

ORDINANCE NO. 09-2023

AN ORDINANCE OF THE CITY OF SEMINOLE, FLORIDA CREATING A NEW ARTICLE III (UNSAFE BUILDING ABATEMENT CODE) OF CHAPTER 6 (BUILDINGS AND BUILDING REGULATIONS) OF THE CODE OF ORDINANCES, CITY OF SEMINOLE TO PROVIDE FOR THE PROHIBITION OF SUCH STRUCTURES, FOR THE AUTHORITY OF THE CITY TO ENSURE SUCH STRUCTURES ARE ABATED OR REMOVED, AND FOR PROCEDURES FOR ABATEMENT OR REMOVAL; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 6 of the Code of Ordinances, City of Seminole, addresses the subject of Buildings and Building Regulations; and

WHEREAS, Chapter 6 does not currently address structures in the City which have become unfit and unsafe for human habitation and which may pose a serious risk of danger to the health and safety of residents, and which may have become an attractive nuisance to children who may enter and become injured on such properties; and

WHEREAS, the City Council has become aware of unoccupied properties in the City which have become unfit for human habitation, and which, due to neglect and deterioration of structural elements, are currently a serious risk to residents and are becoming a nuisance due to being an attraction to termites, rodents, and other undesirable living creatures; and

WHEREAS, a structure may be deemed unsafe (and thus a nuisance) if it poses a danger to the public health or safety, such as in the case of *Trushin v. City of Miami Beach*, 328 So. 2d 27 (Fla. 3d DCA 1976), wherein the court ruled that an apartment building was properly adjudged a nuisance and ordered demolished where it was concededly unfit for human habitation, did not comply with zoning ordinances, and would have cost at least 200% of the county tax-assessed value to repair; and

WHEREAS, court cases such as *Munzel as Trustee of Clyde W. Munzel Revocable Trust, under agreement dated May 3, 2005 v. Hillsborough County*, 574 F.Supp.3d 1145 (M.D. Fla. 2021) confirm that no compensation is due when the government's seizure of property was necessary to abate a nuisance or protect the public health; and

WHEREAS, the Florida Supreme Court has confirmed in *Keshbro, Inc. v. City of Miami*, 801 So. 2d 864, 875 (Fla. 2001) that government agencies need not compensate landowners if they can identify background principles of nuisance and property law that forbid the manner in which the landowner was using the property; and

WHEREAS, the court in *Dragomirecky v. Town of Ponce Inlet*, 882 So. 2d 495, 497 (Fla. 5th DCA 2004) found that, while it is true that a plaintiff may be financially harmed if a demolition of an unsafe and uninhabitable building occurs, "the law permits such harm when it results from a valid exercise of police power"; and

WHEREAS, the court in *G.W. v. State*, 106 So. 2d 83, 85 (Fla. 3d DCA 2013) ruled that a lawmaking body, under its police power “has broad authority...to enact laws which ‘promote the public health, safety, morals, and general welfare’ of its citizens”; and

WHEREAS, the City Council desires to adopt a regulatory scheme which allows the City to promptly address such structures in a way which will ensure that they are either fully secured or demolished, while also providing for procedures which will ensure the owners of such structures are afforded due process; and

WHEREAS, it is in the best interest of the City, its residents, its visitors, and its businesses, to approve the provisions set forth in this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Seminole, Florida that:

Section 1. A new Article III, Chapter 6 of the Code of Ordinances, City of Seminole, is hereby created to read as follows:

ARTICLE III. – UNSAFE BUILDINGS ABATEMENT CODE

Sec. 6-35. - Unfit or unsafe dwellings or structures.

When a dwelling or other structure or any portion thereof, including an accessory building or manmade body of water, is found to be unfit or unsafe upon inspection by the code enforcement officer or the building official, the code enforcement officer or the building official shall require the repair, securing, demolition or removal thereof.

For purposes of this chapter, an unsafe or unfit dwelling or other structure or any portion thereof, including an accessory building or manmade body of water, is one that has any of the following conditions, such that the life, health, property or safety or its occupants or the general public are endangered:

(1) Any means of egress or portion thereof is not of adequate size or is not arranged to provide a safe path of travel in case of fire or panic.

(2) Any means of egress or portion thereof, such as but not limited to fire doors, closing devices and fire resistive ratings, is in disrepair or in a dilapidated or nonworking condition such that the means of ingress or egress could be rendered unsafe in case of fire or panic.

(3) The stress in any material, member or portion thereof, due to all imposed loads including dead load exceeds the stresses allowed in the Florida Building Code.

