

1 The Neighborhood Improvement and Community Enhancement Committee
2 recommends the following Substitute to file no. 2015-361:

3
4 Introduced by Council Member Brown:

5
6
7 **ORDINANCE 2015-361**

8 AN ORDINANCE AMENDING CHAPTER 804
9 (JACKSONVILLE TRAFFIC CODE), PART 7 (VEHICLE
10 REQUIREMENTS) SECTION 804.709 (UNLAWFUL TO
11 ALTER LICENSE PLATES, CITATIONS, MOBILE HOME
12 STICKERS, OR VALIDATION STICKERS; PENALTY)
13 ORDINANCE CODE, ADDING A NEW SUBSECTION (C) TO
14 AUTHORIZE THE PUBLIC PARKING OFFICER OR THEIR
15 DESIGNEE TO ISSUE A WARNING OR CITATION
16 PURSUANT TO THE AUTHORITY GRANTED IN THIS PART
17 AND CHAPTER 609, ORDINANCE CODE; AMENDING
18 CHAPTER 609 (CODE ENFORCEMENT CITATIONS);
19 SECTION 609.109 (APPLICABLE CHAPTERS AND
20 PARTS) TO ADD CHAPTER 804 TO SCHEDULE "A"
21 WHICH LISTS THE APPLICABLE CHAPTERS AND PARTS;
22 PROVIDING FOR AN EFFECTIVE DATE.

23
24 BE IT ORDAINED by the Council of the City of Jacksonville:

25 Section 1. Sections 804.709 (Unlawful to alter license
26 plates, citations, mobile home stickers, or validation stickers;
27 penalty), Ordinance Code, amended. Sections 804.709 (Unlawful to
28 alter license plates, citations, mobile home stickers, or
29 validation stickers; penalty), of Part 7 (Vehicle Requirements) of
30 Chapter 804 (Jacksonville Traffic Code), Ordinance Code, is hereby
31 amended to read as follows:

1 CHAPTER 804. JACKSONVILLE TRAFFIC CODE.

2 * * *

3 PART 7 VEHICLE REQUIREMENTS

4 * * *

5 Sec. 804.709. - Unlawful to alter or cover license plates,
6 citations, mobile home stickers, or validation stickers; penalty.

7 (a) No person shall alter the original appearance of any
8 registration license plate, citation, or validation sticker issued
9 for and assigned to any motor vehicle, whether by mutilation,
10 alteration, defacement, or change of color or in any other manner.
11 Any person who violates the provisions of this Section shall be
12 punishable by a fine of not more than \$100. The Public Parking
13 Officer, or their designee, is authorized to attach an
14 immobilization device to the vehicle pursuant to Section 802.112. A
15 violation of this Subsection shall constitute a class D offense.

16 (b) No person shall cover, hide, cloak, obscure, or
17 camouflage a vehicle's license plate, or the vehicle's license
18 plate mount or location in which the license plate is supposed to
19 be fixed, of any vehicle located in a front yard, or in a location
20 visible from the street or a public right of way. A violation of
21 this subsection shall constitute a class D offense.

22 (c) Pursuant to the authority granted in this Part and
23 Chapter 609, Ordinance Code, the Public Parking Officer or their
24 designee is authorized to enforce the provisions of the
25 aforementioned paragraph (b) by issuance of a warning or a citation
26 for civil fines, and by action for injunctive relief, through a
27 court of competent jurisdiction.

28 * * *

29 Section 2. Chapter 609 (Code Enforcement Citations),
30 Ordinance Code, amended. Chapter 609 (Code Enforcement Citations),
31 Ordinance Code, is hereby amended to read as follows:

CHAPTER 609 - CODE ENFORCEMENT CITATIONS

* * *

Sec. 609.109 - Applicable Chapters and Parts.

The following provisions of the Ordinance Code are subject to enforcement by citation. Where a Chapter or Part of a Chapter of the Code is referenced, then all Sections within that Chapter or Part are subject to enforcement by citation.

SCHEDULE "A"

CODE PROVISION*	DESCRIPTION	CLASS**
	* * *	
Chapter 746	Street Use Regulations	D
Chapter 752	Jacksonville Reuse of Reclaimed Water Program	D
Chapter 754	Stormwater Code	D
Chapter 804.709 (b)	<u>Jacksonville Traffic Code</u>	<u>D</u>

* * *

Section 3. Effective Date. This ordinance shall become effective upon signature by the Mayor or upon becoming effective without the Mayor's signature.

