

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, DECLARING AND IMPLEMENTING A CONTINGENT TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING, AND CONSIDERATION OF APPLICATIONS FOR DEVELOPMENT ORDERS, CONDITIONAL USE APPLICATIONS, SITE PLANS, BUILDING PERMITS AND OTHER DEVELOPMENT APPLICATIONS THAT WOULD UTILIZE THE ORANGE AVENUE OVERLAY DISTRICT POLICIES, REGULATIONS, CODES, AND PROVISIONS APPROVED MARCH 9, 2020 BY WAY OF ORDINANCE 3166-20 (COMPREHENSIVE PLAN AMENDMENT) AND ORDINANCE 3167-20 (LAND DEVELOPMENT CODE AMENDMENT), PROVIDING THE TEMPORARY MORATORIUM TO BECOME EFFECTIVE IF THE CITY'S ORDINANCE 3170-20 (RESCISSION ORDINANCE) IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE NULL, VOID, OR OF NO EFFECT, OR IF ORDINANCE 3166-20 OR ORDINANCE 3167-20 ARE DETERMINED TO BE EFFECTIVE OR VALID; PROVIDING FOR EXTENSION OR TERMINATION OF THE TEMPORARY MORATORIUM BY ORDINANCE OR RESOLUTION; PROVIDING FOR CONFIRMATION AND READOPTION OF THE CITY OF WINTER PARK ORDINANCE 3170-20 (RESCISSION ORDINANCE); PROVIDING FOR NON-CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Winter Park ("City"), as provided in section 2(b), Article VIII of the Florida Constitution and chapters 163 and 166, Florida Statutes, enjoys all home rule authority, police power, land development and zoning authority, governmental and proprietary powers necessary to conduct municipal government and perform municipal functions, and the City may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, the City Commission, on March 9, 2020, approved an Orange Avenue Overlay District to be implemented through Ordinance 3166-20 (Comprehensive Plan Amendment) and Ordinance 3167-20 (Land Development Code Amendment), with an anticipated effective date of April 16, 2020 based on the Florida Department of Economic Opportunity's notification to the City of comprehensive plan amendment completeness; and

WHEREAS, before Ordinance 3166-20 and 3167-20 became effective, the City Commission rescinded and repealed Ordinance 3166-20 and 3167-20 by adoption of Ordinance 3172-20 (Rescission Ordinance) rescinding/repealing Ordinances 3166-20 (Comprehensive Plan Amendment) and 3167-20 (Land Development Code Amendment) on April 13, 2020; and

WHEREAS, a copy of Ordinance 3172-20 (Rescission Ordinance) is attached hereto as Exhibit "A"; and

WHEREAS, the City Commission adopted Ordinance 3172-20 (Rescission Ordinance) before Ordinances 3166-20 (Comprehensive Plan Amendment) and 3167-20 (Land Development Code Amendment) became effective, in part, to avoid anyone, including all of the property owners within and abutting the Orange Avenue Overlay District, from relying on those Ordinances for any purpose and to begin the process of considering an Orange Avenue Overlay District based on additional needed data, information, and analyses; and

WHEREAS, on April 14, 2020, the City notified the Department of Economic Opportunity (“Department”) of the City’s rescission/repeal of Ordinances 3166-20 (Comprehensive Plan Amendment) and 3167-20 (Land Development Code Amendment) and of the withdrawal of the Orange Avenue Overlay District Comprehensive Plan Amendment and the Department acknowledged the City’s rescission/repeal and withdrawal of Ordinance 3166-20 and updated its records accordingly; and

WHEREAS, notwithstanding the foregoing, there are allegations in pending litigation that Ordinance 3172-20 (Rescission Ordinance) was not properly enacted, that Ordinances 3166-20 (Comprehensive Plan Amendment) and 3167-20 (Land Development Code Amendment) were not properly rescinded/repealed; and

WHEREAS, the City Commission finds that Ordinance 3172-20 (Rescission Ordinance) was in fact properly enacted in a manner consistent with law and the City Commission’s own rules and procedures; and

WHEREAS, due to pending litigation challenging the adoption of Ordinance 3172-20 (Rescission Ordinance), the City finds it prudent and necessary to place a contingent temporary moratorium on the acceptance, processing, and consideration of applications for development orders, conditional use applications, site plans, building permits and other development applications that would utilize the Orange Avenue Overlay District policies, regulations, codes, and provisions contained within the now rescinded and repealed Ordinance 3166-20 (Comprehensive Plan Amendment) and Ordinance 3167-20 (Land Development Code Amendment) in order to avoid prejudice to any of the landowners in the Overlay area and to avoid any assertion that any property owner or developer relied upon the provisions of Ordinance 3166-20 and Ordinance 3167-20; and

