil or criminal, for trespass upon real property while in discharge of their duties in enforcing the provisions of this section. The same immunity shall inure to the fire marshal, City engineer, and all City employees acting under this section, their authorized agents, assistants, and contractors employed on behalf of the City in connection with such enforcement.

SECTION 4. THAT SEC. 19-3 OF CHAPTER 19 – NUISANCES OF THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA, IS HEREBY AMENDED TO READ AS FOLLOWS.

Sec. 19-3. - Notice to owner to remove, suppress or abate; ~~contents~~.

Whenever it is made to appear to the ~~city manager~~ building official and/or code enforcement officer(s) after investigation that a nuisance exists within the eCity, ~~he~~ they shall ~~forthwith~~ prepare an estimate of the total cost of removing, suppressing, or abating the nuisance, and cause to be served upon the person owning, occupying, or having the care or custody of any ~~lot or parcel of land~~ premises upon or in connection with such nuisance a written notice to remove, suppress, or abate the nuisance within ~~twenty~~ (20) days after service of the notice, which notice shall:

- (1) Describe the prohibited act, occurrence or condition, in sufficient detail to plainly identify same;
- (2) State the legal description of the property on which the same exists or is maintained;
- (3) State the estimated total cost which will in the opinion of the ~~city manager~~ building official and/or code enforcement officer(s) cover the total cost of removing, suppressing, or abating same;
- (4) The proportion of such cost proposed to be borne by the eCity, if any;
- (5) The proportion of such estimated amount which shall be borne by the owner or occupant of the premises involved;
- (6) State that unless such prohibited act, occurrence, or condition has been effectively removed, suppressed, or abated on or before the time stated in the ~~twenty~~ 20-day notice, the eCity will remove, suppress, or abate the same and assess the cost of so doing, or such proportion thereof as it may deem equitable and just, against the owner or occupant of the premises involved, provided such assessment shall in no event exceed the proportion of the estimated amount set forth in the aforementioned notice to be borne by the owner or occupant of the premises involved; and
- (7) That such notice shall be served by hand delivery or certified mail, return receipt requested, upon the owner, occupant, or person having the care or custody of the particular property involved, if he be found upon the premises or within the eCity, and in case the owner, occupant, or custodian, cannot be found within the eCity after reasonable and diligent inquiry, such notice shall be posted in a conspicuous place upon the premises and a copy thereof mailed to the last known address or the address provided in official tax records of such owner, occupant, ~~or person,~~ or agent having the care or custody of the land involved.

SECTION 5. THAT SEC. 19-4 OF CHAPTER 19 – NUISANCES OF THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA, IS HEREBY AMENDED TO READ AS FOLLOWS.

Sec. 19-4. – Hearings; hearing notices; conduct of hearings; Special Magistrate designated.

The City's Special Magistrate shall have authority to hold hearings and assess fines against property owners and issue orders having full force of law in accordance with this chapter. Any person, owning or occupying the property abated, removed or otherwise interested suppressed, who objects to the proposed removal, suppression or abatement, or levy of a special assessment under this chapter, must present in writing to the ~~city manager~~ building official and/or code enforcement officer(s), his/her objections, within ~~ten~~ (10) days of delivery of the mailing or posting of the notice and must request a hearing before the ~~city council~~ Special Magistrate as provided in Ch. 2, Art. VI, Sec. 2-170, or the person shall have deemed to have consented thereto. The hearing shall be on the first regularly scheduled meeting following the request for the hearing. Failure to request a hearing or to appear before the Special Magistrate within the prescribed time shall be deemed a waiver of the property owner's rights to appeal administrative action of the City or Special Magistrate to abate the nuisance. After the hearing, the ~~city council~~ Special Magistrate, in the exercise of its his/her discretion, may revise, modify, or abandon the proposed action or order any additional action. Action may also be brought in circuit court for abatement of a public nuisance. In addition to lien rights, the City may apply to the court for a money judgment against the property owner for the City's cost to abate the nuisance. The building official and code enforcement officer(s) may initiate any proceeding allowed under this chapter.

- (1) The clerk for the Special Magistrate shall schedule the hearings and the code enforcement officer(s) shall issue hearing notices: (a) by sending written notice of the hearing to the owner and/or operator by certified mail, return receipt requested; or (b) by hand delivering the written notice to the owner and/or operator of the premises at their last known address at least 15 calendar days prior to the scheduled hearing. If an attempt to serve notice upon the owner and/or operator by hand delivery or certified mail is unsuccessful, service of the notice of the hearing may be made by posting as provided in Section 162.12(2)(b), Florida Statutes, such posting to take place not less than 10 days before the scheduled hearing date. The owner and/or operator shall be responsible for providing notice, to any tenant, lessee, or lessor, of the hearing.
- (2) Notice of hearing. The notice of hearing shall include:
 - a. Statement of the time, place, and nature of the hearing;
 - b. Statement of the legal authority and jurisdiction under which the hearing is to be held;
 - c. Reference to the particular sections of the statutes and/or ordinances involved; and
 - d. Short and plain statement of facts summarizing the incidents complained.
- (3) Conduct of hearings:
 - a. City staff shall present evidence before the Special Magistrate.
 - b. The alleged violator and the City shall have an opportunity to present evidence and argument on all issues involved, conduct cross examination, submit rebuttal evidence, and to be represented by legal counsel.
 - c. The Special Magistrate may consider any evidence, including evidence of the general reputation of the place or premises. All testimony shall be given