Form Approved:

/s/ Cherry Shaw Pollock

Office of General Counsel

Legislation prepared by: Cherry Shaw Pollock

Certificate of Use - Summary

Ordinance 2005-1355 was enacted in March of 2006.

This legislation removed the requirement of an applicant for a county occupational license to obtain zoning approval. (Section 772.106).

Historically the practice of the City of Jacksonville was to require verification of zoning compliance prior to issuing of an occupational license. The Attorney General for the State of Florida opined that a local municipality can only limit or restrict the levying of an occupational license tax upon specific enumerated conditions. However contingency upon Zoning Code compliance was not one of the specific conditions within the Florida Statutes.

In response to the Attorney General opinion the City established the Certificate of Use requirement for any new business locating in the City of Jacksonville.

The legislation incorporated Certificates of Use into the responsibility of the Planning and Development Department creating "Subpart E".

The legislation outlined review requirements, established fees and procedures to obtain a Certificate of Use.

Certificate of Use means an official document issued by the City which verifies that a use of a structure, other than a single family residence or duplex, may be used or an existing use enlarged, or any new use made of land, body of water, or structure, complies with the Florida Building Code, the Zoning Code and F.S. Ch. 633 and the City Fire Prevention Code, Chapter 420, Ordinance Code.

Certificate of Use Review

The Building Inspection Division shall review each certificate of use application for any new uses, changes in use, expansion of square footage or inclusion of new uses, for compliance with the Florida Building Code, and Part 12 and Part 13 of Chapter 656, Ordinance Code.

The Fire Prevention Division shall review each certificate of use application for any new uses, changes in use, expansion of square footage or inclusion of new uses, for compliance with Chapter 633 of the Florida Statutes and Section 420, Ordinance Code.

The Planning and Development Department shall review each certificate of use application for any new uses, changes in use, expansion of square footage or inclusion of new uses, for compliance with Chapter 656, Ordinance Code.

Posting of certificate of use.

Any person conducting a business for which a certificate of use is required by this Chapter shall post the certificate of use in a conspicuous place in or about the place of business where it may be seen upon inspection by any official of the City. Failure to do so shall constitute a violation of Chapter 609, Ordinance Code. If a certificate of use is lost or stolen, a duplicate certificate of use may be issued by the Zoning Administrator, provided that a duplication fee shall be charged for each duplicate certificate of use.

The COU legislation furthered the following policies of the Comprehensive Plan

Ensure ability to monitor implementation of the FLUE

FLUE Policy 1.1.4 – Ensure ability to monitor implementation of the FLUE

The Land Development Regulations shall include locational criteria and standards for all zoning or subdivision site plan requests for densities or intensities of use for each future land use category including appropriate criteria related to development areas, street classification, availability of public facilities and services, land use compatibility, development and redevelopment potential, site design factors, ownership patterns, environmental impacts, relevant adopted plans and studies, and principal and secondary uses as described in the Plan Category Descriptions of the Operative Provisions. In order to ensure the development of a variety of neighborhoods and living environments, the Land Development Regulations shall include several zoning districts with different minimum lot size and density of development requirements in each residential land use category.

Promote gradual transition of densities and intensities

FLUE Policy 1.1.7

The Planning and Development Department shall monitor the implementation of the Future Land Use Element by ensuring that the allocation of the various residential zoning districts permissible within each functional land use classification does not exceed the projected holding capacity reflected in Background Report of this Element. The results of this analysis shall ensure that the allocation of residential zoning districts in the Land Development Regulations will be consistent with the range in density and holding capacity established in the above policy. Final Development Orders will not be issued where holding capacity is exceeded.

Promote the elimination of incompatible land uses and blighting influences

FLUE Policy 3.1.2

The City shall eliminate incompatible land uses or blighting influences from potentially stable, viable residential neighborhoods through active code enforcement and other regulatory measures.

Protect residential uses from non-residential use impacts

FLUE Policy 3.2.4

The City shall permit expansion of commercial uses adjacent to residential areas only if such expansion maintains the existing residential character, does not encourage through traffic into adjacent residential neighborhoods, and meets design criteria set forth in the Land Development Regulations.

Ordinance 2014-724

The legislation amended Chapter 656, Part1 - Subpart E Certificates of Use of the Zoning Code.

