

ORDINANCE NO. 2018-2136

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, PROVIDING FOR AMENDMENT OF CHAPTER 2 OF THE NEW PORT RICHEY CODE OF ORDINANCES, PERTAINING TO ADMINISTRATION; PROVIDING A NEW ARTICLE XI, PERTAINING TO CIVIL CITATIONS SUPPLEMENTAL CODE ENFORCEMENT; PROVIDING DEFINITIONS OF TERMS, PROCEDURES, AND PENALTIES; PROVIDING FOR SPECIAL MAGISTRATES; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, within the City limits of the City of New Port Richey, Florida code enforcement is a matter of continuing importance to maintain the quality of life in the City;

WHEREAS, uncorrected code violations are a detriment to the public health, safety, welfare and quality of life of the residents of the City;

WHEREAS, a more expedient process is necessary to ensure the effective and timely removal and correction of code violations;

WHEREAS, the City possesses the home rule power and the specific grant of authority by Chapter 162, Florida Statutes, to enforce its codes by any method not prohibited by law; and

WHEREAS, it is declared as a matter of legislative determination and public policy that the provisions and prohibitions herein are necessary in the public interest; and it is further declared that the provisions and prohibitions herein are in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life in the City.

NOW, THEREFORE, THE CITY OF NEW PORT RICHEY, FLORIDA HEREBY ORDAINS:

Section 1. Chapter 2 of the Code of Ordinances, pertaining to Administration, is hereby amended to add a new Article XI thereto, pertaining to civil citations supplemental code enforcement (all material is new and is not underlined), as follows:

ARTICLE XI. - CIVIL CITATIONS SUPPLEMENTAL CODE ENFORCEMENT

Sec. 2-263. Authority.

- (a) This article has been enacted pursuant to the home rule powers of the City and authority of Chapter 162, Florida Statutes, as a supplemental method of enforcing certain sections of the

codes and ordinances of the City and is enacted to protect the public health, safety, and welfare.

- (b) Nothing in this article shall be construed to prohibit the City from enforcing its codes and ordinances by any other means including, but not limited to: a summons; a notice to appear in the county or circuit court; an arrest; an action before the Code Enforcement Special Magistrate; a civil action for injunctive relief; a stop work order, a demolition order, or any other method of enforcement.
- (c) The provisions of this Article shall apply to all violations of city codes and ordinances.

Sec. 2-264. Definitions.

For the purpose of this Article only, the following words shall have the following meanings:

Citation means the written charging document issued by a code enforcement officer in a form prescribed by the City Manager, or his or her designee, which shall contain:

- (1) The date and time of issuance;
- (2) The name and address of the person to whom the citation is issued;
- (3) The date and time the civil infraction was committed, observed to exist, or identified;
- (4) The facts constituting reasonable cause to believe the violation existed;
- (5) The number or section of the code or ordinance violated;
- (6) The name and title of the issuing officer or inspector;
- (7) The procedure for the person to follow in order to pay the civil penalty or to contest the citation;
- (8) The applicable civil penalty if the person elects not to contest the citation;
- (9) The applicable civil penalty if the person elects to contest the citation;
- (10) The time period in which an appeal must be requested and the location where such request may be made; and
- (11) A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to request a Special Magistrate appeal hearing to contest the citation, that person shall be deemed to have waived his or her right to contest the citation and that, in such case, an order of the Special Magistrate may be entered against that person for the amount of the civil citation.

City Code means the New Port Richey Code of Ordinances, which is the City's Code of Ordinances and includes any ordinance of the City which is not specifically set forth therein.

Code enforcement officer means any agent of the City whose duty it is to enforce any codes and ordinances enacted by the City and may include, but may not be limited to, code enforcement officers, code inspectors, law enforcement officers, building inspectors or fire safety inspectors.

Irreparable or irreversible violation means a violation that causes harm, damage, injury or change that is incapable of correction, repair or return to an original condition.

Person means any natural person, corporation or other legal entity of any kind.

