



## **ORDINANCE NO. 344**

**AN ORDINANCE OF THE CITY OF ORANGE CITY,  
VOLUSIA COUNTY, FLORIDA; AMENDING CHAPTER 5,  
BUILDINGS, HOUSING AND STRUCTURAL  
REQUIREMENTS OF THE ORANGE CITY CODE, TO ADD  
ARTICLE V, CITATIONS; UNLICENSED CONTRACTORS;  
FAILURE TO OBTAIN BUILDING PERMIT; PROVIDING  
FOR CONFLICTS, SEVERABILITY, CODIFICATION AND  
EFFECTIVE DATE.**

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**WHEREAS**, the City Council of the City of Orange City desires to authorize the issuance of citations for violations of Sections 489.127 and 489.132(1), Fla. Stat., to cite those who construct without a building permit, and unlicensed contractors.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AS FOLLOWS:**

**SECTION 1.** That Chapter 5 of the Code of Ordinances for the City of Orange City, Florida is hereby amended by adding the following provisions:

### **ARTICLE V CITATIONS; UNLICENSED CONTRACTORS; FAILURE TO OBTAIN BUILDING PERMIT**

#### **Sec. 5-66. Intent and purpose.**

It is the intent and purpose of this article to authorize the issuance of citations for violations of Sections 489.127 and 489.132(1), Florida Statutes, as may be amended or renumbered from time to time by the Florida Legislature. It is also the intent and purpose of this article to establish a procedure to implement the issuance of such citations by code enforcement officers, who under this article shall be the building official, municipal police officers and those persons designated by the City Manager. Nothing contained in this article shall prohibit the city from enforcing its codes or ordinances by any other lawful means.

#### **Sec. 5-67. Findings.**

The City Council of the City of City of Orange City hereby finds:

(1) The commencement or performance of work for which a building permit is required without such building permit being in effect creates a grave threat to the public health, safety, and welfare and jeopardizes the safety of occupants of buildings.

(2) The performance of construction by contractors who are not duly licensed, when a contracting license is required, may pose a danger of significant harm to the public when incompetent or dishonest unlicensed contractors provide unsafe, unstable, or short-lived products or services.

**Sec. 5-68. Citation authorized for construction contracting violations.**

A code enforcement official is hereby authorized to issue a citation for any violation of Sections 489.127 and Section 489.132(1), Florida Statutes, whenever, based upon personal investigation, the code enforcement official has reasonable and probable grounds to believe that such violation has occurred. A citation shall be issued in accordance with the rules and procedures established by this article and Florida Statutes. This article does not grant the code enforcement official special authority to perform any function or duty of a law enforcement officer, unless said official is also a law enforcement officer.

**Sec. 5-69. Citation form.**

A citation issued by a code enforcement official shall be in a form prescribed by the City Manager, and shall contain at a minimum:

- (1) The time and date of issuance.
- (2) The name and address of the person to whom the citation is issued.
- (3) The time and date of the violation.
- (4) A brief description of the violation and the facts constituting reasonable cause.
- (5) The name of the code enforcement official.
- (6) The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
- (7) The applicable civil penalty if the person elects not to contest the citation.

**Sec. 5-70. Penalty.**

In addition to any other criminal penalties provided by Section 489.127(2), Florida Statutes, a civil penalty of five hundred dollars (\$500.00) shall be levied for any violation of this article. All monies collected by the city from citations issued under this article shall be deposited in the city's general fund and may be expended for any public purpose authorized by the city council. A person cited for a violation pursuant to this article is deemed to be charged with a non-criminal infraction. Each violation is a

separate civil infraction. Each day such violation shall continue shall be deemed to constitute a separate civil infraction.

**Sec. 5-71. Refusal to sign citation.**

Except in the absence of the person who has committed the violation, a code enforcement official shall require the person to sign and accept a citation being issued. If the person refuses to sign and accept the citation, the code enforcement official shall write the words "Refused to Sign" or any other words of similar meaning in the space provided in the citation for the person's signature and shall leave a copy of the citation with the person if possible, or mail a copy to the person, if possible, by registered or certified mail, return receipt requested. Following such refusal to sign and accept, the code enforcement official shall also contact the Orange City Police Department to report such violation of this article and Section 489.127(5)(m), Florida Statutes. Nothing herein shall limit or prevent a municipal police officer from making an arrest for violation of F.S. 489.127(5)(m) in his or her presence.

