

**CITY OF CLERMONT
ORDINANCE NO. 2010-04-C**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLERMONT, LAKE COUNTY, FLORIDA, AMENDING CHAPTER 86, "ADMINISTRATION", BY CREATING NEW ARTICLE VIII "NON-CONFORMING DUE TO EMINENT DOMAIN", PROVIDING FOR SEVERABILITY; CONFLICT; CODIFICATION; AND EFFECTIVE DATE.

WHEREAS, Florida Statutes 166.021 authorizes the City of Clermont to establish, coordinate and enforce laws that are necessary to protect the public; and

WHEREAS, the City of Clermont is committed to planning and managing the future growth and redevelopment of the City; and

WHEREAS, the City of Clermont currently does not have code provisions that provide protection for private property becoming non-conforming as a result of public acquisition of private property through eminent domain proceedings; and

WHEREAS, the exercise of eminent domain is a constitutional and lawful procedure that must meet strict legal requirements as to the purpose and as to the just compensation to an owner of property; and

WHEREAS, the City of Clermont finds that the acquisition of private property by various governmental or public entities, so authorized by law through the eminent domain process, although in the best interest of the citizens of the City of Clermont, the County of Lake and the State of Florida, is an extremely costly and rigorous process; and

WHEREAS, in order to ensure that legally affected property owners have a viable and fair means of preventing or reducing any adverse impact upon their property as a result of the condemnation process, and to allow the continued use of said property in a manner similar to its pre-condemnation condition as practical; and

WHEREAS, the City of Clermont has concluded that relief should be afforded in certain situations to improved properties that will be rendered non-conforming by a government eminent domain action; and

WHEREAS, the provision of relief in certain situations as provided herein is necessary, particularly in light of the anticipated need for continued widening and improving streets within the City to comply with current level of service standards and to accommodate the increased intensification of land uses; and in the interest of the health, safety, and welfare of the City and its citizens.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Clermont, Florida, as follows:

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SECTION 1.

Chapter 86, "Administration", is amended to add new Article VIII "Non-conforming due to Eminent Domain", Section 86-290, "Lots diminished in size due to eminent domain" and Section 86-291, "Authority of administrative official in eminent domain matters", as follows:

ARTICLE VIII. NONCONFORMING DUE TO EMINENT DOMAIN

Sec. 86-281. Types of nonconforming status; continuation.

(c) There are four types of nonconforming status, as follows:

4. Non-conformities due to eminent domain actions as approved by City Council.

Sec. 86-285. Hardship Relief Due to Eminent Domain Actions

(a) Intent.

This Section is intended to provide a fair and equitable process whereby either landowners affected by the transfer of any part of such property to an entity having the power of eminent domain, or the condemning authority can independently obtain non-binding determinations where such remaining parcel deviates from any land development regulation.

(b) Definitions.

For the purposes of this Section only, the following terms shall have the following meanings:

- i. "Transfer in Satisfaction of Condemnation ("TSC")" shall mean and refer to a transfer of an interest in real property to an entity having the power of eminent domain, whether such transfer be effected by final judgment in a condemnation action, certificate of deposit pursuant to an order of taking, deed under threat of condemnation, or voluntary.
- ii. "Director" shall mean and refer to the City of Clermont Planning & Zoning Director or his/her designee.
- iii. "Remaining Parcel" shall mean and refer to the remaining portion of real property, including existing improvements, after a portion of such property is transferred to an entity having the power of eminent domain.
- iv. "Governing Documents" shall mean and refer to those site and/or subdivision plans and/or agreements and/or City Zoning/Development

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approvals, including but not limited to developer annexation agreements, which are applicable to or otherwise enforceable against a particular property or development. Such documents, when submitted to the City for approval, shall be fully engineered and meet any requirements of the Land Development Code applicable to such documents unless otherwise stated herein.

