

ORDINANCE NO. 593

AN ORDINANCE OF THE TOWN OF OCEAN RIDGE, FLORIDA PERTAINING TO PUBLIC HEALTH AND SAFETY; AMENDING CHAPTER 34 OF THE TOWN'S CODE OF ORDINANCES ADDING A NEW ARTICLE V DECLARING CERTAIN CONDITIONS ON LOTS, PARCELS, AND TRACTS WITHIN THE TOWN BOUNDARIES TO BE A NUISANCE; PROHIBITING THE ACCUMULATION OF TRASH, JUNK, OR DEBRIS, LIVING AND NONLIVING PLANT MATERIAL, AND STAGNANT WATER; PROHIBITING THE EXCESSIVE GROWTH OF GRASS, WEEDS, BRUSH, AND OTHER OVERGROWTH; PROHIBITING THE KEEPING OF FILL ON PROPERTY THAT RESULTS IN CERTAIN CONDITIONS; PROHIBITING CERTAIN CONDITIONS THAT CONSTITUTE THE IMMINENT THREAT TO PUBLIC HEALTH; AUTHORIZING THE TOWN TO UNDERTAKE IMMEDIATE ABATEMENT AND REMEDY OF IMMINENT PUBLIC-HEALTH THREATS; PROVIDING FOR ENFORCEMENT OF VIOLATIONS OF , THIS NEW ARTICLE V; REQUIRING NOTICES TO OWNERS AND, IF APPLICABLE, AGENTS, CUSTODIANS, LESSEES, AND OCCUPANTS OF PROPERTY IN VIOLATION OF THIS NEW ARTICLE V; PROVIDING FOR APPEALS OF VIOLATION NOTICES; AUTHORIZING THE IMPOSITION AND LEVY OF SPECIAL ASSESSMENTS IF COSTS ARE INCURRED BY THE TOWN AND NOT REIMBURSED BY THE PROPERTY OWNER OR, IF APPLICABLE, THE PROPERTY AGENT, CUSTODIAN, LESSEE, OR OCCUPANT; REQUIRING NOTICES OF ASSESSMENT; PROVIDING FOR ASSESSMENTS FOR THE COST OF LOT CLEAN-UP; ESTABLISHING THE TOWN AS A SPECIAL ASSESSMENT DISTRICT; AUTHORIZING THE LEVY OF NON-AD VALOREM ASSESSMENTS IN CONNECTION WITH VIOLATIONS OF THE PROVISIONS OF ARTICLE V; PROVIDING FOR THE COLLECTION OF NON-AD VALOREM ASSESSMENTS; AUTHORIZING AN AGREEMENT WITH THE PALM BEACH COUNTY PROPERTY APPRAISER AND TAX COLLECTOR; AUTHORIZING AND REQUIRING THE ADOPTION OF A RESOLUTION REGARDING THE TOWN'S USE OF THE UNIFORM METHOD OF COLLECTING NON-AD VALOREM ASSESSMENTS; PROVIDING FOR ANNUAL NON-AD VALOREM ASSESSMENT ROLLS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Town Commission has determined that many properties in the Town, many of which have been abandoned because of pending mortgage foreclosure, have accumulations of junk, trash, debris, living and nonliving plant material, stagnant water, excessive overgrowth of weeds, grass, and other objectionable, unsightly or unsanitary materials.

**WHEREAS**, by enactment of this ordinance the Town prohibits (i) the existence of excessive accumulations or untended growths of weeds, undergrowth, or other dead or living plant life, stagnant water, rubbish, debris, trash, the keeping of fill in an unsafe and unsanitary manner, and all other objectionable, unsightly, or unsanitary matter upon any lot, tract or parcel, (ii) conditions conducive to the infestation or inhabitation of rodents, vermin, or wild animals, (iii) conditions conducive to the breeding of mosquitoes, and (iv) untended property that threatens or endangers the health, safety, or welfare of Town residents or adversely affects or impairs the economic welfare of adjacent property.

**WHEREAS**, these prohibited conditions are declared public nuisances, and the failure of a property owner to abate and terminate the public nuisance may result in (i) the “clean-up” of the property by the Town and (ii) the imposition of a non-ad valorem special assessment on the property if the Town is not timely reimbursed for the cost of the “clean-up”.

**WHEREAS**, the Town has the authority to use the uniform method for the levy, collection, and enforcement of non-ad valorem assessments as set forth in Chapter 197 of Florida Statutes.

