

ORDINANCE NO. : 343

AN ORDINANCE OF THE CITY OF PORT ST. JOE, FLORIDA, ESTABLISHING A CITY CODE ENFORCEMENT SYSTEM, PROVIDING FOR ADDITIONAL METHODS OF OBTAINING COMPLIANCE WITH CODE OF ORDINANCES OF THE CITY, DESIGNATING A CODE ENFORCEMENT SPECIAL MASTER, PROVIDE A SUPPLEMENTAL MEANS OF ASSURING COMPLIANCE WITH THE CITY'S CODES AND ORDINANCES, COMMISSION CODE ENFORCEMENT OFFICERS, AND ESTABLISHING INITIAL ENFORCEMENT PROCEDURES; PROVIDING FOR REPEAL OF ANY CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Port St. Joe ("City) has deemed it appropriate to establish a Code Enforcement System; and

WHEREAS, The City Commissioners find that in order to promote, protect, and improve the safety, and welfare of the residents of the City, the City Commissioners find that it is in the best interest of the citizens of the City to create a code enforcement system to supplement existing lawful methods of assuring compliance with the City's codes and ordinances, and

WHEREAS, it is the intent of the City Commission that this Ordinance provide additional methods of obtaining compliance with the Code of Ordinances of the City. Nothing contained in this Ordinance shall prohibit the City from enforcing its Code of Ordinances by any other lawful means. Specifically, but not exclusively, the City retains the ability to enforce its codes through procedures and methods established by F.S. §125.69, Laws of Fla., ch. 79-455, F.S. §162, pts. I and II or any codes or ordinances patterned thereafter or derived therefrom.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PORT ST. JOE, FLORIDA:

SECTION 1.

The system created by the Board of City Commissioners of the City of Port St. Joe, Florida, shall be known as the Code Enforcement System.

SECTION 2.

The following words, phrases, or terms as used in this Ordinance, unless the context indicates otherwise, shall have the following meaning:

Code inspector means any authorized agent or employee of the City whose duty it is to assure code compliance through procedures established by F.S. §162. The City Manager may designate additional individuals to serve as code inspectors.

Cost of repairs means the cost incurred by the City in order to make all reasonable repairs required to bring the property into compliance.

Property owner or record owner mean, for the purposes of this chapter, a person that, according to the public records, is an owner of real property in the city.

Repeat violation means a violation of a provision of a code or ordinance by a person who has been previously found through a Special Magistrate or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within two years prior to the violation, notwithstanding the violations occurred at different locations.

SECTION 3.

In order to promote, protect and improve the health, safety, and welfare of the citizens of the City, the Board of City Commissioners hereby creates the office of Code Enforcement Special Magistrate who shall have the authority to hold hearings and impose administrative fines and other noncriminal penalties and otherwise provide an equitable, expeditious, effective, and cost-effective method of enforcing the codes and ordinances in effect in the city where code violations exists. The authority to establish code enforcement through the office of Special Magistrate has been authorized by F.S. §162.03, specifically, and F.S. §162, pt. I, generally, and

SECTION 4.

(a) The board of city commissioners shall designate one or more special magistrates who shall have the authority to hold hearings and assess fines against violators of city codes and ordinances. Each special magistrate shall have the authority to:

- (1) Subpoena alleged violators and witnesses to hearings through service by the chief of police of the City or as provided for service of process pursuant to State law.
- (2) Subpoena evidence to hearings;
- (3) Take testimony under oath or affirmation;
- (4) Issue orders having the force of law to command whatever steps necessary to bring a violation into compliance; and
- (5) Adopt rules for conduct at hearings.

However, no special master shall have the power to initiate enforcement proceedings.

(b) A special magistrate shall be a member of the Florida Bar in good standing. Special magistrates shall be compensated for their services but shall not be employees of the City, and

SECTION 5.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes [assigned for enforcement by the city manager] of the City of Port St. Joe

(b) Except as otherwise provided in this section, if a violation of the code is found, the code inspector shall give written notice notifying the violator of the specific code provision being violated, the action necessary to correct the violation and set forth a

reasonable time within which to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall provide written notification to the special master and request a hearing. The special magistrate shall schedule a hearing at a time and a place accessible to the public and advertise the hearing in a newspaper of general circulation in the county. A written notice of such hearing shall be hand delivered or mailed to the violator as provided in F.S. §162.12. If the violator and the record owner are not the same person, all notices required under this chapter shall also be delivered or mailed as provided in this chapter to the record owner. At the option of the special magistrate, notice may additionally be served by publication or posting as provided by F.S. §162.12. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to a special magistrate even if the violation has been corrected prior to the hearing. In addition, each notice of hearing shall include language providing that if a person decides to appeal any decision made by the special magistrate with respect to any matter considered at such hearing, such person will need a record of the proceedings, and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

(c) If a repeat violation is found, the code inspector shall provide written notification to the violator setting forth each code provision which has been violated and the action required to correct the violation but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the special magistrate and request a hearing. The clerk to the special magistrate shall schedule a hearing and shall provide notice pursuant to F.S. §162.12. The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the special magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his rights to this hearing and pay such costs as determined by the special magistrate.

(d) If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the clerk to the special magistrate and request a hearing.

(e) If, after a hearing, the special magistrate determines that a violation or the condition causing the violation presents a serious threat or that the violation is irreparable or irreversible in nature, the special magistrate shall notify the board of city commissioners, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable costs of the repairs along with any fine imposed pursuant to this article. Making such repairs does not create a continuing obligation on the part of the city to make further repairs or to maintain the property in any manner and does not create any liability against the county for any damages to the property if such repairs were completed in good faith.