- under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings. Orders of the Special Magistrate shall be based upon competent and substantial evidence.
- d. The City shall have the burden of proving the existence of an unlawful public nuisance by the greater weight of the evidence.
 - e. If the alleged violator(s) has been properly noticed in regard to the hearing before the Special Magistrate and fails to appear, the board may proceed with a hearing in absentia on the merits of the alleged violation. Any findings or orders resulting from such hearing are valid and binding upon the owner and/or operator.

SECTION 6. THAT SEC. 19-5 OF CHAPTER 19 – NUISANCES OF THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA, IS HEREBY AMENDED TO READ AS FOLLOWS.

Sec. 19-5. – Abatement by city Appeals.

~~If at the time specified in the notice of section 19-3, the nuisance has not been removed, suppressed or abated, the city manager shall remove, suppress or abate the nuisance referred to in the notice according to the terms set forth in the notice~~ An aggrieved party, including the City, may appeal a final administrative order of the Special Magistrate to the circuit court of Duval County. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within 30 days of the date of execution of the order being appealed. The filing of an appeal shall not constitute an automatic stay of the proceedings or abatement of the nuisance without further action by the court.

SECTION 7. THAT SEC. 19-6 OF CHAPTER 19 – NUISANCES OF THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA, IS HEREBY AMENDED TO READ AS FOLLOWS.

Sec. 19-6. - Levy of special assessment lien against property to finance and defray costs Removal, suppression and abatement of public nuisance by City.

~~The city council shall, as soon as practicable and within thirty (30) days after the completion of work as authorized in this chapter, ascertain and determine the actual cost thereof and the respective portions to be borne by the city if any, and the owners or occupants of the property involved and thereupon, by resolution, fix, levy and impose a special assessment against the property involved at an amount not exceeding either the actual cost of the work, or the estimated special assessment stated in the notice, which notice shall specify the following:~~

- ~~(1) Description of the work performed;~~
- ~~(2) Date of completion;~~
- ~~(3) Total cost;~~
- ~~(4) The proportion of such cost to be financed and defrayed by special assessment;~~
- ~~(5) The unit or basis for distribution the amount to be specially assessed among the several parcels of property where more than one parcel is liable for assessment;~~

- ~~(6) — The fact that a lien has been assessed by the city with a complete schedule or breakdown of the specific amount of special assessment levied and imposed against and upon each respective particular parcel of property involved, showing in detail the description of the property, name of owner and amount of assessment as severally and respectively levied and imposed;~~
- ~~(7) — That such liens shall bear interest at rate of eight (8) percent per annum unless paid within thirty (30) days after publication of such resolution;~~
- ~~(8) — That the city clerk shall forthwith have prepared and entered in a lien book maintained in his office as an official record, the amount of such lien assessed against each parcel of property, the date of completion of such work and such other information as may be deemed appropriate;~~
- ~~(9) — That the city clerk shall cause the resolution to be published by posting, or publication in a newspaper, as required by law;~~
- ~~(10) — That the city shall have, assert and possess a lien, superior to all other claims, except taxes, against and upon the property as therein described for the respective amounts of such special assessments as indicated above, together with interest and costs of collection;~~
- ~~(11) — Commanding the tax collector to enforce collection thereof.~~

If at the time of issuance specified in the notice of section 19-3, the nuisance has not been removed, suppressed, or abated, the building official and/or code enforcement officer(s) shall take any necessary action to remove, suppress, or abate the nuisance referred to in the notice according to the terms set forth in the notice.

SECTION 8. THAT THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA IS HEREBY AMENDED BY ADDING A SECTION, TO BE NUMBERED SEC. 19-7 OF CHAPTER 19, WHICH SAID SECTION SHALL READ AS FOLLOWS.

Sec. 19-7. - Levy of special assessment lien against property to finance and defray costs incurred by City.

