

ORDINANCE NO. 2009-02

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO ATTRACTIVE NUISANCE CONDITIONS; AMENDING CHAPTER 49, TOWN CODE, AND CREATING ARTICLE IV. AND SECTIONS 49-61 THROUGH 49-63, TOWN CODE OF ORDINANCES, TO RECOGNIZE AN ATTRACTIVE NUISANCE CONDITION AS A PUBLIC NUISANCE; PROHIBITING CONDITIONS OF ATTRACTIVE NUISANCE; DEFINING ATTRACTIVE NUISANCE AS AN ARTIFICIAL CONDITION; PROVIDING FOR THE ABATEMENT OF ATTRACTIVE NUISANCE CONDITIONS; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Commission finds that the municipalities in South Brevard County are experiencing an increase in code enforcement cases involving a rising number of abandoned properties; and

WHEREAS, the Town Commission finds that abandoned properties often involve unsecured swimming pools and unsecured buildings, creating an attraction for children and an unreasonable risk of harm to children; and

WHEREAS, the Town Commission finds that occupied properties at times also permit artificial conditions that attract children yet pose an unreasonable risk of harm; and

WHEREAS, the Town Commission finds that conditions constituting a violation of the National Fire Protection Association (NFPA) 101, Life Safety

Code, as adopted or in effect within the town pursuant to section 633.025, Florida Statutes, are also conditions that could constitute an attractive nuisance and do constitute a public nuisance;

WHEREAS, the Town Commission finds that many attractive nuisances can be eliminated by temporary repairs that secure the premises and reduce the unreasonable risk of harm; and

WHEREAS, the Town Commission finds that children should be protected from attractive nuisance conditions created through the lack of adequate maintenance and security of properties; and

WHEREAS, the Town Commission finds that public nuisance proceedings as provided in this Ordinance could apply as an effective means of assessing properties for abatement of attractive nuisances; and

WHEREAS, the Town Commission finds that the Town has authority to come onto private property, make temporary repairs, and secure the premises, Flesch v. Metropolitan Dade County, 240 So.2d 504 (Fla. 3d DCA 1970), *cert. denied*, 244 So.2d 432 (Fla. 1971); and

WHEREAS, the Town Commission finds that this Ordinance the provides a process by which attractive nuisance conditions on private property may be remedied and the

property secured will: promote public health conditions by allowing certain attractive nuisance conditions that could cause a threat to the public health to be quickly and expeditiously remedied, protect the public safety by removing or remedying attractive nuisance conditions, and provide for preservation of the economic order by reducing or stopping conditions of blight that may degrade the property values of adjacent properties.

BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:

SECTION 1. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a new article, to be number VI., and a new section, to be numbered 49-61, which said section reads as follows:

ARTICLE VI. ATTRACTIVE NUISANCE CONDITION

§ 49-61. ATTRACTIVE NUISANCE PROHIBITED.

(a) As used in this article, the term "attractive nuisance" shall be construed to mean any artificial condition, whether in a building, on the premises of a building or upon an unoccupied job site, which by its nature, location or character would tend to attract and substantially endanger the safety of any minor person. This includes, but is not limited to, unsecured swimming pools, abandoned wells or shafts; excavations; abandoned refrigerators/freezers

with doors or motor vehicles with unlocked doors; any structurally unsound fences or structures; lumber, trash/debris, or any other materials which may provide a hazard; or any condition which is determined to be a life safety violation. A "life safety violation" includes: i) a violation of the Florida Fire Prevention Code, as adopted pursuant to Rule 69A-60.002(3), Florida Administrative Code, which includes the National Fire Protection Association (NFPA) 101, Life Safety Code and National Fire Protection Association (NFPA) 1, Life Safety Code; or ii) a violation of the Preston de Ibern/McKenzie Merriam Residential Swimming Pool Act, section 515.21 et seq., Florida Statutes and in particular sections 515.27(1)(a) and 515.29, Florida Statutes.

(b) No person shall have, keep, maintain, cause or permit an attractive nuisance condition on any parcel of land within this Town. Having, keeping, maintaining, causing, or permitting an attractive nuisance in violation of this section is hereby prohibited and declared to be a public nuisance.

SECTION 2. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a new

Section, to be numbered 49-62, which said section reads as follows:

§ 49-62. ATTRACTIVE NUISANCE CONDITION - VIOLATION.

(a) Any person responsible for any parcel of land on which an attractive nuisance condition shall exist shall take all necessary measures to remedy the attractive nuisance condition within three (3) days after written notice by the Town, or within such reasonable time as may be specified in the notice from the Town.

(1) If a code enforcement officer finds and determines that a public nuisance as described in section 49-61 exists and declares same to exist on a particular parcel of land, the code enforcement officer shall so notify the owner and the occupant of record of the offending property and any mortgagee that has registered pursuant to section 49-55. Said notice shall be given in writing and shall require that the condition be remedied. The notice shall specify a date for the completion of the remedying of the attractive nuisance condition. The notice shall be given by certified U.S. mail, return receipt requested, or as otherwise provided in section 162.12, Florida Statutes, said notice being addressed to the owner or owners of the property described and mortgagee of the property, if said mortgagee has registered with the town.