The legislation includes provisions, procedures, enforcement and penalties regarding the revocation and suspension of a Certificates of Use.

The bill amends Chapter 770 and 772 replacing the term "Occupational License Tax" with "County Business Tax" and "Municipal Business Tax." It also clarifies that the issuance of a business tax receipt does not constitute approval of any particular business activity or waive any other city or county ordinances or state or federal regulations.

Existing enforcement and compliance measures have not been sufficient to bring non-compliant businesses into compliance with the applicable codes. The new requirements will reduce the number of businesses that are operating illegally and protect the public health, safety, and welfare.

The Ad Hoc Committee on Neighborhood Blight unanimously passed (5-0) the Certificate of Use legislation draft for introduction at the regular Stand Up for Your Neighborhoods meetings on October 29, 2014. The purpose of the legislation is to provide consistency in the process and requires applicant to be in compliance with all inspections prior to receiving a COU. Additionally, these amendments provide for inclusion of revocation, increased enforcement, and consistency in verbiage throughout the Code regarding Business Tax Receipt.

APPLICATION FOR CERTIFICATE OF USE (COU)

PLEASE PROVIDE ALL REQUESTED INFORMATION (ON BOTH SIDES OF THIS APPLICATION) AND SUBMIT BY MAIL OR IN PERSON TO THE ZONING SECTION AT THE ED BALL BUILDING (214 HOGAN ST. NORTH, 2ND FLOOR, JACKSONVILLE, FL 32202) WITH A CHECK PAYABLE TO THE (TAX COLLECTOR). FOR FURTHER INFORMATION, PLEASE PHONE: 904-255-8300

DATE: _____

\$112.00 Fee

- ☐ New Use
☐ New Business
☐ Change in Use (existing business)
☐ Expansion of Use/Business (sq. ft.)

\$89.00 Fee

(Requires copy of existing COU)

- ☐ Name/Owner Change
(only if you have an existing COU)

Exempt

- ☐ Home Occupation (Section 656.1601)
☐ Peddler (Section 250.101)
(Requires submittal of Home Occupation Disclosure Statement)

Business Owners Information

Business Owner's Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: _____ Fax: _____

E-Mail Address: _____

Business Name: _____

Business Description: ** _____

Business Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: _____ Fax: _____

E-Mail Address: _____ *** Real Estate/Parcel#: _____

** Please include survey/site plan if possible

***Real Estate number can be found on your tax bill or by contacting Jacksonville's Property Appraiser.

CERTIFICATION: I CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HEREBY UNDERSTAND THAT THE ISSUANCE OF A CERTIFICATE OF USE DOES NOT MEAN I HAVE OBTAINED ALL THE NECESSARY APPROVALS/PERMITS FOR MY BUSINESS.

PRINT NAME

SIGNATURE

DEPARTMENT USE ONLY

CERTIFICATE # _____ DATE: _____ PROCESSOR: _____

PREVIOUS USE (Check one)	
RESIDENTIAL	NON-RESIDENTIAL
<input type="checkbox"/> Single Family <input type="checkbox"/> Mobile Home <input type="checkbox"/> Condominium <input type="checkbox"/> Duplex <input type="checkbox"/> 3 or 4 Families <input type="checkbox"/> Apartments <input type="checkbox"/> Other _____	<input type="checkbox"/> Amusement, Recreational <input type="checkbox"/> Church, Other Religious <input type="checkbox"/> Industrial/Manufacturing/Warehousing/Distribution <input type="checkbox"/> Parking Garage <input type="checkbox"/> Service Station, Repair Garage <input type="checkbox"/> Hospital <input type="checkbox"/> Office, Bank, Professional <input type="checkbox"/> Utility, Tower, Storage Tank <input type="checkbox"/> School, Institutional , Library, Other Educ. <input type="checkbox"/> Store, Mercantile, Retail Sales <input type="checkbox"/> Convert Residence to Business <input type="checkbox"/> Restaurant <input type="checkbox"/> Day Care <input type="checkbox"/> New Building <input type="checkbox"/> Hotel, Motel, Dormitory <input type="checkbox"/> Other _____ <input type="checkbox"/> Adult Entertainment facility as described in Chapter 656, Part 10 of the Jacksonville Code of Ordinances? <input type="checkbox"/> Yes <input type="checkbox"/> No

