



The Ordinance Review Committee will meet in the
Water Plant Conference Room located at 1401
County Road 1, Dunedin, FL 34698

WEDNESDAY, NOVEMBER 7, 2018

6:00 P.M.

ORDINANCE REVIEW COMMITTEE AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. APPROVE THE OCTOBER 1, 2018 ORC MINUTES
4. TOPICS
 - A. Chapter 1, General Provisions
 - B. Chapter 2, Administration
 - C. Chapter 26, Elections
 - D. Chapter 30, Emergency Services
 - E. Chapter 42, Human Relations
 - F. Chapter 46, Law Enforcement
 - G. Chapter 54, Parks and Recreation
5. NEXT MEETING: December 3, 2018
6. ADJOURNMENT

***** THIS MEETING IS OPEN TO THE PUBLIC *****

DUNEDIN, FLORIDA
MINUTES OF THE ORDINANCE REVIEW COMMITTEE MEETING
NOVEMBER 7, 2018
6:00 P.M.

1. **CALL TO ORDER.** Denise called the meeting to order at 6:00 p.m.

2. **ROLL CALL**

PRESENT: Mike Bowman, Chair
Grant Painter, Vice-Chair
Kathy Carlson
Manny Koutsourais
Patricia Morea
Eric Peterson
Jen Welch

STAFF: Thomas J. Trask, City Attorney
Denise M. Kirkpatrick, City Clerk

GUEST(S): None.

3. **APPROVE THE OCTOBER 1, 2018 ORC MINUTES**

MOTION: Motion was made by Pat and seconded by Eric to approve the ORC minutes of October 1, 2018 as presented.

VOTE: Motion carried unanimously.

4. **TOPICS**

Eric advised Chapter 54 (Parks and Recreation) will not be discussed tonight because Vince and Lanie had a conflict. He advised he had told them the ORC meeting was on Monday, November 5th date, prior to it being changed to November 7, 2018, at the request of several ORC members so they would be able to attend the Skinner Boulevard Public Meeting on November 5, 2018 at the same time.

4.A. **Chapter 1, General Provisions**

Sec. 1-2. Definitions and rules of Procedure, revisions suggested:

#1 Amend the definition of "Tenant and occupant" (suggested by Mike)

Tenant and occupant. The terms "tenant" and "occupant," applied to a building or land, shall include any person holding a written or oral lease of, or who occupies the whole or part of such building or land, either ~~along~~ alone or with others.

#2 Amend the definition of "Written and in writing" (suggested by Mike)

Written and in writing. The terms "written" and "in writing" shall be construed to include any representation of words, letters or figures, whether by printing, duplicating, handwriting, electronic communications or otherwise.

#3 Delete the second definition of "Sidewalk" under "Signature and subscription" (suggested by Mike)

Sidewalk. The term "sidewalk" shall mean any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians, excluding parkways.

Signature and subscription. The terms "signature" and "subscription" include a mark when the person cannot write.

~~Sidewalk. The term "sidewalk" shall mean any improved portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians, excluding parkways.~~

Manny mentioned the first definition reads "any portion of a street" and the second definition reads "any improved portion of a street".

Tom advised the first definition is correct whether improved or not. Tom also commented if we keep both, the first could be changed to read "any unimproved portion". Discussion ensued, but it was decided to strike out the second definition of "Sidewalk" and to leave the first as it existed.

#4 Amend the definition of "Charter" (suggested by Pat)

Charter, as amended. The term "Charter, as amended" shall mean the Charter of the City of Dunedin, Florida, as printed in part I of this volume.

Pat inquired if the ORC should recommend to insert the ", as amended". After some discussion it was decided no additional change was required.

#5 Amend the definition of "City" (suggested by Pat)

City. The term "city" shall be construed as if the words "of Dunedin" followed it.

Pat inquired if the ORC should recommend to extend it to include officers, agencies and employees. Tom responded no with the reason being that it will be separated out in the rest of the Code.

#6 Add a Conflict provision somewhere in Chapter 1

Pat inquired if the ORC should recommend there be a conflict provision somewhere in the general description. Conflict meaning if there is a conflict between the provisions in the Chapters and the Articles in the other Chapters in the Code the more stringent ordinance or provision shall prevail.

