

ORDINANCE 2018-14

AN ORDINANCE AMENDING SECTION 92 "NUISANCES" OF THE CODIFIED ORDINANCES OF SWANTON, OHIO.

WHEREAS, Section 92 of the Codified Ordinances sets forth certain definitions and regulations regarding nuisances within the Village of Swanton; and

WHEREAS, Council desires to amend Section 92 of the Codified Ordinances to clarify definitions and streamline the process of nuisance abatement;

NOW, THEREFORE, BE IT ORDAINED by Council of the Village of Swanton, Fulton County, Ohio, that:

Section 1. That Section 92 of the Codified Ordinances of the Village of Swanton shall be amended to read as follows:

See Exhibit A attached hereto and incorporated herein by reference.

Section 2. That this ordinance shall be effective at the earliest time allowed by law.

First Reading: April 9, 2018

Second Reading: April 23, 2018

Third Reading: May 14, 2018

Vote on Passage

Moved: Rochelle

Second: Rose

YEAS: 6

NAYS: 0

Date of Passage: May 14, 2018



Ann Roth, Mayor

Attest:

I, Jennifer Harkey, Fiscal Officer of the Village of Swanton, do hereby certify that this is a true and accurate copy of Ordinance 2018-14, passed on May 14, 2018


Jennifer Harkey, Fiscal Officer

Chapter 92: Nuisances

- 92.01 Application of Chapter
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92.01 Application of Chapter

The provisions of this chapter shall be enforceable within the Village concurrently with the state and federal laws relative to sanitation and health, and the ordinances or orders of the County Health District relative thereto, and shall not be construed as modifying, repealing, limiting or affecting in any manner such laws, ordinances or orders. (Adopting Ord. 2003-6, passed 1-27-03)(Ord. 92-20, passed 9-28-92) ('64 Code, ~ 517.01)

92.02 Nuisance Prohibited; Defined

No person or entity shall cause or permit a public nuisance to be or remain in or upon any structure, premises or other place, of which that person or entity is the owner, lessee, tenant or occupant. For purposes of this Chapter, "structure" shall have the same definition as stated in Section 150.007(E) of the Codified Ordinances of the Village of Swanton.

As used in this Chapter, "public nuisance" means a condition that exists when:

- (a) Any structure is so out of repair and dilapidated that, if it were permitted to remain, would endanger the life, limb, or property of persons or property upon the public streets or public ways adjacent thereto by reason of the collapse of such building or structure or by the falling of objects therefrom; or
- (b) Any tree, smoke stack, light pole, flag pole, or other object standing upon property is in such condition that, if it were permitted to remain, would endanger the life, limb or property of persons or property upon the public streets or public ways adjacent thereto by the falling of objects therefrom or by the objects themselves falling; or
- (c) Any excavation or cellar upon property is unguarded or remains in such condition that, if it were permitted to remain, would endanger the life, limb or property of persons or property upon the public streets or public ways adjacent thereto, by falling or being cast therein; or
- (d) Any accumulation of earth, rubbish, brush, or other materials which attract and propagate vermin, rodents, or insects that endanger the public health; or
- (e) Any accumulation of rubbish, refuse or waste materials, including tires and portable water tanks, that, by reason of its location and character, is unsightly and interferes with the reasonable enjoyment of property by neighbors, detrimentally affects property values in the surrounding neighborhood or community, or materially interferes with the prevention or suppression of fire upon the premises;
- (f) Any structure is so out of repair that it constitutes a fire hazard because of its condition. For purposes of this subsection, a building that is vacant, unguarded or open at doors or windows, shall be deemed a fire hazard; or
- (g) There is accumulation in any structure or on any property of rubbish or other materials in an amount and in a condition that constitutes a fire hazard by reason of the likelihood of its catching on or communicating fire; or
- (h) Any structure that has been damaged by a fire and is allowed to remain in such condition for at least ninety days, unless the Fire Chief has approved, in writing, a plan and timeline for reconstruction of the structure; or
- (i) The conduct of any activity on any property which by reason of noxious odors generated thereby, or of smoke, dust and dirt being cast therefrom, is harmful to the public health, welfare or safety, or materially interferes with the peaceful and lawful use, comfort and enjoyment of owners or occupants of a proximate property; or

