

Meeting Date: 7/12/2011



Agenda Item # 5-A

# CITY COUNCIL AGENDA ITEM

Contact Name: Gregory Lariscy

Department Director: Peter C. Thomas

Department/Contact # Police Dept. / 775-9999

City Manager: Jamie Croteau

Type of Item:

- |                                     |                          |                          |                     |
|-------------------------------------|--------------------------|--------------------------|---------------------|
| <input type="checkbox"/>            | Public Hearing           | <input type="checkbox"/> | Resolution          |
| <input checked="" type="checkbox"/> | Ordinance First Reading  | <input type="checkbox"/> | Discussion & Action |
| <input type="checkbox"/>            | Ordinance Second Reading | <input type="checkbox"/> | Council Approval    |

**Subject:** Civil Infraction Citation

**BACKGROUND:** The proposed ordinance amends the civil infraction citation provisions currently found in Chapter 2, Administration, Article IV, Code Enforcement, Divisions 2 of our code of ordinances. The amendment modifies the code to unify the statutory requirements outlined in F.S. Ch. 162 and offers a supplemental method of enforcing our municipal code.

**RECOMMENDATIONS:** Staff recommends approval of the proposed ordinance.

**ATTACHMENTS:** Copy of proposed ordinance.

**FINANCIAL IMPACT:** The proposed ordinance will have a minimal financial impact.

Reviewed by City Attorney \_\_\_\_\_

Reviewed by Finance Dept. \_\_\_\_\_

Reviewed by: \_\_\_\_\_

<b>1<sup>st</sup> Discussion Date:</b> date.	<b>2<sup>nd</sup> Discussion Date:</b> date.	<b>Third Discussion Date:</b> date.	<b>Other Dates:</b> date.
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**ORDINANCE NO. 464**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE IV, CODE ENFORCEMENT, DIVISIONS 1 AND 2; RELOCATING AND ADDING DEFINITIONS; REVISING THE PROCEDURE FOR ISSUANCE OF CODE ENFORCEMENT NOTICES AND CITATIONS, THE PROCESS FOR CLASSIFICATION OF VIOLATIONS AND CIVIL PENALTIES AND THE PROCEDURE TO PAY OR CONTEST VIOLATIONS; ADDING PROVISIONS REGARDING JUDGMENTS OF THE COURT; PROVIDING FOR SEVERABILITY, CONFLICTS AND EFFECTIVE DATE.**

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**WHEREAS**, the City Council of the City of Orange City, upon recommendation from Code Enforcement staff, and given amendments to Chapter 162 of the Florida Statutes, deems it in the best interest of the citizens of the City of Orange City to amend and update the procedure for code enforcement as set forth in Chapter 2, Administration, Article IV, Code Enforcement, Divisions 1 and 2;

**WHEREAS**, words with double underlined type shall constitute additions to the original text and ~~strike through~~ shall constitute deletions to the original text.

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

**SECTION 1.** Chapter 2, Administration, Article IV, Code Enforcement, Divisions 1 and 2 of the City Code of Ordinances shall be amended as set forth in Exhibit "A," which is incorporated by reference as if fully set forth herein.

**SECTION 2. Conflicts:** All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

**SECTION 3. Severability:** 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 4. Effective Date:** 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:**

First Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Gary A. Blair	_____	Tom Abraham	_____
Tom Laputka	_____	Anthony Pupello	_____
Anthony Pupello	_____	O. William Crippen, Vice Mayor	_____
Harley Strickland, Mayor	_____		

**ROLL CALL VOTE AS FOLLOWS:**

Second Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Gary A. Blair	_____	Tom Abraham	_____
Tom Laputka	_____	Anthony Pupello	_____
Anthony Pupello	_____	O. William Crippen, Vice Mayor	_____
Harley Strickland, Mayor	_____		

**PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2011.**

**ATTEST:**

**AUTHENTICATED:**

\_\_\_\_\_  
Deborah J. Renner, CMC, City Clerk

\_\_\_\_\_  
Harley Strickland, Mayor

Approved as to form and legal sufficiency:

\_\_\_\_\_  
W.E. Reischmann, City Attorney

## EXHIBIT "A"

### DIVISION 1. –CODE ENFORCEMENT THROUGH HEARING OFFICER PROCESS.

#### Sec. 2-131.5. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in Article IV, Divisions 1 and 2, except where the context clearly indicates a different meaning:

City shall mean the City of Orange City.

