ORDINANCE NO. 2014-370

AN ORDINANCE OF THE CITY OF PARKER, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF PARKER (ORDINANCE NO. 2010-349, AS AMENDED); AMENDING CHAPTER 26 OF THE CODE OF ORDINANCES RELATING TO CIVIL PENALTIES AND PROPERTY-RELATED PUBLIC NUISANCES; PROVIDING SEVERABILITY, CODIFICATION AND REPEALER CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARKER AS FOLLOWS:

Section 1. The table of contents of Chapter 26 of the Code of Ordinances, City of Parker, Florida, is hereby amended to read as follows:

Chapter 26

CODE ENFORCEMENT

Article I. In General

Sec. 26-1. Definitions.
Sec. 26-2. Code enforcement system for civil offenses and penalties; special magistrate.
Secs. 26-3--26-15. Reserved.

Article II. Code Enforcement Process, Penalties and Appeals

Sec. 26-16. Qualifications; appointment and removal of special magistrate; organization.
Sec. 26-17. Code enforcement procedure.
Sec. 26-18. Notices.
Sec. 26-19. Abatement of unsafe or unfit dwellings or structures.
Sec. 26-20. Imminent public-health threat.
Sec. 26-21. Non-ad valorem assessments.
Secs. 26-~~19~~22--26-30. Reserved.
Sec. 26-31. Civil penalties and other related provisions.
Sec. 26-32. Rights of violators; payment of fines; rights to appeal and correction of violations; failure to pay and correct or to appeal.
Sec. 26-33. Scheduling and conduct of hearing.

Sec. 26-34. Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; foreclosure.
Sec. 26-35. Appeals.
Sec. 26-36. Provisions are supplemental.
Sec. 26-37. Schedule of civil penalties.
Secs. 26-38--26-100. Reserved.

Article III. Nuisances

Sec. 26-101. Definitions.
Sec. 26-102. Penalty.
Sec. 26-103. Prohibitions; violations declared.
Sec. 26-104. City action on failure to comply; assessment of costs; lien.

Article IV. Property-Related Public Nuisances

Sec. 26-105. Definitions.
Sec. 26-106. Complaints.
Sec. 26-107. Hearing procedure.
Sec. 26-108. Declaration of property-related public nuisance and entry of order; contents and expiration date.
Sec. 26-109. Permanent injunctive relief.
Sec. 26-110. Appeals.

Section 2. Section 26-37 of the Code of Ordinances, City of Parker, Florida, is hereby amended to read as follows:

Sec. 26-37. - Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, that may be enforced pursuant to the provisions of this chapter, and the dollar amount of civil penalty for the violation of these sections.

The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed code sections, except to the extent that different types of violations of the same code section may carry different civil penalties. For each code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this chapter, regardless of whether all activities proscribed or required within that particular section are described in the "description of violation" column. To determine the exact nature of any activity proscribed or

required by this Code, the relevant code/ordinance/LDR section must be examined.

Description of Violation	Code/Ordinance	Amount
Unauthorized Land Usage	LDR, Sec. 4-5	$250.00
Home Occupation	LDR, Sec. 4-6.3	100.00
Accessory Structure	LDR, Sec. 4-7.2	100.00
Fences	LDR, Sec. 4-7.2	100.00
Visual Buffer	LDR, Sec. 5-5.3	100.00
Lighting and Glare	LDR, Sec. 5-5.3(3)	100.00
Electromagnetic Interference	LDR, Sec. 5-5.3(4)	100.00
Toxic Matter	LDR, Sec. 5-5.3(5)	250.00
Tree Removal/Damage	LDR, Sec. 5-6.11	100.00
Water/Sewer Hookup	LDR, Sec. 5-7.1(2)	100.00
Right-of-Way	LDR, Sec. 5-9.5	100.00
Setback/Height Restrictions	LDR, Sec. 5-8	200.00
Signs	LDR, ARTICLE VI	200.00
Swimming Pool Regulations	LDR, Sec. 4-7.3	250.00
Mobile Home Park Violations	LDR, Sec. 5-11	250.00
Mobile Home Violations	LDR, Sec. 5-11.4(1)	250.00**
Trash, Litter, Refuse	Sec. 26-101	100.00
Untended Growth	Sec. 26-101	100.00
Unfit or Unsafe Structure	Sec. 26-101	250.00
Weeds exceeding 12" (inches)	Sec. 26-101	50.00
Odors	Sec. 26-101	100.00
Animal Carcasses	Sec. 26-101	100.00
Animals (as nuisance)	Secs. 10-33, 10-44	100.00
Pollution of Any Body of Water	Sec. 26-101	250.00
Stagnant Water	Sec. 26-101	100.00
Smoke, Fumes, Cinders	Sec. 26-101	100.00
Unsheltered or Outdoor Storage	Sec. 26-101	100.00
Noise	Sec. 26-101	100.00

