



**CITY COMMISSION AGENDA
CITY HALL COMMISSION CHAMBERS
300 W. Plant Street**

REGULAR MEETING

MARCH 14, 2013

6:30 P.M.

CALL TO ORDER

Determination of a Quorum
Invocation and Pledge of Allegiance

1. APPROVAL OF MINUTES

Regular Meeting of February 28, 2013

2. FIRST READING OF PROPOSED ORDINANCE

A. **Ordinance 13-18:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ARTICLE IV OF CHAPTER 38 OF THE WINTER GARDEN CITY CODE; PROVIDING FOR CLARIFICATIONS AND OBJECTIVE GUIDELINES TO ENFORCE THE NOISE ORDINANCE VIA AN ALTERNATIVE OBJECTIVE STANDARD OF REASONABLENESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for April 11, 2013** – City Manager Bollhoefer

3. SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE

A. **Ordinance 13-12:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING ARTICLE III, DIVISION 4 AND 5 OF CHAPTER 110 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING FINAL PLAT PROCEDURES AND REQUIREMENTS, AND HOA AND COMMUNITY SUBDIVISION INFRASTRUCTURE; RESPONSIBILITY; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE - Community Development Director Williams

4. REGULAR BUSINESS

A. Request by cycling festival organizer, Dennis Jones, to sell alcohol on the south side of the intersection of W. Plant Street and Lakeview Avenue on Saturday, April 6th, from 12 noon until 9 p.m. – Parks and Recreation Director Conn

5. MATTERS FROM CITIZENS (*Limited to 3 minutes per speaker*)

6. MATTERS FROM CITY ATTORNEY – Kurt Ardaman

7. MATTERS FROM CITY MANAGER – Mike Bollhoefer

8. MATTERS FROM MAYOR AND COMMISSIONERS

ADJOURN to a Regular Meeting on March 28, 2013 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

NOTICE: In accordance with Florida Statutes 286.0105, if any person decides to appeal any decision made by said body with respect to any matter considered at such meeting, he/she will need a record of the proceedings and, for that purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The City of Winter Garden does not prepare or provide such record.

	Those needing assistance to participate in any of these proceedings should contact the City Clerk's Office at least 48 hours in advance of the meeting (407) 656-4111 x2254.		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Director.
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CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

February 28, 2013

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Rees at 6:30 p.m. at City Hall, 300 West Plant Street, Winter Garden, Florida. The invocation and Pledge of Allegiance were given.

Present: Mayor John Rees, Commissioners Bob Buchanan, Kent Makin, Robert Olszewski and Colin Sharman (*arrived at 6:43 p.m.*)

Also Present: City Manager Mike Bollhoefer, City Attorney Kurt Ardaman, Assistant City Clerk Angee Grimmage, Assistant City Manager–Administrative Services Frank Gilbert, Assistant City Manager–Public Services Don Cochran, Community Development Director Ed Williams, Finance Director Laura Zielonka, Fire Chief John Williamson, Police Chief George Brennan, Economic Development Director Tanja Gerhartz, Parks and Recreation Director Jay Conn, Network Specialist George Strobel, Building Official Skip Lukert, and West Orange Times Reporter Kelsey Tressler

1. **APPROVAL OF MINUTES**

Motion by Commissioner Makin to approve regular meeting minutes of February 14, 2013 as submitted. Seconded by Commissioner Buchanan and carried unanimously 4-0.

2. **PUBLIC HEARING MATTER**

A. Appeal of Planning and Zoning Board's denial of a variance request to reduce the 10-foot side yard setback to 6.86 feet and to reduce the minimum 10-foot wide landscaping around the building to no more than 50 percent landscaping around the building at 1089 Walker Street; Applicants George L. and Maria P. Bori (AutoZone parts store CPH Engineers, Inc.)

Community Development Director Williams stated that the property is located on the north side of State Road 50 and east of Walker Street. The requests are for variances to accommodate an AutoZone auto parts facility. Staff recommends denial of their variance request to reduce the side setback and reduction of landscaping. The Planning and Zoning Board held a hearing on this request and were very concerned that millions of public funds have been spent on widening and landscaping of State Road 50 but felt the applicant produced no justification for the request for variances. The importance of the overlay zone for landscaping, signage control, and those issues were paramount to the Planning and Zoning Board's decision. Absent any justification, the board recommended denial of the application.

Mr. Williams noted that the applicant has indicated that when they submit site plans, additional variances may be requested for development of the site. Because of this, staff and the Planning and Zoning Board recommend denial.

Commissioner Olszewski stated that the City Commission has seen this project appealed previously and asked if this is an additional request after working with them almost a year ago. **Mr. Williams** responded yes; the prior issue was for the annexation and how access would be accommodated. They are now getting into the development stage and the first thing they submitted, without a site plan, was this request for variances. They indicated there would be further variance requests in the future. On a raw piece of property, with a new building, there has to be some strong justification as to why the variances would be granted.

City Manager Bollhoefer noted that all other new businesses coming into our City have not only complied but did so willingly because they wanted to be a part of the City's beautification effort on State Road 50.

Victor Chapman, representing the Bori's, Ms. Fleming and her two siblings, stated that this entire episode started back in April of 2009 when Mr. Bori was invited to annex into the City for which application was made in March 2011. It was subsequently denied. Eventually the City Commission approved the annexation, with conditions, which the applicant has complied. Specifically, the only entrance from State Road 50 or exit is from Walker Street on the side. Exiting would be from the left to minimize the impact on adjacent residential properties to the AutoZone location. He stated they are now seeking is a minimal variance of less than ten to six-and-a-half to seven feet of most of the property in setbacks. He noted that AutoZone must have the space to operate their standard building. He described their standardized plans and explained that AutoZone has made it clear that unless the plans submitted are permissible, they will not do it. He noted that there would be 20 to 30 full time employees, a million dollars of construction, and \$1.5 million estimated in gross sales for this property.

Commissioner Olszewski asked for clarification on the statements made about the changes being so minimal why is this issue before them tonight and the statement about if these changes are not granted AutoZone will not build here. Also, he heard that every single AutoZone is built identically. **Mr. Chapman** replied that he believes there are two separate plans. His understanding is that they are standard; you walk into one and you've been in them all.

City Manager Bollhoefer stated that all cities have their standards. Businesses choosing to come into communities look up those standards and make their decisions accordingly. He stated that AutoZone knew the standards coming in. He has not known a business that in the end will not change their standards. He strongly doubts they will withdraw and will try to find a way to make it happen.

Mr. Chapman stated that they understand that and the variance they are seeking will do minimal negative impact to the established standards. At the end of the day it will be an improvement.

Justin Polk, CPH Engineers, 500 West Fulton Street, Sanford, Florida, stated that he represents AutoZone in this application. He gave a historical summary of the events leading up to this point. He stated that they have never hidden the fact that they would be requesting variances. The variance request is from a side yard setback; the side yard building setback required is ten feet. The code states that within the ten feet, five feet may be sidewalk therefore, with six feet of landscaping you won't see a sidewalk. They are putting in 6.83 feet of landscaping, if there was a sidewalk they would already meet the code requirements. The staff report states that over fifty percent of the building has zero landscaping; that is absolutely not true. They moved the landscaping out towards the road to buffer the residential area more but they can move it towards the building if that is what the City wants. The only place next to the building that has zero landscaping is the doors.

Mr. Polk stated they are here today with a request for variance. He explained that a big part of this corridor agreement is the street frontage and how it looks from the road. He stated that all street frontages meet or exceed the setback and landscaping requirements. He displayed diagrams and explained the position of driveways and landscaping. Mr. Polk noted that there are two base building prototypes for AutoZone stores. **Mr. Bollhoefer** stated that staff called AutoZone who indicated they have nine prototypes. **Mr. Polk** stated that is correct because they flip the door and explained why. He noted that they are trying to be amenable with staff and they have had two separate runs with the residents and no one has objected. At the City's request they had a separate meeting and got full support.

Commissioner Sharman arrived at the end of Mr. Polk's account of the historical events leading to this appeal.

Commissioner Buchanan asked Mr. Williams if he understood it to be only this much of a variance being requested because he took it to be all the way around the building. **Mr. Williams** responded that he (Mr. Polk) is incorrect in stating that they are giving more landscaping than what is required; ten feet is required along that sidewalk. You can have sidewalk of five feet and five feet of landscaping, but not putting in the sidewalk and putting in six feet of landscaping does not meet the code. Secondly, he (Mr. Polk) is assuring the City Commission that the landscaping in the front will meet the City's code; they have not turned in any site plan, any landscape plan, or any drawing on which to make that determination.

City Manager Bollhoefer suggested that it all be brought in at one time instead of piece mill so that the City knows what needs to be considered. **Mr. Williams** noted that this is at the heart of the issue such as how are 18-wheelers going to load, unload, and

maneuvering on the sight safely. He stated that staff is assuming but have nothing on record for which to evaluate these issues.

Commissioner Makin asked if a denial letter was submitted from Florida Department of Transportation (FDOT). **Mr. Williams** responded that he has not seen a denial letter from FDOT. **Mr. Bollhoefer** stated that they can submit the denial letter at the next request.

