

**ORDINANCE NO. 2001-05**

**AN ORDINANCE ENTITLED THE BRAZILIAN PEPPER ERADICATION ORDINANCE; MAKING FINDINGS OF FACT; PROHIBITING PROPERTY OWNERS FROM SUFFERING, PERMITTING OR ALLOWING GROWTH OF BRAZILIAN PEPPER OR FAILING TO REMOVE BRAZILIAN PEPPER ON NOTICE; PROVIDING FOR THE GIVING OF NOTICE BY HERNANDO COUNTY OFFICIALS UPON COMPLAINTS REQUIRING CORRECTION OF VIOLATIONS; PROVIDING FOR CORRECTION OF THE PUBLIC CODE VIOLATION BY HERNANDO COUNTY; PROVIDING FOR THE COLLECTION OF COSTS, LEVYING FINES, AND COLLECTION OF LIENS; PROVIDING FOR CIVIL FINES; PROVIDING FOR ADDITIONAL ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS** the Hernando County Board of County Commissioners has been made aware of significant problems associated with public health, safety and welfare associated with the Brazilian pepper plant which is spreading throughout areas of Hernando County, and

**WHEREAS** the Board desires to adopt a local ordinance to require Brazilian pepper eradication and recognizes that such action is dependent upon citizen education and understanding, together with such County staff assistance and direction with respect to similar eradication programs in other Florida cities and counties, and

**WHEREAS** the local ordinance to be adopted herein is primarily based on existing pepper removal programs in the City of Sanibel and in Palm Beach County, and effective implementation of a Brazilian pepper eradication program in Hernando County is further dependent on taking advantage of lessons learned in other areas, and

**WHEREAS** the Board anticipates and intends that the ordinance set forth herein will be implemented with an abundance of citizen education and involvement, together with application of administrative and enforcement principles that have proven successful in other areas, and

**WHEREAS** the Board further expects and intends that staff will coordinate County eradication of Brazilian pepper with other government agencies involved in pepper removal, including but not limited to adjacent counties and the Southwest Florida Water Management District; and that administrative staff will seek any available grant funding to assist in eradication efforts as to pepper on County property, and

**WHEREAS** the Board further intends and directs that the County Administrator and

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staff take all appropriate measures to ensure that disposal of removed Brazilian pepper debris is handled in such a manner as to prevent any chance of further contributing to the propagation of the plant, whether at the County's landfill or at other authorized locations.

**BE IT ORDAINED BY THE HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS:**

**SECTION 1. SHORT TITLE**

This Ordinance shall be known as the Brazilian Pepper Eradication Ordinance.

**SECTION 2. FINDINGS OF FACT**

(A) The Brazilian pepper plant species (*Schinus terebinthifolius*) is hereby declared to be a noxious plant, capable of, and subject to, mandatory eradication pursuant to this ordinance, in that such species is 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 species has 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.

(2) The health, safety, and welfare of the present and future residents of Hernando County are dependent on minimizing degradation of the native ecological systems of the County.

(3) The Florida Legislature has recognized the problem of Brazilian pepper by enacting section 369.251, Florida Statutes, providing that a person may not sell, transport, collect, cultivate, or possess any plant, including any part or seed, of the species *Schinus terebinthifolius* without a permit from the state and providing that a violation of the statute is a misdemeanor of the second degree, while excepting from the operation of the statute such transportation and possession as may be necessary to control such plants and to prevent the further dispersal of the species.

(4) For purposes of this ordinance, "Brazilian pepper" means the species of plant, shrub or tree carrying the botanical term *Schinus terebinthifolius*; and "remove" or "removal" as applied to Brazilian pepper means destruction of all plants and includes removal from the property of all debris from such destruction, provided that for purposes of a plan for removal pursuant to section 8 herein, the Director of Code

Enforcement Department may determine that effective prevention of any continued or future growth of Brazilian pepper plants shall be sufficient to constitute removal.

### **SECTION 3. PROHIBITED CONDITIONS**

(A) It shall be unlawful for any owner of improved or unimproved property to suffer, allow or permit the growth of Brazilian pepper on such property.

(B) It shall be unlawful for any owner of improved or unimproved property to fail to remove upon notice any Brazilian pepper on such property.

