

ORDINANCE NO. 4164

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 11, NUISANCES, BY CREATING A NEW ARTICLE VII TO BE ENTITLED “CHRONIC NUISANCE PROPERTY” ESTABLISHING A PROCEDURE TO ADDRESS PROPERTIES THAT CHRONICALLY OVER BURDEN THE POLICE DEPARTMENT AND CODE COMPLIANCE DIVISION WITH NUISANCE ACTIVITIES; PROVIDING FOR CONFLICTS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach, Florida, is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the City currently has ordinances in place to address properties that violate the code of ordinances (code compliance); that are public nuisances due to controlled substance violations and similar offenses (public nuisance abatement); and, that otherwise endanger the health, safety and welfare of the City (lot clearing, board and secure and unsafe building abatement); and

WHEREAS, the foregoing ordinances used to address nuisance properties do not address those properties that chronically overburden the City’s Police Department with nuisance-type activities; and

WHEREAS, any property that has generated three (3) or more responses from the Police Department for nuisance activities within 30 days, or seven (7) or more responses in six (6) months, has received significantly more services than the normal level of general and adequate police service provided to the public and has placed an extraordinary and unnecessary burden on the citizens, businesses, taxpayers and property owners of the City, has disproportionately used police services, and substantially reduced the availability of police services for other citizens; and

WHEREAS, a property owner that has failed to correct code violation(s) on their property more than 180 days after the time set for compliance by the City’s special magistrate typically receives more City services than other property owners and place an extraordinary and unnecessary burden on the citizens, businesses, taxpayers and property owners of the City, has disproportionately used City services, and substantially reduced the availability of City services for other citizens; and

WHEREAS, property owners, and other parties who control a property, that chronically fail to control the use or code-compliance status of their property substantially

interfere with the comfortable enjoyment of life, health and safety of other citizens and the community; and

WHEREAS, it is in the public interest to require the owners and/or other responsible parties of such property to bear the additional costs associated with abating violations at properties at which nuisance activities chronically occur; and

WHEREAS, such properties disproportionately consume City services and impose an economic burden on properties in the City; and

WHEREAS, nuisance properties receive special services which extend far beyond general law enforcement or code compliance enforcement activities and that the abatement of chronic nuisances by the City is a municipal service; and

WHEREAS, abating chronic nuisances possesses a logical relationship to the use and enjoyment of the benefitted real property and provides a direct, special benefit to the real property by:

- (1) Reducing property maintenance costs;
- (2) Reducing property management costs;
- (3) Eliminating the invitation of on-site criminal activities;
- (4) Protecting the health and safety of the occupants and nearby persons;
- (5) Protecting the value of the real property; and,
- (6) Enhancing market perceptions of the real property; and

WHEREAS, the cost of abating the nuisance activities shall be entirely apportioned to the benefitted real property receiving the services; and

WHEREAS, the cost of abating the nuisance activities may be levied against the benefitted real property as a special assessment superior to all other private rights, interests, liens, encumbrances, titles and claims upon the real property and equal in dignity with a lien for ad valorem taxes; and,

WHEREAS, the City Council has determined that adopting a procedure to address properties that chronically overburden the Police Department with nuisance activities is in the best interest of the health, safety and general welfare of the City's residents and stakeholders.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. Legislative Findings, Intent and Incorporation. The foregoing recitals are ratified as true and correct and are incorporated herein. It is the purpose and intent of this Ordinance to promote the health, safety and general welfare of the residents, businesses and stakeholders of the City.

SECTION 2. Code Amendment. Chapter 11, "Nuisances", is amended to create

Article VII, “Chronic Nuisance Property”, as follows:

ARTICLE VII. – CHRONIC NUISANCE PROPERTY

Sec. 11-221. – Findings.

The City Council hereby makes the following findings:

- (a) That any property that has generated three (3) or more responses from the Police Department for nuisance activities within 30 days, or seven (7) or more responses in six (6) months, has received significantly more services than the normal level of general and adequate police service provided to the public and has placed an extraordinary and unnecessary burden on the citizens, businesses, taxpayers and property owners of the City, has disproportionately used police services, and substantially reduced the availability of police services for other citizens.
- (b) That any property owner that has failed to correct code violation(s) on their property more than 180 days after the time set for compliance by the City’s special magistrate typically receives more City services than other property owners and place an extraordinary and unnecessary burden on the citizens, businesses, taxpayers and property owners of the City, has disproportionately used City services, and substantially reduced the availability of City services for other citizens.
- (c) That property owners, and other parties who control a property, that chronically fail to control the use or code-compliance status of their property substantially interfere with the comfortable enjoyment of life, health and safety of other citizens and the community.
- (d) That it is in the public interest to require the owners and/or other responsible parties of such property to bear the additional costs associated with abating violations at properties at which nuisance activities chronically occur.
- (e) That such properties disproportionately consume City services and impose an economic burden on properties in the City.
- (f) That nuisance properties receive special services which extend far beyond general law enforcement or code enforcement activities and that the abatement of chronic nuisances by the City is a municipal service.
- (f) That abating chronic nuisances possesses a logical relationship to the use and enjoyment of the benefitted real property and provides a direct, special benefit to the real property by:
 - (1) Reducing property maintenance costs;
 - (2) Reducing property management costs;
 - (3) Eliminating the invitation of on-site criminal activities;
 - (4) Protecting the health and safety of the occupants and nearby persons;
 - (5) Protecting the value of the real property; and

