

in which mosquitoes breed or are likely to breed is responsible, as well as the owner, landlord, tenant, or occupant, as the case may be.

(f) The maintenance of a place which constitutes a mosquito breeding place is a public nuisance and may be abated against the responsible person, as defined in subsection (e) of this section, in the manner provided in division 2 of article II of chapter 2 or may be removed, with cost therefor assessed against the property as prescribed in section 38-93.

(Code 1988, §§ 11-41—11-46)

Secs. 38-63—38-90. Reserved.

DIVISION 3. LOT CLEANING

Sec. 38-91. Delegation of authority.

The board of city commissioners hereby designates the code enforcement director, code enforcement division of the city as the enforcement official of this article and delegates to the code enforcement division manager the authority to enforce the provisions of this article, including the authority to cause any violation of this article to be terminated and abated, and the authority to impose a lien upon any lot, tract or parcel of property for the actual cost of terminating and abating such violation.

(Ord. No. 08-06, § 2, 1-10-08; Ord. No. 09-01, § 2, 1-5-09)

Sec. 38-92. Purpose and intent.

The purpose and intent of this article is to prohibit the accumulation of junk, trash, debris, and nonliving plant material upon any residential, professional office, recreational facility, commercial, planned development zoned, or industrial lot, tract, or parcel of land, whether improved or unimproved, and the excessive growth of grass, weeds, brush or branches upon any residential, professional office, recreational facility, commercial, planned development zoned, or industrial lot, tract or parcel of land, whether improved or unimproved, and the keeping of fill on any developed or zoned lot, tract or parcel of land, whether improved or unimproved, where, as a result of any such conditions, such lot, tract or

parcel of land becomes inhabited by, or provides a habitat for rodents, vermin, reptiles or other wild animals, is or provides a breeding place for mosquitos, or such lot, tract or parcel is a place or is reasonably conductive to serving as a place for illegal or illicit activity to occur, or otherwise threatens or endangers the public health, safety or welfare, reasonably causes sickness or disease, or adversely affects and impairs the economic value or enjoyment of surrounding or nearby property.

(Ord. No. 08-06, § 2, 1-10-08; Ord. No. 19-11, § 2, 2-28-19)

Sec. 38-93. Definitions.

For the purpose of this article, the following words and terms shall have the meanings respectively ascribed:

Actual cost shall mean the actual contract amount, as invoiced by an independent contractor, for terminating and abating a violation of this article on any lot, tract or parcel of residential or commercial property pursuant to an order of the zoning director, plus the cost of serving notice, obtaining title information, advertising and recording any liens imposed hereunder.

Code enforcement division manager shall mean the Manager of the City of Winter Garden, or authorized designee.

Code enforcement inspector shall mean a code enforcement division inspector of the code enforcement division, and may include the code enforcement division manager.

Compost bin shall mean a container which is designed for the purpose of allowing 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. The maximum permissible capacity for any compost bin shall be 64 square feet with a maximum height of five feet.

Excessive growth shall mean, grass, weeds or brush that has reached a height of at least eight inches or bushes or shrubs that have reached a height of at least 36 inches.

Exterior portion of any building shall mean those portions of a building which are open-sided, such that the open space within such portions of the building may be lawfully viewed by the public or any member thereof from a sidewalk, street, alleyway, parking lot or from any adjoining or neighboring premises. This definition includes such open-sided structures as carports and porches.

Exterior portion of the property shall mean those portions of a lot, tract or parcel of land which is either (1) outside of any building erected thereon, or (2) if there is no building erected thereon the entire lot, tract or parcel, regardless of whether such portions are exposed to public view or are surrounded by a fence, wall, hedge or other similar structure. For purposes of this article, the term "exterior portion of the property" shall include the "exterior portion of any building" only where specifically stated.

Fill shall mean material such as dirt that is imported and deposited on property by artificial means.

