



**BILL NO. 2010-07**

**Bill No. 2010-07 - Sponsored by: Mayor Wukela**

**A BILL TO:            A Bill to amend Sections 9-24 through 9-39 of the City Code to update and streamline the processes within the City for Identification and Abatement of Nuisances**

**Filed:    January 20, 2010**

**First Reading Proposed: February 22, 2010**

**Introduced and Read First time: February 22, 2010**

**Second Reading Given: March 8, 2010**

**ORDINANCE NO. 2010-\_\_\_\_\_**

**AN ORDINANCE TO AMEND SECTIONS 9-24 THROUGH 9-39 OF THE CITY CODE TO UPDATE AND STREAMLINE THE PROCESSES WITHIN THE CITY FOR THE IDENTIFICATION AND ABATEMENT OF NUISANCES.**

**WHEREAS**, S. C. Code Ann. §5-7-30 (1976) grants to municipalities the authority to abate nuisances; and

**WHEREAS**, it appears to Council that the fair and efficient identification and abatement of nuisances within the city requires ordinance provisions that clearly define nuisances and establish a fair and efficient process for enforcing the prohibition regarding nuisances;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City of Florence that Sections 9-24 through 9-39 of the City Code for Florence, South Carolina be and are hereby amended to read verbatim and provide as follows:

**DIVISION 2. NUISANCES**

**Sec. 9-24. Definitions**

As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended.

**Abate** means repair, replace, remove, destroy, or otherwise remedy the condition in question by such means, in such time, in such a manner, and to such an extent as the enforcement officer or Housing Board of Adjustments and Appeals shall determine to be in the best interest of the public, taking into account all facts and circumstances.

**Business Days** means Monday through Friday.

**Enforcement Officer** means a law enforcement officer, code enforcement official, or city employee or official as maybe designated in writing by the city manager to enforce the provisions of this division.

**Graffiti** means any unauthorized inscription, word, figure, painting, or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, engraved, or otherwise affixed to any surface of public or private property by any graffiti temperament, to the extent that the graffiti was not authorized in advance of the owner or occupant of the property, or, despite advanced authorization.

**Housing Board of Adjustments and Appeals** means the Board created and appointed pursuant to the provisions of Section 4-214 of the City Code.

**Industrial Wastes** means all liquid and water-borne solid, liquid or gaseous waste resulting in industrial manufacturing, food processing operations, processing of any natural resource or mixture of such wastes with water or domestic sewage.

**Person** means any landlord, property owner, manager, lessee, tenant, individual, group, association, corporation, partnership, trust, estate, or receiver having the capacity to sue or be sued.

**Premises** means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, occupied or unoccupied, including adjacent parking.

**Public Nuisance** means those conditions or events which constitute an unreasonable interference with the rights of the public in general and, where in a public place, where the public congregates, or where the public is likely to come within the range of influence within the senses, a person unlawfully does an act or omits to perform a duty, which act or omission does any one of the following:

- (1) Annoys, injures, subverts or endangers the public's order, economy, resources, safety, health, welfare, comfort, repose, or offends public decency;
- (2) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any waters, public places, or public ways.

**Structure** means anything constructed, built, or planted upon, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner which structure requires location on the ground or is attached to something having a location on the ground.

**Sec. 9-25. Specific Nuisances.**

(A) *Nuisances affecting public health.* The following are hereby declared to be nuisances affecting public health, unless they fall into the specific exceptions listed in subparagraph (10) below:

(1) All decayed or unwholesome food products or food waste not properly contained either inside or outside for more than 24 hours before pick-up.

(2) Litter, debris, trash, or refuse which is not placed within the appropriate container;

(3) All pools of stagnant water or vessels holding stagnant water in which mosquitos can breed, excluding required retention ponds;

(4) Swimming pools which either (i) are empty, excluding such pools that are completely and effectively covered, or (ii) contain liquids and/or debris which are not bacteriologically, chemically, or physically safe for swimming or other intended uses.