(4) The building, structure, or portion thereof has been damaged by fire, flood, earthquake, wind or other cause to the extent that the structural integrity of the building or structure is less than it was prior to the damage and is less than the minimum requirement established by the Florida Building Code.

(5) An exterior appendage or portion of the building or structure is not securely fastened, attached or anchored such that it is capable of resisting wind, seismic or similar loads as required by the Florida Building Code.

(6) If for any reason the building, structure or portion thereof is manifestly unsafe or unsanitary for the purpose for which it is being used or for which it was designed or otherwise inadequate to protect the health or safety of the occupants or of the public.

(7) The building, structure or portion thereof as a result of decay, deterioration or dilapidation is likely to fully or partially collapse.

(8) The building, structure or portion thereof has been constructed or maintained in violation of a specific requirement of the Florida Building Code or of a city, county, or state law.

(9) Any building, structure or portion thereof that is in such a condition as to constitute a public nuisance.

(10) Any building, structure or portion thereof that is unsafe, unsanitary or not provided with adequate egress, or which constitutes a fire hazard, or is vandalized or vermin-infested such that it creates a serious hazard to the health or safety of the occupants or of the public, or is otherwise dangerous to human life, or, which in relation to existing use, constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment.

Sec. 6-36. - Notice of violation; notice of condemnation/order to demolish.

When the code enforcement officer or the building official verifies the existence of a dwelling or structure, including an accessory building or manmade body of water, which is unfit or unsafe, the code enforcement officer or the building official shall determine the owner of record of the real estate upon which the dwelling or structure, including accessory buildings or a manmade body of water, is located and shall provide a notice of violation stating the requirements to secure or repair, and/or a notice of condemnation/order to demolish requiring demolition and removal to the owner of record and other interested parties as set forth in section 6-39.

In addition, a copy of the notice of violation and/or order of condemnation shall be posted in a conspicuous place at City Hall and upon such dwelling or structure and a notice of intent to demolish or secure shall be recorded in the public records of the county. Ten days prior to authorizing the demolition or securing of any unsafe structure by city contract, a notice of intent to demolish or secure and inspect shall be published two times in a newspaper of general circulation within the city. Such notice shall be substantially in the following form:

"Notice of Intent to Demolish or Secure and Inspect

The owner or other interested parties having failed to either repair, secure or demolish the structure at (address) as ordered by the City of Seminole are hereby notified that the City of Seminole, Florida, will proceed to have the structure (secured or demolished) on (date), and a lien placed against the property to recover all costs.

If, as result of this notice, the structure is secured, notice is hereby given that the structure may be inspected on a monthly basis by the city, a fee charged for that inspection, and a lien placed against the property for such fees.

To appeal this notice, interested parties must contact the (contact person and phone number) prior to (date)."

Sec. 6-37. - Authority to order demolition, removal.

The code enforcement officer or the building official shall order the vacation, demolition, removal or securing of any unfit or unsafe dwelling or structure, including an accessory building or manmade body of water, or may order the repair, restoration or replacement of any part or parts of any structure, including an accessory building or manmade body of water, in the city when any such part or parts, by reason of inadequate maintenance, fire, age, decay, deterioration, structural defects, improper design, unstable foundation, termites, affording the opportunity of being a nuisance to the public or a haven for vagrants, criminals or immoral persons, acts of God or other causes, shall be dangerous to the occupants thereof or to surrounding buildings and the occupants thereof, a menace to public health, a fire hazard or so unsafe as to endanger life or property or render the use of the public streets dangerous or is dangerous as defined by the Florida Building Code. When a structure is required to be secured, open windows and doors shall be secured with exterior plywood and suitably coated with an appropriate neutral color blending with or harmonizing with the exterior colors of the building so as to be as inconspicuous as possible.

When securing with exterior plywood is not possible because existing structural damage or design features will not support a sound, secure application of plywood or for any other reason, the code enforcement officer or the building official shall order securing against access and shall specify the industrial standard method and materials to be installed. Manmade bodies of water must be secured in a manner so as to eliminate any drowning or infection hazard, or must be filled completely with clean fill dirt or sand and adequate drainage provided so that water is not retained, does not accumulate and does not pond.

In default of the owner or other parties in interest repairing, restoring or demolishing, removing, securing or replacing such part or parts of such dwelling or structure, including an accessory building or manmade body of water, within the specified time or such other reasonable time fixed in such order by virtue of section 6-36 or 6-40, the code enforcement officer or the building official may order vacation of the premises and proceed under provisions of section 6-36. When the county health officer verifies the existence of a rodent infestation in any dwelling or structure that is to be demolished and removed, in order to preclude the migration of rodents the code enforcement officer or the building official shall require that the owner or person in charge carry out effective rodent extermination methods by a licensed structural pest control operator prior to demolition. Extermination techniques shall include ectoparasite control measures.