**WHEREAS**, the use of the assessments to clean up and remove such nuisances will add financial value to the assessed properties equal to or greater than the amount of the assessment.

**WHEREAS**, the removal of nuisance conditions will render the assessed properties more attractive for use and habitation providing a measure of public safety and economic value to not only the assessed property but the general neighborhood.

**WHEREAS**, if not timely paid, the non-ad valorem assessment for clean-up of a lot will be included on the property owner’s annual tax bill, to be paid at the same time that yearly ad-valorem taxes are paid.

**WHEREAS**, the Town Commission now intends to amend its Code of Ordinances to (i) prohibit the nuisances that arise when property is allowed to deteriorate as described herein, (ii) provide for clean-up of the property and abatement of the nuisance, (iii) provide for assessment of property where the Town undertakes the clean-up, and (iv) authorize the use of the uniform method for the imposition and collection of non-ad valorem assessments against those properties.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF OCEAN RIDGE, FLORIDA, AS FOLLOWS:**

**Section 1. Findings of Fact.** The WHEREAS clauses set forth above are adopted herein as findings of fact.

**Section 2. Addition of Article V to Chapter 34..** Article V is hereby added to Chapter 34 of the Code of Ordinances and shall read as follows:

**ARTICLE V. LOT CLEAN-UP**

**Sec. 34-166. Purpose and intent.**

The purpose and intent of this article 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 Town residents.
- 5) property reasonably believed to cause currently, or potentially to cause in the future, ailments or disease.
- 6) the diminution in value of the offending property as well as the impairment of the economic value or enjoyment of surrounding or nearby property.

**Sec. 34-167. Definitions.**

These words, terms and phrases, when used in this article will mean the following:

- 1) "Actual cost" means the actual contract amount plus interest, if any, as invoiced by an independent, private contractor 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 Town in the clean-up of the lot, tract, or parcel. Including any direct costs related to use of Town staff or equipment.
- 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 Palm Beach County Property Appraiser.

3) “Excessive growth” means grass, weeds, rubbish, brush, branches, or undergrowth that has reached a height of eight inches or more.

4) “Fill” means material such as dirt that is imported and deposited on property by artificial means.

5) “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 eight 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.

6) “Imminent public-health threat” means 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, which may cause injury or disease to humans or contaminate the environment, arthropod disease vectors such as stagnant, standing water, or 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.

7) “Levy” means the imposition of a non-ad valorem assessment against property found to be in violation of this section.

8) “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.

9) “Non-ad valorem assessment roll” means the roll prepared by the Town and certified to the Palm Beach County Property Appraiser Tax Collector, as appropriate under Florida law, for collection.

10) “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.

11) "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.

12) "Trash, junk, 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.

**Sec. 34-168. Declaration of nuisance and menace.**

The (i) accumulation of trash, junk, or debris, living and nonliving plant material, or stagnant water upon property, (ii) the excessive and untended growth of grass, weeds, brush, branches, and other overgrowth upon property, and (iii) the keeping of fill in a unsafe and unsanitary manner is declared to be a nuisance and menace to the public health, safety, and welfare of the citizens of the Town for the following reasons:

1) The aesthetic appearance of property preserves the value of all the properties within the Town.

2) Such conditions are 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 such property, and of neighboring property.

3) Unless addressed properly in this Code of Ordinances, Town 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 Town several times a year, in some cases for the same properties.

**Sec. 34-169. Accumulation of trash, junk, 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 and effectively control accumulations of trash, junk, or debris, living and nonliving plant material, and stagnant water (i) on the property, and (ii) on 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. 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.

**Sec. 34-170. 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 excessive growth of grass, weeds, brush, and other overgrowth (i) on the property, and (ii) on that portion of the adjoining public right-of-way between the property and the paved or graded street. Excessive growth of grass, weeds, brush, and other overgrowth that exceeds twelve inches in height is prohibited and shall be trimmed to height below twelve inches.

Vegetative growth that is a mature Florida ecological community, as defined by the Soils Conservation Service in its publication entitled 26 Ecological Communities in Florida, or any similar successor publication, is not prohibited by this section. However, in the event this vegetative growth constitutes an imminent public health threat, it shall be removed upon the order of the Town Manager.

**Sec. 34-171. 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 the property from creating the conditions enumerated in Sections 34-166 and 34-168.

**Sec. 34-172. 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 this Article is a violation of this section. The existence of an imminent public-health threat on a property is a violation of this section.