- (6) Enhancing market perceptions of the real property.
- (g) That the cost of abating the nuisance activities shall be entirely apportioned to the benefitted real property receiving the services.
- (h) That the cost of abating the nuisance activities may be levied against the benefitted real property as a special assessment superior to all other private rights, interests, liens, encumbrances, titles and claims upon the real property and equal in dignity with a lien for ad valorem taxes.

Sec. 11-222. – Definitions and exemptions.

For purposes of this article:

- (a) "Nuisance activity" means any activities relating to the following violations (as amended from time to time), whenever engaged in by the property owner or tenant, or the owner's or tenant's agent, guest or invitee:
 - (1) Code Chapter 3 - Alcoholic Beverages, Article I, sections 3-2 through 3-10.
 - (2) Code Chapter 11- Nuisances, Article IV - Noise, Divisions 1 and 2.
 - (3) Code Chapter 4- Animals, Article II - Dogs, sections 4-22 and 4-23.
 - (4) Code Chapter 2.5, Adult Entertainment Code, Article V, Criminal Provisions.
 - (5) F.S. § 767.12 - Dangerous dogs.
 - (6) F.S. § 784.03 - Battery; felony battery.
 - (7) F.S. § 784.041 - Felony battery.
 - (8) F.S. § 784.045 - Aggravated battery.
 - (9) F.S. § 790.01 - Carrying concealed weapons.
 - (10) F.S. § 790.10 - Improper exhibition of dangerous weapons or firearms.
 - (11) F.S. § 790.15(1) - Discharging firearm in public.
 - (12) F.S. § 790.151(3) - Using firearm while under the influence.
 - (12) F.S. § 790.23 - Felons in possession of firearms, ammunition, etc.
 - (12) F.S. § 796.06 - Renting space to be used for prostitution.
 - (13) F.S. § 796.07 - Prostitution.
 - (14) F.S. § 800.03 - Exposure of sexual organs.
 - (15) F.S. § 806.13 - Criminal mischief.
 - (16) F.S. § 810.08 - Trespass in structure or conveyance.
 - (17) F.S. § 810.09 - Trespass on property other than structure or conveyance.
 - (18) F.S. § 812.014 - Theft.
 - (19) F.S. § 812.019 - Dealing in stolen property.
 - (20) F.S. § 812.173 - Convenience business security.
 - (21) F.S. § 823.01 - Nuisances.
 - (22) F.S. § 828.12 - Cruelty to animals.
 - (23) F.S. § 843.01- Resisting officer with violence.
 - (24) F.S. § 843.02 - Resisting officer without violence.
 - (26) F.S. § 856.011 - Disorderly intoxication.
 - (27) F.S. § 856.015 - Open house parties.

- (28) F.S. § 856.021 - Loitering or prowling.
- (29) F.S. § 856.022 - Loitering or prowling in close proximity to children.
- (25) F.S. § 870.01 - Affrays and riots.
- (30) F.S. Ch. 874 - Criminal gang enforcement and prevention.
- (31) F.S. § 877.03 - Breach of the peace; disorderly conduct.
- (32) F.S. Ch. 893 - Any offense under the Florida Comprehensive Drug Abuse Prevention and Control Act.
- (33) Failure to comply with a code compliance order entered by the City's Special Magistrate.
- (34) Any other offense under state or federal law that is punishable by a term of imprisonment exceeding one year.

(b) *Pattern of nuisance activity* means real property which exhibits a pattern of nuisance activity as follows:

- (1) The City's police department has responded to three (3) or more nuisance activities at the property within thirty (30) days;
- (2) The City's police department has responded to seven (7) or more nuisance activities at the property within six (6) months;
- (3) An alcoholic beverage establishment that employs private security on-site and that the City's police department has responded to five (5) or more nuisance activities at the property within thirty (30) days or twenty (20) or more nuisance activities at the property within six (6) months;
- (4) The property owner has failed to correct a code violation(s) on the property 180 days after the date given by the City's special magistrate in any order entered pursuant the City's code compliance process; or,
- (5) There is a repeat violation of any nuisance as otherwise provided by this code.