All unfit or unsafe structures or manmade bodies of water which have been secured as a result of a notice of violation pursuant to 6-36 of the City Code shall be subject to inspection and the owner of the property, dwelling, structure or building shall be assessed a fee for each and every such inspection. To ensure that the vacant and unfit or unsafe dwelling, structure, building or portion thereof, including an accessory building or manmade body of water, is locked and/or secured, inspections will be conducted at 30-day intervals and the following fee collected in the manner provided by section 6-42 for every inspection conducted.

- (1) Residential, commercial, institutional, and industrial structures, \$70.00 per structure.
- (2) Other structures (detached garages, accessory buildings, etc.), \$50.00 per structure.

Sec. 6-38. - Condition of lot after demolition.

A lot from which a building or manmade body of water is demolished shall be properly filled, graded, and seeded with grass seed or sodded within five days of the date of completion of the demolition.

Sec. 6-39. - Manner of serving notice.

(a) For the purpose of providing notice, interested parties shall be the owner of the property as shown on the county tax rolls, other parties whose names appear on the county tax rolls for the property, and the tenant or occupant(s), if any, of the property, as well as other persons of record interest, which may include the mortgagee, contract purchaser, agent with power of attorney, and any person(s) claiming an interest under lis pendens.

(b) Ten days or more prior to authorizing the demolition or securing of any unsafe structure, the notice of condemnation/order to demolish shall be posted on the front of the property and shall be delivered to the interested parties either:

(1) By personally delivering a copy thereof to the party to be notified, or

(2) By leaving such copy at such person's usual place of residence with some person of the household above 15 years of age and informing such person of the contents thereof, or

(3) By either registered or certified United States mail with return receipt requested.

If the name of any interested party or their place of residence or their post office address cannot be ascertained after diligent search or in the event a notice sent by either registered or certified mail shall be returned undelivered and the person to be notified is not residing within the city, by publishing a copy thereof two times in a newspaper of general circulation within the city and, if the name of such interested party is known, mailing a copy thereof to such person's last known address, if known.

(c) A copy of such notice and order shall be posted in a conspicuous place at City Hall and upon such dwelling or structure or accessory building or abutting such manmade body of water.

(d) Ten days or more prior to authorizing the demolition or securing of any unsafe structure by city contract, a notice of intent to secure and inspect and/or demolish shall be published on two different days in a newspaper of general circulation within the city. Such notice shall be substantially in one of the following forms:

“Notice of Intent to Secure and Inspect”

The owner or other interested parties having failed to either repair, and/or secure the structure at (address) as ordered by the City of Seminole are hereby notified that the City of Seminole, Florida will proceed to have the structure or manmade body of water secured on (date), and a lien will be placed against the property to recover all costs.

If, as result of this notice, the structure or manmade body of water is secured, notice is hereby given that the premises may be inspected on a monthly basis by the City, a fee charged for that inspection, and a lien placed against the property for such fees.

To appeal this notice, interested parties must follow the procedure in section 6-43, City Code prior to (date) and may contact the (contact person, address, and phone number) for information.”

“Notice of Intent to Demolish

The owner or other interested parties having failed to demolish and remove the structure or manmade body of water at (address) as ordered by the City of Seminole are hereby notified that the City of Seminole, Florida will proceed to have the structure or manmade body of water demolished and removed on (date), and a lien will be placed against the property to cover all costs.

To appeal this notice, interested parties must follow the procedure set forth in section 6-43, City Code prior to (date) and may contact the (contact person, address, and phone number) for information."

Sec. 6-40. - Extension of time to comply with order.

(a) If the interested parties shall have obtained a building or demolition permit within the specified period and in good faith and in due time have begun work to comply with the order, but it appears that they will not be able to complete the work by the date ordered, they may file a written request to the code enforcement officer or the building official stating the reasons they have been unable to fully comply, and if reasonable grounds are shown therefor, the code enforcement officer or the building official is authorized to issue extensions in writing not to exceed a total of 60 days in which to fully comply with the original order.

(b) In exceptional cases, the code enforcement officer or the building official may further extend by 30 days the period allowed by the code enforcement officer or the building official as set forth in subsection (a) above, upon written request, as merited by special hardship, unusual difficulty, or unique problems. Requests for extensions shall be made either in person or by certified mail, return receipt requested, to the code enforcement officer or the building official.

Sec. 6-41. - Action on failure to comply.

