

# **Orange County Government**

*Orange County Administration Center  
201 S Rosalind Ave.  
Orlando, FL 32802-1393*



## **Charter Review Commission Agenda - Final**

**Wednesday, August 7, 2019**

**6:00 PM**

**District 1 - Dr. Phillips High School**

### **2020 Charter Review Commission**

***CRC Members:***

***Camille Evans, Chair***

***Carmen Torres, Vice Chair***

***James R. Auffant–Jack Douglas–Russell Drake–John E. Fauth–Matthew Klein–***

***Jeffrey A. Miller–Nikki Mims–Samuel Vilchez Santiago–Soraya Smith–***

***Lee Steinhauer–Eugene Stoccardo–Anthony (Tony) Suarez–Dotti Wynn***

**Call to Order****Pledge of Allegiance****I. Public Comment****II. Consent Item**

- A. CRC-20-047 Approval and execution of the minutes of the July 10, 2019 District 6 Public Hearing of the Charter Review Commission (CRC).

Attachments: 2019-07-10 Draft CRC Meeting Minutes

**III. Discussion Items**

- A. CRC-20-048 Proposed Charter Review Topic - Unlicensed Contractor Activity within Incorporated Orange County

Attachments: 2019-07-10 IV. C1 Steinhauer Unlicensed Contractor Activities

2019-07-10 IV. C2 Audit OC Consumer Fraud Unit Unlicensed Contractor Prgm

- B. CRC-20-049 Proposed Charter Review Topic - Ethics for Appointing Lobbyist to Citizen Boards and Commissions: Prohibition

Attachments: 2019-07-10 IV. E1 Stoccardo Ethics Rule Proposal

2019-08-07 III. B1 Shepard Lobbyist Restrictions

# **Orange County Government**

*Orange County Administration Center  
201 S Rosalind Ave.  
Orlando, FL 32802-1393*



## **Draft Meeting Minutes**

**Wednesday, July 10, 2019**

**6:00 PM**

**District 6 - Holden Heights Community Center**

## **2020 Charter Review Commission**

*CRC Members:*

*Camille Evans, Chair*

*Carmen Torres, Vice Chair*

*James R. Auffant–Jack Douglas–Russell Drake–John E. Fauth–Matthew Klein–  
Jeffrey A. Miller–Nikki Mims–Samuel Vilchez Santiago–Soraya Smith–  
Lee Steinhauer–Eugene Stoccardo–Anthony (Tony) Suarez–Dotti Wynn*

**Call to Order**

The meeting was called to order at 6:04 p.m.

**Present:** 12 - Member Camille Evans, Member Carmen Torres, Member James R. Auffant, Member Jack Douglas, Member Russell Drake, Member John E. Fauth, Member Jeffrey A. Miller, Member Nikki Mims, Member Soraya Smith, Member Lee Steinhauer, Member Eugene Stoccardo, and Member Dotti Wynn

**Absent:** 3 - Member Matthew Klein, Member Samuel Vilchez Santiago, and Member Anthony (Tony) Suarez

Others present:

CRC General Counsel Cliff Shepard  
Deputy Clerk Katie Smith  
Senior Minutes Coordinator Craig Stopyra

**Pledge of Allegiance****I. Invited Guest**

District 6 Board of County Commissioner (BCC) Victoria P. Siplin

Commissioner Siplin thanked CRC members for their service and residents for making their voices heard and concerns known to the CRC.

**II. Public Comment**

The following persons addressed the CRC for public comment:

- Marj Holt
- Bob Olsen
- Roselyn Clouden
- Chuck O'Neal
- Emmett O'Dell
- Bill Lutz
- Kelly Semrad
- Arlene Cuellar
- Jane Goddard
- Debi Meli
- Trini Quiroz
- John Lina
- Steve Meyers
- Peri Sedigh
- Todd Catella
- Barbara Anderson
- Vicki Vargo

### III. Consent Item

- A. **CRC-20-041** Approval and execution of the minutes of the June 5, 2019 Regular Business Meeting of the Charter Review Commission (CRC).

A motion was made by Member Wynn, seconded by Vice Chair Torres, to approve and execute the Minutes of June 5, 2019. The motion carried by the following vote:

**Aye:** 12 - Member Evans, Member Torres, Member Auffant, Member Douglas, Member Drake, Member Fauth, Member Miller, Member Mims, Member Smith, Member Steinhauer, Member Stoccardo, and Member Wynn

**Absent:** 3 - Member Klein, Member Santiago, and Member Suarez

### IV. Discussion Items

- A. **CRC-20-042** Proposed Charter Review Topic - Number and Composition of County Commission Districts

CRC General Counsel Cliff Shepard presented the Proposed Charter Review Topic - Number and Composition of County Commission Districts and stated that this topic has been addressed in every Charter Review Commission since 2000 and was rejected each time before or after the topic was evaluated. CRC General Counsel Shepard discussed the pros and cons as argued previously. Discussion ensued. CRC General Counsel Shepard contributed to the discussion.