PROPOSED USE (Check one)	
RESIDENTIAL	NON-RESIDENTIAL
<input type="checkbox"/> Single Family <input type="checkbox"/> Mobile Home <input type="checkbox"/> Condominium <input type="checkbox"/> Duplex <input type="checkbox"/> 3 or 4 Families <input type="checkbox"/> Apartments <input type="checkbox"/> Other _____	<input type="checkbox"/> Amusement, Recreational <input type="checkbox"/> Church, Other Religious <input type="checkbox"/> Industrial/Manufacturing/Warehousing/Distribution <input type="checkbox"/> Parking Garage <input type="checkbox"/> Service Station, Repair Garage <input type="checkbox"/> Hospital <input type="checkbox"/> Office, Bank, Professional <input type="checkbox"/> Utility, Tower, Storage Tank <input type="checkbox"/> School, Institutional , Library, Other Educ. <input type="checkbox"/> Store, Mercantile, Retail Sales <input type="checkbox"/> Convert Residence to Business <input type="checkbox"/> Restaurant <input type="checkbox"/> Day Care (Site plan approved by City Traffic Engineer and Proof of approval by Dept of Children and Families required). <input type="checkbox"/> Hotel, Motel, Dormitory <input type="checkbox"/> Retail Sales: Type of items to be sold _____ <input type="checkbox"/> Other _____ <input type="checkbox"/> Is this an Adult Entertainment facility as described in Chapter 656 , Part 11 of the Jacksonville Code of Ordinances? <input type="checkbox"/> Yes <input type="checkbox"/> No

DOES THE BUSINESS REQUIRE OUTSIDE DISPLAY, OUTSIDE SALES AND/OR OUTSIDE STORAGE? ☐ YES ☐ NO

Seating capacity: (If Applicable) _____ **Enclosed Area:** _____ SqFt

OFFICE OF GENERAL COUNSEL
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Fax: (904) 630-1316
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MEMORANDUM

TO: Honorable Members of the Special Ad Hoc Committee on
Neighborhood Improvement and Community Enhancement

FROM: Cherry Shaw Pollock, Assistant General Counsel *CSPollock*
Jason Teal, Chief of Regulatory *JR7*

VIA: Jason Gabriel, General Counsel

SUBJECT: Legal Opinion Regarding the Potential Use of Robocalling to Enforce Snipe
Sign Violations

DATE: September 14, 2015

I. Background.

The Jacksonville City Council Special Ad Hoc Committee on Neighborhood Improvement and Community Enhancement ("NICE Committee") has discussed the use of Robocalling as a potential enforcement tool against business owners who violate Chapter 741, Ordinance Code which prohibits snipe signs. Specifically, business owners are illegally posting snipe signs on public property throughout the Jacksonville area, apparently soliciting a myriad of services including buying houses, junk cars, etc. Approximately one year ago, the Municipal Code Compliance Division (MCCD) implemented the use of "robocalling" software to dial phone numbers advertised on the illegal snipe signs. Each call would leave a pre-record message which would inform the owner of the snipe sign that they were in violation of Chapter 741, Ordinance Code and that they may be subject to a penalty if the snipe sign was not removed.

Prior to the use of the Robocalling software, Assistant General Counsel Timothy Horkan issued a legal opinion on February 20, 2014 wherein he advised that such use of robocalls should be limited to one call per day per sign. As justification for his legal opinion, Mr. Horkan cautioned that:

So long as the City does not cause the other phone to ring repeatedly or continuously with the intent of harassing a person at the other end, the proposed use of the robocalls may be permitted under State and Federal Law...[otherwise, such actions may be criminal].

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Recently, members of the NICE Committee and citizens appearing before the Committee have indicated frustration regarding implementation of the legal opinion, apparently, due to other Florida cities purportedly implementing the use of Robocalling without any negative impacts from state or federal agencies. As such, the NICE Committee seeks a review and update to the legal opinion by the Office of General Counsel.

II. Question Asked.

Is it a violation of federal or state law to use the Robocalling enforcement tool against violators of Chapter 741, Ordinance Code regarding snipe sign violations where the robocalling method will dial prerecorded voice messages in excess of one call, per sign, per day?

III. Short Discussion and Answer.

Yes. It is a violation of 47 U.S.C. § 227, and 47 C.F.R. § 64.1200. It also very well may be considered a violation of Florida Statutes, Section 365.16 which prohibits harassing phone calls and criminalizes its utilization.

