RESOLUTION NO. 2124-13

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, FINDING THAT IT IS NECESSARY TO SEEK A DECLARATORY JUDGMENT THAT WILL DETERMINE THE RIGHTS AS BETWEEN THE CITY, ORANGE COUNTY, AND TWO PRIVATE BILLBOARD COMPANIES; RATIFYING THE FILING OF SUCH ACTION BEFORE COMPLIANCE WITH THE DISPUTE RESOLUTION PROCEDURES UNDER CHAPTER 164, FLORIDA STATUTES; FINDING AN IMMEDIATE DANGER TO THE WELFARE OF THE PUBLIC THAT REQUIRES THE CITY OF WINTER PARK TO FILE THE DECLARATORY JUDGMENT ACTION AND RATIFYING THE PRIOR ACTION OF THE CITY MANAGER AND CITY ATTORNEY IN FILING THE DECLARATORY JUDGMENT ACTION; PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the City Manager of the City of Winter Park determined that it was in Winter Park's best interests and the best interests of the public to file a declaratory judgment action to determine the validity of Orange County sign permit #B12006345; and

WHEREAS, the City Manager of the City of Winter Park determined that it was in the City of Winter Park's interest that the City Attorney file a declaratory judgment action regarding the competing claims by two private billboard companies and property owners in the City claiming a priority entitlement to erect billboards on Lee Road; and

WHEREAS, the City Commission of the City of Winter Park is acting in accordance with the provisions of Article VIII, Section 2(b) of the Constitution of the State of Florida, which provides that "municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law"; and

WHEREAS, the City Commission of the City of Winter Park is also acting in accordance with Section 166.021(1), *Florida Statutes*, which provides, in pertinent part, that "[a]s provided in S. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law"; and

WHEREAS, the City Commission of the City of Winter Park is also acting in accordance with Section 166.021(3), *Florida Statues*, which provides, in pertinent part, that "[t]he Legislature recognizes that pursuant to the grant of power set forth in S. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state legislature may act" except for certain very limited matters; and other applicable law; and

WHEREAS, the City has banned all off site signs and digital signs, and has from timeto-time taken action to ensure that the number of off-site signs in the City are minimized, that the rights and expectations of the citizens of the City of Winter Park are honored, and that all such actions are accomplished in a prudent manner consistent with the public interest and the controlling requirements of Florida law; and

WHEREAS, the City of Winter Park is being faced with Orange County's issuance of Permit No. B12006345 for an off-site sign within 1,000 feet of another off site digital sign the County approved on Lee Road as part of a Planned Development; and

WHEREAS, the City has attempted to resolve the conflicts with the County, to no avail; and

WHEREAS, the City Commission of the City of Winter Park hereby ratifies the City Manager's decision to file a declaratory judgment action seeking an adjudication of rights.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA:

SECTION 1. LEGISLATIVE FINDINGS/INTENT.

- (1) The provisions set forth in the recitals to this Resolution (whereas clauses) are hereby adopted by the City Commission of the City of Winter Park as the legislative findings and intent pertaining to this Ordinance.
- (2) The City Commission hereby acknowledges the fact that the City Manager has engaged Orange County administration in a dialogue in an effort to resolve the problem created by the fact that Orange County first issued a right to construct a billboard on Lee Road as part of a Planned Development, and thereafter, in apparent violation of County Code, issued a permit entitling another property owner and billboard company the right to erect a billboard within 1,000 feet of the first entitlement granted, notwithstanding that Orange County prohibits under its Code billboards being erected within 1,000 feet of each other.
- (3) Part II, Chapter 163, Florida Statutes, is styled as the "Local Government Comprehensive Planning and Land Development Regulation Act," and requires local governments to comprehensively plan and manage growth.
- (4) The City Commission for the City of Winter Park recognizes the statutory mandate that it initiate conflict resolution proceedings prior to initiating court proceedings under Chapter 164, *Florida Statutes*, but finds that an exception applies here.

