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**ORDINANCE NO. 2021-03**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WINDERMERE, FLORIDA PERTAINING TO CODE ENFORCEMENT; REVISING ARTICLE IV OF CHAPTER 2 OF THE TOWN'S CODE OF ORDINANCES TO AUTHORIZE THE TOWN TO USE A CODE ENFORCEMENT CITATION PROGRAM; DESIGNATING CODE ENFORCEMENT OFFICIALS; PROVIDING FOR PROCEDURES, INVESTIGATION OF VIOLATIONS, AND THE ISSUANCE OF CITATIONS; PROVIDING FOR THE PAYMENT OF FINES, COURT HEARINGS AND ADOPTING A SCHEDULE OF CIVIL PENALTIES AND FINES; PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**BE IT ENACTED BY THE PEOPLE OF THE TOWN OF WINDERMERE:**

**Section 1. Legislative Findings.**

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1. Article IV of Chapter 2 of the Town of Windermere's Code of Ordinances and Section 11.06.00 of the Town's Land Development Code provides for the use of a special magistrate to hold hearings and assess fines against violators of the Town's codes and ordinances.
  2. Part II of Chapter 162 of the Florida Statutes provides the Town Council with the ability to use additional and supplemental means of enforcing the Town's codes and ordinances, such as issuing citations.
  3. Subsection 162.21(5) of the Florida Statutes provides that the Town may enact an ordinance establishing procedures for issuing citations, including adopting a schedule of violations and penalties to be assessed by code enforcement officers.
  4. The Town Council now desires to amend Chapter 2 of the Town's Code of Ordinances to provide the Town with the ability to issue citations to violators of the Town's codes and ordinances.

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**Section 2. Amendments to the Town's Code of Ordinances.** Article IV of Chapter 2 of the Town's Code of Ordinances is amended as follows (words that are underlined are additions; words that are ~~stricken~~ are deletions):

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**ARTICLE IV. - CODE ENFORCEMENT**

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**DIVISION 1. SPECIAL MAGISTRATE.**

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**Sec. 2-99. - Procedure in Land Development Code adopted by reference.**

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The code enforcement procedure and provisions in the Land Development Code, part III, 11.06.00 are hereby adopted by reference as fully as if included in this Code of Ordinances and shall be applicable to this Code of Ordinances.

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**DIVISION II. CODE ENFORCEMENT CITATION PROGRAM**

46 **Sec. 2-100. - Authorization of the code enforcement citation program.** The Town  
47 hereby creates a supplemental and additional method of enforcing its codes and  
48 ordinances by the issuance of citations for violation of various codes and ordinances.  
49 Nothing contained herein shall prohibit the Town's enforcement of its codes or  
50 ordinances by any other means.

51 **Sec. 2-101. – Designation of code enforcement officers.**

52 (a) The Town Manager is hereby authorized to designate agents and certain  
53 employees as code enforcement officers. Code enforcement officers so  
54 designated shall have the powers and limitations prescribed herein and by statute.

55 (b) The training and qualifications of the code enforcement officers shall be  
56 established by the Town Manager.

57 **Sec. 2-102. – Applicable codes and ordinances.** Each of the various codes and  
58 ordinances of the Town may be enforced pursuant to the supplemental code enforcement  
59 citation procedures contained in this article. The various codes and ordinances shall  
60 include such codes and ordinances as they may be from time-to-time amended,  
61 renumbered, codified or recodified including codes and ordinances enacted subsequent to  
62 the adoption of this Article.

63 **Sec. 2-103. - Procedures; investigation of violations; issuance of citations.**

64  
65 (a) A code enforcement officer is authorized to issue a citation to any person for  
66 violation of any town code or ordinance when, based upon personal investigation,  
67 the code enforcement officer has reasonable cause to believe that a violation has  
68 occurred. The word “person” includes individuals, sole proprietorships,  
69 partnerships, companies, corporations, and all other business entities of all kinds.  
70

71 (b) Except as provided by subsection (c) below, the code enforcement officer shall  
72 provide notice to the person that the person has committed a violation of such  
73 code or ordinance and shall establish a reasonable time period within which the  
74 person must correct the violation. Such time period to correct the violation shall  
75 not exceed thirty (30) days.  
76

77 (c) If a repeat violation is found or if the code enforcement officer has reason to  
78 believe that the violation presents a serious threat to the public health, safety or  
79 welfare, or if the violation is irreparable or irreversible, a code enforcement  
80 officer is not required to provide the person with a reasonable time period to  
81 correct the violation prior to issuing a citation and may immediately issue a  
82 citation.  
83

84 (d) Written warning notices, if applicable, and citations shall be provided to the  
85 alleged violator by hand delivery by the code enforcement officer. In the absence  
86 of the alleged violator, issuance of a written warning notice or citation may be  
87 accomplished by leaving a copy at the alleged violator's residence with any

88 person residing in it who is 15 years of age or older and informing the person of  
89 the contents, or by registered or certified mail, return receipt requested.