Commissioner Olszewski asked City Attorney Ardaman that if the Planning and Zoning Board ruled on this issue and by the City's Code of Ordinances the Commission is required to make a decision based on the applicant's appeal, does the City Commission have the ability to require them to submit a complete site plan before making a ruling on this matter. **Mr. Ardaman** noted that the code provides that the City Commission is supposed to make its decision on the appeal within 21 days after the completion of the public hearing. The City Commission may extend the time for holding its hearing and rendering its decision to a time certain after notice to all parties to who notice of such hearing is required. Mr. Ardaman suggested that the applicant address the question of a continuance to a date and time certain.

Brady Lessard, CPH Engineering, 500 West Fulton Street, Sanford, Florida, stated that he thinks he is hearing there is a way to reach a compromise and make it work. **City Attorney Ardaman** expressed that the City Commission needs to see everything in order to make a determination whether it meets the criteria for the variance set forth in the code. The question is whether or not the AutoZone representatives are willing to continue this hearing to a date and time certain and submit a complete packet for the Commission's consideration. *(A short intermission was taken to allow the AutoZone representatives to discuss a continuation.)*

Mr. Lessard indicated they are willing to commit tonight that their site will meet City code and the overlay district, with the exception of this variance request. **Mayor Rees** stated that the City Commission would feel more comfortable if the appellants would get the packet together so they can see it.

Commissioner Makin readdressed traffic flow with no right-hand turnout and if they come back proposing it again will the traffic flow meet our code? **Mr. Williams** responded no, they will not be able to get eighteen wheelers in and out with the turn radius so there will have to be some modification.

Mayor Rees asked how much time is needed to bring this matter back. **Mr. Lessard** responded 90 days would be ample. **Mr. Ardaman** interjected that it must be to a date and time certain.

Motion by Commissioner Buchanan to continue this appeal hearing on April 11, 2013 at 6:30 p.m. Seconded by Commissioner Makin.

Lucille Verhoest, 175 Water Street, Winter Garden, Florida, (*unincorporated Orange County*) stated she lives behind the proposed site and that they have not spoken to all of the residents as they have indicated because they did not come and speak to her. She noted the plans show a wall right up against her street and complained that she did not want to look at a wall; they need to put in landscaping. She mentioned that the plans show a dumpster at the wall where she lives, which is picked up at 3:00 a.m. **Mayor Rees** shared that this should not happen and that she should let the City know. **Ms. Verhoest** noted that the other Discount Auto Parts store next door has trucks in there at 3:00 a.m. and deliveries at 11:00. Their lights are on constantly lighting up her bedroom. If AutoZone is putting up a light, her entire house will be lit up. **City Manager Bollhoefer** stated that staff will get her name and address and take all of her concerns into consideration.

Mr. Lessard noted that they did legal notifications by certified mail and tried to get as many attendees as possible. The wall was not their idea, but was staff's and the City Commission. He noted that there are some lumens issues for which they think they can handle to their satisfaction.

Motion carried unanimously 5-0.

3. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCE**

- A. **Ordinance 13-12: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING ARTICLE III, DIVISION 4 AND 5 OF CHAPTER 110 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING FINAL PLAT PROCEDURES AND REQUIREMENTS, AND HOA AND COMMUNITY SUBDIVISION INFRASTRUCTURE; RESPONSIBILITY; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE**

City Attorney Ardaman read Ordinance 13-12 by title only. Community Development Director Williams stated that the key provisions and the changes are that the Planning and Zoning Board will no longer review final plats since there is no discretion there was no reason to stretch out the process. The bigger changes include extending the bonding period for maintaining improvements to two years from the current one year, which provides an added protection to the homeowners. Also, it clarifies the need for the developer to fund the reserve accounts for the maintenance of infrastructure within the homeowner's development and homeowner's association common areas. **City Manager Bollhoefer** noted the two years is from the date of the last Certificate of Occupancy is issued.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

Motion by Commissioner Sharman to approve Ordinance 13-12 with the second reading and public hearing being scheduled for March 14, 2013. Seconded by Commissioner Makin and carried unanimously 5-0.

4. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

- A. **Ordinance 13-07:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 4.82 ± ACRES LOCATED AT 1751 WILLIAMS ROAD AT THE NORTHEAST CORNER OF WILLIAMS ROAD AND AMBER SWEET LANE INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
- B. **Ordinance 13-08:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 4.82 ± ACRES LOCATED AT 1751 WILLIAMS ROAD AT THE NORTHEAST CORNER OF WILLIAMS ROAD AND AMBER SWEET LANE FROM ORANGE COUNTY VILLAGE TO CITY URBAN VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinances 13-07 and 13-08 by title only. Community Development Director Williams stated that this is a voluntary annexation and designation of the future land use map of the property. There is no rezoning accompanying these ordinances and would have to come back as an urban village planned development. Staff recommends approval and noted it is consistent with the Joint Planning Area with the County who had no objections.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

Motion by Commissioner Makin to adopt Ordinances 13-07 and 13-08. Seconded by Commissioner Buchanan and carried unanimously 5-0.

- C. **Ordinance 13-09:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 4.6 ± ACRES LOCATED AT 17416 AMBER SWEET LANE ON THE SOUTH SIDE OF AMBER SWEET LANE, EAST OF WILLIAMS ROAD INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
- D. **Ordinance 13-10:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 4.6 ± ACRES LOCATED AT 17416 AMBER SWEET LANE ON THE SOUTH SIDE OF AMBER SWEET LANE, EAST OF WILLIAMS ROAD FROM ORANGE COUNTY VILLAGE

TO CITY URBAN VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinances 13-09 and 13-10 by title only. Community Development Director Williams stated that this property adjoins the previous request to the south. Staff recommends approval and noted this is within the Joint Planning Area with the county having no objections. This establishes the voluntary annexation and future land use designation.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

Motion by Commissioner Olszewski to adopt Ordinances 13-09 and 13-10. Seconded by Commissioner Sharman and carried unanimously 5-0.

- E. **Ordinance 13-11:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ORDINANCE 12-48, THE CITY OF WINTER GARDEN FISCAL YEAR 2012-2013 BUDGET TO CARRY FORWARD PRIOR YEAR APPROPRIATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 13-11 by title and the following excerpt as provided in the agenda packet from Section 1 as follows:

REVENUES

General Fund	\$ 850,978
Local Option Gas Tax Fund	1,582,456
General Impact Fee Fund	840,252
Transportation Impact Fee-South of Turnpike Fund	875,000
Transportation Impact Fee Fund	1,882,509
Utilities Operating Fund	3,143,080
Utilities Impact Fee Fund	3,687,150
Utilities Renewal & Replacement	3,055,700
Stormwater Fund	-
Trailer City Fund	1,056
	<u>\$15,918,181</u>

Mr. Ardaman noted that the expenditures for each of the items were the same amount.

Finance Director Zielonka stated that this ordinance is to carry forward the projects that were approved last year that are to be completed this year.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

Motion by Commissioner Olszewski to adopt Ordinance 13-11. Seconded by Commissioner Sharman and carried unanimously 5-0.

5. **REGULAR BUSINESS**

A. **Recommendation to approve entering into a Right-of-Way Maintenance Agreement with Reserve at Carriage Pointe Homeowners Association**

Community Development Director Williams stated this item is requesting permission to install additional landscaping and irrigation along major public roadways. This agreement establishes the procedures and staff recommends approval.

Motion by Commissioner Sharman to approve entering into a right-of-way maintenance agreement with Reserve at Carriage Pointe Homeowners Association. Seconded by Commissioner Buchanan and carried unanimously 5-0.

B. **Recommendation to approve waiving permit fees and closing Plant Street and Lakeview Avenue to accommodate the "Run in the Garden" 5k road race by Tri & Run of Winter Garden on Saturday, April 20, 2013 from 6:30 a.m. until 9:00 a.m.**

Parks and Recreation Director Conn stated that this request is from Jerry Pegram of Tri & Run of Winter Garden who is requesting to hold his spring 5K race in downtown Winter Garden. Approval is needed for blocking the streets and waiving permit fees. It is a benefit race for the Winter Garden Pal Program. Mr. Pegram has also received approval from the Downtown Merchants Association.

Motion by Commissioner Makin to approve waiving permit fees and closing Plant Street and Lakeview Avenue to accommodate the "Run in the Garden" 5k road race by Tri-n-Run of Winter Garden on Saturday, April 20, 2013 from 6:30 a.m. until 9:00 a.m. Seconded by Commissioner Sharman and carried unanimously 5-0.

C. **Recommendation to approve waiving fees and allowing alcohol sales for Evening at the Pops event Saturday, March 23, 2013 at Newton Park/Tanner Hall**

Parks and Recreation Director Conn stated that the Winter Garden Rotary Club is requesting to hold their annual Evening at the Pops event. He noted that this has been a great event for the City of Winter Garden with about 1,500 attendees since its inception. Approval has been requested to serve beer and wine and waiving of fees for using Tanner Hall.

Commissioner Makin asked if there are to be designated areas for the serving alcohol. **Mr. Conn** responded yes. **Commissioner Buchanan** noted that the entire area is roped off because it is a ticketed event.

Motion by Commissioner Buchanan to approve waiving the fees and allowing alcohol sales at the Evening at the Pops event Saturday, March 23, 2013 at Newton Park/Tanner Hall. Seconded by Commissioner Makin and carried unanimously 5-0.

D. **Appointment to the Code Enforcement Board to fill the unexpired term, until July 1, 2015, of resigning member Bradley Lomneck** *(continued from February 28, 2013)*

Commissioner Buchanan stated that someone had said this seat was formerly held by someone from District 2; after reviewing the applications he feels that the best person for this board would be Johnny Clark. Although he resides in District 1, he has been the Code Enforcement Manager, has passed the test for Code Enforcement, and knows our ordinances. He noted that if he really would like to sit on this board it would be a great fit. City Manager Bollhoefer noted that it is not required to be filled by district; it has just been done that way in the past.

