Council Agenda
Item # 6-B

MEMORANDUM

TO: Honorable Mayor & City Council Members

FROM: Debbie Renner, City Clerk

DATE: July 14, 2009

SUBJECT: **Ordinance No. 395**

The City Attorney has made some revisions to both Ordinance No. 395 and the accompanying Exhibit "A" since first reading took place. You are being provided with a copy of the revised documents for your review prior to second reading.

ORDINANCE NO. 395

AN ORDINANCE OF THE CITY OF ORANGE CITY, FLORIDA, CREATING CHAPTER 12.5, MAINTENANCE OF RIGHT-OF-WAYS IN THE CODE OF ORDINANCES OF THE CITY OF ORANGE CITY, FLORIDA; PROVIDING FOR THE DEFINITION OF RIGHT OF WAY; PROVIDING FOR MAINTENANCE REQUIREMENTS; PROVIDING FOR ENFORCEMENT AUTHORITY; PROVIDING FOR CORRECTION BY CITY, REIMBURSEMENT, LIENS AND RELEASE OF LIENS; PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, most residents of Orange City currently mow and maintain the abutting right-of-way between their property line and the street pavement; and

WHEREAS, the City nevertheless expends significant resources to maintain right-of-ways adjacent to the few properties which are not maintained by the owners of such adjacent properties; and

WHEREAS, it is the desire of the City Council to create this portion of the code to establish responsibility for all property owners to maintain the right of way between their property and the street pavement; and

WHEREAS, enactment of this chapter will provide for uniform maintenance of rights-of-way~~.~~, which will reduce blight, aesthetically enhance neighborhoods and increase property values throughout the entire City; and

WHEREAS, ~~In~~ one of the City Council's Goals ~~for 2008, Goal 2, Objective 6, Action~~ is the private maintenance of public right-of-ways, which the City Council has determined will benefit the health, safety and general welfare of the citizens of Orange City and serve a valid public purpose. ~~; and~~

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:

SECTION 1. The foregoing recitals are hereby fully incorporated herein by reference as legislative findings and which reflect the intent of the City Council of the City of Orange City, and which establish the purpose of the new Chapter 12.5.

SECTION 2. That Chapter 12.5 of the Code of Ordinances of the City of Orange City is hereby created in accordance with Exhibit "A" attached hereto and incorporated herein as though fully set forth by this reference.

SECTION 3. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 4. If any section, part of a section, paragraph, clause, phrase or word of this ordinance is declared invalid, the remaining provisions of this ordinance shall not be affected.

SECTION 5. This ordinance shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida, and approval as provided by law.

ROLL CALL VOTE AS FOLLOWS (Ordinance No. 395):

First Reading this _____ day of _____, 2009.

Jim Mahoney	_____	Donald C. Sherrill	_____
Tom Laputka	_____	Tom Abraham	_____
R. Paul Rasch	_____	Jeff H. Allebach, Vice Mayor	_____
Harley Strickland, Mayor	_____		

ROLL CALL VOTE AS FOLLOWS (Ordinance No. 393):

Second Reading this _____ day of _____, 2009.

Jim Mahoney	_____	Donald C. Sherrill	_____
Tom Laputka	_____	Tom Abraham	_____
R. Paul Rasch	_____	Jeff H. Allebach, Vice Mayor	_____
Harley Strickland, Mayor	_____		

PASSED and ADOPTED this _____ day of _____, 2009.

ATTEST:

_____
Deborah J. Renner, CMC, City Clerk

AUTHENTICATED:

_____
Harley Strickland, Mayor

Approved as to form and legal sufficiency:

_____
William E. Reischmann, Jr., City Attorney

Exhibit "A"
(Ordinance No. 395)

CHAPTER 12.5 Right-Of-Way Maintenance

Sec 12.5-1 Definition of Right-Of-Way

Sec. 12.5-2 Responsibilities of abutting property owners for maintenance of right-of-ways; prohibitions.

Sec. 12.5-3. Failure of owner to comply; correction by city.

Sec. 12.5-4. Service of notice on owner.

Sec. 12.5-5. Billing for work done by city; deadline for payment.

Sec. 12.5-6. Lien declared~~; recording; interest~~.

Sec. 12.5-7. Release of lien.

Sec. 12.5-8. ~~Abatement~~ Alternative enforcement authority.

Sec. 12.5-1. Definition of right-of-way

"Right-Of-Way" is that space between the private property line or survey line of the property owner and the paved or graded portion of the public street adjacent thereto, including the area between a sidewalk and a street.

Sec. 12.5-2. Responsibilities of abutting property owners for maintenance of right-of-way; prohibitions.