Tom stated that was a good idea. He advised that normally most if not all of our Ordinances have a conflict provision similar to that, but when we actually codify the ordinance we don't include all those paragraphs at the end of the ordinance like coming effective, severability and conflicts; so it is a good idea to include that in Chapter One (1). He stated he will draft some language to be considered at another meeting so we don't waste time trying to draft it tonight. The ORC agreed it would be Section 1-16 and Tom will prepare conflict language to read the more stringent or restrictive portion of the Code will apply.

Pat advised she would like to make reference that if the provision cannot be resolved that the matter be referred to the legal department for resolution.

Tom advised he would not suggest adding that because that makes it subjective on the City's part and when someone is reading the Code, they want to know what's going to apply and what's not. The ORC agreed.

4.B. Chapter 2, Administration

Grant advised he did not find anything compelling except Sec 2-206 and Sec 2-207 repeat. Tom advised one page wasn't removed when updating it with a new supplement.

Grant stated he had no other changes. Tom advised sometimes there is no need to recommend any changes, but they must be reviewed. The ORC agreed there were no recommendations to be made for Chapter 2.

Chapter 6, Alcoholic Beverages

Grant advised he was also the lead person for Chapter 6, Alcoholic Beverages and asked that it be added to tonight's agenda, and understands the ORC did not know to collectively review Chapter 6, but yet he has a rather big subject within that to discuss that Greg Rice is sleeping on it kind of thing, but inquired if that could be brought up and maybe the seed be planted and then everyone can read Chapter 6 knowing what he has in mind or would everyone prefer to wait. The ORC agreed to know about it.

Grant stated:

First he wants to say that he's glad he's probably the only one that got the portion of the code that discusses fleshy protuberances.

Second, he has several things in Chapter 6, but the biggest thing on his mind is the 50 foot restriction to schools and churches in the downtown core. He is of the opinion that provision needs to be dropped, because it is not a good fit to our downtown core. It excludes any sale of alcohol and one could have a very family friendly place that can't be within 50 feet of a church or a daycare.

For instance in the new Artisan building, if someone wanted to serve wine right now right next to something that just became a daycare on the ground floor, that couldn't happen.

In the downtown core environment we're creating, where things are becoming tighter and tighter, that 50 foot perimeter adjacent to Skips, the church. Eric commented that Sweet Peas is another one. Pat clarified it wasn't a school.

Mike advised tonight's not the time for discussion and stated they should all read Chapter 6 and be prepared for the next meeting.

Tom commented before we move on he just wanted to share with you some of the things that are happening as far as his experience with the other cities he represents. One thing that Oldsmar did was to allow him to draft an ordinance that would exempt out breweries, micro-breweries and pubs. Oldsmar didn't allow an exception on the distance requirement for establishments that sold alcohol/liquor, but they allowed the exemption for breweries, micro-breweries and pubs, which are specifically defined.

The reason they adopted an ordinance was because they didn't want to create a red light district or a district where it is bar after bar after bar throughout the city, because once in there they will be grandfathered and if they're successful, which we want them to be, we will end up like another Ybor City. So that is what the distance requirements are for.

As for the differences between the downtown core – it looks like an exception was allowed in 2014, which he drafted but does not remember doing that, but that's when it was added to shrink from 300 feet to 50 feet; however, what you're suggesting is none or a smaller amount, but don't allow it for every establishment that sells alcohol, but maybe do exceptions for certain things.

Grant advised he thinks it's even written a different way for restaurants that are able to sell beer and wine (i.e. Section 6-31).

4.C. Chapter 26, Elections

Kathy advised that was a long Chapter.

#1 Section 26-2, in the definition of "Issue" and "Issue election," what does "straw ballots" mean and when she looked it up all it came up with is straw poll or straw vote.

Tom advised straw ballot is basically a piece of paper with something written on it and it's usually pulled out of a cup or a hat. He commented there have been elections locally in Pinellas County that have been won and lost by a straw vote. In 1991 or 1992 in Belleair Beach, we had an election and it was a tie vote between two individuals and we decided who was going to be the Commission by a straw vote. Tom clarified it is a way to solve a problem in the simplest terms.