Motion by Commissioner Buchanan to appoint Robert “Johnny” Clark to the Code Enforcement Board to fill the unexpired term, until July 1, 2015, of resigning member Bradley Lomneck. Seconded by Commissioner Makin and carried unanimously 5-0.

6. **MATTERS FROM CITIZENS** - There were no items.
7. **MATTERS FROM CITY ATTORNEY** - There were no items.
8. **MATTERS FROM CITY MANAGER** - There were no items.

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Makin asked Public Services Director Cochran about the progress on Crest Avenue and explained that he has spoken to the City Manager and was told there were problems with the contractor. He stated that he has residents calling and inquiring about when it will be done because they are tired of the detour. **Mr. Cochran** responded that he can understand their frustration because staff is also frustrated. He has been there almost every day for the past two weeks to motivate the contractor as much as possible. He explained that rain slowed their progress but they still assured him that they would have the street temporarily paved tomorrow so that it could be opened up. He shared that this company is Valencia Construction formerly known as Emerald Utilities. Staff will put together a summary report on this contractor so if they are ever the lowest bidder again, he will report their performance on this project to the City Commission.

Commissioner Buchanan spoke of people sharing with him they can't get close to the Farmer's Market on Saturday because of the lack of parking and his inability to find parking at events in the downtown area. **City Manager Bollhoefer** stated that staff will be bringing a presentation to the next meeting on parking.

Commissioner Buchanan also noted that he thought that the last 10K run was better organized than the previous one.

Commissioner Olszewski stated that he wanted to keep everyone informed that the group concerned about the 7-Eleven has been meeting with City staff as well as the attorney and representatives from 7-Eleven. He shared that there are ongoing discussions.

Commissioner Olszewski thanked the City, Orange County Community Action Board, and the East Winter Garden Community Development Corporation for their support with the “How you Can Drive a Mercedes” financial literacy event that was held in east Winter Garden last week. He also thanked Mercedes Benz of Orlando and the Orlando Magic; specifically Bo Outlaw and Nick Anderson for showing up.

Commissioner Olszewski congratulated the West Orange High School Men’s Soccer team who went undefeated the entire season except for the last game at the State Championship.

The meeting adjourned at 7:27 p.m.

APPROVED:

Mayor John Rees

ATTEST:

City Clerk Kathy Golden, CMC

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Michael Bollhoefer, City Manager

Date: March 8, 2013

Meeting Date: March 14, 2013

Subject: Ordinance 13-18 amending the current noise ordinance

Issue: This ordinance amends our existing code to authorize the City to cite operators of motor vehicles for noise violations emanating from their motor vehicle

Recommended action: Approve Ordinance 13-18 with the second reading on April 11, 2013

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ARTICLE IV OF CHAPTER 38 OF THE WINTER GARDEN CITY CODE; PROVIDING FOR CLARIFICATIONS AND OBJECTIVE GUIDELINES TO ENFORCE THE NOISE ORDINANCE VIA AN ALTERNATIVE OBJECTIVE STANDARD OF REASONABLENESS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Winter Garden (“City”) desires to amend Article IV of Chapter 38 of its Code of Ordinances relating to the abatement of noise levels within the City to add clarifying objective guidelines for determining violations of the City’s Noise Ordinance; and

WHEREAS, the City recognizes recent increases in complaints within residential areas of loud, raucous, or otherwise unduly jarring noise occurring at night during customary periods of slumber and of other times, and the City also recognizes recent increases in disturbances relating to noise in other parts of the City; and

WHEREAS, it has been held by courts within this state that both the U.S. and Florida Constitutions permit the enforcement of noise ordinances by and through the evaluation of noise in light of an objectively determined reasonable person standard providing objective criteria; and

WHEREAS, the City recognizes that Florida legislative enactments may preempt or otherwise effectively preclude the City in certain circumstances from enforcing the City’s Noise Ordinance,

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION I: SECTION 38-155. PROHIBITED ACTS, Section 38-155 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

(a) It shall be unlawful for any person to produce, cause to be produced, allow to be produced or project, by any means, any sound or noise across a property line in such manner as to create a sound level which exceeds the limits set forth for the receiving land use listed in section 38-156 when measured at or within the property line of the receiving property. For any activity or use of land or buildings not expressly listed in the zoning districts in the city, the city commission, upon notice to the owner or occupant of the property producing sound, may determine the category of use under this article for which the activity or use is to be considered. Notwithstanding the foregoing, the existence of a noise which relates to the receiving land use listed in 38-156 may be

determined by the City's law enforcement officers, code enforcement officers, code inspectors, and/or their agents pursuant to section 38-160(a)(1).

(b) Notwithstanding any violation of subsection (a) above, the following specific uses, activities and circumstances are declared to be in violation of this article:

- (1) *Radios, television sets, exterior loudspeakers, musical instruments, and similar devices.* Operating or permitting the use or operation of any radio receiving set, exterior loudspeaker, amplified sound equipment, musical instrument, phonograph, television set, or other machine or device for the production or reproduction of sound in such a manner as to create a noise across the boundary of the property, including, without limitation, public and private rights of way from which the noise originates. In addition to the preceding, radios, cassette players, disk players and similar devices associated with motor vehicles or motorboats, shall not be operated or amplified in such a manner as to be felt or clearly heard at 25 feet or more from such device, when operated or parked on a public or private right-of-way or public or private space. In determining whether such devices may be clearly heard, the City's law enforcement officers, code enforcement officers, code inspectors, and/or their agents must utilize their normal auditory senses without any enhancements or hearing aids. Particular words or phrases or the name of any song or artist are not required to be identified. The detection of a rhythmic bass reverberating sound shall be sufficient to determine if a violation has occurred. To the extent that the Florida Uniform Traffic Control Law provisions regulate noise originating from within public or private rights of way, those provisions shall apply where currently existing or as amended.

All other provisions remain the same.

SECTION II: Sec. 38-158. Exceptions. Section 38-165 is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions while underlined text indicates additions):

(a) The following noise and sounds are exempt from this article:

- (1) Noise and sounds caused by or related to emergency vehicles, equipment, and personnel during emergencies, which shall be deemed to include all work made necessary by an emergency to restore property to a safe condition, all work made necessary by an emergency to restore public utility service and all work made necessary by an emergency to protect persons or property from imminent injury, death, or substantial harm.
- (2) Noise and sounds produced by city, county, state, and federal government vehicles, equipment and personnel during the pursuit of official duties of the respective governments, including but not limited to public works construction

and maintenance, authorized safety signals, warning devices and emergency testing.

(3) Noise and sounds produced by public utility vehicles, equipment and personnel during the pursuit of the public duty of such public utility.

(4) Noise and sounds produced by activities or events approved by the city commission where the person responsible for such activities or events obtains the city commission's approval after such person clearly and expressly has advised the city commission that the noise or sounds associated with the activities or events would be in violation of this article but for this exemption.

(5) Noise and sounds produced between the hours of 7:00 a.m. and 9:00 p.m. by the mowing of grass; the operation of other yard maintenance equipment; the construction of properly permitted buildings, structures and other improvements; and the operation of farm equipment during farming activities.

(6) Railway locomotives and railway cars.

(7) Aircraft and airport activity conducted in accordance with federal laws and regulations.

(8) Motor vehicles operating on a public right-of-way subject to F.S. § 316.293 or other provisions of the Florida Uniform Traffic Control Law that regulate noise and sounds originating from within public or private right-of-way where currently existing or as amended.

(9) Organized athletic contests.

(10) Noise and sounds produced from churches between the hours of 7:00 a.m. and 10:00 p.m.

(11) Community events, such as fairs, school activities, community festivals and the like which do not extend their activities beyond 11:00 p.m. or commence before 7:00 a.m. Any community activity which extends beyond 11:00 p.m. or commences before 7:00 a.m. and would otherwise violate this article must apply for and receive prior approval from the city.

(12) Noise and sounds produced by an electrical generator during a time period in which regular electrical utility service is temporarily unavailable to the property upon which the generator is located.

(13) Noise and sound associated with uses or activities for which a variance has been obtained from the city approving such noises and sounds contrary to the restrictions of this article.

(b) To the extent any portion of this article covers a matter covered by F.S. § 403.415, the Florida Motor Vehicle Noise Prevention and Control Act of 1974, or any other provisions of the Florida Uniform Traffic Control Law, the provisions of this article covered by such act or law shall be of no effect. For matters not covered by the act or law, all of the sections of this article are in full force and effect. Additionally, any violation of such act within the city shall be a violation of this article, and such violation may be penalized and such act may be enforced through the enforcement provisions of this article and this Code.

SECTION III: INCONSISTENCY. If any Ordinances or parts of Ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflict.

SECTION IV: SEVERABILITY. If any portion of this Ordinance is determined to void, unconstitutional, or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

SECTION V: CODIFICATION. That Sections I through II of this Ordinance shall be codified and made a part of the City of Winter Garden Code of Ordinances; that the Sections of this Ordinance may be renumbered or relettered to accomplish such intention; the word "*Ordinance*" may be changed to "*Section*", "*Article*", or other appropriate word.

SECTION VI: This Ordinance shall become effective upon approval by the City Commission at its second reading.

FIRST READING: _____, 2013.

