

ORDINANCE NO. 21-2007

A ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 54, SECTION 54-81 ENTITLED "PROPERTY MAINTENANCE STANDARDS, GENERALLY"; SECTION 54-82 ENTITLED "BOARDED UP BUILDINGS, HURRICANE SHUTTER REMOVAL REQUIRED"; SECTION 54-131 ENTITLED "NUISANCE DECLARED"; SECTION 54-132 ENTITLED "NUISANCE TO BE ABATED"; AMENDING SECTION 54-133 ENTITLED "PROCEDURE FOR ABATEMENT OF NUISANCE"; SECTION 54-134 ENTITLED "APPEAL PROCEDURE"; PROVIDING FOR SEVERABILITY, PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, §2(b) of the Constitution of the State of Florida and Chapter 166, Florida Statutes, the Town of Lake Park, Florida (the "Town") has the governmental and corporate powers of a duly constituted municipality; and

WHEREAS, the Town Commission has previously adopted provisions pertaining to property maintenance and nuisance abatement which have been codified in Chapter 54, Sections 54-81, 54-82, 54-131, 54-132, 54-133 and 54-134; and

WHEREAS, subsequent to the adoption of these provisions, it has become apparent that minor revisions need to be made to various portions of these Code Sections in order to provide the Town with more flexibility in property maintenance and abating certain nuisances in an expedient manner; and

WHEREAS, Town staff has recommended that the Town Commission amend Code Sections 54-81, 54-82, 54-131, 54-132, 54-133, and 54-134, as provided herein; and

WHEREAS, the Town Commission, after due notice and public hearings, deems it to be in the interest of the public health, safety and general welfare to amend Chapter 54, Sections 54-81, 54-82, 54-131, 54-132, 54-133, and 54-134, pertaining to property maintenance and nuisance abatement as recommend by Town staff.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The foregoing recitals are adopted herein as true and correct findings of fact and conclusions of law of the Town Commission.

Section 2. Chapter 54, Article III, Sections 54-81, 54-82, 54-131, 54-132, 54-133, and 54-134 are hereby amended to read as follows:

Sec. 54-81. Property maintenance standards. general.

(a) Applicability. These regulations shall apply to all private property, including all buildings and structures within the town.

(b) General regulations.

(1) All buildings and structures, both existing and new, and all parts thereof, shall be maintained in good repair and kept in a sound, safe and sanitary condition. All devices or safeguards which are required by this article in a building when erected, altered, or repaired shall be maintained in good working order. The owner, or the owner's designated agent, and the tenant shall be responsible for the maintenance of buildings, structures and premises. The exterior of all buildings or structures shall be kept free from stains, mold, mildew, peeling paint, discoloration, graffiti, and general disrepair. Buildings or structures shall have no missing windows, doors, or railings .

(2) All driveways, sidewalks, and parking areas shall be maintained reasonably free of discoloration or deterioration, including potholes.

(3) Fences and walls shall be maintained structurally sound (such as vertically plumb).

Fences and walls shall be maintained in their original condition (such as reasonably free of discoloration, staining, or peeling).

(4) Hedges shall be trimmed and maintained in a healthy and neat condition; and shall not extend onto or over public or adjoining private properties or road rights-of-ways.

(c) Maintenance of construction sites. All construction sites shall be maintained in a clean and orderly condition during the entire construction process. Only town approved dumpster(s)/enclosure(s) shall be located on site throughout the construction process. The dumpster(s)/enclosure(s) shall be emptied when full, or if it emits noxious odors, or is attracting vermin or insects. All construction debris, materials, equipment, trailers, and other property, used directly or indirectly in connection with the construction activities, shall be physically contained within the boundaries of the construction site. Dumpster(s)/enclosure(s) may be required for additions or remodeling of single-family dwellings if deemed necessary by the Community Development Director.

Sec. 54-83. Boarded up buildings, hurricane shutter removal required.

(3) If real property in any zoning district is secured for more than thirty (30) days, except in the case of a natural disaster, the boards, panels or other means of securing structural openings shall be painted to match the exterior color of the building and shall be cut and placed so as to fit within form to the opening being secured.