A motion was made by Member Smith, seconded by Member Mims, to have the Number and Composition of County Commission Districts established as an evaluation topic for the 2020 CRC. The motion carried by the following vote:

**Aye:** 8 - Member Douglas, Member Drake, Member Fauth, Member Miller, Member Mims, Member Smith, Member Stoccardo, and Member Torres

**Nay:** 4 - Member Auffant, Member Evans, Member Steinhauer, and Member Wynn

**Absent:** 3 - Member Klein, Member Santiago, and Member Suarez

A motion was made by Member Auffant, seconded by Member Stoccardo, to establish the Number and Composition of County Commission Districts as a Subcommittee for the 2020 CRC. The motion carried by the following vote:

**Aye:** 12 - Member Auffant, Member Douglas, Member Drake, Member Evans, Member Fauth, Member Miller, Member Mims, Member Smith, Member Steinhauer, Member Stoccardo, Member Torres, and Member Wynn

**Absent:** 3 - Member Klein, Member Santiago, and Member Suarez

Chair Evans appointed the following CRC members to serve on the Number and Composition of County Commission Districts Subcommittee:

Chair of Subcommittee: Vice Chair Torres

Subcommittee: Member Drake, Member Klein, Member Suarez, and Member Wynn

**B. CRC-20-043 Proposed Charter Review Topic - Various Topics Regarding Land Use and Zoning**

CRC General Counsel Shepard presented the Proposed Charter Review Topic - Various Topics Regarding Land Use and Zoning including information regarding agricultural zoned areas outside the urban service area, the requirement for a super majority vote of the BCC for ordinances that increase land use densities and intensities, urban service boundaries, dedicated funding for the Green Place Land Acquisition Program, and rural land protection by virtue of a super majority of the BCC for any annexations and a majority of the voters in the area to be annexed. Discussion ensued.

A motion was made by Member Stoccardo, seconded by Member Wynn, to have the Various Topics Regarding Land Use and Zoning established as an evaluation topic for the 2020 CRC. The motion failed by the following vote:

**Aye:** 4 - Member Torres, Member Drake, Member Fauth, and Member Stoccardo

**Nay:** 8 - Member Evans, Member Auffant, Member Douglas, Member Miller, Member Mims, Member Smith, Member Steinhauer, and Member Wynn

**Absent:** 3 - Member Klein, Member Santiago, and Member Suarez

**C. CRC-20-044 Proposed Charter Review Topic - Unlicensed Contractor Activity within Incorporated Orange County**

CRC General Counsel Shepard presented the Proposed Charter Review Topic - Unlicensed Contractor Activity within incorporated Orange County and stated that this topic had not been addressed by the CRC in previous cycles. The request is to consider amending the Charter to provide authority to the County to enter into interlocal agreements with cities to enforce unlicensed contractor activity in the area as being detrimental to the health, safety and welfare of citizens. Backup for this topic was provided in an audit that was conducted by the Orange County Comptroller's Office. CRC General Counsel Shepard suspects that the CRC will hear from the County Attorney's Office stating they already have the authority to do these interlocal agreements.

A motion was made by Member Steinhauer, seconded by Member Auffant, to table the Proposed Charter Review Topic - Unlicensed Contractor Activity within incorporated Orange County until the CRC receives information from the County Attorney's Office. The motion carried by the following vote:

**Aye:** 12 - Member Evans, Member Torres, Member Auffant, Member Douglas, Member Drake, Member Fauth, Member Miller, Member Mims, Member Smith, Member Steinhauer, Member Stoccardo, and Member Wynn

**Absent:** 3 - Member Klein, Member Santiago, and Member Suarez

**D. CRC-20-045 Proposed Charter Review Topic - Rights of the Wekiva River and Econlockhatchee River**

CRC General Counsel Shepard presented the Proposed Charter Review Topic - Rights of the Wekiva River and Econlockhatchee River. The request is to amend the Orange County Charter to provide protection rights of natural features. Discussion ensued. CRC General Counsel Shepard contributed to the discussion.