All costs incurred by the City to cure any violation of this article shall be a special assessment lien against the property and shall be charged and billed to the violator of this article. The Special Magistrate shall, as soon as practicable and within 30 days after the completion of work as authorized in this chapter, ascertain and determine the actual cost thereof and the respective portions to be borne by the City, if any, and the owners or occupants of the property involved and thereupon, fix, levy, and impose a special assessment against the property involved at an amount not exceeding either the actual cost of the work, or the estimated special assessment stated in the notice, which notice shall specify the following:

- (1) Description of the work performed;
- (2) Date of completion;
- (3) Total cost;

- (4) The proportion of such cost to be financed and defrayed by special assessment;
- (5) The unit or basis for distribution of the amount to be specially assessed among the several parcels of property where more than one parcel is liable for assessment;
- (6) The fact that a lien has been assessed by the City with a complete schedule or breakdown of the specific amount of special assessment levied and imposed against and upon each respective particular parcel of property involved, showing in detail the description of the property, name of owner, and amount of assessment as severally and respectively levied and imposed;
- (7) That such liens shall bear interest at the Florida Department of Financial Services prevailing legal rate unless paid within 30 days after the special assessment is imposed;
- (8) That the City clerk shall forthwith have prepared and entered in a lien book maintained in his/her office as an official record, the amount of such lien assessed against each parcel of property, the date of completion of such work, and such other information as may be deemed appropriate;
- (9) That the City clerk shall cause the assessment of lien to be published by posting, or publication in a newspaper, as required by law;
- (10) That the City shall have, assert, and possess a lien, superior to all other claims, except taxes, against and upon the property as therein described for the respective amounts of such special assessments as indicated above, together with interest and costs of collection;
- (11) Commanding the tax collector to enforce collection of the assessment and instruct the clerk to take any necessary actions to record and enforce the lien.
- (12) All liens may be foreclosed by the City.

SECTION 9. THAT THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA IS HEREBY AMENDED BY ADDING A SECTION, TO BE NUMBERED SEC. 19-8 OF CHAPTER 19, WHICH SAID SECTION SHALL READ AS FOLLOWS.

Sec. 19-8. - Article construction.

All powers and rights conferred by this article shall be in addition to and supplemental to those conferred by any other general or special laws governing public nuisances and shall be

liberally construed to effectuate the purpose of this article. Nothing contained in this article shall prohibit the City of Jacksonville Beach from abating such public nuisances by any other means. This section does not restrict the right of any person to proceed under Section 60.05, Florida Statutes, against any public nuisance.

Secs. 19-79 - 19-20. - Reserved.

SECTION 10. THAT SEC. 19-22 OF CHAPTER 19 – NUISANCES OF THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA, IS HEREBY AMENDED TO READ AS FOLLOWS.

Sec. 19-22. - Violation.

- (a1) *Violation.* It shall be unlawful and a violation of this article for a human sign spinner to display a human commercial advertising sign while standing or sitting on public property or on public rights-of way, by waving, twirling, spinning or otherwise using some form of action or movement in a manner whereby a commercial advertising message is directed or oriented in whole or in part to any passing motorist or vehicular traffic transiting nearby on an adjoining street or highway.
- (b2) *Separate violation.* Each day that a violation of this article occurs at a location on public property or on public rights-of-way shall be deemed a separate violation for purposes of the remedies, fines and penalties set forth herein. If a violation of this article occurs on the same day at a location on public property or on public rights-of-way that is more than ~~one hundred (100)~~ feet (100') from any other location where a violation of this article has occurred on the same day, then the violation shall be considered a separate violation for the purpose of the remedies, fines and penalties set forth herein even though the violation occurred on the same day.

SECTION 11. THAT SEC. 19-23 OF CHAPTER 19 – NUISANCES OF THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA, IS HEREBY AMENDED TO READ AS FOLLOWS.

Sec. 19-23. - Remedies, fines and penalties.

- (a1) Each person that holds or controls a human commercial advertising sign in violation of this article shall be responsible for a civil fine and penalty as provided for in section 2-174 of the Jacksonville Beach Code of Ordinances.
- (b2) The Jacksonville Police Department and any and all designated code enforcement officers are authorized to issue a citation to a person when, based upon personal investigation, there is reasonable cause to believe that the person has committed a violation of this article. A warning notice is not required for the issuance of a citation for a violation of this article.

(e3) In addition to the remedies set forth ~~above~~ in this article, the City of Jacksonville Beach may seek injunctive or other available civil relief from ~~a court of competent~~ the Special Magistrate as provided in Ch. 2, Art. VI, Sec. 2-170 to compel enforcement of the provisions of the article.

SECTION 12. CONFLICTING ORDINANCES AND ACTS. All ordinances and resolutions previously adopted or entered into by the City that are in conflict with this Ordinance are repealed to the extent inconsistent herewith

SECTION 13. SEVERABILITY. If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 14. CODIFICATION. The City Council intends that this Ordinance will be made a part of and codified in the City of Jacksonville Beach Code of Ordinances.

SECTION 15. EFFECTIVE DATE. This Ordinance will immediately take effect upon its adoption by the City Council.

AUTHENTICATED THIS 8th DAY OF September, A.D., 2020.



William C. Latham, Mayor



Laurie Scott, City Clerk