(5) Any device (including wood or approved hurricane shutters) used for the securing of a property during a declared hurricane or tropical storm shall be removed no later than twenty-eight ~~fourteen~~ (28) days after the lifting of any hurricane or tropical storm warning or watch unless:

- (a) A hurricane or tropical storm watch occurs during the ~~twenty-eight fourteen~~ (28) day period, at which point the ~~twenty-eight fourteen~~ (28) day period begins anew after the hurricane or tropical storm conditions have subsided; or
 - (b) The structure is used for residential purposes, but no person is in residence and the structure is secured by manufactured storm shutters.
- (6) In no case shall plywood sheets be used for the boarding of occupied residences beyond the times set out in subsections (4) and (5) above.

Sec. 54-131. Nuisance declared.

It is hereby declared and determined by the town commission, that the following shall each individually, or in any combination, be considered nuisances when they exist upon a lot in the ~~unincorporated area of the town~~:

- (3) Uncultivated vegetation greater when:
 - a. Greater than twelve (12) inches in height located on nonresidential vacant lots; or
 - b. Greater than ~~eight seven~~ (8) inches in height when located on developed or undeveloped residential or developed nonresidential lots.

Sec. 54-132. Nuisance to be abated.

~~It is further determined by the town commission, that~~ Any nuisance declared by this section, which is found, on any property within the town ~~a lot in the unincorporated area of the town~~ shall be abated in the following manner:

- (1) If the nuisance consists solely of accumulations of waste, yard trash, or rubble and debris as provided in subsections 54-131(1) and (2), it shall be abated in its entirety, provided that the nuisance exists ~~lies~~ upon a lot which is adjacent to a property which is developed ~~and used~~ or has been used for residential, commercial or industrial purposes; or
- (2) If the nuisance consists solely of uncultivated vegetation as provided in subsections 54-131(3), (4) and (5), and the parcel is less than one and one-half ($1\frac{1}{2}$) ~~acres~~ in size, the nuisance shall be abated in its entirety. If the parcel is greater than one and one-half ($1\frac{1}{2}$) ~~acres~~ in size, the nuisance shall be abated on the portion one hundred twenty-five (~~25~~) feet of the boundary of any adjacent property, which is developed ~~and used~~ or has been used for residential, commercial or industrial purposes.
- (3) In cases involving areas declared by the town commission as blighted, pursuant to state statutes, or in any cases which there is evidence of vagrants using the overgrown property for habitation, or that crimes of a violent nature, or crimes involving the sale or possession of illegal substances are occurring on the premises, then the nuisance may be abated in its entirety, regardless of lot size, ~~provided that the nuisance lies upon a lot which is adjacent to property which is developed.~~ The evidence of such activities required must be documented by the town code compliance division or other appropriate law enforcement agency. ~~For purposes of this section only, rights-of-way shall be considered adjacent, developed property.~~ In abating such nuisances, property owners owner and the town are encouraged to preserve, and need not clear, trees and *Serenoa repens* (commonly known as Saw Palmetto); ~~and provided further that the~~ Property owners and the town are encouraged to clear *Melaleuca quinquenervia* (commonly

known as Punk Tree, Cajeput, or Paper Bark Tree), *Casurina Spp.* (commonly known as Australian Pine); *Acacia Ariculaeformis* (commonly known as Earleaf Acacia); and ~~provided further that the property owners and the town shall be required to clear~~ *Schinus terebinthifolius* (commonly known as Brazilian Pepper).

(4) If the nuisance consists of the obstruction of adequate view of intersections, crossings, or traffic signs, the nuisance shall be abated in accordance with the safe sight distance triangles provisions of the Code or other applicable regulations, and when not provided by law or ordinance in that section, the nuisances shall be abated so as to afford a clear, unobstructed view.

(5) If the nuisance consists of dead trees, only those standing dead trees located in an area that, if they fell, would likely cause damage to adjacent developed lots, sidewalks, or rights-of-way, need be removed.

(6) If the nuisance consists in part of uncultivated vegetation and in part of other nuisances declared by this article, the provisions of subsections (1), (2) and (3) shall each apply to its abatement.

Sec. 54-133. Procedure for abatement of a nuisance.