Manny advised Section 26-123 is titled "Straw Ballot" and it reads different. Tom stated the title is incorrect it should be titled "Nonbinding referendum."

The ORC then went back to Section 26-2 "Definition" and referred to the definition of "Issue" and "Issue election." Tom advised it is not a definition of "straw ballot," it is part of the definition of "issue."

Manny googled it and advised "a straw poll or straw vote is an ad hoc or unofficial vote. It is used to show the popular opinion on a certain matter and can be used to help politicians know the majority opinion and help them decide what to say in order to gain votes. Straw polls provide dialog among movements with large groups." (Wikipedia)

Tom inquired the question is do we want to change "straw ballot" to "nonbinding referendum" in the definitions of "issue" and "issue election" and change the title of Section 26-123 from "Straw ballot" to "Nonbinding referendum." The ORC agreed to the proposed recommendation.

Manny stated he's just playing devil's advocate, but if you're having a referendum, it is a vote and can somebody challenge that and say you can't have any nonbinding referendum?

Tom advised when you look at the election code under Florida Statutes, there are certain "Home Rule" powers the City still has and based on using the City's "Home Rule" powers to allow for something to happen other than what is in the current election code. The answer is I think that you can do it, because under "Home Rule" yours is the rule of the law that's closest to the people and what the constitution says is that we're going to allow for Home Rule in situations where it is not otherwise provided for by general law. In other words a statute. He said if anyone challenges it he believes the City would prevail. Also, as far as he knows this section has never been challenged.

Kathy advised in Section 26-117(a) there is a word "question;" however after trying to look it up she thought maybe the word should be "question." The ORC members agreed to that change.

#2 Pat commented with regard to Section 26-2, the definition for "Special election" and inquired if there should be a "Public Notice" provision. Tom stated it is already

required per statute (it is also mentioned in Section 26-114 "Notice of Election"). The ORC concluded they would leave it as written.

4.D. Chapter 30, Emergency Services

Jen advised this Chapter has some provisions that are outdated.

- #1 Amend Section 30-34(a) "It shall be presumed ~~that~~ that an alarm system caused a false alarm when the alarm was not the result of an actual emergency. ...**

The ORC concurred.

- #2 Under Section 30-34(b) there is some discussion about appealing the decision of the law enforcement officer or the fire chief or any other**

Jen stated that when talking with Fire Chief Jeff Parks and Fire Marshal Michael Handoga she found out that what has changed is because we don't have our own police department anymore, alarm systems whether they be for crimes or fire are registered with the Pinellas County Sheriff's Office (PCSO), which she felt was a big shift.

For instance, under Section 30-35(a) it talks about the City Manager or his designee establishes the official notification forms and procedures to carry out the notification requirements. She stated that actually happens with the PCSO too.

She presented Tom with information about their SHARP Program, because the City does not register the alarms anymore. She stated she did not know if we wanted to reference the PCSO policy or if we have to let the public know they have to register with the PCSO, because it is a totally different system.

Jen stated if it is a burglary or impacts law enforcement it stays with the PCSO and they will send a citation; however, if it is a fire alarm - our Fire Department can actually send a citation. She stated the Fire Department would like to keep that option.

Jen stated there are some sections that work, but a lot that do not.

Tom inquired if the Fire Chief or Fire Marshal provided any suggested changes. Jen responded they had no suggestions, they were just saying how much it has changed. They commented it is all shifted to the SHARP Program.

Tom advised the ORC can't order the PC to do anything. The only thing we can do is ask them to comply with the contract we have with them. Tom advised he needs to know a little bit more about this.

Eric/Grant advised in talking with a friend in the Fire Department just recently they had to fine someone locally in his neighborhood, because the alarm went off over and over and they couldn't get them to fix the problem, because of so many times they had to back up the truck on Howard Avenue.

Jen inquired if it was possible to move that provision into Chapter 18 "Civil Emergencies."

Tom advised it looks like he needs to sit down with the Chief and maybe Jen if she wants to be involved with that and try to figure out the best approach, because obviously this is not working now. He stated maybe by the next meeting we might be able to come back with a suggestion and see whether or not it is acceptable to make recommendation to the Commission.

