

PUBLIC NOTICE



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

MONDAY, MAY 6, 2019

6:00 P.M.

ORDINANCE REVIEW COMMITTEE AGENDA

1. Call To Order
2. Roll Call
3. Approve the Minutes – March 4, 2019
4. Public Input
5. Topic
 - A. Chapter 6, Alcoholic Beverages
 - B. Chapter 10, Animals
 - C. Chapter 22, Code Enforcement
 - D. Chapter 34, Environment
 - E. Chapter 62, Sales
 - F. Chapter 70, Taxation
 - G. Chapter 82, Vehicles for Hire
 - H. Miscellaneous
6. Next Meeting: June 3, 2019
7. Adjournment

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

DUNEDIN, FLORIDA
MINUTES OF THE ORDINANCE REVIEW COMMITTEE MEETING
MAY 6, 2019
6:00 P.M.

1. **Call to Order.** Mike called the ORC meeting to order at 6:00 p.m.

2. **Roll Call**

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

Staff: Thomas J. Trask, City Attorney
Denise M. Kirkpatrick, City Clerk
Lanie Sheets, Parks & Recreation Superintendent
Greg Rice, Planning and Development Director

3. **Approve the Minutes – March 4, 2019**

March 4, 2019

Mike noted Tom had pointed out on Page 19-3 the bottom paragraph, Vehicles for Hire it says Eric advised this chapter is preempted by the State; it should be Tom and not Eric.

MOTION: Motion was made by Manny and seconded by Pat to approve the ORC minutes of March 4, 2019 as amended.

VOTE: Motion carried unanimously.

4. **Public Input – None**

5. **Topics**

5.a **Chapter 6, Alcoholic Beverages**

City Attorney Trask recalled that there was a consensus here we would delete the word "church" from the paragraphs under Section 6-31, which "church" was referenced three times. He made a note on his copy that when the draft is done in the report that comes back to the committee that the word "church" will be deleted.

Mike determined the members were in agreement.

MOTION: Motion was made by Manny and seconded by Pat to recommend approval to delete the word "church" from the paragraphs under Section 6-31 which "church" that was referenced three times.

VOTE: Motion carried unanimously.

5.b **Chapter 10, Animals**

Greg noted one small paragraph he rewrote: Section 10.4 (a)4

The committee members recalled there was consensus at the previous meeting.

Tom explained:

Things are coming back to the committee because they got them when they were in the meeting and even though there was a consensus, if there was some need to go back and

review it all and there were different thoughts since then this is the opportunity if after thinking it over they are not interested in doing that.

The last time there was a consensus to move forward with that one change in that one sub paragraph.

Mike verified with Tom he did not think another vote was needed on this item.

5.c Chapter 22, Code Enforcement

Mike noted that Tom rewrote a few sections for this topic.

Tom advised the Code Enforcement Board was adopted by way of an ordinance done in the 1980's and it is basically a cut and paste of the same provisions in the Florida Statute Chapter 162. The attempt is to make them as consistent as possible both the statute and the code. Over the years there have been a few changes. It might have been noted in some of the sub paragraphs there were some changes in 2014 probably as a direct result of the Ordinance Review Committee in 2014. He wanted to compare it to the State Statute and update it to 2019. Some are to fix some gender terms. He reviewed the changes and explained the reasoning.

Special Magistrate Section 22-3 (b) 3

In sub paragraph 3, the statute just refers to it as the Special Magistrate, which Dunedin does not have. If the City did have one it would not be a Code Magistrate versus a different type. He wanted it to be consistent throughout both the statute and the code. It is referred to throughout the Code as Special Magistrate, but for some reason in this particular paragraph it says "Code Special Magistrate". He wanted to make it consistent by taking out the word "Code".

The next sub paragraph refers to the Special Magistrate performing "his" duties. If one is ever appointed he wanted to be sure it says "his or her" duties. He noted there are many female special magistrates throughout Pinellas County and he works with many of them.

Grant stated he is also seeing the word "their" used more and more as a neutral.