Garbage container shall mean a container made of nonabsorbent material provided with a close-fitting cover, side bail handles, and of 32 gallons or less gross capacity, capable of receiving and holding waste material without leakage or escape of odors, or a waterproof bag of strength and material capable of receiving and holding waste material without leakage or escape of odors.

Grass, weeds, or brush shall mean any grass or weeds, or brush typical of the state which, when allowed to grow in a wild and unkempt manner, will reach a height of 18 inches or more. This definition does not include bushes, shrubs, trees, vines, flowering plants, or any other living plant life typically used and actually being used for landscaping purposes.

Imminent public health threat shall mean the condition of any lot, tract or parcel or land that, because of the accumulation of junk, trash, or debris, such as broken glass, rusted metal, automotive and appliance parts, some of which may contain chemicals, such as Freon, oils, fluids, etc., may cause injury or disease to humans or

contaminate the environment, or the condition of any lot, tract or parcel that, because of the excessive growth of grass, weeds, bush or is a harbor for criminal activity.

Improved property shall mean any lot, tract or parcel of land in the city used for residential, commercial, professional office or industrial purposes which contains one or more buildings or structures, paving or other improvements, excluding solely underground utilities, pipes, wires, cable culverts, conduits or other similar improvements.

Mechanical garbage container shall mean any portable, nonabsorbent container approved by the board of city commissioners which is used to store large volumes of refuse and which is emptied by mechanical means.

Nonliving plant material shall mean nonliving vegetation such as leaves, grass cuttings, shrubbery cuttings, tree trimmings and other material attending the care of lawns, shrubs, vines and trees.

Property shall mean any lot, tract or parcel of land, or portion thereof, whether improved or unimproved, that is utilized or zoned for residential, commercial, recreational, open space, professional office or industrial use, planned development zoning, or any lot, tract or parcel of land, or portion thereof, whether improved or unimproved, that is zoned agricultural but is being utilized, as determined by the code enforcement division manager, for residential, nonagricultural commercial, nonagricultural recreational, open space, professional office, nonagricultural industrial, or planned development zoned use.

Trash, junk and debris shall mean waste material, including, but not limited to, putrescible and nonputrescible waste, combustible and noncombustible waste, and generally all 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 or rusted metal articles of any kind.

Unimproved property shall mean any lot, tract or parcel of land in the city used for residential,

commercial, professional office or industrial purposes which does not contain any buildings or structures, paving or other improvements, but may include solely underground utilities, pipes, wires, cables, culverts, conduits or other similar improvements.

All other words and terms shall be from the latest edition of Webster Dictionary.

(Ord. No. 08-06, § 2, 1-10-08; Ord. No. 09-01, § 2, 1-5-09; Ord. No. 11-21, § 1, 10-13-11; Ord. No. 19-11, § 2, 2-28-19)

Sec. 38-94. Accumulations of trash, junk, debris and nonliving plant material on property utilized or zoned for residential, professional office, recreational, commercial, open space, or industrial, or planned development zoned use.

(a) Subject to subsection (b), no owner, agent, custodian, lessee or occupant of property utilized or zoned for residential, professional office, recreational, commercial, industrial, or planned development zoned use shall permit the accumulation of trash, junk, debris, or nonliving plant material on any exterior portion of the property, including the exterior portion of any building located thereon. Accordingly, such owner, agent, custodian or occupant shall maintain and keep the property free of accumulation of trash, junk, debris, and nonliving plant material.

(b) Subsection (a) shall not be construed to prohibit any of the following:

- (1) The storage of trash, junk, debris and nonliving plant material in garbage containers or mechanical garbage containers which comply with all applicable ordinances relating to solid waste collection;
- (2) The storage of nonliving plant material in compost bins; or
- (3) Keeping wood on the property for use as 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 and branches; and

(4) Trash, junk, debris and nonliving plant material placed on property at a properly permitted and licensed junkyard, landfill or recycling operation operating in compliance with all applicable city, county, state and federal regulations.

