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AN ORDINANCE OF THE CITY OF PORT RICHEY, FLORIDA, AMENDING PORTIONS OF ARTICLE V OF CHAPTER 2 OF THE PORT RICHEY CITY CODE ESTABLISHING THE PRIMARY MEANS OF PROSECUTING CODE ENFORCEMENT CASES; ESTABLISHING A CITATION AND FINE SCHEDULE FOR SPECIFIC VIOLATIONS OF THE CODE OF ORDINANCES; PROVIDING PROCEDURES FOR NOTICE AND ENFORCEMENT; PROVIDING FOR DESIGNATION OF CODE ENFORCEMENT OFFICERS; PROVIDING AUTHORIZATION FOR THE ISSUANCE OF CITATIONS; PROVIDING ADDITIONAL DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH;

WHEREAS, City Council of the City of Port Richey hereby declares that due to the increasing number of complaints, and ongoing issues of non-compliance with respect to adjudicated violations by the Special Master, an Ordinance providing for additional enforcement methods has become a necessity; and

Acpt: 1382228 Rec: 86.50  
DS: 0.00 IT: 0.00  
08/08/11 S. Shultz, Dpty Clerk

WHEREAS, previous violations addressed by the Special Master hearing process continue to exist and fines continue to escalate; and

WHEREAS, the Special Master and the City have no effective means of enforcing existing violations other than by remedial monetary measures which may not be collectable and which require costly court action to enforce and defend; and

WHEREAS, the City Council of the City of Port Richey hereby finds that to protect the aesthetic beauty of the City and the health, welfare and safety of its citizens, enforcement of the Code of Ordinances through the County Court system has become desirable as an additional method of enforcement; and

WHEREAS, the City of Port Richey Code of Ordinances, Article V, Sec.2-323(c) provides for alternative means of code enforcement; and,

AULH S. O'NEIL, FR. D. PROB. CLERK & COMPTROLLER  
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WHEREAS, City Council elects to prosecute its code enforcement cases including, without limitation, the Minimum Housing Code pursuant to Article V, Chapter 2 of its Code of Ordinances as amended and restated herein, while preserving the jurisdiction of the Special Master to hear and decide violations of the City's Code in appropriate cases.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT RICHEY, FLORIDA:

Section 1. The following sections of Article V of Chapter 2 of the City Code of the City of New Port Richey are hereby amended to incorporate the following language:

**Sec. 2-288. Definitions.**

The following terms and phrases shall be incorporated and included in the definitions as listed in Section 2-288.

*Administrative Order* shall mean Administrative Order No. 2003-027 PA/CTY, as Amended by Administrative Order No. 2005-036 PA/CTY, as amended from time to time.

*City Code* shall mean all Ordinances duly enacted by the City of Port Richey including, without limitation, those Ordinances codified in the Port Richey Code of Ordinances, the Minimum Housing Code and the Land Development Code.

*Code Inspector* shall mean all code enforcement officers, code enforcement inspectors, sworn law enforcement officers, building code and fire inspectors.

*Uniform Fine Schedule* shall mean the violation classification and the corresponding schedule of fines associated with each classification, as proscribed pursuant to Administrative Order No. 2005-036 PA-CTY, as said Administrative Order is amended from time to time. The Uniform Fine Schedule shall be based upon violations of the Port Richey City Code.

For purposes of this subsection, the term "repeat violation" means a violation of a provision of the City Code by a person who has previously been found to have violated the same

provision within five (5) years prior to the violation, provided that the violations occurred at the same location.

*Violations of the City Code* means any of the following:

- (i) Doing an act that is prohibited or made or declared unlawful or an offense by ordinance or by rule or regulation authorized by ordinance.
- (ii) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
- (iii) Failure to perform an act if the failure is declared to be an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

The phrase "violation of the City Code" does not include the failure of a City officer or City employee to perform an official duty unless the context requires otherwise.

**Sec. 2-297. Form of the Citation.**

The following paragraph shall be included in this section following listed item number in number ten (10) of **Sec. 2-297**.

"Notwithstanding the above, failure to omit one (1) or more of the above listed items shall not render the citation ineffective without a clear showing that the person alleged to have committed the violation has been unfairly prejudiced by the omission of said item or items. Each violation of the City Code shall be a separate civil infraction, and each day the violation continues to exist shall constitute a separate City Code violation".

Section 2 Division 2. Code Enforcement County Courts

**Sec. 2-303. through 2-308 shall be created to include and incorporated into the City Code the following:**

- (a) It is the intent of the City, by the adoption of this article, to enact primary procedures for code enforcement pursuant to section 162.21 Florida Statutes (2007), as amended from time to time.

(b) The provisions of this Division 2 Code Enforcement County Courts is the primary means of enforcing the City Code. However, nothing contained in this Article shall prohibit the City from enforcing its City Codes by any other means including through the Special Master system or through civil injunctive relief.

(c) Except as otherwise provided in this chapter, a person who violates any provision of this City Code shall be prosecuted and punished in County Court in the manner provided by law under Chapter 162, Florida Statutes. For violations of this City Code that are continuous with respect to time, each day the violation continues is a separate offense in the absence of provisions to the contrary. The Uniform Fine Schedule, including court costs, shall be the sole and exclusive schedule of fines for which City Code violations are prosecuted in County Court.

(d) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise, the imposition of civil penalties or other administrative actions.

