

**MAYOR AND COUNCIL  
TOWN OF FOREST HEIGHTS**

**EMERGENCY ORDINANCE 03-10**

**AN EMERGENCY ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOREST HEIGHTS, MARYLAND ENACTING NEWLY CREATED ARTICLE 23 (POLICE AND CODE ENFORCEMENT) OF THE TOWN ORDINANCE CODE, DESCRIBING THE DUTIES OF THE CHIEF OF POLICE, ENACTING PROCEDURES CONSISTENT WITH STATE LAW REGARDING THE ISSUANCE OF MUNICIPAL INFRACTIONS, FORMALLY APPOINTING A CODE ENFORCEMENT OFFICIAL FOR THE TOWN, AND GENERALLY RELATING TO THE REGULATION, CONTROL AND ADMINISTRATION OF THE FOREST HEIGHTS POLICE DEPARTMENT AND THE OFFICE OF CODE ENFORCEMENT OFFICER.**

**INTRODUCED BY:** Councilman Jonathon Kennedy II

**ENACTED:** April 21, 2010

**WHEREAS**, pursuant to Section 33-18 of the Charter of the Town of Forest Heights (the “Charter”), the Mayor with the approval of the Council, shall appoint the officers of the Town as established by Charter or by ordinance and said officers shall serve at the pleasure of the Mayor; and

**WHEREAS**, pursuant to Section 33-20(b)(40) of the Charter, the Council shall have the power to pass an ordinance to establish, operate, and maintain a police force with police officers having the powers and authority of constables in this State; and

**WHEREAS**, pursuant to Section 33-20(b)(14) of the Charter the Council shall have the power to pass ordinances not contrary to the laws and Constitution of this State for the purpose of creating, changing, and abolishing offices, departments, or agencies, other than those established by Charter; and

**WHEREAS**, pursuant to Section 33-66 of the Charter, the Town of Forest Heights (the “Town”) shall have the power to employ such officers and employees as it deems necessary to execute the powers and duties provided by the Charter or other State law; and

**WHEREAS**, pursuant to Section 33-20(b)(8) of the Charter, the Council shall have the power to pass an ordinance providing for the appointment of a building inspector; and

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CAPITALS	:	Indicate matter added to existing law
[Brackets]	:	Indicate matter deleted from existing law
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**WHEREAS**, pursuant to the Maryland Annotated Code, Article 23A, Section 3 those officials authorized by the legislative body of the municipality to act as code enforcement officers may serve a municipal infraction citation on any person whom they believe is committing or has committed a municipal infraction, or on the basis of an affidavit submitted to an appropriate official of the municipality, to be named by the municipality, citing the facts of the alleged infraction, and coordinate the selection of court dates; and

**WHEREAS**, the Mayor and Council finds that it is in the best interest of the Town to formally create and ratify the Office of Town Code Enforcement Officer, formally declare the appointment of an individual to serve in said office and describe said officer's duties and responsibilities.

**WHEREAS**, the Mayor and Council further finds it in the best interest of the Town to formally and expressly restate the duties and authority of the Chief of Police having command and control of the Forest Heights Police Department including but not limited to operational and administrative control of said Code Enforcement Officer.

**SECTION 1.**

**NOW THEREFORE, BE IT ORDAINED AND ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOREST HEIGHTS**, that Article 23 (Police and Code Enforcement), §§ 23.1 (Designation and Duties of the Chief of Police) through 23.3 (Issuance of Civil Citation) of the Ordinance Code of the Town of Forest Heights are hereby adopted and enacted such that said article shall henceforth read as follows:

**ARTICLE 23 – POLICE AND CODE ENFORCEMENT**

**SECTION 23.1: DESIGNATION AND DUTIES OF THE CHIEF OF POLICE.**

(A) THE POSITION OF CHIEF OF POLICE IS HEREBY CONFIRMED AS ESTABLISHED. THE APPOINTMENT OF THE CHIEF OF POLICE SHALL BE APPROVED BY ORDINANCE OR RESOLUTION. THE CHIEF OF POLICE SHALL ASSIST THE MAYOR IN THE ESTABLISHMENT AND MAINTENANCE OF A POLICE DEPARTMENT. THE POWER TO MANAGE AND OPERATE THE TOWN'S POLICE DEPARTMENT SHALL BE VESTED IN THE CHIEF OF POLICE, SUBJECT TO APPROVAL AND OVERSIGHT BY THE MAYOR AND COUNCIL. IT SHALL BE THE FUNCTION OF THE FOREST HEIGHTS POLICE DEPARTMENT TO ENFORCE THE LAWS OF THE TOWN AND, WHEN APPROPRIATE AND LAWFUL, THE LAWS OF PRINCE GEORGE'S COUNTY AND THE STATE OF MARYLAND. THE CHIEF OF POLICE SHALL ENSURE THAT THE POLICE DEPARTMENT ADEQUATELY AND COMPETENTLY FULFILLS ITS FUNCTION.