SECOND READING AND PUBLIC HEARING: _____, 2013.

APPROVED:

John Rees, Mayor/Commissioner

ATTEST:

Kathy Golden, City Clerk

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Ed Williams, Community Development Director

Via: City Manager Mike Bollhoefer

Date: March 7, 2013

Meeting Date: March 14, 2013

Subject: **Ordinance 13-12**

Issue: Amending Article III, Division 4 and 5 of Chapter 110 of the Code of Ordinances of the City of Winter Garden.

Discussion: An Ordinance of the City Commission of the City of Winter Garden, Florida amending Article III, Division 4 and 5 of Chapter 110 of the Code of Ordinance of the City of Winter Garden concerning Final Plat procedures and requirements, and HOA and Community infrastructure; Responsibility.

Recommended Action:

Staff recommends adoption of Ordinance 13-12.

Attachment(s)/References:

Ordinance 13-12

ORDINANCE 13-12

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING ARTICLE III, DIVISION 4 AND 5 OF CHAPTER 110 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING FINAL PLAT PROCEDURES AND REQUIREMENTS, AND HOA AND COMMUNITY SUBDIVISION INFRASTRUCTURE; RESPONSIBILITY; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission desires to amend the final plat approval procedures and requirements of Chapter 110, City of Winter Garden Code of Ordinances to, among other things, more specifically address a subdivision developer’s funding and maintenance responsibilities for community subdivision infrastructure prior to turnover of the subdivision homeowners’ association and to provide more specific requirements for performance and maintenance guarantees; and

WHEREAS, the City Commission finds it to be in the best interest of the public health, safety and welfare to revise the final plat approval procedures and requirements of Chapter 110, City of Winter Garden Code of Ordinances in the manner specified in this Ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

Section 1: **Authority.** The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

Section 2: **Adoption.** Article III, Division 4 and 5 of Chapter 110 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

DIVISION 4. - FINAL PLAT

Sec. 110-151. - Procedure for approval.

(a) The final subdivision plat shall conform substantially to the preliminary plat as approved, and, if desired by the subdivider, it may constitute only that portion of the approved preliminary plat which he proposes to record and develop at the time, provided that such portion conforms to all requirements of this chapter. Provided, however, that the ~~planning and zoning board~~ or city commission may authorize minor adjustments to street and alley alignments, length, and lot lines where the ~~planning and zoning board~~ or city commission determines such adjustments are consistent with the intent and general layout of the approved preliminary plat. Where the final plat deviates from the approved preliminary plat to the extent that the ~~planning and zoning board~~ or city commission find such deviation to be significant and not consistent with the intent and general layout of the approved preliminary plat, such final plat shall not be approved until it reflects the originally approved preliminary plat, or a new preliminary plat has been approved in accordance with the preliminary plat provisions of this article.

(b) After obtaining conditional approval of the preliminary plat, six copies of the final plat and supplementary material specified in this chapter shall be submitted to the Community Development Director ~~city planner~~, along with an application for final plat approval, for review by the city surveyor, city attorney, and Development Review Committee (DRC).

(c) Following a review by the city surveyor, city attorney and staff DRC of the application, final plat and other materials submitted for conformity to this chapter and such other requirements of the code or law as may be applicable, the negotiations with the subdivider on changes deemed advisable and the kind and extent of improvements to be made by the subdivider, the completion of all necessary actions by the subdivider as may be required by the code or applicable law and after the subdivider has addressed the ~~city staff's~~ city surveyor's, city attorney's and DRC's comments, and provided any requested additional information or materials, the ~~city planner~~ Community Development Director shall place the subdivider's request for final plat approval, as submitted or as modified, on the next available ~~planning and zoning board~~ city commission agenda. ~~Thereafter, the planning and zoning board shall express its approval and shall state the conditions, if any, of such approval, or, if disapproved, shall express its disapproval and its reasons therefor.~~

(d) ~~After the planning and zoning board has approved the final plat, it shall transmit it to the~~ Thereafter, the city commission shall consider the final plat for final approval by the city, or for such other and take such action as the city commission deems appropriate, which may include approval, approval with conditions, or denial.

(e) Subject to approval of city commission and any conditions imposed thereby, the city attorney shall cause to be recorded in the public records of Orange County, Florida, the final plat and such other documents as may be required, at the expense of the subdivider.

(f) Notwithstanding anything to the contrary, the city commission shall not approve a final plat of any subdivision unless the subdivision improvements required by these regulations have been installed in accordance with the standards and specifications of the code and the appropriate officials and agencies and their approval has been certified to city or a surety bond or irrevocable letter of credit has been furnished in favor of and acceptable to the city in the amount of one hundred twenty percent of the contract cost of the required subdivision improvements to be completed.

(g) At no time prior to the final plat approval by the city commission and recording the final plat in the public records shall an owner of real property convey a portion of any lot, parcel or tract of land, unless such owner has otherwise received proper lot split or subdivision approval from the city creating a separate legal lot, parcel or tract. It is not a violation of this subsection to convey a partial undivided interest in an overall parent lot, parcel, or tract, such that there are multiple owners of the overall parent lot, parcel or tract. In addition to any other rights and remedies under the code, at law and in equity the city may have for a violation of this subsection, the city shall have the right to not process, withhold and revoke any and all certificates of occupancy, building permits and development orders concerning any unauthorized lot split or subdivision, including for the unauthorized lot, parcel or tract created and the parent lot, parcel or tract for which the unauthorized lot, parcel or tract was created.

Sec. 110-152. - Final plats; application, supplementary materials, documentation, contents and data required for final approval.

The final plat, application, and other materials required by subparagraphs (b) and (c) of section 110-151 shall, where applicable, at a minimum, comply with and include the following:

(1) Unless otherwise provided for in this article, the final subdivision plat shall comply with the requirements of F.S. Ch. 177, as may be amended from time to time. The final subdivision plat shall be drawn in ink on tracing cloth on sheets as required for filing for record in the county and shall be at a scale of 100 feet to one inch or larger. Where more than one sheet must be used to accurately portray the lands subdivided, an index or key map must be included and each sheet must show the particular number of that sheet and the total number of sheets included, as well as clearly labeled matchlines to show where other sheets match or adjoin. For large subdivisions the final plat may be submitted for approval progressively in contiguous sections satisfactory to the planning and zoning board. In addition to the requirements of F.S. Ch. 177, referenced above, the final plat shall show, depict, or otherwise provide for the following:

- a. Primary control points, approved by the city engineer, or descriptions and ties to such control points, to which all dimensions, angles, bearings, and similar data on the plat shall be referred.
- b. Tract boundary lines, right-of-way lines of streets, easements and other rights-of-way, and property lines of residential lots and other sites, with accurate dimensions, bearing or deflection angles; and radii, arcs and central angles of all curves.
- c. As applicable, the exact location, dimensions, name, identification, purpose, and description of public streets, private roadways, public and private alleys, rights-of-way, waterways, tracts, common areas, parks, public and private areas, playgrounds or other similar uses, reservations, easements or rights-of-way, blocks, lots and significant sites within the subdivision, with accurate dimensions, bearing or deflecting angles and radii, area and central angles, chord bearing and distance, tangent distance and length of all curves where appropriate. All interior excepted parcels as described in the description of the lands being subdivided shall be clearly indicated and labeled "Not a part of this plat."

d. Location, dimensions and purpose of any proposed easements and existing easements identified in the title opinion or certification required by this article below shall be shown on the plat or in the notes or legend, and their intended use shall be clearly stated. Where easements are not coincident with property lines, they must be labeled with bearings and distances tied to the principal lot, tract, or right-of-way.

e. Number to identify each lot or site. All lots shall be numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.

f. Purpose for which sites, other than residential lots, are dedicated or reserved.

g. Reserved.

h. Location and description of monuments.

i. Reserved.

j. All contiguous properties shall be identified by subdivision title, plat book, and page, and date of recording, or, if unplatted, land shall be so designated. If the subdivision platted is a part or the whole of a previously recorded subdivision, sufficient ties shall be shown to controlling lines appearing on the earlier plat to permit an overlay to be made; the fact of its being a replat shall be stated as a subtitle under the name of the plat on each sheet included. The subtitle must state the name of the subdivision being replatted and the appropriate recording reference.

k. Every plat offered for recording must be prepared by a Florida registered professional surveyor and mapper. The plat must be signed and sealed by that professional surveyor and mapper, who must state on the plat that the plat was prepared under his or her direction and supervision and that the plat complies with all of the survey requirements of F.S. Pt. I of Ch. 177, and Chapter 110 of the Winter Garden Code of Ordinances. Every plat must also contain the printed name and registration number of the professional surveyor and mapper directly below the statement required by this paragraph, along with the printed name, address, and certificate of authorization number of the legal entity, if any. A professional surveyor and mapper practicing independently of a legal entity must include his or her address.

l. Dedication of the plat to the public and the city for the uses and purposes stated thereon including in the plat notes by the owner or owners of record of lands to be subdivided. The dedication must be executed by all persons, corporations, or entities whose signature would be required to convey the record fee simple title to the lands being dedicated in the same manner in which deeds are required to be executed. All mortgagees having a record interest in the lands subdivided shall execute, in the same manner in which deeds are required to be executed, either the dedication contained on the plat or a separate instrument joining in, consenting to, and ratifying the plat and all dedications and reservations thereon.

m. Each plat shall show a description of the lands subdivided, and the description shall be the same in the title certification. The description must be so complete that from it, without reference to the plat, the starting point and boundary can be determined.