Code enforcement officer shall mean any designated or authorized employee(s) or agents(s) of the City, whose duty it is to enforce codes and ordinances enacted by the City. Code enforcement officers may include, but are not limited to, code inspectors, animal control officers, law enforcement officers, or fire safety inspectors. Provided, however, nothing herein shall be construed to authorize any person designated as a code enforcement officer to perform any function or duty of a law enforcement officer, as defined in F.S. §§943.05—943.255, other than as specified.

Irreparable or irreversible violation means an act or event that is impossible or impractical to change back to a previous or original condition or circumstance.

Itinerant or transient violation means a single prohibited infraction rather than ongoing condition or circumstance.

Local governing body shall mean the City Council of Orange City.

Person shall mean individuals, associations, joint ventures, partnerships, corporations, or any other group or combination.

Repeat violation means a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board or any other quasi-judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations.

~~Sec. 2-151. Definitions~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*City* shall mean the City of Orange City.~~

~~*Code enforcement officer* shall mean any designated employee(s), agent(s), or inspector(s) of the city, whose duty it is to enforce codes and ordinances enacted by the city. Code enforcement officers may include, but are not limited to, code inspectors, animal control officers, or fire safety inspectors. Provided, however, nothing herein shall be construed to authorize any person designated as a code enforcement officer, to perform any function or duties of a law enforcement officer, as defined in F.S. §§ 943.085—943.255, other than as specified.~~

~~*Person* shall mean individuals, associations, joint ventures, partnerships, corporations, or any other group or combination.~~

~~*Repeat violation* shall mean a violation of a provision of a code or ordinance by any person previously found to have violated the same provision within five years prior to the current violation by the code enforcement officer established by the city or the county court of the county.~~

Sec. 2-152. Authority and purpose.

This article is adopted pursuant to the authority granted municipalities by F.S. ch. 162, part II (F.S. § 162.21 et seq.), a supplemental method of enforcing codes and ordinances; the Home Rule Powers Act (F.S. § 166.011 et seq.) and the Charter of the city, for the purpose of protecting and enhancing the public health, safety and welfare of the citizens of the city.

Sec. 2-153. Training of officers.

The training and qualifications of the employees or agents to be designated as code enforcement officers shall be determined by the city manager.

Sec. 2-154. Authority to issue citations.

Any code enforcement officer is hereby authorized and empowered to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted city code or ordinance and that the county court will hear the charge. ~~A code enforcement officer, other than a sworn law enforcement officer, shall not make any physical arrest or take any person into custody except when acting as an agent of the state fire marshal, as provided for by F.S. § 633.14.~~

Sec. 2-155. ~~Violations;~~ Procedure.

(a)

~~A code enforcement officer is authorized to issue citations to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted city code or ordinance. However, prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of the code or ordinance or statute and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days unless additional time is granted based on the circumstances surrounding the violation by the city manager or his designee. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, a code enforcement officer may issue a citation to the person who has committed the violation. A code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found, or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or if the violation may cause irreparable or irreversible harm.~~

(b)

~~A code enforcement officer shall issue a notice of violation in a form prescribed by the city, and it shall contain:~~

(1)

~~The date and time of issuance.~~

(2)

~~The name and address of the person to whom the citation is issued.~~

~~(3)~~

~~The date and time the civil infraction was committed.~~

~~(4)~~

~~The facts constituting reasonable cause.~~

~~(5)~~

~~The number or section of the code or ordinance or statute violated.~~

~~(6)~~

~~The name and authority of the code enforcement officer.~~

~~(7)~~

~~The procedure for the person to follow in order to pay the civil penalty or to contest the citation.~~

~~(8)~~

~~The applicable civil penalty if the person elects to contest the citation.~~

~~(9)~~

~~The applicable civil penalty if the person elects not to contest the citation.~~

~~(10)~~

~~A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he shall be deemed to have waived his right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.~~

~~(e)(a)~~

~~After issuing a citation to an alleged violator, a code enforcement officer shall:~~

~~(1)~~

~~Deposit the original citation and one copy of the citation with the appropriate county court of the county Volusia County Clerk of Court or other appropriate representative of the County Court of Volusia County;~~

~~(2)~~

~~Provide the alleged violator with one copy; and~~

~~(3)~~

~~Retain one copy in the code enforcement officer's department file.~~

~~(d)~~

Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or 775.083.

(e) (b)

Each violation of the city code or ordinances in the schedule of violations adopted, pursuant to section 2-158, is a separate civil infraction. Each day such violation continues beyond the ~~30-day grace period~~ time period to correct the violation provided on the notice of violation shall be deemed to constitute an additional and independent violation.