A motion was made by Member Stoccardo, seconded by Vice Chair Torres, to have the Rights of the Wekiva River and Econlockhatchee River established as an evaluation topic for the 2020 CRC. The motion carried by the following vote:

**Aye:** 7 - Member Fauth, Member Douglas, Member Stoccardo, Member Drake, Member Torres, Member Auffant, and Member Mims

**Nay:** 5 - Member Evans, Member Miller, Member Smith, Member Steinhauer, and Member Wynn

**Absent:** 3 - Member Klein, Member Santiago, and Member Suarez

A motion was made by Member Auffant, seconded by Member Stoccardo, to establish the Rights of the Wekiva River and Econlockhatchee River as a Subcommittee for the 2020 CRC. The motion carried by the following vote:

**Aye:** 12 - Member Evans, Member Steinhauer, Member Fauth, Member Douglas, Member Stoccardo, Member Drake, Member Miller, Member Torres, Member Wynn, Member Smith, Member Auffant, and Member Mims

**Absent:** 3 - Member Klein, Member Santiago, and Member Suarez

Chair Evans appointed the following CRC members to serve on the Rights of Wekiva River and Econlockhatchee River Subcommittee:

Chair of Subcommittee: Member Stoccardo

Subcommittee: Member Auffant, Member Fauth, Member Mims, Member Suarez

**E. CRC-20-046 Proposed Charter Review Topic - Ethics for Appointing Lobbyist to Citizen Boards and Commissions: Prohibition**

CRC General Counsel Shepard presented the Proposed Charter Review Topic - Ethics for Appointing Lobbyist to Citizen Boards and Commissions: Prohibition. The request is for an ethics rule to be applied in the County through the Charter that would prohibit lobbyists from being appointed to committees except in so much to conflict with State law. CRC General Counsel Shepard added that it would prohibit for a period of two years after a citizen serving on a non-elected committee or Board commission position from becoming a paid lobbyist. Discussion ensued. CRC General Counsel Shepard contributed to the discussion.

CRC General Counsel Shepard will provide a brief to the CRC regarding the County's current rules of Ethics, State Law and lobbying pertaining to this proposed Charter Review Topic.

The motion that was made by Member Stoccardo, seconded by Vice Chair Torres, to have the

Ethics for Appointing Lobbyist to Citizen Boards and Commissions: Prohibition established as an evaluation topic for the 2020 CRC was rescinded by Member Stoccardo.

A motion was made by Member Stoccardo, seconded by Member Auffant, to table the Proposed Charter Review Topic - Ethics for Appointing Lobbyist to Citizen Boards and Commissions: Prohibition to the next CRC meeting. The motion carried by the following vote:

**Aye:** 12 - Member Evans, Member Torres, Member Auffant, Member Douglas, Member Drake, Member Fauth, Member Miller, Member Mims, Member Smith, Member Steinhauer, Member Stoccardo, and Member Wynn

**Absent:** 3 - Member Klein, Member Santiago, and Member Suarez

## **V. New Business**

Chair Evans reminded the audience that the Charter website has the process for submitting documents to get topics on the agenda. The next CRC meeting is scheduled for 6:00 p.m., on August 7, 2019, in District 1, at Dr. Phillips High School. The deadline for written materials is due to CRC Staff by close of business day on July 26, 2019. The agenda for the August 7, 2019, meeting will be distributed on July 31, 2019.

## **VI. Adjournment**

There being no further business, the CRC adjourned at 8:51 p.m.

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Camille Evans, Chair  
2020 Charter Review Commission



## **MEMORANDUM**

**To:** 2019-2020 Orange County Charter Review Commission

**From:** Lee Steinhauer, Esq.

**Re:** CRC issue for consideration related to unlicensed contractor program

**Date:** April 9, 2019

### **Issue(s) for Consideration**

The Orange County Comptroller's office performed an audit of Orange County's Consumer Fraud Unit's Unlicensed Contractor Program ("Program) and issued a report regarding same in April 2017. The audit reviewed the Program and provided recommendations for improvement.

One of the findings of the audit was that County investigators were unable to enforce unlicensed contractor rules within incorporated cities in Orange County. Even though County investigators became aware of unlicensed contracting activity in those cities, they were unable to take any action due to jurisdictional issues.

As such, one of the audit's recommendations for improvement was for the Consumer Fraud Unit to work with the County to consider entering into interlocal agreements to authorize review of complaints and the issuance of citations within municipalities that do not investigate complaints within their jurisdictions.

Consumer Fraud Unit management provided the following response, recited in the audit, to the recommendation:

"Our office recently drafted in conjunction with the Division of Building Safety a 'survey monkey' which was sent to all of Orange County municipalities. We are presently waiting responses from the surveys. If the results from the survey prove positive, we will bring this issue before the BCC so we can receive the authority to enforce the ordinance countywide. By making these changes, it would enable our office to more effectively work our cases and receive information without the worries of jurisdictional boundaries. Each municipality handles the enforcement of unlicensed contracting differently."

**Requested Action**

Unlicensed contracting activity poses a threat to the health, welfare and safety of Orange County residents.