*(2) Notice of violation.* Whenever the Town Manager or his or her designee determines there is a violation of this section, the Town

Manager 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 calendar days of the date the “notice is received.” If the “notice of violation” pertains to an imminent public-health threat abated by the Town, the notice shall direct the owner and, if applicable, the agent, custodian, lessee, or occupant to pay to the Town 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.

*(3) Notice is received.* 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 Town 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 Town, a physical posting of the “notice of violation” on the property shall be deemed the date the “notice of violation” is received.

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

NOTICE OF VIOLATION

Name of owner:

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Address of owner:

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

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

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Our records indicate that you are the owner, agent, custodian, lessee or occupant of the following property in the Town of Ocean Ridge, 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 Article V, Chapter 34, of the Code of Ordinances of the Town of Ocean Ridge, 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 Section 34-174 of the Town's Code of Ordinances, [the Town will cause the violation to be remedied, and the costs incurred by the Town in connection with the cleanup will be assessed against the property. To appeal this notice of violation, you must file your notice of appeal no later than 15 days after receipt of this notice.]

Town of Ocean Ridge

By: \_\_\_\_\_  
Title: \_\_\_\_\_

If the notice is an after-the-fact notice of an imminent public-health threat, the bracketed portions shall be deleted and, in their place, the information required in section 34-176 regarding levy of assessment on the property for the costs of abatement incurred by the Town shall be substituted.

**Sec. 34-173. Imminent public-health threat.**

An (i) accumulation of trash, junk, debris, living and nonliving plant material, or stagnant water, (ii) excessive growth of grass, weeds, brush, or other overgrowth, or (iii) the keeping of fill on property that presents an imminent public-health threat may be remedied by the Town immediately without notice to the owner or, if applicable, the agent, custodian, lessee, or occupant. The Town Manager shall determine whether, under the provisions of this section, an imminent public-health threat exists.

After-the-fact notice will be provided by the Town to the owner and, if applicable, the agent, custodian, lessee, or occupant no later than five work days after the abatement. After-the-fact notice shall be sent as set forth in section 34- 174 below, and the owner and, if applicable, the agent, custodian, lessee, or occupant shall have fifteen days from the date notice is received to (i) reimburse the Town or (ii) appeal the Town Manager's determination that an imminent public-health threat existed on the property.

**Sec. 34-174. 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 Town Commission that a "notice of violation" is not warranted for the property or that the property did not pose an imminent public-health threat that required immediate cleanup.

*(1) 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 Town Manager. The written notice must be accompanied by a reasonable filing fee, as determined by the Town Manager, and shall be either hand delivered to the Town Manager, or mailed to the Town Manager and postmarked, within the fifteen-day period after notice is received.

Upon timely receipt, the Town Manager will schedule the appeal for a public hearing before the Town 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 Town Manager or other Town 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 Town Commission shall rule on the appeal.

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

**Sec. 34-175. Special assessment imposed.**

In the event an appeal is not made within fifteen 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 Town may undertake such action as is necessary or useful to remedy the violation. The costs incurred by the Town to remedy the violation, including the actual cost of clean-up, all administrative

expenses, and all other identifiable costs incurred by the Town, shall be assessed against the property as authorized by this Article. All assessments shall be paid in full no later than the close of Town 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.

**Sec. 34-176. Notice of assessment.**

Upon completion of the actions undertaken by the Town to remedy the violation on the property, the Town 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 section 34- 172(2).

The notice of assessment shall set forth the following:

- 1) A description of the violation, a description of the actions taken by the Town to remedy the violation, and the fact that the property has been assessed for the costs incurred by the Town to remedy the violation.
- 2) The aggregate amount of such costs and an itemized list of such costs.
- 3) The intent of the Town to place the assessment on the tax roll as a non-ad valorem assessment if not paid by the following September 1.
- 4) 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.
- 5) 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.

**Sec. 34-177. Assessments for lot clean-up.**

**a) Establishment of special assessment district.** The Town of Ocean Ridge in its entirety, as its Town boundaries exist on the date of enactment of this section and as they may be expanded or contracted from time to time, is hereby declared a special-

assessment district for the purposes of abating and remedying violations of this article. Individual properties within the Town's boundaries, as they may exist from time to time, may be assessed for the costs incurred by the Town in abating and remedying violations of this article.

**b) Levy of non-ad valorem assessments.** There is hereby levied, and the Town Commission is authorized to levy from time to time, a non-ad valorem assessment against each and every property in the Town (i) on which there occurs or has occurred a violation of this article, (ii) the Town undertakes or has undertaken action pursuant to this article to abate and/or remedy the violation and, thereby, incurs or has incurred costs, and (iii) the property owner and, if applicable, the agent, custodian, lessee, or occupant of the property fails or refuses or has failed or refused, for whatever reason, to pay timely the amount owed to the Town under this article for the costs incurred by the Town in carrying out such abatement and remedy.

