

## **ORDINANCE 3260-23**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, ADDING A NEW DIVISION 3 OF ARTICLE VI, CHAPTER 2, OF THE CITY OF WINTER PARK CODE OF ORDINANCES, PROVIDING FOR THE ASSESSMENT OF THIRD PARTY CITY CONSULTANT COSTS, EXPENSES AND FEES INCURRED BY THE CITY OF WINTER PARK IN REVIEWING, PROCESSING AND REGULATING PROPOSED PLATS, LOT SPLITS, SITE PLANS, REZONINGS, CONDITIONAL USES, VARIANCES, DEVELOPER'S AGREEMENTS, COMPREHENSIVE PLAN AMENDMENTS, ANNEXATIONS AND OTHER DEVELOPMENT ORDER AND PERMIT REQUESTS AND DEVELOPMENT RELATED MATTERS; PROVIDING FOR REVIEW DEPOSITS, PROCEDURES FOR HANDLING REVIEW DEPOSITS AND CITY INVOICES; PROVIDING FOR FAILURE OF APPLICANTS TO PAY INVOICES; DEFINING ASSESSABLE COSTS, EXPENSES AND FEES; PROVIDING FOR ADMINISTRATIVE PROCEDURES; PROVIDING FOR FEE SCHEDULES; PROVIDING FOR OBJECTIONS AND APPEALS, PROVIDING FOR AMENDMENTS; SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Winter Park (hereinafter referred to as the "City") pursuant to the Land Development Code and State law has the authority to review applications and proposals for development, such as subdivisions, planned developments, site plans, rezoning, conditional uses, variances, development agreements, plat approvals, comprehensive plan amendments, annexations, lot splits, lot consolidations, development orders and permits, and projects relating to development (hereinafter collectively referred to as "Proposals") and to consider the impacts of development which may occur pursuant to such Proposals on the citizens, infrastructure, lands, businesses and well-being of the City and to ensure that conditions required for approval have been met; and

**WHEREAS**, the City has the authority to review, inspect, process and regulate the foregoing; and

**WHEREAS**, the City incurs substantial costs, expenses and fees, directly and solely caused by and related to the review, processing and regulation of development applications pursuant to Proposals that often exceed the application fees charged and collected by the City; and

**WHEREAS**, in order to efficiently and effectively carry out the review of such Proposals and the processing and regulation of development, it is necessary that the City contract with or otherwise engage competent contractors and professional consultants to perform such services; and

**WHEREAS**, the City Commission of the City finds that the costs, expenses, and fees incurred by the City that are caused directly and solely by such development should be incurred by those responsible for said development and not by the taxpayers in general; and

**WHEREAS**, the costs, expenses, and fees recoverable by the City under this Ordinance are less than the costs, expenses, and fees actually incurred by the City for review, inspection, processing and regulation of development; and

**WHEREAS**, the City Commission of the City has determined that this Ordinance is necessary and appropriate to have a substantial portion of the third-party costs, expenses, and fees incurred for the review, processing, and regulation of development and Proposals borne by those responsible for such; and

**WHEREAS**, to accomplish the objectives of this Ordinance and to fairly and properly assess the costs, expenses, and fees incurred by the City due to development, the framework set forth in this Ordinance is necessary; and

**WHEREAS**, the City Commission has determined that this Ordinance is necessary for the protection of the health, safety and general welfare of the citizens of Winter Park, Florida.

**NOW THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS:**

**SECTION I: AMENDMENT.** A new Division 3 of Article VI of Chapter 2 of the City of Winter Park Code of Ordinances is hereby created to read as follows:

**DIVISION 3.- DEVELOPMENT REVIEW EXPENSE.**

**Section 2-195.6.** – Authority. The City is hereby authorized to assess and collect fees, deposits, costs, and expenses relating or pertaining to the review, and regulation of development related activities pursuant to this chapter.

**Section 2-195.7.** – Definitions.

The following words, terms, phrases, when used in this chapter, shall have the meanings set forth below unless otherwise indicated by the context:

“Applicant” means and refers to an Owner or an Owner’s Authorized Agent, who submits a Application or project to the City.

“Application” means and refers to an application or petition or proposal submitted to the City for review or approval of (i) a preliminary subdivision plan, (ii) a subdivision plan or plat, including any replat or other revisions to a previously approved or existing subdivision plan or plat, (iii) an annexation, (iv) a rezoning, (v) a comprehensive plan amendment, (vi) a variance, (vii) a conditional use, (viii) a planned development, (ix) a site plan, (x) any other development order or permit, (xi) a

development agreement, developer's agreement, or other agreement relating to a development project, (xii) a lot split, lot consolidation, or lot line readjustment, (xiii) an applicant request for text change to the land development regulations, (xiv) a duplex modified yard project, and/or (xv) a development review application submitted to the Development Review Committee.