Repeat violation means a violation of a provision of the City Code by a person who has received a citation and: (1) paid the fine for the same; (2) contested the citation and been found guilty thereof; or (3) been found guilty by reason of default for violating the same provision of the City Code within five years prior to the violation, notwithstanding that the violations occurred at different locations.

Sec. 2-265. Enforcement procedures.

- (a) A code enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the inspector has reasonable cause to believe that the person is in violation of the City Code.
- (b) Prior to issuing a citation, a code enforcement inspector shall provide written notice to the person that the person has committed a violation of the City Code and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the given time period, a code enforcement officer may issue a citation to the person who has committed the violation.
- (c) A code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue that citation if a code enforcement inspector has reason to believe that the violation:
 - (1) Is a repeat violation;
 - (2) Presents a serious threat to the public health, safety, or welfare; or
 - (3) Is irreparable or irreversible.
- (d) Each violation of the City Code shall be a separate civil infraction. Each day such violation continues shall be deemed to constitute a separate civil infraction.
- (e) After issuing a citation to an alleged violator, a code enforcement officer shall keep on file the citation for a period of eight weeks or at least 30 days after all appeal times have expired, whichever is later.
- (f) A violation of the City Code enforced by the provisions of this article is a civil infraction punishable by a maximum civil penalty not to exceed \$500.00 or such amount as may hereafter be prescribed by law. The fines to be assessed by code enforcement officers shall be established by this article.
- (g) Subject to the procedures below, the alleged violator has the option of paying the penalty to the City or requesting an appeal hearing to be heard by the Special Magistrate authorized to hear civil citation hearings. Payment of said penalty to the City shall be made either in person or by mail, postmarked on or before, 15 days after receipt of the citation. If the alleged violator elects to pay the applicable penalty set forth on the citation, that person shall be deemed to have admitted the infraction and waived the right to a hearing.
- (h) If a person fails to pay the penalty within the specified period or fails to timely request a hearing, that person shall be deemed to have waived the right to contest the citation. An order

of the Special Magistrate may be entered against that person for the amount of the civil citation.

Sec. 2-266. Special magistrate; appointment, powers.

- (a) The City Council may appoint one or more Special Magistrates who shall have the authority to hold civil citation appeal hearings, assess fines against violators of the City Code and otherwise exercise the powers of a municipal Code Enforcement Board as provided in Chapter 162, Florida Statutes, as and to the extent provided in this article. Any current Special Magistrate of the City authorized to hear and adjudicate any code enforcement cases of the City shall automatically have authority to hear and adjudicate violations under this article, without need of further appointment by the City Council until expiration of such magistrate's appointment or termination thereof by the City Council.
- (b) Special Magistrates shall be attorneys licensed to practice law in the State of Florida and appointed by City Council.
- (c) Minutes and records of hearings before a Special Magistrate shall be kept and maintained by the City in the manner and to the extent required by law. The City shall provide necessary and reasonable clerical and administrative support to enable a Special Magistrate to perform his or her duties. A Special Magistrate shall not be authorized to hire or use the services of any person except those provided by the City to assist the performance of his or her duties.

Sec. 2-267. Appeal of civil citation to special magistrate.

Any petitioner who wishes to appeal the violation charged by a civil citation shall file with the City's Code Enforcement Department a request for hearing on the form provided by the City by 5:00 p.m. on the tenth day following the date of the service of the civil citation. Such requests may be mailed by the violator if such request is sent certified mail and post-marked before midnight on the tenth day following the date of the service of the civil citation.

Sec. 2-268. Hearing procedures.

- (a) Hearings may be held at any time after giving the notice required by this article. All hearings shall be open to the public.
- (b) The code enforcement officer shall provide the Special Magistrate with a copy of the civil citation, the notice provided prior to issuance of the civil citation (if applicable), any recorded images related to the citation, and any other case history data at or prior to a hearing pursuant to this article.
- (c) Notice of hearing shall be provided by first class mail, to the address provided by the violator in the request for hearing, at least 20 days before the hearing.
- (d) Cases on the agenda for a particular day shall be heard. All testimony shall be under oath and shall be recorded. The Special Magistrate shall take testimony from the code enforcement officer, the petitioner and any other person with relevant information to the civil citation. The Special Magistrate shall review the case history and any recorded images. The Special Magistrate shall not be bound by the formal rules of evidence; however, he or she shall act to ensure fundamental due process in each case.

