

ORDINANCE NO: 549

AN ORDINANCE OF THE CITY OF CHATTAHOOCHEE,
FLORIDA AMENDING CHAPTER 22 OF THE CITY OF
CHATTAHOOCHEE CODE DEALING WITH
ENVIRONMENT; PROVIDING FOR SEVERABILITY
AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF
CHATTAHOOCHEE, FLORIDA THAT:

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

SECTION 2. Repeal/Amendment. Article II, Chapter 22 of the Code of Ordinances of the City of Chattahoochee is hereby repealed and a new Article II, entitled Environment, of the City of Chattahoochee is hereby enacted as follows:

Chapter 22

ENVIRONMENT

Article I. In General

Secs. 22-1--22-25. Reserved.

Article II. Nuisances

- Sec. 22-26. Definitions.
- Sec. 22-27. Article supplemental to other city ordinances.
- Sec. 22-28. Enumeration.
- Sec. 22-29. Powers and duties of the inspector; determination of interested parties.
- Sec. 22-30. Duties of other departments.
- Sec. 22-31. Entry powers.
- Sec. 22-32. Procedures
- Sec. 22-33. Penalty
- Sec. 22-34. Appeals
- Sec. 22-35. Repealer
- Sec. 22-36. Severability
- Sec. 22-37. Effective Date
- Secs. 22-38--22-70. Reserved.**

ARTICLE II. NUISANCES

Sec. 22-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned personal property: Wrecked or derelict property having no value other than nominal salvage value, if any, which has been left abandoned and unprotected from the elements, including but not limited to, wrecked, inoperative or partially dismantled motor vehicles, trailers, boats, machinery, appliances, fixtures, furniture and other similar articles constitute abandoned personal property. A motor vehicle which is not in current running condition, does not have a current tag or registration and is not insured shall demonstrate that such vehicle is abandoned personal property for the purpose of this Ordinance.

Inspector: Means any code enforcement officer of the City of Chattahoochee.

Invasive Species: Means a species that is non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

Noxious plants: Weeds, underbrush, uncontrolled growth or dangerous or poisoned weeds, plants or trees constitute noxious plants.

Nuisance: Means any of the conditions described in Section 22-28.

Occupant: Any individual, firm, corporation or entity who has a lawful agreement with the owner to be in possession and engage use of the property.

Owner: Any individual, firm, corporation or entity that is named on the Records of the Gadsden County Property Appraiser as a title holder of any lot, tract or parcel of land within the city shall be deemed to be the owner.

Refuse: Means leavings, dregs, rubbish, trash or waste material.

Repeat Violation: Means a violation of a provision of the City of Chattahoochee Code of Ordinances by a person whom the Special Master has previously found to have violated the same provision with five (5) years prior to the present violation.

Special Master: The hearing officer designated and appointed by the City of Chattahoochee to review the evidence of an alleged violation of the City of Chattahoochee Ordinances.

Underbrush means any undergrowth or brush conducive to the collection of insect and rodents.

Unfit or unsafe dwelling or structure means any dwellings or structures or portions thereof and accessory buildings which are structurally unsafe, unstable, or unsanitary; inadequately provided with exit facilities; constitute a fire hazard; unsuitable or improper for the use or occupancy to which they are put; constitute a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; dangerous to life or property of the occupant thereof or of the surrounding areas; unfit for human habitation, if so intended or used; or otherwise in violation of the housing, building, electrical, plumbing, mechanical, sanitation and fire codes of the city.

Sec. 22-27. Article supplemental to other city ordinances.

The provisions of this article shall be supplemental to all other ordinances of the city.

Sec. 22-28. Enumeration.

(a) A nuisance is:

- (1) Any accumulation of rubbish, trash, junk and other abandoned materials, metals, lumber or other things.
- (2) Any excessive accumulation of untended growth of weeds, undergrowth or other dead or living plant life upon a lot, tract or parcel of land, improved or unimproved, within 100 feet of any improved property within the city to the extent and in the manner that such lot, tract or parcel of land shall or may become infested or inhabited with rodents, vermin or snakes; may become a breeding place for mosquitoes; threaten or endanger the public health and welfare; may reasonably cause disease; or adversely affect and impair the economic welfare of the adjacent property.
- (3) Any refuse of a height of more than one foot.
- (4) Any underbrush or weeds which exceeds one foot in height.
- (5) Any unfit or unsafe dwelling or structure.
- (6) Any invasive species or plants that may cause ecological, economic or resource management problems as declared by Florida statute or rule.
- (7) All unnecessary or unauthorized noises and annoying vibrations, including animal noises.
- (8) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.
- (9) The carcasses of animals or fowl not disposed of within 24 hours after death.
- (10) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
- (11) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.
- (12) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
- (13) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.
- (14) Unsheltered storage for a period of 30 days or more within the corporate limits of this city, of old and unused stripped junk and other automobiles not in good and safe operating condition, and of any other vehicles, machinery, implements, or equipment or personal property of any kind which is no longer safely usable for the

purposes for which it was manufactured is hereby declared to be a nuisance and a danger to public health, safety and welfare.