(B) THE DUTIES OF THE CHIEF OF POLICE SHALL BE AS FOLLOWS:

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(1) TO RECOMMEND TO THE MAYOR THE APPOINTMENT OF POLICE OFFICERS TO PERFORM THE POLICING FUNCTIONS OF THE DEPARTMENT;

(2) TO RECOMMEND TO THE MAYOR THE HIRING OF CIVILIAN EMPLOYEES, AS NECESSARY, TO PERFORM ADMINISTRATIVE, CIVIL CODE ENFORCEMENT AND CLERICAL FUNCTIONS FOR THE DEPARTMENT;

(3) TO PREPARE AND IMPLEMENT, WITH THE CONCURRENCE OF THE MAYOR AND COUNCIL, STATEMENTS OF POLICY AND PRACTICE AND GENERAL ORDERS, AS APPROPRIATE, TO GOVERN THE CONDUCT OF TOWN POLICE AND CODE ENFORCEMENT OFFICERS; AND

(4) TO MANAGE THE DAY-TO-DAY OPERATIONS OF THE DEPARTMENT AND SUPERVISE THE DEPARTMENT'S POLICE AND CIVILIAN EMPLOYEES, INCLUDING BUT NOT LIMITED TO THE SCHEDULING OF DEPARTMENT EMPLOYEES AND THE DISCIPLINE OF POLICE AND CODE ENFORCEMENT OFFICERS IN ACCORDANCE WITH THE PROVISIONS OF STATE LAW, WHERE APPLICABLE.

SECTION 23.2: DESIGNATION AND DUTIES OF CODE ENFORCEMENT OFFICER.

THE APPOINTMENT OF THE CODE ENFORCEMENT OFFICER SHALL BE APPROVED BY ORDINANCE OR RESOLUTION. A CODE ENFORCEMENT OFFICER APPOINTED BY THE MAYOR WITH THE CONSENT OF THE COUNCIL SHALL HAVE THE FOLLOWING POWERS, DUTIES AND FUNCTIONS:

A. REVIEW PLANS AND SPECIFICATIONS REQUIRED TO BE FILED WITH THE APPLICATION FOR A TOWN BUILDING PERMIT, CERTIFICATE OF REFERRAL OR OTHER LAND USE APPLICATION, AND ADVISE THE MAYOR WHETHER A BUILDING PERMIT, CERTIFICATE OF REFERRAL OR OTHER APPLICATION SHOULD BE ISSUED OR DENIED.

B. IN THE EVENT THE CODE ENFORCEMENT OFFICER OR DESIGNATED REPRESENTATIVE, AFTER DUE CONSIDERATION, RECOMMENDS TO THE COUNCIL THAT A BUILDING PERMIT, CERTIFICATE OF REFERRAL OR OTHER APPLICATION SHOULD NOT BE ISSUED AND THE REASON THEREFORE SHALL BE STATED IN WRITING.

C. UPON ISSUANCE OF A TOWN BUILDING PERMIT, CERTIFICATE, OR OTHER APPROVAL THE CODE ENFORCEMENT OFFICER OR DESIGNATED REPRESENTATIVE SHALL INSPECT ALL CONSTRUCTION PROJECTS AND INSURE STRICT ADHERENCE TO THE APPROVED PLANS AND SPECIFICATIONS.

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D. IN THE EVENT OF VIOLATION, DEVIATION, OR IRREGULARITY, THE CODE ENFORCEMENT OFFICER SHALL:

1. NOTIFY AND CONSULT WITH THE MAYOR;
2. ADVISE THE PROPERTY OWNER AND/OR CONTRACTOR OF THE INFRACTION AND SPECIFY THE TIME NOT TO EXCEED SIXTY (60) DAYS BY WHICH SAID INFRACTION SHALL BE CORRECTED;
3. ISSUE A STOP-WORK ORDER SHOULD THE INFRACTION NOT BE CORRECTED WITHIN THE SPECIFIED TIME;
4. SUSPEND THE BUILDING PERMIT UPON ISSUANCE OF A STOP-WORK ORDER;
5. RE-ISSUE A BUILDING PERMIT AND REMOVE ANY STOP-WORK ORDER WHEN REASON FOR THE STOP-WORK ORDER HAS BEEN CORRECTED.