Section 22-4

This is a very important provision in that people will be in the middle of a code enforcement action and they decide to sell real quickly before the lien hits or they go before the Code Enforcement Board and be obligated to do certain things. He wanted that it should be absolutely clear when people transfer property. There is a provision in the State Statute that talks about how to handle that.

In the State Statute it talks about the Code Enforcement Board, Special Magistrate or Court transferring title; our code did not talk about a Special Magistrate so he was trying to pick it up there to make it consistent

Sub paragraph 4 changes he made comply with the state statute. This gives a deadline for someone to file a notice with the Code Enforcement Officer that they have transferred the property; they have to do it within five (5) days of the transfer. Previously the code just said they had to do it; however, did not say when which was obviously a problem.

He also added in that sub paragraph the language in the statute basically saying that if they fail to disclose the information about a code enforcement action pending that there is the presumption of fraud in the transfer. This protects the buyer; it does not do so much for the

City, but it protects the buyer by knowing fraud has been committed and they can go after the seller if this was done behind the buyer's back.

These are word for word what is in the state statute.

Section 22-42. Definitions

The reference to see Section 2-91 of the Code of Ordinances as it did not make any sense he deleted as it is not necessary for the definition of Code Enforcement Officer.

Section 22-44. Title of Appointments or Membership Skills

The Code Enforcement statute is very specific and it basically says we want these types of individuals with these types of expertise to be on the Code Enforcement Board. Those are architect, a business man, an engineer, a general contractor, subcontractor and realtor. The change is to business person because that is what the statute says.

When we have those types of people available who have applied there should be a direction to putting them in place as one of the board members in order to have that expertise.

Section 22-47. Legal Counsel

This is one of the bigger changes he made.

Currently the Code reads:

The City Attorney shall act as counsel for the Code Enforcement Board.

He has seen in his litigation for the City it is very awkward for him to represent the Code Enforcement Board and then as soon as the case is over begin sending demand letters on behalf of the City. Basically this is switching hats which he does not like and he wants to be able to represent the City in front of the Code Enforcement Board. If the Code Enforcement Board needs its own attorney then we will hire an attorney for the Code Enforcement Board and this will avoid what appears in his mind to be almost sort of a conflict. That does not mean that if the Code Enforcement Board does not hire a lawyer and he does not know of any that have in the cities he represents, but if they would have to hire a lawyer of course the City would pay for it and they would be at each and every meeting. He still answers questions of the Code Enforcement Board no matter what; due process questions because as an officer of the court he is obligated to do that. Procedural matters, he is an officer of the court and is required to do that. He does not think they will need a Code Enforcement Board attorney, but if there is he wants to clear up that conflict.

It does not read this way in the statute; he has added it because he thinks it is needed. His firm is very persistent in collection efforts for the City and they have collected about \$1Million in code enforcement fines over the past five or six years. It is a significant amount of money and there is significant exposure.

Tom asked if the committee members had any issue with that change and there were no objections.

Section 22-72 – at the end of the second "violator and give him "or her" a reasonable time to correct the violation.

Section 22-73 (a):

Some language was deleted that says "~~the automatic fine shall be levied~~". The sentence does not flow correctly and it is not in the state statute. The City does not really have an automatic fine as the Code Enforcement Board has to hear testimony and evidence and then

make the determination of whether or not a fine applies. The Code Enforcement Board could make a determination that there is no fine.

Section 22-73 (b) -- fix the last sentence to read "The repeat violator may choose to waive his "or her" to this hearing and pay the costs as determined by the code enforcement board."

Section 22-76 – the words "of the County" were added so that when recording the code enforcement liens they will be recorded *in the public records of the County*.

There have been questions in the past as to whether the liens were being recorded in the public records of the City; no they are recorded in the County and he wanted to make that clear.

Also there was a typographical error on the fourth line down "and the findings therein shall be ~~finding~~ binding upon". . .

Section 22-77 Changed "his attorney" to his or her attorney

Section 22-79 (a)

Tom advised he cleaned up the repeat violation language.

When you are a repeat violator if you have violated the same code provision cited for before and found in violation and you do it again within a five year period of time that is considered a repeat violator.