(c) *Construction and application.* Pattern of nuisance activity shall not be construed to include:

- (1) A nuisance activity where the property owner or tenant, or the owner's or tenant's agent, guest or invitee is the victim of a crime and called for service; or
- (2) A complaint or call for service to which the city's police department, code compliance division, fire, medic and/or other emergency personnel responded and it was determined that no nuisance activity occurred.

(d) *Separate and distinct incident* means that each time one or more police officers respond to a nuisance activity at the property it shall be deemed a separate and distinct incident. This may include multiple incidents occurring on the same day.

(e) *Police services* means all costs associated with a police officer response to a property and may include, but is not limited to, the costs for: officers and cruisers to respond to a call, receiving

the call, dispatch, any supervisory time necessary, any research necessary for enforcement, any citation costs, any transport costs for arrests, and any other cost associated with a response to a call for service at the property.

(f) *Chronic Nuisance Services* means all City services provided to a property that has been declared a chronic nuisance under this article, including services provided by an independent contractor of the City and including, without limitation, lot clearing, board and secure, unsafe building abatement.

(f) This article shall not be applied to restaurants or bars except for violations of the noise ordinance (Chapter 11), the alcoholic beverage ordinance (Code Chapter 3) and any violation set forth herein which is committed by the owner of the property or business or their employees. The 'theft' category shall not be applied in dealing with retail establishments.

(g) This article shall not be applied when the victim of a crime is the victim of domestic violence.

(j) *PD* means the person(s) designated by the Chief of Police or Code Compliance Division Administrator for purposes of this article.

Sec. 11-223. – Procedure.

(a) Notices.

(1) Whenever the PD determines that police officers have responded to three (3) or more separate and distinct incidents of nuisance activities at a property during a 30-day period or seven (7) or more separate and distinct incidents of nuisance activities at a property within a six (6) month period, the PD may notify the property owner in writing that the property is a nuisance. Likewise, if a property owner has failed to correct a code violation(s) on a property within 180 days after the date given by the City's special magistrate in any order entered pursuant the City's code compliance process, the PD may notify the property owner in writing that the property is a nuisance. The initial nuisance property notice (INP notice) shall begin the procedures of this article, although the PD should attempt other contact with the property owner or tenant (if applicable) in an effort to abate the nuisance activity prior to the initiation of this process. The INP notice shall contain:

- i. A clear statement that the property is deemed a nuisance.
- ii. The street address or legal description sufficient for identification of the property along with the parcel control number.
- iii. A description of the nuisance activities that have occurred at the property, including the dates of the occurrences or the code compliance order that has not been complied with by the property owner.
- iv. A statement that all costs of services provided by the city to a property that has been declared a nuisance, including without limitation cost of police services for nuisance activities and chronic nuisance services, may be assessed and levied against the property for collection or as a non-ad valorem assessment superior to all other private rights, interests, liens, encumbrances, titles and claims upon the

property and equal in rank and dignity with a lien for ad valorem taxes.

- v. A statement that unpaid assessments may be certified to the tax collector for collection pursuant to the uniform method provided in F.S. § 197.3632.
 - vi. Examples of nuisance abatement measures.
 - vii. A statement that the property owner shall, within 14 days of service of the INP notice, either respond to the PD with an acceptable, written action plan (WAP) to abate the nuisance activities at the property or file an appeal pursuant this article.
 - viii. A requirement that the WAP shall include the specific address(es) at which all future correspondence and notices shall be sent. Any future notice sent to the address in the WAP by first class mail or by hand delivery shall be considered to have been properly served.
 - ix. A statement that the INP Notice may be appealed within 14 days of service of the INP notice.
- (b) Upon service of the INP notice, the property owner shall, within 14 days, either respond to the PD with an acceptable WAP to abate the nuisance activities at the property or file an appeal pursuant this article.
- (c) Extensions. The PD may extend any deadline for up to 60 days if the property owner is actively, and in good faith, attempting to comply with this section.
- (d) Upon receipt of the proposed WAP, the PD shall review the proposed WAP to determine if the proposed WAP will ensure that the identified nuisance activities will not occur again. Measures to be considered in determining the adequacy of the WAP may include, but are not limited to:
- (1) Commencement of an eviction action pursuant to F.S. Chapter 83 to remove from the property those individuals engaged in the nuisance activity;
 - (2) Implementation of crime prevention through environmental design (CPTED) measures;
 - (3) Frequency of site visits and inspections at various times of both day and night;
 - (4) Hiring of property management;
 - (5) Hiring of private security;
 - (6) Installation of security cameras and/or exterior lighting;
 - (7) Installation of fencing;
 - (8) Compliance with all property maintenance and appearance standards as set forth in the code;
 - (9) Use and enforcement of a comprehensive written lease agreement which addresses the standard terms of the industry for rentals;
 - (10) Criminal background checks for prospective tenants and lease renewals;
 - (11) Posting of "no trespassing" signs at the property and execution of a "no trespass affidavit" authorizing the Police Department to act as an agent of the property owner to enforce trespass statutes on the property;
 - (12) Regular requests for offense and incident reports relating to the property that are available through the records custodian of the Police Department Records Division;
 - (13) Written documentation of all efforts to curtail or eliminate the re-occurrence of nuisance activities on the property; and,