**c) Collection of non-ad valorem assessments.** The Town Commission elects to use the uniform method to impose and collect non-ad valorem assessments against properties on which violations of this article occur or have occurred. The non-ad valorem assessments collected pursuant to this section will be included in the combined notice for ad-valorem taxes and non-ad valorem assessments as provided in section 197.3635 of Florida Statutes. Non-ad valorem assessments collected pursuant to this section are subject to all collection provisions in section 197.3632 of Florida Statutes, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment.

**d) Agreement to reimburse the Palm Beach County Property Appraiser and the Palm Beach County Tax Collector.** In order to use the uniform method for the levy, collection, and enforcement of the non-ad valorem assessments, the Town is authorized to enter into a written agreement with the Palm Beach County Property Appraiser and the Palm Beach County Tax Collector providing for the reimbursement of their costs incurred in the administration and collection of the non-ad valorem assessments levied under this section.

**e) Adoption of a resolution.** The Town Commission will adopt a resolution at a public hearing prior to March 1, 2011 in accordance with subsection 197.3632(3) of the Florida Statutes (2010), which resolution shall state the following:

1) The Town's intent to use the uniform method of collecting non-ad valorem assessments.

2) The Town's need for the imposition of the non-ad valorem assessments.

3) The entire Town is declared a special-assessment district, with individual properties being subject to the non-ad valorem assessment from time to time if and when violations of this article occur.

The Town will comply with all statutory notice prerequisites set forth in Section 197.3632 of Florida Statutes.

**f) Annual non-ad valorem assessment roll.** Each year, the Town Commission will approve a non-ad valorem assessment roll at a public hearing between January 1 and September 15. The non-ad valorem assessment roll will be comprised of properties that have had levied against them non-ad valorem assessments under this section, and such assessments have not otherwise been paid in full prior to approval of the roll.

The Town Manager and the Town Attorney are authorized and directed each year (i) to prepare the notice that must be sent by first-class United States mail, as required by subsection 197.3632(4)(b) of Florida Statutes, and (ii) to prepare and publish the newspaper notice required by subsection 197.3632(4)(b) of Florida Statutes.

The notice to be sent by first-class mail will be sent to each person owning property that will be on the non-ad valorem assessment roll and will include the following:

- 1) The purpose of the assessment;
- 2) The total amount to be levied against the parcel, which includes the actual cost incurred by the Town;
- 3) A statement that failure to pay the assessment will cause a tax certificate to be issued against the property, which may result in a loss of title;
- 4) A statement that all affected property owners have a right to appear at the hearing and to file written objections with the local governing board within 20 days of the notice; and
- 5) The date, time, and place of the hearing.

Upon its approval by the Town Commission, the non-ad valorem assessment roll will be certified to the Tax Collector as required by law.

**Section 3. Remedies cumulative.** The procedures and remedies contained herein are in addition to, and not in lieu of, other procedures and remedies otherwise available to the Town elsewhere within the Town's Code of Ordinances or by law.

**Section 4. 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 5. Inclusion in Code.** This Ordinance shall be re-numbered and codified and made part of the official Code of Ordinances of the Town of Ocean Ridge.

**Section 6. Effective Date.** This ordinance takes effect immediately upon its enactment.

FIRST READING this 3rd day of January, 2010.

SECOND AND FINAL READING this 23 day of February, ~~2010~~ 2011

Commissioner Pugh offered the foregoing Ordinance and its adoption. The motion was seconded by Commissioner Allison and upon being put to a vote, the vote was as follows:

KENNETH M. KALEEL, Mayor	<u>Yea</u>
DR. LYNN L. ALLISON, Vice Mayor	<u>Yea</u>
ELIZABETH P.B. BINGHAM, Commissioner	<u>Absent</u>
TERRY BROWN, Commissioner	<u>Resigned</u>
GEOFFREY A. PUGH, Commissioner	<u>Yea</u>

The Mayor thereupon declared this Ordinance approved and adopted by the Town Commission of the Town of Ocean Ridge, Florida, on second reading, this 23 day of February, 2011.

TOWN OF OCEAN RIDGE, FLORIDA

BY: [Signature]  
KENNETH M. KALEEL, MAYOR

ATTEST: [Signature]  
TOWN CLERK