If notice is mailed, notice to a property owner shall be given as their names and addresses are shown upon the record of the county property appraiser, and notice given to a mortgagee shall be addressed to the address as shown by any mortgagee registration filed at town hall. Mailed notice shall be deemed complete and sufficient when so addressed and deposited in the United States mail with proper postage prepaid.

(2) Simultaneous with mailing the notice, the property shall be posted with a notice in substantially the following form:

NOTICE OF PUBLIC NUISANCE

Name of owner . . .

Address of owner . . .

Name of registered mortgagee, if any (§49-55, Town Code)...

Address of registered mortgagee . . .

Our records indicate that you are the owner(s) of the following property in the Town of Melbourne Beach, Florida:

(describe property)

An inspection of this property reveals that a public nuisance exists and constitutes a violation of Section 49-61 of the Town of Melbourne Beach Code of Ordinances, in that:

(describe here the condition which places the property in violation)

You are hereby notified that unless the condition above-described is remedied so that it is no longer in violation of the Town Code within _____ (___) days from the date of this notice, the Town of Melbourne Beach will proceed to remedy this condition and the cost of the work, including advertising costs and other expenses, will be imposed as a lien on the property if not otherwise paid within thirty (30) days after receipt of billing. Appeal of such billing or lienning of the property may be undertaken pursuant to Section 49-43, Town Code, within not more than twenty-one (21) consecutive days after the taking of the action complained of. Further information regarding this notice or any appeal may be obtained by contacting . . . , at Melbourne Beach Town Hall, 507 Ocean Avenue, Melbourne Beach, FL 32951, telephone number . . . ; e-mail . . .

(b) Within ten (10) days after the mailing or other service of the notice to the property owner and mortgagee (if the property is registered), and the posting of the property, the owner or mortgagee of the property may make written request to the town manager for a hearing before said manager or said manager's designee to show that the

condition alleged in the notice does not exist or that such condition does not constitute a public nuisance.

(c) At the hearing, the town and the property owner or mortgagee may introduce such evidence as is deemed necessary. The town manager, or said manager's designee, shall establish rules and regulations for the hearing procedure. The formal rules of evidence shall not apply; provided, that fundamental due process is provided. Following a review by the town manager, the owner or mortgagee, as applicable, will have exhausted said owner's or mortgagee's administrative remedies.

(d) Should the condition to be abated be deemed an emergency condition necessitating immediate action to preserve the health, safety or welfare of the neighborhood in which the parcel of land on which an attractive nuisance exists, the town may, but shall not be obligated, to abate the nuisance as provided in this article absent written notice but after it has attempted reasonable means of notifying the owner, occupant, lessee, registered mortgagee, or other person in control of the land. As soon as practicable after abatement, notice shall be sent to said owner, occupant, lessee, registered mortgagee, or other person in control of the parcel of land on which the

attractive nuisance exists, of the action taken and a lien shall arise as provided in section 49-63.

SECTION 3. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a new Section, to be numbered 49-63, which said section reads as follows:

§ 49-63. CONDITION MAY BE REMEDIED BY TOWN.

(a) If within twenty (20) days after mailing of the notice, no hearing has been requested, or if the property owner or mortgagee, as applicable, has been found in violation at the hearing specified in section 49-62 before the town manager or said manager's designee, and the condition described in the notice has not been remedied, the attractive nuisance condition may be remedied by the town at the expense of the property owner or mortgagee, as applicable.

(b) After causing the attractive nuisance condition to be remedied, the town manager, or said manager's designee, shall certify to the town clerk the expense incurred in remedying the condition and shall include a copy of the notice above-described and a copy of the decision, if any, by the town manager, or said manager's designee. If the expense is not paid within thirty (30) days, a special assessment lien and charge will be made

upon the property, which shall be payable with interest at the rate of eight percent (8%) per annum from the date of such certification until paid. Such lien may be satisfied at any time by payment thereof including accrued interest. Such lien shall be recorded in the public records of the county. Upon payment of a lien, the satisfaction and cancellation of such lien shall be recorded in the public records of the county. If the charge and special assessment lien shall not be paid within two (2) years from the date of recording of said lien, the town may at anytime thereafter institute foreclosure and other proceedings as provided in section 170.10, Florida Statutes, or chapter 173, Florida Statutes, to recover the amount of the charge plus interest, court costs, and attorneys' and paralegals' fees.

SECTION 4. Severability/Interpretation Clause. That it is hereby declared to be the intention of the Commission that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of

this Code. That in interpreting this ordinance, underlined words indicate additions to the existing text, and ~~stricken through~~ words indicate a deletion from existing text.

SECTION 5. Ordinances in Conflict. That all ordinances or resolutions or parts thereof that may be determined to be in conflict herewith are hereby repealed.

SECTION 6. Effective Date. That this ordinance shall become effective immediately upon its adoption in accordance with the Town Charter.

That this Ordinance was passed on first reading at a regular meeting of the Town Commission on the 21st day of January, 2009, and adopted on the second and final reading at a regular meeting of the Town Commission on the 18th day of February, 2009.

TOWN OF MELBOURNE BEACH,
FLORIDA, a Florida Municipal
Corporation

BY: _____
Rita A. Karpie, Mayor

ATTEST:

(TOWN SEAL)

Tina Hoffkins, Town Clerk

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