(16) Such other acts or conditions which are declared by other ordinances to be or to constitute nuisances.

(b) For the purpose of this article, the term "nuisance" shall also include any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which the premises are located. This includes, but is not limited to, the keeping or depositing on or the scattering over the premises of any of the following:

(1) Lumber, junk, trash, or debris; and

(2) Abandoned, discarded, unused objects or equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers.

(c) It is unlawful for any owner or occupant of premises within the city to maintain a nuisance as described in this section.

Sec. 22-29. Powers and duties of the inspector; determination of interested parties.

(a) The inspector shall be charged with the duty of administering the applicable standards and securing compliance therewith, and, in furtherance of this responsibility, the inspector shall:

(1) Make such inspections as may be necessary to effectuate the purposes and intent of this article.

(2) Investigate any complaints of alleged violation of this article and maintain a log reflecting the resolution of such complaints. However, only matters or conditions pertinent to the existence of a nuisance shall be considered or reported by the inspector pursuant to this article.

(b) When the inspector verifies the existence of a nuisance involving an unfit or unsafe structure, it shall be his duty to promptly prepare and submit to the city manager the notice and order required by this article. The city manager, with the assistance of the city attorney, shall determine the owner of record of the real estate upon which the nuisance is located, and send a notice and order of condemnation to such party. In addition, notice shall be given to the lessee or occupants, if any, and persons of interest, including a mortgagee, a contract purchaser, an agent with the power of attorney, and persons claiming an interest under lis pendens and the like.

(c) Where the inspector verifies the existence of a nuisance not involving an unsafe or unfit structure, the inspector shall serve the notice and order upon the record owner of the premises reflected by the latest tax rolls and upon any occupant of the premises, if other than the owner.

Sec. 22-30. Duties of other departments.

(a) Members of the fire department, police department, and public works department shall make written reports to the inspector of all dwellings or structures which appear to be

substandard housing within the terms of this article. Such reports shall be submitted to the inspector as soon as practicable.

(b) In carrying out his responsibilities under this article, the inspector may request assistance from the county health department, to determine violations of municipal ordinances, state law, and rules and regulations of the city.

Sec. 22-31. Entry Powers.

The inspector and his designees are hereby authorized to enter upon private property in order to enforce the provisions of this article. When necessary to obtain such entry, the inspector and his designees may institute appropriate proceedings to obtain a search warrant.

Sec. 22-32. Procedures. In the event that the City of Chattahoochee Code Enforcement Officer(s) determines that the owner or occupant of any lot, tract or parcel of land within the City of Chattahoochee, whether occupied or unoccupied suffers, maintains or permits to remain thereon any abandoned personal property, noxious plants, unlawful accumulations or any other nuisance which is in violation of this Ordinance then the Officer(s) shall initiate the following procedure:

- a. The Code Enforcement Officer(s) shall issue a Notice of Violation to the owner and occupant, if any, which shall specify the details of the violation and list the activity necessary to correct the violation(s). The Notice shall grant a period of fifteen (15) days from the date of issuance for correction of the violation(s). Written notice of such violation(s) shall be provided the alleged violator by certified and regular mail, return receipt requested, at the address appearing on the City of Chattahoochee tax role, or by hand delivery by a police officer of the City of Chattahoochee, including the City of Chattahoochee Code Enforcement Officer, or by leaving the notice at the violators usual place of residence with any person residing therein who is above fifteen years of age.
- b. In the event that the violation(s) shall continue beyond the fifteen day time period specified for correction of the violation(s) as presented within the notice of violation, then the Code Enforcement Officer shall issue to the owner and occupant, if any, a citation of violation and shall notify the Special Master of the issuance of a citation of violation and shall request a hearing date.
- c. If the Code Enforcement Officer has reason to believe a violation or a condition causing the violation presents a serious threat to the public health, safety and welfare or if the violation is irreparable or irreversible in nature, the Code Enforcement Officer shall make a reasonable effort to notify the violation and may immediately issue a citation of violation and notify the Special Master and request a hearing.
- d. The Special Master, through the clerical staff of the City of Chattahoochee Utility Department, shall schedule a hearing before the Special Master concerning the citation. The administrative staff of the City of Chattahoochee shall provide the necessary administrative support required by the ordinance. Written notice of such hearings shall be provided to the alleged violator by certified and regular mail, return receipt requested, at the address appearing on the City of Chattahoochee tax role, or

