

September 26, 2018

**ORDINANCE NUMBER 2018-9-26**

**AN ORDINANCE REPEALING SECTIONS 94.25 THROUGH 94.45 AND ENACTING  
ORDINANCE 2018- OF THE VILLAGE OF MARENGO**

**WHEREAS**, the Council of the Village of Marengo believes that revisions are necessary to the nuisance abatement law to protect the health, safety, and welfare of the public and to prevent deterioration of real estate property values; and

**WHEREAS**, the Council of the Village of Marengo desires to repeal Section 94.25 through 94.45 of the Codified Ordinances and enact this replacement Ordinance;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the Village of Marengo, Morrow County, Ohio, as follows:

SECTION 1: That Sections 94.25 through 94.45 are hereby repealed by the following ordinance, which shall be entitled Section 94.25 (Property Nuisances And Abatement) and shall be enacted as follows:

**§ 94.25 ABATEMENT OF NUISANCES**

**(a) Purpose and Applicability.** The purpose of this section is to set forth standards for the declaration of a property or condition as a public nuisance, to declare vacant properties as nuisances, to authorize the abatement of nuisances by the Village and to establish procedures for the abatement of nuisances, in order to prevent hazards to the health, safety and welfare of the public, to prevent blight in residential and other areas, and to prevent conditions which impair or adversely affect the value of neighboring properties.

**(b) Definition of Nuisance.** For purposes of this section; the term nuisance shall be defined to mean (1) any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of the property in the neighborhood in which such premises are located or (2) any substance, material or condition which is or may become noxious, offensive, injurious, or dangerous to the public health, comfort, or safety.

**(c) Declaration of Nuisance.** For purposes of this section, the keeping or depositing on, the scattering over, the suffering, permitting, allowing to remain or maintaining of the following substances, materials, or conditions upon public or private property shall be prima facie deemed to constitute a nuisance:

(1) Junk, debris, garbage, wastes, trash, rubbish, perishable animal and vegetative wastes, commercial or industrial waste, scrap materials, discarded or abandoned furniture and appliances, inoperable vehicles or any parts thereof, combustible or hazardous materials, dangerous materials, brush, leaves, tree branches, yard trimmings or snow and ice build-up on sidewalks.

(2) Unsanitary matter, septic waste, sewage, human waste, carcass or remains of dead animals, putrid substances, or any substance or condition which is of such a nature as to spread or harbor disease, emit noxious odors or harmful gas, attract or harbor flies, insects, rodents, or animals.

(3) Grass or other vegetative matter growing to a height of eight (8) inches or noxious weeds as defined in Chapters 901:5-31 and 901:5-37 of the Ohio Administrative Code.

(4) Lumber, building materials, or mineral matter unless such materials or matter are part of a construction or improvement project for the property on which they are located and do not remain on the property in excess of a period of six months.

**(d) Prohibited Use and Conduct.**

(1) No person owning, leasing, occupying, or having charge of any premises shall maintain or keep any nuisance thereon, nor shall such person keep or maintain such premises in a manner causing substantial diminution in the value of the other property in the neighborhood in which such premises are located.

(2) No person shall, without lawful authority, place or dispose of in any manner, upon any public property or upon the premises of another any item, substance, or material listed in subsection (c) hereof.

(3) No person owning, leasing, occupying, or having charge of any premises shall unlawfully obstruct, impede, divert, or render unwholesome or impure any natural watercourse.

**(e) Authority to Inspect Properties Where Nuisances Exist and to Abate Nuisance**

**Conditions.** Whenever there shall be done or exist on any property an act, thing, or condition of a kind which has been or may hereafter be defined by ordinance, as a nuisance, the Mayor and/or the Village Administrator, Chief of Police, or their designees, are authorized and directed promptly to enter and inspect the premises or structure where such nuisance is found to exist to determine the extent and nature of the nuisance and whether it has been abated, provided permission to enter or inspect is obtained from the owner or his or her agent. If such permission is refused or is otherwise unobtainable, a search warrant shall be obtained before such entry or inspection is made, except in the case of an existing emergency to which case entry or inspection may be made at any time and no search warrant is necessary. No person shall refuse to permit such emergency entry or inspection, nor shall any person hinder, obstruct, resist or abuse any person making or attempting to make such inspection.

**(f) Order and Authority to Abate.**

(1) If the Mayor, Village Administrator and/or Chief of Police, or their designees find that a nuisance condition exists as defined by this section or by any other ordinance passed by Council, on any property, the Mayor, Village Administrator or Chief of Police, or their designees may issue a notice declaring the existence of such nuisance, and may order the abatement of the nuisance or proceed to abate the nuisance.