WHEREAS, the City desires this moratorium only apply to the extent of the policies, regulations, codes, and provisions of the now rescinded and repealed Ordinance 3166-20 (Comprehensive Plan Amendment) and Ordinance 3167-20 (Land Development Code Amendment) and that this moratorium not be construed as a limitation on acceptance, processing, and consideration of applications for development orders, conditional use applications, site plans, building permits and other development applications under any other applicable provisions of the Winter Park Comprehensive Plan and City Code; and

WHEREAS, this temporary moratorium shall only become effective in the event a court of competent jurisdiction determines Ordinance 3166-20 (Comprehensive Plan

Amendment) and/or Ordinance 3167-20 (Land Development Code Amendment) are valid or effective or that Ordinance 3172-20 (Rescission Ordinance) is defective, ineffective, void or otherwise invalid; and

WHEREAS, the City desires to place the property owners, tenants, businesses, residents and other members of public and all parties on notice that the City is creating a contingent temporary moratorium on the acceptance, processing, and consideration of applications for development orders, conditional use applications, site plans, building permits and other development applications that would utilize the Orange Avenue Overlay District policies, regulations, codes and provisions concerning properties located within the Orange Avenue Overlay District as such are contained in the now rescinded/repealed Ordinance 3166-20 (Comprehensive Plan Amendment) and/or Ordinance 3167-20 (Land Development Code Amendment); and

WHEREAS, the City planners, engineers, and other staff estimate they may need approximately six (6) months from the adoption of this Ordinance to obtain the additional needed data, information, studies, analyses, and community input from property owners, tenants, and citizens to determine what policies, provisions, rules, and regulations may be appropriate and necessary to create standards and requirements relating to development and redevelopment within the Orange Avenue Overlay District; and

WHEREAS, the recitals adopted by 3172-20 (Rescission Ordinance) as the legislative findings, purposes and legislative determinations are hereby incorporated into this Ordinance for the purposes of approving Section 3 of this Ordinance; and

WHEREAS, prior to its adoption, this Ordinance was publicly noticed and public hearings were conducted in accordance with Section 166.041(3)(c)2, Florida Statutes; and

WHEREAS, this Ordinance was prepared at the direction of the City Commission and in a manner consistent with the City Commission's own rules and procedures.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK AS FOLLOWS:

SECTION 1. Intent. The above recitals are hereby adopted as the legislative findings and purposes of this Ordinance and as the City Commission's legislative determinations.

SECTION 2. Moratorium. In the event a court of competent jurisdiction determines Ordinance 3172-20 (Rescission Ordinance) is defective, ineffective, void, or otherwise invalid and/or Ordinance 3166-20 (Comprehensive Plan Amendment) and/or Ordinance 3167-20 (Land Development Code Amendment) is/are valid or effective, a temporary moratorium (suspension) on the acceptance, processing, and consideration of all development orders, conditional use applications, site plans, building permits and other development applications that would utilize the Orange Avenue Overlay District

policies, regulations and codes contained within Ordinance 3166-20 (Comprehensive Plan Amendment) and Ordinance 3167-20 (Land Development Code amendment) for all properties proposing development within the Orange Avenue Overlay District identified on the map attached hereto as **Exhibit “B”** shall take effect immediately and last for a period of 270 days thereafter. Building permits and all other applications for development pursuant to the existing comprehensive plan policies, zoning, development and building codes and regulations in effect in the City prior to approval of Ordinance 3166-20 (Comprehensive Plan Amendment) and/or Ordinance 3167-20 (Land Development Code Amendment) are excepted from this temporary moratorium. Further, excepted from the temporary moratorium set forth in this Ordinance are building permits and development orders issued pursuant to any comprehensive plan amendments or land development regulation amendments adopted after the Effective Date of this Ordinance. For the purpose of this Ordinance, the terms “development order” and “development permit” mean the same as defined in section 163.3164, Florida Statutes. The temporary moratorium established by this Ordinance may be extended or terminated early by adoption of an ordinance or resolution of the City Commission.

SECTION 3. Confirmation and Readoption of Ordinance 3172-20. Ordinance 3172-20 (Rescission Ordinance), adopted April 14, 2020 rescinding and nullifying Ordinance 3166-20 (Comprehensive Plan Amendment) and/or Ordinance 3167-20 (Land Development Code Amendment) is hereby confirmed, validated, and readopted. A copy of Ordinance 3172-20 is attached hereto as Exhibit “A”.

SECTION 4. Non-Codification. Given the temporary nature and effect of this Ordinance, it is the intent of the City Commission that this Ordinance shall not be codified.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. Conflicts. In the event of a conflict or conflicts between this Ordinance and any other ordinance, resolution, or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 7. Effective date. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

FIRST READING this _____ day of _____, 2020.

SECOND READING this _____ day of _____, 2020.

ADOPTED this ____ day of _____, 2020, by the City Commission of the City of Winter Park, Florida.

**CITY COMMISSION
CITY OF WINTER PARK**

Steve Leary, Mayor

ATTEST:

Rene Cranis, City Clerk

EXHIBIT "B"
Orange Avenue Overlay District