(a) ~~Authorized agents, employees and independent contractors of the~~ The community development department ~~are is~~ empowered to enter upon and inspect lots on which a nuisance is suspected to exist. Any code compliance officer or Palm Beach County Sheriff's deputy or other authorized agent, employee or independent contractor of the town shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon residential, commercial or industrial property while in the discharge of duties imposed by these regulations. If an inspection reveals the presence of a nuisance, the community development department shall notify the property owner of the nuisance in the manner provided in section 9-42. by registered or certified mail, return receipt requested, sent to the last known address of the owner, that a nuisance exists which is a violation of this ordinance. The notice shall also:

- (1) Advise the property owner of the right to a hearing as provided in section 54-134;
- (2) Specify what corrective action must be taken and the date by which the corrective action must be completed;
- (3) State that a failure to abate the nuisance as required by the notice will result in the abatement of the nuisance by the town community development department or an outside contractor retained by the town abating it--and that the cost incurred by the town in the abatement of the nuisance of which action shall be assessed against the property as a lien; and
- (4) That a lien shall be recorded against the property in the public records of Palm Beach County.
- (5) That the failure of the property owner to file an appeal of the determination of a nuisance before the expiration of the date specified in the notice for completion of the corrective action, shall constitute a waiver of the property owner's right to a hearing and right to appeal the town's determination of a nuisance.

The appeal forms required in section 54-134 shall be included in the notice, along with a statement that such form must be used to appeal the administrative determination. ~~The~~

~~property owner shall have thirty (30) days from the date notice is mailed to abate the nuisance.~~

(b) ~~If an appeal is filed, a quasi-judicial hearing will be scheduled by the town's code compliance division before the town's special magistrate. The town shall give the property owner notice of the hearing in the manner provided in section 9-42. an enforcement action shall proceed as provided in section 54-133.~~

(c) ~~If no appeal is filed or if the notice sent as provided in subsection 54-133(g) is returned unclaimed,~~ the community development department shall, upon the expiration of the compliance date notification period, re-inspect the property lot to determine whether or not the nuisance has been abated to the satisfaction of the town. If the community development department determines that the property lot still harbors a nuisance, and/or the required corrective action is not completed to the satisfaction of the town manager, the town may immediately commence all reasonable actions necessary to abate the nuisance. it shall cause its abatement according to the provisions of this article. To accomplish that goal, the community development department and/or its agents are authorized by the town commission to enter upon the property lot and to take all steps reasonably necessary to effect the abatement.

(d) If abatement is effected by the community development department, ~~as provided in subsection (e),~~ the cost to the town of abating the nuisance on each lot, including an administrative and operating fee of six hundred dollars (\$600.00), shall be calculated and assessed against the lot by the community development director or the town manager. The assessment shall contain a legal description of the property, the street or physical address, describe the lot, show state the cost of abatement, and specify the administrative and operating fee. The community development department shall mail a notice of the assessment to the owner at the owner's last known address by regular U.S. mail. Until full payment is received, assessments shall be legal, valid and binding liens obligations upon the property. The assessment shall become due and payable to the town as of the date of the mailing of the notice of assessment, interest shall begin to accrue at the statutory rate of eleven (11) percent per annum on any unpaid portion thereof.

(e) As soon as possible after the assessment has been made by the community development director or town manager, a certified copy of the assessment shall be recorded in by way of a claim of lien for assessments in the official records of the town maintained by the town clerk, and the Claim of Lien shall also be recorded in the public records of Palm Beach County. The lien shall become effective on the date that a copy of the lien is recorded.

(f) Lien assessments, together with interest thereon, may be enforced by civil action in the appropriate court of competent jurisdiction. The lien created hereby shall be a first lien, equal to a lien for nonpayment of property taxes, on any lot against which an assessment for costs to abate a nuisance has been recorded. The lien shall continue in full force until discharge by payment or otherwise, until settled and released by the community development director or the town manager.