(5) Animal carcass not buried or disposed of in a lawful and sanitary manner within 24 hours after death of the animal;

(6) Leaking septic tanks or sewer lines or other sewage existing in an unsanitary manner;

(7) Leaves or other growth of weeds, grass, vines, briars, or other vegetation upon private or public property and all other vegetation at any stage of maturity which:

(i) exceeds twelve inches in height, except for healthy trees, shrubs, or plants grown in a tended and cultivated garden or plot; or

(ii) regardless of height, harbors, conceals or invites rodents, pests, or vermin or deposits of refuse, gives off noxious odors or constitutes a fire or traffic hazard;

(8) Damaged or diseased limbs or trees to the extent they cause potential injury to the public at large due to eminent structure

failure;

(9) Deliberate placement or discharge into any part of a stormwater drainage system of: untreated sewage; sewage solids; processed wastewater; refuse; explosive or combustible liquid, solid, or gas; oils, greases; industrial water or other polluted water except where a federal, state, or local permit for connections, discharge or disposal has been obtained prior to the event; waters or waste containing toxic or poisonous wastes to constitute a hazard to humans, plants or animals or to cause corrosion, discoloration, or deposition on real or personal property; or any solid or viscous substances in such quantities or such size capable of causing obstruction to the flow in the stormwater drainage system or other interference with the proper operation of the drainage system of the city.

(10) The conditions described above shall not be considered "nuisances affecting public health" if they fall into the following specific exceptions:

- (i) Industrial refuse temporarily stored within a delineated storage area for purposes of reuse or disposal;
- (ii) Building rubbish temporarily stored within a delineated, confined storage area on construction sites during construction;
- (iii) Sites approved by the State of South Carolina as sanitary landfills, provided such sites comply with the state's rules and regulations regarding landfills; and
- (iv) Salvage or junk operations carried on in full compliance with Chapter 21 of this Code.

(B) *Nuisances Offending Peace and Order.* The following are hereby declared to be public nuisances affecting public peace and order when such violations are of a continual, reoccurring or constant nature; provided, however, that no person shall be held liable or no structure shall be declared a nuisance in the event that such person does not generate, enable or contribute to the occurrence of unlawful behavior by a management policy or practice, personal conduct, lack of control or supervision, absence or ineffectiveness of

security, or other factors:

(1) Any structure, whether commercial or residential, where gambling devices, slot machines, punch boards, and other such contrivances of similar character involving any elements of chance as a consideration or any type of gambling, bookmaking, wagering or betting is carried on, and all gambling equipment, except where such specific form of gambling is permitted by applicable law.

(2) Any structure, whether commercial or residential, operated as a bawdy house, house of assignation, place of prostitution or used and maintained for the commercial or criminal purchases of unlawful sexual activity in violation of federal, state, or local law.

(3) Any structure, whether commercial or residential where intoxicating liquors are manufactured, sold, bartered, or given away in violation of federal, state or local law, or where intoxicating liquids are kept for sale, barter, or distribution in violation of federal, state, or local laws.

(4) Any structure, whether commercial or residential where acts of sale, possession, or distribution of control substances occur in violation of federal, state, and local law.

(C) *Nuisance affecting public welfare and safety.* The following are hereby declared to be public nuisances affecting public welfare and safety:

(1) All trees, hedges, signs or other obstructions, or any portion of the same, so located on private property as to prevent persons driving vehicles approaching an intersection of streets from having a clear, safe view of traffic approaching such intersection.

(2) All trees, hedges, signs, or other obstructions, or any portion of the same, so located on private property which prevents a clear and unobstructed view of a fire hydrant, fire department connection or other fire detection device or directional identification signage pertaining to the above, from a public way.

(3) Any obstruction, erosion or depression which poses

potential hazard to vehicles or pedestrians using a right-of-way on private property where the public is invited or permitted to traverse for commercial purposes.

(4) All wires, strings, ropes, or lighting contrivances over streets, alley ways, or public grounds which are not authorized or permitted by the city or which are strung so that the lowest portion is less than thirteen and one half feet above the surface of the ground.

(5) All explosives, flammable liquids, and other substances stored in any manner in any amount other than that manner or amount permitted by law.

(6) All hanging signs, awnings, canopies, and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety or to be contrary to ordinance.

(7) Any motor vehicle that is unregistered, inoperable, derelict, or abandoned on any highway or right-of-way, or other public or private property, unless such vehicle is stored inside of a building or protected from the elements by way of a complete covering.