E. THE CODE ENFORCEMENT OFFICER, IN CONJUNCTION WITH THE TOWN CLERK/RECORDS CUSTODIAN, SHALL KEEP ON FILE ALL APPLICATIONS, PLANS, AND OTHER PERTINENT BUILDING OR OTHER LAND USE RECORDS ASSOCIATED WITH THE ISSUANCE OF A BUILDING OR OTHER PERMIT.

F. THE CODE ENFORCEMENT OFFICER AND/OR A DESIGNATED POLICE OFFICER MAY BE AUTHORIZED BY THE MAYOR AND COUNCIL TO ENFORCE THIS ORDINANCE CODE AND MAY DELIVER A MUNICIPAL INFRACTION CITATION TO ANY PERSON ALLEGED TO BE COMMITTING OR TO HAVE COMMITTED A MUNICIPAL INFRACTION. EXCEPT AS OTHERWISE STATED IN THIS SECTION REGARDING PARKING CITATIONS THAT ARE NOT OTHERWISE ENFORCED BY USE OF A MUNICIPAL INFRACTION, CRIMINAL MISDEMEANOR VIOLATION SUMMONSES, CHARGING DOCUMENTS OR CITATIONS SHALL BE ISSUED ONLY BY A SWORN POLICE OFFICER.

G. UNLESS POSTED OTHERWISE, THE CODE ENFORCEMENT OR POLICE OFFICER SHALL HAVE THE RIGHT, UPON PROPER IDENTIFICATION, TO ROUTINELY ENTER UPON PRIVATE PROPERTY SO FAR AS IS NECESSARY FOR THE PERFORMANCE OF DUTIES.

H. THE CHIEF OF POLICE IS HEREBY AUTHORIZED AND EMPOWERED TO ESTABLISH ADDITIONAL DUTIES FOR ANY ASSIGNED CODE ENFORCEMENT OFFICER PROVIDED THAT SAID OFFICERS SHALL NOT BE VESTED WITH POLICE POWERS OF ARREST AND SHALL NOT TAKE ANY INITIATING ACTIONS IN THE ENFORCEMENT OF THE CRIMINAL LAW CONSISTENT WITH POLICE POWERS.

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CODE ENFORCEMENT OFFICERS ARE NOT AUTHORIZED TO CARRY FIREARMS AS CIVILIAN MEMBERS OF THE POLICE DEPARTMENT, AND THEY SHALL NOT CARRY FIREARMS WHILE ON DUTY OR OTHERWISE ACTING AS CIVILIAN MEMBERS OF THE POLICE DEPARTMENT. SAID OFFICERS SHALL BE ASSIGNED SUCH DUTIES AS ARE CIVILIAN AND ADMINISTRATIVE IN NATURE THAT THE CHIEF OF POLICE SHALL, FROM TIME TO TIME, DIRECT, THAT ARE NOT INCONSISTENT WITH THE LIMITATIONS SET FORTH IN THIS SECTION, OR STATE LAW AND, IN ADDITION, THE CODE ENFORCEMENT OFFICER SHALL BE VESTED WITH THE AUTHORITY TO ISSUE PARKING CITATIONS AND CITATIONS FOR MUNICIPAL INFRACTIONS AS EXPRESSLY PROVIDED FOR IN EACH APPLICABLE ARTICLE OF THIS ORDINANCE CODE.

SECTION 23.3: ISSUANCE OF A MUNICIPAL INFRACTION CITATION.

A. CITATION FORM. THOSE CODE ENFORCEMENT OFFICIALS OR POLICE OFFICERS AUTHORIZED BY THE COUNCIL TO ENFORCE THIS ORDINANCE CODE MAY DELIVER A CITATION TO ANY PERSON ALLEGED TO BE COMMITTING OR HAVE COMMITTED A MUNICIPAL INFRACTION. UNLESS OTHERWISE PRESCRIBED BY ORDINANCE, A WARNING NOTICE OR COURTESY LETTER MAY BE SENT TO THE ALLEGED VIOLATOR BEFORE ISSUANCE OF THE CITATION. A COPY OF THE CITATION SHALL BE RETAINED BY THE TOWN AND SHALL BEAR THE CERTIFICATION OF THE ENFORCING OFFICIAL ATTESTING TO THE TRUTH OF THE MATTER SET FORTH IN THE CITATION. THE CITATION APPROVED FOR USE BY THE DISTRICT COURT OF MARYLAND SHALL CONTAIN AT A MINIMUM THE FOLLOWING INFORMATION OR AS OTHERWISE REQUIRED BY MD. ANN. CODE, ART. 23A, SECTION 3:

- (1) NAME AND ADDRESS OF THE PERSON CHARGED;
- (2) THE NATURE OF THE INFRACTION;
- (3) THE LOCATION AND TIME THAT THE INFRACTION OCCURRED OR WAS OBSERVED;
- (4) THE AMOUNT OF THE INFRACTION FINE ASSESSED;
- (5) THE MANNER, LOCATION, AND TIME IN WHICH THE FINE MAY BE PAID TO THE TOWN; AND
- (6) THE RIGHT OF THE ACCUSED TO STAND TRIAL FOR THE INFRACTION.

