

ORDINANCE 18-37

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 18, ARTICLE II, DIVISION II OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN REGARDING THE BUILDING CODE TO CREATE A NEW SECTION 18-62 RELATING TO PRIVATE PROVIDER ALTERNATIVE PLANS REVIEW AND INSPECTION; PROVIDING FOR PRIVATE PROVIDER REGISTRATION AND A SYSTEM TO VERIFY COMPLIANCE WITH LICENSURE AND INSURANCE REQUIREMENTS; PROVIDING EXPRESS RESERVATIONS OF CITY AUTHORITY, INCLUDING THE AUTHORITY TO ISSUE STOP-WORK ORDERS UPON OFFICIAL DETERMINATION THAT A CONDITION ON BUILDING SITES CONSTITUTES AN IMMEDIATE THREAT TO THE PUBLIC SAFETY AND WELFARE; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Garden (“City”) recognizes that pursuant to section 553.791, Florida Statutes, appropriately licensed and qualified private providers may conduct alternative building plan and building inspection reviews; and

WHEREAS, the City acknowledges that it may, notwithstanding the alternative building plan and building inspection review process, lawfully issue stop-work orders relating to projects, or any portion thereof, that is an immediate threat to the public safety and welfare, that the City may further lawfully create a system of registration to verify compliance with the licensure requirements of section 553.791(1)(i), Florida Statutes, and that the City may verify compliance with the insurance requirements of section 553.791(16), Florida Statutes; and

WHEREAS, the City recognizes that the Legislature, in section 553.791(2)(b), Florida Statutes, has mandated that owners and contractors not be required to pay extra costs related to building permitting requirements when hiring a private provider for plans review and building inspections, and the City must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans review and building inspections in lieu of the local building official and to reduce the associated permit fees accordingly; and

WHEREAS, the City has determined such cost savings as may be applied for private provider plan review and building inspections in accordance with section 553.791(2)(b), Florida Statutes.

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

Section 1: Recitals. The above recitals are hereby incorporated by reference and shall constitute the legislative findings of the City Commission of the City of Winter Garden.

Section 2: Adoption: Chapter 18 regarding Buildings and Building Regulations is hereby amended to add a new section 18-62 to read as follows (words that are underlined are additions; words that are ~~stricken~~ are deletions; and all other provisions of Chapter 18 shall remain unchanged):

ARTICLE II. – BUILDING CODES

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DIVISION II. – BUILDING CODE

Secs. 18-62. –Private Provider Alternative Plans Review and Inspection

(a) Generally. As set forth in section 553.791, Florida Statutes, as may be amended, private providers may perform alternative plans review and building inspections under the circumstances provided therein. For purposes of this section, the term “private provider” shall have the meaning set forth in section 553.791, Florida Statutes. Notwithstanding the preceding, a private provider may not provide building code inspection services pursuant to this section or section 553.791, Florida Statutes, upon any building designed or constructed by the private provider or the private provider’s firm. No fee owner or contractor shall use a private provider that has not registered with the City Building Department and otherwise complied with this section.

(b) Registration. Any private provider intending to perform or provide building code inspection services as set forth in section 468.603(5), Florida Statutes, including building plans examination as set forth in section 468.603(8), Florida Statutes, for building or structures within the city, prior to engaging in any building code inspection services, shall register with the City Building Department and:

(i) provide the city with current, legible copies of any and all applicable and current Florida licensures providing proof of eligibility as a building code administrator under part XII of chapter 468, Florida Statutes, as an engineer under chapter 471, Florida Statutes, or as an architect under chapter 481, Florida Statutes. Additionally, for purposes of performing inspections under section 553.791, Florida Statutes, for additions and alterations that are limited to 1,000 square feet or less to residential buildings, a private provider shall also include a person who holds a standard certificate under part XII of chapter 468, Florida Statutes;

(ii) deliver to the city acceptable proofs of insurance or other evidence demonstrating that the private provider has and maintains insurance for professional liability covering all services performed as a private provider. Such insurance shall have minimum policy limits of \$1 million per occurrence and \$2 million in the aggregate for any project with a construction cost of \$5 million or

less and \$2 million per occurrence and \$4 million in the aggregate for any project with a construction cost of over \$5 million. The term “construction cost” means the total cost of building construction as stated in the building permit application. If the private provider chooses to secure claims-made coverage to fulfill this requirement, the private provider must also maintain coverage for a minimum of 5 years subsequent to the performance of building code inspection services. The insurance required under this subsection shall be written only by insurers authorized to do business in this state with a minimum A.M. Best’s rating of A;

(iii) set forth in sufficient detail the services to be performed by the private provider;

(iv) state the name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider’s firm, the private provider, and any duly authorized representative in the amounts required by section 553.791, Florida Statutes, and subsection (ii) above; and

(v) provide an acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by section 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit application.

(c) Notice provisions. The private provider and any fee owner or fee owner’s contractor shall be jointly and severally responsible for ensuring compliance with the notice

provisions of section 553.791, Florida Statutes, which establishes various notices that must be provided to the city. Such notices include, but are not limited to, the following:

(i) a private provider performing required inspections under section 553.791, Florida Statutes, shall provide notice to the city's building inspector of the date and approximate time of any such inspection no later than the prior business day by 2:00 p.m. local time or by any later time permitted by the city's building official. Thereafter, the city building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections; and

(ii) a private provider shall report to the city's building inspector any condition that poses an immediate threat to public safety and welfare as set forth in section 553.791, Florida Statutes.

For subdivision developments involving more than two platted lots, the fee owner or fee owner's contractor shall provide the city notice of its intention to utilize a private provider registered with the city prior to obtaining the first building permit for any structure within the development. If such notice of intention to use a private provider is not timely provided as set forth in the foregoing sentence, then a private provider cannot be used for any structure within or building permit concerning the development.

(d) *Fees when using private provider.* When a fee owner of a building or a structure, or the fee owner's contractor upon written authorization of the fee owner, utilizes a private provider as set forth in this section and section 553.791, Florida Statutes, for all required building or structure plan reviews and building or structure inspections, then city permitting and inspection fees will be assessed as a regular building permit with a credit of 30 percent towards the applicable inspection fee and permit fee charged without use of a private provider. If just plans reviews or building inspections are performed by a private provider under this section and section 553.791, Florida Statutes, then the credit of 15 percent will only apply towards the permitting or inspection fee associated with the service being privately provided.

(e) *City reservations.* The city expressly reserves all rights available under federal, state, and local law relating to the provisions of this section, including but not limited to, the immunity provisions set forth in section 553.791, Florida Statutes, and the city's authority to perform audits, issue stop-work orders, and otherwise conduct building planning review, inspection, and code compliance to the fullest extent permissible. Additionally, if the fee owner or the fee owner's contractor uses a private provider to provide plans review, the city building official may require the fee owner or the fee owner's contractor to use a private provider to also provide required building inspections. The city shall also have authority to implement the provisions of this section and the provisions of section 553.791, Florida Statutes, as may be amended, through the creation and requiring the completion of forms and affidavits and through the adoption and enforcement of policies by the Community Development Director or his/her designee.

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: Conflicts: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls to the extent of the conflict.

SECTION 5: 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 6: Effective Date: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING: September 27, 2018

SECOND READING AND PUBLIC HEARING: October 25, 2018

ADOPTED this 25th day of October, 2018, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

/S/
Bob Buchanan, Mayor Pro-Tem/Commissioner

ATTEST:

/S/
Angela Grimmage, City Clerk