- (14) Any other action that the PD determines is reasonably sufficient to curtail or eliminate the re-occurrence of nuisance activities on the property.
- (e) Upon review of the proposed WAP, the PD shall accept the proposed WAP if the PD reasonably believes that, based on the measures identified in the proposed WAP, that it will ensure that the identified nuisance activities will not occur again. If the PD rejects the WAP, measures shall be identified which, if included in the WAP, will make the WAP acceptable.
- (1) An accepted WAP shall include a specific timetable for the implementation of each measure of the WAP and shall be fully implemented within 45 days from the date the PD mails notice of acceptance of the WAP to the responsible parties.
 - (2) If implementation of any measure in the WAP is expected to exceed 45 days (e.g. tenant eviction) through no fault of the responsible party, the PD may extend this time limit for such measure so long as the responsible party has implemented all other measures and the responsible party is acting in good faith to implement the measures which need additional time.
 - (3) An acceptable WAP shall be recorded in official records so that any potential purchaser, assignee or transferee of the property will have notice of the declaration.
- (f) Whenever the PD determines that an accepted WAP has not abated the identified nuisance activities or that other nuisance activities have begun at the property, and that modification of an accepted WAP is necessary to abate nuisance activities at the property, the PD shall notify the property owner in writing that the WAP must be modified. This modification notice shall contain the same information as the INP Notice and, in addition, a description of the nuisance activities that continue to occur at the property and/or the new nuisance activities, and a copy of the previously accepted WAP.
- (g) Upon receipt of a modification notice, the property owner shall, within 14 days either respond to the PD with a modified, acceptable WAP to abate the nuisance activities at the property or file an appeal pursuant this article.
- (1) Upon review of the modified WAP, the PD shall accept or reject the proposed modified WAP if the PD reasonably believes that, based on the measures identified in the proposed modified WAP, that it will ensure that the identified nuisance activities will not occur again.
 - (2) The modified WAP shall include a specific timetable for the implementation of each aspect of the modified WAP and shall be fully implemented within 45 days from the date the PD mails notice of acceptance of the modified WAP to the property owner, subject to the specific extensions for specific measures allowed for the original WAP.
 - (3) An acceptable modified WAP shall be recorded in official records so that any potential purchaser, assignee or transferee of the property will have notice of the declaration.

- (h) Each WAP shall be effective for not less than six months nor more than one year from its approval.
 - (1) The PD shall determine the period of time the WAP shall be in effect at the time of approving the WAP, which time shall be based on the reasonable amount of time necessary to implement the requirements of the WAP and abate the nuisance activities.
 - (2) If the WAP is modified, the PD shall establish a new date for termination of the WAP.
 - (3) A property owner may request that a WAP be terminated early. The PD may terminate the WAP before the established termination date if the PD determines that the nuisance activities have been abated and are not likely to reoccur in the near future. This decision is within the PD's discretion, is final, and is not appealable.

Sec. 11-224 - Penalties.

- (a) If the property owner fails to respond to the INP notice, proposes a WAP that is rejected by the PD, or fails to implement an accepted or modified WAP completely, the PD shall declare the property a chronic nuisance and notify the property owner by serving a chronic nuisance notice as required in this article containing at least the following information:
 - (1) The street address or legal description sufficient for identification of the property along with the parcel control number.
 - (2) A declaration that the property is a chronic nuisance.
 - (3) A statement that the property owner may be cited with a municipal ordinance violation for allowing a chronic nuisance property to exist.
 - (4) A statement that the property owner has 14 days from the date of serving notice in which to appeal the chronic nuisance declaration.
 - (5) A statement that all costs of services provided by the City to a property that has been declared a chronic nuisance, including without limitation cost of police services for subsequent nuisance activities and costs for chronic nuisance services, may be assessed and levied against the property for collection or as a non-ad valorem assessment superior to all other private rights, interests, liens, encumbrances, titles and claims upon the property and equal in rank and dignity with a lien for ad valorem taxes.
 - (6) A statement that unpaid assessments may be certified to the tax collector for collection pursuant to the uniform method provided in F.S. § 197.3632.
- (b) If a timely appeal of the declaration of chronic nuisance is not received, the PD shall record a certified copy of the declaration of chronic nuisance in the official records so that any potential purchaser, assignee or transferee of the property will have notice of the declaration.
- (c) If a timely appeal of the declaration of chronic nuisance is not received, the PD may calculate the cost of police services for responses to nuisance activities occurring at the property after the appeal date expires for up to one (1) year or chronic nuisance services costs and serve written notice of the costs on the property owner. Costs under this provision shall be documented in accordance with the cost recovery section set forth in this article. If the costs are not timely paid within 30 days of receipt of notice, the costs may be assessed and levied against the property for collection or as a non-ad valorem assessment as set forth in this article.
- (d) It is a violation of this section to be a property owner of a chronic nuisance property. The fine for each violation of this section shall be \$500.00.