(Ord. No. 08-06, § 2, 1-10-08; Ord. No. 19-11, § 2, 2-28-19)

Editor's note—Ord. No. 19-11, § 2, adopted Feb. 28, 2019, amended the title of § 38-94 to read as herein set out. The former § 38-94 title pertained to accumulation of trash, junk, debris and nonliving plant material on property utilized or zoned for residential, professional office, commercial or industrial use.

Sec. 38-95. Excessive growth of grass, weeds, and brush on property utilized or zoned for residential, professional office, recreational, commercial, industrial, or planned development zoned use.

(a) Subject to subsection (b), no owner, agent, custodian, lessee or occupant of property utilized or zoned for residential, professional office, recreational, commercial, industrial, or planned development zoned use shall permit the excessive growth of grass, weeds, or brush on any exterior portion of the property. Accordingly, such owner, agent, custodian, lessee or occupant shall cut, trim or remove such vegetation, and keep such vegetation cut, trimmed or removed, so that it is not in a state of excessive growth.

(b) Except in those cases where there is an imminent public health threat as determined by the code enforcement division manager or his or her delegates, subsection (a) shall not be construed to prohibit property 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 (such publication shall be kept on file with the code enforcement division manager).

(Ord. No. 08-06, § 2, 1-10-08; Ord. No. 19-11, § 2, 2-28-19)

Editor's note—Ord. No. 19-11, § 2, adopted Feb. 28, 2019, amended the title of § 38-95 to read as herein set out. The former § 38-95 pertained to excessive growth of grass, weeds, and brush on property utilized or zoned for residential, professional office, commercial or industrial use.

Sec. 38-96. Compost bins.

Accumulations of nonliving plant material may be permitted to remain on property utilized or zoned for residential, professional office, recreational, commercial, industrial, or planned development zoned use provided that such debris is stored in a compost bin. No more than two compost bins per primary structure shall be allowed to remain on any particular lot, tract or parcel of property. In addition, the area surrounding any compost bin shall be kept free of excessive growths of grass or weeds in order to prevent rodents, vermin, reptiles or other wild animals from living and breeding around the base of or inside the bin. Compost bins shall be adequately screened. A compost bin shall not be located in the front yard in front of the principal structure and shall not be located within ten feet of any side or rear property lien. In addition, for purposes of reverse corner lots and side street yard lots, compost bins shall be treated as structures and shall comply with applicable regulations.

(Ord. No. 08-06, § 2, 1-10-08; Ord. No. 19-11, § 2, 2-28-19)

Sec. 38-97. Responsibility for non-compliance.

The owner, custodian, lessee, occupant or agent of property upon which a violation of section 38-94 or 38-95 occurs shall be jointly and individually responsible for not complying with sections 38-94 or 38-95.

(Ord. No. 08-06, § 2, 1-10-08)

Sec. 38-98. Enforcement; abatement of nuisance.

(a) *First violation.* Whenever a code enforcement inspector reports to the code enforcement division manager that there appears to be a violation of section 38-94 or 38-95, the code enforcement division manager shall direct that a notice of violation be served upon the owner, and, if applicable, the agent, custodian, lessee or occupant, directing such owner, and, if applicable, the agent, custodian, lessee or occupant, to terminate and abate the violation within ten calendar days of the date such notice is received.

For purposes of this division "notice is received" on the earliest of the day it is hand delivered to the property owner, the date the property is posted with said notice, or five days after said notice is mailed to the property owner, postage prepaid. The code enforcement division manager shall, within five days of the date the notice is mailed, cause a sign to be placed upon the property in a conspicuous and easily visible location. The sign shall be at least eight inches by twelve inches in size and shall include the following information:

- (1) A sufficient description by address and/or legal description to identify the property upon which the violation exists;
- (2) A description of the violation to be terminated and abated;
- (3) A statement that if the described violation is not terminated and abated within ten calendar days after notice is received the code enforcement division manager shall cause the violation to be terminated and abated;
- (4) That a special assessment lien shall be imposed upon the property for the actual cost of such termination and abatement, plus administrative expenses; and
- (5) A preliminary nonbinding, minimum estimate of the cost of termination and abatement.
- (6) The notice of violation shall further state in bold and conspicuous letters that if such violation, within the ten-day period prescribed by subsection (a) of this section:
 - a. Has not been terminated and abated; or
 - b. Has not been timely appealed in accordance with section 38-99; or
 - c. Has been timely appealed but the appeal process proves unsuccessful, then the code enforcement division manager shall cause the violation to be terminated and abated, and the actual cost of such termination and abatement, plus administrative fees,

shall constitute a special assessment lien on the property in accordance with section 38-100.

(b) *Subsequent violation during same calendar year.* If weeds, excessive growth of grass or plant material are permitted to grow or accumulate on private property in violation of this article more than one time within one calendar year of, a prior violation that was terminated and abated pursuant to this division, then the director of code enforcement, or his/her duly authorized agent, may, without further notification, remove such noxious growths in the manner set forth in section 38-98(c) of this Code, and may collect the total cost of such removal in the manner set forth in section 38-100 of this Code. The director of code enforcement or designee may hire and enter into contracts with independent contractors to destroy or remove such weeds, excessive growth of grass or plant material.

(c) *Imminent health threat (first and subsequent violations).* In a case involving a condition which poses an imminent public health threat, the code enforcement division manager may, without prior notice, authorize the immediate termination and abatement of the condition.

(d) *After the fact notice:* Whenever the code enforcement division manager proceeds pursuant to subsection (b) or (c) herein, an after-the-fact notice shall be provided not later than five days after the termination or abatement of the condition ,which notice shall include the following:

- (1) A description of the conditions that were terminated and abated;
- (2) Whether the conditions were terminated and abated without prior notice due to subsection (b) or (c), herein;
- (3) The actual cost of the termination and abatement, together with administrative fees, is due to be paid within ten days of the notice;
- (4) That the failure to pay the actual costs and administrative fees when due will result in imposition of a special assessment lien against the property; and

(5) That the property owner may file a notice appeal to show that the property did not contain such violation within ten days of the notice, as provided by section 38-99.

(e) *[Terminated and abated.]* If the owner or other person in control of any property fails to destroy the weeds, excessive growth of grass or other plant material and thereby abate the nuisance within ten days after the notice described in section 38-98(a) is delivered, the director of code enforcement or designee, shall cause such nuisance to be terminated and abated. The director of code enforcement or designee may hire and enter into contracts with independent contractors to destroy or remove such weeds, excessive growth of grass or other plant material.

(Ord. No. 08-06, § 2, 1-10-08; Ord. No. 09-01, § 2, 1-5-09)

Sec. 38-99. Appeals.

(a) Within the ten-day period prescribed by subsection 38-98 after notice is received, an aggrieved party may appeal the code enforcement division manager's determination that a notice of violation is warranted for the property in question pursuant to subsection 38-98(a), or that the property did not contain a condition authorizing immediate termination and abatement, pursuant to subsection 38-98 (b) and (c).

(b) An appeal by an aggrieved party shall:

- (1) Be accompanied by a filing fee as determined by the board of city commissioners; and
- (2) Be addressed to the code enforcement division manager; and
- (3) Be either hand-delivered to the code enforcement division manager or postmarked within the ten-day period after notice is received.

(c) Upon receipt of a timely appeal, the code enforcement manager shall schedule a hearing date before the code enforcement board.

