



ORDINANCE NO. 431

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA, AMENDING CHAPTER 22 ENVIRONMENT, ARTICLE II NUISANCES, DIVISION 1 IN GENERAL, SECTION 22-32 PROHIBITED NUISANCES ON DEVELOPED OR VACANT LOTS AND SECTION 22-33 ABATEMENT OF UNCULTIVATED VEGETATION; NUISANCES TO CLARIFY THE AUTHORITY AND PROCEDURES FOR ABATEMENT OF NUISANCES AND FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY, THE REPEAL OF ALL CONFLICTING ORDINANCES, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town of Sewall's Point, Florida (the "Town") 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 Town's Code of Ordinances, at sections 22-32 and 22-33 address prohibited nuisances on developed and vacant lots, including but not limited to, the accumulation of trash, dilapidated structures, and overgrown grass and the procedures for the abatement of such nuisances; and

WHEREAS, the Town Commission wishes to amend these sections to clarify the authority and procedures to abate these nuisances and to ensure that due process is provided to all respondents; and

WHEREAS, the Town Commission finds and declares that the amendments to these sections are appropriate and in the best interest of the health, safety and welfare of the Town, its residents and visitors.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the legislative findings of the Town Commission.

Section 2. Chapter 22 Environment, Article II Nuisances, Division 1 In General is hereby amended to read as set forth below:

DIVISION 1. – IN GENERAL

Sec. 22-31. - Nuisance defined.

For the purposes of this chapter, the word "nuisance" is hereby defined as a condition caused by an unlawful act, or omission, or permitting any condition or thing to be or exist, which either:

- (1) Injures or endangers the comfort, health or safety of others; or
- (2) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
- (3) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

Sec. 22-32. – Prohibited nuisances on developed or vacant lots.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property, developed or undeveloped, ~~or lot~~ of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance and are prohibited within the town; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (1) Accumulation of rubbish, trash, refuse, junk, debris, and other abandoned materials, metals, lumber or other things;
- (2) Any condition which provides harborage for rats, mice, and other vermin or for the breeding of mosquitoes;
- (3) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more ordinarily dangerous fire hazard in the vicinity where it is located;
- (4) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches;
- (5) The carcasses of animals or fowl not disposed of within a reasonable time after death;
- (6) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, industrial wastes or other substances;

- (7) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained;
- (8) Any accumulation of stagnant water on any lot or piece of ground;
- (9) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities;:-
- (10) Uncultivated vegetation, common and noxious weeds, or grass constitutes a nuisance when it is:
 - a. Greater than 18 inches in height located on vacant lots; or
 - b. Greater than eight inches in height when located on developed residential or nonresidential lots; or
 - c. An unmanaged prohibited species as set forth in subsection 22-2(f)(4)b.; or
 - d. A prohibited species as set forth in subsection 22-2(f)(4)a. and ~~cd.~~ and subsection 22-2(f)(5).

Sec. 22-33. – Abatement of ~~uncultivated vegetation~~; nuisances.

- (a) Authority. The town shall have authority pursuant to its home rule powers, police powers, and Article VIII, Section 2(b) of the Florida Constitution to determine and declare the existence of a public nuisance and shall have the authority to provide for the abatement of such nuisances. The enforcement of this division is supplemental to and outside of Part 1, Chapter 162, Florida Statutes.
- (ba) Inspection and notice. ~~All code enforcement officers are hereby empowered to enter upon and inspect lots on which a violation of this article is suspected to exist. Any code enforcement officer shall be immune from prosecution, civil or eriminal, for reasonable, good faith entry upon a lot suspected of harboring a nuisance as defined herein while in the discharge of his or her duties authorized herein.~~ If inspection by a code enforcement officer reveals the presence of a ~~nuisance~~~~code violation~~, the town shall provide notice advising the property owner of the following:
 - (1) That a nuisance exists on the property;
 - (2) That the owner has ten days to comply the nuisance or deliver to the town manager a written request for a hearing~~right to a hearing~~ before the town's code enforcement board or special magistrate; ~~provided a written request for a hearing is received by the town within ten days of the delivery of the notice;~~

(3) ~~That a failure to abate the nuisance or request a hearing~~ within the time specified may result in the town taking such actions as necessary to abate the nuisance and the cost of abatement shall be assessed against the property~~lot~~; and

(4) ~~That a lien may be recorded against the property~~lot to secure the recovery of the town's expenses incurred in abating the nuisance.

The notice shall be provided to the owner by regular and certified mail, return receipt requested, or by hand delivery. In the event that the mailed notice is returned by the postal authorities or the return receipt is not received by the town within ten days after mailing, the notice shall be given by physical posting of the notice at the subject property. Notice by posting shall be considered delivered on the date posted. In the case of multiple owners, service as herein provided on any one owner shall be sufficient.

(c**b**) Time to comply; reinspection. The owner shall have ten days from the date the notice of the nuisance is delivered to either comply the nuisance or deliver a written request for a hearing to the town manager. If no hearing is timely requested~~If the notice is returned unclaimed,~~ the code enforcement officer shall, upon the expiration of the notification period, re-inspect the property~~lot~~ to determine whether or not the nuisance has been abated. If the code enforcement officer determines that the property~~lot~~ still harbors a nuisance, the code enforcement officer, or such other town employees, or town contractor~~agents~~ as ~~he or she may retain~~ are herein authorized to enter upon the property~~lot~~ and to take such steps as are reasonably necessary to effect abatement of the nuisance or take other such corrective action, as he or she deems appropriate.