Sec. 11-225. – Appeals.

- (a) Appeals may be taken from:
 - (1) The INP notice that a property is a nuisance;
 - (2) The written determination by the PD that a WAP, or modified WAP, is inadequate or rejected; or
 - (3) The written determination by the PD that the property is a chronic nuisance.
- (b) Failure to file a timely appeal shall be deemed to be a waiver of that right and the property owner shall have failed to exhaust their administrative remedies.
- (c) An appeal may be filed by a responsible party or an attorney for the responsible party.
- (d) Any appeal must be filed not later than 5:00 p.m. on the fourteenth day after service of the applicable notice. The appeal:
 - (1) Shall be filed at the Police Department, Special Operation Division or designee if the appeal is based on calls to the Police Department for service;
 - (2) Shall be filed with the Code Compliance Division if the appeal relates to a failure to comply with a code compliance order;
 - (3) Shall be in writing;
 - (4) Shall include a copy of the action complained of and copy of the notice being appealed;
 - (5) Shall include the address where any future notice shall be mailed;
 - (6) Shall include the phone number and email address of the responsible party, its attorney or agent, who filed the appeal; and
 - (7) Shall be accompanied by a fee of \$100.00. If the responsible party filing the appeal prevails, then the appeal fee shall be returned.
 - (8) Shall include a short, plain statement identifying the factual, procedural or legal error upon which the request for appeal is based.
 - (9) The Police Department and Code Compliance Division shall not accept any appeal which does not meet these requirements.
- (e) The appeal shall be heard by the city's special magistrate utilized to hear code compliance cases, who is an attorney licensed to practice law in Florida.
- (f) A notice of the appeal hearing shall be mailed (or hand delivered) by the PD at least ten (10) days prior to the date of the hearing and shall identify the date, time and location of the hearing.
- (g) The hearing shall be a quasi-judicial hearing at which the special magistrate determines whether the PD followed the procedures set forth in this article and that the action appealed from meets the requirements of this article. If the appeal is to challenge the declaration of nuisance, the hearing shall be limited to a determination of whether the property is a nuisance and, if so, what action shall be required to abate the nuisance activities at the property. If the rejection of a proposed WAP or modified WAP is the subject of the appeal, the hearing shall be limited to a determination of whether the measures identified in the proposed or modified WAP, if implemented, are likely to abate the nuisance activities. If not, the special magistrate shall determine what measures shall be required to abate the nuisance activities at the property. If the appeal is to challenge the declaration of chronic nuisance, the hearing shall be limited to

a determination of whether the property is a chronic nuisance and, if so, what action shall be required to abate the chronic nuisance at the property and a statement that if further nuisance activities occur, the City shall be entitled to cost recovery as set forth in this article.

- (h) In any hearing before the special magistrate, formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of the State. Each party shall have the right to be represented by counsel, to call and examine witnesses under oath, to introduce documentary evidence or exhibits, to cross-examine opposing witnesses on any relevant matter even though the matter was not covered under direct examination, to impeach any witness regardless of which party first called the witness, and to submit rebuttal evidence.
- (i) All findings of the special magistrate shall be by a preponderance of the evidence. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a civil action.
- (j) At the conclusion of the hearing, the special magistrate shall issue findings of fact and conclusions of law with respect to the issue(s) appealed. The decision of the special magistrate shall be in writing and shall be deemed final. If the special magistrate affirms the declaration of a nuisance, the special magistrate shall enter an order establishing the action plan, providing reasonable time to implement the action plan and set a hearing date and time to consider the entry of a chronic nuisance order if the action plan is not timely implemented. If the special magistrate affirms the rejection of a proposed or modified WAP, the special magistrate shall enter an order establishing the action plan, providing reasonable time to implement the action plan and set a hearing date and time to consider the entry of a chronic nuisance order if the action plan is not timely implemented. If the special magistrate affirms the declaration of chronic nuisance, the special magistrate shall enter an order establishing the action plan, providing reasonable time to implement the action plan and establish the costs, if any, if the action plan is not timely implemented. An order rejecting the declaration of nuisance or chronic nuisance shall not bar the City from recommencing the process.
- (k) If the special magistrate upholds the declaration of a chronic nuisance, the special magistrate may enter an order authorizing the City to provide chronic nuisance services at the property. All costs for such chronic nuisance services shall be recoverable by the City as set forth herein.
- (l) Any person aggrieved by the decision of the special magistrate, including the City, may appeal the final order of the special magistrate to the circuit court. 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. Any appeal to the circuit court shall be filed within 30 days of the execution of the special magistrate's final order to be appealed. A notice of appeal must be filed with the Police Department, Special Operations Division, or with the City's Code Compliance Division.