- (j) The presence of noxious weeds or invasive plants as those terms are defined in the Ohio Administrative Code on any premises in the Village at a height that exceeds ten inches; or
- (k) Any structure that becomes so out of repair and dilapidated that, due to lack of adequate maintenance or neglect, it becomes unsafe for occupancy, endangers the public health, welfare, or safety of occupants, or causes such a condition of blight that it materially interferes with the peaceful enjoyment and lawful use of owners or occupants of a proximate property; or
- (l) The presence on any premises of turf grasses exceeding ten inches in height; or
- (m) The conduct of any activity on any property that generates loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others; or
- (n) There is an accumulation of any dirt, construction or demolition debris, containers from industrial use, inoperable motorized vehicles, campers, filth, rubbish, garbage, waste, leaves or clippings, straw, hay bales, tree stumps, boxes, or any other matter of an unsightly or unsanitary nature, in such a manner that such matter could become dangerous to the public health, comfort and safety of others, that such matter could be blown into any street, alley, park, public ground, sidewalk, or property of another, or such matter could be deposited into any plumbing fixture that it may obstruct or render unwholesome any sanitary sewer or watercourse; or
- (o) Any structure, fence, wall, shed, house, swimming pool, any part of any of the foregoing; or any pole or smoke stack; or any excavation, basement, cellar, sidewalk subspace, wharf or dock, which in its entirety or in any part thereof, by reason of the condition in which the same is permitted to be or remain, shall or may endanger the health, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, depreciation, damage, or injury to any one or more persons or to any other property in the Village; or
- (p) Any swimming pool, pond or other body of water that is abandoned, unattended, unfiltered, or otherwise not maintained, resulting in the water becoming polluted by bacterial growth, algae, remains of insects, remains of deceased animals, reptiles, rubbish, refuse, debris, or any other material, which, because of its location, becomes an unhealthy, unsafe or unsightly condition; or
- (q) Any appliance, such as refrigerators and freezers, with a capacity of one and one-half cubic feet or more and an opening of fifty square inches and which has a door or lid equipped with hinge, latch or other fastening device capable of securing such door or lid, which is abandoned, discarded or knowingly permitted to remain on premises in a place accessible to children; or
- (r) Leaving any putrid substances on any lot or land, or failing to remove all obstructions from culverts, covered drains or natural watercourses as provided in Ohio Revised Code 715.47; or
- (s) Failing to keep sidewalks in repair and free from snow, ice, or other obstructions; or
- (t) Any dangerous structure which, because of its condition, is unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of the Village; or

- (u) The storage of any junk car on any premises. As used in this subsection, "junk car" means any unlicensed motor vehicle or any used vehicle propelled or intended to be propelled by power other than human power and which is in an inoperative or partially dismantled condition. As used in this subsection, "inoperative condition" means incapable of being propelled under its own power in its present condition, and "partially dismantled condition" means that some part of a motor vehicle is missing, which part is ordinarily an essential component of the motor vehicle. This subsection shall not apply to vehicles in an enclosed building, to commercial garages, repair shops or used car dealers or to operators of junkyards appropriately licensed and in compliance with the Village Ordinances and the Ohio Revised Code; or
- (v) Any condition exists which has been declared a public nuisance by common law or the Ohio Revised Code.

92.03 Complaints; Inspections of Premises

- (a) Whenever a complaint is made or visual inspection discloses to the Village Administrator or designee of the existence of a public nuisance as defined in Section 92.02, the Village Administrator or designee shall promptly inspect, or cause to be inspected by the Fire Chief, the premises on which it is alleged such public nuisance exists.
- (b) For the purpose of enforcing this Chapter, the Village Administrator or designee is authorized, at any reasonable time, to enter upon and inspect any premises or property within the Village when there is a reasonable cause to believe that a public nuisance, as defined in this Chapter, exists.
- (c) If either the Village Administrator or designee, or the Fire Chief, find that a public nuisance exists and that it should be abated, abatement of such nuisance shall proceed in accordance with the provisions of Section 92.04 or 92.05 below.

