

ORDINANCE NO. 14-_____

AN ORDINANCE AMENDING POLK COUNTY ORDINANCE 08-047, AS AMENDED, “POLK COUNTY PROPERTY MAINTENANCE ORDINANCE” BY PROVIDING FOR AN AMENDMENT TO SECTION 4 TO REVISE CERTAIN DEFINITIONS; PROVIDING FOR AN AMENDMENT TO SECTION 6(d) TO CHANGE SIZE OF A LOT SUBJECT TO THE ORDINANCE FOR OVERGROWN LOTS; PROVIDING AN AMENDMENT TO SECTION 6 MAKING IT UNLAWFUL FOR A STRUCTURE OR PROPERTY TO HAVE INSECT AND RODENT INFESTATION, FOR A VACANT STRUCTURE TO BE OPEN TO THE PUBLIC, OR FOR FAILURE TO POST OR DISPLAY THE ASSIGNED BUILDING NUMBER; PROVIDING FOR AMENDMENT TO SECTION 9, TO CHANGE THE TIME IN WHICH AN OWNER HAS TO PAY THE COSTS PRIOR TO A LIEN BEING FILED, REQUIRING PAYMENT OF COSTS IF THE VIOLATION RECURS, REMOVING REQUIREMENT THAT NOTICES OF LIEN TO BE SENT BY CERTIFIED OR REGISTERED MAIL, AND MAKING TECHNICAL AND GRAMMATICAL REVISIONS; PROVIDING FOR RATIFICATION OF NOTICES, ABATEMENTS AND LIENS OCCURRING PRIOR TO THE EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE FOR ORDINANCE.

WHEREAS, Polk County, by and through its Board of County Commissioners, wishes to promote, protect, and improve the health, safety and welfare of the citizens of unincorporated Polk County, by creating a procedure to allow for Polk County to abate the threat to the public safety, health and welfare due to overgrown lots of two acres or less in size, infestation, vacant structures open to the public, or failure to post or display the assigned building numbers;

WHEREAS, this Ordinance is intended to provide an equitable, expeditious, effective and inexpensive method of enforcing Polk County’s police powers regarding these public threats; and

WHEREAS, the Polk County Board of County Commissioners expressly finds that vacant structures open to the public constitutes an attractive nuisance to children and is otherwise detrimental to the public health, safety and welfare of the citizens of unincorporated Polk County; and now therefore,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA:

SECTION 1: Section 4(e) of Polk County Ordinance 08-047 is hereby amended to read as follows:

(e). *Division:* shall mean the Polk County Building and Codes Division, the division within Polk County government that is responsible for the enforcement of the codes and ordinances of Polk County, or other division designated by the County Manager to carry out the provisions of this Ordinance.

SECTION 1: Section 6(d) of Polk County Ordinance 08-047 is hereby amended to read as follows:

- (d). **Overgrown Lots:** Overgrown lots are prohibited as follows:
- (1). except as provided in this subsection, any grass or weeds on a lot two acres or less in size that is adjacent to a parcel that contains a residential or commercial building shall not exceed the height of eighteen (18) inches from the ground for more than ten (10) percent of the property;
 - i. except on lots in which the majority of the lot is being used for agricultural purposes, on such lots any grass or weeds within twenty-five (25) feet of an adjacent property line of a lot that contains a residential or commercial building shall not exceed the height of eighteen (18) inches from the ground.
 - (2). except as provided in this subsection any grass or weeds on a lot larger than two acres in size shall not exceed the height of eighteen (18) inches from the ground within two hundred (200) feet of an adjacent property line of a lot that contains a residential or commercial building;
 - i. except on lots in which the majority of the lot is being used for agricultural purposes, on such lots any grass or weeds within twenty-five (25) feet of an adjacent property line of a lot that contains a residential or commercial building shall not exceed the height of eighteen (18) inches from the ground.

SECTION 2: Section 6 of Polk County Ordinance 08-047 is hereby amended and supplemented with the addition of the following new subsections to read as follows:

(g). Infestation: It shall be unlawful for any structure or property to be infested with insects or rodents.

(h). Vacant structure open to the public: It shall be unlawful for any vacant structure to be open to the public. A vacant structure open to the public, includes without limitation, any residential, commercial or industrial building which is not being lawfully resided in or conducting business and which a portion of the exterior building, a door or a window is in disrepair, open, or not secured.