- (m) As used in this subsection, and for appeal purposes only, "responsible party" may include a person who possesses a present legal right of present or future enjoyment of the property by virtue of a deed, title, mortgage, fully executed contract for purchase, lease, rental agreement, lien or estate in the property, court judgment, being a named beneficiary in a will or trust of a deceased owner, or the spouse of the property owner.
- (n) Any responsible party appearing before the special magistrate may appear in person, by counsel or by an agent designated in writing.

Sec. 11-226. – Service of Notice

- (a) *Notice.* All notices required by this article shall be provided to the property owner(s) consistent with the requirements for notice provided in F.S. § 162.12, regarding notices for code compliance cases, except that if any notice sent by certified mail is not signed as received within fifteen (15) days after the date of mailing, notice may be provided by posting as described in F.S. § 162.12(2)(b). Notice by posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as set forth above. Evidence that an attempt has been made to hand deliver or mail notice as provided above, together with proof of posting, shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the property owner actually received such notice.
- (b) After the INP notice has been served as provided in this article, all subsequent correspondence and notices shall be mailed, by first class mail or hand delivery, to the address provided in the WAP. If a WAP is not received, notice shall continue to be provided under sub-section (a) above until such time as the property owner provides an address to send all future correspondence.
- (c) *Constructive Notice.* A property owner shall be deemed to have notice of a nuisance activity if the property owner: i) has actual knowledge of the nuisance activity; ii) has received notice of the nuisance activity; iii) has refused to accept a communication sent by certified mail; iv) has reason to know of the nuisance activity; v) knows about a fact related to a nuisance activity; or vi) is able to ascertain the existence of a nuisance activity by checking an official filing or recording. The lack of knowledge of, acquiescence to, participation in, or responsibility for a nuisance activity on the part of a responsible party shall not be a defense to any enforcement of this article.

Sec. 11-227. - Change of ownership.

- (a) Any purchaser of a chronic nuisance property at a judicial sale, any trustee of a chronic nuisance property in receivership, and any personal representative of an estate in probate (or the beneficiaries if the owner died intestate) for which a chronic nuisance property is an asset shall file a WAP within 45 days after they become responsible for, or legally in control of, the property.
- (b) An arms-length purchaser or bona fide purchaser for value who purchases the property shall file a WAP within 45 days after closing or when they otherwise become responsible for, or legally in control of, the property.
- (c) A new owner who obtains title to a chronic nuisance property and who does not fall into one of the categories of owners set forth in this section, shall step into the shoes of the previous

owner and comply with any WAP which has been approved or, if no WAP is approved, shall have 14 days to file a WAP with the PD or file an appeal.

- (d) To facilitate the transfer of property that is the subject of a special magistrate order, the special magistrate is authorized to modify or compromise an order and an assessment owed to the city, provided reasonable assurances are provided to the special magistrate that the nuisance conditions on the property will be remedied and will not re-occur under the new ownership.
- (e) All WAPs or special magistrate orders that are recorded in official records under this article shall expire on the date set forth in the WAP or the order. The City may execute a release after the expiration of said date upon payment of a release fee to be established by city resolution.

Sec. 11-228. - Cost recovery.

- (a) *Establishment of costs.* If the special magistrate affirms a declaration of chronic nuisance, or if a timely appeal of the declaration of chronic nuisance is not received by the Police Department or Code Compliance Division, the PD may calculate the cost of police services for responses to nuisance activities occurring at the property after the date of the special magistrate's order or after the appeal date expires or for chronic nuisance services after the date of the special magistrate's order or after the appeal date expires. The costs shall be calculated by the PD every 90 days for up to one (1) year and the PD shall serve written notice of the costs to the responsible party as provided herein. If the costs are not timely paid within 30 days of receipt of notice, the costs may be assessed and levied against the property for collection or as a non-ad valorem assessment as set forth in this article. Costs under this provision shall be for the actual cost of the police services provided to the property. All notices for costs shall be supported with written documentation showing the actual time and costs for police services provided to the property.
- (b) *Billing of police service and chronic nuisance services costs.*
 - (1) The property owner of the chronic nuisance property and all other responsible parties are responsible for paying all police service and chronic nuisance services costs.
 - (2) The bill for police service and chronic nuisance services costs shall be mailed to the property owner by first class mail to the address listed on the ad valorem tax roll and to any other responsible party at the address provided in the WAP or the ad valorem tax roll. The bill shall contain at least the following information:
 - i. The street address or legal description sufficient for identification of the property including the parcel control number;
 - ii. A general description and date of the nuisance activities that occurred on the property;
 - iii. A general description of the police services or chronic nuisance services provided to abate the nuisance activities, and cost of the services;
 - iv. A statement that the total amount of the bill shall be paid to the City within 30 days from receipt of the bill and that any police service or chronic nuisance services costs that are not paid within 30 days from the date of the bill shall be delinquent;
 - v. A statement that any unpaid police service or chronic nuisance services costs may be levied against the property as a non-ad valorem assessment equal in rank and dignity with a lien for ad valorem taxes; and