(a) It shall be the duty and the responsibility of every owner of real property within the City to at all times maintain the right-of-way most nearly abutting their property. These duties and responsibilities shall include cutting and mowing grass, edging of sidewalks and curbs, and cutting flowers, vines, and shrubbery so as to maintain a neat, trim appearance in such areas. More specifically, grass shall be mowed at least twice a month during the months of May through October and at least once a month during the remaining period of the year. Flowers, vines, and shrubbery shall be trimmed as required to maintain a neat appearance, but in no event less than once a year. ~~The City Council may by resolution eliminate or alter in any manner the duties and responsibilities contained in this subsection (a).~~

(b) It shall be the further duty of every property owner within the city to remove any and all refuse or other debris located within the adjacent right-of-way in a reasonable period of time.

(c) Property owners shall ***not*** be required to maintain trees that exist in the right-of-way.

(d) No person shall plant or remove any tree or shrubbery in any right-of-way unless ~~written~~ permission is requested in writing and received in writing from the City Manager or his designee.

Sec. 12.5-3. Failure of owner to comply; correction by city; reimbursement.

Upon the failure of the owner or owners of said lots, parcels or tracts of land to remedy the condition of such premises found to be in violation of the requirements of this chapter, within 15 days after notice, the city manager may direct that all reasonable maintenance activities which are required to bring the property into compliance be made, and thereafter charge the violator with the reasonable costs of the maintenance activities, as well as any other applicable charges, fines and penalties. Maintenance by the City does not create a continuing obligation on the part of the City to further maintain the property and it does not create any liability against the City for any damages to the property if such maintenance was completed in good faith.

~~(Ord. No. 73-9-1, § 4, 10-1-73; Ord. No. 229, § 1, 2-8-05)~~

Sec. 12.5-4. Service of notice on owner.

Notice shall be in accordance with Sec. 2-140, Orange City Code of Ordinances. ~~from the city manager shall be by personal service or registered mail addressed to the owner or owners of the property described as their names and addresses are shown on the records of the property appraiser of Volusia County and shall be deemed proper notice when so addressed and deposited in the United States mail with proper postage prepaid.~~

~~(Ord. No. 73-9-1, § 3, 10-1-73; Ord. No. 229, § 1, 2-8-05)~~

Sec. 12.5-5. Billing for work done by city; deadline for payment.

~~Upon completion of the work by the city, the owner shall be billed for the cost and shall have 30 days within which to pay the same.~~ After the City has caused the nuisance condition to be remedied, the City Manager shall certify the actual expenses incurred by the City, plus administrative expenses and penalties, and shall send a copy of the certification to the property owner. The sum certified to be paid must be received by the City no later than 35 days from the date the notice is mailed to the property owner.

~~(Ord. No. 73-9-1, § 5, 10-1-73; Ord. No. 229, § 1, 2-8-05)~~

Sec. 12.5-6. Lien declared~~; recording; interest~~.

~~Any unpaid charges at the end of 30 days shall be recorded, plus administrative charges, in the office of the clerk of the circuit court, as a lien against the property, and interest shall accrue on the amount of said lien from and after the date on which said charges were payable at the rate of seven percent per year until the amount of the lien, plus interest, is paid~~ In the event that the property owner fails or refuses to pay the said certified sum, a certified copy of the certification may be recorded in the public records of Volusia County and shall constitute a lien against the

property on which the violation exists and upon any other real or personal property owned by the violator. The lien placed on the property shall be payable, with interest at the highest lawful rate per annum from the date of such certification until paid. All such liens shall be coequal with the liens of all state, county, district, and municipal taxes, superior in dignity to all other liens, titles, and claims, until paid or extinguished. The lien shall be enforceable in the same manner as any other judgment or lien in favor of the City.

~~(Ord. No. 73-9-1, § 6, 10-1-73; Ord. No. 229, § 1, 2-8-05)~~

Sec. 12.5-7. Release of lien.

A lien may be removed by the execution of a written release of same signed by the city manager and attested by the city clerk, which release shall be in a form acknowledgeable for recording in the office of the clerk of the circuit court.

~~(Ord. No. 73-9-1, § 7, 10-1-73; Ord. No. 229, § 1, 2-8-05)~~

Sec. 12.5-8. ~~Abatement~~ Enforcement authority.

~~In accordance with section 2-136(5) of the Orange City Code of Ordinance, the hearing officer may make a written request to the city manager to request abatement action for violations of this chapter.~~ This chapter may also be enforced pursuant to the provisions of chapter 2, article IV, Code Enforcement~~.~~, Orange City Code of Ordinances, by utilizing either the hearing officer or citation process.

~~(Ord. No. 73-9-1, § 3, 10-1-73; Ord. No. 229, § 1, 2-8-05)~~