90  
91 (e) Issuance of a written warning notice or citation to a business may be  
92 accomplished by leaving a copy at the business during regular business hours with  
93 any employee and informing the employee of the contents, or by registered or  
94 certified mail, return receipt requested. Each employee of the business shall be  
95 deemed to be an agent of the business for service of warning notices and citations.

96  
97 (f) If upon personal investigation the code enforcement officer finds that the  
98 violation has not been corrected within the specified time period, a code  
99 enforcement officer may issue a citation for a civil infraction to the person  
100 accused of committing the violation.

101  
102 (g) A citation shall include but not be limited to the following:

- 103 (1) Date and time of issuance;
- 104 (2) Name of the code enforcement officer and jurisdiction;
- 105 (3) Name and address of the violator;
- 106 (4) Code section that has been violated;
- 107 (5) Brief description of the nature of the violation, including location, date  
108 and time of violation;
- 109 (6) Amount of the applicable civil penalty;
- 110 (7) Procedure for the person to follow to pay the civil penalty, or to contest  
111 the citation;
- 112 (8) Notice that if the person fails to pay the civil penalty within the time  
113 allowed, and fails to appear in court then the person shall be deemed to  
114 have waived his or her rights to contest the citation and that, in such case,  
115 judgment may be entered up to the maximum civil penalty; and
- 116 (9) Notice that the person may be liable for reasonable costs of the hearing  
117 should the violator be found guilty of the violation.

118  
119 (h) Each violation of a Town code or ordinance is a separate civil infraction. Each  
120 day that such violation continues shall be deemed to constitute a separate civil  
121 infraction.

122  
123 (i) The maximum civil penalty or fine for each violation shall not exceed five  
124 hundred dollars (\$500.00).

125  
126 (j) After issuing a citation to an alleged violator, the code enforcement officer shall:

- 127 (1) Provide the person cited with 1 copy;
- 128 (2) Retain 1 copy in the code enforcement officer's department or division  
129 file; and
- 130 (3) Deposit the original citation and 1 copy of the citation with the Orange  
131 County Clerk of Court.

- 133 (k) If the person cited refuses to sign the citation, the code enforcement officer shall  
134 write the words “refused” or “refused to sign” in the space provided for the  
135 person’s signature. The code enforcement officer shall then leave a copy of the  
136 citation with the person cited, if possible, and shall notify the Town’s law  
137 enforcement and request filing of the necessary reports alleging a violation of  
138 Subsection 162.21(6) of the Florida Statutes, which provides that a person who  
139 willfully refuses to sign and accept a citation issued by a code enforcement officer  
140 shall be guilty of a misdemeanor of the second degree punishable as provided in  
141 Sections 775.082 or 775.083 of the Florida Statutes.  
142  
143 (l) Each person issued a citation shall have the following options: (i) to correct the  
144 violation and pay the civil penalty in the manner indicated on the citation; or (ii)  
145 appear on the designated court date and contest the citation before a Orange  
146 County judge. Failure to appear in county court on the designated court date shall  
147 be deemed a waiver of the rights of the person to contest the citation and may  
148 result in the imposition of a fine against the violator for an amount up to the  
149 maximum civil penalty.  
150

151 **Sec. 2-104. - Payment of fines; court hearings.**

- 152 (a) If the person elects not to contest the citation, the person shall pay in full the  
153 applicable civil penalty within 14 days after issuance of the citation.  
154  
155 (b) If the person elects to pay the civil penalty the person shall be deemed to have  
156 admitted the infraction and waived the right to a hearing.  
157  
158 (c) If the person cited fails to pay the civil penalty by the 14th day after issuance of  
159 the citation or fails to request a court hearing within the time prescribed, the  
160 person shall have waived any right to contest the citation and a judgment shall be  
161 entered against the person cited in an amount up to the maximum civil penalty,  
162 which shall not exceed \$500.00 per citation.  
163  
164 (d) If the person elects to contest the citation, the person shall appear in court before a  
165 county court judge within 21 days of issuance of the citation to request a hearing  
166 date.  
167  
168 (e) A county judge, after a hearing on the citation, shall make a determination  
169 whether or not a violation of this article has been committed. If a violation is  
170 found to have occurred, the county judge may impose a civil penalty up to the  
171 maximum civil penalty in an amount not to exceed \$500.00 per citation, plus all  
172 applicable court costs.  
173  
174 (f) The judge may provide for the civil penalty to be paid within such time as the  
175 judge determines to be appropriate. If the person found to be in violation fails to  
176 pay the fine within the time provided, a civil judgment shall be entered against  
177 that person in the amount up to the maximum civil penalty, not to exceed \$500.00  
178 per citation.

