

ORDINANCE NO. 385

AN ORDINANCE OF THE CITY OF BONIFAY, FLORIDA RELATING TO REGULATION OF PRIVATE PROPERTY STANDARDS AND NUISANCE ABATEMENT; PROVIDING FOR AUTHORITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITED CONDITIONS AND CONDUCT; PROVIDING FOR LITTER CONTROL; CREATING A CODE ENFORCEMENT OFFICER POSITION; PROVIDING FOR CODE ENFORCEMENT OFFICER POLICY AND PROCEDURES; PROVIDING FOR PURPOSE AND JURISDICITON; PROVIDING FOR LEGAL REPRESENTATION; PROVIDING FOR POWERS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF BONIFAY, FLORIDA AS FOLLOWS:

SECTION 1. Authority. The authority for enactment of this Ordinance is Chapter 162, Florida Statutes.

SECTION 2. Any previous ordinances of the City of Bonifay that are direct conflict with this ordinance are hereby repealed.

SECTION 3. This ordinance shall be known as the “Private Property Standards, of the City of Bonifay, Florida,” and is hereby enacted as follows:

Sec. 3-1. Purpose. The purpose of this chapter is to protect the comfort, health, repose, safety, and general welfare of the citizens who reside in the city and to prevent maintenance of nuisances affecting the general public. It is hereby declared by the City Council that the creation or maintenance of a nuisance shall constitute irreparable public injury. In order to accomplish the foregoing purpose, it is deemed essential to establish a mechanism to review and provide for remedies in order to abate or remove a public nuisance through action of the City Council or County Court system.

Sec. 3-2. Definitions. The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them, except where the context clearly indicates a different meaning.

Abandoned Personal Property shall mean wrecked or derelict property having no value other than nominal salvage value, if any, and which has been left abandoned and unprotected from the elements and shall include wrecked, inoperative or partially dismantled motor vehicles, trailers, boats, machinery, white goods, furniture, and any other similar article which has been left abandoned and unprotected from the elements. The term includes any article of personal

property which is left upon public or private property without the consent of the owner, lessee, or occupant thereof for a period longer than two (2) hours.

Cover means any device, equipment, container, close-fitting tarpaulin, chain, rope, wire, or line used on vehicles to prevent any part of a vehicle load to sift, blow, leak, fall, or escape in any manner from the vehicle.

Debris means abandoned or inoperative material which is stored externally and shall include but not be limited to one or more of the following: discarded household items; inoperative or abandoned machinery, motor vehicles, boats, trailers, household appliances including but not limited to freezers, refrigerators, iceboxes, stoves, dishwashers, and washing and drying machines for clothing; or refuse, garbage, rubbish, trash, junk, used scrap, lumber, steel, plumbing fixtures, insulation materials, barrels, boxes, drums, piping, glass, iron materials, excelsior or plastic.

Excessive growth means the growth of weeds, vegetation, or plants which are not cultivated or landscaped or regularly tended which exceeds a height of twelve (12) inches.

Externally means outside a fully enclosed building or structure, except that materials stored in a carport shall not be deemed to be stored externally.

Inoperative means not in a working condition as designed, or incapable of being lawfully operated. For the meaning of the term, a motor vehicle is deemed to be inoperative if a current registration, also known as a license plate, or a kind required under a state law as a condition of operation upon the public streets is not affixed thereto, or if one or more parts which are required for the operation of the vehicle are missing or not attached to the vehicle as designed.

Litter means refuse and rubbish including, but not limited, to paper, bottles, tin cans, glass, crockery, plastic, rubber, yard trash, waste building materials, tree and shrub trimmings, leaves, and disposable packages and containers.

Nuisance means conduct specified as follows:

- A. Any continuing condition or use of premises or of building exteriors or of land which causes substantial diminution of the value of property in the vicinity of such condition or use.
- B. Any continuing condition or use of a premises, building exteriors or of land which unreasonably annoys, injures, or endangers the comfort, health, repose, privacy, or safety of the public through offensive odors, noises, substances, smoke, ashes, soot, dust, gas fumes, chemical diffusion, smog, flooding, disturbance and vibrations of earth, air or structures, emanations, light, sights, entry on adjoining property by persons or vehicles.