(i). Building numbering: It shall be unlawful for an owner of a residential, commercial, or industrial building to fail to display the building number, assigned by Polk County, on or near the building in accordance with the following requirements:

- (1). The building number shall be displayed by the permanent attachment or affixing of the building number to the building front or to a separate structure located in front of the building, such as a mailbox, post, wall or fence.
- (2). The building number shall be clearly visible and legible from the roadway on which the building faces and shall clearly identify the building to which it is assigned.
- (3). The building number shall be displayed by the use of Arabic numerals of a height not less than three inches and of a color which contrasts with the color of its immediate background.

- (4). The numerals used for a display of a building number shall be made of durable weather resistant material and shall be permanently affixed to their supporting structure.

SECTION 3: Section 9 of Polk County Ordinance 08-047 is hereby amended to read as follows:

SECTION 9: ENFORCEMENT PROCEDURE AND ASSESSMENT OF COSTS AND FEES

- (a). A code officer is empowered to investigate a violation of this Ordinance. If an inspection reveals that a violation of this Ordinance exists, the code officer or Division shall notify the owner by registered or certified mail, return receipt requested, sent to the address of the owner as on record with the Polk County Property Appraiser's Office, that a violation of this Ordinance exists and shall contemporaneously post the property with a copy of the notice described herein on 8^{1/2} x 11 sheet of paper attached to a yellow placard. Unless an emergency hearing is requested by the Division pursuant to Section 10(b), the owner of the property shall have ten (10) days from the date in which the property was posted to correct the violation. Proof that an attempt has been made to mail notice together with proof of posting of notice shall be sufficient to show that the notice requirements of this Ordinance have been met, without regard to whether or not the owner actually received such notice.

The notice shall:

- (1). state the nature of the violation with reference to the section of this Ordinance defining the violation;
 - (2). specify the corrective action that must be taken;
 - (3). specify the date in which the corrective action must be taken;
 - (4). state that a failure to abate the violation will result in Polk County abating it, the cost of which action shall be assessed against the property;
 - (5). state the owner has the right to appeal by filing a written request with the Polk County Code Enforcement Special Magistrate's office within ten (10) days of posting of the property with the address in which appeal should be sent with the appropriate appeal fee;
 - (6). state the procedure to request an extension of time from the Division Director; and
 - (7). state that if the violation recurs or if the violation is a recurrence of a previous violation, notwithstanding whether the abatement is effected by the owner or Polk County, the owner shall be responsible for all costs incurred by Polk County for the original violation and recurrence of the violation, including without limitation, all vendor, administrative, and operating costs.
- (b). If an appeal is filed, enforcement action shall proceed as provided in Section (10) of this Ordinance.
 - (c). If no appeal is filed as provided in Section (10) of this Ordinance and no extension of time is granted by the Division Director or the Division Director's designee as provided in subsection (i), the Division shall, upon the expiration of the notification period, reinspect the lot to determine whether or not the violation has been abated. If the Division determines that the lot still consists of the violation, the Division shall cause the abatement according to the provisions of this Ordinance. To accomplish the abatement of the violation, the Division or its designee is authorized by the Board of County Commissioners to enter upon the lot and to take steps reasonably necessary to effect abatement of the violation. If the property consists of unserviceable vehicles, the Division is further authorized to have such vehicle

removed by any firm or person regularly engaged in business of transporting vehicles by wrecker, any such firm or person shall be entitled to a reasonable towing fee and a reasonable storage fee and lien for same as provided by County Ordinance. All costs of removal of such vehicle shall be the sole responsibility of the property owner and no towing or storage fee shall be charged to or collected from Polk County unless specifically authorized by the Division Director.

- (d). If abatement of the violation is effected by the Division as provided in subsection (c), the costs to Polk County of abating the violation on each lot, including without limitation, all vendor, administrative, and operating costs, shall be calculated and assessed against the property as an assessment pursuant to Florida Law and may be collected pursuant to Florida Statute §197.3632.
- (e). In those instances where abatement of the violation is effected by the owner and the violation recurs within five years on the same property while still owned by the same owner, all costs reasonably and necessarily incurred by Polk County for the original violation and recurrence of the violation, including without limitation, all vendor, administrative, and operating costs, shall be assessed against the property as an assessment pursuant to Florida Law and may be collected pursuant to Florida Statute § 197.3632. Notwithstanding, whether the abatement of the recurred violation is effected by the owner or Polk County, the costs for the original violation and recurrence of the violation shall be assessed against the property.
- (f). The Division shall mail a notice of the assessment to the owner at the address on record with the Polk County Property Appraiser Office specifying the violation that was abated, the address or parcel identification number of the lot in which the abatement occurred, the costs of abatement with a statement that if not paid in full or an appeal filed in writing with the Polk County Code Enforcement Special Magistrate Office at the address provided in the notice within thirty (30) days of the notice being sent, the costs shall be recorded against the owner as an assessment and will create a first lien, equal to a lien for nonpayment of property taxes. Such notice shall specify the date certain in which the costs of abatement must be paid or appeal filed.

