

ORDINANCE 3163-20

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING ARTICLE III "ZONING" AND ARTICLE IV "SUBDIVISION AND LOT CONSOLIDATION REGULATIONS OF CHAPTER 58 "LAND DEVELOPMENT CODE" TO CLARIFY THE PROCEDURES FOR APPLICANTS SEEKING TO TABLE, CONTINUE OR POSTPONE PUBLIC HEARINGS AFTER SUCH PUBLIC HEARINGS HAVE BEEN DULY ADVERTISED FOR REZONING AND CONDITIONAL USE REQUESTS; PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Park (the "City") recognizes that repeated requests from applicants to continue or postpone their public hearing when these requests come after the public hearing has been duly advertised, places an undue burden on the Planning and Zoning Board, Board of Zoning Adjustments, City Commission, City staff and the public; and

WHEREAS, the City recognizes that there is currently no limit on the number of times an applicant can request that the Planning and Zoning Board, Board of Zoning Adjustments or the City Commission may continue or postpone an application; and

WHEREAS, the City recognizes that the applicant must pay added filing fees to cover necessary administration and other expenses; but this is not a discouragement to repeated requests for continuances or postponements; and

WHEREAS, the City recognizes some limitations are necessary to the number of times an applicant can continue or postpone and application as is the custom for most cities and counties in Florida; and

WHEREAS, in accordance with section 163.3174, Florida Statutes, the City's local planning agency, which is the designated Planning and Zoning Board, has reviewed and made recommendations as to the amendments set forth herein;

WHEREAS, the City Commission has determined that this Ordinance is in the best interest of the health, safety and welfare of the citizens of Winter Park and is consistent with the Comprehensive Plan.

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

SECTION I: The above recitals are true and correct, are adopted and incorporated herein, and constitute the legislative findings of the City Commission of the City of Winter Park.

SECTION II: Portions of Chapter 58, Land Development Code, Article III, Zoning as set forth in this Ordinance, are hereby amended to read as shown below, and words with single underlined type shall constitute additions to the original text, ~~strike through~~ shall constitute deletions to the original text, and subsections and provisions not included are not being amended.

SECTION III: Chapter 58, Land Development Code, Article III, Zoning, Section 58-89 "Zoning changes and amendments, public notice requirements and procedures for zoning amendments and conditional uses" is hereby amended to repeal Subsection (h) entitled "*Continuances*" and replace it with a new Subsection (h) entitled "*Continuances*" and a new Subsection (n) entitled "*Limit on Application After Denial*," as shown below:

Sec. 58-89. – Zoning changes and amendments, public notice requirements and procedures for zoning amendments; and conditional uses.

(h) *Continuances.* Requests for continuances and continuances of public hearings before the planning and zoning board or city commission relating to rezoning, zoning code text change, conditional use, lakefront review, or other development order applications will be handled in the following manner:

(1) If the after a public hearing has been duly advertised, the applicant requests a continuation or postponement of such public hearing, the planning and zoning board or the city commission may grant the applicant's request for a continuance for up to six (6) months after the date of the originally advertised public hearing. Further, upon its own motion at a public hearing, the planning and zoning board or city commission may continue the public hearing for up to six (6) months with the concurrence of the applicant. The planning and zoning board and city commission shall each have the authority to deny any request for a continuance.

(2) If after an originally scheduled public hearing is continued at the request of the applicant, the applicant does not desire to proceed with the continued public hearing the applicant shall withdraw its application, otherwise the planning and zoning board or city commission will proceed with the continued public hearing. Thus, the applicant may only receive one continuance (one from each the planning and zoning board and city commission) of a public hearing at the applicant's own request. However, if at a city commission public hearing, the applicant's request for a postponement or continuance is based exclusively and entirely on a lack of all five members of the city commission being present to consider the matter, the city commission may waive the one applicant requested continuance restriction set forth in this subsection.

(3) If at any time the planning and zoning board or city commission lacks a quorum to conduct business on the date of an advertised public hearing, the public

hearing shall be deemed automatically continued to the date of the next regularly scheduled meeting of the planning and zoning board or city commission without the need to re-advertise the public hearing, unless it is continued as provided in the next sentence. Further, in the event of a lack of quorum, with unanimous consent of the members of the planning and zoning board or city commission who are present constituting less than a quorum after a call to order, the public hearing may be continued to a special meeting or other regular meeting occurring within forty-five (45) days from the date of the originally scheduled public hearing without the need to re-advertise the public hearing.