As such, and based upon the foregoing, I request that the CRC consider whether a potential charter amendment would be appropriate to allow the County to enter into interlocal agreements with incorporated County cities and municipalities to enforce unlicensed contracting activity.

# **Audit of Orange County Consumer Fraud Unit's Unlicensed Contractor Program**

**Report by the  
Office of County Comptroller**

**Phil Diamond, CPA  
County Comptroller**

## **County Audit Division**

Christopher J. Dawkins, CPA, CIA  
Director

Wendy D. Kittleson, CISA, CIA  
Deputy Director

Scott Dezort, CPA  
Audit Supervisor

**Report No. 463  
April 2017**

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**OFFICE OF THE COMPTROLLER**

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COUNTY  
FLORIDA**

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April 24, 2017

Teresa Jacobs, County Mayor  
And  
Board of County Commissioners

We have conducted an audit of the Orange County Consumer Fraud Unit's unlicensed contractor program. The audit scope was limited to a review of the Consumer Fraud Unit's program for investigating unlicensed contracting complaints. The period audited was March 1, 2013 through August 31, 2015. In addition, controls through June 30, 2016 were considered during the review.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Responses to our Recommendations for Improvement were received from the Administrator of the Orange County Consumer Fraud Unit and are incorporated herein.

We appreciate the cooperation of the personnel of the Orange County Consumer Fraud Unit during the course of the audit.

  
Phil Diamond, CPA  
County Comptroller

c: Ajit Lalchandani, County Administrator  
Lonnie Bell, Director, Family Services Department  
Carlos Morales, Administrator, Orange County Consumer Fraud Unit

## EXECUTIVE SUMMARY

## **Executive Summary**

The Orange County Consumer Fraud Unit (Consumer Fraud) receives consumer complaints and initiates investigations into alleged unfair and deceptive business practices and attempts to resolve them. Consumer Fraud also issues civil citations to unlicensed contractors operating in unincorporated Orange County. The Orange County Code assigns Consumer Fraud to the supervision and control of the State Attorney's Office. However, the Orange County Board of County Commissioners funds the office's four employees.

The audit scope included a review of Consumer Fraud's program for investigating unlicensed contractor complaints and compliance with Article IX of the Orange County Code. The period audited was March 2013 through August 2015. In addition, controls through June 2016 were considered during the review. The audit objectives were to ensure that:

- Controls over initiating, investigating, and enforcing complaints of unlicensed contractor activity are adequate; and,
- Citations issued during the audit period complied with Section 9-325 of the Orange County Code.

In our opinion, controls over initiating, investigating, and enforcing complaints of unlicensed contractor activity are adequate. However, the controls for monitoring and collecting issued citation fines are not adequate. In addition, based on the results of our testing, citations issued during the audit period materially complied with Section 9-325 of the Orange County Code. Opportunities for improvement are discussed herein. Specifically, we noted the following:

Five of the seven citation case files reviewed did not document that a violation had occurred in unincorporated Orange County. Of those five citations, three citations were issued for advertising contracting services on the Internet. Two citations involved addresses within incorporated Orange County cities, which are outside of Consumer Fraud's jurisdictional authority. In addition, deadlines to pay applicable fines or request hearings were revised for three citations without any documented explanation.

Procedurally, unlicensed contractor investigations found by Consumer Fraud within incorporated cities are forwarded to the appropriate jurisdiction for investigation. However, some municipalities within the County may choose not to allocate the necessary resources to investigate complaints, which would result in Orange County citizens within those municipalities not being protected from unlicensed contractors. Consumer Fraud should work with the County to consider entering into inter-local agreements to authorize review of complaints and the issuance of

citations within municipalities that do not investigate complaints within their jurisdiction.

Additionally, procedures for collecting citation penalties are not adequate. Our testing of a sample of citations issued during the audit period found that less than \$2,000 of the \$7,100 assessed was collected. No additional follow-up to determine if a citation is paid or additional collection procedures are performed after a case is closed.

Recommendations for Improvement were developed and discussed with Consumer Fraud. Consumer Fraud concurred with all of our recommendations and steps to implement the recommendations are underway. Responses to the Recommendations for Improvement are included herein.



