

## ORDINANCE NO. 2021-09

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, ADOPTING CHAPTER 4 BUILDINGS AND BUILDING REGULATIONS, SECTION 4-5, AS THE UNSAFE BUILDING ABATEMENT CODE, PROVIDING FOR PURPOSE, AUTHORITY, ESTABLISHMENT OF A DISTRICT, DEFINITIONS, ENFORCEMENT, EMERGENCIES, ABATEMENT, COLLECTION OF COSTS, APPEALS AND OTHER PURPOSES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, the City of Greenacres (the "City") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the City may, under its police powers regulate, restrain, and abate activities or conditions which are dangerous to the public health, safety or welfare; and

**WHEREAS**, the City wishes to provide for the identification and abatement of unsafe buildings throughout the City; and

**WHEREAS**, the City Council hereby finds that this Ordinance serves a public purpose and is in the best interest of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, AS FOLLOWS:**

**Section 1.** Findings. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby incorporated as findings of the City Council of the legislative intent of this ordinance.

**Section 2.** Chapter 4 Buildings and Building Regulations, Section 4-5 is hereby adopted to read as follows:

**Sec. 4-5. – Unsafe building abatement code.**

**(a) General matters.**

**(1) Purpose and scope.** This section is declared to be remedial in nature. The purpose of this section is to secure the public health, safety and welfare by ensuring that all buildings, as defined herein, within the city are structurally sound and that such premises provide adequate egress, sanitation, light and ventilation for the protection of life and property and are free from fire

and other hazards incidental to their construction, alteration, use and occupancy. The provisions of this section shall apply to all unsafe buildings and shall apply equally to new and existing conditions.

(2) *Authority.* The city, acting through its city council and/or its designee, shall have authority pursuant to its home rule and police powers and Article VIII, Section 2(b) of the Florida Constitution to determine and declare the existence of a public nuisance in the form of an unsafe building and shall have the authority to provide for the abatement of the same. The abatement of such unsafe buildings constitutes a municipal service, which specifically benefits the property, and the assessment of the costs incurred by the city in abating an unsafe building is deemed fair and reasonable. These costs of abatement may be levied as a special assessment. The enforcement of this section is an alternative to the procedures set forth in the “Amendments to Chapter One of the 2020 Florida Building Code (7<sup>th</sup> Edition)” adopted pursuant to Section 4-2(b) of this Code.

(3) *District established.* The city, in its entirety, as its city 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 unsafe buildings. Individual properties within the city’s boundaries, as they may exist from time to time, may be assessed for the costs incurred by the city in abating and remedying violations of this section.

(4) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning.

*Interested parties.* Interested parties mean the owner, as determined by the records of the Palm Beach County Tax Collector, the occupant of the building, and any other person or entity having a legal or equitable interest in the building, including but not limited to, any mortgage holder, judgement holder or other lien holders of record.

Unsafe building means any building, structure, existing equipment, or service systems or portion thereof that are or hereafter become unsafe, unsanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance. A vacant structure that is not secured against entry shall also be deemed unsafe.

(b) Enforcement; inspection.

(1) Enforcement. The provisions of this section shall be enforced by the building official or designee.

(2) Inspection.

a. Generally. The building official or designee, may inspect, or cause to be inspected, any building which is or may be unsafe. The building official shall carry proper identification when inspecting buildings or premises in the performance of duties under this section. If, after inspection, the building official finds that the building is unsafe, he/she shall initiate proceedings to cause the abatement of the unsafe condition by repair, vacation or demolition, or any combination thereof.

b. Right of entry.

i. Where it is necessary to make an inspection to enforce the provisions of this section, or where the building official has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this section which makes the building or premises unsafe, dangerous or hazardous, the building official is authorized to enter the building or premises at reasonable times to inspect or to perform the duties imposed by this section, provided that if such building or premises is occupied, that credentials be presented to the occupant and entry requested. If such building or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control

of the building or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

- ii. When the building official obtains a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of the building or premises, shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official for the purpose of inspection and examination pursuant to this section and any other applicable law.

(c) Notice of violation; recording; service; posting and publication; placard posting.

(1) Notice of violation. Whenever the building official has determined that a building is unsafe, he/she shall prepare a written notice of violation to the owner of record and all interested parties regarding the defects thereof.

- a. The notice shall require the owner or other interested party, within a stated time, either to complete specified repairs or improvements, or to demolish and remove the building or portion thereof (including existing equipment or service systems or portion thereof). The notice shall include a statement that if the building is not brought into compliance in accordance with the notice or a hearing is not timely requested, the notice of violation may be recorded in the public records. If necessary, the notice shall also require the building, existing equipment or services systems or portion thereof to be vacated and/or disconnected, and not reoccupied and/or reconnected until the specified repairs and improvements are completed, inspected and approved by the building official.
- b. The notice shall give interested parties fifteen (15) days after the notice of violation is received to deliver a written request for a hearing to the building official. If the written request for a hearing is not received within the 15 days, the right to such hearing is waived. The written request shall include the interested party's name and interest in the property, street

address of the unsafe building, current mailing address (for hearing notice) and telephone number.