B. PAYMENT OF THE FINE. THE FINE FOR AN INFRACTION SHALL BE AS SPECIFIED IN THE ORDINANCE PROVISION OR ARTICLE THAT WAS VIOLATED OR

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AS AUTHORIZED BY ORDINANCE TO BE ESTABLISHED OR AMENDED FROM TIME TO TIME BY RESOLUTION. THE FINE IS PAYABLE BY THE RECIPIENT OF THE CITATION TO THE TOWN WITHIN TWENTY (20) CALENDAR DAYS OR RECEIPT OF THE CITATION.

C. NO FORMAL HEARING BY TOWN. THE TOWN SHALL NOT CONDUCT ANY FORMAL HEARING FOR THOSE PERSONS IN RECEIPT OF A CITATION FOR AN INFRACTION. ANY OFFENDER SO CITED MAY PAY THE FINE AS INDICATED HEREIN AND ON THE CITATION, OR ELECT TO STAND TRIAL FOR THE OFFENSE. THIS PROVISION SHALL NOT PREVENT AN OFFENDER FROM REQUESTING, EITHER PERSONALLY OR THROUGH AN ATTORNEY, ADDITIONAL INFORMATION CONCERNING THE INFRACTION. ONCE A CITATION FORM IS ISSUED TO THE ALLEGED VIOLATOR, ONLY THE STATE'S ATTORNEY, AN ASSISTANT STATE'S ATTORNEY, OR THE TOWN ATTORNEY WHEN ASSIGNED TO PROSECUTE THE CASE, MAY EXERCISE PROSECUTORIAL DISCRETION IN ENFORCING THE VIOLATION. THE MAYOR AND COUNCIL MAY ELECT TO ASSIGN THE TOWN ATTORNEY TO PROSECUTE THE MUNICIPAL INFRACTION IN ACCORDANCE WITH STATE LAW.

D. ELECTION TO STAND TRIAL. A PERSON RECEIVING THE CITATION FOR AN INFRACTION MAY ELECT TO STAND TRIAL FOR THE OFFENSE BY NOTIFYING THE TOWN IN WRITING OF HIS OR HER INTENTION OF STANDING TRIAL. THE NOTICE SHALL BE GIVEN AT LEAST (5) FIVE DAYS PRIOR TO THE DATE OF PAYMENT AS SET FORTH IN THE CITATION. UPON RECEIPT OF THE NOTICE OF THE INTENTION TO STAND TRIAL, THE TOWN SHALL FORWARD TO THE DISTRICT COURT HAVING VENUE A COPY OF THE NOTICE FROM THE PERSON WHO RECEIVED THE CITATION INDICATING HIS OR HER INTENTION TO STAND TRIAL. ALL FINES, PENALTIES, OR FORFEITURES COLLECTED BY THE DISTRICT COURT FOR VIOLATIONS OF INFRACTIONS SHALL BE REMITTED TO THE GENERAL FUND OF THE TOWN.

E. FAILURE TO PAY FINE. IF A PERSON RECEIVING A CITATION FOR AN INFRACTION FAILS TO PAY THE FINE FOR THE MUNICIPAL INFRACTION OR FAILS TO FILE A NOTICE OF HIS OR HER INTENTION TO STAND TRIAL FOR THE OFFENSE WITHIN TWENTY (20) DAYS FROM THE DATE OF THE CITATION, THE FINE SHALL BE DOUBLE THE STATED AMOUNT, BUT SHALL NOT EXCEED \$1,000. IF AFTER THIRTY-FIVE (35) DAYS FROM THE DATE OF ISSUE, THE CITATION HAS NOT BEEN SATISFIED, THE TOWN MAY REQUEST ADJUDICATION OF THE CASE THROUGH THE DISTRICT COURT OF MARYLAND TO OBTAIN AN ENTRY OF JUDGMENT IN THE AMOUNT DUE IN FAVOR OF THE TOWN IF A PROPER DEMAND FOR JUDGMENT ON AFFIDAVIT OR OTHERWISE HAS BEEN MADE.