"City Consultant(s)" means and refers to those corporations, companies, consultants, governments, individuals, partnerships, and other entities under contract with the City to provide services to or for the City or who provide technical or professional advice, representation, expertise or other work or assistance to or for the City in connection with the review or processing of an Application, including, but not limited to, planners, architects, accountants, attorneys, (including the city attorney) engineers, biologists, economists, and surveyors.

"Development Review Fee" means and refers to the combination of the Application Fee established by the City and the Review Costs to be paid by an Applicant.

"Owner" means and refers to an Owner or group of Owners of fee simple title to a particular lot, tract, or parcel of real property.

"Owner's Authorized Agent" means and refers to an agent of the Owner duly authorized to submit and process an Application. If the applicant is not the property owner, a proper authorization must accompany the Application. Such authorization shall be evidenced by a power of attorney signed by the Owner and notarized specifically authorizing the agent to represent the Owner in connection with the Application and as to the Owner's real property, which is the subject of the Application. The authorization must include an agreement of the Owner to be bound by the actions of the Owner's Authorized Agent and the provisions of this division.

"Review Deposit" means and refers to the review deposit, as established by this Section and as established from time-to-time by resolution of the City Commission, to be paid by an Applicant at the time of the filing of an Application in those circumstances where Review Costs are paid by the Applicant under the provisions of this division.

**Section 2-195.8. – Review Deposits.**

Required review deposits. In addition to the required Application Fee, a Review Deposit in the amount of three thousand (\$3,000) dollars or in an amount as may be established by the City Commission in the adoption of the city fee schedule shall be made payable to the City of Winter Park by money order, personal or company check, or cashier's check drawn on a financial institution authorized to do business in Orange County, Florida, and shall be delivered to and collected by the Planning Director or his/her designee at the time of submission of each Application for review or approval, of a preliminary subdivision plan, subdivision/plat, conditional use, planned development, rezoning, comprehensive plan amendment, text amendment to the land development

regulations, development agreement, developer's agreement, other development related agreement, annexations, or any development order or permit application requiring review by the City's attorney or a City consultant. If the amount of the costs, expenses, and fees relating to the City Consultants' review, processing, and regulation of such as estimated by the Planning Director, based on information provided by city staff and the Applicant, will exceed the Application Fee and are likely either to be less than or more than the Review Deposit, then the Planning Director may adjust the Review Deposit to the minimum extent supported by the Planning Director's estimate. The Planning Director may waive the requirement of a Review Deposit if, based upon information provided by city staff and the Applicant, the amount of the costs, expenses and fees relating to the review, processing, and regulation of such as estimated by the Planning Director will not involve the use of City Consultant services that exceed the Application Fee.

No review of any Application may commence until the Application Fee and Review Deposit, if applicable, are paid. The Review Deposit must be forwarded to the Planning Director or his/her designee prior to the end of the second business day following the submittal of an Application for review or approval. Any portion of the Review Deposit that exceeds the actual costs incurred in reviewing the Application will be returned to the Applicant after completion of the matter for which the Application was submitted or after withdrawal of such Application. No interest will be paid on any Review Deposit.

The City Commission is hereby authorized to adopt by resolution a fee schedule setting forth the amount of Application Fees, Review Deposits, and any other fees authorized herein.

**Section 2-195.9. – Project account.**

Once an Application has been submitted to the City and the applicable Application Fee and Review Deposit have been collected, the Planning Director or his/her designee shall establish an individual project account through which all costs, expenses, and fees incurred by City Consultants that are associated with the Application will be monitored. The project account will be maintained throughout the entire review, processing, and regulation process until the later of: (i) final action (after all appeal periods have run) by the City Commission has occurred with respect to the Application; (ii) no further involvement of one or more City Consultant(s) is likely; and (iii) the City has been paid all of the amounts due under this division and the City Code. Costs, expenses, and fees for the City Consultant time directly related to the review, processing, inspection, or regulation of an Application or development pursuant to this division, the City Code, and Florida Statutes and directly related expenses, including, but not limited to, advertising, legal, drafting agreements, inspection, and engineering costs will be charged to the project account.