A repeat violator does not receive the same type of notice requirements, because of the fact if you did not learn the first time you should not be given a second opportunity to violate the code. The fine starts at a different period of time.

An original code violation, the Code Enforcement Boards allows a period of time to come into compliance, sometimes a week, sometimes two weeks or a month and sometimes more than a month. A repeat violator does not get the benefit of more time and the fine begins to run on the day of the inspection of the property. This is clearing up this language to show the fine will begin to run on the day it is found to have occurred by the Code Enforcement Officer.

When it gets to the Code Enforcement Board they are actually considering the fine retroactively to the date of the inspection. That is the way it has been treated for 30 years and it is nothing different; he was just cleaning up the code to make it clear.

Section 22-79 (b)

In the last sentence it talks about the City Commission and it ends in the sentence, "*this does not create any liability against the City Commission for any damages*". It is really any liability against the City which would include the City Commission, the Charter Officials, every employee of the City, the City as an entity itself. He did not want it limited to releasing liability of just the City Commission, but to cover the entire City; he just deleted the word "Commission".

Section 22-81. Recording of Orders and Imposing Fines and Liens

Tom advised John Hubbard was very clever many years ago in the late 1980's, early 1990's and he put in this provision that the City's liens are superior to everyone else's liens in the world. The firm made those arguments in court many times and a lot of other cities saw what was being done in Dunedin and followed in suit adding that same language to their code.

Unfortunately, one of those cases got to the Appellate Court and they said, no the City's liens were not superior to those of mortgages. It was a good try, but the law now is that the City's liens are not superior to any other encumbrance and especially mortgages. That second sentence has been deleted because the case law has changed.

The other language he has added here is basically for it to read almost word for word what it provides in the state statute. It talks about not only can the City foreclose a Code Enforcement Lien, but it can also seek a money judgment. This language added to the bottom cleans that up a little. The scenario is that many people who have code enforcement liens filed against them; their property is homesteaded and under the Florida Constitution their property is protected; that means the City can never foreclose that lien against that particular property. In fact the state statute even says that you cannot foreclose homestead property.

The question then was how to collect the liens. About ten years ago, the statute changed and it said we are not only going to allow foreclosing on non-homestead real property, but also get a money judgment; the reason is if someone is driving around in a Lamborghini and it is fully paid off they might have a \$100,000 asset on wheels the City can go after. The City can go after jewelry, bank accounts, cars, boats, trailers and any type of commercial property. This added language is basically to go after personal property. It is very helpful with this language. There was one person with homestead property who was cited for having one of these 3-wheeled spider motorcycles parked on the front lawn and he kind of ignored the City and kept parking on the lawn and once the lien hit he did some research and found that 3-wheeled motorcycle was paid for, so he took a photograph of it and attached it to a letter in which he said you need to pay this, we realize you have this motorcycle that is valued at a certain amount of money and he paid the fine after he moved it.

There is some benefit to these changes in the statute and he wants to include them in the City's code and that is what this paragraph is doing.

Manny noted he had the word "execution" between including and levy in that paragraph.

Tom explained that is a legal term that allows us to execute on a document; it has to be in there. It is language that perfects the lien, if we don't have execution and levy we can't levy against any property. It is the proper language that has to be there. It means to do something with a document. Likewise in addition to the language he has added that it would be helpful for us to get a money judgment.

Tom explained he has also added some language at the very end that talks about protections people have in Section 4 – Article 10 of the State Constitution where their homestead is protected. He has added some language that says the money judgment also does not apply against real or personal property which is covered by that same section. That adds some protection for people who have those defenses that were not otherwise there. It is working both sides of the table in order for it to be right.

Section 22-82.

He took out the word "Commission" where it used to say: The City Commission shall be entitled to collect all costs; it is really the City. When they file lawsuits they file in the name of the City, not the City Commission.

Grant asked if the word city should be capitalized and noted he sees it both ways all the time. Tom said no and explained the city in general versus the city as the perfected name; he has trouble with that himself and constantly has to go to his paralegal who is the grammar person as to if it is a capital "C" or a small "c" and this is a small "c". In fact in the state statute it is a small "c".

