



MEMORANDUM

Office of the City Attorney

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TO: Public Safety Committee
FROM: City Attorney
SUBJECT: Municipal Ordinance Prosecution

DATE: August 17, 2006

Violations of the City's open container and public urination ordinances (Gainesville City Ordinance Sections 4-4 and 17-8, respectively) are prosecuted in the criminal divisions of the Alachua County Court. The maximum penalties for violations of these ordinances are imprisonment for a term not to exceed 60 days and a fine not to exceed \$500.00. Additionally, alleged violators receive an arrest record as a result of violating the open container or public urination ordinances.

Violations of various other City ordinances, such as Chapter 15 noise violations, are enforced through issuance of civil citations. An alleged violator who receives a civil citation has the option of paying a fine or appearing in court for an administrative hearing to determine guilt. The civil penalty increases with each subsequent violation of the same ordinance, but may not exceed \$500.00 per violation. Civil citations are processed similarly to civil traffic infractions, and there is no arrest record resulting from receiving a civil citation.

ISSUES PRESENTED

The City's Code of Ordinances could be amended to allow enforcement of code violations by civil citation as an alternative to enforcement in the criminal courts. Several considerations would be impacted by such amendments.

1) Issue: Arrest powers are still available to curb the violations at issue.

This proposal does not require that law enforcement agencies abandon any present tools to enforce City ordinances, it merely suggests that there is an alternative way of handling open container and public urination cases. There are two important considerations that must be weighed in deciding to opt for civil enforcement rather than criminal-type enforcement of these violations. First, when arresting or issuing a notice to appear (NTA) in lieu of arrest, an officer has the ability to search the alleged violator incident to the arrest, primarily to ensure officer safety. Occasionally, a lawful search may lead to additional evidence, or evidence of other crimes. Second, when arresting an alleged violator, by definition, the officer removes the alleged violator

from the scene of the offense, and, therefore, causes an immediate cessation of the violation.

Regardless of the form of enforcement, valid identification must be produced by an alleged violator. Otherwise, an arrest will be necessary. As for other evidence that may be discovered during the course of a search, open containers of alcohol and public urination cases are not likely to be enhanced by additional evidence obtained through a search. While there are situations in which a person is found to have evidence of another crime, such as possession of drugs or drug paraphernalia, the number of cases where a defendant is charged with a municipal ordinance violation and other criminal activity is rather low. Nevertheless, the officer still has the discretion to arrest an alleged violator if he feels that the violator's conduct or other non-discriminatory circumstances arise that in any way endangers the safety of the officer or members of the public.

Open container and public urination typically are not crimes that would necessitate a removal of the alleged violator from the scene. This is more reserved for crimes that require removal in order to cease the activity from occurring, such as disorderly conduct and trespassing in a public park after hours. However, the police could still issue a Notice to Appear (in criminal court) in circumstances that are warranted.

2) Issue: The civil citation process is less "cumbersome, time consuming, and resource intensive."

Issuing civil citations is nothing new to local law enforcement agencies, as revealed by the large number of noise ordinance citations written each month. With regards to process, issuing a civil citation is no more time consuming than issuing an NTA, and it utilizes less resources than a physical arrest. The only procedural distinction between a civil citation and an NTA is whether a violator has been previously noticed before receiving a civil citation. For example, under Chapter 15, a person accused with a violation of the noise ordinance is warned by an officer, and is cited only if another violation occurs 90 days after the initial notice.

Florida Statutes state that an initial warning is not necessary for issuance of civil citations when the, "officer has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or if the violation is irreparable or irreversible." F.S. §162.21(3)(b). There are hazards associated with open containers in public areas, as well as sanitary concerns of public urination. With the appropriate presentation of evidence and testimony, the City Commission would likely find that violations of these ordinances could be appropriately enforced with civil citations absent prior personal notice. This would in turn eliminate the administrative burden of keeping track of past warnings. This Office in conjunction with GPD could make such a recommendation to the Commission.

3) Issue: Penalties for ordinance violations should fit the crime.

There is concern that people who violate the City's ordinances should face a more substantive penalty than a civil citation. What is the appropriate penalty for violating the City's open container and public urination ordinances? The perpetrators fall into three broad categories: college students and young adults; out-of-towners visiting for University-related events; and homeless individuals. An arrest record is a far more serious matter for the violators than the penalties assessed.

The majority of open container and public urination cases are committed by first time offenders, and the penalties for them are typically much less severe in the criminal courts than those that result from civil citations. The City has created a pre-trial diversion system, which is consistent with and based on a policy the State Attorney's Office utilizes in prosecuting misdemeanor criminal cases. Defendants who have little or no criminal history are offered, and overwhelmingly accept, a deferred prosecution agreement in which they agree to refrain from new violations of law for ninety days and pay a sum to defray the cost of prosecution within sixty days. Under the agreement, if all of the terms have been met, the City will dismiss the charges. Defendants who choose to go before the court or to whom pretrial-diversion is not offered, if found guilty, are sentenced by the Court. The penalties imposed by the Court are similar to those of 2nd degree misdemeanor cases, which are typically less than a person would receive as a result of a civil citation or traffic citation.

CITY STAFF RESOURCES

The prosecution of open container and public urination ordinance violations consumes a lot of staff time. An attorney and a staff assistant are required to attend every arraignment and pre-trial conference scheduled in each of the three misdemeanor divisions, plus at all hearings contesting the charges. This amounts to at least nine court appearances per month, plus additional dockets that are added on an occasional basis. Each case is called before the judge regardless of whether it is disposed of by pre-trial diversion, plea, or trial.

Civil citations only require court appearances if the defendant challenges the citation, or if it is the defendant's third or more violation of the same offense. Similar to traffic offenses, the case is typically presented by the officer who issues the citation, but assistance is available by the City Attorney's Office in matters where unusual defenses are raised, or at the reasonable request of an officer.