(d) At the hearing, the code enforcement board shall allow the code enforcement division manager or designee(s) and the aggrieved party an

opportunity to present evidence and to examine and cross-examine witnesses. After considering the evidence and testimony, the hearing Inspector or code enforcement board shall make a factual determination as to whether the property is (or was, with respect to subsection 38-98 in violation of this article. If the hearing Inspector or code enforcement board makes a factual determination that the property is (or was) in violation of this article, he shall affirm the code enforcement division manager's issuance of the notice of violation and, with respect to an appeal brought under subsections 38-98(a), (b) or (c), issue an order requiring the aggrieved party to promptly clean the property in order to terminate or abate the violation, or, with respect to an appeal filed under subsection 38-98(b) or (c) issue an order holding that the conditions allowed its immediate termination or abatement. If the aggrieved party has not remedied the violation within five calendar days after the date of the code enforcement board's written order holding that this article has been violated, then the code enforcement division manager may have the property cleaned, and the property owner shall be responsible for such costs and related expenses. If the code enforcement board makes a factual determination that the property is not (or was not, with respect to subsection 38-98(b) or (c) in violation of this division, then the filing fee shall be returned to the aggrieved party, and, with respect to an appeal filed under subsection 38-98(b) or (c) the city shall be responsible for the costs of cleaning the property.

(e) Appeal of the code enforcement board decision, whether it is a first or subsequent offense, or an imminent health threat, shall be filed in a timely manner with the circuit court under the provisions of section 2-70 of the Winter Garden Code.

(Ord. No. 08-06, § 2, 1-10-08; Ord. No. 09-01, § 2, 1-5-09)

Sec. 38-100. Liens; assessment.

(a) After causing the nuisance condition to be remedied as provided in section 38-98, the code enforcement division manager shall certify to the city clerk the actual cost incurred in remedying the condition, whereupon such cost, plus a

charge equal to 100 percent of such cost to cover city administrative expenses, shall become payable within ten days, after which a special assessment lien and charge will be made upon the property, which shall be payable with interest at the rate of 12 percent per annum from the date of such certification until paid.

(b) Prior to approving and recording a claim of special assessment lien pursuant to subsection (c), the city shall, by hand or certified mail, return receipt requested, deliver or send a notice of assessment of costs to the last known owner of record of the subject real property. If the assessment is not paid or arrangements satisfactory to the city have not been made to pay such assessment within ten days after notice is received, then the claim of special assessment lien may be recorded.

(c) Such lien shall be enforceable in the same manner as a tax lien in favor of the city and may be satisfied at any time by payment thereof, including accrued interest. Notice of such lien may be filed in the office of the clerk of the circuit court and recorded among the public records of the county.

(d) The city attorney is authorized and directed to institute such proceedings in the name of the city in any court having jurisdiction over such matters against any property for which a lien has been filed pursuant to this and the property owner shall be liable for all costs, including reasonable attorney's fees, incurred in any such action.

(Ord. No. 08-06, § 2, 1-10-08; Ord. No. 09-01, § 2, 1-5-09)

Sec. 38-101. Opposing, obstructing or resisting code inspector.

No person shall oppose, obstruct or resist any code inspector or any person authorized by the code inspector in the discharge of his duties as provided in this article.

(Ord. No. 08-06, § 2, 1-10-08)

Sec. 38-102. No liability for reasonable, good-faith trespass by code inspector.

Any code inspector shall be immune from prosecution, civil or criminal, for reasonable,

good faith trespass upon property utilized or zoned for residential, professional office, recreational, commercial, industrial, or planned development zoned use while in the discharge of duties imposed by this article.

(Ord. No. 08-06, § 2, 1-10-08; Ord. No. 19-11, § 2, 2-28-19)

Sec. 38-103. Exemption.

This article shall not apply to junk dealers and scrap metal processors who are duly licensed to pursue such occupations under section 66-104. (Ord. No. 08-06, § 2, 1-10-08)

Secs. 38-104—38-120. Reserved.

ARTICLE III. LITTERING*

Sec. 38-121. Distribution of commercial handbills on streets.

It shall be unlawful for any person to distribute or cause to be distributed on any of the streets, avenues, alleys, or parks within the city or any vacant property within the city, where it is or should be readily apparent to a reasonably prudent person that the property is uninhabited or has been otherwise vacant for a substantial period of

***Cross references**—Businesses, ch. 22; solid waste, ch. 58.

