

Marguerite Linke

From: Bryant, Linda C. <Linda.Bryant@DOS.MyFlorida.com>
Sent: Friday, June 26, 2015 9:30 AM
To: Marguerite Linke
Cc: County Ordinances
Attachments: Hernando20150625_Ordinance2015_09_Ack.pdf

The Department of State is committed to excellence.
Please take our [Customer Satisfaction Survey](#).



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

June 26, 2015

Honorable Don Barbee Jr.
Hernando County Clerk's Office
20 North Main Street, Rm. 3621
Brooksville, Florida 34601

Attention: Marguerite Linke

Dear Mr. Barbee:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Hernando County Ordinance No. 2015-09, which was filed in this office on June 25, 2015.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

ORDINANCE NO. 2015-09

AN ORDINANCE AMENDING THE HERNANDO COUNTY CODE OF ORDINANCES BY AMENDING CHAPTER 21, ARTICLE XIII; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR INCLUSION IN THE CODE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the County desires to update and modernize its code of ordinances by providing for the control of certain noxious plants as provided for herein; and

WHEREAS, this proposed substantive amendment to the Hernando County Code of Ordinances (Chapter 21, offenses and miscellaneous provisions), has received a public hearing before the Board of County Commissioners as required by state and local law.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, FLORIDA:

SECTION I. Hernando County Code of Ordinances, Chapter 21, Article XIII, is hereby amended to provide for revisions as more precisely delineated with strike-through and underlined text below:

Sec. 21-221. - Short title.

This article shall be known as the ~~Brazilian Pepper~~ Noxious Plant Eradication Control Ordinance.

~~(Ord. No. 2001-05, § 1, 3-13-01)~~

Sec. 21-222. - Findings of fact.

(a) The Brazilian pepper plant species (*Schinus terebinthifolius*) and Lead Tree (*Leucaena leucocephala*) trees are ~~is~~ plants on the Noxious Weed List promulgated by the State by Rule, and are hereby declared to be a noxious plants, capable of, and subject to, mandatory eradication control and removal pursuant to this article, in that such species ~~is~~ are detrimental to or destructive of, the growth or condition of vegetation native to Hernando County.

(b) It is further hereby found and determined that:

(1) The Brazilian pepper plant and Lead tree are classified as noxious species ~~has~~ having the potential to spread rapidly in certain areas of Hernando County and Florida, displacing the diverse native Florida vegetation and associated wildlife habitat, and creating ecologically undesirable vegetative monocultures.

- 1 (2) The health, safety, and welfare of the present and future residents of
2 Hernando County are dependent on minimizing degradation of the native
3 ecological systems of the county.
4
- 5 (3) The Florida Legislature has recognized the problem of ~~Brazilian pepper~~ by
6 enacting section 369.251, Florida Statutes non-native plants by providing for
7 the promulgation of a Noxious Weed List, providing that a person may not
8 sell, transport, collect, cultivate, or possess any plant, including any part or
9 seed, of ~~the species Schinus terebinthifolius~~ plants on the Noxious Weed List
10 without a permit from the state and providing that a violation of the statute is
11 a misdemeanor of the second degree, while excepting from the operation of
12 the statute such transportation and possession as may be necessary to control
13 such plants and to prevent the further dispersal of the species.
14
- 15 (4) For purposes of this article, "~~Brazilian pepper~~" ~~means the species of plant,~~
16 ~~shrub or tree carrying the botanical term Schinus terebinthifolius~~ noxious
17 plants regulated by this article shall refer to Brazilian pepper (Schinus
18 terebinthifolius) and Lead Tree (Leucaena leucocephala); and "remove" or
19 "removal" as applied to ~~Brazilian pepper~~ noxious plants regulated by this
20 article means destruction of all plants and includes removal from the property
21 of all debris from such destruction, provided that for purposes of a plan for
22 removal pursuant to ~~section 21-228~~ [note: remove hyperlink] section 21-228
23 herein, the director of code enforcement department in consultation with a
24 qualified professional, or professionals, may determine that effective
25 prevention of any continued or future growth of ~~Brazilian pepper~~ noxious
26 plants regulated by this article shall be sufficient to constitute removal.
27

