

TOWN OF CALLAHAN, FLORIDA
ORDINANCE NO.: 2020-001

AN ORDINANCE OF THE TOWN OF CALLAHAN TO ENACT AN ARTICLE IV OF CHAPTER 73 OF THE CALLAHAN CODE TO REGULATE UNSAFE STRUCTURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS the Town Council finds that unsafe, dilapidated, and nuisance structures present on ongoing hazard to the health, safety, and welfare of the residents of the Town, and this Article IV of Chapter 73 of the Code of the Town of Callahan should be enacted to benefit the health, safety, and welfare of the residents.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CALLAHAN, FLORIDA, AS FOLLOWS:

UNSAFE BUILDING ABATEMENT CODE

Section 1. Intent.

The Town of Callahan hereby establishes this article as allowed by Florida Statutes Chapters 162 and 553. The provisions of this article are remedial and shall be construed to secure the beneficial interests of public safety, health, and general welfare through structural stability, sanitation, and safety to life and property from fire and other hazards. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein. Nothing herein shall prevent the Town of Callahan from pursuing enforcement of such violations described herein through other means, including without limitations filing for injunctive relief or by Florida Statutes Chapter 162.

Section 2. Definitions.

The following words, terms and phrases when used in this article have the set forth below:

Building means any structure, either temporary or permanent, built for the support or enclosure of persons, chattels or property of any kind for residential or commercial purposes. Buildings shall include tents, trailers or manufactured/modular homes serving in any way the function of a building or structure for residential or commercial purposes.

Special Magistrate means the Special Magistrate appointed by the Town of Callahan Town Council exercising the powers granted by this Ordinance and Chapter 162, Florida Statutes.

Owner means any person or persons owning real property, as shown on the last equalized assessment roll for county taxes or the lessee, tenant or other person having control or possession of the property.

Permitted means to possess a valid building or site improvement permit.

Person means any individual, partnership, corporation, association or other organization, however formed.

Words not defined here shall have the meaning as stated in the current edition of the Florida Building Codes and the Florida Fire Prevention Code, if definitions exist therein.

Section 3. Unlawful residential, commercial, and industrial building nuisances.

It shall be unlawful for any person owning, leasing, renting, occupying or having charge of any real property in the Town to maintain the property or to allow the property to be maintained in a manner such that any of the following conditions are found to exist thereon as determined by the building official, except as otherwise stated herein or as may be allowed by any other provision of law. The prohibited conditions are:

(1) *Buildings and structures.*

- a. Any building or structure which is vacant and open to unlawful trespass;
- b. Any partially constructed, reconstructed or demolished building or structure upon which work is abandoned. Work is deemed abandoned when there is no valid and current building or demolition permit or when there has not been any substantial completed work on the project for one hundred eighty {180} days (per Florida Building Code section 105.4.1.3) from the last date of an approved inspection;
- c. Any building or structure which by reason of rot, weakened joints, walls, floors, underpinning, roof, ceilings, unsecure foundation, or other causes has become dilapidated or deteriorated;
- d. Any building or structure with exterior walls and/or roof coverings which have become so deteriorated as to not provide adequate weather protection and be likely to, or have resulted in, termite infestation or dry rot;
- e. Buildings or structures with broken or missing windows or doors which constitute a hazardous condition or a potential attraction to trespassers. For purposes of this chapter "window" shall include any opening, including glazed doors, which open upon a yard, court, or vent shaft open to the elements;
- f. Buildings or structures including, but not limited to, walls, windows, fences, signs, retaining walls, driveways, walkways, poles or other objects which are broken, deteriorated, or damaged to the extent that the disrepair presents a risk to public safety, and any building or structure used or intended to be used for dwelling purposes which, because of inadequate maintenance, dilapidation, decay, damage, fire, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the building official to be unfit for human habitation;

- g. Any building or structure that is determined by the building official to be "unsafe" or "dangerous" as described in chapter 2, definitions of the current edition of the Florida Existing Building Code;

(2) *Miscellaneous.*

- a. Any other condition or use of a property that gives rise to a reasonable determination by the building official that such condition or use represents a threat to the health, safety and welfare of the public by virtue of its condition or use, or hazardous nature.
- b. Except as otherwise provided herein the provisions of this chapter shall be administered and enforced by the building official. In the enforcement of this chapter the building official and designated officers may, according to law, enter upon private or public property to determine if any condition exists that may be detrimental to the public health, safety or general welfare or which constitutes a public nuisance. If entrance is denied, entrance may be obtained by every source available by Florida law.