- (e) The hearing may be continued once, prior to the hearing, at the discretion of the City, if the violator provides the City with written notice of the request to continue seven days before the scheduled date of the hearing. Any violator may cancel his or her hearing by paying the penalty stated on the civil citation plus administrative costs established by this section before the start of the hearing. This information, including where to make payment and the accepted forms of payment, shall be set forth in the notice of hearing.
- (f) At the conclusion of each hearing, the Special Magistrate shall determine whether a violation of the City Code has occurred, in which case the Special Magistrate shall uphold or dismiss the citation, and issue a final order. If the citation is upheld, the final order shall order the violator to pay the penalty stated on the citation and shall order the violator to pay an administrative charge of \$50.00 or such other amount established by the City Council by resolution hereafter.
- (g) If the violator fails to appear at the hearing, the violator shall be deemed to have waived the right to contest the citation, and the Special Magistrate may receive evidence from the code enforcement officer or any other person, and enter an order upholding the citation and ordering the violator to pay the penalty stated on the citation plus the administrative charges.

Sec. 2-269. Appeal.

Any aggrieved party, including the City, may appeal a final order of the Special Magistrate to the circuit court, by filing for a petition for writ of certiorari in the manner provided by law within thirty (30) days of the final order. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the Special Magistrate.

Sec. 2-270. Collection of unpaid penalty.

The City Manager, or his or her designee, may establish procedures for the collection of any unpaid civil penalty and administrative costs. The final order of the Special Magistrate for any unpaid fines or fines plus administrative costs, if applicable, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Such liens may be foreclosed upon by the City subject to the state laws governing such code enforcement liens.

Sec. 2-271. Notices.

- (a) All notices required by this part, other than the initial violation warning letter, must be provided to the violator by:
 - (1) Certified mail to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database, except the City may provide notice of a Special Magistrate hearing to any other address provided to the City by the alleged violator on the appeal hearing request form by first class mail;
 - (2) Hand delivery;
 - (3) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice;

- (4) In the case of a violation at a commercial premises, leaving the notice with the manager or other person in charge. Each employee of the business shall be deemed to be an agent of the business for service of warning notices and citations during regular business hours; or
 - (5) Additional notice may be completed by posting a copy of the notice or citation in a conspicuous place upon the property which is the subject of the violation. Such posting, together with proof of mailing in subsection (1) shall be sufficient to show that the notice requirements were met without regard to whether or not the alleged violator actually received such notice.
- (b) For violations involving vehicles, vessels, or equipment which have a visible state license or registration, notice may be provided to the registered owner of the vehicle, vessel, or equipment by certified mail to the owner's record address for the license or registration. In addition to such mailing, the notice may be provided in accordance with subsection (a) to the property owner where the vehicle, vessel, or equipment in violation is located.

Sec. 2-272. Schedule of violations and penalties.

The violation of any provision of any ordinances or codes shall constitute a civil offense punishable by civil penalty in accordance with the uniform fine schedule which provides violations of City Codes and Ordinances and their corresponding penalty class. The uniform fine schedule 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.

Section 2. Conflict with Other Ordinances and Codes. All ordinances or parts of ordinances of the City of New Port Richey, Florida, in conflict with the provisions of this ordinance, are hereby repealed to the extent of such conflict.

Section 3. Severability. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 4. Effective Date. This ordinance shall take effect immediately upon its adoption as provided by law.

The foregoing Ordinance was duly read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this 20th day of February, 2018, and read and adopted on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this 6th day of March, 2018.

ATTEST:

By: _____
Judy Meyers, City Clerk

By: _____
Rob Marlowe, Mayor-Council Member

(Seal)

APPROVED AS TO FORM AND LEGALITY FOR
THE SOLE USE AND RELIANCE OF THE CITY
OF NEW PORT RICHEY, FLORIDA:

Timothy P. Driscoll, City Attorney