

BY THE CITY COMMISSION

ORDINANCE NO.: 2010-27

AN ORDINANCE OF THE CITY OF DADE CITY, FLORIDA PERTAINING TO PUBLIC HEALTH AND SAFETY; SUBSTANTIALLY AMENDING, REWRITING, AND REWORDING SECTIONS 102-131 THROUGH 102-135 OF THE CODE OF ORDINANCES TO INCLUDE THE CLEAN-UP OF HAZARDOUS TREES, EXCESSIVE WEEDS, UNDERGROWTH AND ALL OTHER UNSANITARY MATTER UPON ANY PROPERTY WITHIN THE CITY LIMITS; REQUIRING PROPERTY OWNERS TO MAINTAIN THE UNPAVED AREAS OF RIGHT-OF-WAY ADJACENT TO THEIR PROPERTY; PROVIDING FOR DEFINITIONS; DECLARING THAT HAZARDOUS TREES AND OTHER EXCESSIVE UNSANITARY CONDITIONS ARE A NUISANCE AND A MENACE TO PUBLIC HEALTH AND SAFETY; REQUIRING PROPERTY OWNERS, CUSTODIANS, LESSEES, AND OCCUPANTS TO CONTROL TREES AND OTHER EXCESSIVE UNDERGROWTH ON THEIR PROPERTY; PROVIDING THAT HAZARDOUS TREES AND EXCESSIVE UNDERGROWTH AND OTHER CONDITIONS CAN BE REMEDIED BY THE CITY WITHOUT NOTICE TO THE PROPERTY OWNER AND AT THE PROPERTY OWNER'S COST; AUTHORIZING THE CITY TO UTILIZE THE UNIFORM NON-AD VALOREM ASSESSMENT METHOD TO IMPOSE, LEVY, AND COLLECT SPECIAL ASSESSMENTS IF COSTS ARE INCURRED BY THE CITY AND NOT REIMBURSED BY THE PROPERTY OWNER; PROVIDING THE PURPOSE AND INTENT OF TRANSITION PROVISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

Whereas, the City Commission previously adopted Sections 102-131 through 102-135 of the Dade City Code to require, and otherwise to prohibit the accumulation of yard trash and overgrown vegetation on property within the City; and

Whereas, those sections do not address the existence of hazardous trees, excessive undergrowth, overgrowth and other unsanitary conditions on property within the City; and

Whereas, Section 102-131 also does not clearly address the maintenance of areas of unpaved, undeveloped, and/or vacated rights-of-way abutting private property; and

Whereas, the City Commission now wants to amend Sections 102-131 through 102-135 of the Code of Ordinances to include hazardous trees, overgrown vegetation, and other unsanitary conditions; and

Whereas, the City Commission also wants to amend Sections 102-131 through 102-135 of the Code of Ordinances to provide that if property owners do not pay the costs and expenses associated with the City's elimination of overgrown conditions, the City may use the uniform method of collecting non-ad valorem assessments to reimburse the City for costs and expenses incurred when the City must eliminate these conditions.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF DADE CITY, FLORIDA AS FOLLOWS:

Section 1. Sections 102-131 and 102-135 of the Code of Ordinances are hereby substantially amended, replaced, and reworded as follows:

Sec. 102-131. Lot Clean-Up.

(a) Purpose and intent. The purpose and intent of this section is to prohibit the following:

- 1) accumulation of trash, junk, or debris, living and nonliving plant material, and stagnant water,
- 2) hazardous trees,
- 3) excessive and untended growth of grass, weeds, brush, branches, and other overgrowth, and
- 4) the existence of all other objectionable, unsightly or unsanitary matter, materials, and conditions on property, whether improved or unimproved.

(b) The purpose and intent of this section is to prevent conditions on property that result in the following:

- 1) property being inhabited by, or providing a habitat for, rodents, vermin, reptiles, or other wild animals.
- 2) property providing a breeding place for mosquitoes.
- 3) property being a place, or being reasonably conducive to serving as a place, for illegal or illicit activity.
- 4) property threatening or endangering the public health, safety or welfare of City residents.
- 5) property reasonably believed to cause currently, or potentially to cause in the future, injury, ailments or disease.
- 6) property adversely affecting and impairing the economic value or enjoyment of surrounding or nearby property.