Specifically, Section 227(b)(1)(A)(iii) of the Federal Communications Act ("Act") and Section 64.1200(a)(1)(iii) of the Code of Federal Rules prohibit prerecorded voice messages and autodialed calls to cell phones, unless certain conditions are met. The Act makes it unlawful:

...for any person...to make any call...using any automatic telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

While there are two exceptions for: (a) calls made for emergency purposes, and (b) calls made with prior express consent of the called party, the proposed MCCD Robocalling enforcement methods do not meet either of these exceptions. First, MCCD makes the robocalls for the purpose of notifying violators of the snipe sign regulation. Such enforcement methods and tools cannot be considered a call for emergency purposes. Likewise, a posted phone number on an illegal snipe sign does not provide prior express consent of the called party. At best, the posting of the phone number may be considered implied consent. Finally, it is impossible to tell from the posted number whether it is a land line or cellular telephone number.

In an effort to obtain official guidance and clarity of the federal prohibition, on September 2, 2015, our Office spoke, via telephone, with Kurt Schroeder, Chief of Consumer Policy Division for the Federal Communications Commission (FCC) located in Washington, DC. Mr. Schroeder has been employed at the FCC for 26 years with 15 years serving as the Chief of the Consumer Policy Division. He advised that the FCC (which is the agency charged with

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interpretation and enforcement of 47 U.S.C. § 227, and 47 C.F.R. § 64.1200) considers it unlawful to make non-emergency calls without prior consent in the form of Robocalls as a tool for code enforcement. More importantly, he stated that the FCC could impose a civil penalty against a violator for \$500 per unlawful call. He further stated that there exists an active plaintiff's bar regarding class action lawsuits for violations of the Telephone Consumer Protection Act, and they are aggressively seeking potential causes of action.

In addition, pursuant to the directive from the NICE Committee, our Office, on September 3, 2015, also reached out to St. Petersburg City Attorney, John Wolfe, to learn more about St. Petersburg's use of Robocalling to enforce snipe sign violation. Mr. Wolfe indicated that St. Petersburg was not using Robocalling. He also suggested that we contact the St. Petersburg Code Enforcement Director, Todd Yost, to confirm such use. Mr. Yost was contacted and he confirmed, via telephone on September 9, 2015, that St. Petersburg is no longer using robocalling as an enforcement tool since they determined, through their experience, that it was not effective and was cost prohibitive.

As additional justification for the prohibition, we wish to bring to your attention the May 4, 2015 FCC Citation and Order issued in the Matter of M.J. Ross Group, Inc., d/b/a PoliticalRobocalls.com. In that administrative action, the FCC issued a Citation and Order to M.J. Ross Group, d/b/a PoliticalRobocalls.com for making robocalls to consumers' cell phones without consent or in the absence of an emergency, apparently, promoting clients from the Democratic Party. The FCC staff determined that PoliticalRobocalls.com made 293 autodialed or prerecorded message calls to cell phones in violation of the Act and Rules. Because the Company offered no evidence demonstrating that the calls made were for emergency purposes or that the Company obtained prior express consent for any of the calls, the FCC issued the Citation to the Company, and further ordered that additional violations cause a penalty in the amount of \$16,000 per call. Similarly, a Citation could be issued to the City of Jacksonville should it proceed with the use of Robocalling in violation of the Federal Communications Act.

Finally, Section 365.16, Florida Statutes, provides as follows:

- (1) Whoever:
 - (a) Makes a telephone call to a location at which the person receiving the call has a reasonable expectation of privacy; during such call makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, vulgar, or indecent; and by such call or such language intends to offend, annoy, abuse, threaten, or harass any person at the called number;
 - (b) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to annoy, abuse, threaten, or harass any person at the called number;
 - (c) Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or
 - (d) Makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number,

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is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

....
(5) Nothing contained in this section shall apply to telephone calls made in good faith in the ordinary course of business or commerce.

Accordingly, the State of Florida has in fact criminalized the employment of such technique. As previously noted, while proposed robocalls are being contemplated for governmental enforcement purposes and are not perhaps intended to harass a person at the dialed number, the placement, frequency and timing of such calls are relevant to the analysis and could very well be found to violate the statute.

IV. Conclusion.

Due to the potential for excessive exposure to litigation and liability, it is highly recommended that the City not use the robocalling method for the enforcement of snipe signs.