**Section 2-195.10. – City invoices.**

(a) Payment. The Planning Director or his/her designee may periodically, up until, and shall prior to, the City's final approval of each Application and the project for which a Review Deposit is required, total the costs, expenses, and fees incurred by the City for such Application and project and send an invoice to the Applicant for payment. The Applicant shall have twenty (20) days from the date of the invoice to pay to the City the invoiced amount. Thereafter, if payment is not received in the required time, the Planning Director or his/her designee shall apply the Review Deposit toward payment of the invoiced amounts. If the total costs, expenses, and fees incurred by City Consultants for such Application and project exceed the Review Deposit and payment is not received in the required time, the Planning Director or his/her designee shall apply the Review Deposit to the invoiced amount and send a notice of non-payment to the Applicant and to all City Consultants associated with the Application or project. The notice will instruct the City Consultants to cease all work relating to such unless and until further notified by the Planning Director or his/her designee.

If the City issues a final approval of an Application but it is later determined that additional modifications or amendments to the Application or Project requiring additional City Consultant time, then the Planning Director or his/her designee may require an additional Review Deposit commensurate with the estimated costs in City Consultant time of any such modifications or amendments and issue additional invoices consistent with the procedures outlined for standard invoices. Similarly, if the total costs, expenses, and fees incurred by the City for any such modifications or amendments exceed the Review Deposit and payment is not received in the required time, the Planning Director or his/her designee shall apply the Review Deposit to a portion of the invoiced amount and send a notice of non-payment to the Applicant and to all City Consultants associated with the Application or project. The notice will instruct City Consultants to cease all work relating to such unless and until further notified by the Planning Director or his/her designee.

If payment of the balance of the invoice is not received within the required time, then work by city staff and the City Consultants will cease and not be reactivated on any Application or project. No building permits, certificates of completion, or certificates of occupancy will be issued with respect to such Application or project or real property related to the Application or project until such time as all outstanding fees, costs, and expenses due under this division and the City Code are paid in full and a new Review Deposit for the Application or project, if applicable, is paid to the City in an amount determined by the Planning Director. Review of any future Application or project with respect to the real property for which payment was not made will not be undertaken by the City until such time as all outstanding costs, expenses, and fees due under this division are paid in full and a new Review Deposit is paid to the City.

(b) *Deficiency and liens.* Any deficiency owed to the City will bear interest from the date of the aforementioned notice of non-payment at the lower of (i) the rate of eighteen percent (18%) per annum or (ii) the highest rate allowed by law, until paid. The amount of any such deficiency owed to the City will, together with interest and the costs of collection as hereinafter provided, be the personal obligation of the Applicant and constitute a continuing lien on the real property related to the Application or project under review. Any subsequent or new owner of the real property related to the Application or project takes title subject to the obligations of the Applicant under the terms of this Section and is jointly and severally liable for such obligations; provided, however, that an Applicant may not escape liability for the deficiency by abandonment of the Application or project, withdrawal of the Application, or sale of the real property with respect to which such Application has been submitted. If the initial or subsequent invoice(s) is/are not timely paid and the invoiced amount exceeds the amount of the Review Deposit, the City may take whatever legal means it deems appropriate to collect the deficiency, including, but not limited to, retaining the services of a collection agency or attorney, initiating legal proceedings for the collection thereof, recording a Notice of Lien as hereinafter provided, and foreclosing same in the same fashion as mortgage liens are foreclosed. To give the public notice of the deficiency, the City Manager may (but shall not be obligated to) record a Notice of Lien in the Public Records of Orange County, Florida, stating the description of the real property related to the Application or project, the name of the owner of the real property and the amount then due and owing to the City.

**Section 2-195.11.** – Required payments.

Payment of costs, expenses and fees incurred by the City under this division is a requirement for the City's final approval of the applicable Application and project.

**Section 2-195.12.** – Assessable costs, expenses, and fees.

All costs, expenses and fees incurred by the City relating directly to the review, inspection, processing, and regulation of an Application or project, including, but not limited to, the time of the City Consultant(s), as well as those relating directly to advertising, and other costs, expenses and fees, shall be assessed to the Applicant. The costs, expenses, and fees for the City Consultants will be invoiced to the Applicant without any markup by the City to those invoiced amounts. To the extent that the costs, expenses, and fees required under this division are assessed and paid pursuant to other provisions of the City Code, assessment and payment under this division will not occur.

**Section 2-195.13.** – Fee collection.

Application Fees in addition to any Review Deposit required pursuant to Section 2-195.8. shall be paid by the Applicant and delivered to the Planning Director or his/her designee upon submittal of any Application to the City. The Planning Director or his/her

designee shall ensure the required Application Fee is collected, and, if applicable, the Review Deposit (collectively referred to as "Development Review Fee") is posted to an account for said Application. The Planning Director or his/her designee or other appropriate city staff or City Consultants, shall receive all Applications with proof of payment of the Application Fee and Review Deposit, if applicable. The Application Fee is nonrefundable and covers only a portion of the minimum cost incurred by the City in accepting, reviewing and processing an Application.