- v. “Nonbinding” shall mean and refer to determinations by the City that do not require the owner of a Remaining Parcel to comply with the City’s determination.
 - vi. “Cure Plan” shall mean and refer to a site plan identifying measures to mitigate or correct Land Development Code and/or Governing Documents non-conformities caused by the Transfer in Satisfaction of Condemnation, including, but not limited to landscape buffers, setbacks, landscaping, signage, and parking requirements.
- (c) Taking or Transfer Causing Nonconformance of Remaining Property.
- i. Notwithstanding any provision of the Land Development Code to the contrary, whenever a Transfer in Satisfaction of Condemnation (TSC) occurs, and such transfer causes the Remaining Parcel to deviate from the Land Development Code and/or Governing Documents applicable to such property, then such Remaining Parcel shall thereafter be an illegal site and/or structure to the extent the Transfer in Satisfaction of Condemnation causes the Remaining Parcel to deviate from the Land Development Code and/or Governing Documents unless a Cure Plan is approved by the City Council allowing such deviation.
 - ii. (a) Within ninety (90) days after the date of the Transfer in Satisfaction of Condemnation, the owner of the Remaining Parcel must schedule and participate in a pre-application conference with the Director to discuss the Cure Plan and the actions or improvements necessary to bring such Remaining Parcel into compliance with the Land Development Code and Governing Documents. Such 90-day period shall constitute a “grace period” during which Code Enforcement action against the Remaining Parcel, with respect only to those deviations caused by the Transfer in Satisfaction of Condemnation shall be temporarily suspended to facilitate operation of this Section. An application for site plan approval to remedy the newly created non-conformities made within such 90-day period shall extend such “grace period” pending the owner’s good faith participation in the rehabilitation process pursuant to this Section. A property

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owner may still apply for relief pursuant to this Section after the expiration of the 90-day period, at which time, pending Code Enforcement action against deviations caused by the Transfer in Satisfaction of Condemnation shall be abated pending the owner's good faith participation in the rehabilitation process pursuant to this Section.

- (b) Nothing in this Section shall be construed to prohibit or otherwise abate Code Enforcement action against a Remaining Parcel for: (1) deviations or violations not caused by a Transfer in Satisfaction of Condemnation or; (2) deviations or violations, regardless of whether such are caused by a Transfer in Satisfaction of Condemnation, that pose a serious threat to the public health, safety and welfare.
- iii. Within one-hundred eighty (180) days after the date of the Transfer in Satisfaction of Condemnation, the owner of the Remaining Parcel must submit to the Director a Cure Plan identifying measures to mitigate or correct Land Development Code and/or Governing Documents non-conformities caused by the Transfer in Satisfaction of Condemnation, including, but not limited to landscape buffers, setbacks, landscaping, signage, and parking requirements. To be considered by the Director, the foregoing documentation must be submitted together with appropriate application forms, as well as payment for any application fees.
- iv. Following submittal of such application, the owner of the Remaining Parcel must continue in good faith with the processing of the application and the proposed revisions and amendments to the Governing Documents and respond to City staff comments within thirty (30) days of receiving any such comments. Failure to comply will constitute a code violation. Following a sufficient application determination, the Cure Plan will be scheduled for a City Council public hearing.
- v. The City Council shall approve a specific timeline for completion of site improvements required by the approved Cure Plan, which shall be tailored to account for the complexity of the required improvements as well as any special conditions pertaining to the rehabilitation of the Remaining Parcel. Following timely completion of the site improvements required by the approved Cure Plan, the Remaining Parcel shall thereafter be deemed to be conforming or legally non-conforming, whichever may be applicable, as it relates to the matters addressed on the Cure Plan.
- vii. As a condition of approval of any Cure Plan, hereunder, the City

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Council may require, among other things, that the owner or owners of the Remaining Parcel execute and record in the Public of Lake County a Notice of Encumbrance in a form acceptable to the City for the purpose of notifying any and all subsequent owners of the remaining Parcel is subject to a Cure Plan.