Building Regulations	Secs. 14-31—14-40	250.00
Motor Vehicle Wrecking Establishment	Sec. 26-101	250.00
Unsafe Storage, Maintenance of Personal Property	Sec. 26-101	100.00
Motor Vehicle Graveyard	Sec. 26-101	100.00
Utilities	Ch. 82	100.00
Graffiti	Sec. 26-101	100.00
Other Acts Constituting a Nuisance	Sec. 26-101	100.00
Property Numbering	Sec. 14-72	50.00
Health/Sanitation	Ch. 42	250.00
Construction Debris	Sec. 66-34	100.00
Refuse	Sec. 66-33	100.00
Garbage Container	Sec. 66-35	50.00
Residential Garbage	Sec. 66-36	50.00
Commercial Garbage	Sec. 66-37	100.00
Trash	Secs. 66-38, 66-39	50.00
Occupational Licensing	Sec. 18-38	100.00
Property-related public nuisance	Sec. 26-105	250.00

* NOTE: THE AMOUNT INDICATED IS PER OFFENSE. EACH VIOLATION THAT GOES UNCORRECTED BEYOND THE DATE ON THE NOTICE OF CIVIL VIOLATION IS CONSIDERED A CONTINUING VIOLATION, EACH DAY OF CONTINUED VIOLATION SHALL CONSTITUTE A SEPARATE OFFENSE.

** MOBILE HOME SKIRTING FINES ARE DETERMINED BY THE AGREEMENT ENTERED INTO AT THE TIME OF APPLICATION AND IS INITIATED BY THE APPLICANT. THIS SCHEDULE DOES NOT ALTER THAT AGREEMENT.

Section 3. Article IV of Chapter 26 of the Code of Ordinances, City of Parker, Florida, is hereby added to read as follows:

Sec. 26-105. Definitions.

Property-related public nuisance means any place or premises that has been used:

(1) On more than two occasions within a six month period, as the site of a violation of F.S. § 796.07, as may be amended or superseded;

(2) On more than two occasions within a six month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(3) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony under the laws of the State of Florida and that has been previously used on more than one occasion within a six month period as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(4) On more than one occasion within a six month period by a criminal gang for the purpose of conducting criminal gang activity as defined by F.S. § 874.03, as may be amended or superseded;

(5) On more than two occasions within a six month period, as the site of a violation of F.S. § 812.019, as may be amended or superseded, relating to dealing in stolen property; or

(6) Any pain management clinic, as described in F.S. § 458.3265 or 459.0137, as those sections may be amended or superseded, which has been used on more than two occasions within a six month period as the site of a violation of:

a. F.S. § 784.011, 784.021, 784.03 or 784.045, as those sections may be amended or superseded, relating to assault and battery;

b. F.S. § 810.02, as may be amended or superseded, relating to burglary;

c. F.S. § 812.014, as may be amended or superseded, relating to dealing in theft;

d. F.S. § 812.131, as may be amended or superseded, relating to robbery by sudden snatching; or

e. F.S. § 893.13, as may be amended or superseded, relating to the unlawful distribution of controlled substance.

(7) By the owners, lessees, users or occupants of the property to provide goods or services to third persons or to members of the public, whether classified as a for profit or not for profit organization, where the presence of the city's law enforcement officers has been required on the premises on five or more occasions within any thirty (30) day period.

(8) To permit the existence of any activities on the property that are prohibited by the laws of the State of Florida or the code or ordinances of the City and where the presence of the city's law enforcement officers on the premises has been required on five or more occasions within any thirty (30) day period.

Sec. 26-106. Complaints.