Sec. 2-156. Delivery of warning notices and citations.

- (a) ~~A copy of warning Notices and citations shall be issued in compliance with Article IV, Division 1 of this Chapter and F.S. §162.12, provided to the alleged violator by hand delivery by the code enforcement officer. In the absence of the alleged violator, the warning notice or citation shall be delivered to the alleged violator by leaving a copy of the warning notice or citation at the alleged violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the warning notice or citation or the warning notice or citation shall be provided by registered or certified mail, return receipt requested.~~
- (b) ~~Issuance of a warning notice or citation shall be made in person to a person doing business may be accomplished by leaving a copy at the person's place of business, during regular business hours, with any employee and informing the employee of the contents or by registered or certified mail, return receipt requested. Each employee of a person doing business shall be deemed to be an agent of the person doing business for service of warning notices and citations.~~
- (c) ~~Whenever an alleged violator is required to do some act within a prescribed period after a wrning notice or citation is delivered by mail, three days shall be added to the prescribed period.~~

Sec. 2-157. Penalties.

- (a) A violation of the City code or ordinance deemed is a civil infraction in accordance with F.S. §162.21(5)(a), shall have  
(1) a maximum civil penalty shall not to exceed \$500.00, and a  
(2) A civil penalty of less than the maximum civil penalty if the person who has committed the civil infraction does not contest the citation.

(b) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree punishable by imprisonment not exceeding 60 days and by a fine as provided in F.S. §§775.082 and 775.0835.

Sec. 2-158. Violation classifications and civil penalties.

(a) Pursuant to F.S. §162.21(5), the City Council is authorized to adopt a schedule of violations and penalties which may be adopted and amended subsequently by resolution; furthermore the City is hereby authorizes the City Manager to thereafter revise the schedule of penalties to be assessed by the code enforcement officer.

~~(b) The city manager is hereby authorized to establish and implement a schedule of violations and penalties. Said classification and schedule authorized by this article may be adopted and subsequently amended by resolution.~~

~~(e)~~(b) Civil penalties received by the county court from violators of the city code or ordinances shall be paid into the general fund of the city. Court costs shall be retained by the clerk of the circuit court. Court costs and other surcharges imposed pursuant to law shall be in addition to the penalties or fines imposed against the violator.

Sec. 2-159. Procedures to pay or contest citations.

(a) Any person cited for a violation under this article shall, ~~within ten days of issuance of the citation:~~

- (1) Pay the civil penalty set forth in the schedule of violations at the clerk of the circuit court's office within the specified time period on the citation or notice from the clerk of court; or
- (2) Request a court date to contest the citation in county court within the specified time period on the citation or notice from the clerk of the court.

~~(b)~~

~~If the person cited pays the civil penalty as provided in subsection (a)(1) of this section, he shall be deemed to have admitted the civil infraction and to have waived his right to a hearing to contest the citation.~~

~~(c)~~

~~If the person cited receives a court date as provided in subsection (a)(2) of this section, he shall appear on said court date to contest the citation in~~

~~county court and he shall be deemed to have waived his right to the civil penalty set forth in the schedule of violations and shall be subject for each violation to the maximum civil penalty, which shall not exceed \$500.00 plus any applicable court costs.~~

(d)

~~If the person cited fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he shall be deemed to have waived his right to contest the citation and judgment may be entered against the person for each violation for an amount up to the maximum civil penalty not to exceed \$500.00 plus any applicable court costs.~~

(e)

~~Any person who willfully refused to sign and accept a citation issued by a code enforcement officer or refused to provide the information required in the citation shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or 775.0835.~~

#### Sec. 2-160. Provisions Supplemental.

It is the legislative intent of this article to provide an additional and supplemental means of obtaining compliance with the city code and ordinances. Nothing contained herein shall prohibit the city from enforcing its code or ordinances by any other means.

#### Sec. 2-161. Judgment of court.

If the person fails to pay the civil penalty or request a hearing in the county court; fails to appear in court to contest the citation when a hearing has been requested; or fails to appear in court as may be required; the court may enter judgment for an amount not to exceed \$500.00 per infraction and/or may issue an order to show cause upon the request of the issuing agency. The court order to show cause shall require such person to appear before the court to explain why action on the citation has not been taken. If any person who is issued such order fails to appear in response to the court's directive, the person may be held in contempt of court. In lieu of a civil penalty, or in addition to a civil penalty, the court may order the violator to perform a public service or other penalties provided by law.