If an appeal is requested pursuant to this subsection, the only issue to be determined is whether or not the costs in the notice is the actual costs incurred by Polk County and/or if the notice describes the proper property and owners, the Polk County Code Enforcement Special Magistrate is not authorize to reduce or waive the costs incurred by Polk County pursuant to this section.

- (g). If the any costs remain unpaid after thirty (30) days of notice being sent pursuant to subsection (f), the Division Director is hereby authorized and shall record in the Official Records of Polk County a Claim of Lien for Assessment in the name of Polk County indicating the code enforcement case number(s) and caption, the property owners, the lot subject to the assessment with the legal description and parcel identification number, and the amount of the assessment. Such Claim of Lien for Assessment shall be signed by the Division Director. The lien created hereby shall be a first lien, equal to a lien for nonpayment of property taxes.

The liens created hereby shall accrue from date of abatement of the violation at an interest rate equal to the amount of interest payable on a judgment lien pursuant to Section 55.03, Florida Statutes, as it may be amended from time to time until such time as the costs of

abatement is placed on the “Non-ad valorem assessment roll” as defined by Section 197.102, Florida Statutes. If Section 55.03, Florida Statutes is repealed, then the liens created hereby shall accrue at the interest rate in effect prior to its repeal. The liens created hereby shall bear, on its face, the rate of interest that is payable on the lien. The failure to bear the rate of interest on the lien shall not invalidate the lien. The rate of interest shall be established on the date the violation is abated by Polk County.

- (h). The Division shall mail a notice that a lien has been recorded to the owner(s) of each lot described in the lien for assessments. The notice shall be sent to the owner at the address listed with the Polk County Property Appraiser’s Office. The notice shall be in a form prepared by the Division which shall include the following information:
 - (1). name and address of the owner;
 - (2). legal description of the lot where the violation has been abated;
 - (3). date of mailing the notice of the lien;
 - (4). a brief description of the violation abated;
 - (5). date of abatement;
 - (6). a statement of the actual costs of abatement and the operating and administrative costs;
 - (7). instructions regarding payment and removal of the lien; and
 - (8). additional information as necessary and appropriate.
- (i). The owner may request in writing an extension of time to abate the violation from the Division Director or the Division Director’s designee. Such written request shall state the basis of such request and be hand delivered or mailed by register or certified mail return receipt requested to the Division and to the attention of the Polk County Code Enforcement Division Director. Such request shall be granted or denied in writing within five (5) days of the Division receiving the request. If such request is not granted within five (5) days then it shall be deemed denied. The extension of time is at the sole discretion of the Division Director or the Division Director’s designee and shall be final and may not be appealed.
- (j). Nothing in this part shall prevent the Division or Polk County from pursuing enforcement of violations of this Ordinance through other processes.

SECTION 4: RATIFICATION OF NOTICES, ABATEMENTS AND LIENS OCCURRING PRIOR TO EFFECTIVE DATE. All notices, costs of abatement, and liens occurring pursuant Polk County Ordinance 08-047, as amended prior to the Effective Date of this Ordinance are hereby ratified and shall proceed pursuant to the provisions of Polk County Ordinance 08-047, as amended, that were in effect prior to the Effective Date of this Ordinance, and violations shall be abated by Polk County and liens shall be recorded in accordance with the provisions of Polk County Ordinance 08-047, as amended, in effect prior to the Effective Date of this Ordinance.

All notices sent on or after the Effective Date of this Ordinance and abatements of violations and liens resulting from notices sent on or after the Effective Date of this Ordinance shall be governed the provisions of Polk County Ordinance 08-047, as amended by this Ordinance.

SECTION 5: SEVERABILITY. If any provision of this Ordinance or if this Ordinance as applied is determined to be invalid or unconstitutional by a court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6: EFFECTIVE DATE. This Ordinance shall become effective upon filing of a certified copy of this Ordinance with the Department of State.