Under appeals he has taken out "Commission" it would not be the City Commission that would appeal an administrative decision of the Code Enforcement Board, it would be the city.

Section 22-84. Notices

The law changed about five years ago where it said not only do we send notices to the address listed by the tax collector, but can also do it at the address listed at the County Appraiser's database. There are two different databases and sometimes they are not the same; 90% of the time they are, but since the statute allows for doing either he wanted to include both. Later on in that sentence he took out "Commission" to make it the city.

Section 22-101. Citation System Procedure

This is different from the Code Enforcement Board. The City does not use this a lot, but there is a right for the City to issue citations like a parking ticket. If there was a code violation and we knew it was going to be a one-time thing we could cite them and usually that would be like parking in the wrong place at the wrong time. This citation system is used for that and instead of going to the Code Enforcement Board they go to County Court and they get a fine usually from \$80 to \$250.00; it is a one-time fine and not a daily basis.

Section 22-101. (b)

There was some language missing; it did not follow the statute. He added the missing language, a repeat violation is found, or if.

Section 22-102. Sub Paragraph 10

He made it to read exactly the way the statute read; took out "he" and put in person. That statute says his or her and he corrected that as well.

Section 22-105. (b)

It says if a person is going to appeal a decision under the citation chapter; it used to say the State of Florida Court Civil proceedings; however, there is no such thing. It is the Florida Rules of Appellate Procedures and he corrected that.

Tom noted of all the changes there was really only one that he added that was out of what the statute said and that was the one dealing with the City Attorney. He offered to answer any questions otherwise he was looking for a consensus to make the changes.

MOTION: Motion was made by Manny and seconded by Mike to accept the recommendation of the City Attorney for the changes to the Chapter 22, Code Enforcement.

Mike explained about the repeat violation that many times there are people who for example will park their car in their front yard and they will do it and the neighbors complain back and forth and the Code Enforcement Officer tells them they can't to do this and says to have it out of there by a certain time and they don't do it, so they get a letter that says they are going before the Code Enforcement Board. The day before the Code Enforcement Board meeting they move the car and the day after they put it back in the front yard; that is a repeat

violation. They can be set up for a repeat violation where the Code Enforcement Officer can go out and take pictures of every day it was there and the Board could set a fine of up to \$500.00 a day. The maximum for a violation is \$250.00, but for a repeat it is possible to double that.

VOTE: Motion carried unanimously.

5.d Chapter 34, Environment

Greg advised there was one small change on the first page.

Section 34.1

(e) It shall be the responsibility of each parcel owner to maintain vegetation in the City right-of-way between their property line and the pavement portion of the street.

Mike noted this is talking about between the sidewalk and the street.

Greg explained they have even had an employee at the Property Appraiser's Office who argued they had where their property line was and refused to mow the grass, because there was a sidewalk and refused to mow between their property line and the pavement.

A motion carried unanimously in a previous meeting to include this sentence.

5.e Chapter 62, Sales

Greg noted this chapter was for the committee to take a look at and quite a bit was deleted and some new language adopted to simplify and make it more realistic. He offered to take questions or determine the committee was ready to move forward with those changes.

Pat recalled the committee had agreed to move forward with those changes at the previous meeting.

5.f Chapter 70, Taxation

Greg explained this is the topic he spoke with Mr. DiPasqua about. It was completely rewritten and they would like the permission of the committee to move forward with this with the caveat.

Tom explained the caveat is to appoint a committee or commission and there is a process in the state statute to allow for making these changes. That will have to be done; however, the committee can still make their recommendation to come forward and a couple extra steps before it can actually be put in the code book because of the topic. The Florida Legislature wanted to adopt a Chapter 205 of the Florida Statutes; they specifically wanted some control over the fact that you cannot just go out and make someone pay \$5,000 for example for an occupational license and there has to be some reasonableness to it and that is why the committee is basically appointed to make sure of that. He has seen in the past in the late 1980's and early 1990's people did not want or commissions did not want gypsies, fortune telling and so forth in their cities so a lot of these things they said they would just make them pay a \$5,000 occupational license and scare them away and sometimes it worked. The statute created this commission to do an audit or analysis and that is the extra step.