In the event that the owner or other interested parties shall fail to comply with any order issued under this article within the time therein fixed, the city, acting through the code enforcement officer or the building official, is authorized to vacate, demolish, remove or secure, either with city forces or by independent contractor, submitting the lowest and best bid, any such dwelling or structure, including an accessory building and manmade body of water.

Sec. 6-42. - Assessment of cost of demolition, etc.; lien on property.

(a) Upon expiration of the appeal period with no appeal having been taken, or upon expiration of a 30-day period following the denial of an appeal, or following an emergency demolition authorized and conducted in accordance with section 6-46, the code enforcement officer or the building official, after proceeding under this article, shall report the abatement of the nuisance by the city to the city council; and the city council shall assess the entire cost of such vacation, demolition, removal or securing against the real property upon which such cost was incurred. The costs which may be assessed include the costs of rodent extermination where employed, all administrative costs (which shall include all costs related to any hearing before a special magistrate), postal expense, newspaper publication and other costs reasonably and necessarily incurred by the city, and attorney's fees and costs. Such costs when assessed shall constitute a lien upon such property superior to all others except taxes.

(b) In those instances where the owner has repaired, secured, or demolished a structure or caused such work to be done as the result of having received notice from the city ordering such repair work, demolition or securing, all costs described in subsection (a) reasonably and necessarily incurred by the city shall be assessed against the property and shall constitute a lien upon such property superior to all others except taxes.

(c) The city shall record a notice of lien in the public records of the county. The notice of lien shall show the nature of such lien, the amount thereof, the names of persons having an ownership or other property interest of record, and an accurate legal description of the property, which lien shall date from the date of recording of the notice of lien. Such lien shall bear interest from such date at the rate established by the Comptroller of the State of Florida pursuant to F.S. § 55.03(1), as amended, and shall be enforceable as other liens may be enforced by the city.

Sec. 6-43. - Appeal procedure.

Appeals may be taken of a notice of violation or notice of condemnation/order to demolish issued pursuant to this article by any interested party who has been aggrieved as a result of such notice or order, except in emergency cases as set forth in section 6-46. Such party is afforded a right of hearing. A written request for such hearing shall be filed with the city clerk within ten days of service of notice of violation or the posting or publication of the second notice or notice of condemnation/order to demolish required by section 6-39, whichever is later. Failure to effect personal notice shall not prevent the city from performing the demolition of the structure or attaching a lien on the property.

A notice of the appeal hearing by a special magistrate shall be published once in a newspaper of general circulation in the city at least ten days prior to the time and place of hearing. When the findings of the special magistrate sustain the code enforcement officer or the building official, the special magistrate may set a new deadline date for compliance or authorize the code enforcement officer or the building official to proceed at the expiration of 30 days to demolish and remove the dwelling or structure, including accessory buildings and manmade bodies of water, and report the cost to the city council as provided herein.

In any hearing before the special magistrate, formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of Florida. Each party shall have the right to be represented by counsel, to call and examine witnesses under oath, to introduce documentary evidence or exhibits, to cross-examine opposing witnesses on any relevant matter even though the matter was not covered under direct examination, to impeach any witness regardless of which party first called him to testify, and to submit rebuttal evidence. Each hearing shall be electronically recorded, the cost of which shall be included in the costs referenced in section 6-42 if a final order of demolition is entered.

The burden of proof by a preponderance of the evidence is upon the enforcing agency to show that the subject dwelling, structure, or any portion thereof is unfit or unsafe as defined in section 6-35. At the hearing, the special magistrate shall affirm, modify, or reverse the findings of the code enforcement officer or the building official that the subject dwelling, structure, or any portion thereof is unfit or unsafe as defined in section 6-35. If the special magistrate agrees with the determination of the code enforcement officer or the building official, he or she shall enter a final order approving the demolition.

The special magistrate may grant an extension of time for demolition if at the hearing evidence is presented that families with minor children are residing in the building and that immediate relocation is not possible. However, no such extension of time shall exceed four months. If the special magistrate disagrees with the determination of the code enforcement officer or the building official, he or she shall enter an order reversing the notice of violation or notice of condemnation/order to demolish. All orders shall be issued in writing and shall contain findings of fact and conclusions of law supporting the decision.

Any person aggrieved by the decision of the special magistrate may seek judicial review in accordance with the Florida Rules of Appellate Procedure or other applicable law.

Sec. 6-44. - Appearance of interested parties before the special magistrate.

Any interested party appearing before the special magistrate may appear in person, by legal counsel, or by an agent.

Sec. 6-45. - Reports of unsafe dwellings or structures from departments, and/or private professionals.