(2) In addition to the authority granted in subsection f(1) hereof: If the Mayor, Village Administrator and/or Chief of Police, or their designees find that a property or a structure, by reason of deterioration of materials, lack of repair or maintenance, is or will become a hazard to the health, safety or welfare of its occupants or the public or is will become a blighting or deteriorating factor in the neighborhood, or will impair or adversely affect the value of neighboring property, the Mayor, Village Administrator and/or Chief of Police, or their designees may declare such property or structure to be a nuisance, issue a

notice declaring the existence of such nuisance, and order the abatement of the nuisance or proceed to abate the nuisance.

(3) The existence of grass, weeds or other landscaping conditions that violate the provisions of this section or any other ordinance passed by Council shall be considered a nuisance, and if such conditions are found to exist only one (1) notice to the property owner, as provided in this section, shall be necessary to anyone and the Mayor, Village Administrator and/or Chief of Police, or their designees may cause such nuisance to be abated or removed more than once in any growing season as conditions may require.

(4) If the Mayor, Village Administrator and/or Chief of Police, or their designees determines to take action to abate the nuisances described in subsection f(3) hereof: the Mayor, Village Administrator and/or Chief of Police, or their designees shall furnish the owner of the real estate from which the nuisance originates with a statement of the estimated cost of abating the same prior to the abatement, and a statement of the final cost as soon as the cost can be ascertained, and shall order the owner to pay the cost within such reasonable time as the Mayor and/or Administrator shall fix. The Fiscal Officer shall collect such costs as set forth in this section. The Village may assess the real estate at any time after the Village incurs the costs of preparing to abate and/or abating the nuisance.

**(g) Notice and Service.**

(1) A written notice of a nuisance or order to abate shall be served on the owner, agent, lessee, or party in control of the property. The notice or order shall set forth the nature of the nuisance, a reasonable time determined by the Mayor, Village Administrator and/or Chief of Police, or their designees within which the person shall abate the nuisance, and the statement that unless the nuisance is abated within the stated time the Village may prosecute the owner, agent, lessee or party in control for failure to comply with the order of the Mayor, Village Administrator and/or Chief of Police, or their designees, or may seek an order of a court requiring the abatement of the nuisance by such person

(2) In addition to or in lieu of the procedure in subsection g(1) hereof: the Mayor, Village Administrator and/or Chief of Police, or their designees may cause a written notice and order to be served on the owner or the agent of the owner of the property setting forth the nature of the nuisance, the estimate of the cost of abating the same if done by the Village, a reasonable time determined by the Mayor, Village Administrator and/or Chief of Police, or their designees within which the owner shall abate the nuisance or pay the estimated cost to the Village, and the statement that unless the nuisance is abated within the stated time it may be abated by the Village and the cost of abatement assessed on the real estate involved.

(3) A notice or order shall be served by delivering it personally, leaving it at the person's usual place of business or residence, by posting it in a conspicuous place on the real estate involved, or by mailing it to the person, or notice may be published in a newspaper of general circulation within the Village if it cannot be served in any of the other ways above mentioned.

**(h) Abatement of Nuisance; Collection of Costs; Assessment.**

(1) If the nuisance is not abated within the required time, the Mayor, Village Administrator and/or Chief of Police, or their designees may cause its abatement. The abatement of a nuisance may be conducted utilizing labor, equipment and materials provided by the Village and/or by entering into a contract for the provision of abatement services. If the Village uses its own employees to abate the nuisance, the cost of labor shall be billed in one hour increments at a rate no less than one-hundred fifty (\$150.00) per hour for each person so employed along with costs of any equipment, materials, and subcontractors at a mark-up of 50% on said costs.

(2) The Village may take such action as it deems necessary to collect the costs incurred by the Village in preparing to abate and/or in abating the nuisance, the assessment of such costs on the real estate on which the nuisance existed or the cause or source thereof was located, and including but not limited to the costs of preparing and serving notices and of any investigation or inspections required as well as any legal expense incurred by the Village.

(3) Regardless of the estimated cost of abating a public nuisance by the Village as determined herein, the owner or agent shall be responsible for payment to the Village of the actual costs incurred by the Village in preparing to abate the nuisance if the Village does not proceed with the abatement.

**(i) Vacant and Abandoned Structures.**

**(1) Definitions**

A. "Vacant": A structure shall be considered "vacant" for the purposes of this section if it has not been occupied for a period of six (6) consecutive months or more, except a structure shall not be considered vacant if it is only seasonally not occupied and such period is less than twelve (12) months or is being maintained in accordance with all Village Ordinances.