- c. The notice should state that if the violation is not timely complied and no hearing is requested, the building official may cause the work to be done and the costs of the work, together with all costs of inspection, administration and other related costs shall be a special assessment lien against the property and said lien shall be equal in dignity to taxes.

(2) Recording of notice of violation. If the building is not brought into compliance in accordance with the notice or a hearing is not timely requested, the notice of violation will be recorded in the official records of Palm Beach County. When the conditions rendering the building unsafe have been abated, the building official shall file a new notice indicating that corrective action has been taken and the building is no longer unsafe based upon the previously noticed conditions.

(3) Service of notice. The notice of violation shall be served either personally (hand-delivery) or by regular mail and certified mail, return receipt requested, to each owner and to all other known interested parties. The failure of any person to receive proper notice as described herein, other than the owner of record, shall not invalidate any proceedings. Service by certified mail shall be effective on the date notice was received as indicated on the return receipt or as otherwise documented.

(4) Posting and publication. In the event the certified mail is unclaimed or refused or the return receipt is not otherwise returned within twenty-one (21) days of mailing or there is no mailing address for an interested party, the notice shall be posted at the property and city hall for ten (10) days and a notice of condemnation will be published once a week for two (2) consecutive weeks in a newspaper of general circulation within the city. For properties that are published and posted, the notice shall be deemed received the day the notice was last published. Notice by posting and publication may run concurrently with, or may follow, an attempt to provide hand-delivery or by mail as set forth above. Evidence that an attempt has

been made to hand-deliver or mail notice as provided above, together with proof of publication and posting, shall be sufficient to show that the notice requirements have been met, without regard to whether or not the owner or other interested party actually received such notice.

(5) *Placard posted.* If the building official determines that the unsafe building, structure, electrical, gas, mechanical, plumbing equipment or service systems or portion thereof must be vacated and/or disconnected and not reoccupied and/or reconnected until repairs and improvements are completed, inspected and approved by the building official, a notice shall be posted at each exit and entrance to the building or structure and shall substantially state the following: THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE BUILDING OFFICIAL. PURSUANT TO CITY OF GREENACRES CODE SECTION 4-5(C)(5), IT IS UNLAWFUL FOR ANY PERSON TO ENTER, OCCUPY OR RESIDE IN THIS BUILDING AND VIOLATORS WILL BE SUBJECT TO ARREST. Such notice shall remain posted until the property is no longer unsafe, and it shall be unlawful for any person to remove such notice or for any person to enter the building except for the purpose of making the required repairs or demolishing such building. Any violation of this provision shall be prosecuted as a misdemeanor of the second degree and punished by a fine of not more than five hundred dollars (\$500.00) and/or imprisonment in the county jail for not more than sixty (60) days. Each day of violation shall be considered a separate offense.

(6) *Extension of time to comply.* The building official may, upon written request of the property owner or any other interested party, grant an extension of time as the building official may determine to be reasonable to complete the required remedial action.

(d) *Hearing.*

(1) *Special Magistrate.* The city council shall appoint a special magistrate to conduct all hearings contemplated by this section. In the alternative, the

special magistrate appointed to hear code enforcement hearings may be used to conduct these hearings.

(2) Notice of hearing. Upon receipt of a timely request for a hearing, the building official or designee shall schedule a hearing before the special magistrate as soon as is practicable. Written notice of the date, time and location of the hearing shall be delivered personally or mailed, regular U.S. mail, to the owner or interested party requesting the hearing at the address provided on the request for hearing.

(3) Procedure.

a. Generally. A hearing before the special magistrate shall offer the requesting interested party a reasonable opportunity to be heard on any matter or issue that is relevant to the proceeding. All testimony shall be under oath and shall be recorded. The formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The requesting interested party may appear at the hearing or through an attorney or other designated representative (with valid power of attorney). Failure of any person to appear or otherwise be represented at a scheduled hearing shall constitute a waiver of that person's right to a hearing. The special magistrate may issue subpoenas for the attendance of witnesses or the production of evidence at a hearing.

b. Orders. After the hearing, the special magistrate shall issue a written order:

i. Finding an unsafe condition does not exist and dismissing the violation;

ii. Finding an unsafe condition exists and requiring the abatement of the same and the vacation of all occupants within a time certain along with any other conditions deemed appropriate, and, if such abatement is not timely made, authorizing the building official to abate the same and to charge the property owner for the costs;

or

- iii. Finding an unsafe condition exists and authorizing the building official to vacate and abate the same and charge the property owner for the costs. This order shall also require the recording of the notice of violation in the official records of Palm Beach County, unless already recorded, as set forth above.

(e) Emergency action.