n. In all cases, the letter size and scale used shall be of sufficient size to show all detail. The scale shall be both stated and graphically illustrated by a graphic scale drawn on every sheet showing any portion of the lands subdivided. The name of the plat shall be shown in bold legible letters, as stated in F.S. § 177.051. The name of the subdivision shall be shown on each sheet included. The name of the professional surveyor and mapper or legal entity, along with the street and mailing address and phone number, must be shown on each sheet included. A prominent "north arrow" shall be drawn on every sheet included showing any portion of the lands subdivided. The bearings or azimuth reference shall be clearly stated on the face of the plat in the notes or legend, and, in all cases, the bearings used shall be referenced to some well established and monumented line. The date of preparation shall be provided on the face of the plat.

o. When a subdivision provides screening walls, landscaping, sidewalks, or other amenities within the public right-of-way and such is acceptable to the city in the city's sole discretion, a license agreement shall be required between the city, the developer and/or the homeowners association and such license agreement shall be referenced on the plat. Such license agreement shall be reviewed by the city as part of the preliminary plat process. Unless otherwise provided for in the license agreement, the developer and the HOA, jointly and severally, shall be responsible for the maintenance and repair of any such amenities constructed in the public right-of-way, and in no event shall the city be prohibited from removing such amenities within the public right-of-way in its sole and absolute discretion (such removal being at the cost of the developer and HOA, jointly and severally).

p. A statement of approval of the plat by the city.

q. The section, township, and range shall appear immediately under the name of the plat on each sheet included, along with the name of the city, county, and state.

r. As applicable, the following statements shall appear on the face of the plat in the "notes" section:

1. "The homeowners association, as owner of the subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, common properties, and amenities, and the individual lot owners to extent of their interest in the foregoing, shall release, defend, indemnify and hold the City of Winter Garden, other governmental entities and public utilities harmless from any and all costs, expenses, suits, demands, liabilities, damages, injuries (including death), or otherwise including attorney's fees and costs of suit, in connection with the reasonable use of said subdivision infrastructure, common areas, or amenities, or said parties' maintenance thereof, or said parties' exercise of rights permitted in the declaration of the homeowners association, this plat, or as otherwise permitted by law."

2. "The lots within this subdivision are governed by a mandatory homeowners association requiring the payment of fees and with the power to assess the lots. The homeowners association is the owner of and/or responsible for the maintenance, repair, and replacement of all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____ and _____ and the improvements thereon. Every lot owner within this subdivision must be a member of the homeowners association. Failure to pay such fees or assessments shall result in the attachment of a lien on the property of the owner which fails to pay such fees or assessments by the homeowners association, which may result in the foreclosure of said property."

3. "The City of Winter Garden shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, any and all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____ and _____ and the improvements thereon. In the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or become a nuisance or in the event the City of Winter Garden exercises its aforementioned right, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fail to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____ and _____ and the improvements thereon."

4. "All platted utility easements shall also be easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services shall interfere with the facilities and services of an electric, telephone, gas, or other public utility. In the event a cable television company damages the facilities of a public utility, it shall be solely responsible for the

damages. This paragraph shall not apply to those private easements granted to or obtained by a particular electric, telephone, gas, or other public utility. Further, such construction, installation, maintenance, and operation shall comply with the National Electrical Safety Code as adopted by the Florida Public Service Commission."

5. "NOTICE: This plat, as recorded in its graphic form, is the official depiction of the subdivided lands described herein and will in no circumstances be supplanted in authority by any other graphic or digital form of the plat. There may be additional restrictions that are not recorded on this plat that may be found in the public records of this county."

6. If applicable: "The homeowners association shall enter into a license agreement with the city, where additional right-of-way has been dedicated or right-of-way will be utilized for the purpose of providing landscaping, additional areas for sidewalks, walls, or other amenities, and shall be responsible for the installation and maintenance of all landscape areas that are located in the public right-of-way."

7. For subdivisions with private roads or alleys, then the following, or substantially similar statement: "There is hereby granted and dedicated to the City of Winter Garden and other public service and emergency service providers, a non-exclusive easement over and through Tract _____ (Private Right-of-Way) and any other privately owned internal roads, alleys, paved areas and sidewalks for vehicular and pedestrian ingress and egress access for the purpose of providing public and emergency services to the subdivision, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services."

(2) A certificate shall be issued by the city engineer certifying that the subdivider has complied with one of the following alternatives:

a. All improvements have been installed in accord with the requirements of this section and with the action of the planning and zoning board giving conditional approval of the preliminary plat; or

b. A bond, irrevocable letter of credit, cash deposits, or certificate check has been posted, which is available to the city, and in sufficient amount to ensure such completion of all required improvements, said amount being at least equal to 120 percent of the estimated cost of completion.

(3) When the subdivider proposes to regulate land use within the subdivision or when required pursuant to this chapter, an executed original declaration, or amendment thereto, in recordable form, providing for the requirements of this chapter shall be required and subject to review by the city attorney for compliance with the provisions of this article.

(4) An original "Affidavit Certifying an Absence of Reserve Strips," in recordable form, executed by the developer and preparing surveyor.

(5) Unless provided for on the plat, an original joinder and consent to dedication, in recordable form, executed by all mortgage holders and such other parties, having a record interest in the land to be platted. Said joinder and consent must be executed in the same manner in which deeds are required to be executed, joining in, consenting to and ratifying the plat and all dedications, reservations, restrictions and covenants thereon.

(6) An original joinder and consent to the declaration, in recordable form, executed by all mortgage holders and such other parties having a record interest in the land to be platted. Said joinder and consent must be executed in the same manner in which deeds are required to be executed, joining in, consenting to and ratifying the declaration and all dedications, reservations, restrictions and covenants therein.

(7) If applicable, an original performance guarantee in the form of a bond, irrevocable letter of credit or cash deposit in favor of and acceptable to the city. Said guarantee shall, at a minimum, be in the amount of one hundred twenty percent of the ~~contract~~ construction cost of the required subdivision improvements to be completed and guarantee the proper and timely completion of all unfinished public and private infrastructure improvements, including, but not limited to, its materials, workmanship, structural integrity, and functionality to the satisfaction and approval of the city.

(8) An original maintenance guarantee in the form of a bond, irrevocable letter of credit or cash deposit in favor of and acceptable to the city. Subject to approval by the city engineer, said maintenance guarantee may be provided after final plat approval, but before issuance of a certificate of occupancy. Said maintenance guarantee shall, at a minimum, be in the amount of 20 percent of the ~~contract~~ construction cost of (i) the required subdivision improvements to be dedicated or conveyed to the city, (ii) the offsite public infrastructure improvements constructed or installed by the developer, and (iii) the private community subdivision infrastructure improvements. ~~and~~ The maintenance guarantee shall provide for the developer's guarantee of all such improvements, including its of all materials, workmanship, structural integrity, and functionality equipment for any improvement dedicated to the city and require developer's repair, replacement and correction of damage and defects to such improvements for at least a period of one two years from the date of final acceptance by the city. Prior to the city engineer issuing a certificate of completion for such improvements, the developer shall cause the design engineer of record to provide a signed and sealed certification to the city that all subdivision improvements to be dedicated or conveyed to the city, offsite public infrastructure improvements, and private community subdivision infrastructure improvements constructed or installed by the developer have been completed in accordance with approved design and construction plans.

(9) An original "Statement of Lien Settlement - Requirement For Current Year Of Payable Taxes, Tax Sale, and Capital Improvements" from the Orange County Property Appraiser's Office showing that all due taxes have been paid in full and all tax certificates, if any, against the land have been redeemed.

(10) As may be applicable, executed original instruments of conveyance in recordable form as to such property and improvements which are required to be conveyed to the HOA and the City from the developer, along with executed partial release of mortgages ~~the appropriate DR 219 forms.~~ Fee simple ownership of all rights-of-way, lift station tracts and other lands to be used for public purposes, but excluding dedicated easements, should be conveyed to the city by warranty deed, unless otherwise specified by the city. Fee simple ownership of all common area tracts should be conveyed to the applicable homeowners association by quit claim deed, unless otherwise specified by the city. Mortgagees shall execute partial release of mortgages concerning all tracts and lands conveyed in fee simple either to the homeowners' association or the city and such partial releases shall be recorded in the public records concurrently with the recording of the corresponding deeds.

(11) A title opinion of an attorney at law licensed in Florida or a certification by an abstractor or a title company, along with referenced documents, showing that record title to the land as described and shown on the plat is in the name of the persons, persons, corporation, or entity executing the dedication. The title opinion or certification shall also show all mortgages, easements, or encumbrances not satisfied or released of record nor otherwise terminated by law. An update of said title opinion or certification, certified to the city and the offices of the city attorney and the city surveyor, must be provided within 30 days of final plat recording. All documents referenced in said title opinion or certification, and update thereof, shall also be provided for review by the city.

(12) A construction cost estimate shall be submitted, which provides the estimated cost of installing all improvements. Such estimates shall be based upon recent bid information. As an alternative, bids of two reputable contractors, or a copy of an executed contract, for the installation of the improvements may be submitted.

(13) Payment of required recording costs, fees, deposits and costs as may be applicable or required pursuant to the code, and other applicable laws, ordinances, and regulations.