- C. A condition that interferes with, obstructs, or tends to obstruct, or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch, or drainage way.
- D. Other unreasonable intrusions upon the free use and comfortable enjoyment of the property of the citizens of the City.

Owner, with respect to property, means the person, corporation, partnership, or other legal entity, singular or plural, which is a record owner as recorded on the current tax rolls of Holmes County.

Premises means the land and all structures and articles appurtenant or attached thereto which are owned, leased, occupied, or controlled by a person.

Property means any individual parcel of real property or any portion thereof.

Sec. 3-3. Conditions and Conduct. The existence of any of the following specific conditions or conduct is hereby declared to constitute a public nuisance as that term is used in this Chapter. It shall be a violation of this chapter for any owner, heir(s) to real property, or person(s) in charge, or in control, of any property within the city limits to allow any items(s) declared a nuisance under this chapter, after proper notice of such nuisance being served, to be placed or remain on such property unless stored in a completely enclosed building or structure. Further, the nuisance, as defined, shall not be visible from any street, driveway, sidewalk, right-of-ways or bordering property.

- A. A condition or use of property that causes a substantial diminution of the value of property in the vicinity of such condition or use.
- B. A condition or use that unreasonably intrudes upon the free use, privacy, and comfortable enjoyment of the property of the citizens of the City. The use or condition may be considered an unreasonable intrusion upon the free use and comfortable enjoyment of property when one or more of the following conditions are determined to exist:
 - (1) The repeated intrusion upon property adjoining or surrounding the use or condition identified in the complaint of odors, gases, smoke, ashes, soot, dust, fumes, chemical diffusion, smog, or other particles or gases.
 - (2) The repeated intrusion upon property of disturbances of earth or air including but not limited to vibrations, explosions, light and loud, raucous and unnecessary noise, and the repeated unauthorized intrusion of adjoining property by patrons or users of the premises, which unreasonably disturbs or interferes with the peace, comfort, privacy, and repose of owners or possessors of real property in the enjoyment and the use of their property.

- (3) The repeated unauthorized intrusion upon property by persons or vehicles which adversely disturb the privacy, comfort, peace, repose, and use of owners or possessors of property adjoining the premises where the persons or vehicles complained of originates.
 - (4) The repeated attraction to the premises where the use or condition complained of is maintained by persons who, through frequent raucous or disorderly conduct, through repeated disturbances of the peace or through violation of any law of the state, county, or city, adversely affect ordinarily reasonable and reasonably behaved persons in the enjoyment of their property.
- C. Buildings which are unoccupied, deserted, boarded up, partially destroyed, or left for unreasonably long periods of time in a state of partial construction, disrepair, such as broken windows, partial walls and foundations, incomplete framing, and unpainted or peeled paint surfaces, etc., abuse or neglect as to appearance provided that any unfinished building or structure which has been in the course of construction two (2) years or more, and where the appearance of such unfinished building or structure substantially detracts from the appearance of the immediate neighborhood or reduces the value of property in the immediate neighborhood or is a nuisance, shall be deemed and presumed to have been left for an unreasonably long period of time in the sense of this subsection.
- D. Attractive nuisance dangerous to children and the welfare of the general public, shall be defined as any form of abandoned or broken equipment; partially destroyed buildings, shed or storage buildings; unfenced pools, excavations or wells; junk or abandoned vehicles or boats; freezers, refrigerators, washing or drying machines, stoves or dishwashers.
- E. Overt blocking of drainage pipes, ditches, channels, and streams, so as to cause flooding and adverse affect to surrounding properties.
- F. The existence of excessive growth of weeds or vegetation, or the existence of any accumulation of debris, trash, garden trash, junk, untended growth of vegetation, or undergrowth or dead or living vegetation, upon any property to the extent and manner that such property contains or is likely to contain rodents, reptiles, or other vermin, or furnishes a breeding place for flies, mosquitoes, or wood-destroying insects, or otherwise, threatens the public health, safety, or welfare.

