

**ORDINANCE NO. 2007-04**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ORCHID, FLORIDA, REPEALING CHAPTER 42 OF THE TOWN CODE IN ITS ENTIRETY; ADOPTING A NEW CHAPTER 42 ENTITLED CONSUMER PROTECTION; PROVIDING GENERAL PROVISIONS; ADOPTING AN ANNUAL WORK PERMIT REQUIREMENT FOR CONTRACTORS THAT ARE PROVIDING CONTRACTING SERVICES WITHIN THE BOUNDARIES OF THE TOWN; PROVIDING CONDITIONS FOR OBTAINING WORK PERMITS; PROVIDING CERTAIN EXEMPTIONS FROM THE ANNUAL WORK PERMIT REQUIREMENTS; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town is granted the authority, under section 2(b), Art. VIII of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, the Town is also granted general police powers for the protection of the citizens of Orchid; and

**WHEREAS**, the Florida Legislature has recognized that in accordance with the home rule powers granted to municipalities by the Florida Constitution, each municipality has the power to enact legislation concerning any subject matter upon which the state legislature may act, unless a municipality is preempted from doing so. §166.021(3), Fla. Stat.; and

**WHEREAS**, the Town Council hereby acknowledges and recognizes that the Florida Legislature has enacted numerous statutes imposing insurance requirements on contractors and has also required such contractors to demonstrate proof of insurance for licensing and permit purposes; and

**WHEREAS**, given the Legislature's actions, the Town Council hereby finds that the Town may also enact legislation requiring contractors, who are engaged in contracting services within the Town, to demonstrate proof of insurance as a condition of obtaining a work permit to the extent not prohibited by law; and

**WHEREAS**, the Town is a small bedroom community which experiences a substantial amount of transient contractors providing contracting services within the Town because the Town has no significant businesses located within the Town; and

**WHEREAS**, the Town Council desires to establish a regulatory scheme which requires certain contractors to obtain a work permit from the Town prior to engaging in contracting services; and

**WHEREAS**, the Town Council recognizes that it is the policy of the State of Florida to require contractors regulated under state law to maintain certain insurance coverage while engaging in business within the State of Florida; and

**WHEREAS**, in accordance with section 489.113 (4)(c), Florida Statutes, the Town Council further recognizes that it is also the policy of the State of Florida to allow local governments to deny issuance of, or to suspend, building permits where a contractor fails or refuses to provide proof of public liability, property damage, and worker's compensation insurance; and

**WHEREAS**, in furtherance of this state policy, the Town Council desires, to the extent permitted by law, to establish a regulatory scheme that requires contractors to annually demonstrate proof of such insurance as a condition of doing business within the Town and for purposes of providing some level of consumer protection to the citizens of Orchid; and

**WHEREAS**, the Town Council finds that this ordinance is not intended to be a substitute for consumers carefully selecting contractors and consumers must ultimately assume personal responsibility by conducting their own due diligence on all contractors before they are hired in order to determine that the contractors are fully and adequately insured relative to the contracting services being provided; and

**WHEREAS**, while this Ordinance is intended to afford some level of consumer protection, this Ordinance shall not be construed as the Town accepting responsibility that a contractor is actually or adequately insured to meet the needs of any consumer; and

**WHEREAS**, the Town Council also recognizes that in some cases state and federal law will preempt the Town's ability to enforce the provisions of this Ordinance and therefore, this Ordinance provides certain exemptions which acknowledge this preemption; and

**WHEREAS**, the Town is expressly authorized to impose fees to reimburse the Town for regulatory activities, including activities related to consumer protection, pursuant to section 166.221, Florida Statutes; and

**WHEREAS**, the Town Council hereby finds this Ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Orchid.

**NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF ORCHID, INDIAN RIVER COUNTY, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The foregoing recitals are hereby fully incorporated herein by the reference as legislative findings of the Town Council of Orchid, Florida.

**Section 2. Repeal Chapter 42, Town Code.** The Town Council of Orchid hereby repeals Chapter 42 of the Town Code in its entirety. A copy of Chapter 42 being repealed hereunder is attached hereto as Exhibit "A" for information purposes only.

