

**ORDINANCE 2011-24**

(Amendments to Chapter 12, Health, Sanitation, Nuisances - Correcting cross-references and removing redundancies)

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES, CHAPTER 12, HEALTH, SANITATION, NUISANCES; CLARIFYING CONDITIONS, CONSOLIDATING RIGHTS OF PROPERTY OWNERS, UPDATING CROSS REFERENCES WITH OTHER SECTIONS OF THE CODE OF ORDINANCES, REMOVING REDUNDANCIES, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ENACTED** by the City Commission of the City of Lake Wales, Polk County, Florida:

**SECTION 1: DIVISION 2. DEBRIS, WEEDS, WILD GROWTH AND UNSANITARY CONDITIONS**

**Sec. 12-36. - Debris, noxious growths and unsanitary conditions on premises is amended as follows:**

(a) It shall be the duty of each property owner and householder in this city to remove all debris, weeds or other noxious growths from his or her property, including the streets and sidewalks bordering thereon, and keep the same in good, clean, sanitary condition, and upon a failure to perform such duty, after due notice from the city, shall be subject to enforcement procedures and penalties provided in section 12-38 or as provided in article III of this chapter.

(b) It shall be unlawful for any person to allow the accumulation or occurrence on any property in the city limits any of the following:

(1) (a) Debris, trash, cans, paper or other litter.

(2) (b) Stagnant water.

(3) (c) Diseased, damaged or dead trees.

(4) (d) Dense growth of vines, underbrush, weeds, wild growth and/or grass.

(5) (e) Any condition which provides or may provide a nest and/or breeding ground for insects, rodents, snakes or any other types of pests.

(6) (f) Any condition which is or may become a menace to life, property, public health.

(7) (g) Any condition which creates or may create a fire hazard.

**Sec. 12-39 – Rights of property owner is repealed:**

**~~Sec. 23-39. Rights of property owner.~~**

~~(a) Protest by property owner: code enforcement board determination final. The property owner or his duly authorized agent may elect to protest the notice as set forth in section 12-35. To do so, he must file a written appeal with the city clerk within ten (10) days of the date of the notice to the owner. The appeal shall be~~

placed on the agenda of the next regular code enforcement board meeting, and the code enforcement board shall determine conclusively whether the condition described in the section 12-34 hereof does or does not exist and such determination shall be final. If the owner or duly authorized agent fails to appeal the notice as set forth in section 12-35 in the time prescribed, such owner or agent shall waive any right to question whether or not the condition as described in the notice to the owner or agent did, in fact, constitute a public nuisance, and that the owner or agent shall not be entitled to raise that defense in any subsequent foreclosure proceeding, or any other proceeding incident to a lot cleaning.

*(1) Determination that condition does not exist.* If the code enforcement board determines that the situation and conditions as set forth herein and in the notice to the owner do not exist, then such notice to the owner shall be considered forthwith null and void and of no effect, and no action shall be taken by any agency of this city in regard to such condition at that time.

*(2) Determination that condition does exist.* If the code enforcement board shall determine that the condition described in the notice to the owner does exist, then from the date of such determination by the code enforcement board, the owner shall be given a period of time as specified by the board to correct such condition. Upon failure of the owner to correct such condition within the time specified, the city manager shall direct the appropriate agency of the city to correct such conditions as outlined in the preceding section 12-35 where no protest has been made.

*(b) Payment within specified time when conditions remedied by city.* After following the procedures outlined herein in those cases where the owner shall not correct or remedy the condition prescribed in the notice and the city takes action pursuant to the notice to have the lot, parcel, or strip of land cleaned, the expenses incurred in remedying the condition shall be computed in accordance with effective rates, and a statement of this expense shall be mailed to the owner of the affected property. In addition to the expense of actually cleaning the lot or strip, the city shall be entitled to include an administrative fee of fifteen (15) percent of the lot cleaning expense, but not to exceed ten dollars (\$10.00).