If the Planning Director or his/her designee determines that the required Review Deposit for an Application is inadequate to cover the reasonably anticipated costs, expenses and fees to be required by the City, the Planning Director or his/her designee shall increase the minimum deposit to the minimum extent necessary to cover such reasonably anticipated costs, expenses, and fees.

**Section 2-195.14. – Objections/appeal.**

Any objection to any invoice or to any matter set forth in this division must be set forth in writing and addressed and delivered to the City Manager on or within ten (10) days of the date of the relevant invoice. If the City Manager denies the objection or request, the applicant will have ten (10) days after the date of the City Manager's decision to file an appeal or reconsideration of such decision with the City Manager or his/her designee. All objections and appeals must set forth in detail the reasons and evidence upon which the objection and appeal are based. Failure of the applicant to establish beyond a preponderance of the evidence that an invoice, decision, or other matter objected to or appealed is not appropriate and is not based upon competent substantial evidence, shall result in a denial of the objection and appeal or reconsideration.

**Section 2-195.15. - Attorney's Fees in the Event of Failure to Pay Review Costs.**

If the City takes legal action to enforce this division, then the City is entitled to recover from the Applicant all costs and expenses incurred, including, but not limited to, its reasonable attorneys' fees, paralegal fees, and other costs and expenses, whether incurred prior to, during or subsequent to court proceedings or on appeal.

**Section 2-195.16. – Change of Ownership.**

An Applicant shall provide prompt written notice to the Planning Director in the event of a change in ownership of all or a portion of a lot, tract, or parcel of real property with respect to an Application or project is pending before the City. Such notice must be on a form approved by the City and include the name, address, and phone number of the new Owner and a legal description of the lot, tract, or parcel of real property now owned by the new Owner. Any such new Owner (i) is not entitled to utilize or draw upon any Review Deposit previously paid to the City by the original Applicant, (ii) is liable to the City for all costs, expenses, and fees related to the lot, tract,

or parcel of real property that arise subsequent to the date the new Owner acquires title to such real property, and (iii) may be required by the City to pay a separate Review Deposit in the same manner as a new Application, in which case, a separate project account will be opened in the name of the new Owner or the new Owner's Authorized Agent. If a separate Review Deposit is required, no work may be undertaken by the City with respect to the lot, tract or parcel of real property then owned by the new Owner until a separate Review Deposit is paid to the City. Until such time as the City receives such written notice of a change in ownership, the original Applicant will be jointly and severally liable to the City for all costs, expenses, and fees associated with the Application or project that may subsequently be incurred by the City in connection with the activities of the new Owner; provided, however, that upon receipt by the City of such a notification of change of ownership, the original Applicant will not be liable to the City for any further costs, expenses, and fees incurred by the City that arise solely out of the Application or project of the new Owner, and the new Owner will be solely liable to the City for all such costs, expenses, and fees associated with the Application or project activities of the new Owner or the new Owner's Authorized Agent subsequent to the date of receipt by the City of such notification.

**Section 2-195.17. – Agreement to be Bound by this Division.**

Execution of an Application constitutes the consent and agreement of the Applicant and the Owner if the Application is being executed by the Owner's Authorized Agent to be bound by the provisions of this division. Without waiving the foregoing, the Community Development Director is authorized to require Applicants to sign a written agreement to be bound by the terms and conditions of this division before processing an Application for review and approval (or denial).

**Section 2-195.18. – Amendments.**

This division will be reviewed periodically and may be amended by ordinance, however, any fees and fee schedules authorized in this division may be amended by resolution.

**SECTION II: 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 III. Codification.** Section I of this Ordinance shall be codified and made a part of the City of Winter Park Code of Ordinances; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; the word "Ordinance" may be changed to "Section," "Article," "Division" or other appropriate word. The City Clerk is given liberal authority to correct scribes errors, such as incorrect Code cross references, grammatical, typographical and similar or like errors when codifying this Ordinance.



**SECTION IV: Effective Date** — This Ordinance shall take effect upon adoption by City Commission and shall apply to costs, expenses, and fees incurred by the City with regard to Applications and projects submitted after the effective date of this Ordinance.

**PASSED AND ADOPTED** on first reading this 14th day of December, 2022.

**PASSED AND ADOPTED** on second reading this 25<sup>th</sup> day of January, 2023

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Phillip M. Anderson, Mayor

**ATTEST:**

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Rene Cranis, City Clerk