Section 4. Declaration of public nuisance by the building official.

Any property found by the building official to be maintained in violation of section 1 of this article, is declared to be a public nuisance and shall be abated by rehabilitation, demolition, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the town from enforcing other town ordinances or abating public nuisances in any other manner provided by law. The building official may consult with the town fire inspector in making a determination as to violations.

Section 5. Notification of nuisance/unsafe building.

The building official or his designee shall prepare and issue a notice of a building violation of section 1 of this article, directed to the owner of record of the building or structure (including tenant and occupant) or individual determined by the building official or his designee to be the proper person to be notified. The notice shall contain but not be limited to the following information:

- (1) The street address, if any, of the building or structure, and the legal or tax assessment description of the property upon which the building or structure is located;
- (2) A description of the building or structure or portion thereof deemed to be in violation;
- (3) A statement of the particulars in which the building or structure or portion thereof is in violation;
- (4) A statement that the owner, tenant/occupant, if appropriate, or appropriate person is requested to take the necessary action to abate the violation by repair, rehabilitation, or

demolition in order to be in compliance with this Code. The notice should provide a reasonable time to abate the violation which shall not be less than thirty (30) days nor more than one hundred twenty (120) days from receipt of said notice. The building official may allow more than one hundred twenty (120) days according to the necessity if requested in writing by the owner or appropriate person that sets forth the reasons for the extension of time. In the event the violation is not addressed and completed, unless an extension is granted, a notice of hearing shall be provided. If the building official allows more than one hundred twenty (120) days he shall notify the owner or appropriate person on a form to be approved by the building official and town attorney, that requires the execution and acknowledgement of the owner or the appropriate person;

- (5) The notice shall indicate that the owners or person in charge of the building or structure or premises within which the violation is located shall contact the building official within seven (7) days of the date of the violation to enter into an agreement to address the violation. The notice shall also indicate that the owner or person in charge of the building cited may appear before the Special Magistrate and show cause why such condition should not be deemed a nuisance or unsafe condition and be abated as provided. The notice shall contain information about requesting a hearing and shall indicate that:
 - a. The form for requesting a hearing shall be provided by the building official, or his designee, upon request;
 - b. The form requesting the hearing shall be filled out and turned in to the building official within ten (10) days of the date of the notice; and
 - c. The hearing shall be set within thirty (30) days of the request being turned in to the building department. All interested parties who desire to be heard in the matter shall be directed to appear before the Special Magistrate to show cause. The notice shall advise the owner or owners or persons in charge or control of the building or structure or premises and all interested parties that failure to appear at the hearing may be deemed an admission of the acts or omissions charged in the order and notice of the building official may direct the abatement without further evidence which served as the basis for the order and notice;
- (6) A statement that any repairs or demolition performed by a contractor directed by the town shall cause a lien and special assessment to be placed on the property for the total cost thereof and administrative fee; and a statement that the owner will also be subject to all other penalties provided in this Code or by law if the unsafe condition is not corrected within the time required.

The notice of violation shall be delivered to the owner and any lessee, occupant, lienholder, and mortgagee as follows:

The building official or designee shall deliver, or cause to be delivered, the notice of violation and/or hearing if necessary to the owner and any lessee, occupant, lienholder, and mortgagee of the building or structure, and of the land on which it is situated, by hand delivery, and by certified mail return receipt required, addressed to each such person's mailing address and

regular address. The hearing, if necessary, shall be as set forth in section 5.

If the person is a corporation, trust, partnership, limited liability company, or other entity, diligent search and inquiry shall be made to discover the true name, domicile, principal place of business, and status of the corporation or other entity, and the names and whereabouts of all persons upon whom service of the notice would bind the corporation or other entity. Notice must be sent to the representative of the corporation or other entity.

Diligent search and inquiry shall be made to identify and locate each person required to be notified, including a title search of the official public records maintained by the Clerk of Circuit Court of Nassau County, Florida. The building official or an employee of the department and title search company shall prepare a list of the persons required to be notified hereunder and their respective mailing addresses which shall be placed in the office file.

In addition, the notice of violation shall be posted in a conspicuous place on the building or structure. The notice shall be posted on the property at least thirty (30) days prior to the hearing date. Proof of posting shall be by affidavit of the person posting the notice which affidavit shall include a copy of the notice posted, the dates and places of its posting;

In addition, a notice of building violation and notice of hearing shall be published in a newspaper of general circulation in the Town of Callahan, each publication shall appear each week for two (2) consecutive weeks. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication shall be provided as required in F.S. §§ 50.041 and 50.051.