(d**e**) Abatement costs. If abatement is effected by the town as provided herein above, the cost to the town of abating the nuisance on each property~~lot~~, including administrative costs and all other related costs, shall be calculated and assessed against the property~~lot~~ ~~by the code enforcement officer.~~ The assessment shall describe the property ~~and~~~~lot~~; enumerate the cost of abatement, including the administrative costs and other related costs~~fees~~ incurred by the town. The ~~town~~~~code enforcement officer~~ shall mail a notice of the assessment to the address

of the property owner as shown by the tax collector's records. Until full payment is received, assessments shall be a legal, valid and binding lien upon the property. The assessment shall become due and payable to the town as of the date of the mailing of the notice of assessment; and interest shall begin to accrue at the rate of 12 percent per annum on any unpaid portion thereof.

- (~~e~~) Recording and enforcement of lien. As soon as possible after the assessment has been made by the ~~town~~code enforcement officer, a certified copy of the assessment shall be recorded by way of lien for assessments in the official records of ~~the~~ Martin County. The lien shall become effective on the date that a copy of the lien is recorded.
- (~~e~~)—Such lien assessments, together with interest thereon, may be enforced or foreclosed by civil action in the appropriate court of the law. The lien created hereby shall be a first lien, equal to a lien for nonpayment of property taxes, on any lot against which an assessment for costs to abate a nuisance has been recorded. The lien shall continue in full force until discharge by payment or otherwise, until settled and released by the town.
- (~~f~~)—The ~~town~~code enforcement officer shall mail a notice that a lien has been recorded against the lot to its owner. The notice shall be sent by certified or registered mail, return receipt requested, to the owner's ~~last known~~ address as shown in the tax collector's records.
- (~~g~~)—Nothing in this part shall prevent the town from pursuing abatement of a nuisance or enforcement of this article through other processes or legal action.
- (f) Hearing. If a hearing is timely requested, the town will schedule the code enforcement board or special magistrate to hear the matter. The town will provide the owner with a written notice of the date and location of the scheduled hearing. The hearing will be conducted in accordance with the rules of procedure applicable to code enforcement proceedings as set forth in subsections 18-202(a) and (b) of this Code. The decision of the code enforcement board or special magistrate will be final. If after the hearing the code enforcement board or special magistrate determines that the condition which exists on the property constitutes a nuisance and is in violation of the ordinance, administrative costs shall be

assessed against the owner, and the owner of the property shall have a reasonable time, as determined by the code enforcement board or special magistrate, to comply the violation. If the owner fails to timely comply the violation, the town shall have the right to have the nuisance abated at the expense of the owner. If the town abates the nuisance, the costs of the abatement, including the costs of inspection, administration, and all other related costs shall be assessed against the property as set forth in this section.

- (g) Any person adversely affected or aggrieved by a final order of the code enforcement board or special magistrate pursuant to this article may file an appeal to the circuit court. Such appeal shall not be a hearing de novo but shall be limited to an appellate review of the record created before the code enforcement board or special magistrate. The appeal shall be filed within thirty days of the execution of the order to be appealed.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Codification. The sections of the ordinance may be made a part of the Town Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 6. Effective Date. This ordinance shall take effect immediately upon adoption.

Vice Mayor Campo offered the Ordinance for its first reading and moved its adoption. The motion was seconded by *Commissioner Fender*, and upon being put to a vote, the vote was:

	<u>AYE</u>	<u>NAY</u>
KAIJA MAYFIELD, MAYOR	<input checked="" type="checkbox"/>	___
JAMES W. CAMPO, VICE MAYOR	<input checked="" type="checkbox"/>	___
FRANK FENDER, COMMISSIONER	<input checked="" type="checkbox"/>	___
DAVE KURZMAN, COMMISSIONER	<input checked="" type="checkbox"/>	___
JOHN TOMPECK, COMMISSIONER	<input checked="" type="checkbox"/>	___

Passed first reading at the Regular Meeting of the Town Commission held on the 27th day of April, 2021.

Vice Mayor Campo offered the Ordinance for its second reading and moved its adoption. The motion was seconded by Commissioner Kurzman and upon being put to a vote, the vote was:

	<u>AYE</u>	<u>NAY</u>
KAIJA MAYFIELD, MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JAMES W. CAMPO, VICE MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FRANK FENDER, COMMISSIONER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DAVE KURZMAN, COMMISSIONER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JOHN TOMPECK, COMMISSIONER	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Passed second reading at the Regular Meeting of the Town Commission held on the 25th day of May, 2021. The Mayor thereupon declared this Ordinance approved and adopted by the Town Commission on this 25th day of May, 2021.

TOWN OF SEWALL'S POINT, FLORIDA

Kaija Mayfield
Kaija Mayfield, Mayor

ATTEST:

April Stoncius
April Stoncius, CMC, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: Glen J. Torcivia
Glen J. Torcivia, Town Attorney
Florida Bar No. 343374