B "Abandoned": An "abandoned" structure is a structure that is not occupied for any period of time during which the Village has not been able to communicate with or locate an owner or party with the legal authority to be in control of the property, and after the Village has made reasonable attempts to communicate with or locate the owner or a party in control.

C. "Occupied": The term "occupied" shall mean the presence of a person or persons either:

1. Living in a structure and using some portion of such structure as a dwelling unit; or
2. Working in a structure and using some portion of the structure for the operation of a business.

D. "Property": The term "property" shall mean all portions of the real estate of a parcel in the Village, including lands and structures of every type.

(2) Any property that contains a structure that is vacant or abandoned shall be considered a nuisance unless and until the owner, agent, lessee or party in control of the property shall, at minimum, take all actions required in this section. The exterior of a vacant or abandoned structure, including the property and structure, shall be maintained in compliance with all applicable ordinances of the Village, and the interior shall be maintained in a safe, secure and preserved manner to prevent and abate any threat to the health or safety of the public or anyone entering the structure, and to prevent and abate any threat of fire or health violation, or to its structural or historical integrity. The structure shall be winterized to prevent the freezing of pipes, and all points of entry shall be kept locked and secure. Sufficient property and liability insurance shall be maintained covering the property up to an amount at least equal to the fair market value of the property. The Village shall provide the insurance carrier, if known, and any lien holder of record for the property a written notice of the requirements of this section and that the property is considered a vacant or abandoned structure. The Village may require an owner or agent of a vacant or abandoned property in violation of this section or any other ordinance applicable to the property or structure to provide proof of insurance, and no owner or agent shall fail to provide such proof when so ordered.

(3) The Mayor, Village Administrator and/or Chief of Police, or their designees may take any action necessary to inspect a vacant or abandoned property, and to abate a vacant or abandoned property nuisance, as authorized in this section. Upon inspection of a vacant or abandoned structure, the Mayor, Village Administrator and/or Chief of Police, or their designees may take any action authorized by law to ensure that the property, including the structure, is maintained according to the requirements of all applicable ordinances.

(4) No insurance company doing business in the Village shall pay a claim of any named insured, including any lien holder, for damage to a vacant or abandoned structure, other than fire damage covered by Ohio R.C. 3929.86, unless and until the carrier follows the procedures in this section. The carrier shall request from the Village an affidavit signed by the Fiscal Officer that states whether the Village has any unpaid costs or whether any abatement orders have been issued containing an estimated cost of work associated with the abatement of any existing nuisance condition, as defined in this section, at the insured property. The Village shall provide an affidavit in response to the request of an insurance carrier within thirty (30) days of receiving a request. If the affidavit states that the Village has no unpaid costs or outstanding abatement orders, the carrier may pay the claim if the affidavit states that there are unpaid costs the insurance carrier shall pay to the Village such costs or the full amount of the claim owed to the insured, whichever is less. If the affidavit states that there is an outstanding abatement order, the insurer shall pay into an escrow fund established for the purpose of this section the amount of the estimated cost of abatement or the full amount owed to the insured, whichever is less. Funds shall be disbursed from the escrow to the Village upon the presentation of an invoice showing the amount incurred by the Village to abate the nuisance. Funds shall be disbursed to the insured only upon the written authorization of the Fiscal Officer, which shall be provided after the Village is provided proof that the nuisance has been abated, or that an amount equal to the amount in escrow has been expended in the performance of work to abate the nuisance on the property.

(5) No person, other than the owner, agent, lessee or other person with lawful control of or access to a vacant property that is deemed to be a nuisance pursuant to subsection (i)(2) hereof or abandoned pursuant to subsection (i)(1) hereof: may enter, remain on, or refuse to leave, or alter or destroy, the grounds or any structure on such property. Any person who violates such prohibition, shall be deemed to have entered, remained on, refused to leave, altered or destroyed the property of another without that person's consent, and without the privilege, authority or permission to do so, as such terms are used in the Ohio Revised Code. Any person who violates this subsection may be ordered by the Police or any authorized person to leave the premises or the Police may arrest such person for violating this subsection. Any vehicle remaining on the grounds of such a property that is not titled in the name of the owner or the ownership is unknown, or that is otherwise in violation of any provision of this section or any other ordinance passed by Council, shall be deemed to be parked without the consent, authority or permission of the owner, agent, lessee or party in control of the property. The prohibitions in this subsection do not apply to any employee or agent of any governmental entity, including the Village, which has the lawful authority to enter such property, when such person is acting in their official capacity as an employee or agent.