(c) Definitions.

These words, terms and phrases, when used in this section shall have the following meanings:

- 1) “Actual Cost” means the actual contract amount plus interest, if any, as invoiced by an independent, private contractor or the City for terminating and abating a violation of this section on a lot, tract, or parcel, plus the cost of serving notice of the violation, obtaining title information on the property, and all other identifiable costs incurred by the City in the clean-up of the lot, tract, or parcel.

- 2) “Compatible Electronic Medium or Media” means machine-readable electronic repositories of data and information, including, but not limited to, magnetic disk, magnetic tape, and magnetic diskette technologies, which provide without modification that the data and information therein are in harmony with and can be used in concert with the data and information on the ad valorem tax roll keyed to the property identification number used by the Pasco County Property Appraiser.
- 3) “Compost Bin” means a container designed for the purpose of allowing nonliving plant material to decompose for use as fertilizer. For purposes of this article, any such compost bin shall be constructed of wire, wood lattice or other material which allows air to filter through the structure. A compost bin shall not exceed an area of sixty-four (64) square feet or a height of five (5) feet.
- 4) “Excessive Growth” means grass, weeds, rubbish, brush, branches, or undergrowth that has reached a height of twelve (12) inches or more.
- 5) “Fill” means material such as dirt that is imported and deposited on property by artificial means.
- 6) “Grass, Weeds, or Brush” means grass or weeds or brush that, when allowed to grow in a wild and unkempt manner, will reach a height of twelve (12) inches or more. This definition does not include bushes, shrubs, trees, vines, flowering plants, and other living plant life typically used and actually being used for landscaping purposes.
- 7) “Hazardous tree” means a tree that appears to have a defect or structural weakness that may cause property damage, personal injury or death.
- 8) “Imminent Public Health Threat” means (i) the condition of a lot, tract, or parcel of land that, because of the accumulation of trash, junk, or debris, such as broken glass, rusted metal, automotive and appliance parts, some of which may contain chemicals, such as freon, oils, fluids, or the like, may cause injury or disease to humans or contaminate the environment, or (ii) the condition of a lot, tract or parcel that, because of the excessive growth of grass, weeds, or brush, can harbor criminal activity, vermin, or disease, or (iii) the presence of a hazardous tree.
- 9) “Levy” means the imposition of a non-ad valorem assessment against property found to be in violation of this section.
- 10) “Non-Ad Valorem Assessment” means a special assessment that is not based upon millage and that can become a lien against a homestead as permitted in Section 4 of Article X of the Florida Constitution.
- 11) “Non-Ad Valorem Assessment Roll” means the roll prepared by the City and certified to the Pasco County Property Appraiser and/or Tax Collector, as appropriate under Florida law, for collection.
- 12) “Non-Living Plant Material” means nonliving vegetation such as leaves, grass cuttings, shrubbery cuttings, tree trimmings and other material incidental to attending the care of lawns, shrubs, vines and trees.

13) "Property" means a lot or tract or parcel of land and the adjacent unpaved and ungraded portion of the right-of-way, whether such lot or tract or parcel is improved or unimproved.

14) "Trash, Vegetation, or Debris" mean waste material, including, but not limited to, putrescible and nonputrescible waste, combustible and non-combustible waste, and generally all waste materials such as paper, cardboard, tin cans, lumber, concrete rubble, glass, bedding, crockery, household furnishings, household appliances, dismantled pieces of motor vehicles or other machinery, rubber tires, and rusted metal articles of any kind.