Greg explained a new rate structure was proposed and they are only allowed he thought a 10% increase projected overall.

Manny asked if there was some discussion regarding the occupational tax in the Legislature this session. Tom explained nothing has happened with that; the language is Business Tax

Receipt; he is not aware of it getting to the Governor's desk for any changes. Greg did not see anything watching the updates.

Grant commented he was contacted by someone in Mr. DiPasqua's office last week again for third time with more questions concerning his businesses as it pertains to this and this needs to happen. What he is paying in taxes is not enough to cover the time spent figuring his taxes out; the City must be losing on this.

Greg advised the collections were averaging \$115,000 per year and it is at \$196,000 now, because of previously missing 40% of the businesses. He agreed it should be easier.

Tom noted the changes were approved on April 22, 2019.

5.g Chapter 82, Vehicles for Hire

Greg commented this topic was a significant rewrite in that our code really covered taxi cabs only. This is the one where the types of transportation were dramatically expanded that would require a certificate from the City Commission to be able to operate in the city. Because there are many people trying to come in with pedal pubs to scooters, pedal cabs and free ride services different from Uber and Lyft. The proposal is to title this as Modes of Transportation. The scooters have become a nightmare with the way they are just being left all over.

Mike noted the Tiki Ride does not charge, they are working off sponsors and so forth and he says he does not allow alcohol.

Pat recalled she had a note from the last time about adding something about free ride things and Greg advised that is defined in the rewrite.

Discussion ensued regarding the title of the chapter.

Tom had the same note to address vehicles that were giving free rides. He thought Greg was addressing it just in changing the title; however, he suggested changing it in the body of the chapter because some of the definitions are still referring to being for hire. There might be a motorized vehicle that is free as opposed to be for hire. He and Greg will work on it and present it when the report comes back to the committee. Grant suggested the Chapter title be changed to read Public Transportation and Vehicles for Hire; that can be addressed when they bring it back in the report.

5.h Miscellaneous

Manny asked with all these changes about how long it will take to get the job completed by the City Commission. Tom explained he and staff will prepare the report for the Committee to review. Mike or someone on the committee will present the report and maybe answer questions about the report. Usually there is no action taken at that meeting at all and then it comes back in a workshop or another Commission meeting where they discuss portions of each of these.

Mike recalled the Charter Review took about six months.

Denise noted this is much bigger than the Charter Review when they are prepared that will be set to go on the back of possibly a one page ordinance that will state the changes are being made.

Kathy inquired about the earlier changes made; this is going over these with Greg for the second time, but she did not see the other changes made for a second time.

Denise stated they have not been brought back yet.

Mike explained after tonight everything will go into the report and the committee will get a copy of the report to review.

Denise noted June 3rd would be the last meeting.

When Mike suggested asking for another couple of months if needed, Tom advised, no it needs to get completed. To answer Manny's question it will probably take a year to get them all done. He said to keep in mind the Commission might decide they only want to do half these changes, thank the committee for their work and recommendations but leave some as they are.

In response to the question from Kathy, Tom explained the entire code book was not being reviewed by this committee; the Land Development Code was not part of their chore, just the Code of Ordinances that is the front part of the Code. Noise is part of the Land Development Code so this committee would not be getting to that; the City Commission was asked for direction and they said to just review the Code and if they want to have the Land Development Code done they would let the committee know. This committee's job will be completed in June and there has been no other direction; he doubts that will be done, but if so they will create another committee.

6. **Next Meeting:** June 3, 2019

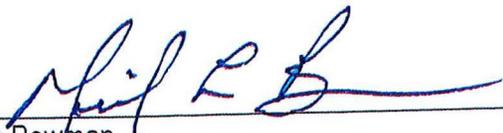
7. **Adjournment**

The meeting adjourned at 6:47 p.m.

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

Attest:


Denise M. Kirkpatrick
City Clerk


Mike Bowman
ORC Chair