28 *(Ord. No. 2001-05, § 2, 3-13-01)*
29

30 **Sec. 21-223. - Prohibited conditions.**

- 31
- 32 (a) It shall be unlawful for any owner of improved or unimproved property to suffer,
33 allow or permit the growth of ~~Brazilian pepper~~ noxious plants regulated by this
34 article on such property.
35
- 36 (b) It shall be unlawful for any owner of improved or unimproved property to fail to
37 remove upon notice any ~~Brazilian pepper~~ noxious plant regulated by this article on
38 such property when it has been determined by the director of code enforcement
39 department in consultation with a qualified professional, or professionals, the
40 continued presence of the noxious plant species constitutes a nuisance that can lead
41 to the degradation of the native ecological systems of the county.
42
- 43 (c) It is unlawful for any person to knowingly plant, sell, offer for sale, or distribute any
44 noxious plant regulated by this article.
45

46 *(Ord. No. 2001-05, § 3, 3-13-01)*

1 **Sec. 21-224. - Notice to property owner to correct prohibited conditions.**
2

3 (a) If the code enforcement department finds and determines that a prohibited condition
4 exists, as described in ~~section 21-223~~ *[note: remove hyperlink]* section 21-223 of this
5 article, it shall so notify the record owner of the offending property in writing by
6 certified mail and demand requesting that such owner cause the situation to be
7 remedied within twenty (20) days of delivery. ~~The written notice may be in the form~~
8 ~~of initial notice by post card addressed to the owner or owners of the property~~
9 ~~described with the names and addresses as shown upon the most recent records of the~~
10 ~~Hernando County Property Appraiser. Initial notice by post card may specify any~~
11 ~~length of time for compliance that is deemed appropriate by the code enforcement~~
12 ~~department. If the prohibited condition is not remedied after initial notice by post~~
13 ~~card, or if the code enforcement department elects not to provide initial notice by~~
14 ~~post card, the code enforcement department may hand-deliver or send by certified~~
15 ~~mail a notice of public code violation in substantially the form set forth in this~~
16 ~~section, which notice if mailed shall be addressed to the owner or owners of the~~
17 ~~property described with the names and addresses as shown upon the most recent~~
18 ~~records of the Hernando County Property Appraiser. If certified mail is returned to~~
19 ~~code enforcement department for any reason, including but not limited to refusal of~~
20 ~~delivery by the addressee or incorrect address information from the property~~
21 ~~appraiser, or if no written response to the notice of public code violation is received~~
22 ~~by the code enforcement department within twenty (20) days of delivery, the code~~
23 ~~enforcement department shall post the offending property for a period of ten (10)~~
24 ~~days. Upon the expiration of the posting date, all persons with interests in the~~
25 ~~property shall be conclusively deemed to have waived any and all right to appeal the~~
26 ~~determination of the code enforcement department or otherwise object to county~~
27 ~~remedy of the prohibited condition, and the department may arrange for the Brazilian~~
28 ~~pepper on the property to be removed and may bill the property owner pursuant to~~
29 ~~section 21-225 of this article. The code enforcement department may use the services~~
30 ~~of any county employee, agent or contractor for such purposes.~~

31
32 (b) ~~The notice shall be in substantially the following form and shall provide notice of~~
33 ~~waiver of rights in the absence of a written response: If the situation is not remedied,~~
34 ~~this article may be enforced in accordance with the terms and provisions of Chapter~~
35 ~~2, Article III, of the Hernando County Code of Ordinances; or~~
36

37 (c) ~~The code enforcement department may choose to post the offending property for a~~
38 ~~period of ten (10) days. Upon the expiration of the posting period, all persons with~~
39 ~~interests in the property shall be conclusively deemed to have waived any and all~~
40 ~~right to appeal the determination of the code enforcement department or otherwise~~
41 ~~object to county remedy of the prohibited condition, and the department may arrange~~
42 ~~for the noxious plants on the property to be removed and may bill the property owner~~
43 ~~pursuant to the terms and provisions of Chapter 15, Article V, of the Hernando~~
44 ~~County Code of Ordinances. The code enforcement department may use the services~~
45 ~~of any county employee, agent or contractor for such purposes.~~
46