**Sec. 5-72. Stop work.**

Any person who is issued a citation under this article shall immediately cease the act for which the citation was issued upon receipt of the citation.

**Sec. 5-73. Correction of violation; payment of penalty; notice of hearing.**

Upon receipt of a citation, the person charged with the violation shall elect either to:

(1) Correct the violation and pay to the city the civil penalty in the manner indicated on the citation; or

(2) Within ten (10) days of receipt of the citation, exclusive of weekends and legal holidays, request an administrative hearing before the city's code enforcement hearing officer to appeal the issuance of the citation in accordance with the procedures set forth in this article. Any request for an administrative hearing shall be made and delivered in writing to the Orange City Police Department Community Improvement Unit by the time set forth in this subsection. Failure to request an administrative hearing in writing within the ten (10) day time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of said right shall be deemed an admission of the violation, and penalties shall be imposed as set forth on the citation.

**Sec. 5-74. Administrative hearings; accrual of penalties.**

(a) All administrative hearings held pursuant to this article shall be conducted by the code enforcement hearing official in accordance with the requirements of the Local Government Code Enforcement Board Act and City Code.

(b) During the administrative hearing, if the violator demonstrates to the code enforcement hearing officer that the violation is invalid or that the violation has been corrected prior to appearing before the code enforcement hearing officer, the code enforcement hearing officer may dismiss the citation unless the violation is irreparable or irreversible, in which case the code enforcement hearing officer may order the violator to pay a civil penalty as set forth in subsection (c) below.

(c) During the administrative hearing, if the code enforcement hearing officer finds that a violation exists, the code enforcement hearing officer may order the violator to pay a civil penalty of not less than the amount set forth on the citation but not more than one thousand dollars (\$1,000.00) per day for each violation. In determining the amount of the penalty, the code enforcement hearing officer shall consider the following facts:

- (1) The gravity of the violation.
- (2) Any actions taken by the violator to correct the violation.
- (3) Any previous violations which were committed by the violator.

(d) During the administrative hearing, if the code enforcement hearing officer finds that the violator had not contested or paid the civil penalty set forth in the citation within the time required in this article, the code enforcement hearing officer shall enter an order ordering the violator to pay the civil penalty set forth on the citation, and a hearing shall not be necessary for the issuance of such order.

(e) All civil penalties imposed by the code enforcement hearing officer under this article shall continue to accrue until the violator comes into compliance or until a judgment is rendered by a court to collect or foreclose on a lien filed under this article, whichever occurs first, regardless of whether or not the order of the code enforcement hearing officer sets forth this accrual requirement.

#### **Sec. 5-75. Appeals of code enforcement hearing officer decisions.**

Any person aggrieved by a final administrative order of the code enforcement hearing officer pursuant to this article, including the city council, may appeal the order to the circuit court in accordance with Section 489.127(5)(J), Florida Statutes, as may be amended or renumbered from time to time by the Florida Legislature.

#### **Sec. 5-76. Recording code enforcement hearing officer orders.**

A certified copy of an order of the code enforcement hearing officer imposing a civil penalty under this article may be recorded in the public records and thereafter shall constitute a lien against any real or personal property owned by the violator. Such orders shall be enforced in accordance with Florida law.

**Sec. 5-77. Notices.**

All notices required by this article shall be provided to the violator by certified mail, return receipt requested; by hand delivery by a law enforcement officer or code enforcement official; by leaving the notice at the violator's usual place of residence with some person of his or her family above fifteen (15) years of age and informing such person of the contents of the notice; or by including a hearing date within the citation.

**SECTION 2: CONFLICTS.** All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION 3: SEVERABILITY.** If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

**SECTION 4: CODIFICATION.** It is the intention of the City Council of the City of Orange City, Florida, and it is hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Orange City, Florida; that the Sections of this Ordinance may be renumbered or relettered to accomplish such intention; that the word, "Ordinance," may be changed to "Section," "Article," or other appropriate word.

**SECTION 5: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon its adoption.

First reading this \_\_\_\_\_ day of \_\_\_\_\_, 2008

**ROLL CALL VOTE AS FOLLOWS:**

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

Second Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**ROLL CALL VOTE AS FOLLOWS:**

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

**PASSED and ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**ATTEST:**

**AUTHENTICATED:**

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

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

Approved as to form and legal sufficiency:

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William E. Reischmann, Jr., City Attorney