*(1) Nonpayment of costs constitutes lien against property.* If the owner or his agent fails to make payment within thirty (30) days, the expense shall become and automatically constitute a lien and charge upon the property, which shall be payable with interest at the rate of ten (10) percent per annum from thirty (30) days after the statement was mailed to the owner, and which expense and charge shall be a first and prior lien against the property, subject only to the lien of taxes due to the county and state, and of the same character as a lien of the city for municipal taxes. Upon failure of the owner of said property to pay the lien, it will be foreclosed in the same manner as tax liens in favor of the city are foreclosed, or foreclosed in the same manner as mortgages under the laws of the state are foreclosed, and it shall be lawful to join in any complaint for foreclosure any one

~~(1) or more lots or parcels of landowners. The suit for foreclosure may be brought at any time after the expiration of sixty (60) days after the statement has been mailed to the owner. In addition to the costs and expenses which constituted the lien and the interest accumulated thereon, the city shall be entitled to collect and receive its costs in prosecuting the foreclosure, which costs shall include court costs, reasonable attorney's fees, abstracts costs, publication costs, and such costs as are assessable in foreclosure actions.~~

~~(2) *Property owner's right to hearing before the code enforcement board.* Any property owner shall have the right to have a hearing before the code enforcement board to show cause, if any, why said expenses and charges should not constitute a lien against the property; provided, however, that the finding by the code enforcement board that the condition described herein and notice to the owner thereof exists shall be final.~~

**Sec. 12-40 is renumbered 12-39.**

**Sec. 12-41 is renumbered 12-40.**

## **SECTION 2: DIVISION 4. ABANDONED, WRECKED, JUNKED PROPERTY**

**Sec. 12-71 – Definitions is amended as follows:**

*Other abandoned property* shall mean all other personal property other than that defined as a “vehicle” ~~above~~ below.

**Sec 12-76 – Appeal is repealed.**

~~Any person may postpone the operation of such order of the city manager by filing a notice of appeal with the city clerk on or before four (4) hours from the time the vehicle was ordered to be removed. If such appeal is filed, the city manager or his designated representative shall not take action until such appeal is reviewed by the code enforcement board at its next regular meeting, following the filing of the notice of appeal. In the event the appeal is denied, such automobile shall be removed, at the owner's expense, within twenty four (24) hours after the person making the appeal is notified of the adverse decision by the code enforcement board. If the appeal is granted by the code enforcement board, the order of the city manager or his designated representative shall be of no force and effect. Appeals may be sought through the code enforcement board.~~

**Sec 12-77 – Disposition of vehicle is repealed.**

~~(a) If the vehicle is not removed in accordance with the notice set forth in this chapter, the city manager may cause the vehicle to be removed. The city manager shall cause the vehicle to be retained by the city or its representative for a period of forty five (45) days after the vehicle is removed. At any time during the forty five (45) day period after removal, the owner, upon presenting proof of ownership by title, registration or a bill of sale to the city manager or his representative and~~

~~paying any required fee to the city, shall be issued a release which will allow the owner to pick up the vehicle at the depository where the vehicle has been stored. The owner will be required to remove the vehicle from the depository to a satisfactory place of storage within forty-eight (48) hours. The owner will be required to pay such reasonable towing fees, per diem storage fees, and such other reasonable and necessary fees as may be charged to the city by private contractors from time to time, and the most current list of such charges shall be on file in the office of the city clerk.~~

~~(b) If the vehicle is not claimed within the forty-five (45) day period, the city manager or private contractor may dispose of the vehicle in any manner permitted by law.~~

**Sec 12-78 – is renumbered 12-76.**

**Sec. 12-79 – is renumbered 12-77.**

**SECTION 3: ARTICLE III. CODE ENFORCEMENT  
DIVISION 1. GENERALLY**

**Sec. 12-203 – Applicability is updated as follows:**

The provisions of this article shall apply in the incorporated area of Lake Wales to the enforcement of the following city codes as they may be amended from time to time:

- (1) Chapter 6, Animals.
- (2) Chapter 12, article II, Nuisances.
- (3) Chapter 20, section 20-3(4), commercial parking in residential areas.
- (4) Chapter 23, article II, division 9, sign regulations.
- (5) Chapter 23, article II, division 10, swimming pool regulations.