(f) If the owner of property, which is subject to an enforcement proceeding before the special magistrate, or a court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

A failure to make the disclosures described in subsections (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable time to correct the violation before the hearing is held.

SECTION 6.

Conduct of hearing:

(a) Upon request of the code inspector, or as otherwise required by this article, the special magistrate shall schedule a hearing. Minutes shall be kept of all hearings by a special magistrate, and all hearings and proceedings shall be open to the public. The board of city commissioners shall provide clerical and administrative personnel as may be reasonably required for each special magistrate for the proper performance of such duties.

(b) Each case before a special magistrate shall be presented on behalf of the city by the city attorney or a staff member designated by the city manager. Both the city, through the office of the city attorney, and the violator shall have the right to be represented by counsel at the hearing. In a case before the special magistrate, if the city prevails it shall be entitled to recover all reasonable costs incurred in prosecuting the case and such costs shall be included in the lien authorized pursuant to F.S. §162 herein.

(c) A special master shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath or affirmation and shall be recorded. A special magistrate shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) At the conclusion of the hearing, the special magistrate shall issue findings of fact based on evidence of record and conclusions of law, and shall issue an order awarding the proper relief consistent with powers granted by F.S. §162. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in F.S. §162.09, the cost of repairs may be included along with the fine if the order is not complied with by such date. A certified copy of the

order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns that the violation concerns real property, and the findings therein shall be binding upon the violator and any subsequent purchasers, successors in interest or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the special magistrate or successor shall issue an order acknowledging compliance which shall be recorded in the public records. A hearing shall not be required to issue such an order acknowledging compliance.

SECTION 7.

Fines:

(a) *Notification.* Upon notification by the code inspector that an order of the special magistrate has not been complied with within the time allowed or, upon finding that a repeat violation has been committed, the special magistrate may order the violator to pay a fine in the amount provided in this section for each day the violation continues past the date set by the special magistrate for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector provided that each day of continuing violation shall be separately attested to by the code inspector. If a finding of a violation or a repeat violation has been made, a hearing shall not be necessary for issuance of the order imposing the fine.

(b) *Imposition of fines.*

(1) A fine for the violation of any duly enacted code or ordinance of the city, which is imposed pursuant to this section shall not exceed \$250.00 per day for the first violation and shall not exceed \$500.00 per day for a repeat violation and, in addition, may include all costs of repairs as provided by this article.

(2) However, if the special magistrate finds such violation to be irreparable or irreversible in nature, he or she may order the violator to pay a fine not to exceed \$5,000.00 per violation.

(3) In determining the amount of the fine, if any, the special magistrate shall consider the gravity of the violation, any actions taken by the violator to correct the violation, and any previous violations committed by the violator.

(4) A special magistrate may reduce or abate a fine imposed pursuant to this section upon proof of compliance and upon a showing of extenuating circumstances or severe hardship.

(c) *Certified copy of order.* A certified copy of an order imposing a fine, or a fine plus repair costs shall 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/owner and shall be enforceable as provided in this article and F.S. §162.09; and

SECTION 8.

Appeals:

An aggrieved party, including the city, may appeal a final administrative order of a special magistrate to the circuit court. Such appeal shall not be de novo but shall be limited to review of the record created before the special magistrate. An appeal shall be filed within 30 days of the execution of the order.

(Code 1985, §1-8.5-11); and

SECTION 9.

Liens:

(a) Upon petition to the circuit court, liens provided by this article shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, and as otherwise provided by F.S. §162.09(3).

(b) A fine imposed pursuant to this chapter shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this article, whichever occurs first.

(c) A lien arising from a fine imposed pursuant to this section runs in favor of the county, and the county may execute a satisfaction or release of lien entered pursuant to this chapter.

(d) Ninety days from the filing of any such lien which remains unpaid, the board of city commissioners may authorize the city attorney to bring an action to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus costs, attorney's fees and accrued interest, but actions for money judgments may be pursued only as to fines levied after October 1, 2000. However, no lien created pursuant to the provisions of this chapter may be foreclosed on real property which is a homestead under section 4, article X of the state constitution, and the money judgment provisions of this section shall not apply to real or personal property which is covered under section 4(a), article X of the state constitution.

(e) In an action to foreclosure on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee that it incurs in the foreclosure. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effective by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice unless a notice of lis pendens is recorded; and

SECTION 10.

Notices:

(a) All notices required by this article shall be provided to the alleged violator and, where the violation is connected with a specific property, to the occupant of the property and to the record owner of the property, if not already otherwise notified, by certified mail, return receipt requested; by hand delivery by the police chief or city police officer or other law enforcement officer, code inspector, or other person designated by the board of city commissioners; or by 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.

(b) Such notices required hereunder shall be sent to the alleged violator by certified mail, return receipt requested; provided, however, if such notice is sent under this paragraph to the owner 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 owner and is returned as unclaimed or refused, notice may be provided by posting as described in F. S. §162.12(b) 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. In the case of commercial premises, leaving the notice with the manager or other person in charge shall be sufficient.

(c) In addition to providing notice as set forth in subsection (a) of this section, at the option of the special magistrate, notice may also be served by publication or posting as provided in F.S. §162.12(2); and

SECTION 11. SEVERABILITY

The provisions of the Ordinance are hereby declared to be severable. If any provision of this Ordinance, or the application thereof, to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application.

SECTION 12. EFFECTIVE DATE


This Ordinance shall become effective as provided by law.

This Ordinance was adopted in open regular meeting after its second reading this 7th day of March, 2006, after due notice in accordance with Florida Law.

THE CITY OF PORT ST. JOE BOARD OF CITY COMMISSIONERS



FRANK PATE, MAYOR

Attest: 
PAULINE PENDARVIS
Clerk