1 ~~"NOTICE OF PUBLIC CODE VIOLATION~~

2
3 ~~"Date~~

4
5 ~~"NAME OF OWNER(S)~~

6
7 ~~"ADDRESS:~~

8
9 ~~"All records indicate that you are the owner(s) of the following property in Hernando~~
10 ~~County, Florida:~~

11
12 ~~"(Legal Description of Property FROM Property Appraiser Records)~~

13
14 ~~"An inspection of this property discloses, and the Hernando County Code Enforcement~~
15 ~~Department has determined, that a Public Code Violation exists thereon so as to constitute a~~
16 ~~violation of Hernando County Ordinance No. 2001-05, in that Brazilian pepper is growing on~~
17 ~~the above described property in violation of said ordinance, which makes it unlawful for any~~
18 ~~property owner to suffer, permit or allow such growth on property.~~

19
20 ~~"You are hereby notified that unless the condition above described is remedied as required by~~
21 ~~this article within twenty (20) days from receipt of this Notice, the County will abate this~~
22 ~~condition and the cost of the work, including advertising costs, a Nuisance Administrative~~
23 ~~Surcharge of twenty five dollars (\$25.00), Inspection fee of twenty dollars (\$20.00) per site~~
24 ~~visit, and other expenses, will be imposed as a Special Assessment Lien upon the property.~~
25 ~~Such action WILL be taken if you fail to remedy the violation or otherwise respond in~~
26 ~~writing to this notice within twenty (20) days of the date of receipt. Any such response must~~
27 ~~be mailed or delivered so as to reach the Hernando County Code Enforcement Department~~
28 ~~within twenty (20) days of your receipt of this notice. If you do not remedy the violation or~~
29 ~~otherwise respond in writing, **YOU WILL BE DEEMED TO HAVE WAIVED ANY**~~
30 ~~**AND ALL RIGHTS TO ANY FURTHER NOTICE AS TO THIS MATTER.**~~

31
32 ~~"Furthermore, please be advised that Hernando County has the right to foreclose on~~
33 ~~properties upon which a lien has been placed and not paid within one year.~~

34
35 ~~"The enclosed list of contractors is provided for your convenience and you are not obligated~~
36 ~~to use the services of these contractors.~~

37
38 ~~"Your cooperation is greatly appreciated. You may contact the code enforcement department~~
39 ~~by calling 352-754-4056 if you have questions. However, you **MUST** respond in writing~~
40 ~~within twenty (20) days of the date of receipt if you disagree with the determinations in this~~
41 ~~notice.~~

42
43 ~~"Sincerely,~~

44 ~~"Code Enforcement Officer"~~

45
46 ~~(Ord. No. 2001-05, § 4, 3-13-01)~~

1 **Sec. 21-225.-- Collection of costs and records. Reserved.**
2

3 (a) ~~— *Certification of expenses to remedy condition; assessment of lien.* Upon causing a~~
4 ~~condition prohibited by section 21-223 of this article to be remedied, the code~~
5 ~~enforcement department shall certify to the board of county commissioners the~~
6 ~~expenses incurred in remedying the condition including any unpaid administrative costs~~
7 ~~whereupon such costs shall be payable within thirty (30) days, after which a special~~
8 ~~assessment lien and an administrative surcharge will be made upon the property which~~
9 ~~shall be payable with interest at a rate of ten (10) percent per annum from the date of~~
10 ~~such certification until paid. Such lien shall be enforceable in the same manner as a~~
11 ~~special assessment lien in favor of the county and shall be satisfied at any time by~~
12 ~~payment thereof including accrued interest. Notice of such lien shall be filed in the~~
13 ~~office of the clerk of the circuit court and recorded among the official records of the~~
14 ~~county.~~

15
16 (b) ~~— *Right to foreclosure and pay costs.* The clerk of circuit court shall keep complete~~
17 ~~records relating to the amount payable for the liens above described.~~