Section 102-132. Declaration of Nuisance and Menace. The (i) accumulation of trash, junk, or debris, living and nonliving plant material, or stagnant water upon property, (ii) hazardous trees, (iii) the excessive growth of grass, weeds, brush, branches, and other overgrowth upon property, and (iv) the keeping of fill in a unsafe and unsanitary manner are each is declared to be a nuisance and menace to the public health, safety, and welfare of the citizens of the City for the following reasons:

- 1) The aesthetic appearance of property preserves the value of other properties within the City.
- 2) Hazardous trees may cause property damage, personal injury, or death.
- 3) The (i) accumulation of trash, junk, or debris, nonliving plant material, or stagnant water, (ii) the excessive growth of grass, weeds, brush, branches, and other overgrowth, and (iii) the keeping of fill in an unsafe and unsanitary manner is dangerous, unhygienic, unhealthy, visually unpleasant to the reasonable person of average sensibilities, and a visual nuisance because it depreciates, or potentially can depreciate, the value of neighboring property.
- 4) Unless addressed properly in this Code of Ordinances, City taxpayers could be and would be required to pay the cost of cleaning up such properties, and such clean-ups would have to be undertaken by the City several times a year, in some cases for the same properties.

Section 102-133. Accumulation of Trash, Vegetation, or Debris, Living and Nonliving Plant Material, and Stagnant Water.

- 1) Every owner and, if applicable, every agent, custodian, lessee, or occupant of property shall reasonably regulate, mow, maintain, and effectively control accumulations of trash, junk, or debris, living and nonliving plant material, and stagnant water (i) on the property, and (ii) that portion of the adjoining public right-of-way between the property and the paved or graded street.
- 2) The following uses are permissible:
 - A. Storage of trash, junk, debris, and living and nonliving plant material in garbage cans that comply with applicable ordinances relating to solid-waste collection.
 - B. The storage of nonliving plant material in compost bins, except that no property may have more than two compost bins.
 - C. Keeping wood on the property for use as fire or fuel, provided, such wood shall be piled, stacked, bundled, or corded and the area surrounding the piles, stacks, bundles, or cords shall be free of excessive growth of grass, weeds, brush, branches, and other overgrowth.

- 3) **Trees, excessive growth of grass, weeds, brush, and other overgrowth.** Every owner and, if applicable, every agent, custodian, lessee, or occupant of property shall reasonably regulate and effectively control the trees and excessive growth of grass, weeds, brush, and other overgrowth (i) on the property, and (ii) that portion of the adjoining public right-of-way between the property and the paved or graded street. Hazardous trees and the excessive growth of grass, weeds, brush, and other overgrowth that exceeds eight inches in height is prohibited and shall be trimmed to height below eight inches.
- 4) **Keeping of fill on property.** Every owner and, if applicable, every agent, custodian, lessee, or occupant of property shall reasonably regulate and effectively control the property so as to prevent the keeping of fill on it to prevent the creation of (i) a habitat for rodents, vermin, reptiles, or other wild animals, (ii) breeding ground for mosquitoes, (iii) a place conducive to illegal activity, (iv) a place that threatens or endangers the public health, safety or welfare of City residents, (v) a place that is reasonably believed to cause currently, or potentially to cause in the future, ailments or disease, or (vi) a condition on the property that adversely affects and impairs the economic value or enjoyment of surrounding or nearby property.
- 5) **Imminent public-health or public-safety threat.** If the City Manager, or his designee, determines that an imminent public-health or public-safety threat exists because of (i) an accumulation of trash, junk, debris, living and nonliving plant material, or stagnant water, (ii) a hazardous tree, (iii) the excessive growth of grass, weeds, brush, or other overgrowth, or (iv) the keeping of fill on property, the threat may be remedied by the City immediately without notice to the owner or, if applicable, the agent, custodian, lessee, or occupant. The City Manager shall be the official to determine whether, under the provisions of this Section, an imminent public-health or public-safety threat exists.

After-the-fact notice will be provided by the City to the owner and, if applicable, the agent, custodian, lessee, or occupant no later than five (5) work days after the abatement. After-the-fact notice shall be sent as set forth in subsection (h) below, and the owner and, if applicable, the agent, custodian, lessee, or occupant shall have fifteen (15) days from the date notice is received to (i) reimburse the City or (ii) appeal the City Manager’s determination that an imminent public-health or public-safety threat existed on the property to the City Commission.

Section 102-134. Enforcement.