# ACTION PLAN

## AUDIT OF THE ORANGE COUNTY CONSUMER FRAUD UNIT'S UNLICENSED CONTRACTOR PROGRAM ACTION PLAN

NO.	RECOMMENDATIONS	MANAGEMENT RESPONSE			IMPLEMENTATION STATUS	
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
1.	Consumer Fraud should:					
A)	Implement procedures requiring supervisory review and approval for each citation issued. In addition, any changes to an issued citation should be adequately documented and approved by the supervisor.	✓			✓	
B)	Work with the County to consider entering into inter-local agreements to authorize review of complaints and the issuance of citations within municipalities that do not investigate complaints within their jurisdictions.	✓			✓	
2.	Consumer Fraud should:					
A)	Develop and implement citation collection procedures, including continually monitoring and follow-up of unpaid fines.	✓			✓	
B)	Retain evidence of all citation amounts reported as paid.	✓			✓	
C)	Work with the County Attorney's office to establish a lien process for unpaid citations.	✓			✓	

# INTRODUCTION

### **Background**

The Orange County Consumer Fraud Unit (Consumer Fraud) was initially created in November 1978 to implement a consumer protection program. Since the program's first two years were considered successful in protecting the interests of both consumers and reputable contractors, the Orange County Board of County Commissioners (Board) passed the "Orange County Consumer Protection Ordinance" in 1980.

Consumer Fraud receives consumer complaints and initiates investigations into alleged unfair and deceptive business practices and attempts to resolve them. Consumer Fraud also issues civil citations to unlicensed contractors operating in unincorporated Orange County. Its primary duties are mediating civil disputes, attempting to obtain restitution for consumers, and referring criminal investigations to the State Attorney, Ninth Judicial Circuit. From March 1, 2013 through August 31, 2015 Consumer Fraud investigated 225 cases of unlicensed contracting.

The Orange County Code places Consumer Fraud under the supervision and control of the State Attorney's Office. However, the Board funds the office's four employees. Consumer Fraud was previously under the oversight of Public Safety and the Office of Public Engagement & Citizen Advocacy before being placed under the Department of Family Services in 2013.

The Board amended various provisions in the building and construction regulations in March 2013 to address the rise in unlicensed contractor activity and the negative impact on consumers and reputable contractors.

Consumer Fraud's Vision Statement for the Unlicensed Contractor Program emphasizes issuing citations and participating with other agencies, whenever possible, in the enforcement of laws, rules and regulations. In addition, it provides informative programs for the public to enhance consumer awareness.

### **Scope, Objectives, and Methodology**

The audit scope included a review of Consumer Fraud's program for investigating unlicensed contractor complaints.

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## INTRODUCTION



Audit of Orange County Consumer Fraud Unit's  
Unlicensed Contracting Program

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The period audited was March 1, 2013 through August 31, 2015. In addition, controls through June 30, 2016 were considered during the review. The audit objectives were to ensure the following:

- Controls over initiating, investigating, and enforcing complaints of unlicensed contractor activity are adequate; and,
- Citations issued during the audit period complied with Section 9-325 of the Orange County Code.

To achieve our objectives, we performed the following tests:

- Reviewed a sample of unlicensed contractor cases recorded in Consumer Fraud's logs and reviewed the file documents to ensure the conclusions reached were adequately documented.
- Examined a sample of citations issued to confirm that the citations were prepared in accordance with the Orange County Code.
- Reviewed the County's financial records to ascertain whether the citation fines were collected.

## Overall Evaluation

In our opinion, controls over initiating, investigating, and enforcing complaints of unlicensed contractor activity are adequate. However, the controls for monitoring and collecting issued citation fines are not adequate. In addition, based on the results of our testing, citations issued during the audit period materially complied with Section 9-325 of the Orange County Code. Opportunities for improvement are discussed herein.

# RECOMMENDATIONS FOR IMPROVEMENT

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## RECOMMENDATIONS FOR IMPROVEMENT



Audit of Orange County Consumer Fraud Unit's  
Unlicensed Contracting Program

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### **1. Citation Preparation Procedures Should Be Improved**

Section 9-324 of the Orange County Code (County Code) forbids a person or entity from engaging, advertising, or acting in the capacity of a contractor in unincorporated Orange County without being duly certified, licensed, or registered as a contractor. Section 9-325, authorizes Consumer Fraud investigators to issue a citation to a person whenever there are reasonable and probable grounds to believe that based upon the officer's investigation a violation of section 9-324 has occurred. Section 9-326 provides that a person who has been served with a citation shall either:

- 1) Correct the violation and pay the civil penalty in a manner indicated on the citation; or,
- 2) Within ten (10) days of receipt of the citation, exclusive of weekends and legal holidays, make a request in writing for an administrative hearing to challenge the issuance of the citation. Such written request is to be filed with the Orange County Building Official.

As part of our testing, we selected a sample of 18 unlicensed contractor investigations and reviewed the resulting seven citations. We observed the following:

- A) Five of the seven case files reviewed did not contain documentation that a violation had occurred in unincorporated Orange County. Three cases involved advertising for contracting services on the Internet. Therefore, the locations of any violations were not known. The other two citations involved addresses within the cities of Winter Park and Winter Garden, which are outside of the jurisdictional authority of Consumer Fraud to issue citations. Only one of the five citations issued without the proper authority had been paid at the time of the audit.