92.04 Abatement of Nuisances—Standard Abatement

- (a) Should the Village Administrator or designee, or the Fire Chief, find that a public nuisance as defined in Section 92.02 exists, the Village Administrator or a designee shall cause photographs of such nuisance to be made. The Village Administrator or designee shall then determine from the records of the Lucas or Fulton County Auditor's Office any owner, mortgagee, lienholder, tenant, or person that possesses an interest of record in the property and immediately send a standard notice of violation pursuant to subsection (d) below. The Village Administrator or designee may also send the standard notice of violation to the lessee, tenant or occupant of the premises.
- (b) The standard notice of violation shall: (i) describe with reasonable certainty the premises determined to be a public nuisance; (ii) describe the conditions constituting the public nuisance; (iii) specify that the owner or lessee, tenant or occupant has seven calendar days in which to take one of the actions described in subsection (c) below; (iv) state whether the Village Administrator or designee, or the Fire Chief, finds the public nuisance to constitute an emergency; (v) describe the remediation necessary to abate the public nuisance, which may include repair, rehabilitation and/or vacation of the premises; and (vi) specify the actions to be taken by the Village pursuant to this Chapter upon failure of an owner or lessee, tenant or occupant to take one of the actions described in subsection (c) below within the seven-day time limitation.
- (c) Standard Notice of Violation. In cases in which demolition is not required for abatement, an owner shall have seven calendar days from receipt of the notice of violation to take one of the following actions: (i) fully and completely abate the public nuisance; (ii) work out a schedule, satisfactory to the Village Administrator or designee, for the nuisance abatement, with sufficient surety acceptable to the Village to guarantee completion on schedule; or (iii) appeal the determination of the Village Administrator or designee of the existence of a public nuisance and/or the remedy required to the Board of Zoning Appeals by filing a written notice of appeal with the Village Administrator or designee. If an owner appeals the standard notice of violation to the Board of Zoning Appeals in accordance with this subsection, the Board shall affirm, reverse, or modify the determinations made by the Village Administrator or designee. For purposes of this subsection, "sufficient surety acceptable to the Village to guarantee completion on schedule" affords the Village the sole discretion to select the necessary surety, which may include but not be limited to a cash bond or letter of credit.
- (d) The standard notice of violation may be served by any of the following methods: (i) hand delivery; (ii) posting a notice of violation on the subject premises; (iii) sending certified and ordinary U.S. Mail, addressed to the usual place of residence of the persons entitled to receive the notices of violation, as indicated by current tax records of the Fulton or Lucas County Treasurer's Office or the real property records of the Fulton or Lucas County Recorder's Office.
- (e) If an owner, lessee, tenant or occupant fails to appeal a standard notice of violation within seven calendar days of receipt of the standard notice of violation, and fails to take one of the other steps described in subsection (c) above, the Village Administrator or designee is authorized to take

immediate action to abate the nuisance. Action by the Village Administrator or designee, shall be through such legal or administrative channels as are deemed most appropriate or through use of either Village or private labor to effect the necessary nuisance abatement.