18
19 (c) ~~— *Penalties and fines.* In the event the special assessment lien is not paid within one (1)~~
20 ~~year, the county attorney may commence foreclosure proceedings to foreclose upon the~~
21 ~~special assessment lien. The foreclosure shall be conducted pursuant to procedure set~~
22 ~~forth in general law for the foreclosure of special assessment liens. In the event the lien~~
23 ~~is foreclosed upon, the owner of the property which is subject to foreclosure shall, in~~
24 ~~addition to any other charges, pay the county's reasonable attorney's fees in such~~
25 ~~foreclosure proceedings. The county shall have the right to compromise or settle any~~
26 ~~lien by accepting payment of less than the full amount of the lien for good cause. For~~
27 ~~liens where a proposed compromise or settlement amount is equal to or greater than~~
28 ~~two-thirds of the currently due amount, including principal and interest, the county~~
29 ~~administrator or designee shall have final authority to determine existence of good~~
30 ~~cause and approve such compromise or settlement and to sign or certify satisfaction of~~
31 ~~lien on behalf of the county for entry in the official records.~~

32
33 ~~(Ord. No. 2001-05, § 5, 3-13-01)~~

34
35 **Sec. 21-226. - Civil fines. Reserved.**
36

37 (a) ~~— In the event the owner or owners of any lot, tract, or parcel of land with any prohibited~~
38 ~~condition specified herein makes a written response to the notice of public code~~
39 ~~violation within twenty (20) days of receipt which does not directly consent to remedy~~
40 ~~of any such prohibited conditions by the county, its agents or contractors; or in the~~
41 ~~event the owner or owners fail to remedy any such prohibited conditions on the~~
42 ~~property within the time set forth in the notice required by section 21-226 of this article,~~
43 ~~a citation may be issued if the violation continues to exist. Any such citation shall be~~
44 ~~delivered within the county or served by certified mail to addresses outside the county.~~
45

1 ~~(b) At any time, the code enforcement department may elect to cite the owner or owners~~
2 ~~of particular property for any conditions on such property which are prohibited~~
3 ~~herein pursuant to any authorized means of enforcing codes now or hereafter~~
4 ~~existing. Such election may be made in lieu of, or in addition to, other enforcement~~
5 ~~measures taken pursuant to this article or any other authority against any party with~~
6 ~~an interest in the property.~~

7
8 ~~(e) Any violation of this article may be considered a civil infraction and may be~~
9 ~~prosecuted as described in Chapter 2, Article III as amended from time to time. Each~~
10 ~~day that a violation continues after the time set forth in said notice of violation shall~~
11 ~~constitute a separate offense. All penalties, fines, fees, and costs collected under this~~
12 ~~article shall be credited to the county code enforcement department.~~

13
14 ~~(Ord. No. 2001-05, § 6, 3-13-01; Ord. No. 2004-09, § 14, 7-13-04)~~

15
16 **Sec. 21-227. - Additional enforcement.**

17
18 Nothing contained in this article shall be construed to prevent Hernando County from
19 enforcing its codes or ordinances, including this article, by any other means allowed or
20 permitted by law, including, but not limited to, proceedings to enjoin continuation or
21 maintenance of any condition prohibited by this article upon such terms and with such notice
22 as the code enforcement department and the court may determine to be applicable.

23
24 ~~(Ord. No. 2001-05, § 7, 3-13-01)~~

25
26 **Sec. 21-228. - Alternative enforcement of Brazilian Pepper violation plan for effective**
27 **prevention.**

28
29 (a) Where the owner, owners or authorized owner representative of a lot, tract, or parcel
30 of land described in a notice of public code violation pursuant to ~~section 21-224~~
31 ~~[note: remove hyperlink] section 21-224~~ of this article makes a written response to
32 the notice within twenty (20) days of receipt which does not directly consent to
33 removal of ~~Brazilian pepper by the county, its agents or contractors; or in the event~~
34 ~~the owner fails to remove the Brazilian pepper growth~~ any noxious plants regulated
35 under this article on the property within the time set forth in the notice, the director
36 of code enforcement is authorized but not required to extend the time for removal
37 upon submission of ~~an a~~ plan for ~~Brazilian pepper~~ containment or removal. In
38 determining whether or not to approve any such plan for containment or removal ~~and~~
39 ~~extend the time for removal~~, the director shall consider the time proposed for
40 removal or containment in light of any practical difficulties or hardship in complying
41 with the requirements of this article, including the reasons that the deadline for
42 removal set forth in the notice cannot be met; the nature of the practical difficulties
43 or hardship preventing compliance, including but not limited to the size, topography
44 or geology of the lot, tract or parcel; the method of proposed removal or
45 containment; ~~the nature of the ownership, as for example and not by way of~~
46 ~~limitation, the nonprofit status of any entity with an ownership interest; the fruit-~~

1 bearing status of the existing plants in relation to likelihood of spreading seeds in the
2 event of removal; the likelihood that containment will prevent the spreading of the
3 species to other properties, and the plan for keeping the property free of ~~Brazilian~~
4 ~~pepper~~ noxious plants regulated by this article in the future.