Mike inquired if Tom wanted to wait until the February meeting, but Tom responded no, we need to keep the pressure on, because we only have six months to finish this project. The ORC agreed to place this on the December 3, 2018 ORC Agenda.

4.E. Chapter 42, Human Relations

Pat advised she spoke with Human Resources Director Theresa Smalling who oversees the human relations position, which really has to do with civil rights provisions.

Pat thought the ORC should add additional provisions and suggested the following:

#1 Add a General Purpose Section:

The general purposes of the Human Relations ordinance are to secure for all individuals within the city freedom from discriminatory practice and to comply with the necessary state and federal regulations.

#2 Add Powers section:

In talking with Theresa, she said it is based on the Florida Statutes and is referenced to the County when a situation occurs.

Within the limitations provided by law, the City shall have the following powers:

To promote the creation of and to provide continuing assistance to local commissions on human relations and to cooperate with individuals within the state, local or other agencies.

To receive complaints and coordinate activities, pursuant to F.S. 112-318.

To adopt, promulgate, amend and rescind rules to effectuate the purposes of this ordinance and to impose a penalty for violation of this ordinance.

#3 Had comments about the Penalty provision:

Pat advised she also had some comments about the penalty provision.

She suggested to have the City Commission determine that any party willfully violated the provisions of the Article or who shall aid or cause a violation of any provision shall be deemed guilty of a misdemeanor and upon conviction it shall be referred to the County or the State's Civil Rights Commission.

Tom advised he did not think we really want to go down the path of creating a criminal penalty for violating a City code provision.

Pat stated it's there in:

Section 42-35 "Penalty for violation of article."

Any party willfully violating any of the provisions of this article or who shall aid or cause the violation of any of such provisions shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished in accordance with section 1-15 of this code.

Tom said he really does not think that's what we should be doing. We have never, that he was aware of in the City's history, gone after someone on a criminal basis for violating a City Code provision. He stated he realizes it is there, and probably in Section 1-15 as well, but commented is that really something we want to do?

Pat replied not necessarily. It is probably best to have the Commission, if it comes to notification, if it rises to the level of someone getting it should be referred to the County or the State.

Mike did not know why the HR person couldn't just refer it. Pat responded she did not feel comfortable about it being a direct referral; she felt the Commission should make that decision.

Grant stated he was really extremely uncomfortable and Mike agreed.

Pat stated "just referring to the State." She agrees with the violation Grant stated the Commission has to decide collectively whether or not it should be referred; so therefore, they are the first jury.

Mike commented whether she likes it or not it should still fall under human relations.

Eric stated he could see where Pat was coming from, but commented that looking at it differently he did not know why the Commission should be involved.

Tom advised he wanted to explain how the codes are enforced in Dunedin. There are a few different options:

1. One is to go before the Dunedin Code Enforcement Board (DCEB).
2. F.S. 162 allows the City to have a police officer issue a citation and they go before the County Court, and we call that the "love court." It is a local ordinance and is placed on the violation calendar and that's where this would go. Now the way it currently reads, if someone has been cited for violating this particular code provision it would go to the County Court and the judge would look at the penalty violations under Sections 1-14 and 42-35 and decide whether or not it meets those requirements, and that way it would keep the politics out of the situation.
3. He also stated the ORC could ask the Commission to change it to allow them to be put in that position and he did not believe they would do it. The Commission wants to help their residents not necessarily punish them.

Mike commented the DCEB does not want that responsibility either.

Pat advised she was surprised HR would be involved with it. It has nothing to do with civil rights of individuals with the confines of the city. She stated there is a specific County department that manages this in conjunction with the State.

Mike commented if someone files a complaint would it go to HR. Tom advised no, a complaint would go to the City Manager. Pat commented then the City Manager assigns it to the County or the State.

Tom thinks that when someone violates one of the code provisions, you don't need to appoint a person to determine whether a provision has been violated or not, because that is what the judge is going to do. If there is probable cause to believe that one of these provisions has been violated, your Sheriff's Office is going to be the one that issues the citation stating that person is in violation of Section 42-32, it will be sent to County Court, they will have to do an appearance before the judge and the judge would decide based upon the testimony and evidence that he or she heard, whether there was a violation and the judge will determine what the penalty will be i.e. "a fine

not exceeding \$500.00 or imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment.”