- by hand delivery by a police officer of the City of Chattahoochee, including the Code Enforcement Officer, or by leaving the notice at the violators usual place of residence with any person residing therein who is above fifteen year of age and informing such person of the contents of the Notice of Hearing.
- e. The date of the hearing shall not be less than fifteen (15) days from the date of the Notice of Hearing.
 - f. During the hearing before the Special Master, the owner or occupant shall have the right to appear before the Special Master and be heard either in person or by an authorized representative. Minutes shall be kept of all hearings before the Code Enforcement Special Master and all hearings and proceedings before the Special Master shall be open to the public.
 - g. Each case before the Special Master shall be presented and prosecuted by the Code Enforcement Officer or designated administrative staff of the City of Chattahoochee, Florida.
 - h. In the event that the City of Chattahoochee prevails in prosecuting a case before the Special Master it shall be entitled to recover all costs incurred in prosecuting the case before the Special Master and included in the cost are Attorney's fees, Service fees, Special Master's fees, fines, demolition fees, administrative fees and any other costs authorized by this ordinance.
 - i. The Special Master shall proceed to hear all cases on the agenda for the hearing date. All testimony shall be under oath and shall be recorded. The Special Master shall take testimony from the Code Enforcement Officer and the alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Each Special Master shall have the power to:
 - (a) Adopt rules for the conduct of his/her hearings
 - (b) Subpoena alleged violators and witnesses to his/her hearings
 - (c) Subpoena may be served by the Sheriff of Gadsden County
 - (d) Subpoena evidence to his/her hearing
 - (e) Take testimony under oath
 - (f) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
 - j. Within thirty (30) days of the hearing, the Special Master shall issue an order with written findings of fact, based upon evidence of record and conclusion of law and affording the proper relief consistent with powers granted herein.

Sec 22.33 PENALTY. The owner and/or occupant of any lot, tract or parcel of land within the City of Chattahoochee who violates any of the provisions of this ordinance shall be guilty of a civil infraction. Such infraction shall be punishable by a monetary fine to be imposed by the Special Master pursuant to this ordinance.

- a. Upon finding that a violation has been committed, the Special Master may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the Code Enforcement Officer within the Notice of Violation for compliance or, in the case of a repeat violator, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the Code Enforcement Officer.

- b. If the violation is a violation as described in section 22-32(c) above, the Special Master shall notify the governing body which shall make all responsible repairs which are required to bring the property into compliance and charge the violator with a reasonable cost for the repairs along with a fine imposed pursuant to this section.
- c. A fine may be imposed by the Special Master pursuant to this ordinance in an amount not to exceed \$250.00 per day for a violation of the first offense and shall not exceed \$500.00 per day for a repeat violation, and, in addition may include all costs of repairs as set forth above.
- d. In determining the amount of the fine the Special Master shall consider the following factors:
 - (a) The gravity of the violation
 - (b) Any actions taken by the violator to correct the violation
 - (c) Any previous violations committed by the violator
 - (d) A Special Master may reduce a fine imposed pursuant to this section.
- e. A certified copy of the order imposing a fine and/or cost may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator.
- f. Upon petition to the Circuit Court, such order may be enforced in the same manner as a court judgment by the Sheriff's of this State, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes.
- g. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered and a suit to foreclose on a lien is filed pursuant to the section, whichever occurs first.
- h. A lien arising from a fine imposed pursuant to this section shall run in favor of the City Council of the City of Chattahoochee and the City Council of the City of Chattahoochee may execute a satisfaction or release of lien entered in pursuant to this section.
- i. At the conclusion of three (3) months from the filing of any such lien which remains unpaid, the City Council of the City of Chattahoochee may authorize the City of Chattahoochee Attorney to foreclose on the lien. No lien created pursuant to this provision may be foreclosed on real property which is a homestead under Section 4, Article 10 of the State of Florida Constitution.
- j. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs including reasonable attorney's fees that are incurred in the foreclosure. The City Council of the City of Chattahoochee shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien affected by the commencement of this action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.
- k. Any fines, clean-up costs, the proceeding costs including the cost of the special master shall be reduced to a judgment by the special master. The respective landowner shall have 30 days to satisfy the judgment. In the event the judgment is not satisfied within 30 days the City may, at its discretion, record the judgment as

lien against the real property and foreclose the lien as set forth in Florida Statute 173.

Sec. 22-34. APPEALS: - An aggrieved party, including the local governing board, may appeal a final administrative hearing by the Special Master to the Circuit Court. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Special Master. Any appeal must be filed within thirty (30) days of the entry of the Order by the Special Master.

Sec. 22-35. REPEALER –That any other ordinance or provision or an ordinance in conflict with this ordinance shall be repealed to the extent of, but only to the extent of, the explicit conflict of this ordinance.

Sec. 22-36 SEVERABILITY – That in the event any part of this ordinance is deemed to be unconstitutional or invalid for any reason, the remainder of the ordinance shall remain in full force and effect.

Sec.22-37. EFFECTIVE DATE – This ordinance shall become effective as provided by law upon major vote of the City Council of the City of Chattahoochee, Florida.

FIRST READING WAS APPROVED BY THE CITY COMMISSION OF THE
CITY OF CHATTAHOOCHEE, FLORIDA ON THE ____ DAY OF _____,
2013, BY A VOTE OF ____ YEA AND ____ NEA.

PASSED AND ADOPTED BY THE CITY COMMISSION OF
CHATTAHOOCHEE, FLORIDA ON THIS ____ DAY OF _____,
2013, BY A VOTE OF ____ YEA AND ____ NEA.

ATTEST:

MARINDA WILSON, CITY CLERK

ANNETTE H. BATES, MAYOR