



City of North Port

ORDINANCE NO. 2021-03

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, REGULATING THE STORAGE AND REMOVAL OF PERSONAL PROPERTY BY AMENDING THE CODE OF THE CITY OF NORTH PORT, FLORIDA, BY CREATING SECTION 46-3 – STORAGE AND REMOVAL OF PERSONAL PROPERTY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of North Port, Florida has a significant governmental interest in promoting the health, safety, and security of citizens and visitors by regulating potentially hazardous conditions on private and public property including public rights-of-way; and

WHEREAS, the City Commission recognizes that the City has a significant governmental interest in ensuring that pedestrians have access to public sidewalks with minimal obstructions; and

WHEREAS, the City Commission recognizes that the City has a compelling governmental interest in complying with the requirements of the Americans with Disabilities Act which include sidewalk access with minimal obstructions for those with disabilities; and

WHEREAS, the City Commission seeks to maintain a safe, orderly, and pleasant environment on public property and public rights-of-way; and

WHEREAS, the City Commission recognizes the need to restrict keeping, leaving unattended, discarding, storing, or placing personal property upon public and private property, which can obstruct vehicular and pedestrian traffic, contribute to a disordered and unpleasant environment in the City, and/or present public health, safety, and security hazards; and

WHEREAS, Florida Statutes Chapter 705 prescribes provisions for governmental entities to identify and dispose of only what is defined as lost or abandoned personal property, and law enforcement officers shall continue to follow the procedures set forth in Chapter 705 for the removal of lost or abandoned property on Public Property; and

WHEREAS, in *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011), the United States Eleventh Circuit Court of Appeals found that an ordinance of the City of St. Petersburg utilizing the same definition of “unlawful storage” as found herein, under the terms “store or stored,” was not unconstitutionally vague on its face because it failed to define sufficiently the term “unlawful storage,” and was likewise not unconstitutionally vague on its face because it failed to define sufficiently the term “unattended;” and

WHEREAS, the City Commission finds it necessary in the interests of public health, welfare, safety, security, tranquility, and quality of life to adopt this ordinance regulating the placement of personal property kept, left unattended, or stored upon public property and private property and to establish a process for removing the property in a lawful manner; and

WHEREAS, the City Commission has determined that the proposed amendments serve the public health, safety, and welfare of the citizens of the City of North Port, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA:

SECTION 1 – FINDINGS

1.01 The recitals outlined above are incorporated by reference as findings of fact as if expressly set forth herein.

SECTION 2 – ADOPTION

2.01 Section 46-3 of the Code of the City of North Port, Florida is hereby created to read as follows:

“Chapter 46 – OFFENSES

ARTICLE I. – OFFENSES INVOLVING PROPERTY

...

Sec. 46-3. – Storage and removal of personal property.

(a) Definitions. The following words, phrases, and term shall have the meanings ascribed to them in this section, except where the context clearly indicates otherwise:

- (1) Custodian. An owner of personal property or another person entrusted with the care and possession of the personal property by the owner.
- (2) Public property. Includes but is not limited to, public rights-of-way, parks, lands, government buildings, and government facilities.
- (3) Reasonable charges. The process under which the city takes into consideration the owner’s ability to pay a charge for the storage and/or removal of an item.
- (4) Store or stored. When referring to an item on public or private property, shall be broadly interpreted to include any action to place, store, park, display, keep, locate, or set an item upon the property.

(b) Storage of personal property. It is unlawful, subject to the provisions herein, for any person to store unattended items of personal property on public property, or store attended items of personal property on public property for more than 24 continuous hours, or store items of personal property on private property without the authorization of the private property owner.

- (1) Warning required. A person shall not be charged with a violation of this section unless and until they have been given verbal, written, or posted notice, under the provisions herein, to remove the prohibited items, and then fail to do so.
 - (2) No citation for first violation. A custodian will not be charged with a criminal violation if it is the custodian's first violation of this section within a 12-month period.
 - (3) No citation if compliance. A person shall not be charged with a violation of this section if the person removes or causes to be removed all prohibited items from any public property or private property immediately, and does not return any personal property to any public property or to private property without the permission of the private property owner. Moving unlawfully stored items from one location on public property to another location on public property shall not be considered removing the item from public property.
 - (4) At the option of the city and where applicable, the provisions of this section may be utilized as an alternative to the provisions of Chapter 62, Article II, entitled "Litter control," of this Code.
 - (5) If requested by a person in violation of this section, and in consideration of public health and safety, a law enforcement officer or code enforcement officer must remove, or cause to be removed, all items of personal property to a secure indoor or outdoor location maintained by the city, a social service organization, or similar entity if the person in violation does not have a permanent abode or other available location to store the personal property. The organization storing the property may establish reasonable rules and guidelines for the use of any storage location in accord with any applicable governmental laws and regulations. Whenever it is determined that personal property has been abandoned at the storage location, the procedures set forth in Florida Statutes Chapter 705 shall apply and be followed.
- (c) Removal of personal property unlawfully stored on public property.
- (1) Attended property. If the city identifies items of personal property that are and have been stored continuously on public property for more than 24 hours and the items are attended by the owner or other custodian, the city must give the owner or custodian 24 hours to remove, or cause to be removed, the items to another location that is not on public property or on private property without the private property owner's authorization. If the owner or custodian fails to remove any item of personal property unlawfully stored on public property after receiving verbal or written notice as required by this section, the city may cause the removal of the unlawfully stored item.
 - (2) Unattended property. If the city identifies unattended items of personal property being stored on public property, and the items are not determined to be lost or abandoned property under Florida Statutes Chapter 705, the city must affix written notice to the personal property that gives the owner 48 hours to remove or cause to be removed the items to another location that is not on public property. If the property owner fails to remove any item of personal property that is unlawfully stored on public property after

receiving written notice as required by this section, the city may cause the removal of the unlawfully stored item.