(4) If a public hearing is continued or postponed to a time that is more than forty-five (45) days from the date of the originally advertised public hearing, the continued public hearing date shall be re-advertised in the same manner as was required for the original public hearing date except as otherwise provided in subsection (c). If the planning and zoning board or city commission continues a public hearing to a time certain that is to occur within forty-five (45) days of the originally noticed public hearing date, the continued public hearing date does not have to be re-advertised except for the public posting of the planning and zoning board or city commission agenda for which the matter is to be heard.

(5) If re-advertising is required due to a continuance or tabling of a public hearing, the applicant shall pay all costs necessary to cover the advertising and notice costs and other administrative expenses relating to continuing or tabling and re-advertising the public hearing. The planning and community development department shall have the authority to establish a fee schedule for costs and expenses relating to continuances or postponement.

(6) The planning and zoning board and city commission shall each have the authority to continue or table any scheduled public hearing with or without the applicant's consent in the event it is determined that: (i) the applicable required advertising or notice of the public hearing was not provided, so that a future public hearing can be scheduled with proper advertising and notice; or (ii) the application is incomplete or there is a lack of relevant information needed to make a decision on the applicant's request.

(n) *Limit on Application After Denial.* If a rezoning or conditional use request is denied, a new application for a rezoning or conditional use pertaining to the same property will not be accepted or processed for a period of one-year from the date of the public hearing for which the denial vote occurred.

SECTION IV: Chapter 58, Land Development Code, Article III, Zoning, Section 58-91 "Board of adjustments – Establishment of procedure" is hereby amended to add a new subsection (b) (4) as shown below:

(b) Proceedings.

(4) Continuances. Requests for continuances and continuances of public hearings before the board of zoning adjustments relating to variance requests will be handled in the following manner:

(a) If the after a public hearing has been duly advertised, the applicant requests a continuation or postponement of such public hearing, the board of zoning adjustments may grant the applicant's request for a continuance or tabling for up to six (6) months after the date of the originally advertised public hearing. Further, upon its own motion at a public hearing, the board of zoning adjustments may continue the public hearing for up to six (6) months with the concurrence of the applicant. The board of zoning adjustments has the authority to deny any request for a continuance.

(b) If after an originally scheduled public hearing is continued at the request of the applicant, the applicant does not desire to proceed with the continued public hearing the applicant shall withdraw its application, otherwise the board of zoning adjustments will proceed with the continued public hearing. Thus, the applicant may only receive one continuance of a public hearing at its own request. However, if at a board of zoning adjustments public hearing, the applicant's request for a postponement or continuance is based exclusively and entirely on a lack of all seven members of the board of zoning adjustments being present to consider the matter, the board of zoning adjustments may waive the one applicant requested continuance restriction set forth in this subsection.

(c) If at any time the board of zoning adjustments lacks a quorum to conduct business on the date of an advertised public hearing, the public hearing shall be deemed automatically continued to the date of the next regularly scheduled meeting of the board of zoning adjustments without the need to re-advertise the public hearing, unless it is continued as provided in the next sentence. Further, in the event of a lack of quorum, with unanimous consent of the members of the board of zoning adjustments who are present constituting less than a quorum after a call to order, the public hearing may be continued to special meeting or other regular meeting occurring within forty-five (45) days from the date of the originally scheduled public hearing without the need to re-advertise the public hearing.

(d) If a public hearing is continued or postponed to a time that is more than forty-five (45) days from the date of the originally advertised public hearing, the continued public hearing date shall be re-advertised in the same manner as was required for the original public hearing date. If the board of zoning adjustments continues a public hearing to a time certain that is to occur within forty-five (45) days of the originally noticed public hearing date, the continued public hearing date does not have to be re-advertised except for the public posting of the board of zoning adjustments agenda for which the matter is to be heard.

(e) If re-advertising is required due to a continuance or tabling of a public hearing, the applicant shall pay all costs necessary to cover the advertising and notice costs and other administrative expenses relating to continuing and re-advertising the public hearing. The planning and community development department shall have the authority to establish a fee schedule for costs and expenses relating to continuances or postponement.