Section 6. Cancellation or postponement of hearing date.

- (a) The building official may cancel a hearing noticed in accordance with section 3 if the violation is corrected by the owner prior to the hearing date. The building official shall inform the clerk of the Town of Callahan of the cancellation, and mail or hand deliver a written notice to each person who received a notice of the hearing by mail or hand delivery.
- (b) The building official may postpone a hearing noticed in accordance with section 3 if necessary to allow time to effectuate service of notice on any person or for any other reason a hearing cannot be held on the date stated in the notice. Notice of a new hearing date caused by the postponement shall be given by the building official or his designee. Each person who received a notice of the hearing by hand delivery or mail shall be provided notice of a new hearing date by hand delivery or mail in the same manner provided in section 3. The hearing date shall be at least thirty (30) days after the date of mailing (or hand delivery) of the notice.

If a mailing address is not available for any person, or any person was given notice under section 3, notice of a new hearing date shall be given to such people at least thirty (30) days prior to the new hearing date by:

- (1) Mailing the notice to the person to the address of the building or structure involved in the proceeding;

- (2) Posting the notice in a conspicuous place on the unsafe building or structure, and also at the place legal notices are customarily displayed for inspection by the public at the Callahan Town Hall 542300 US Hwy 1, Callahan, Florida 32011;
- (3) In addition thereto, publishing the notice one (1) time in a newspaper of general circulation in the Town of Callahan. Proof of publication shall be by affidavit of the building official or an employee of the publisher of the newspaper, which affidavit shall include a copy of the notice published and the date of publication. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the dates and places of its posting.

Section 7. Hearing.

Each case before the Special Magistrate shall be presented by the building official or his/her designee. The Hearing Office shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The Special Magistrate shall hear any testimony presented by the building official, building inspector, code inspector, fire inspector, the owner, and other interested persons or witnesses. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The proceedings shall be conducted as a quasi-judicial hearing.

The following standards shall be followed in substance by the Special Magistrate when determining whether the building or structure is in violation and/or ordering the repair, demolition or vacation of an unsafe building or structure:

If the building or structure is in violation, the owner shall be ordered, if determined by the Special Magistrate, to eliminate or cure all violations by repairing the building or structure in accordance with the Florida Building Code, or by demolishing it if the board determines that repair is not possible. Required permits must be obtained prior to making repairs to, or demolishing structure(s), per 2017 Florida Building Code section 105.1. In making a demolition determination, the Special Magistrate will set forth the basis for the determination. If a building or structure poses an immediate hazard to life or to the safety of the public, it shall be ordered vacated immediately. If the owner chooses to demolish the building or structure, the owner shall be ordered to remove the demolition debris from the property.

The Special Magistrate shall issue findings of fact based on evidence of record, and conclusions of law, and shall issue an order consistent with the powers granted by this article. In accordance therewith, a written order shall be signed by the Special Magistrate. If the Special Magistrate finds that the building or structure is in violation, the Special Magistrate may issue an order. The order shall:

- Set forth the street address of the building or structure, and a legal description of the premises sufficient for identification. It shall contain a statement of the particulars of the condition or conditions which render the building or structure in violation, and a statement of the things required to be done to remedy the unsafe conditions;
- Specify the time that the work required (repair, demolishment) shall be commenced,

which shall be not less than ten (10) days nor later than sixty (60) days after the order is signed by the Special Magistrate, and shall further specify a reasonable time within which the work shall be completed; and

- Provide for a date for a hearing to determine whether the order was complied with by the owner within the time specified, and if compliance has not occurred, to authorize appropriate action to be taken to remedy the unsafe conditions. Said action shall be set forth in an order approved by the Special Magistrate.

The time for completion of the work may be extended for additional periods not to exceed ninety (90) days each by the building official or the Special Magistrate for cause in accordance with section 3. This shall be done in writing upon application in writing of any interested person.

A copy of an order shall be mailed by certified mail, return receipt requested and regular mail, to the owner and any lessee, occupant, lienholder, and mortgagee of the building or structure, and of the land on which it is situated, to the mailing address(es) listed by the building official. A copy of the order shall be posted in a conspicuous place on the unsafe building or structure. Proof of posting shall be by affidavit of the person posting the order, which affidavit shall include a copy of the order posted and the dates and places of its posting. The posted order shall not be removed without the permission of the Special Magistrate. Upon posting of the order, the building official may remove any previously posted notices on the unsafe building or structure and at Town Hall.

