

# City of South Daytona

## Code Compliance

Post Office Box 214960 • South Daytona, FL 32121 • 386/322-3025



### MEMORANDUM

To: James L. Gillis, Jr., City Manager

From: Josh McEnany, Code Compliance Manager

Re: Consideration of approving Ordinance No. 2023-01 for modifying nuisance abatement notification from 10 to 5 days with associated costs added to the Utility Bill.

Date: December 19, 2022

The City adopts certain rules and regulations to promote the health, safety, morals, convenience, order, prosperity, and general welfare of the present and future inhabitants of the City. The original City Code included an Article specific to abatements of weeds and offensive conditions on properties. In 1992, the code was modified from weeds and grass from a height of eighteen (18) inches to a height of twelve (12) inches.

The code states the City Manager has the authority to take necessary actions and abatement measures. These nuisances include rank vegetation growth which exhales unpleasant and/or noxious odors, and any trash or rubbish, which may conceal filthy deposits or may harbor insects, reptiles, or rodents or which may constitute a fire hazard is hereby declared a public nuisance.

The typical process for an abatement for high grass begins with a courtesy notice to the resident. The resident is given five days which includes a weekend to mow. The vast majority of property owners resolve the issue immediately upon receiving the courtesy notice. For those few who do not resolve the issue, a notice of abatement is given. Currently this notice gives the property owner an additional 10 days to mow. If the grass still has not been mowed, then the City will proceed to hire a contractor to cut it. The charge for the abatement is then compiled and a lien is placed on the property.

Staff is experiencing issues with this process. First, the current process allows for 15 days to transpire before we contract the mowing of the property. The contractor typically needs a few days to schedule the mowing; therefore, it may take three weeks to get the yard cut. During the summer months, three weeks added on to a property already with high grass is frustrating some of the neighbors who want their neighborhoods to look there best.

Under the City's proactive measures of Code Compliance, at the time nuisance abatement is required, property owners have received notification and education. When the nuisance has escalated to the City Manager, it is important for swift action to protect the health, safety and

welfare of our residents while striving to achieve beautification. Staff recommends reducing the notice for these abatements from ten (10) to five (5) days. The five day requirement moves us more in line with what our neighboring jurisdictions use as a sufficient time period.

The second issue with the current process is recouping the cost of the abatements. Liens are being placed on the properties to cover the cost of the abatements. The lien is not typically paid until the property is sold which could take many years. To ensure a timelier reimbursement, staff is proposing to add these abatement costs to the Utility Bill in lieu of filing a lien. With these costs added to the Utility bill, customers will recognize the need for compliance with City Codes, create payment plans and remove the need for a lien against the property.

If approved by the City Council, Code Compliance will continue to educate the residents of this requirement and the overarching goal of promoting, protecting, and maintaining the City's residential character and small-town atmosphere. If this ordinance is approved, it will be another tool that Code Compliance can use to ensure compliance with our codes. Our focus will continue to be on achieving compliance through education to reduce the occurrences of abatement orders.

Staff recommends approval of Ordinance No. 2023-01 for modifying nuisance abatement notification from 10 to 5 days with associated costs added to the Utility Bill.

## ORDINANCE NO. 2023-01

**AN ORDINANCE OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING THE CITY OF SOUTH DAYTONA CODE OF ORDINANCES, CHAPTER 8, HEALTH AND SANITATION, ARTICLE II, WEEDS AND OFFENSIVE CONDITIONS ON PROPERTY, SECTIONS 8-19, 8-20, AND 8-21, TO REVISE THE NOTICE PERIOD FOR THE ABATEMENT OF NUISANCES, AND TO ALLOW FOR THE COSTS AND EXPENSES OF NUISANCE ABATEMENT TO BE INCLUDED ON THE CITY UTILITY BILL; AMENDING CHAPTER 20, WATER AND SEWER SERVICE, ARTICLE V, WATER AND SEWER BILLING, SECTION 20-70, TO INCLUDE THE COSTS AND EXPENSES OF NUISANCE ABATEMENT ON THE CITY UTILITY BILL; AND PROVIDING FOR CONFLICTS, SEVERABILITY, APPLICABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of South Daytona, Florida (the “City”) adopts certain rules and regulations in order to promote the health, safety, morals, convenience, order, prosperity, and general welfare of the present and future inhabitants of the City; and

**WHEREAS**, in order to protect the health, safety and welfare of our residents, the original city code included an Article to abate weeds and offensive conditions on properties; and

**WHEREAS**, per City Code of Ordinances, Chapter 8, Article II, Section 8-21. Notice to Abate, the City Manager shall notify the owner of the nuisance and abate if not addressed within a specified time frame; and

**WHEREAS**, with the severity of nuisances which include any rank vegetation growth which exhales unpleasant and/or noxious odors, and any trash or rubbish, which may conceal filthy deposits or may harbor insects, reptiles or rodents or which may constitute a fire hazard, all of which are declared a public nuisance pursuant to City Code, the City Council finds it reasonable to reduce the notification period from 10 days to 5 days; and