- vi. A statement that unpaid assessments may be certified to the tax collector for collection pursuant to the uniform method provided in F.S. § 197.3632.

Sec. 11-229. - Cost recovery termination.

If the property receives no calls for police services for nuisance activities or receives no chronic nuisance services for one year from the date it is declared a chronic nuisance, then it shall no longer be a chronic nuisance under this section and shall not be billed for any additional calls for police service or chronic nuisance services unless the PD initiates this process from the beginning.

Sec. 11-230. – Non-ad valorem assessments.

The PD shall follow the procedures for assessing a non-ad valorem assessment as set forth in state statutes (currently F.S. § 197.3632, Uniform Method) for the levy, collection and enforcement of non-ad valorem assessments and any additional requirements of this article. In the event of any conflict in these procedures, state law procedures shall control.

Sec. 11-231. - Initial assessment roll.

- (a) *Contents of initial assessment roll.* The PD shall prepare an initial assessment roll for delinquent police service and chronic nuisance services costs which shall contain the following:
- (1) A summary description of all benefited real property with delinquent police service and chronic nuisance services costs to be assessed, conforming to the description contained on the ad valorem tax roll;
 - (2) The name of each owner of the benefited real property as listed on the ad valorem tax roll; and
 - (3) The amount of the delinquent police service and chronic nuisance services costs to be assessed against each parcel of benefited real property.
- (b) *Public inspection of initial assessment roll.* The initial assessment roll shall be retained by the City Clerk and shall be open to public inspection. The foregoing shall not be construed to require that the assessment roll be in printed form if the amount of the assessment for each parcel of benefited real property can be determined by use of a computer terminal available to the public.
- (c) *Notice to property appraiser.* A copy of the initial assessment roll shall be provided to the property appraiser and included as a part of the notice of proposed property taxes if required by state law (F.S. § 200.069, the truth-in-millage notification).

Sec. 11-232. - Final assessment roll; public hearing.

- (a) *Public hearing.* The City Council shall adopt a final non-ad valorem assessment roll at a public hearing held in accordance with state law (currently F.S. § 197.3632).
- (b) *Notice by mail.* The City shall mail notice of the public hearing to the property owner(s). The mailed notice shall conform to the requirements for non-ad valorem assessments set forth in state law (currently F.S. § 197.3632). Notice shall be mailed by first class mail prior to the hearing to each property owner at the address listed on the ad valorem tax roll. The mailed notice shall contain at least the following information:
- (1) The purpose of the assessment;
 - (2) The total amount to be levied against each parcel of assessed real property;
 - (3) A statement that failure to pay the assessment will cause a tax certificate to be issued against the property which may result in a loss of title;
 - (4) A statement that all affected property owners have a right to appear at the hearing and to file written objections with the City Council; and
 - (5) The date, time, and place of the hearing.

Failure of the property owner to receive such notice due to mistake or inadvertence shall not affect the validity of the assessment roll nor release or discharge any obligation for payment of a police service cost assessment.

- (c) *Notice by publication.* The City shall publish notice of the public hearing in a newspaper of general circulation in the City. The published notice shall conform to the requirements set forth in state law (currently F.S. § 197.3632) and shall contain at least the following information:
- (1) A geographic description of the real property subject to the assessment;
 - (2) A brief and general description of the police services and chronic nuisance services provided;
 - (3) The fact that the assessment will be collected by the tax collector;

- (4) A statement that all affected property owners have the right to appear at the public hearing and the right to file written objections with the PD; and
- (5) A statement that the initial assessment roll is available for inspection at the office of the City Clerk and that all interested persons may ascertain the amount to be assessed against a parcel of assessed real property at the office of the City Clerk.

Sec. 11-233. - Public hearing; adoption of final assessment roll.