Members of the fire department, sheriff's department, public works department and any other city department may make written reports to the code enforcement officer or the building official concerning dwellings or structures, which appear to be unsafe within the terms of this article. The code enforcement officer or the building official is authorized to utilize the services of private engineers, architects, or other professionals in order to determine the condition of the structure in question, and such costs shall be assessed in the same manner as provided for in section 6-42.

Sec. 6-46. - Emergency condemnations, authority to take action; lien on property.

In cases where there is imminent peril to the public safety or general welfare or immediate danger to the life or safety of any person or where the public is endangered by weather conditions, fire, other natural disasters or the particular location of the subject property, unless an unfit or unsafe dwelling or structure, including an accessory building or manmade body of water, is immediately repaired, demolished, or removed, the code enforcement officer or the building official shall promptly cause such building, structure, portion thereof, including an accessory building or manmade body of water to be made safe or removed. For this purpose the code enforcement officer or the building official, or his designee, and the fire marshal may at once enter such a structure or land on which it stands, or abutting land or structures, to perform an inspection with such assistance and at such cost as may be deemed necessary.

Upon inspection, the code enforcement officer or the building official or his designee, and the fire marshal shall jointly determine whether or not the building, structure, portion thereof, including an accessory building or manmade body of water requires immediate emergency demolition in order to maintain the safety and welfare of the owner, tenants, or public. A written report will document results of these inspections. Exterior and interior photographs of the building, structure, or portion thereof including an accessory building or manmade body of water will be taken when feasible.

The code enforcement officer or the building official may order the vacation of adjacent structures and may require the protection of the public by appropriate fence or such other means as may be necessary, and for this purpose may close a public or private way.

If the code enforcement officer or the building official determines there is sufficient time prior to demolition, a notice of intent to demolish will be provided via priority mail or courier delivery or telephone to the owner and interested parties informing him/her/them of the emergency demolition. This written notification must state the findings of the code enforcement officer or the building official and the fire marshal, documenting cause for demolition or removal. Where the owner or other interested party fails to take immediate corrective action as ordered by the code enforcement officer or the building official, the code enforcement officer or the building official shall have the authority to promptly proceed with the abatement of the unsafe structure in accordance with this article. Failure

to effect personal notice upon the individual owner or interested parties shall not prevent the city from performing the emergency demolition or removal and assessing a lien on the property. All costs incurred in the evaluation, vacation, securing and emergency demolition are the responsibility of the property owner, shall be reported to city council, and the council shall place a lien on the property as set forth in section 6-42.

Sec. 6-47. - Appeal and hearing of notice of emergency condemnation/order to demolish.

Appeals may be taken by any interested party of a notice of emergency condemnation/order to demolish only in cases where the structure has not been secured or demolished. Such interested party is afforded a right of hearing upon submission of a written request for such hearing to the city clerk within five days of receipt of actual or constructive notice of the emergency condemnation/order to demolish.

The hearing will be scheduled as soon as possible after receipt of the appeal. Notice of the public hearing of the appeal of emergency cases shall be given by posting a copy of the special magistrate's agenda or a good and sufficient notice of such hearing in City Hall for at least five days prior thereto. Notice will be mailed to the owner and interested parties at least five days prior thereto. Failure to effect personal notice upon an interested party shall not prevent the city from performing the emergency demolition or removal and assessment of a lien on the property as set forth in section 6-42 performing the emergency demolition or removal.

Where the owner or other interested party failed to appear at the emergency condemnation/demolition hearing, such person may seek relief from the circuit court, upon posting adequate bond, as prescribed by law.

Sec. 6-48. - Notice of special magistrate's action concerning appeal.

The code enforcement officer or the building official shall advise the owner or record titleholder of the special magistrate's action by the most expeditious means available, including telephone where urgent, excluding, however, notice by publication.

Sec. 6-49. - Penalty.

In the event the owner, agent or occupant fails to comply with the written notice or order of the code enforcement officer or the building official or the special magistrate, the owner, agent and/or occupant shall be in violation of this article.


Section 2. For purposes of codification of any existing section of the Code of Ordinances, City of Seminole, Florida herein amended, words **underlined** represent additions to original text, words **stricken** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision, or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Council would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Code of Ordinances, City of Seminole, Florida contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses or any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

APPROVED ON FIRST READING: August 8, 2023
PUBLISHED: August 16, 2023
PASSED AND ADOPTED ON
SECOND AND FINAL READING: August 22, 2023


LESLIE WATERS, MAYOR

ATTEST: CITY CLERK

By: Ann Marie Mancuso