(8) All structures found to be an "Unsafe Commercial Building" under §4-2.1 of this Code;

(D) *Nuisances affecting public economy.* The following are hereby declared to be public nuisances affecting the public economy:

(1) All structures bearing graffiti as defined herein;

(2) All businesses or commercial enterprises operating within the City without a valid, current, and properly displayed business license; and

(3) All premises continually not in compliance with applicable licensing, zoning, and land use laws.

#### **Sec. 9-26. Other Nuisances**

The enumeration of specific nuisances in this ordinance shall not be deemed to make lawful any other act or condition declared to be a nuisance by any

other city ordinance, state law, federal law, or court decision.

**Sec. 9-27. Reporting Emergencies and Emergency Action - Summary Abatement**

Any person who directly observes a nuisance posing an emergency threat to the public health or safety or to the environment shall immediately report the incident to the police department or fire department and shall provide any information requested by the enforcement officer needed to investigate or abate the potential emergency. If any nuisance exists in such a condition so as to be menacing to the public health, peace, or safety that it is necessary that it be summarily abated, the enforcement officer, after consultation with and concurrence from the city manager, may proceed to abate the nuisance without a hearing.

**Section 9-28. Nuisances Prohibited and Unlawful**

No person shall create any public nuisance in the city, and no person shall, by failure to act, permit a public nuisance to occur or continue on any real property under such person's control, whether the person's control is by recorded or unrecorded instrument or permission. Additionally no person will permit a public nuisance to occur involving any personal property under such person's control.

**Section 9-29. Institution of Criminal Process and Penalty**

(A) The public nature of a public nuisance must be determined by an enforcement officer or other appropriate governmental official. Enforcement of this chapter's provisions may be accomplished upon the institution of criminal process by way of a municipal ordinance summons or warrant made only by an enforcement officer or appropriate government official. Each day a violation continues constitutes a separate misdemeanor offense subject to a fine up to \$500 and/or imprisonment up to thirty days for each offense. The enforcement officer issuing a municipal summons under the provisions of this section shall place on the summons the amount of the fine, and the municipal summons shall give to the accused party the right to either pay the fine through forfeiture of the bond amount or appear in the municipal court at the time and place specified to litigate the offense and/or penalty.

(B) A municipal ordinance summons as described herein shall be served on the accused individual by personal service as attested to on an Affidavit of Service signed by an enforcement officer as defined herein.

(C) In its discretion, the city may elect to use other applicable code sections pertaining to remediation and abatement of nuisance.

**Section 9-30. Public Abatement-Notice and Service**

(A) If a person fails or refuses to discharge the duty imposed by Section 9-28, the city may concurrently serve an administrative notice to abate a public nuisance upon the owner or occupant and demand that compliance must be achieved within the time specified in the notice.

(B) The city shall determine the individual, firm or corporation who, from the records in the county tax assessor's office, appears to be the titled owner of the property and shall cause a written notice of public nuisance to be served upon such individual, firm, or corporation utilizing the following methods:

(1) Personal service as attested to Affidavit of Service by an enforcement officer as defined herein; or

(2) Copy mailed to such owner at the address maintained by the county tax assessor's office by United States Certified Mail, Return Receipt Requested; or

(3) In the event the City is unable to perfect service utilizing any of the methods described above, the City shall cause a copy of the aforesaid notice to be published in a newspaper of general circulation in the city, once per week, for two consecutive weeks, and shall further cause a copy of the aforesaid notice to be left with the individual, if any, in physical possession of such property on which it is alleged that such public notice exists, or, if there is no individual in physical possession thereof, the city shall cause a copy of the notice posted at such structure, location, or premises.

(C) The city shall also determine from the office of the Clerk of Court the identity of any lien holder with respect to said property, and the city shall cause a written notice to be served upon such lien holder by United States Mail, Return Receipt Requested, utilizing the address of the lien holder as noted on the lien document in the clerk's office.

(D) The aforesaid notice to the owner and lien holder, if any, shall state clearly and concisely the findings of the city with respect to the existence of a public nuisance. The notice shall further provide the following information:

- (1) The names, telephone numbers, and addresses for use in contacting the city;
- (2) A clear statement that, unless the owner thereof shall cause the abatement of the nuisance pursuant to the order's contained in the city's notice, the public nuisance shall be abated by the city at the expense of the owner;
- (3) Inform them of their rights to appeal;
- (4) The city's right, if it has to abate the condition, to assess an administrative fee and to recover all public cost, including attorney's fee and the cost of establishing a lien against the property.