(6) Any vacant property that has been deemed to be a nuisance or abandoned pursuant to this section shall be considered to be in the custody of the Village, and the Village shall be deemed to be the lawful agent of the owner of the property, solely for the purposes of this section. This subsection confers no authority to or duty upon the Village over a property as an agent or custodian other than to protect such properties from trespassers or other persons who may enter such properties without the authority, consent or privilege to do so from the lawful owner, agent, lessee, or party in control or possession of such properties, and who may vandalize and damage the grounds or structures thereon leading to further deterioration and neighborhood blight. This subsection confers no new or different authority or duty on the Village as to the condition, safety or security of any private property other than the specific authority conferred expressly herein, and such authority is in addition to, and not in derogation or substitution of: the authority of the Village pursuant to its police powers. This subsection is not intended to, nor does it, require the Village to be or make the Village responsible or liable to any person for the condition, safety or security of any private property.

(7) The Mayor and/or Village Administrator or designee may file a complaint with the Police Department of the Village or other law enforcement agency based on any violation of subsection (i)(5) hereof against a property that is in the custody of the Village or for which the Village is deemed the agent of the owner pursuant to this section. The Police or other law enforcement agency may take any lawful action including but not limited to, the filing of a criminal complaint in Municipal Court against any person who violates any provision of subsection (i)(5) hereof.

**(j) Emergency Abatement.**

(1) In cases in which the Mayor, Village Administrator and/or Chief of Police, or their designees finds that a nuisance condition exists which constitutes an emergency involving immediate danger to human life or health, or an immediate threat of substantial and/or irreparable physical or economic damage to a structure, the Mayor, Village Administrator and/or Chief of Police, or their designees may declare such condition a nuisance and order its immediate abatement, and the Mayor, Village Administrator and/or Chief of Police, or their designees may take action necessary to immediately abate the violation constituting a nuisance without advance notice to the owner. Such action may include entering a property for the purposes of conducting an inspection, to the extent and in the manner allowed by law, ordering that the property be immediately vacated, ordering the cessation of utility service if necessary to protect life, health or property, and/or abate the violation constituting the nuisance.

(2) If the Mayor, Village Administrator and/or Chief of Police, or their designees abate a nuisance pursuant to this section, notice shall be provided to the owner within three (3) days after the start of the abatement work in the same manner as notice is required in this section for non-emergency nuisance abatement.

**(k) Appeals.**

(1) Whenever an order or notice of violation is issued, or the Village takes any other action pursuant to this section, the person that is the subject of the order, notice or action may appeal such order, notice or action to the Board of Zoning Appeals within ten (10) days from the date of the date of the order, notice or action.

(2) When a nuisance subject to this section has not been abated within the time prescribed in the notice, the Mayor, Village Administrator and/or Chief of Police, or their designees may authorize the immediate abatement of such nuisance by the Village notwithstanding the pendency of an appeal of such order/notice to the Board of Zoning Appeals. If, as a result of such appeal the Board overturns the order of the Mayor, Village Administrator and/or Chief of Police, or their designees, then the owner shall not be obligated to pay to the Village its costs to abate the nuisance.

**(l) Enforcement and Penalty.**

(1) If a property owner, lessee, or party in control fails to comply with any provision of this section, or any order issued pursuant to this section, such failure shall be considered a fourth degree misdemeanor. Upon a plea of guilty or conviction thereof, a mandatory fine of \$250.00 shall be imposed which may not be suspended or reduced,

(2) If a property owner, lessee, or party in control fails to comply with any provision of this section, or any order issued pursuant to this section and has pled guilty to or been convicted of a violation of this section within the previous one year from the date of said plea and or conviction, such failure shall

be considered a third degree misdemeanor and a mandatory fine of \$500.00 shall be imposed which may not be suspended or reduced,

(3) If a property owner, lessee, or part in control fails to comply with any provision of this section, or any order issued pursuant to this section and has pled guilty to or been convicted of a violation of this section within the previous two years from the date of said plea or conviction, such failure shall be considered a first degree misdemeanor and a mandatory fine of \$1,000.00 shall be imposed which may not be suspended or reduced.

(4) In the event of any violation of this section, the Village, in addition to any other action or remedy allowed by law, may bring a criminal action, may institute proper suit in equity or law to prevent or terminate any such violation or remedy such situation, and/or may take action itself or through contractors hired for such purpose to abate the violation or situation as set forth in this section.

(5) Each day of violation hereunder shall be considered a separate offense.

**(m) Relationship to Other Laws.** The authority to abate nuisances, and the procedures required herein, as set forth in this section, shall be in addition to and shall not limit the authority to abate nuisances granted in the Ohio Administrative Code or in other ordinances of the Village or the laws or Constitution of the State of Ohio.

Passed: September 26, 2018

Mike Baker, Mayor

Attest: Hilary Ostrom, Fiscal Officer