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## RECOMMENDATIONS FOR IMPROVEMENT



Audit of Orange County Consumer Fraud Unit's  
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- B) Dates for the individuals cited for a violation to either pay the applicable fine or request an appellant hearing were revised for three citations issued without any explanation for the changes in the file.

Code Enforcement investigators should ensure that all complaints received are adequately investigated and documented prior to citation issuance. Unlicensed contractor investigations within Orange County municipalities should be forwarded to the appropriate jurisdiction for investigation. Alternatively, Consumer Fraud could establish inter-local agreements with municipalities to conduct the investigations. Some municipalities within the County may choose not to allocate the necessary resources to investigate complaints. If so, Orange County citizens within those municipalities would not be protected from unlicensed contractors.

Consumer Fraud's procedures do not require supervisory review prior to the issuance of citations. Prior to the issuance of a citation, each file and citation should be reviewed by a supervisor to ensure the required information is on the citation and included in the file. Any changes to an approved citation should also be adequately documented. A checklist prepared by the investigator referencing where the information is documented in the file could help ensure all required documents are included.

### **Recommendation:**

Consumer Fraud should:

- A) Implement procedures requiring supervisory review and approval for each citation issued. In addition, any changes to an issued citation should be adequately documented and approved by the supervisor.
- B) Work with the County to consider entering into inter-local agreements to authorize review of complaints and the issuance of citations within municipalities that do not investigate complaints within their jurisdictions.



**Management's Response:**

Our office concurs with the recommendations.

- A) The audit recommends the implementation of supervisory reviews prior to an unlicensed construction citation being issued. Our office has developed a "Construction Case Worksheet" that the supervisor will review prior to any citation being issued. The form is also designed to identify other courses of action that the case can take (Criminal Filing, Referral, Civil Mediation etc.). For citations issued in the field, this recommendation is impractical as the investigator issues the citation based on personal observation and information obtained at the scene.

We have modified the changes in our procedures to have the investigator state the reasoning for changing the date for a citation or appeal. For the most part these were due to a change of address when we discovered that the violator had moved.

- B) For the citations issued based on information obtained on the Internet, we discovered the jurisdictional challenges and limitations the ordinance has as we are limited only to "Unincorporated Orange County" which leaves all Orange County Municipalities without the enforcement of this ordinance. When our office received information and leads from the general public, we discovered that the sender could not identify the exact location as to the location of the picture or facts and therefore precluding our investigators from issuing an unlicensed construction citation or being issued in error.

Our office recently drafted in conjunction with the Division of Building Safety a "survey monkey" which was sent to all of Orange County municipalities. We are presently waiting responses from the surveys. If the results from the survey prove positive, we will bring this issue before the BCC so we can receive the authority to enforce the ordinance countywide. By making these

## RECOMMENDATIONS FOR IMPROVEMENT



### Audit of Orange County Consumer Fraud Unit's Unlicensed Contracting Program

changes, it would enable our office to more effectively work our cases and receive information without the worries of jurisdictional boundaries. Each municipality handles the enforcement of unlicensed contracting differently.

As of the beginning of 2015 thru the end of September 2016 there were a total of 239 Construction related cases.

## 2. Citation Fine Collection Procedures Should Be Improved

Procedures for collecting citation penalties are not adequate. Currently procedures for issued citations require the offender to pay the fine to the County's Building Safety Division. Periodically, the investigator reviews the records of fines paid and updates the case file if the fine is paid. After approximately four months, the case file is closed regardless of collection status. We reviewed 21 (totaling \$7,100) of the 42 citations issued during the audit period to assess whether the citation was served and collected. Our testing found only \$2,050 of the \$7,100 was collected. The following table shows the status of the uncollected citations.

Citation No.	Citation Amount Unpaid	Citation Issued	Citation Served	Case Closed
CC0001	\$500	9/3/13	Yes	11/04/13
CC0002	\$250	9/12/13	Yes	10/14/13
CC0015	\$300	1/24/14	Yes	4/17/14
CC0016	\$400	3/20/14	No	7/18/14
CC0020	\$800	7/28/14	Yes	11/05/14
CC0021	\$250	4/7/14	Yes	8/28/14
CC0023*	\$250	8/7/14	Yes	11/12/14
CC0024*	\$500	8/11/14	Yes	12/30/14
CC0026	\$400	10/3/14	Not Documented	1/06/15
CC0029	\$400	10/27/14	Yes	12/18/14
CC0037*	\$250	10/24/14	No	2/25/15
CC0039	\$250	6/15/15	Yes	9/03/15
CC0040	\$250	7/30/15	Yes	10/02/15
CC0041	\$250	8/5/15	Yes	1/26/16
Total	\$5,050			

\* - Citations issued without documentation of County jurisdiction as noted in Recommendation for Improvement No. 1) above.