- 5
6 (b) No extension of time, approval of a an alternative plan for Brazilian pepper removal,
7 or other administrative forbearance of immediate enforcement pursuant to this
8 section shall prejudice the right of the county to enforce any or all terms and
9 requirements of this article by any means authorized herein or under any other
10 ordinance, statute or authority of any kind whatsoever.

11
12 ~~(Ord. No. 2001-05, § 8, 3-13-01)~~

13
14 **Sec. 21-229. - ~~Permit denial.~~ Removal During Development**

15
16 ~~While any unpaid charges or liens exist as to property pursuant to this or other county~~
17 ~~ordinance, no building or zoning permit or license or any other form of county approval shall~~
18 ~~be issued to anyone affecting or relating to the subject property until such lien or charges are~~
19 ~~satisfied or satisfactory arrangements are made with the county for payment.~~

- 20
21 (a) Every site on which development occurs shall, to the most reasonable extent possible,
22 be cleared of noxious plants regulated under this Article during site development.
23 Where removal may cause the potential for erosion, the area in question shall be re-
24 established.
25
26 (b) Development shall mean the carrying out of any building activity, the making of any
27 material change in the use or appearance of any structure or land, including but not
28 limited to site clearing, excavation, the installation of infrastructure, and the
29 construction of a structure or structures.

30
31 ~~(Ord. No. 2001-05, § 9, 3-13-01)~~

32
33 **Sec. 21-230. - Reserved.**

34
35 **SECTION II. APPLICABILITY.** This Ordinance shall be applicable throughout the
36 unincorporated area of Hernando County.

37
38 **SECTION III. SEVERABILITY.** It is declared to be the intent of the Board of County
39 Commissioners that if any section, subsection, clause, sentence, phrase, or provision of this
40 ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect
41 the validity of the remaining portions of this ordinance.

42
43 **SECTION IV. CONFLICTING PROVISIONS.** Special acts of the Florida Legislature
44 applicable only to unincorporated areas of Hernando County, Hernando County ordinances,
45 County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this

1 ordinance to the extent of such conflict except for ordinances concerning either adoption or
2 amendment of the Comprehensive Plan, pursuant to Chapter 163, part II, Florida Statutes.

3
4 **SECTION V. FILING WITH THE DEPARTMENT OF STATE.** The clerk shall be and is
5 hereby directed forthwith to send a certified copy of this ordinance to the Bureau of
6 Administrative Code, Department of State, R.A. Gray Bldg., Room 101, 500 S. Bronough Street,
7 Tallahassee, FL 32399-0250.

8
9 **SECTION VI. INCLUSION IN CODE.** It is the intention of the Board of County
10 Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of
11 this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County,
12 Florida. To this end, any section or subsection of this Ordinance may be renumbered or re-
13 lettered to accomplish such intention, and the word "ordinance" may be changed to "section,
14 "article," or other appropriate designation. Whereas clauses, and Sections II through Section VII
15 need not be codified.

16
17 **SECTION VII. EFFECTIVE DATE.** This ordinance shall take effect immediately upon filing
18 with the Department of State.

19
20 **DULY PASSED AND ADOPTED IN REGULAR SESSION THIS 23rd DAY OF**
21 **JUNE**, 2015.

22
23 BOARD OF COUNTY COMMISSIONERS
24 HERNANDO COUNTY, FLORIDA

25
26 Attest: *Donald C. Barbee Jr.*
27 DONALD C. BARBEE JR, CLERK

25
26 By: *Nicholas W. Nicholson*
27 NICHOLAS W. NICHOLSON, CHAIRMAN



28
29
30
31 **Approved as to Form and**
32 **Legal Sufficiency**

33
34 By: *John J. Marino*