SECTION 2. FINDING OF ADVERSE EFFECT UPON CITY'S LEGAL RIGHTS.

- (1) Orange County should not have the authority to enter into and take actions that adversely affect the City of Winter Park's ability to enforce its Codes.
- (2) The City understood when it annexed the subject Planned Development that the owner had the right to a billboard on Lee Road, but subject to the condition that three other billboards operated and owned by Clear Channel would be removed.

- (3) Clear Channel, MaxMedia, the property owners with relationships with these two companies, and Orange County have taken divergent and inconsistent positions. The City of Winter Park is in doubt as to its legal obligation under these circumstances and a declaratory judgment action pursuant to Chapter 86, *Florida Statutes*, is appropriate to resolve such doubt.
- (4) All other issues of conflict are specified in the recitals (whereas clauses) of this Resolution.

SECTION 3. SUPER MAJORITY FINDING OF THE CITY COMMISSION; AUTHORIZATION TO CITY MANAGER AND CITY ATTORNEY.

- (1) The City Commission for the City of Winter Park, by a three-fourths (3/4) vote, finds that significant legal rights of the City may be compromised, and there is an immediate danger to the welfare of the public unless the declaratory judgment is filed, accompanied by a motion to stay further action regarding the competing billboard interests pending a determination of the law by the court.
- (2) The City Manager authorized the City Attorney to file a declaratory judgment action against Orange County, MaxMedia, Clear Channel and the landowners on whose land the two billboard companies seek to erect billboards, and to bypass the conflict resolution process set forth in Chapter 164, *Florida Statutes*, because of the possible business damages that may be incurred without a prompt adjudication of the legal rights of the parties. And, the City Commission hereby ratifies the filing of such action.
- (3) The City Commission of the City of Winter Park also ratifies the direction by the City Manager to the City Attorney that the attorney shall prosecute the declaratory judgment action and obtain a statement of the correct law, defend against any effort to erect more than one billboard on Lee Road, and to receive for the City as a result of the legal action all benefits and conditions contained in the Planned Development (notably, the removal of three Clear Channel billboards in consideration of the erection of one Clear Channel billboard on Lee Road).
- (4) The City Commission of the City of Winter Park hereby directs the City Attorney to sustain to the greatest extent possible the position of the City that no off site sign or digital sign (commonly referred to as a billboard) will be permitted.
- (5) The City Commission of the City of Winter Park hereby directs the City Manager or designee to cause a certified copy of this Resolution to be delivered, return receipt requested, to the County Administrator of Orange County within five (5) days after passage of this Resolution, together with a letter pursuant to Section 164.1052(1), *Florida Statutes*. Also pursuant to Section 164.1052(1), *Florida Statutes*, the City Commission hereby directs the City Manager or designee to cause to be delivered a copy of the letter and this Resolution to all other local governmental entities as may be appropriate and beneficial.

SECTION 4. ANY ACTION WHICH THREATENS THE CITY. The City Manager is hereby authorized to authorize and direct the City's Attorneys to file any lawsuits or take any action necessary (as the City Manager may determine to be necessary) against any government

entity or agency, individual, or private entity which threatens or jeopardizes the City, and take all reasonable action necessary to protect the same.

SECTION 5. ADMINISTRATIVE ACTIONS. The City Manager or designee is hereby authorized to take any and all such administrative actions that are deemed necessary and appropriate to implement the provisions of this Resolution.

SECTION 6. SEVERABILITY. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Resolution not otherwise determined to be invalid, unlawful or unconstitutional.

SECTION 7 CONFLICTS. All resolutions or part of resolutions in conflict with this Resolution are hereby repealed.

SECTION 8. EFFECTIVE DATE. This Resolution becomes effective immediately upon its adoption.

ADOPTED at regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the 10th day of June, 2013.

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CITY OF WINTER PARK, FLORIDA

Kenneth W. Bradley, Mayor

ATTEST:

Cynthia S. Bonham, City Clerk