After additional discussion, Tom advised the ORC should consider recommending the suggestions for:

#1 Add a General Purpose Section:

The general purposes of the Human Relations ordinance are to secure for all individuals within the city freedom from discriminatory practice and to comply with the necessary state and federal regulations.

#2 Add Powers section:

In talking with Theresa, she said it is based on the Florida Statutes and is referenced to the County when a situation occurs.

Within the limitations provided by law, the City shall have the following powers:

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To receive complaints and coordinate activities, pursuant to F.S. 112-318.

To adopt, promulgate, amend and rescind rules to effectuate the purposes of this ordinance and to impose a penalty for violation of this ordinance.

The ORC concurred.

4.F. Chapter 46, Law Enforcement

Eric advised the chapter was rather thin, but it really defined when a new permit is issued, when a Certificate of Occupancy (CO) is issued, or when an occupiable structure is annexed into the City, it is subjected to a law enforcement public safety facilities fee. It goes on to explain the fees are held in the “law enforcement capital improvement trust fund,” which specifically states the proceeds be can only be used for capital expenditures consisting of buildings, building equipment or improvements, vehicles and equipment for crime prevention, and law enforcement protection services necessary for the protection of the public.

He advised he was unable to identify any areas with grammatical issues or any conflicts between the sections.

He said he did notice that in Section 46-32 the one thing that appeared to be missing from the definition of “Public assembly unit or building” was a reference to “parking garages.” He said since parking garages are in our future, he thought he would bring it before the committee.

Pat inquired if we don’t have a law enforcement department here in the City, why would we be charging a facilities fee for law enforcement. She asked if we’re collecting that and paying it to the County. Tom replied no, but if you remember that until recently, the Sheriff had a north county location in our Technical Services Building on the first floor. So when the money would come in, we would use this money to do buildout, remodeling, electrical, plumbing, air and all those similar types of things. So it wasn’t going to law enforcement, but it was providing a benefit to law enforcement. Pat inquired if we are doing it now that they moved out of our facility. Tom replied no and the first floor is vacant and being used for storage. The building they are in now is owned by Mr. Kokolakis and so other than them

having a storage area where the garbage trucks are stored on Virginia. We store their S.W.A.T. equipment and assume we would be using the money for that; he commented that it is not a whole lot of money.

Tom advised when big development comes into the City, this in one of the fees that is waived.

Manny inquired if it was necessary to have this in the code. Tom responded he always thinks that if we can collect money for development in our City we should never do away with a fee that is on the books. Grant advised it is a tool in the tool box and Tom concurred.

Eric inquired about adding "parking garages" in the definition of "Public assembly unit or building." Tom commented that would fall under commercial buildings. Nobody is just going to build a parking garage on its own. It would probably be attached to some type of retail. Tom felt it was covered already.

Eric reiterated he could not find any conflicts or grammatical errors. The consensus of the ORC was there are no changes to Chapter 46.

4.G. Chapter 54, Parks and Recreation

There was no discussion on this Chapter.

5. Other Business

The ORC identified the Chapters to be discussed on December 3, 2018

They included:

- Chapter 6, Alcoholic Beverages
- Chapter 18, Civil Emergencies
- Chapter 30, Emergency Services
- Chapter 38, Fire Protection and Prevention
- Chapter 42, Human Relations

6. Next Meeting: December 3, 2018

7. Adjournment

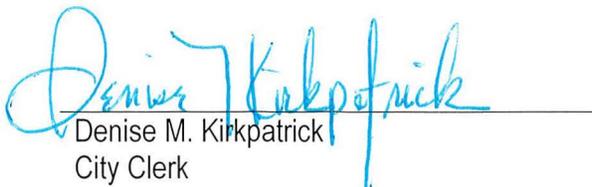
The meeting adjourned at 7.50 p.m.

NOTE: An audio copy of this meeting was completely recorded and is in the official file.



Mike Bowman
ORC Chair

Attest:



Denise M. Kirkpatrick
City Clerk