- (1) Generally. If the building official or designee finds that a building is likely to fully or partially collapse, posing an immediate hazard to life or to the safety of the general public, the building shall be deemed an emergency and ordered demolished immediately by the building official by affidavit attesting to the unsafe condition and by letter of authorization by the city manager.

(2) Notice.

- a. Generally. Prior to such demolition, notice shall be given to the owner of record and to any other interested party by hand-delivery or, if hand-delivery is not reasonably possible, by posting the property and mailing the notice by regular mail and certified mail, return receipt requested. Notice so posted may run concurrently with, or may follow, an attempt or attempts to provide notice by hand-delivery or by mail.
- b. Contents. Such notice shall include the affidavit of the building official and give the owner of the property and any other interested party five (5) business days to deliver a written request for a hearing to the building official.
- c. Receipt of notice. Notice shall be deemed received upon hand-delivery or, if not hand-delivered, upon the date the return receipt was signed or otherwise documented as delivered. If the returned receipt is not received within ten (10) days of mailing, the notice shall be deemed received ten (10) days after it is first posted. Evidence that an attempt was made to hand-deliver or mail notice as provided above, together with proof of posting, shall be sufficient to show that the notice requirements have been met, without regard to whether or not the owner or other interested party actually received such notice.



d. *Imminent threat.* Nothing herein precludes the exercise of emergency powers otherwise available in the face of an imminent threat to public safety.

(3) *Procedures.* If a hearing is timely requested, the hearing procedures set forth in subsection (d) above shall apply. If no hearing is timely requested, or as otherwise authorized in a special magistrate order, the building official may take action to repair the building, cause the building to be boarded and secured or demolish the building. The costs of such abatement shall be calculated and collected as set forth in subsection (f) below.

(f) *Abatement; costs.*

(1) *Abatement of unsafe condition.* If the notice of violation is not timely complied with and a hearing is not timely requested or as otherwise authorized in a special magistrate order, the building official may take action to repair the building, cause the building to be boarded and secured or demolish the building.

(2) *Costs.*

a. *Abatement costs.* Whenever an unsafe building is abated by the city, all costs incurred by the city, including but not limited to, the costs of abatement, title work, publication, service and postage, and any other cost or fee attributable to the unsafe building (collectively, "Abatement Costs"), shall be assessed to the owner of the property and shall be a special assessment lien against such property. The city shall mail an invoice of the Abatement Costs to the property owner and request payment in full by a date certain.

b. *Lien.* The Abatement Costs shall be a special assessment lien equal in rank and dignity with taxes and other non-ad valorem assessments and superior in dignity to all other liens, mortgages, judgments, encumbrances, titles, and claims until paid. The city council may, by the adoption of a resolution levying such charges, document such lien in the amount of the outstanding Abatement Costs, or such greater or lesser amount as the city council shall decide is just and fair. The amount of

the Abatement Costs may also include any costs incurred after the initial billing, any costs incurred that were inadvertently omitted, and any costs to be incurred for the recording of the special assessment in the public records. Such assessment may be recorded in the public records. Said assessment shall bear interest at the current legal rate of interest per annum as provided by law and shall constitute a lien upon the property from the date of the assessment.

c. *Collection.* The Abatement Costs assessments are collectible in the same manner as liens for taxes and special assessments. The city may choose to use the uniform method to collect such non-ad valorem assessments as authorized under section 197.3632, Florida Statutes, as amended from time to time. These assessments may also be foreclosed upon in accordance with law or collected by any other procedure authorized by law.

(g) *Appeal.* An aggrieved party, including the city, may appeal a final order of the special magistrate by filing a petition for writ of certiorari with the circuit court. Said appeal must be filed within thirty (30) days from the effective date of the special magistrate's written order.

**Section 3. Repeal of Conflicting Ordinances.** All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

**Section 4. Inclusion in Code.** It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Greenacres.

**Section 5. Severability.** If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Greenacres that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the

inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

**Section 6.** Effective Date. This Ordinance shall take effect upon passage of this Ordinance.

**[The remainder of this page intentionally left blank.]**

Passed on the first reading this \_\_\_\_ day of \_\_\_\_\_, 2021.

PASSED AND ADOPTED on the second reading this \_\_\_\_ day of \_\_\_\_\_, 2021.

Voted

\_\_\_\_\_  
Joel Flores  
Mayor

\_\_\_\_\_  
( )  
John Tharp  
Deputy Mayor

Attest:

\_\_\_\_\_  
Quintella Moorer, CMC  
City Clerk

\_\_\_\_\_  
( )  
Peter A. Noble  
Council Member, District II

\_\_\_\_\_  
( )  
Judith Dugo  
Council Member, District III

\_\_\_\_\_  
( )  
Jonathan G. Pearce  
Council Member, District IV

\_\_\_\_\_  
( )  
Paula Bousquet  
Council Member, District V

Approved as to Form  
and Legal Sufficiency:

\_\_\_\_\_  
Glen J. Torcivia  
City Attorney