179  
 180 (g) Should the person cited schedule a hearing as provided for herein, and thereafter  
 181 fail to appear at such hearing, the person shall be deemed to have waived the right  
 182 to contest the citation and a civil judgment shall be entered against the person in  
 183 an amount up to the maximum civil penalty; provided, however, that the court  
 184 shall have the discretion to continue or reschedule any hearing when it determines  
 185 that doing so will further the interest of justice. In such an event, the clerk shall  
 186 notify the code enforcement officer and the person cited of the date and time of  
 187 the new hearing.

188  
 189 **Sec. 2-105. – Procedures for payment of civil penalty.** Payment of any civil penalty  
 190 and applicable court costs imposed by civil judgment or county judge shall be made to  
 191 the Clerk of the Court for Orange County. Thereafter, the clerk of the court shall remit  
 192 the remaining balance to the Town. Once a judgment has been satisfied and all violations  
 193 of the code or ordinance are brought into compliance, the necessary satisfaction of  
 194 judgment shall be prepared by the code enforcement department for the Town and  
 195 recorded in the Official Records of Orange County.

196  
 197 **Sec. 2-106. Applicable codes and ordinances; class violation.** All violations of the  
 198 Town’s code and ordinances (which include the Town’s Land Development Code) other  
 199 than the violations listed in the table below shall be cited as a Class 1 violation:

<b><u>Violation Classification</u></b>	<b><u>Description of Violation</u></b>	<b><u>Code Section</u></b>
Class 2	Unlawful parking of vehicles	Chapter 20, Article II
Class 2	Conduct in town parks and recreation areas – alcoholic beverages prohibited	Chapter 22, Article III
Class 2	Unlawful parking of boat trailers	Sec. 36-21

200

201 **Sec. 2-107. – Classes of violations and penalties.**

202 Violations of the Town’s codes or ordinances and the applicable civil penalties shall be  
 203 classified as follows:

<b><u>Violation Classifications</u></b>	<b><u>First Offense</u></b>	<b><u>Second Offense</u></b>	<b><u>Third Offense</u></b>
Class 1	\$50.00	\$100.00	\$150.00
Class 2	\$200.00	\$350.00	\$500.00

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205 **Section 3. Adjustments to penalties and classifications.** The Town Council will review and  
 206 revise the penalties and classifications periodically as required, but not less than every five years.

207 **Section 4. Codification.** Section 2 of this Ordinance shall be codified and made part of the  
208 Town of Windermere Code of Ordinances.

209 **Section 5. Conflicts.** In the event of a conflict or conflicts between this ordinance and other  
210 ordinances, this ordinance controls to the extent of the conflict.

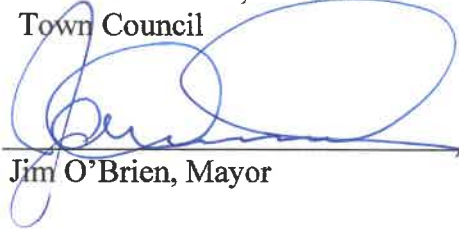
211 **Section 6. Severability.** The provisions of this Ordinance are declared to be separable and if  
212 any section, paragraph, sentence or word of this Ordinance or the application thereto any person  
213 or circumstance is held invalid, that invalidity shall not affect other sections or words or  
214 applications of this Ordinance. If any part of this Ordinance is found to be preempted or  
215 otherwise superseded, the remainder shall nevertheless be given full force and effect to the extent  
216 permitted by the severance of such preempted or superseded part.

217 **Section 7. Effective Date.** This Ordinance shall become effective upon adoption at its second  
218 reading.


219 **ENACTED** this 9<sup>th</sup> day of November, 2021, at a regular meeting of the Town  
220 Council of the Town of Windermere, Florida.

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Town of Windermere, Florida  
by: Town Council

by:   
Jim O'Brien, Mayor

230 Attest:

231   
232  
233  
234 Dorothy Burkhalter, MMC, FCRM  
235 Town Clerk

236  
237 First reading: October 12, 2021  
238 Second reading: November 9, 2021  
239 Advertised: October 28, 2021  
240