92.05 Abatement of Nuisances—Abatement by Demolition

- (a) Should the Village Administrator or designee, or the Fire Chief, find that a public nuisance as defined in Section 92.02 exists, and that abatement by demolition may be required, the Village Administrator or a designee shall cause photographs of such nuisance to be made. As otherwise permitted in the Village's Ordinances or the Ohio Revised Code, the Village Administrator or designee shall have the express authority to engage any engineers or consultants to evaluate the need for demolition in a particular case. The Village Administrator or a designee shall then determine from the records of the Lucas County or Fulton County Auditor's Office any owner, mortgagee, lienholder, tenant, or person that possesses an interest of record in the property and immediately send a demolition notice of violation to the owner and, as applicable, to the lessee, tenant or occupant of the premises, as provided in subsection (c) below.
- (b) Contents of a Demolition Notice of Violation. The demolition notice of violation shall: (i) describe with reasonable particularity the premises deemed to be a public nuisance; (ii) describe the conditions constituting the public nuisance; (iii) specify that an owner has thirty calendar days within which to either fully and completely abate the nuisance via demolition or work out a schedule, satisfactory to the Village Administrator or designee, or the Fire Chief, for the demolition, with sufficient surety acceptable to the Village to guarantee timely completion of the abatement according to schedule; and (iv) inform the interested parties of the date and time of the pre-scheduled adjudicatory hearing date before the Board of Zoning Appeals. The hearing date shall be set no less than thirty calendar days after the date of the demolition notice of violation. The Board of Zoning Appeals shall affirm, reverse, or modify the determinations made by the Village Administrator or designee, or Fire Chief, in the demolition notice of violation, including the existence of the public nuisance and the demolition remedy deemed necessary by the Village Administrator or designee, or Fire Chief. For purposes of this subsection, "sufficient surety acceptable to the Village to guarantee completion on schedule" affords the Village the sole discretion to select the necessary surety, which may include but not be limited to a cash bond or letter of credit.
- (c) The demolition notice of violation shall be served by either hand delivery, or both the posting of a notice of violation on the subject premises and via certified and ordinary U.S. Mail, addressed to the usual place of residence of the persons entitled to receive the notices of violation, as indicated by current tax records of the Lucas or Fulton County Treasurer's Office or the real property records of the Lucas or Fulton County Recorder's Office. This shall include all owners, mortgagees, lienholders, tenants or other persons possessing an interest of record in the property.
- (d) The final decision of the Board of Zoning Appeals regarding demolition shall be delivered to the property owner via hand delivery, or via certified and ordinary U.S. mail, and posted on the subject premises. Upon the decision of the Board of Zoning Appeals determining that demolition is required for abatement of a nuisance, the Village Administrator is authorized to abate the nuisance via demolition through such legal or administrative channels as are deemed most appropriate or through use of either Village or private labor to effect the necessary nuisance abatement.

92.06 Emergency Abatement

- (a) Whenever a public nuisance exists as defined in Section 92.02 and the nature thereof constitutes an emergency as defined in subsection (b) below, the Village Administrator or designee may take immediate action to abate the nuisance and such abatement may take place without prior notice to the titled owner of the premises on which the public nuisance exists. Notice of the action taken to abate the nuisance shall immediately be sent to the titled owner by certified mail with a return receipt requested and posted on the premises.

- (b) As used in this section, “emergency” means an unforeseen combination of circumstances that calls for immediate action in order to preserve the public health, safety, welfare, or property against an imminent risk of physical harm.

- (c) In any proceeding pursuant to this section, the determination that a public nuisance exists and constitutes an emergency as defined in subsection (b) hereof shall be made solely by the Village Administrator or the Fire Chief. As otherwise permitted in the Village Ordinances and the Ohio Revised Code, the Village Administrator or designee shall have the express authority to engage any engineers or consultants to evaluate the need for emergency abatement.

92.07 Abatement by Village; Costs and Assessment

- (a) Should the public nuisance not be abated as provided in the notice given pursuant Section 92.04 or 92.05, the Village Administrator or designee shall have the right to enter upon the premises to abate such public nuisance. In abating any public nuisance, the Village Administrator or designee may take such action as is necessary to complete the abatement of the same and should it be practicable to sell or salvage any material resulting from such abatement, the Village Administrator may cause the same to be sold at public or private sale at the best price obtainable and keep an account of the proceeds thereof. Such proceeds shall be deposited in the General Fund of the Village and any difference in the amount so received and the cost of the abatement shall be reported to Council, which shall levy an assessment against the premises upon which such nuisance was abated and cause such assessment to be certified and collected as other assessments by the Village.

- (b) Should the proceeds of the sale of any material salvaged in the course of such abatement exceed the cost thereof, the amount of such excess shall be paid to the owner of the premises upon filing a claim thereof and proof of title and right to such surplus.

- (c) The Village Administrator or designee may utilize any labor or equipment of the Village in making such abatement or the Village Administrator may contract privately for the abatement of the nuisance provided that Council authorizes the expenditures of such funds.

- (d) Any and all expenses or costs incurred under this Chapter for the abatement, including removal, repair, alteration, securing, boarding, or demolition of a building or structure shall be paid by the owner of the land and/or responsible person as provided in Ohio Revised Code 715.261. If the owner and/or other responsible person fails to pay for the costs within thirty days after receipt of notice from the Village Administrator of a statement of the charges and costs incurred, the Village Administrator may certify such amount to the Fiscal Officer. The Fiscal Officer shall promptly make a written return to the Fulton or Lucas County Auditor of the action under this section with a statement of the total costs and expenses, the amount credited for salvage, if any, and a proper legal description of the premises. Certification to the County Auditor is for the purpose of making such costs and expenses a lien upon the property, to be collected as other taxes and returned to the Village with accounting thereof in accordance with Ohio Revised Code 715.261.