- 1) **Violations.** Failure or refusal by the owner and/or, if applicable, the agent, custodian, lessee or occupant of property to comply with the requirements of Subsections (d), (e), and (f) above is a violation of this Section and the Code of Ordinances. The existence of an imminent public-health or public-safety threat on a property is also a violation of this Section.
- 2) **Notice of Violation.** Whenever the City Manager or his designee determines there is a violation of this Section, the City shall serve, or cause to be served, a “notice of violation” on the owner and, if applicable, the agent, custodian, lessee, or occupant of the property. The “notice of violation” shall direct the owner and, if applicable, the agent, custodian, lessee, or occupant to terminate and abate the violation within twenty (20) calendar days of the date the “notice is received.” If the “notice of violation” pertains to an imminent public-health or public-safety threat abated by the City, the notice shall direct the owner and, if applicable, the agent, custodian, lessee, or occupant to pay to the City the cost of such abatement.

If the notice of violation is sent or delivered to both the owner and the owner’s agent, custodian, lessee, or occupant, they shall be jointly and severally responsible to remedy the violation.

The “notice of violation” shall be sent by United States certified mail with a return receipt requested. “Notice is received” on the date the owner or, if applicable, the agent, custodian, lessee, or occupant of the property initials or otherwise indicates receipt of the notice on the return receipt.

In the event that certified-mail delivery cannot be accomplished, and after reasonable search by the City for such owner or, if applicable, the agent, custodian, lessee, or occupant of the property, or if the notice is not accepted or is returned to the City, a physical posting of the “notice of violation” on the property shall be deemed the date the “notice of violation” is received.

3) **Form of notice.** The notice shall be in substantially the following form:

NOTICE OF VIOLATION

Name of owner:

Address of owner:

Name of agent, custodian, lessee, or occupant (if applicable):

Address of agent, custodian, lessee, or occupant (if applicable):

Our records indicate that you are the owner, agent, custodian, lessee or occupant of the following property in the City of Dade City, Florida:

[description of property]

An inspection of this property discloses, and I have found and determined, that a public nuisance exists on this property. This public nuisance violates Section 102-131 of the Code of Ordinances of the City of Dade City, Florida in that:

[description of the violation in this section]

[You are hereby notified that if, within twenty days from the date this notice is received,

a. the violation described above is not remedied and abated, or

b. this violation notice has not been timely appealed, as set forth in Subsection 8-8(i) of the City's Code of Ordinances,

the City will cause the violation to be remedied, and the costs incurred by the City in connection with the cleanup will be assessed against the property.] To appeal this notice of violation, you must file your notice of appeal with the City Manager no later than fifteen (15) days after receipt of this notice.

City of Dade City, Florida

By: _____
Title: _____

If the notice is an after-the-fact notice of an imminent public-health or public-safety threat, the bracketed portions shall be deleted and, in their place, the information required in subsection (k) regarding levy of assessment on the property for the costs of abatement incurred by the City shall be substituted.

4) **Appeals.** Within fifteen days after notice is received, the owner or, if applicable, the agent, custodian, lessee, or occupant of the property may appeal to the City Commission that a "notice of violation" is not warranted for the property or that the property did not pose an imminent public-health or public-safety threat that required immediate cleanup.

5) **Content of Appeal.** The owner or, if applicable, the agent, custodian, lessee, or occupant of the property must appeal the notice of violation by written notice to the City Manager. The written notice must be accompanied by a filing fee of \$250.00, and shall be either hand delivered to the City Manager, or mailed to the City Manager and postmarked, within the fifteen (15) day period after notice is received.

Upon timely receipt, the City Manager will schedule the appeal for a public hearing before the City Commission. At the public hearing, the appellant shall be afforded due process and may present such evidence as is probative of the appellant's case. The City Manager or other City staff shall present such evidence as is probative of the alleged violation. Members of the public shall be afforded the opportunity to present germane testimony and evidence. Thereafter, the hearing shall be closed and the City Commission shall rule on the appeal.

6) **Unsuccessful appeal.** If the appeal is unsuccessful, the property must be "cleaned up" and the violation remedied and removed within fifteen (15) days from the date of the City Commission's decision.