- G. The outdoor storage of all or part of any dismantled, partially dismantled, inoperative or discarded motor vehicle, machinery, farm equipment, aircraft, construction equipment, boat, personal water craft, trailer, truck, motorcycle, or bicycle, which is not located on the premises of a lawfully established storage yard or which is not on the premises of a lawfully established vehicle service establishment and is in the process of repair or maintenance by that establishment.
- H. Any other condition or use that constitutes a nuisance to the public, generally, as that term is defined herein, which is continually or repeatedly maintained, the abatement of which would be in the best interest of the health, safety, or welfare of the citizens of the city.
- I. Prima facie evidence of abandonment. The absence of a license plate for the current year and/or absence of a current motor vehicle registration shall be prima facie evidence that such vehicle has been abandoned, junked or discarded. Further, prima facie evidence shall include whether the vehicle, motor home or trailer is unusable for its intended purpose or is incapable of operation under its own power due to damage, disassembly, deterioration, or the existence of trash or undergrowth in or around the vehicle, motor home or trailer indicating disuse.

Sec. 3-4. Maintenance of Private Property. No person owning, leasing, operating, occupying, or having control of any premises within the City shall maintain, keep, or permit any nuisance, as defined in Section 3-3 above, and as further defined in Section 3-2, affecting the citizens of the City.

Sec. 3-5. Litter Control. It shall be a violation of this chapter for any person to throw, discard, place, drop, or deposit litter in any manner or amount in or upon any public property, private property, highway, street, right-of-way, or body of water in the city, except in areas and containers duly provided.

A. **Littering Prohibited.**

- (1) In any case where litter is ejected or discarded from a motor vehicle, except at approved and permitted disposals sites, the operator of the motor vehicle shall be deemed in violation of this chapter.
- (2) It shall be a violation of this chapter for any person to deposit any item or materials, except litter, in any receptacle placed for public use as a depository litter.

B. **Vehicle Loads.**

- (1) No vehicle shall be driven, moved, stopped, or parked on any highway street, alley, or thoroughfare unless the vehicle is so constructed or loaded as to prevent

any of its load from dropping, shifting, leaking, blowing, or otherwise escaping there from, except that sand may be dropped only for the purpose of securing traction or water or other substances may be sprinkled on a roadway in cleaning or maintaining the roadway.

- (2) It is the duty of every vehicle owner, lessee, or driver of any vehicle hauling, upon any public road or highway open to the public, dirt, sand, lime rock, gravel, silica, or other similar material, to prevent such materials from falling, blowing, or in any way escaping from such vehicle. Covering and securing the load with a close-fitting tarpaulin or other appropriate cover is required.
- (3) Any owner, lessee, or driver of any vehicle from which any materials or objects have fallen, blown, leaked, shifted, or otherwise escaped from the vehicle shall immediately cause the materials or object on public property or private property to be cleaned up and shall pay any cost thereof.

C. **Litter Containers.** It shall be the duty of any and every person, business, corporation, company, lessee, or agent owning or operating any public establishment or public place to keep litter in adequate and suitable receptacles and/or containers capable of holding such materials until proper disposal is accomplished.

D. **Construction Litter.**

- (1) All construction and demolition contractors, owners, or agents, shall provide on-site receptacles for loose debris, paper, building materials wastes, scrap building materials, and other litter products to prevent wind-driven scattering of such materials.
- (2) It is a violation of this chapter for any private property owner, tenant, occupant, lessee, or agent to grant permission to any person to dispose of construction or other debris on such property.

Sec. 3-6. Penalty. Any violation of this section shall be penalized as provided in Section 4 of this ordinance, with each day that such condition continues to exist regarded as a new and separate offense.

SECTION 4. Authority and purpose of Section. This Section is adopted as a method of enforcing the codes and ordinances of the city and is enacted to protect the public health, safety and welfare of the citizens of the city. In no way is this Section intended to replace or exclude the enforcement of code or ordinance violations as otherwise permitted by law.

Sec. 4-1 Designation of code enforcement officer. For the purpose of this article, a code enforcement officer shall be any designated employee or agent of the city whose duty it is to enforce the codes and ordinances enacted by the city.