(3) *Property that is a threat to health, safety, or welfare.* If the city identifies attended or unattended personal property being stored on public property, and determines that the stored item is a threat to the health, safety, or welfare of the public, the city may immediately remove the stored item. A threat to the health, safety, or welfare of the public includes but is not limited to a fire hazard, an explosive hazard, a noxious odor, an infectious or pathogenic hazard, or an infestation of vermin, including rodents, lice, roaches, and/or fleas, to which the public would be exposed due to the unlawful storage. If prior notice is not or cannot be provided before the item is removed, written notice of removal must be posted at or nearby the location of removal, and at the city police department.

(4) *Unattended property where proper notice of no storage is posted.* If the city identifies unattended personal property being stored on public property, and a sign conforming to the notice requirements of this section is properly posted, then no additional notice is required, and the unattended item may be immediately removed by the city or by someone under the authority of the city.

(5) *Written notice requirements.* Any written notice provided pursuant to subsections (c)(1), (c)(2), and (c)(3) must include:

- a. A complete description of the item(s) to be removed (which may refer to an attached photograph);
- b. The unlawful location of the item(s);
- c. The location where the item(s) will be located once removed;
- d. The date and time by when the item(s) must be removed from the public property;
- e. The last date the item(s) must be claimed once removed; and
- f. Identification of the section of this Code being violated.

(d) *Removal of personal property unlawfully stored on private property.* If the city identifies personal property being stored on private real property without the permission of the private real property owner, the city may immediately remove the unlawfully stored item at the request of the private real property owner.

(e) *Disposal and retrieval of personal property that has been removed by the city.*

(1) The city may dispose of personal property that has been removed pursuant to subsections (c)(1) and (c)(2) if the item has not been retrieved by the custodian of the property within 30 days of the item's removal. However, the custodian of the personal property may retrieve the property by presenting the city with adequate proof of ownership and the payment of a reasonable charge for the storage and removal of the item, if applicable.

The city may impose a reasonable charge upon a custodian for repeated violations of this section within a 12-month period.

- (2) The city may dispose of any personal property that has been removed pursuant to subsection (c)(3) upon determining that the property is a threat to the health, safety, or welfare of the public as described in subsection (c)(3) above. The removal and disposal of any personal property under this section may be accomplished either by the city or by someone under the authority of the city.
- (f) Posted notice. The city must post, or cause to be posted, notice of the prohibitions provided by this section on public property, pursuant to and including but not limited to the following:
- (1) Preplanned event. Temporary signs warning of immediate removal of unattended items at least 36 hours before a preplanned event, such as a parade or other event that is likely to attract a large crowd.
 - (2) Specific area. Temporary signs at a specific area where the clean-up or removal of unattended items is needed. Signs must be posted at least 36 hours before performing any clean-up or removal of items. Any item remaining at the specific area when the clean-up or removal begins may be immediately removed.
 - (3) Pedestrian traffic. Permanent signs warning of the immediate removal of unattended items from public property that is frequently traveled by pedestrians in order to facilitate access, or when required to ensure access pursuant to the Americans with Disabilities Act.
 - (4) Targets of terrorism. Permanent signs warning of the immediate removal of unattended items from public property that could be the target of terrorism.
- (g) Notice requirement. All notice authorized by this subsection must:
- (1) Be readable to pedestrians traveling in or upon the public property;
 - (2) Be prominently displayed on the public property where the prohibition applies;
 - (3) Prominently state “NO storage of unattended personal property on public property allowed;”
 - (4) State where personal property removed under this section may be recovered; and
 - (5) Cite to this section of the Code.
- (h) Exemptions. The following items are exempt from the prohibitions of this section, unless any exemption creates and/or causes a hazardous condition or threatens public safety:
- (1) Medical emergency. Items stored or activities conducted pursuant to a medical emergency until the medical emergency is addressed.

- (2) Permitted event. Items stored or activities conducted pursuant to and as allowed under a city-permitted event, including but not limited to parades, festivals, assemblies, or concerts for the duration of the permitted event, at the discretion of the city manager or designee.
 - (3) Permitted property. Items stored pursuant to a city-issued permit or express permission from the city manager or designee.
 - (4) Government property or activity. Items stored or activities conducted by a government entity or pursuant to direction from a government entity, at the discretion of the city manager.
- (i) Penalty. Any violation of the foregoing provisions of this section are punishable by a fine not exceeding five hundred dollars (\$500.00), or imprisonment for a term not exceeding sixty days, or both fine and imprisonment."

SECTION 3 – CONFLICTS

- 3.01 In the event of any conflict between the provisions of this ordinance and any other ordinance or provisions thereof, the provisions of this ordinance shall prevail to the extent of such conflict.

SECTION 4 – SEVERABILITY

- 4.01 If any section, subsection, sentence, clause, phase, or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5 – CODIFICATION

- 5.01 In this ordinance, additions are shown as underlined and deletions as ~~striketrough~~. Any additional codification information and notations appear in *italics*. These editorial notations shall not appear in the codified text.

SECTION 6 – EFFECTIVE DATE

- 6.01 This ordinance shall take effect immediately upon adoption by the City Commission of the City of North Port, Florida.

READ BY TITLE ONLY at first reading by the City Commission of the City of North Port, Florida in public session on the 12th day of January 2021.

PASSED and DULY ADOPTED by the City Commission of the City of North Port, Florida on the second and final reading in public session this 9th day of February 2021.

CITY OF NORTH PORT, FLORIDA

GISELE "JILL" E. LUKE
MAYOR

ATTEST

HEATHER TAYLOR, CMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

AMBER L. SLAYTON
CITY ATTORNEY