**WHEREAS**, in order to recoup the costs and expenses of necessary abatements, the City Council finds it appropriate that such costs and expenses be applied to the City’s Utility Bills, as applicable, to assist with payment options and limit liens placed on properties; and

**WHEREAS**, for purposes of this Ordinance, underlined type shall constitute additions to the original text, \*\*\* shall constitute ellipses to the original text and ~~striketrough~~ shall constitute deletions to the original text.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, VOLUSIA COUNTY, FLORIDA, THAT:**

**SECTION 1. Recitals.** The above recitals are true and correct and are incorporated herein by reference.

**SECTION 2.** Sections 8-19, 8-20, and 8-21 of the City of South Daytona Code of Ordinances are amended to read as follows:

## ARTICLE II. WEEDS AND OFFENSIVE CONDITIONS ON PROPERTY

### **Sec. 8-19. Conditions prohibited; duty to abate.**

Any growth of weeds or grass to a height of twelve (12) inches, any rank vegetation growth which exhales unpleasant and/or noxious odors, and any trash or rubbish, which may conceal filthy deposits or may harbor insects, reptiles or rodents or which may constitute a fire hazard is hereby declared a public nuisance and it shall be the duty of the owner, lessee, or occupant of such property, or portion thereof, or the agent, servant, representative or employee of such owner, lessee or occupant having control of the property or portion thereof, to abate such nuisance within ~~ten (10)~~ five (5) days after notice is served upon him by the city, and upon failure, neglect or refusal to abate such nuisance or to comply with any of the provisions of this section, such person or corporation shall be deemed guilty of a misdemeanor, and upon conviction thereof in court, be subject to punishment as provided in this Code.

### **Sec. 8-20. Failure to abate; abatement by city; assessment and collection of costs.**

In the event of failure, neglect or refusal of such owner, lessee or occupant, or any agent, servant, representative or employee of any such owner, lessee or occupant having control of the property or portion thereof to abate such nuisance, as provided in this article, the city may abate such nuisance and the reasonable costs and expenses (including but not limited to related administrative fees) of such abatement by the city is hereby assessed against the several parcels of land and is hereby declared to be a lien upon the several parcels of land respectively. The city may file a notice of the lien in the office of the clerk of the circuit court, Volusia County, Florida. In addition, the city may add such reasonable costs and expenses of abatement to the utility bill associated with the parcel upon which the nuisance was abated. Such amounts so due to the city, as aforesaid, shall bear interest at the rate of eight (8) percent per annum until paid.

### **Sec. 8-21. Notice to abate.**

Prior to entering upon and cleaning any such lands by the city, as hereinabove authorized, the city manager shall notify the owner of same to clean them and put them in sanitary condition within ~~ten (10)~~ five (5) days from the date of said notice. The notice shall be provided by simultaneously both sending it by certified United States mail and posting it upon the subject property. The notice shall be addressed to the owner of the land as the same appears on the tax rolls of Volusia County at the usual mailing address of the owner. If the owner, lessee or occupant of such property or portion thereof, or agent, servant, representative or employee of such owner, lessee or occupant having control of the property or portion thereof fails to clean and make sanitary the property as directed in the notice within the ~~ten-five~~ day period provided for therein, the city may thereafter, at any time, enter upon same, through its servants, employees, or those under contract to the city, to clean and make sanitary said property.

**SECTION 3.** Section 20-70 of the City of South Daytona Code of Ordinances is amended to read as follows:

## **Article V. Water and Sewer Billing**

### **Sec. 20-70. Bills for water and sewer services; delinquency; discontinuing service for nonpayment; service continuation charge; reconnect service charge; disconnect fee.**

- (a) Utility bills shall be rendered monthly, and no discount shall be allowed for prompt payment thereof. Payments will be applied first to public service tax and then to stormwater drainage fees, penalties, miscellaneous fees, nuisance abatement costs and expenses (including but not limited to related administrative fees), and garbage collection fees if such charges apply, then to sewer charges and lastly, to charges for water service. If payment on any bill is not received within twenty (20) days following the date of the bill, a late charge as outlined in chapter 21 of the city code shall be added thereto. If payment on any bill is not received within twenty-nine (29) days of the bill date, service on the account shall be disconnected.

**SECTION 4. Administrative Actions.** The City Manager, or designee, is hereby authorized

and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative forms, policies, procedures, processes and rules.

**SECTION 5. Codification.** The provisions of this Ordinance shall become and be made a part of the City of South Daytona, Florida Code of Ordinances, and the Sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that portions other than Sections 2 and 3 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

**SECTION 6. Conflicts.** All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION 7. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 9. Effective Date.** This Ordinance shall take effect immediately upon enactment.

**APPROVED** upon first reading on the 10<sup>th</sup> day of January 2023 at a regular meeting of the City Council of the City of South Daytona.

**APPROVED AND ADOPTED** upon second and final reading on the 14<sup>th</sup> day of February 2023 at the Regular Meeting of the City of South Daytona City Council.

CITY OF SOUTH DAYTONA:

ATTEST:

\_\_\_\_\_  
William C. Hall, Mayor

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James L. Gillis, Jr., City Manager

CERTIFIED AS TO FORM:

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Wade C. Vose, City Attorney