(a) The code inspector may file a written complaint for a property-related public nuisance with the city clerk after giving not less than three days' written notice of such complaint to the owner and occupant of the place or premises at the last known address of the owner or occupant. Such notice shall be sent by registered or certified mail, return receipt requested, or delivered by hand delivery.

(b) The complaint shall state the facts that reasonably tend to establish the existence of a property-related public nuisance.

(c) The complaint and the police reports documenting the occasions of prohibited conduct shall be forwarded by the police department to the city clerk for a determination that the case is sufficient for presentation to the city council. Such determination shall be made by the city clerk within seven working days of receipt of the completed complaint package.

(d) The city council shall conduct a hearing on such complaint after giving reasonable notice to the owner and

occupant of the date, time and place of the hearing and of the location of the place or premises complained against.

Sec. 26-107. Hearing procedure.

(a) Any hearing before the city council shall be a quasi-judicial proceeding. All hearings by the city council shall be open to the public. All testimony shall be under oath and shall be electronically recorded. Assuming proper notice, a hearing may proceed in the absence of the named violator.

(b) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript. Minutes shall be kept of all hearings by the city clerk.

(c) Each case before the city council shall be presented by the code inspector. The city attorney may serve as general counsel to the city. If an appeal is requested pursuant to sec. 26-111, the city attorney shall represent the city in such proceedings.

(d) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings. Any relevant evidence shall be admitted if the special magistrate finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

(e) The city council may take testimony from the code inspector and the alleged violator. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called them to testify; and to rebut the evidence against that party.

(f) The city council shall make findings of fact based on the evidence of record. The findings shall be by motion approved by a majority of those council members present and voting.

(g) The city council shall have the power to:

(1) Adopt procedures for the conduct of hearings;

(2) Subpoena alleged violators and witnesses for hearings; subpoenas may be served by the law enforcement officers;
(3) Subpoena evidence; and
(4) Take testimony under oath.

(h) If the owner of the property that is subject to an enforcement action or proceeding transfers ownership of such property between the time the complaint is filed and the date of the decision of the city council following the hearing, the owner shall comply with the provisions of section 26-33(o).

Sec. 26-108. Declaration of property-related public nuisance and entry of order; contents and expiration date.

(a) After conducting the hearing referred to in section 26-110, the city council may declare the place or premises to be a property-related public nuisance.

(b) If such determination is made, the city council may order any of the following:

(1) The discontinuance of the nuisance;
(2) The closing of the place or premises for a period of time up to one (1) year;
(3) The prohibition of conduct, operation, or maintenance of any business or activity on the premises, and/or business or activity which is conductive to the maintenance of such nuisance;
(4) The payment to the city by the owner or occupant, as determined appropriate by the city council, of a civil penalty.
(5) The payment of any administrative costs and fees including but not limited to investigative costs and attorneys' fees.
(6) Any combination of the foregoing.

(c) An order entered by the city council, except for those imposing fines or administrative costs or fees, shall expire after one year or at such other time as is stated in the order.

(d) An order imposing fines or fees may be collected in any manner prescribed in this code including but not limited to the methods set forth in section 26-21 and 26-34.

Sec. 26-109. Permanent injunctive relief.

If the city council declares a place or premises to be a property-related public nuisance in accordance with this article, the city may bring an action for a permanent injunction in a court of competent jurisdiction. In any proceeding brought under this section, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

Sec. 26-110. Appeals.

An aggrieved party may file an appeal of any order issued by the city council in the manner set forth in section 26-35 of this code.

Section 4. Severability.

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

Section 5. Codification.

The provisions of this Ordinance shall become and be made part of the Code of the City. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 6. Repeal of Conflicting Codes, Ordinances, and Resolutions.

All codes, ordinances and resolutions or parts of codes, ordinances and resolutions or portions thereof of the City of Parker, in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 7. Effective Date.

This Ordinance shall take effect immediately upon its passage.

PASSED, ADOPTED AND ADOPTED at a Meeting of the City Council of the City of Parker, Florida as of the 15th day of July, 2014.

CITY OF PARKER

Richard Musgrave, Mayor

ATTEST:

Nancy Rowell, City Clerk

Examined and approved by me, this 15th day of July, 2014.

Richard Musgrave, Mayor