Section 102-135. Special Assessment Imposed. In the event an appeal is not made within fifteen (15) days after notice is received and the violation is not remedied, or a timely appeal is made, but is unsuccessful and the violation is not remedied, the City may undertake such action as is necessary or useful to remedy the violation. The costs incurred by the City to remedy the violation, including the actual cost of clean-up, all administrative expenses, and all other identifiable costs incurred by the City, shall be assessed against the property as authorized by this Section. All assessments shall be paid in full no later than the close of City business on the twentieth (20th) business day after the property owner has received notice of the assessment. Thereafter, the unpaid amount of the

assessment will accrue interest at the rate of 12% per annum or at the maximum rate allowed by law, whichever is less.

- 1) **Notice of assessment.** Upon completion of the actions undertaken by the City to remedy the violation on the property, the City Manager shall notify in writing the owner and, if applicable, the agent, custodian, lessee, or occupant that a special assessment has been imposed on the property. The notice shall be delivered to the owner and, if applicable, the agent, custodian, lessee, or occupant in the manner set forth for delivery of the notice of violation in subsection (h) above.

The notice of assessment shall set forth the following:

- a) A description of the violation, a description of the actions taken by the City to remedy the violation, and the fact that the property has been assessed for the costs incurred by the City to remedy the violation.
- b) The aggregate amount of such costs and an itemized list of such costs.
- c) The intent of the City to record the assessment as a lien against the property if not paid timely, within the period of twenty (20) business days as set forth in subsection (j).
- d) The intent of the City to place the assessment on the tax roll as a non-ad valorem assessment if not paid by the following December 1.
- e) The potential for the property to be subject to the sale of a tax certificate, bearing interest by law at a rate as high as 18% per annum, if the non-ad valorem assessment is not paid as part of the tax bill on the property.
- f) The potential for the property to be sold and conveyed by tax deed if the tax certificate is not redeemed by payment of the non-ad valorem assessment in full, plus interest, as required by Florida law.

Section 2. Transition Provision. Non-ad valorem assessments to recover actual costs incurred by the City in remedying violations of the above Sections of the Code of Ordinances prior to the effective date of this ordinance may be levied against the affected properties and, if not timely paid in full, may be placed on a non-ad valorem assessment roll at the next available opportunity. All actions taken by City officials and employees to that end are ratified and confirmed herewith.

Section 3. Inclusion in Code. It is the intent of the City Commission that the provisions of this Ordinance shall become and be made a part of the Dade City Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to “section,” “article,” “regulation,” or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. Repealer. All provisions of the Dade City Code of Ordinances, as amended, and ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any conflict.

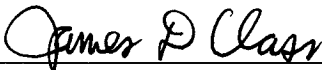
Section 5. Severability. If a provision of this ordinance is held invalid or unconstitutional in judicial proceedings, the holding shall not affect other provisions that can be given effect. To that end, this ordinance is declared to be severable.

Section 6. Effective Date. This ordinance takes effect immediately upon its enactment. The amendments to Section 8-8 of the Code of Ordinances set forth in this ordinance shall apply to and be enforceable against all violations existing on and after the date on which the City published the agenda for the City Commission meeting at which the first reading of this ordinance occurred.

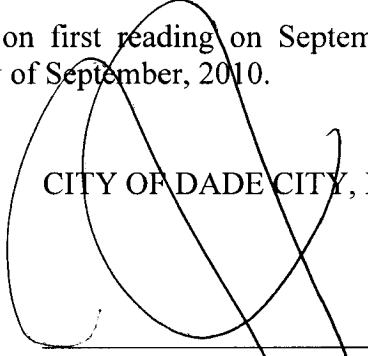
The above ordinance was read and approved on first reading on September 13, 2010, and adopted following public hearing on the 28th day of September, 2010.

ATTEST:

CITY OF DADE CITY, FLORIDA

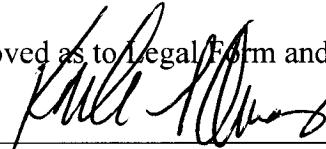


James D. Class, City Clerk



Scott Black, Mayor

Approved as to Legal Form and Content



Karla S. Owens, City Attorney