#### **Section 9-31. Abatement by Owner**

Within thirty (30) days after the service of the notice of abatement of nuisance as described above, the owner, agent of the owner, or individual in possession of the affected property shall remove and abate such nuisance. The owner, agent of the owner or individual in possession of the affected property shall file a written statement with the department establishing that no nuisance exists any longer, and such written statements shall be filed within the thirty day extension described above, the owner, agent of the owner, or individual in possession of the affected property shall file a written statement on the department establishing that no nuisance exists any longer, and such written statement shall be filed within the thirty day period mentioned above.

#### **Section 9-32. Abatement by City; Liability for cost of abatement; court action.**

In the event the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, or in the event of summary abatement as provided for in Section 9-27 above, the city manager may, in a reasonable and prudent matter, direct the expenditure of public resources to abate the nuisance condition. The cost of such abatement shall include an administrative assessment of \$250, any attorney fees and costs incurred in processing of the nuisance as described herein, plus the actual cost of labor and materials expended in the public abatement. The person shall be served with a Notice of Assessment within seven days after the completion of the abatement. The notice of assessment shall include the administrative fee and a statement of public cost, attested to by affidavit, and shall be issued and served as provided for in Section 9-30 above upon the person responsible for

payment, and the notice shall call for payment to be made within thirty days of the date of service. Upon expiration of the thirty day period, if the amount has not been paid in full or contested utilizing the appeal mechanism described herein, the city manager may cause a lien in the amount to be filed in the clerk of court and the finance director for the city. The lien shall be of record in the county courthouse and the finance director shall note it in the book of liens until such amount has been paid or recovered or otherwise released. The lien shall be collectable in the same manner and shall have the same priority as municipal taxes. Collection of the lien by way of recovery or foreclosure may be instituted by the city attorney on behalf of the city. Additionally, the City of Florence, South Carolina, is a claimant agency as defined in the Setoff Debt Collection Act, SC Code Ann. § 12-56-10, et seq. (the Act) and is therefore entitled to utilize the procedures set out in the Act to collect delinquent debts owed to the City of Florence. The city may utilize those procedures to collect any delinquent debts owed to the city as a result of abatement activities under this code section.

### **Section 9-33. Appeal Procedures**

Within fifteen (15) days after the service of the notice of abatement of nuisance as described above, the owner, agent of the owner, or individual in possession of the affected property may file a written statement of appeal with the department appealing the finding by the Enforcement Official regarding the existence of a nuisance.

(1) The appeal shall be heard at a hearing conducted by the Housing Board of Adjustments and Appeals as established in §4-214 of this Code. Said board may amend or modify the notice of nuisance and/or order, it may extend the time for compliance with the city's order regarding abatement by the owner to such date as the majority of said board may determine.

(2) The hearings allowed under this section shall be held as soon as practical, but in any event, not later than thirty calendar days following receipt by the city of the written demand. Additionally, the individual shall provide to the individual making the written demand for a hearing at least two day's notice of the hearing, and said notice shall advise the individual making the demand of the time and location of the hearing and the right to present evidence and to be represented by counsel at such hearing. The hearing shall be informal, and the decision of the housing board of adjustments and appeals, as described below, shall be final.

(3) The owner, agent, agent of the owner, occupant, and lienholder, if any, of the subject property shall be given the opportunity to present evidence to said board during the course of the hearing.

(4) In those instances where the nuisance has been abated by the city pursuant to §9-32 herein, and the purpose of the hearing demanded is to address the cost of abating the nuisance and the fees charged therein, the appeals board shall have the discretion to waive the cost and fees associated with the abating of the nuisance in whole or in part, if, in the course of the hearing reviewing the decision, the appeals board finds that any of the following did not conform to the provisions of this article;

- (1) The notice to remove the nuisance;
- (2) The work performed in abating the nuisance;
- (3) The computation of the charges and fees associated with the abatement of the nuisance.

**This Ordinance shall be effective immediately upon its passage on second reading.**

**ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2010.**

\_\_\_\_\_  
**Stephen J. Wukela**  
**Mayor**

**Approved as to form:**

**Attest:**

\_\_\_\_\_  
**James W. Peterson, Jr.**  
**City Attorney**

\_\_\_\_\_  
**Dianne M. Rowan**  
**Municipal Clerk**