Sec. 4-2 Authority of officer to issue citations. Any code enforcement officer, so designated by the city council, is hereby authorized to issue a citation to a person or business when, based upon personal investigation, the officer has reasonable cause to believe that the person or business (the violator) has committed a civil infraction violation of a duly enacted code or ordinance of the city, and that the county court, in and for the county will hear the charge.

Sec. 4-3 Citation procedures.

- (a) *Citation with notice.* Prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of the Code or a city ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than thirty (30) days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the stated time period, the code enforcement officer may issue a citation to the person who has committed the violation.
- (b) *Citation without notice.* A code enforcement officer shall not be required to provide the person who has committed a violation of a city code or ordinance with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare or if the violation is irreparable or irreversible.
- (c) *Form of citation.* A citation issued by a code enforcement officer shall be in a form prescribed by the city and shall contain:
 - (1) The date and time of issuance;
 - (2) The name and address of the person to whom the citation is issued;
 - (3) The date and time the civil infraction was committed;
 - (4) The facts constituting reasonable cause;
 - (5) The number of the section of this ordinance violated;
 - (6) The name and authority of the code enforcement officer;
 - (7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation;
 - (8) The applicable civil penalty if the person elects to contest the citation;
 - (9) The applicable civil penalty if the person elects not to contest the citation;
 - (10) A conspicuous statement that, if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation and that, in such case, judgment may be entered against the person for an amount up to a maximum civil penalty.

- (d) *Right to contest citation in county court.* Any person receiving a citation issued under this article must sign and accept a citation indicating a promise to:
- (1) Pay the applicable civil penalty within thirty (30) days of issue; or
 - (2) Appear in Holmes County Court within (30) days of issue to receive a hearing date, the time and location of which shall be determined by the clerk of the county court.
- (e) *Preponderance of evidence required.* At any hearing pursuant to this article, the commission of a violation of a code or ordinance must be proved by a preponderance of the evidence.
- (f) *Applicable rules.* The Florida Rules of Civil Procedure and the Florida Evidence Code shall be applicable to any hearing.
- (g) *Reasonable cause.* For issuance of a citation, a code enforcement officer must have reasonable cause to believe that a person has committed an act in violation of a code or ordinance.
- (h) *Citations to be deposited with the county court with a copy to the city clerk.* After issuing a citation to an alleged violator, a code enforcement officer shall deposit the original and one (1) copy of the citation with the county court, by filing same with the clerk of the county court. The clerk of the county court shall send a copy to the clerk of the city.

Sec. 4-4 Procedure for contesting citation.

- (a) Within fifteen (15) days of the issuance of a citation the person so charged may file a contest to such citation with the clerk of the county court. A copy of the contest must be furnished by the person to the city clerk. The contest shall include the name and address of the person.
- (b) The clerk of the county court shall cause the matter to be set before the county judge on the next reasonably available date, in no less than fifteen (15) days and not more than thirty (30) days, with notices being sent by the clerk to the city clerk and the person contesting the citation.
- (c) The county judge shall, on the appointed date and time, hold a hearing to determine if the citation was properly issued and to hear any other matters pertaining to such citation, and shall make an adjudication upon the evidence so presented, and may assess a civil penalty up to the maximum set by the ordinance. The minimum standards of procedure, excluding pretrial, set forth in the Florida rules of Small Claims shall apply.

- (d) If the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he/she shall be deemed to have waived his/her right to contest the citation. In such case, judgment may be entered against the person for an amount up to the maximum civil penalty.
- (e) The judgment of the court, or a default judgment pursuant to subsection (d) of this section, shall have the same effect as any civil judgment of the county court, and bear interest at the legal rate. In addition, such judgment shall be a lien on the property, real or person, on which the violation exists, and may be enforced as provided by F.S. 162.09(3).

Sec. 4-5 Continuing violations. Each day a violation continues subsequent to the issuance of a citation shall constitute a separate violation, for which the initial notice and period for corrective action shall suffice, for which a separate subsequent citation may be issued, and for which a separate penalty may apply.

Sec. 4-6 Penalties for violation of codes and ordinances.