(f) The board of zoning adjustments shall have the authority to continue or table any scheduled public hearing with or without the applicant's consent in the event it is determined that: (i) the applicable required advertising or notice of the public hearing was not provided, so that a future public hearing can be scheduled with proper advertising and notice; or (ii) the application is incomplete or there is a lack of relevant information needed to make a decision on the applicant's request.

SECTION V: Chapter 58, Land Development Code, Article VI, Subdivision Regulations, Section 58-372 "Procedure for securing approval of subdivisions." is hereby amended to add Subsection (d) *Continuances* as shown below:

Sec. 58-372. – Procedure for securing approval of subdivisions.

(d) *Continuances.* Requests for continuances and continuances of public hearings before the planning and zoning board or city commission relating to subdivisions requests or other development order applications within this Article will be handled in the following manner:

(1) If the after a public hearing has been duly advertised, the applicant requests a continuation or postponement of such public hearing, the planning and zoning board or the city commission may grant the applicant's request for a continuance for up to six (6) months after the date of the originally advertised public hearing. Further, upon its own motion at a public hearing, the planning and zoning board or city commission may continue the public hearing for up to six (6) months with the concurrence of the applicant. The planning and zoning board and city commission have the authority to deny any request for a continuance.

(2) If after an originally scheduled public hearing is continued at the request of the applicant, the applicant does not desire to proceed with the continued public hearing the applicant shall withdraw its application, otherwise the planning and zoning board or city commission will proceed with the continued public hearing. Thus, the applicant may only receive one continuance (one from each the planning and zoning board and city commission) of a public hearing at its own request. However, if at a city commission public hearing, the applicant's request for a postponement or continuance is based exclusively and entirely on a lack of all five members of the city commission being present to consider the matter, the city commission may waive the one applicant requested continuance restriction set forth in this subsection.

(3) If at any time the planning and zoning board or city commission lacks a quorum to conduct business on the date of an advertised public hearing, the public hearing shall be deemed automatically continued to the date of the next regularly scheduled meeting of the planning and zoning board or city commission without the need to re-advertise the public hearing, unless it is continued as provided in the next sentence. Further, in the event of a lack of quorum, with unanimous consent of the members of the planning and zoning board or city commission who are present constituting less than a quorum after a call to order, the public hearing may be continued to special meeting or other regular meeting occurring within forty-five (45) days from the date of the originally scheduled public hearing without the need to re-advertise the public hearing.

(4) If a public hearing is continued or postponed to a time that is more than forty-five (45) days from the date of the originally advertised public hearing, the continued public hearing date shall be re-advertised in the same manner as was required for the original public hearing date. If the planning and zoning board or city commission continues a public hearing to a time certain that is to occur within forty-five (45) days of the originally noticed public hearing date, the continued public hearing date does not have to be re-advertised except for the public posting of the planning and zoning board or city commission agenda for which the matter is to be heard.

(5) If re-advertising is required due to a continuance or tabling of a public hearing, the applicant shall pay all costs necessary to cover the advertising and notice costs and other administrative expenses relating to continuing and re-advertising the public hearing. The planning and community development department shall have the authority to establish a fee schedule for costs and expenses relating to continuances or postponement.

(6) The planning and zoning board and city commission shall each have the authority to continue or table any scheduled public hearing with or without the applicant's consent in the event it is determined that: (i) the applicable required advertising or notice of the public hearing was not provided, so that a future public hearing can be scheduled with proper advertising and notice, or (ii) the application is incomplete or there is a lack of relevant information needed to make a decision on the applicant's request.

SECTION VI: CONFLICTS. If any ordinances or parts of ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflict.

SECTION VII: SEVERABILITY. If any section, subsection, sentence, clause, phrase, provision, or word of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then such invalidity or unconstitutionality shall not be held to invalidate or impair the validity, force, or effect of any other remaining provisions of this Ordinance.

SECTION VIII: CODIFICATION. Sections III, IV and V of this Ordinance shall be codified and made a part of the City of Winter Park Land Development Code, and the sections of this Ordinance may be renumbered or re-lettered to accomplish this intention. The City Clerk is given liberal authority to ensure proper codification of this Ordinance, including the right to correct scrivener's errors.

SECTION IX: EFFECTIVE DATE. This Ordinance shall become effective immediately following approval by the City Commission at its second reading.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this 10th day of February 2020.

Steven M. Leary, Mayor

Attest:

Rene Cranis, City Clerk