A certified copy of the order shall be recorded in the office of the Callahan Town Clerk in the official public records of Town of Callahan, and shall constitute notice to any subsequent purchases, successors in interest, grantees, or assigns. When a recorded order is complied with by the owner, the building official shall issue an order acknowledging compliance that shall be recorded in the public records.

Section 8. Failure to comply with order.

Whenever an order issued pursuant to section 3 is not complied with by the owner, the Special Magistrate, upon notification of a meeting, by the building official, shall have the power to enter an order determining noncompliance, and may direct the town building official to have the building or structure repaired or demolished. The following standards shall be followed in substance by the Special Magistrate in determining and recommending what, if any, action to correct or eliminate the violation shall be pursued. If the building or structure poses an immediate hazard to life or to the safety of the occupants, it shall be ordered vacated;

- In any case where a violation cannot reasonably be repaired so that the building or structure will no longer exist in violation of the Florida Building Code, the Special Magistrate may authorize demolition of the building or structure and removal of the demolition debris from the property;
- If there is an accumulation of trash, garbage, or debris outside of an enclosed building

on property where a building or structure has been declared unsafe, the Special Magistrate may direct the building official to notify code enforcement.

At the conclusion of the hearing, the Special Magistrate may issue findings of fact based on evidence of record, and conclusions of law, and shall issue an order consistent with the powers granted by this Code. In accordance therewith, a written order shall be signed by the Special Magistrate.

A copy of the order shall be provided to the owner, and any lessee, occupant, lienholder, and mortgagee of the building or structure, and of the land on which it is situated.

- (1) Any work authorized by the Special Magistrate to this action shall be accomplished by properly licensed contractors, unless the owner/builder exemption applies in F.S. § 489.103(7) or as directed by the building official.

Section 9. Temporary action by the owner.

When a notice of violation has been issued for a building or structure, the owner may provide temporary action by securing and sealing the unsafe building. If the owner chooses to provide temporary action by securing and sealing the property, he or she shall notify and obtain approval from the building official or his/her designee for the temporary action. The building official or his/her designee, when approving temporary action in the form of securing and sealing, shall state a reasonable time in which permanent repairs shall be made to the property. If permanent repairs are not made within the specified time, the building official or his/her designee may set the matter for hearing before the Special Magistrate.

Section 10. Emergency securing of building.

If the building or structure poses an immediate hazard to life or to the safety of the public, the building official may order it be vacated, repaired, or demolished, and in such case the notice shall state the time within which vacation, repair, or demolition is to be completed.

If the building or structure is unoccupied and is unsafe because it is vacant, unguarded and open at doors or windows, or otherwise allows unobstructed access to the interior, and poses an immediate hazard to life or to the safety of the public, the building official may cause the temporary securing of the building or structure. The work may be performed by independent contractors, or such other qualified means as available. Materials or methods for securing the building or structure shall be as determined by the building official.

Section 11. Limitation of filing judicial action.

Any legal action appealing the Special Magistrate's order shall be commenced within thirty (30) calendar days of the date of the order and shall be in a court of competent jurisdiction in the Fourth Judicial Circuit Court in and for Nassau County, Florida.

Section 12. Assessment lien.

The total cost for addressing, by an independent contractor, a violation shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the county clerk of a lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.

Such notice of lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN
(Claim of Town of Callahan)

Pursuant to the authority vested by the provisions of Section ____ of Town of Callahan Ordinance No. _____, the Special Magistrate did on or about the _____ day of _____, 20____, cause the property hereinafter described, to be repaired or the building or structure on the property hereinafter described, to be repaired or demolished in order to abate a violation on said real property; and the Special Magistrate did on the _____ day of _____, 20____, assess the cost of such repair or demolition upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said Town of Callahan does hereby claim a lien on such rehabilitation, removal, repair or demolition in the amount of said assessment, to wit: the sum of \$ _____ and the same, shall be a lien upon said real property until the same has been paid in full and discharged of record. The real property herein above mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in Town of Callahan, State of Florida, and particularly described as follows:

(description)

Dated this day of _____ day of _____, 20____.
Special Magistrate, Town of Callahan.

Section 13. Alternative actions available-Violation an infraction.

Nothing in this chapter shall be deemed to prevent the Town of Callahan from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law or from taking any other code enforcement actions authorized by Chapter 162, Florida Statutes.

ADOPTED THIS 18 DAY OF February, 2020.


TOWN OF CALLAHAN, FLORIDA


Ken Bass, Town Council President

ATTEST:


Stephanie Knagge, Town Clerk

APPROVED:


Martin Fontes, Mayor

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