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## RECOMMENDATIONS FOR IMPROVEMENT



Audit of Orange County Consumer Fraud Unit's  
Unlicensed Contracting Program

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Relating to this, we had the following concerns:

- A) There are no written procedures for steps to be taken to monitor and collect outstanding citations. Section 9-329(a) of the County Code requires, "...Appropriate guidelines and procedures for the administration, collection, recordkeeping, reporting, and accountability of penalties assessed under this article."
- B) Evidence the citation was paid is not retained in the case file. In addition, the case file for one citation notes the citation was paid, yet no record of payment can be located in either Consumer Fraud or the Building Safety Division. As such, it appears the citation was not paid; or if paid, no record of deposit exists. Documentation of all amounts recorded as paid should be kept.
- C) No additional follow-up to determine a citation's payment status is performed after the case is closed. County Code Sections 9-329(b) and (c), allow further actions to be taken to collect unpaid citations<sup>1</sup>.

Written collection procedures should be developed. These procedures should include responsibility for collection and documentation of amounts paid. In addition, Consumer Fraud should work with the County Attorney to establish additional procedures if citations are not paid timely. These procedures could include filing and executing liens and taking action in civil court.

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<sup>1</sup> Sec. 9-329. - Collection and recovery of civil penalties

- (b) The county may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.
- (c) A certified copy of an order imposing a civil penalty may be recorded in the public records and thereafter shall constitute a lien against the real and personal property of the violator. The order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three (3) months from the filing of any such lien which remains unpaid, the county may foreclose or otherwise execute on the lien.

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## RECOMMENDATIONS FOR IMPROVEMENT



Audit of Orange County Consumer Fraud Unit's  
Unlicensed Contracting Program

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### **Recommendation:**

Consumer Fraud should:

- A) Develop and implement citation collection procedures, including continually monitoring and follow-up of unpaid fines.
- B) Retain evidence of all citation amounts reported as paid.
- C) Work with the County Attorney's office to establish a lien process for unpaid citations.

### **Management's Response:**

Our office concurs with the recommendations. The audit recommends the development and implementation of additional citation collection procedures, including the continual monitoring and follow up of unpaid fines. As part of the development of our new database system for the OC Consumer Fraud Unit, it has been requested that key collection datelines be available so follow up collection actions can be made. We'll coordinate with the OC Building Safety Department Personnel so we can coordinate and attain copies of payments so these can be placed in their files.

A copy of these findings have been forwarded to Orange County Legal for the development of the procedures for the filings of liens. We will incorporate any additional steps to our developing new database so that the process is duly documented and that due process is followed in order not to jeopardize the established procedures. We estimate that during FY 17-18 much of our efforts will be focused on implementing the changes of the audit. We will continue to work with our existing database and improve our procedures.

## **Ethics for appointing Lobbyist to Citizen Boards and Commissions: Prohibition**

**Suggest area for Charter location: New Section and Paragraph 707 G. and 707 G. 1.**

**707 G.** Prohibition against appointing registered lobbyists for Non-elected Committee, Board and Commission positions. This will not apply to any position restricted by a Florida Statute.

**Why the issue:** This avoids conflicts of interest and promotes 'Good Government' to Orange county citizens; Belief that Government is as impartial as possible is fundamental to our open representative democracy. Living up to the Abraham Lincoln words "**Government of the people, by the people, for the people**". While lobbyists testifying to Government provides an insight from their employer interest to those for Non-elected Committee, Board and Commissions, it is NOT clear to the public if a registered lobbyist sitting as a voting member whom they might be representing with their votes.

**707 G. 1. Prohibition of 2 years after a citizen serving on Non-elected Committee, Board and Commission positions becoming a paid Lobbyist.**

- This avoids the issue of the appearance of influencing decisions while serving the citizens.



## Memo

To: OCCRC Members

From: Cliff Shepard

CC: Katie Smith

Re: Lobbyist restrictions

Members-

Currently, Commissioners and other County officials are primarily governed by the same lobbying regulations that apply to other state and local officials. However, County officials can be treated differently when lobbying the County government while in office or immediately following departure. These restrictions apply differently based on the type of County official.

Restrictions greatly increasing restrictions on certain elected County officials will soon take effect. Starting in 2022, elected County officials will be prohibited from (1) lobbying virtually any governmental body while in office or (2) lobbying their former County for a period of 6 years following departure.

### Legal Background and Definition of Lobbyist & Lobbying

How Florida law regulates lobbying depends, not just an individual's activities, but also the governmental body being lobbied. This means different restrictions apply when an individual is lobbying the legislature, the executive branch, a special district or a local government.

