

## **ORDINANCE 3179-20**

**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**WHEREAS**, before Ordinance 3166-20 and 3167-20 became effective, the City Commission rescinded and repealed Ordinance 3166-20 and 3167-20 by adoption of Ordinance 3172-20 (Rescission Ordinance) rescinding/repealing Ordinances 3166-20 (Comprehensive Plan Amendment)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 22<sup>nd</sup> day of July, 2020.

**SECOND READING** this 12<sup>th</sup> day of August, 2020.

**ADOPTED** this 12th day of August 2020, by the City Commission of the City of Winter Park, Florida.

**CITY COMMISSION  
CITY OF WINTER PARK**

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Steve Leary, Mayor

ATTEST:

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Rene Cranis, City Clerk

# EXHIBIT "A"

## ORDINANCE 3172-20

**AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, RESCINDING ORDINANCE 3166-20 AND ORDINANCE 3167-20, WHICH RESPECTIVELY AMENDED THE COMPREHENSIVE PLAN AND ZONING CODE TO ESTABLISH THE ORANGE AVENUE OVERLAY DISTRICT AND GOVERNING POLICIES AND LAND DEVELOPMENT REGULATIONS; PROVIDING FOR CONFLICTS; SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission adopted Ordinance 3166-20 (Comprehensive Plan Amendment) and Ordinance 3167-20 (Land Development Code amendment) concerning the establishment of the Orange Avenue Overlay District and related policies and land development regulations on March 9, 2020; and

**WHEREAS**, the City Commission has reconsidered its votes on Ordinances 3166-20 and 3167-20 and now repeals those ordinances before they become effective to avoid causing prejudice to any of the landowners in the Overlay area; and to begin the process anew to consider adoption of an Orange Avenue Overlay District; and

**WHEREAS**, the City Commission directs City staff to provide necessary data and analysis, as delineated by the City Commission, within 30 days following the expiration of any state or federal Executive Orders (EO) allowing public meeting by communications media technology; and within 30 days following the presentation to and acceptance by the City Commission of such data and analysis, re-initiate the process and schedule public hearings to consider amendments to the Comprehensive Plan and the Zoning Code to create the Orange Avenue Overlay District in accordance with F.S. Chapter 163, pt. II and Land Development Code Section 58-6; and

**WHEREAS**, since Ordinance 3166-20 and Ordinance 3167-20 are not yet effective, they are not currently part of the Comprehensive Plan or Land Development Regulations of the City of Winter Park; and

**WHEREAS**, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, the City Commission has reconsidered its votes on Ordinance 3166-20, establishing the Orange Avenue Overlay, and Ordinance 3167-20, the associated land development code amendment, (referred to collectively as the Orange Avenue Overlay), and hereby repeals those ordinances before the ordinances become effective, to avoid causing prejudice to any of the landowners in the Overlay area; and

**WHEREAS**, the City Commission is repealing the Orange Avenue Overlay to allow more time for Staff to provide analysis and data, and to offer the public additional information and opportunity for public comment, and since many changes in substance were made at the second reading of the ordinances. Chapter 163.3181(1) of Florida Statute expresses the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible. There were public hearings on prior versions of the Orange Avenue Overlay, however at the second reading of the ordinances many changes in substance were

made to the Overlay, preventing full opportunity for public understanding and informed comment on the final version; and

**WHEREAS**, it is the intention of the City Commission to further study and potentially amend proposed Orange Avenue Overlay policies and regulations; specifically, to examine the value to the City from the transfer of residential development rights; intensities of land use; the regulations pertaining to parking garages; the use of existing public right of ways; the economic value of incentives, and

**WHEREAS**, the City Commission now finds that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida.

**WHEREAS**, Ordinance 3166-20 was not to become effective until April 16, 2020. By repealing Ordinance 3166-20 and Ordinance 3167-20 before April 16, 2020, the City Commission is providing ample notice to the property owners in the Orange Avenue Overlay that they should make no investment backed decisions based on Ordinances 3166-20 or 3167-20. Further that a copy of this Ordinance shall be mailed to all property owners within the geographic area referred to as Orange Avenue Overlay to ensure all owners are aware of this repeal of the Orange Avenue Overlay.

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

**SECTION 1. Recitals.** The above recitals are hereby adopted as the legislative findings of the City Commission.

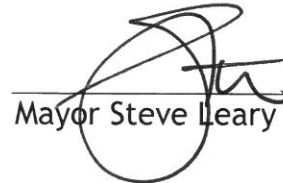
**SECTION 2. Rescind.** That Ordinances 3166-20 and 3167-20 adopted on March 9, 2020 are hereby rescinded (repealed) and are null and void.

**SECTION 3. Severability.** If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

**SECTION 4. Conflicts.** To the extent any provision or provisions of this Ordinance conflict with the provision or provisions of other Ordinances, the provisions of this Ordinance control.

**SECTION 5. Effective Date.** This Ordinance shall become effective immediately following approval of the 2nd 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 13th day of April 2020.

  
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Mayor Steve Leary

Attest:

  
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Rene Cranis, City Clerk

**EXHIBIT "B"**  
**Orange Avenue Overlay District**