(14) A phase I environmental site assessment (ESA) must be conducted in accordance with the latest edition of the American Society for Testing and Materials (ASTM) standard E-1527 (Phase I ESA Process). The city will require a specified minimum off-site search distance of one-quarter mile. The minimum search distance may include areas outside the adjoining properties and shall be measured from the nearest property boundary. The ESA must be performed and signed by a Florida registered professional engineer or geologist who is able to demonstrate competence (i.e., education and previous experience) in producing ESA reports.

A previous phase I ESA may be used if it meets or exceeds the requirement of ASTM E-1527 (except as modified herein) and if the conditions of the property and area surrounding the property are not likely to have changed materially since the previous phase I ESA. Should more than one year have passed since the completion of the last phase I ESA, a current site reconnaissance and records review will be required at a minimum. All supplemental phase I ESA documents must also be signed by a Florida licensed engineer or geologist.

The results shall be provided to the city prior to acceptance of any lands to be dedicated to the city. Should environmental conditions requiring any remedial activity, monitoring or regulatory

action be identified as a result of the ESA(s), the city will not accept any dedications of such land until the conditions on the land are fully addressed to the satisfaction of the city and all applicable regulatory agencies.

(15) Such other agreements, certificates, endorsements, affidavits, documentation, engineering drawings, and data as may be deemed necessary to ensure conformity with the requirements of this chapter, the code, and other applicable laws, ordinances, and regulations.

DIVISION 5. HOA AND COMMUNITY SUBDIVISION INFRASTRUCTURE RESPONSIBILITY

Sec. 110-153. Homeowners association.

Prior to final plat approval and, in the case of a gated community, prior to the closure or operation of the gates, a residential subdivision or commercial subdivision which is subject to the provisions of this division shall establish a mandatory homeowners' (or property owners') association in accordance with the requirements of this division, and a declaration (or in the event of an existing recorded declaration, an amendment thereto) must be approved by the city. A certificate of good standing or such other evidence to determine the status of the HOA shall be submitted to the city as part of the final plat approval process. Unless otherwise approved by the city, simultaneous with the recording of the plat the developer shall cause to be conveyed to the HOA such land and improvements for which the HOA shall have the responsibility for maintaining and repairing, including the community subdivision infrastructure. A residential subdivision or commercial subdivision shall be subject to the provisions of this division when:

- (1) The responsibility to maintain certain areas, private amenities, subdivision infrastructure or improvements within the subdivision is to be shared by the lot owners, or where common areas will exist; or
- (2) Any of the subdivision infrastructure, including, but not limited to, roadways, street lights, drainage systems (which includes, without limitation, stormwater detention/retention areas and underdrains), sidewalks, or certain other subdivision infrastructure and improvements are to be owned or maintained privately; or
- (3) A gated community is sought to be established.

Sec. 110-154. Declaration.

A declaration, or an amendment thereto, which, at a minimum, sets forth the responsibilities and obligations for the maintenance, repair and replacement of the community subdivision infrastructure, common areas and private amenities and such other matters as provided in this division shall be required and submitted to the city prior to final plat approval and, in the case of a gated community, prior to the closure or operation of the gates. The declaration, or amendment thereto, shall be recorded simultaneously with the subdivision plat. The terms of the declaration, or amendment thereto, shall be to the city's satisfaction, legally sufficient and enforceable to, at a minimum, accomplish, provide or otherwise ensure or disclose the provisions of this division. Notwithstanding the foregoing, the exclusion of said provisions within the declaration, or amendment thereto, shall not operate as a condition precedent to city's ability to enforce the requirements of this chapter. Further, nothing in this section shall preclude the declaration, or amendment thereto, from addressing other matters so long as the substance of each part of the

declaration, or amendment thereto, is not inconsistent with the requirements of this chapter or any other applicable code reference or state law. The declaration, or amendment thereto, shall, as applicable:

(1) Establish the point at which the developer must turn over control of the HOA consistent with definition of same provided in section 110-56.

(2) Provide for the preparation of an initial community subdivision infrastructure report and compliance with the provisions of section 110-155, including developer's requirements prior to turnover.

(3) Provide for the preparation of a subsequent community subdivision infrastructure report and compliance with the provisions of section 110-156.

(4) Include the following or similar statement: "Property owners within the subdivision shall receive no discount in property taxes or any other tax or fee because of the retention or private ownership of the community subdivision infrastructure."

(5) Include the following or similar statement: "The City of Winter Garden shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, any and all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____ and _____ and the improvements thereon. In the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or become a nuisance or in the event the City of Winter Garden exercises its aforementioned right, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fail to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____ and _____ and the improvements thereon."

(6) Provide for the consequences resulting from a default with the provisions of the declaration, or amendment thereto, or the provisions of this chapter by the HOA or developer as set forth in section 110-159.

(7) Provide that any transfer of any portion or component of the community subdivision infrastructure (including the property on which the said community subdivision infrastructure is located) to the city or other governmental entity is prohibited without the concurrence of the city or governmental entity and the owners of two-thirds (or such higher percentage as the declaration may provide) of the platted lots.

(8) Require the establishment, funding and maintenance of an HOA account for annual routine maintenance and repair of the community subdivision infrastructure (referred to in this division as the "routine-community subdivision infrastructure-maintenance account"), and impose the restrictions and requirements set forth in section 110-157 regarding that account. Provide for the

developer's obligation to ensure adequate funding of HOA routine-community subdivision infrastructure-maintenance account required by section 110-157 until turnover of the HOA. Provide that developer/declarant shall continue to have responsibility to ensure proper maintenance of the community subdivision infrastructure until turnover occurs.

(9) Require the establishment, funding and maintenance of an HOA account for major capital repair and replacement of the subdivision's roads, curbing, sidewalks, stormwater drainage systems, and walls, etc. (referred to in this division as the "capital-community subdivision infrastructure reserve account"), and impose the restrictions and requirements set forth in section 110-157 regarding that account. Provide for the developer's obligation to ensure adequate funding of HOA capital-community subdivision infrastructure reserve account required by section 110-157 until turnover of the HOA.

(10) Include the following or similar statement: "The association and the lot and unit owners are responsible for assessing, collecting and reserving sufficient funds to operate, maintain, repair and replace common properties and subdivision infrastructure improvements. The City of Winter Garden shall not be liable or responsible for the maintenance, repair and replacement of private subdivision property and infrastructure improvements."

(11) Include the following or similar statement: "It is prohibited to alter the grade of or original drainage plan for any parcel, lot or tract, or change in the direction of, obstruct, or retard the flow of surface water drainage, or alter or remove of any berm, pipe, ditch, weir, manhole, swale, and stormwater collection, storage and conveyance system unless expressly authorized by the City of Winter Garden. This provision shall be considered a restrictive covenant in favor of and enforceable by the City of Winter Garden and in the event of a violation of this provision, the City of Winter Garden shall have the right to obtain injunctive relief, seek damages, and assess fines and liens in the amount of the cost to remedy the prohibited action (including administrative costs and attorneys' fees and costs) against the violating person or entity and any property owned by such violating person or entity; provided however, such right shall not limit the City of Winter Garden's other available enforcement actions permitted by law or equity."

(12) For subdivisions with private roads or alleys, include the following or similar statement: "There is hereby created, granted and reserved for the benefit of the City of Winter Garden and other public service and emergency service providers, a non-exclusive easement over, under and through the private subdivision roads and alleys for vehicular and pedestrian ingress and egress access for the purpose of providing public and emergency services to the common property and lots, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services."

(13) Provide that the HOA may not be dissolved and that no portion of the declaration, or amendment thereto, pertaining to the requirements of this chapter may be amended without the written consent of the city.

Sec. 110-155. Initial community subdivision infrastructure report/turnover requirements.

- (a) Prior to the point in time in which certificates of occupancy have issued for seventy percent (70%) of the platted lots within the project and No earlier than 180 days before turnover, whichever occurs first, the HOA must retain the services of a Florida registered engineer experienced in subdivision construction to inspect the community subdivision infrastructure and prepare a report evaluating the community subdivision infrastructure's economic life, recommending the amount of scheduled maintenance and unscheduled repair for the subsequent five years that likely will be needed for each component of the community subdivision infrastructure (specifically, at a minimum and as may be

applicable, providing for the roads, street lights, sidewalks and drainage system (which includes, without limitation, the stormwater detention/retention areas and underdrains)) which recommends the amounts of money that should be deposited each year in the routine-community subdivision infrastructure-maintenance account and the capital-community subdivision infrastructure reserve account, determining whether the existing capital-community subdivision infrastructure reserve account balance is adequate to provide for restoration or replacement of the infrastructure by the end of its estimated economic life, and determining what repairs, if any, are needed prior to turnover of the HOA. The HOA shall pay the cost associated with the preparation of the initial community subdivision infrastructure report, and the HOA may pay such cost from the routine-community subdivision infrastructure-maintenance account. The report must be signed and sealed by the engineer, certified to the HOA and provided to the city and to all owners of lots, blocks, and tracts within the subdivision within 15 days after its completion. In the event turnover occurs more than 1 year after the initial community subdivision infrastructure report is prepared, then before the occurrence of the turnover an update of the initial community subdivision infrastructure report shall be obtained and provided in the same manner as the initial community subdivision infrastructure report. Any needed repairs or replacements identified by the report(s) shall be completed by the developer, at the developer's sole expense, prior to turnover.