(g) The community development department shall mail a notice that a lien has been recorded to the record owner of ~~each of each~~ lot described in the lien for the assessments. The notice shall be sent by certified or registered mail, return receipt requested, to the owner's last known address. The notice shall be in a form prepared by the community development department, which shall include the following information:

Name and address of the owner;
Legal description of the lot where the nuisance has been abated;
Date of mailing of the notice of the lien;
A brief description of the nuisance;
Date that notice was originally sent to abate the nuisance;
A statement of the actual costs of abatement, the administrative fee, and any interest due;
Instructions regarding payment and removal of the lien; and
Additional information as necessary and appropriate.

(h) Nothing in this part shall prevent the town or the community development department from pursuing enforcement of this article through other processes.

Sec. 54-134. Appeal procedures.

At any time before the expiration of the time specified in the notice for the completion of the corrective action to abate the nuisance, Within twenty-five (25) days after the initial notice of a nuisance is sent by the community development department, as provided in section 54-133, the property lot owner may appeal the town's determination that a nuisance exists on the property by submitting an appeal on form prepared by the community development department together with make written request to the town for a hearing before the special magistrate to show that the condition alleged in the notice does not exist, or to show that the condition does not constitute a nuisance. Notice of the right to a hearing shall be included in the initial notice to the lot owner. The owner's appeal shall be submitted upon forms to be provided by the community development department, and shall be accompanied by a certified check or money order in the amount of two hundred dollars (\$200.00) made payable to the town Town of Lake Park, which amount shall constitute a fee necessary to defray the costs to the town, the town attorney, the community development department, and for the sSpecial mMagistrate hearing, and the processing and administering the appeal. Failure to file an appeal or to appear before the sSpecial mMagistrate within the proscribed time shall be deemed a waiver of the property lot owner's rights to appeal the administrative action. The special magistrate shall hear the appeal on its regularly scheduled agenda and the hearing shall be conducted in accordance with the procedure set forth in section 9-37, and fines, costs and fees may be imposed by the special magistrate in the same manner as provided in section 9-39. and other. The town's code compliance division special magistrate shall give the property lot owner seeking an appeal written notice of the date and location of the scheduled hearing in the same manner as provided in section 9-42. At the hearing, the town and the lot owner may introduce such evidence as is relevant. The hearing shall be conducted in accordance with the rules of procedure applicable to code enforcement proceedings. The decision of the sSpecial mMagistrate shall be final and the final order finding a nuisance and imposing a fine and costs shall be recorded by the town and shall constitute a lien of the town against the subject property any other property owned by the property owner in the state of Florida.

Section 3. Codification.

The provisions of this Ordinance shall become and be made part of the Code of Laws and Ordinances of the Town of Lake Park.

Section 4. Severability.

If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 5. Repeal of Laws in Conflict.

All ordinances or parts of ordinances of the Town of Lake Park, Florida, which are in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. Effective Date.

The provisions of this Ordinance shall become effective upon adoption.

Upon First Reading this 22 day of August, 2007,
 the foregoing Ordinance 21-2007, was offered by Commissioner Balius
 who moved its approval. The motion was seconded by Vice-Mayor Daly,
 and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	<u>X</u>	_____
VICE MAYOR ED DALY	<u>X</u>	_____
COMMISSIONER CHUCK BALIUS	<u>X</u>	_____
COMMISSIONER JEFF CAREY	<u>X</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	_____

Upon Second Reading this 12 day of September, 2007, the foregoing
 Ordinance 21-2007, was offered by Commissioner Balius who
 moved its adoption. The motion was seconded by Commissioner Carey,
 and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	<u>X</u>	_____
VICE MAYOR ED DALY	<u>X</u>	_____
COMMISSIONER CHUCK BALIUS	<u>X</u>	_____
COMMISSIONER JEFF CAREY	<u>X</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	_____

The Mayor thereupon declared Ordinance No. 21-2007 duly passed and adopted this
12 day of September, 2007.

TOWN OF LAKE PARK, FLORIDA

BY: *Paul Castro*
 Mayor Paul Castro

ATTEST:

Vivian Mendez
 Vivian Mendez
 Town Clerk
 TOWN OF LAKE PARK
 SEAL
 FLORIDA

Approved as to form and legal sufficiency:
Thomas J. Baird
 for Thomas J. Baird, Town Attorney