### **SECTION 4. NOTICE TO PROPERTY OWNER TO CORRECT PROHIBITED CONDITIONS**

(A) If the Code Enforcement Department finds and determines that a prohibited condition exists, as described in Section 3 of this ordinance, it shall so notify the record owner of the offending property in writing and demand that such owner cause the situation to be remedied. The written notice may be in the form of initial notice by post card addressed to the owner or owners of the property described with the names and addresses as shown upon the most recent records of the Hernando County Property Appraiser. Initial notice by post card may specify any length of time for compliance that is deemed appropriate by the Code Enforcement Department. If the prohibited condition is not remedied after initial notice by post card, or if the Code Enforcement Department elects not to provide initial notice by post card, the Code Enforcement Department may hand-deliver or send by certified mail a Notice of Public Code Violation in substantially the form set forth in this section, which notice if mailed shall be addressed to the owner or owners of the property described with the names and addresses as shown upon the most recent records of the Hernando County Property Appraiser. If certified mail is returned to Code Enforcement Department for any reason, including but not limited to refusal of delivery by the addressee or incorrect address information from the Property Appraiser, or if no written response to the Notice of Public Code Violation is received by the Code Enforcement Department within 20 days of delivery, the Code Enforcement Department shall post the offending property for a period of ten (10) days. Upon the expiration of the posting date, all persons with interests in the property shall be conclusively deemed to have waived any and all right to appeal the determination of the Code Enforcement Department or otherwise object to County remedy of the prohibited condition, and the Department may arrange for the Brazilian pepper on the property to be removed and may bill the property owner pursuant to Section 5 of this ordinance. The Code Enforcement Department may use the services of any County employee, agent or contractor for such purposes.

(B) The notice shall be in substantially the following form and shall provide notice of waiver of rights in the absence of a written response:

**NOTICE OF PUBLIC CODE VIOLATION**

Date\_

NAME OF OWNER(S)\_

ADDRESS:\_

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

(Legal Description of Property FROM Property Appraiser Records)

An inspection of this property discloses, and the Hernando County Code Enforcement Department has determined, that a Public Code Violation exists thereon so as to constitute a violation of Hernando County Ordinance \_\_\_\_\_ in that Brazilian pepper is growing on the above described property in violation of said ordinance, which makes it unlawful for any property owner to suffer, permit or allow such growth on property.

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

Furthermore, please be advised that Hernando County has the right to foreclose on properties upon which a lien has been placed and not paid within one (1) year.

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

Your cooperation is greatly appreciated. You may contact the Code Enforcement Department by calling 352-754-4056 if you have questions. However, you **MUST** respond in writing within 20 days of the date of receipt if you disagree with the determinations in this notice.

Sincerely,

Code Enforcement Officer

## **SECTION 5. COLLECTION OF COSTS AND RECORDS**

(A) Upon causing a condition prohibited by Section 3 of this ordinance to be remedied, the Code Enforcement Department shall certify to the Board of County Commissioners the expenses incurred in remedying the condition including any unpaid administrative costs whereupon such costs shall be payable within thirty (30) days, after which a Special Assessment Lien and an Administrative Surcharge will be made upon the property which shall be payable with interest at a rate of ten (10%) percent per annum from the date of such certification until paid. Such lien shall be enforceable in the same manner as a Special Assessment Lien in favor of the County and shall be satisfied at any time by payment thereof including accrued interest. Notice of such lien shall be filed in the Office of the Clerk of the Circuit Court and recorded among the Official Records of the County.

(B) Right to Foreclosure and Pay Costs - The Clerk of Circuit Court shall keep complete records relating to the amount payable for the liens above described.

(C) Penalties and Fines - In the event the Special Assessment Lien is not paid within one (1) year, the County Attorney may commence foreclosure proceedings to foreclose upon the Special Assessment Lien. The foreclosure shall be conducted pursuant to procedure set forth in General Law for the foreclosure of Special Assessment Liens. In the event the lien is foreclosed upon, the owner of the property which is subject to foreclosure shall, in addition to any other charges, pay the County's reasonable attorney's fees in such foreclosure proceedings. The County shall have the right to compromise or settle any lien by accepting payment of less than the full amount of the lien for good cause. For liens where a proposed compromise or settlement amount is equal to or greater than two-thirds of the currently due amount, including principal and interest, the County Administrator or designee shall have final authority to determine existence of good cause and approve such compromise or settlement and to sign or certify satisfaction of lien on behalf of the County for entry in the official records.