A "lobbyist" is generally one who attempts to influence a governmental agency or official on behalf of another person in exchange for compensation. See F.S. §§ 11.045(1)(h), 112.3215(1)(h), 112.3261(1)(c); *and* Orange Cnty. Code § 2-351(h). While the regulatory schemes differ on the definition of "lobbying," each scheme shares the same basic idea: seeking to influence a governmental body with respect to a

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decision of the body or attempting to obtain the goodwill of a governmental body official or employee. See F.S. §§ 11.045(1)(e) (lobbying the legislature), 112.3215(1)(f) (lobbying the executive branch or Constitution Revision Commission), 112.3261(1)(b) (lobbying a water management district); *and* Orange Cnty. Code § 2-351(i) (lobbying Orange County).

Orange County's code, which governs lobbying the County government, provides the following definitions:

- ) *Lobbyist* means any person, partnership, corporation or other business entity that receives compensation to lobby on behalf of a principal, or an employee of a principal only when governmental relations, acting as a governmental liaison, or communicating with governmental agencies is a primary or substantial part of the employee's ongoing job responsibilities. Lobbyist does not mean a county official, county employee or any other person affiliated with the county while acting in his or her official capacity.
- ) *Lobbying* means:
  - o To communicate or the act of communicating directly with the county mayor, with any other member of the board, or with any member of a procurement committee; or
  - o To communicate indirectly with the county mayor or any other member of the board by communicating with any staff member to a county commissioner, any county employee assigned to the county mayor's staff, the county administrator, any deputy or assistant county administrator, the county attorney, any county department director, or any county division manager.

Orange Cnty. Code § 2-351(h). The code also (1) prohibits lobbying in procurement matters; (2) prohibits certain campaign contributions; (3) requires lobbyists to register with the County; and (4) requires lobbyists to submit annual expenditure reports. See Orange Cnty. Code Ch. 2, Art. X, Sec. 2-354. There are no laws preventing a registered lobbyist from running for or holding office in Orange County.

General corruption criminal statutes also regulate lobbying activities. Bribery is a second-degree felony under Florida law, and is defined as:

“[T]o knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person

believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.”

Federal law prohibits similar actions through its Honest Services Fraud statute. *See* 18 U.S.C. § 1343-1349 (prohibiting bribes and kickbacks in exchange for official acts).

#### Lobbying Restrictions While In Office

While there is no direct statute prohibiting a County officer from lobbying the County while in office, the Florida Commission on Ethics has repeatedly opined that such activities violate Florida’s statutory prohibition against public officers entering contractual relationships in conflict with their public duties. *See* F.S. § 112.313(7)(a); Comm. on Ethics Op. 09-10 (June 17, 2009). This applies to appointed officers on advisory boards as well as Commissioners. *See* F.S. § 112.313(1). Otherwise, County officers may lobby other governmental bodies so long as there is no conflict.

Amendment 12, which passed in 2018, will soon restrict practically all lobbying activities by elected County officers. Starting on December 31, 2022, no public officer may lobby on issues of policy, appropriation or procurement before virtually any government body while in office. *See* FLA. CONST. Art. II, Sec. 8 (2022). The term “public officer” is defined to include county commissioners as well as county constitutional and charter officers. *See* FLA. CONST. Art. II, Sec. 8(f)(1) (2022).

Additionally, current state ethics laws prohibit elected county officers and certain appointed County officials<sup>1</sup> from soliciting any gift from a lobbyist who has lobbied their County in the past 12 months or from *accepting* a gift worth more than \$100 from a lobbyist. *See* F.S. § 112.3148.

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<sup>1</sup> All elected officers are subject to this provision, but only appointed officers who must file a Form 1 or Form 6 disclosure with the state are subject to this rule. You can read more regarding who must file a such disclosures at F.S. § 112.3145(1)(a).



#### Cooling-Off Period: Lobbying the County after Departing County Office

Former County officers currently face no special restrictions on lobbying except when it comes to lobbying their former County. Section 112.313(14), *Florida Statutes*, provides a two-year cooling off period for elected officials lobbying their former agency as follows:

A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. . . . The “government body or agency” of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.

While this section only applies to *elected* local government officers, Section 112.313(13) authorizes local governments to pass their own laws applying the same restrictions to appointed officers and employees. Orange County does not appear to have passed such an ordinance.

Amendment 12 will significantly lengthen this cooling-off period. Effective December 31, 2022, the Florida Constitution will prohibit County Commissioners, Charter Officers and Constitutional Officers from lobbying their governing body or agency on the issues of procurement, policy or appropriation for a period of six years. See FLA. CONST. Art. II, Sec. 8(f)(3)(c) (2022). While this section does not affect appointed officers or County employees, the Amendment explicitly authorizes enabling legislation. That legislation may include an expanded definition of “public officers.”