**SECTION 4: DIVISION 2. ENFORCEMENT PROCEDURE**

**Sec. 12-211 - Initiation of proceedings is amended as follows:**

(b) Except as provided in subsections (c) and (d), if a violation of the codes is found, the code enforcement officer shall notify the violator and give him a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement officer shall notify the code enforcement board and request a hearing. A hearing shall be scheduled, and written notice of such hearing shall be ~~hand delivered or mailed as provided~~ as set forth in subsection 12-216(a) to said violator. ~~At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in subsection 12-216(b).~~ If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code

enforcement officer, the case may be presented to the code enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

**Sec. 12-216 – Notices is amended as follows:**

Notice shall be provided in accordance with § 162.12 Florida Statutes as amended from time to time.

~~(a) All notices required by this division shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by a law enforcement officer, code enforcement officer, or other person designated by the city; or by leaving the notice at the violators usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person of the contents of the notice.~~

~~(b) In addition to providing notice as set forth in subsection (a), at the option of the code enforcement board, notice may also be served by publication or posting as follows:~~

~~(1) a. Such notice shall be published once during each week for four (4) consecutive weeks in a newspaper of general circulation in the county. The newspaper shall meet such requirements as are prescribed in F.S. Ch. 50, for legal and official advertisements.~~

~~b. Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.~~

~~(2) a. In lieu of publication as described in paragraph (1), such notice may be posted for at least ten (10) days in at least two (2) locations, one (1) of which shall be the property upon which the violation is alleged to exist and the other of which shall be in city hall in a location where public notices are normally posted.~~

~~b. 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 date and places of its posting.~~

~~(3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a).~~

~~(4) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection (b), shall be sufficient to show that the notice requirements of this division have been met, without regard to whether or not the alleged violator actually received such notice.~~

**Sec. 12-217 – Appeals is amended as follows:**

(a) Notice of violation - Any owner aggrieved by the findings and order of the code enforcement officer as set forth in section 12-211 shall have the right to appeal said decision prior to the expiration of the time within which such owner was given to correct the nuisance. Any appeal taken pursuant to this section must be requested in writing and received by the city clerk as 201 W Central Avenue. The enforcement officer will place the appeal on the agenda of the next scheduled regular code enforcement board hearing

(b) Final administrative order – An aggrieved party, including the city, may appeal a final administrative order of the code enforcement board to the circuit court. Such appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the board. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

**SECTION 5: DIVISION 3. SUPPLEMENTAL ENFORCEMENT PROCEDURES**

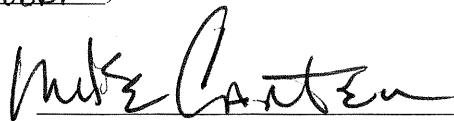
**Sec. 12-221 – Code enforcement citation system is amended as follows:**

(a) In accordance with F.S. § ~~162.71~~ 162.22, a code enforcement citation system is established to provide a supplemental means of enforcing city codes and ordinances under circumstances which are not conducive to enforcement through procedures provided in division 2.

**SECTION 6:** If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

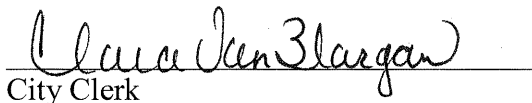
**SECTION 7:** This ordinance shall become effective immediately upon passage by the City Commission.

**CERTIFIED AS TO PASSAGE** this 4<sup>th</sup> day of October, 2011.



Mayor/Commissioner  
City of Lake Wales, Florida

ATTEST:

  
City Clerk