**Section 3. Adoption of New Chapter 42, Consumer Protection.** The Town Council of Orchid hereby adopts a new Chapter 42 of the Town Code entitled Consumer Protection as follows (underlined type indicates additions and ~~strikeout~~ type indicates deletions):

## **CHAPTER 42. CONSUMER PROTECTION**

### **ARTICLE I. IN GENERAL.**

**Sec. 42-1. General Authority.** The Town Council hereby finds that this Article is adopted pursuant to the Florida Municipal Home Rule Powers Act and under the Town's general police powers to protect the safety and economic well-being of consumers.

**Sec. 42-2. Definitions.** Unless the context clearly provides otherwise, the following words and phrases shall have the meaning ascribed hereunder:

- (a) Contractor shall mean any person who, for others and for compensation, undertakes to construct, repair, alter, remodel, paint, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, and who, for compensation, undertakes to install, maintain, or remove landscape material such as soil, grass, shrubs, and trees or maintain swimming pools, jacuzzis, and other water features such as fountains.
- (b) Person shall mean any individual, firm, partnership, corporation, company, association, organization, or cooperative.

**Sec. 42-3 - 42-9. Reserved.**

### **ARTICLE II. ANNUAL WORK PERMITS.**

**Sec. 42-10 Public interest.** It is hereby declared to be the public policy of the Town of Orchid that in order to safeguard the life, health, property and public welfare of the citizens of

Orchid, the business of construction and home improvements and maintenance is a matter affecting the public interest. In addition, the Town recognizes that the construction and home improvement and maintenance industries may pose a danger of significant harm to the public when incompetent, dishonest, and uninsured contractors provide unsafe, unstable, or inferior products and services. Therefore, it is necessary in the interests of the public health, safety, and welfare to regulate the construction and home improvement and maintenance industries operating with the Town by requiring contractors in said industries to obtain annual work permits from the Town unless state or federal law preempts the Town's ability to do so. This Article, and the permit requirements imposed hereunder, are hereby deemed supplemental and in addition to any other permit and license requirements imposed by law.

**Sec. 42-15 Contractor Work Permit Required.**

- (a) Work permit required. Unless prohibited by state or federal law, all contractors desiring to do business within the Town of Orchid shall be required to obtain an annual work permit issued by the Town prior to engaging in contracting within the Town. The term "contracting" shall include not only any act of engaging and providing contracting services, but shall also include any unsolicited door-to-door solicitation of contracting services, bidding, and contract negotiations within the boundaries of the Town.
- (b) Form required. Any contractor desiring an annual work permit under this Article shall be required to complete and file a form provided by the Town Manager on an annual basis. At a minimum, the form shall require the applicant to provide the following information:
- (1) current name of business, name of principal/owner of business, street address of business, and telephone number of business or principal/owner;
  - (2) nature of contracting services provided;
  - (3) copies of any current local, state, or federal business licenses, if any;
  - (4) proof of current worker's compensation, general liability and property damage insurance including coverage amounts; and
  - (5) Service vehicle identification information for all vehicles that will be provided a decal in accordance with subsection (c) including license plate number, make and model, and color.
- (c) Issuance of permit. Upon filing a completed form as required by subsection (b), the Town Manager shall issue the contractor an annual work permit. The Town Manager shall also issue numbered vehicle decals for the contractor's service vehicles. The contractor shall be required to provide a copy of the permit to all customers prior to entering into any agreement

for contracting services within the Town. In addition, whenever any vehicle is being used for contracting services within the Town, the contractor shall be required to place the numbered decal within all service vehicles in such a manner that the decal is visible at all times from the front windshield of all such vehicles. Permits and decals issued hereunder shall be issued on an annual basis based on the Town's fiscal year. Permits and decals shall expire on September 30<sup>th</sup> of each year. Permits and decals are not transferable.

(d) Payment of permit fee required. The Town Council may establish an annual permit fee by resolution and said fee shall be required to be paid at such time a form is submitted by a contractor for processing.