- (b) Prior to turnover, the developer shall fund or cause the funding of the routine-community subdivision infrastructure-maintenance account and capital-community subdivision infrastructure reserve account to cover any deficiencies in account balances. Not sooner than fifteen (15) days and not more than forty-five (45) days prior to turnover, the developer shall submit a sworn affidavit along with supporting documentation to the HOA and the city evidencing developer's compliance with the requirements of this section.
- (c) Prior to turnover and prior to the issuance of certificates of occupancy for ninety percent (90%) of the platted lots within the project, developer shall execute and deliver to the city a 2 year warranty guarantee agreement with the city along with security in the form of a bond, irrevocable letter of credit or cash deposit covering the private community subdivision infrastructure improvements, in a form approved by the city attorney, and naming the city as primary beneficiary and the applicable homeowners association as a third party beneficiary. The warranty guarantee shall provide for the developer's guarantee of all such improvements, including its materials, workmanship, structural integrity and functionality, and require developer's repair, replacement and correction of damage and defects to such improvements found within the warranty period. The warranty guarantee period shall commence from the estimated date of turnover and end two years thereafter. The maintenance bond or irrevocable letter of credit shall be in an amount equal to twenty (20) percent of the then current estimated costs to construct the community subdivision infrastructure improvements, which amount shall be subject to city engineer review and approval.
- (d) If turnover occurs and the foregoing requirements of subsections (a), (b) & (c) have not been fulfilled, the rights of the city, the HOA, any of its the HOA's members, and any and all owners of land within the subdivision to enforce these requirements against the

developer shall survive the turnover, with the prevailing party to be entitled to attorneys' fees and costs against the non-prevailing party. Notwithstanding the foregoing and without limiting the city's remedies, the city shall be entitled to withhold the issuances of certificates of occupancy ~~and~~ building permits for improvements within the subdivision until such time as the provisions of this section are met.

Sec. 110-156. Subsequent community subdivision infrastructure reports and maintenance.

The HOA shall obtain an inspection and written report of the community subdivision infrastructure, by a Florida registered engineer experienced in subdivision construction at least once every five years after the initial engineer's inspection required by section 110-155. Using good engineering practice or in accordance with such other standards as may be adopted from time to time by the HOA, or in accordance with such standards as the HOA's engineer may determine to be appropriate, the inspection shall determine and the written report shall document the level of maintenance and repair (both scheduled and unscheduled) needed, the amounts of funding needed each year for the next five years in the routine-community subdivision infrastructure-maintenance account to pay for such maintenance and repair, and any repairs then needed and determining whether the existing capital-community subdivision infrastructure reserve account balance is adequate to provide for restoration or replacement of the infrastructure by the end of its estimated economic life. The report must be signed and sealed by the engineer, certified to the HOA, and provided to the city and to all owners of lots, blocks, and tracts within the subdivision within 15 days after its completion. Within 180 days of receipt of each five-year report, the HOA shall complete all remedial work identified and recommended by the engineer. A completion report, signed, sealed and certifying that said remedial work has been completed, shall be submitted to the HOA, to the city, and to all owners of lots, blocks, and tracts within the subdivision 90 days thereafter. The HOA and the lot and unit owners of the subdivision are responsible for assessing, collecting and reserving sufficient funds to operate, maintain, repair and replace common properties and subdivision infrastructure improvements. The city does not have and will not assume any duty, liability or obligation concerning the operation, maintenance, repair and replacement of common properties and subdivision infrastructure improvements arising out of or relating to any provision of this chapter, including but not limited to, the city's collection of, evaluation of and response to the reports submitted pursuant to Section 110-155 and this section.

Sec. 110-157. Homeowners association required accounts for maintenance, repair and reserves.

At a minimum, the requirements, restrictions, terms, conditions, and limitations provided for in this section with respect to the accounts required for the maintenance and repair of the community subdivision infrastructure and the monies on deposit in those accounts shall be established and maintained by each HOA.

(1) *Required HOA asset accounts.* The HOA must create, deposit monies into, retain in perpetuity, and replenish from time to time the following accounts, which are referred to in this article collectively as the "required HOA accounts":

- a. A routine-community subdivision infrastructure-maintenance account; and
- b. A capital-community subdivision infrastructure reserve account;
- c. This division does not require the establishment of accounts for either routine maintenance or the capital repair and replacement of private amenities not related to the community subdivision infrastructure, but such accounts may be required by the declaration or as may be established at the discretion of the HOA. However, except as otherwise provided for in this section, monies

within the required HOA accounts may not be utilized for the maintenance, repair or replacement of the private amenities.

Each of the foregoing accounts must be asset accounts kept separate and apart from all other funds and accounts of the HOA, and for accounting purposes the HOA may not commingle these accounts, either with each other or with other funds and accounts of the HOA. However, notwithstanding the foregoing, the monies in the above accounts may be commingled with monies in other HOA accounts for banking and investment purposes, and may be pooled with other HOA monies in a common investment program, so long as the financial books and records of the HOA account for these monies separately and apart from all other HOA monies and keep such monies earmarked for the purposes set forth below. All earnings from the investment of monies in the required HOA accounts shall remain in their respective accounts and shall follow their respective principal.

(2) *Use of accounts.*

a. *Routine-community subdivision infrastructure-maintenance account.* Monies on deposit in the routine-community subdivision infrastructure-maintenance account, including any investment earnings, shall be used by the HOA, or by the developer with the written consent of the board of directors of the HOA, only for scheduled maintenance and for unscheduled repair of the roads, drainage system, including, but not limited to, the stormwater detention/retention areas and underdrains, sidewalks, street lights, curbing, bike paths, traffic-control signage and other HOA infrastructure appurtenant to the private roads and drainage systems. If allowed by the declaration, the monies on deposit in the account may also be used for scheduled maintenance and unscheduled maintenance and repair of the entrance and exit gates and their related facilities, but the declaration shall require that the roadways and drainage-system maintenance and repair take priority over the maintenance and repair of the gates and related facilities.

b. *Capital-community subdivision infrastructure reserve account.* Monies on deposit in the capital- community subdivision infrastructure reserve account, including any investment earnings, shall be used by the HOA for: (i) resurfacing and related reconstruction of the roadways, including alleys, in the subdivision; (ii) major repair, replacement and reconstruction of drainage systems, including, but not limited to, the stormwater detention/retention areas, control structures, underdrains and conveyance systems; and (iii) major repair, replacement and reconstruction of sidewalks, bike paths, curbing, walls, subdivision signage, gates, and other capital infrastructure improvements of the subdivision. Under no circumstances may the monies in the account be expended before the developer conveys the community subdivision infrastructure to the HOA.

(3) *Required funding; required assessments.*

a. *Routine-community subdivision infrastructure-maintenance account.* The HOA must deposit each year into the routine- community subdivision infrastructure-maintenance account an amount of money sufficient to perform all scheduled maintenance and unscheduled repair of the roads, drainage system, and other community subdivision infrastructure during the subsequent year. The amount deposited, when added to investment earnings, must be no less than the amounts estimated under subsection (5) until the reports required under sections 110-155 and 110-156 are prepared, and thereafter the amount deposited must be no less than the amount recommended by the applicable engineer's report required pursuant to sections 110-155 and 110-156. If the declaration allows maintenance and repair of the entrance and exit gates and their related facilities to be paid from the routine-community subdivision infrastructure-maintenance account, then the deposits each year must be increased by amounts sufficient to cover those costs.

b. *Capital-community subdivision infrastructure reserve account.* The HOA must deposit each year into the capital-community subdivision infrastructure reserve account an amount sufficient for: (i) the private roads and alleys to be resurfaced and, as related to the resurfacing, reconstructed no less frequently than every 12 years; (ii) the restoration and repair or replacement of the drainage systems, including, but not limited to, the stormwater detention/retention areas control structures, underdrains and conveyance systems, no less frequently than once every ten years; and (iii) the restoration and repair or replacement of all other community subdivision infrastructure, no less frequently than once every 50 years. The amount to be deposited each year into the account must be estimated by the developer and approved by the city prior to issuance of a certificate of completion for the subdivision infrastructure. Deposits to the account must begin in the year in which the city issues its certificate of completion. At the end of each five-year community subdivision infrastructure reporting period pursuant to section 110-156, the HOA shall revise and update the estimated cost to restore, repair and replace community infrastructure improvements taking into consideration actual costs incurred and expected increases in costs, and shall adjust the amount of its annual deposits to the account accordingly.

c. *Required assessments.* The obligation to collect and pay assessments shall commence as of the date on which the city issues its certificate of completion for the infrastructure improvements for the subdivision. However, if no plat has been recorded as of that date, the obligation to collect and pay assessments shall commence as of the date the plat is recorded in the public records of Orange County, Florida. In the case of the conversion of an existing subdivision to a gated community, the city shall determine the appropriate commencement dates on a case by case basis. The HOA shall impose and collect assessments against each platted lot in the subdivision, including lots owned or controlled by the developer and by any builder, without exception. The assessments must be uniform and equitable and must be imposed and collected in amounts sufficient, when added to investment earnings and other available revenues of the HOA, if any, to make all required deposits to each of the required HOA accounts.

Notwithstanding the foregoing, if in the opinion of the city engineer the community subdivision infrastructure has substantially deteriorated at the time a plat is approved, the city may require an additional payment of assessments by the developer to address the loss of useful life of the deteriorated community subdivision infrastructure.