- (a) *Public hearing.* At the public hearing, the City Council shall receive the written objections and shall hear testimony from all interested persons. If the City Council adopts the final assessment roll, the City Council shall specify the amount of the assessment. Notwithstanding the notices provided for in this division, the City Council may adjust the assessment or the application of the assessment to any assessed real property based on the benefit which the City has provided to the property.
- (b) *Adoption of final assessment roll.* The City Council may, at the public hearing or at any subsequent meeting of the City Council, adopt an assessment roll which shall confirm, modify, or repeal the initial assessment roll with such amendments, if any, as the City Council deems equitable.
- (c) *Legislative determination of special benefit and fair apportionment.* The adoption of the final assessment roll by the City Council shall constitute a legislative determination that all assessed parcels of real property derive a special benefit from the police services and chronic nuisance services provided by the City and a legislative determination that the assessments are fairly and reasonably apportioned to the properties.

Sec. 11-234. - Lien of police service assessments.

Upon the adoption of the final assessment roll, all police service and chronic nuisance services cost assessments shall constitute a perfected lien against the assessed real property superior to all other rights, interests, liens, encumbrances, titles and claims upon the property and equal in rank and dignity with a lien for ad valorem taxes.

Sec. 11-235. - Correction of errors and omissions.

- (a) *Validity of assessment.* Any informality or irregularity in the proceedings in connection with the levy of a police service and chronic nuisance services costs assessment shall not affect the validity of the assessment after approval by the City Council. A police service and chronic nuisance services costs assessment as finally approved by the City Council shall be competent evidence that the assessment was duly levied, made and adopted, and that all other proceedings were duly taken. No error or omission on the part of the property appraiser, tax collector, PD, or other employee of the City shall operate to release or discharge any obligation for payment of a police service and chronic nuisance services costs assessment imposed by the City under this division.
- (b) *Correction of errors by the PD.* Prior to the delivery of the assessment roll to the tax collector, the PD shall have the authority at any time to correct any error or omission in applying the assessment to any particular parcel of assessed real property not otherwise requiring the provision of notice pursuant to state law. Any such correction shall be considered valid ab initio and shall not affect the enforcement of the police service costs assessment. Any such correction shall be made by the PD and not the property appraiser or tax collector.

Sec. 11-236. - Alternate methods of collection.

- (a) Police service and chronic nuisance services costs assessments shall be collected pursuant to the uniform method provided in state law (currently F.S. § 197.3632), unless the PD determines that another enforcement method is more effective.
- (b) In lieu of using the non-ad valorem assessment method, the PD may elect to collect a police service and chronic nuisance services cost assessment by any other method authorized by law including, but not limited to, filing an action in a court of law or assessing the property using any other process.

- (c) Any hearing or notice required by this article may be combined with any other hearing or notice required by any other provision of law.
- (d) Notwithstanding the City's use of an alternative method of collection, PD shall have the same power and authority to correct errors and omissions as provided in this division.

Sec. 11-237. - Construction of article.

- (a) *Levy of special assessments.* This article shall not be construed to limit the City from levying special assessments in accordance with this Code, as adopted by the City.
- (b) *Code compliance.* This article shall not be construed to limit the City from pursuing or continuing to pursue code compliance cases against a property in violation of the code and from imposing administrative fines under the code compliance process.
- (d) *Nuisance abatement.* This article shall not be construed to conflict with the public nuisance abatement process of this code.
- (e) *Exemptions.* This article shall not be construed to apply to property owned by the City or any other governmental entity.
- (f) *Provision of this article supplement.* Nothing in this article shall be construed to limit the authority of the City to pursue chronic nuisance services otherwise authorized under the code and to collect special assessments by any other method according to law.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 6. Repeal of laws in conflict. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 7. Effective Date. This Ordinance shall take effect immediately upon final approval and adoption.

PASSED AND APPROVED on the first reading this _____ day of _____, 2021.

PASSED AND ADOPTED on second and final reading this _____ day of _____, 2021.

APPROVED:

RONNIE L. FELDER
MAYOR

SHIRLEY D. LANIER
CHAIRPERSON

ATTEST:

CLAUDENE L. ANTHONY,
CERTIFIED MUNICIPAL CLERK
TEM CITY CLERK

KASHAMBA MILLER-ANDERSON
CHAIR PRO

TRADRICK MCCOY
COUNCILPERSON

JULIA A. BOTEL, Ed. D.
COUNCILPERSON

DOUGLAS A. LAWSON
COUNCILPERSON

REVIEWED AS TO LEGAL
SUFFICIENCY

DAWN S. WYNN, CITY ATTORNEY

DATE:

1ST READING

2ND & FINAL READING

MOTIONED BY:

MOTIONED BY: _

SECONDED BY: _

SECONDED BY: _

**T.
MCCOY**

T. MCCOY

K. MILLER-ANDERSON _____

K. MILLER-ANDERSON _____

S. LANIER _____

S. LANIER _____

J. BOTEL _____

J. BOTEL _____

D. LAWSON _____

D. LAWSON _____

**REVIEWED AS TO LEGAL
SUFFICIENCY**

----- **DAWN S.
WYNN, CITY
ATTORNEY**

DATE: _