92.08 Annual Order To Clean Up Premises

Prior to May 10 and September 10 of every year, the Mayor shall cause a notice or proclamation to be inserted in one or more newspapers of general circulation within the Village, ordering all persons to thoroughly clean and provide proper drainage for all lands, yards, lots, premises or structures and to cause all trash and other unclean and unsightly matter to be removed therefrom within 30 days of the publication of the proclamation. (Adopting Ord. 2003-6, passed 1-27-03) (Ord. 92-20, passed 9-28-92) ('64 Code, ~ 517.16)

92.09 Authority of Village

This Chapter shall be deemed to be an enlargement and not a limitation or restriction on the power or authority of the Village or any officer thereof to take action or bring any suit or proceeding in respect to public nuisances otherwise provided for by law or ordinance of the Village.

92.10 Unlawful Interference Prohibited

No person shall interfere with any municipal officer, designee, assistant, subordinate, employee or agent while they are engaged in or carrying out the inspection of an alleged nuisance or the abatement of a nuisance as set forth in this Chapter.

92.11 Demolition and Lien Agreement; Costs

- (a) Notwithstanding and in addition to all sections of this Chapter, the Village Administrator is authorized to enter into an Abatement, Demolition and Lien Agreement with the approval of a property owner or other responsible person to abate any public nuisance as defined in Section 92.02.

- (b) In the event an Abatement, Demolition and Lien Agreement is executed by the Village Administrator and the property owner under this Section, no further notice is required to be given to the property owner regarding the nuisance and its abatement.

- (c) Any and all expenses or costs incurred under this Chapter for nuisance abatement, including the removal, repair, alteration, securing or boarding of a building or structure shall be paid by the owner of the land and/or other responsible person as provided in Ohio Revised Code 715.261, which amount shall be included in the Abatement, Demolition and Lien Agreement. The Village is then authorized to certify the costs described herein to the Fulton or Lucas County Auditor for the purpose of making such costs and expenses a lien upon the property, to be collected as other taxes and returned to the Village with accounting thereof in accordance with Ohio Revised Code 715.261.

92.12 Fire Damaged Structure

- (a) The Village adopts the provisions of Ohio Revised Code 3929.86 where applicable and shall follow the procedures established herein and whereby in certain specified situations insurance proceeds recoverable for fire-damaged structures shall be deposited with the Village to secure the cost and expenses incurred by the Village for removal, repairs or securing of fire-damaged buildings or structures on the property pursuant to the Ohio Revised Code.

- (b) The Fiscal Officer is hereby designated as the officer of the Village authorized to carry out duties of municipal officers under Ohio Revised Code 3929.86 and shall perform all duties in compliance therewith, including the establishment of a special fund known as the Fire Damaged Structures Account, Insurance Proceeds, and shall receive therein and disburse therefrom funds in accordance with the provisions of Ohio Revised Code 3929.86.

92.13 Administrative Liability

No officer, agent or employee of the Village shall be rendered personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of duties under this Chapter. Any suit brought against any officer, agent or employee as a result of any act required or permitted in the discharge of duties under this Chapter shall be defended by the Village Solicitor or the insurance carrier until the final determination of the proceedings therein.

92.99 Penalty

- (a) The owner, tenant, business, or person in control of property that is deemed a public nuisance, as defined in this Chapter, who fails or refuses to comply with any notice or order to repair, vacate or demolish the public nuisance given by any person authorized by this Chapter is guilty of a minor misdemeanor and shall be fined not more than one hundred fifty dollars (\$150.00) for each offense. A separate offense shall be deemed committed each day that such public nuisance is permitted to exist after the time specified for the abatement thereof by the owner or occupant in any notice as provided for in this Chapter.

- (b) Any owner, tenant, business, or person who has pleaded guilty or been convicted of an offense under any provision of this Chapter, or a substantially equivalent offense in another jurisdiction, within the previous five years shall be guilty of a misdemeanor of the third degree, punishable as provided in Section 130.01.

- (c) Whoever violates the provisions of Section 92.10 shall be guilty of a misdemeanor of the second degree, punishable as provided in Section 130.01.