(e) Violations of this City Code may be abated by injunctive or other equitable or civil relief, and no bond shall be required nor proof of intent or *scienter*. The imposition of a penalty does not prevent equitable or other forms of relief.

(f) The owner, tenant, or occupant of any land or structure or part thereof, and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of any City of Port Richey Ordinance may be held responsible for the violation and be subject to the penalties and remedies provided for in the City Code.

(g) Violations prosecuted in County Court in the manner provided by law under Chapter 162, Florida Statutes, shall be prosecuted pursuant to the procedures set forth herein, and by administrative order of the Chief Judge of the Sixth Judicial Circuit Court.

**Sec. 2-304. Designation of Code Inspectors.**

(a) For purposes of this Section, the City hereby designates all code enforcement officers, sworn law enforcement officers and building/fire inspectors to be and constitute Code Inspectors of the City (collectively referred to hereafter as "Code Inspectors").

(b) The training and qualifications of the Code Inspectors shall be established by the City Manager or his/her designees and shall be in compliance with any applicable Florida law.

(c) Except as to sworn law enforcement officers, designation as a Code Inspector does not confer the power of arrest or other law enforcement powers, nor subject the Code Inspector to the provisions of Chapter 943, Florida Statutes.

(d) A list of designated Code Inspectors shall be maintained in the office of the City Manager.

(e) Nothing in this Section shall be construed to amend, alter, or contravene the provision of any retirement or pension plan or system administered by the City of Port Richey or the State of Florida.

**Sec. 2-305. Contesting the violation.**

(a) If the defendant to whom the citation is issued so desires, the citation may be contested in the County Court of Pasco County pursuant to the rules of procedure established by the courts.

(b) If the defendant elects not to contest the citation, then the defendant may plead guilty or no contest by signing the plea form on the citation and paying the applicable fine in full to the Pasco County Clerk of the Court within thirty (30) calendar days after issuance of the citation.

(c) If the defendant elects to contest the citation or fails to pay the citation, or if the charge is one for which a mandatory court appearance is required, then the defendant shall attend the arraignment on the date as set forth in the citation.

(d) Any person who fails to appear or otherwise properly respond to the citation shall, in addition to the charge relating to the violation of the City Code, be charged with the offense of failing to appear, and upon conviction, be guilty of a civil offense and may be ordered to pay a fine not to exceed \$500.00.

(e) At any hearing contesting a citation, the violation of the City Code must be proved by clear and convincing evidence. Violations pertaining to animals must be proved by a preponderance of the evidence. The Florida Rules of Civil Procedure and the Florida Evidence Code shall be applicable to any such hearing.

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**Sec. 2-306. Schedule of violations and penalties.**

(a) The City specifically adopts the schedule of fines and penalties of Pasco County Administrative Order No. 2005-036 as amended from time to time to be charged for violations of the City Code.

(b) The Uniform Fine Schedule which provides violations of City Codes and Ordinances and their corresponding penalty class shall be established and amended from time to time by the City. The same shall supersede all ordinances that set forth fines in conflict therewith.

**Sec. 2-06. Service of warning notices, citations, and other legal notices required for enforcement.**

(a) Written warning notices shall be delivered as provided in Section 2-306, included as listed below. Citations shall be served upon the alleged violator only as provided in Section 2-306 as listed below.

1. Certified mail, return receipt requested, provided that if such notice or citation is sent under this paragraph to the owner or other responsible party of the property in question at the address listed in the tax collector's office for tax notices and at any other address provided to the local government by such person and is returned as unclaimed or refused, notice

may be provided by publication or by posting, and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing; or

2. Leaving the notice at the alleged violator's usual place of residence with any person residing therein who is above fifteen (15) years of age and informing such person of the contents of the notice; or

3. In the case of commercial premises, leaving the notice with the manager or other person in charge; or

4. Hand delivery to the alleged violator by the sheriff or other law enforcement officer, code inspector, or other person designated by the City Manager or his/her designee.

(b) Legal notices required to enforce the City Code, may be served by any of the methods described in this section. In addition, such notices may be served by publication or posting, as follows:

1. Such notice shall be published once during each week for four (4) consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county. The newspaper shall meet such requirements as are prescribed under F.S. Ch. 50 for legal and official advertisements. Proof of publication shall be made as provided in F.S. §§ 50.041, 50.051, as now or subsequently amended.

2. In lieu of publication, such notice may be posted for at least ten (10) days prior to any hearing described in the notice or prior to the expiration of any deadline contained in the notice, in at least two (2) locations, one of which shall be the property upon which the violation is alleged to exist, and the other of which shall be at or near the front door of the main City governmental center in Port Richey, Florida in Pasco County. Proof of posting shall be by

Section 5. The above and foregoing Ordinance was read and approved on first reading at a duly convened meeting of the City Council of the City of Port Richey, Florida, this 13<sup>th</sup> day of April 2011.

ATTEST:

Sharon Mayberry  
Sharon Mayberry, City Clerk

Richard Rober  
Richard Rober, Mayor

The above and foregoing Ordinance was read and approved on second reading at a duly convened meeting of the City Council of the City of Port Richey, Florida, this 26<sup>th</sup> day of April 2011.

ATTEST:

Sharon Mayberry  
Sharon Mayberry, City Clerk

Richard Rober  
Richard Rober, Mayor

APPROVED AS TO LEGAL FORM AND CONTENT

By: [Signature]  
Michael J. Brannigan, City Attorney