(e) Insurance Requirements. Any contractor performing contracting services within the Town shall maintain worker's compensation, property damage, and general liability insurance in force at all times. If a contractor's insurance coverages as required by this subsection are canceled or otherwise terminated, the contractor shall notify the Town within fifteen (15) days after such cancellation or termination. In the event a contractor engages in contracting services within the Town without complying with the insurance requirements of this subsection, the Town may, in addition to any other remedy provided by law, deny issuance of, or may suspend, the work permit issued hereunder and any building permit issued by the Town.

(f) Exemption from Article. This Article shall not apply to:

(1) Certified contractors under chapter 489, Florida Statutes, and any other contractor that is exempt from the requirements of this Article by state or federal law.

(2) Any employee of a permit holder under this Article provided such employee does not hold himself out for hire or engage in contracting except as an employee.

(3) An authorized employee of the United States, State of Florida, or any local government of the State of Florida as long as the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with their employment with the government agency.

(4) Public utilities and public franchisees on construction, maintenance, and development work that is performed by their employees including, but not limited to providers of water, sewer, electric, phone, cable, gas, and solid waste services.

(5) The delivery of any finished products, materials, or merchandise which are not permanently fixed to the ground or any structure or building and not applied to the property by the person making the delivery (e.g. lawn spray and pest control).

(6) The delivery of packages and mail by the U.S. Postal Service, UPS, Fedex and other similar mail carriers.

(7) Owner-builders that are building a residence on their property for their own occupancy, provided the residence is not offered for sale.

(8) Owners of property providing their own contracting services for their own property including any bonafide employees of a country club providing the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with their employment with the club.

(9) Any person issued a license under chapter 527, Florida Statutes (Liquified Petroleum Gas).

(10) Any land surveyor, architect, engineer, realtor, or other professional service provider working in conjunction with a permit holder.

Notwithstanding the exemptions provided by this subsection, the Town Manager may issue a vehicle decal to any exempt person upon request, provided the form required by subsection (b) has been fully completed.

(g) *Penalties.* In addition to any other penalties and enforcement procedures provided by law, the Town Manager and Police Chief are hereby authorized to enforce the provisions of this Article by civil citation issued in accordance with Chapter 162, Part II, Florida Statutes. Violations of this Article shall constitute a civil infraction and any contractor violating the provisions of this Article shall be issued a citation which may be contested in county court. A citation issued shall be subject to a civil penalty in the amount of \$100.00 for the first violation, \$250.00 for the second violation, and \$500 for each violation thereafter. If a contractor elects not to contest a citation issued hereunder, the civil penalty imposed shall be reduced by twenty-five (25) percent.

**Section 3. Repeal of Prior Inconsistent Ordinances and Resolutions.** All prior inconsistent ordinances and resolutions adopted by the Town Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

**Section 4. Incorporation Into Code.** This ordinance shall be incorporated into the Orchid Code and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations and omissions not affecting the construction or meaning of this ordinance and the Town Code may be freely made.

**Section 5. Severability.** If any section, subsection, sentence, clause, phrase, word or provision

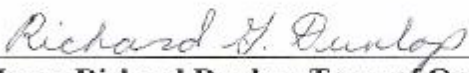
of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

**Section 6. Effective Date.** This Ordinance shall become effective immediately upon adoption by the Town Council of the Town of Orchid, Florida.

**ADOPTED** by the Town Council of the Town of Orchid, Florida, in a regular meeting assembled on the 2nd day of May, 2007.

**Ordinance 2007-04** was moved for adoption by Councilmember Crandall and seconded by Councilmember Joyce and adopted by the following vote:

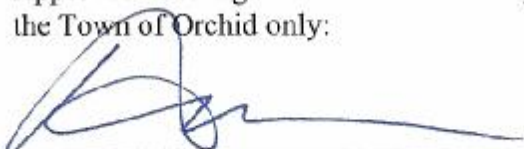
Mayor Dunlop	<u>    Aye    </u>
Vice Mayor Joyce	<u>    Aye    </u>
Councilmember Johnson	<u>    Aye    </u>
Councilmember Crandall	<u>    Aye    </u>
Councilmember Oatway	<u>    Aye    </u>

  
**Mayor Richard Dunlop, Town of Orchid**

ATTEST:

  
**Deb Branwell, Town Clerk**

Approved as to legal form and sufficiency for the Town of Orchid only:

  
**Anthony A. Garganese, Town Attorney**