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F. CONVICTION NOT A CRIMINAL OFFENSE. CONVICTION OF A MUNICIPAL INFRACTION, WHETHER BY THE DISTRICT COURT OR BY PAYMENT OF THE FINE TO THE TOWN, IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE, NOR DOES IT IMPOSE ANY OF THE CIVIL DISABILITIES ORDINARILY IMPOSED BY A CRIMINAL CONVICTION.

G. COURT PROCEEDINGS AND RIGHTS OF ACCUSED. IN ANY PROCEEDING FOR A MUNICIPAL INFRACTION, THE ACCUSED SHALL HAVE THE SAME RIGHTS AS FOR THE TRIAL OF CRIMINAL CASES. HE SHALL HAVE THE RIGHT TO CROSS-EXAMINE WITNESSES AGAINST HIM, TO TESTIFY OR INTRODUCE EVIDENCE IN HIS OWN BEHALF AND TO BE REPRESENTED BY AN ATTORNEY OF HIS OWN SELECTION AND AT HIS OWN EXPENSE.

**SECTION 2.**

**AND BE IT FURTHER ORDAINED AND ENACTED,** that the appointment of Napoleon Epps as Code Enforcement Officer of the Town of Forest Heights is hereby confirmed and approved by the Council and made effective on the date he was initially employed by the Town. Any citations issued prior to this ordinance by said officer shall remain in full force and effect.

**SECTION 3.**

**AND BE IT FURTHER ORDAINED AND ENACTED,** that if any section or part of a section of this Ordinance shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance nor the context in which such section or part of section so held invalid shall appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

**SECTION 4.**

**AND BE IT FURTHER ORDAINED AND ENACTED,** that any prior ordinances adopting and enacting any substantially similar provision of this newly enacted Article 23 of said Ordinance Code, or any other ordinance or resolution previously adopted pertaining to a subject or subjects embodied by the title of this Ordinance or the provisions found herein shall be deemed repealed and superseded by the provisions of this Ordinance. Should a previously enacted ordinance cover a provision or subject that is not specifically covered by this Emergency Ordinance, it shall remain in full force and effect unless it directly conflicts with the express language of this Ordinance.

**SECTION 5.**

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**AND BE IT FURTHER ORDAINED AND ENACTED**, that this Emergency Ordinance shall take effect immediately upon its enactment, having been passed by the required ye and nay votes of the Mayor and Council of the Town of Forest Heights.

**SECTION 6.**

**AND BE IT FURTHER ORDAINED AND ENACTED**, that upon passage, the Town Clerk shall cause to be published a fair summary of this Emergency Ordinance at least twice in the town newsletter or a newspaper having general circulation within the Town of Forest Heights.

**HAVING BEEN INTRODUCED AND HAVING BEEN READ** as an emergency ordinance and passed by a ye and nay vote of the Mayor and Council of the Town of Forest Heights with the affirmative votes of at least five (5) of the members of the legislative body including the Mayor as indicated below at a Public Meeting of The Mayor and Council of the Town of Forest Heights held on this 21<sup>st</sup> day of April 2010, at 8:10 o'clock pm., in the Municipal Building in Forest Heights, Maryland.

MCCUTCHEON	<u>YEA</u>
KENNEDY	<u>YEA</u>
MCLAURIN	<u>NAY</u>
GOODALL	<u>YEA</u>
CLARK	<u>YEA</u>
SMITH-BARNES	<u>YEA</u>
REIFSNEIDER	<u>YEA</u>

ATTEST:

THE MAYOR AND COUNCIL OF THE  
TOWN OF FOREST HEIGHTS

\_\_\_\_\_  
Bonita C. Anderson, Town Clerk

By: \_\_\_\_\_ (Seal)  
Andrea McCutcheon, Mayor

By: \_\_\_\_\_ (Seal)  
Jonathon Kennedy II, Council President

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By: \_\_\_\_\_(Seal)  
C. Lynn Smith-Barnes, Councilwoman

By: \_\_\_\_\_(Seal)  
Jacqueline Goodall, Councilwoman

By: \_\_\_\_\_(Seal)  
Anne Reifsneider, Councilwoman

By: \_\_\_\_\_(Seal)  
William E. Clark, Jr., Councilman

By: \_\_\_\_\_(Seal)  
Brian McLaurin, Councilman

I HEREBY CERTIFY that following its passage, a summary of this Ordinance has been published at least twice in the town newsletter or a newspaper having general circulation in the Town of Forest Heights.

Date: \_\_\_\_\_, 2010

\_\_\_\_\_(Seal)  
Bonita C. Anderson, Town Clerk

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