## **SECTION 6. CIVIL FINES**

(A) In the event the owner or owners of any lot, tract, or parcel of land with any prohibited condition specified herein makes a written response to the Notice of Public Code Violation within 20 days of receipt which does not directly consent to remedy of any such prohibited conditions by the County, its agents or contractors; or in the event the owner or owners fail to remedy any such prohibited conditions on the property within the time set forth in the notice required by Section 6 of this ordinance, a Citation may be issued if the violation continues to exist. Any such citation shall be delivered within the County or served by certified mail to addresses outside the County.

(B) At any time, the Code Enforcement Department may elect to cite the owner or owners of particular property for any conditions on such property which are prohibited herein pursuant to any authorized means of enforcing codes now or hereafter existing.

Such election may be made in lieu of, or in addition to, other enforcement measures taken pursuant to this ordinance or any other authority against any party with an interest in the property.

(C) Any violation of this ordinance may be considered a civil infraction for purposes of the issuance of a citation. Issuance of a citation will subject the owner to a maximum civil penalty not to exceed five hundred (\$500.00) dollars plus administrative costs and fees including but not limited to site visits. Each day that a violation continues after the time set forth in said Notice of Violation shall constitute a separate offense. All penalties, fines, fees, and costs collected under this ordinance shall be credited to the County Code Enforcement Department.

### **SECTION 7. ADDITIONAL ENFORCEMENT**

Nothing contained in this ordinance shall be construed to prevent Hernando County from enforcing its codes or ordinances, including this ordinance, by any other means allowed or permitted by law, including but not limited to proceedings to enjoin continuation or maintenance of any condition prohibited by this ordinance upon such terms and with such notice as the Code Enforcement Department and the court may determine to be applicable.

### **SECTION 8. ALTERNATIVE ENFORCEMENT OF BRAZILIAN PEPPER VIOLATION**

(A) Where the owner, owners or authorized owner representative of a lot, tract, or parcel of land described in a Notice of Public Code Violation pursuant to section 4 of this ordinance makes a written response to the Notice within 20 days of receipt which does not directly consent to removal of Brazilian pepper by the County, its agents or contractors; or in the event the owner fails to remove the Brazilian pepper growth on the property within the time set forth in the Notice, the Director of Code Enforcement is authorized but not required to extend the time for removal upon submission of an plan for Brazilian pepper removal. In determining whether or not to approve any such plan and extend the time for removal, the Director shall consider the time proposed for removal in light of any practical difficulties or hardship in complying with the requirements of this ordinance, including the reasons that the deadline for removal set forth in the Notice cannot be met; the nature of the practical difficulties or hardship preventing compliance, including but not limited to the size, topography or geology of the lot, tract or parcel; the method of proposed removal; the nature of the ownership, as for example and not by way of limitation, the nonprofit status of any entity with an ownership interest; the fruit-bearing status of the existing plants in relation to likelihood of spreading seeds in the event of removal; and the plan for keeping the property free of Brazilian pepper in the future.

(B) No extension of time, approval of a plan for Brazilian pepper removal, or other administrative forbearance of immediate enforcement pursuant to this section shall

prejudice the right of the County to enforce any or all terms and requirements of this ordinance by any means authorized herein or under any other ordinance, statute or authority of any kind whatsoever.

**SECTION 9. PERMIT DENIAL**

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

**SECTION 10. SEVERABILITY**

It is declared to be the intent of the Board of County Commissioners of Hernando County, Florida, that if any section, subsection, clause, sentence phrase or provision of this Ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 11. INCLUSION IN THE CODE**

It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, the sections of this Ordinance may be renumbered or relettered to accomplish such intention, and that the work "ordinance" may be changed to "section", "article", or other appropriate designation.

**SECTION 12. EFFECTIVE DATE**


This Ordinance shall become effective June 1, 2001.

**ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS** in Regular Session this 13<sup>th</sup> day of March, 2001, A.D.

**BOARD OF COUNTY COMMISSIONERS  
HERNANDO COUNTY, FLORIDA.**

By: *Christopher A. Kingsley*  
**CHRISTOPHER A. KINGSLEY**  
Chairman

Attest: *Karen Nicolai*  
**KAREN NICOLAI**  
Clerk



APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY *[Signature]* 3/13/01  
County Attorney's Office