- (a) A violation of a code or an ordinance cited and enforced under the provisions of this article shall be deemed a civil infraction.
 - (1) For the first violation, by a civil penalty of \$50.00.
 - (2) For the second violation, by a civil penalty of \$150.00.
 - (3) For a third violation, by a civil penalty of \$250.00.
- (b) Any person who fails to pay the appropriate civil penalty or to request a hearing within the time allowed, or who fails to appear in court to contest the citation when a hearing has been requested, or who fails to appear in court as may be required shall be deemed to have waived his right to contest the citation. A judgment may be entered against the person for an amount of \$500.00. The court may issue a rule to show cause, sui sponte, or upon the request of the city. The court rule shall require the violator to appear before the court to explain why action on the citation has not been taken. If the person who is issued such rule to show cause fails to appear in response to the court's order, the violator may be held in contempt of court.

Sec. 4-7 Refusal to sign and accept citation. Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. 775.082 or 775.083.

Sec. 4-8 Judgment of court. If the person fails to pay the civil penalty or request a hearing in the county court; fails to appear in court to contest the citation when a hearing has been requested; or fails to appear in court as may be required; the court may enter judgment for an amount not to exceed five hundred dollars (\$500.00) per infraction and/or may issue an order to show cause upon the request of the issuing agency. The court order to show cause shall require such person to appear before the court to explain why action on the citation has not been taken. If any person who is issued such order fails to appear in response to the court's directive, the person may be held in contempt of court. In lieu of a civil penalty, or in addition to a civil penalty, the court may order the violator to perform a public service.

Sec. 4-9 Provision not applicable to certain building codes. The provisions of this article shall not apply to the enforcement pursuant to F.S. 553.79 and 553.80, of building codes adopted pursuant to F.S. 553.73, as they apply to construction, provided that a building permit is either not required or has been issued by the county. For the purpose of this article, "building codes" means only those codes adopted pursuant to F.S. 553.73.

Sec. 4-10 Payment of Penalties.

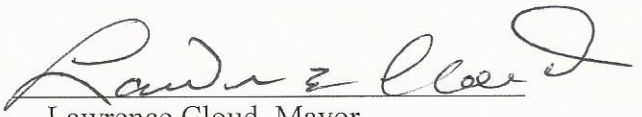
- (a) All civil penalties shall be paid to and collected by the city clerk.
- (b) A total of two dollars (\$2.00) per citation collected shall be credited to the revenues of the issuing agency and earmarked for training purposes. The remaining funds shall be deposited in the general revenues of the city.
- (c) An exception to the general revenues deposit requirement shall be allowed only when specifically designated otherwise by ordinance.
- (d) The city, as an additional remedy, may refer cases of violations not paid and not contested within thirty (30) days of issuance to a collection agency for processing, collection, and notifications of failure to pay the credit bureau.

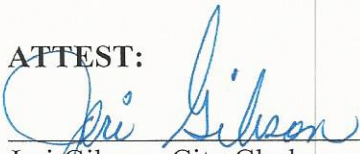
Sec. 4-11 Provisions of article supplemental means. The provisions of this article are additional and supplemental means of enforcing city codes or ordinances and may be used for the enforcement of all codes and ordinances duly adopted by the city council. Nothing contained in this article shall prohibit the city from enforcing its codes or ordinances by other means.

SECTION 5. SEVERABILITY. Each separate provision of this ordinance is deemed independent of all other provisions herein so that if any portion or provision of this ordinance is declared invalid, all other provisions thereof shall remain valid and enforceable.

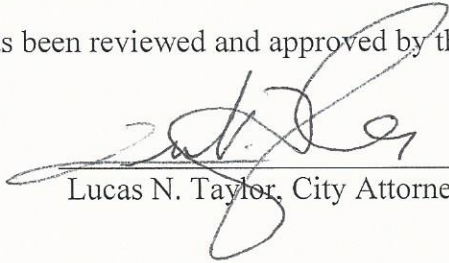
SECTION 6. EFFECTIVE DATE. This ordinance shall become effective immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OR BONIFAY, FLORIDA ON
THIS 11th DAY OF March, 2013.

By: 
Lawrence Cloud, Mayor

ATTEST:

Jeri Gibson, City Clerk

The form and legal sufficiency of the foregoing has been reviewed and approved by the City Attorney:


Lucas N. Taylor, City Attorney