(4) *Financial reports and other requirements.* Each year the HOA shall cause a financial report of the required HOA accounts to be performed and prepared, and a copy of the report shall be submitted to each owner of property in the subdivision and the city within the time frame required under the "financial reporting" requirements of F.S. ch. 720. At a minimum, the report shall confirm the existence of each of the required HOA accounts and report the amounts of deposits into and expenditures from the account during the period year, along with an itemization of the expenditures from the required HOA accounts. Finally, the financial report shall disclose whether any of the required HOA accounts has on deposit less than the amount required under the declaration.

(5) *Initial account funding and developer's obligations.* From the recording of the plat and up to the point in time when turnover of control of the HOA occurs, the developer and its successors in interest, shall remain personally obligated to ensure that adequate funding of the HOA accounts required by this section is provided, that the financial reporting requirements of this section are met and that the community subdivision infrastructure is being properly maintained. Prior to the issuance of a certificate of completion for the community subdivision infrastructure, the developer shall be required to fund the capital-community subdivision infrastructure reserve

account in an amount sufficient cover two-year's estimated deposits for such account and fund the routine-community subdivision infrastructure-maintenance account in an amount sufficient to cover one-year's estimated deposits for such account. For purposes of establishing deposits by the developer required under this subsection, deposit amounts shall be supported by a licensed engineer's evaluation of the community subdivision infrastructure's economic life and cost estimate for maintenance and replacement of such infrastructure provided to the city at the developer's expense and such is subject to the review and approval by the city engineer.

Sec. 110-158. Indemnification.

In the event the community subdivision infrastructure, or any component thereof, including, but not limited to, any and all private areas, drainage systems (including without limitation, the retention/detention areas and underdrains), common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the city, are not maintained, repaired, replaced, or cared for in accordance with the standards of the city code, good engineering practices, or such become a nuisance, or HOA accounts relating to the community subdivision infrastructure are not properly funded, the developer (so long as the developer retains control of the board of directors of the HOA and the provisions of section 110-155 are not completely satisfied), the HOA, and the individual lot owners of the subdivision, jointly and severally, shall release, defend, indemnify, and hold the city and its officers, contractors, consultants and employees harmless from any and all costs, expenses, suits, demands, liabilities, damages, injuries (including death), tort liability or award of damages or otherwise, including attorneys' fees and costs, in connection with, related to, or arising out of the maintenance, repair, replacement, reconstruction, or care of the community subdivision infrastructure, or any component thereof, by or on behalf of the city.

Sec. 110-159. Default.

The city shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, the community subdivision infrastructure, or any component thereof, including, but not limited to, any and all private areas, drainage systems (including without limitation, the retention/detention areas and underdrains), common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the city. Further, the city shall have the right, but not the obligation, to cause to be prepared any report, study, or inspection required by this division, if the HOA fails to obtain such reports, studies, or inspections required by this division in the time provided. In the event any or all of the components of the community subdivision infrastructure are not maintained, repaired, or replaced in accordance with the standards of the city code, good engineering practices, or become a nuisance, or the required reports, studies, or inspections are not obtained, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of reports, studies, inspections, maintenance, repair, replacement and care provided by or for the city, plus administrative costs and attorneys' fees and costs incurred by the city. If said costs are not paid within 15 days of invoicing to the HOA and the lot owners, then said costs shall constitute a lien on the property of the owner which fails to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the city's exercise of said right, shall not impose any obligation on the city to maintain, repair, replace, or otherwise care for any or all components of the community subdivision infrastructure or cause to be prepared any reports, studies, or inspections.

Without limiting the foregoing, upon any default by the HOA or the developer in any requirement of either this article or the declaration required under this article, the city, at its option (and without limiting its remedies) and after due notice of its declaration of a default and a reasonable time to cure, may prohibit closure of the gates and utilize all HOA monies on deposit in the routine-community subdivision infrastructure-maintenance account and the capital-reserve accounts or, if no monies exist or if an insufficient amount exists, using such other revenues or financing methods as the city may elect, including, but not limited to, special assessments against the all of the subdivision lots. The City shall have the right to enforce against the HOA and developer the requirements of this division and the provisions of the declaration required in this division. Further, without limiting the foregoing, upon any default by the developer of any requirement of this division, the city shall be entitled to withhold the issuance of certificates of occupancy and building permits for improvements within the project and withhold the issuance of development orders, certificates of occupancy and building permits for any other project the developer is the developer of record until such time as the default is cured.

Sec. 110-160. Insurance.

The HOA shall provide general liability insurance in the amount of not less than \$300,000.00 per occurrence and \$500,000.00 aggregate and name the city as an additional named insured. Such insurance shall protect the HOA and the city from any claim, suit, demand or damages resulting from or related to any activity by the city within the subdivision or the community subdivision infrastructure and private amenities, including, but not limited to, the operation, maintenance or repair of streets, subdivision infrastructure, water, sewer and drainage facilities. The insurance shall not include any exclusion that would deny coverage from the operation of sewer lines and shall provide 30-day written notice to the city prior to cancellation or modification of any insurance referred to therein. A signed certificate of insurance showing compliance with the requirements of this section, satisfactory to the city, shall be furnished to the city prior to final plat approval

Sec. 110-161. HOA and member rights.

The HOA, any member of the HOA, and any and all owners of land in the subdivision shall have the right jointly and severally to enforce against the developer the requirements of this chapter and the provisions of the declaration required in this division, with the prevailing party being entitled to attorneys' fees and costs. Any member of the HOA and any and all owners of land in the subdivision shall have the right to enforce against the HOA the requirements of this division and the provisions of the declaration required herein, with the prevailing party being entitled to attorneys' fees and costs against the non-prevailing party. Venue for any such enforcement action shall be in the Ninth Judicial Circuit of Florida, in Orange County, Florida.

(Ord. No. 04-19, § 2(Exh. A), 6-10-04)

Sec. 110-162. Developer liability.

~~Subject to section 110-155, u~~Until such time as turnover of control of the HOA has occurred and the developer has conveyed to the HOA such land and improvements for which the HOA shall have the responsibility for maintaining and repairing, including the community subdivision infrastructure, the developer shall remain jointly and severally liable, to the city, along with the HOA, for the maintenance and repair of the community subdivision infrastructure, common areas and private amenities within the subdivision, for the adequate funding of the HOA

accounts required by section 110-157 and for otherwise ensuring compliance with the provisions of this division chapter. By way of example and not limitation, all maintenance and repair of roads, sidewalks, street lighting and the drainage system, including the stormwater detention/retention areas and underdrains, are the responsibility of the developer, except as provided in this section. If turnover occurs and the obligations of the developer under this division have not been met, the rights of the city, HOA, any of the HOA's members, and any and all owners of land within the subdivision to enforce the requirements of this division against the developer shall survive the turnover, with the prevailing party to be entitled to attorneys' fees and costs against the non-prevailing party. Venue for any such enforcement action shall be in the Ninth Judicial Circuit of Florida, in Orange County, Florida.

SECTION 3: Codification: Section 2 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 4: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls.

SECTION 5: Severability: It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 6: Effective Date: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING: February 28, 2013.

SECOND READING AND PUBLIC HEARING HELD: _____ 2013.

ADOPTED this _____ day of _____, 2013, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: *Jay Conn, Director, Parks and Recreation Department*

Via: City Manager Mike Bollhoefer

Date: **March 7, 2013**

Meeting Date: **March 14, 2013**

Subject: *Approval of request to sell alcohol at the Winter Garden Bike Fest on April 6, 2013.*

Issue:

Permission to host the 2nd annual bike fest on April 6, 2013 was granted to Dennis Jones, owner of Wheelworks of Winter Garden, at the Dec. 19, 2012 commission meeting. Mr. Jones would like to amend his original request to include the sale of alcohol at his event to supplement the fundraising for the 501c-3 beneficiary of the event (Noah's Light Foundation).

This is the second year that Mr. Jones will host the sale of alcohol at his event. There were no concerns regarding the sales or consumption of alcohol at the 2012 event.

Mr. Jones has complied with City staff requests in regards to the following safeguards:

- A designated, confined area will be utilized for this purpose.
- All state regulations will be followed regarding the sale of alcohol including obtaining the proper permits.
- The sales will not commence until 12:00pm and will end at 9:00pm
- ID's will be properly be checked to assure that proper age restrictions will be enforced.

Recommended action:

Motion to approve the sales of alcohol at the Winter Garden Bike Fest on April 6, 2013.

Attachments/References:

Zone Map

Narrative Request

Winter Garden Cycling Festival Proposal for Alcohol Sales

Winter Garden Wheel Works is hosting the Winter Garden Cycling Festival on Saturday April 6th 2013. The event is organized to benefit the Noah's Light Foundation whose mission is to find a cure for pediatric brain cancer.

We are requesting permission to sell alcohol to assist in raising funds for the Noah's Light Foundation. 100% of all processed will go to the foundation.

➤ Proposed Alcohol Sales:

- Hours of alcohol sales will be 12:00pm-9:00pm
- Types of alcohol, beer and wine
- I.D. will be checked for all sales
- Red Top Production is the proposed vendor and has all necessary permits, regulations, and rules governing sales of alcohol
- The vendor will be at located on the south side of the intersection of Plant St. and Lakeview Ave.
- An area clearly marked by signage and barrier tape will identify the limits of the area that alcohol may be consumed
- See attached map for location of sales and limited area

The location identified is the best possible to minimize effects on local merchants that sell alcohol as well.

We are excited about the opportunities that this event will bring to the City of Winter Garden as well as the Downtown Merchants. Thank you for considering our proposal.

Sincerely,

Dennis A. Jones
Winter Garden Wheel Works

Bike Fest Alcohol Site Plan