(d) Deviations

- i. If, due to the Transfer in Satisfaction of Condemnation, bringing the remaining Parcel into conformity with the Land Development Code and/or the Governing Documents would place an unreasonable burden upon the property owner, then the property owner may seek a deviation as part of the proposed Cure Plan. In determining whether bringing a particular parcel of property into conformity with the Land Development Code and/or Governing Documents would place an unreasonable burden upon the owner of the Remaining Parcel, the City Council must consider the following factors:
 - (a) Physical constraints imposed based upon the size, shape or usable area of the Remaining Parcel and existing structures located thereon;
 - (b) Safety concerns that would be created by strict adherence to the Land Development Code and/or Governing Documents;
 - (c) Factors and circumstances that preclude the continued use of the Remaining Parcel with the uses actually occurring on the property immediately prior to the Transfer in Satisfaction Condemnation;
 - (d) The effects of the proposed deviation on traffic congestion on the surrounding public streets and the danger of fire or other hazard to the public; and
 - (e) Whether the effect of the proposed deviation is in harmony with the general intent of the City's Land Development Code and the specific intent of any and all relevant subject areas of the Code.
- ii. City Council approval of a deviation may include conditions and restrictions upon the Remaining Parcel benefited by the deviation so as to minimize the injurious effect of the deviation.

(e) Actions Taken Prior to Transfer in Satisfaction of Condemnation

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- i. Prior to the occurrence of the Transfer in Satisfaction of Condemnation, a property owner may, at his/her option, may hold the pre-application conference with the Director and submit an application for Cure Plan approval.
- ii. At any time prior to the Transfer in Satisfaction of Condemnation, the condemning authority may apply for a non-binding Cure Plan approval to ascertain whether such plan will likely satisfy the requirements of this Section. Prior to submitting any such application, the condemning authority shall hold a pre-application conference with the Director.

Prior to submitting any such application, the condemning authority shall hold a pre-application conference with the Director. As a condition precedent to submitting an application, the Condemning Authority shall schedule a meeting with all record owners of the subject property for the purpose of reviewing the proposed Cure Plan and to encourage cooperation and conformance with the City Code wherever possible. The meeting between the Condemning Authority and the property owner shall occur at a location or method as agreed upon by both parties, and upon a minimum of thirty (30) days written notice by Certified Mail from the Condemning Authority to the property owner or owners. In the event that the property owner fails to attend the meeting after receiving timely notice, the Condemning Authority may submit the proposed Cure Plan for review by the City Council hereunder.

The final application submitted to the City Council shall include any and all information requested by, or recommendations of the Director arising out of the pre- application conference or subsequent staff review. Any Cure Plan submitted must clearly depict and describe the existing condition of the affected property prior to the Transfer in Satisfaction of Condemnation and the conditions existing after the completion of the site improvements proposed by the Cure Plan.

- iii. The approval of the non-binding Cure Plan shall not preclude the City Council from approving a competing application from the owner of the Remaining Parcel, which differs from the Cure Plan addressed in the non-binding approval, it being recognized that there may be more than one (1) alternative approach to cure the effects of a Transfer in Satisfaction of Condemnation that would bring the Remaining Parcel into conformity with the City Code requirements and/or Governing Documents or legal non-conformities as described above.

A City Council approved non-binding Cure Plan, including such

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with deviations, shall only become binding upon the Remaining Parcel when such is incorporated into a written settlement of the Transfer in Satisfaction of Condemnation between the owner of the Remaining Parcel and the condemning authority. If more than one Cure Plan has been approved by the City Council, including a non-binding Cure Plan submitted by the condemning authority, any of the Cure Plans may be used and relied upon by the owner of the Remaining Parcel to rehabilitate such parcel.

- iv. As a condition of approval of any Cure Plan, hereunder, the City Council may require, among other things, that the owner or owners of the Remaining Parcel execute and record in the Public Records of Lake County a Notice of Encumbrance in a form acceptable to the City for the purpose of notifying any and all subsequent owners of the remaining Parcel is subject to a Cure Plan.
- (f) Upon final approval of a cure plan by the City Council, the terms, conditions and requirements contained therein shall attach as covenants that run with the land. Provided, however, that the City shall not act to enforce the Cure Plan until such time as the construction of the new right-of-way pertaining to the taking and the Cure Plan has been completed. All City reviews may be conducted and approved prior to the right-of-way completion in order to allow for the property owner the needed time to prepare the site plan and obtain any permits that may be required.
- (g) Fees.

The fees for submission of a Cure Plan for review and approval shall be the same cost as site plan review.
- (h) Enforcement.

The City may enforce violations of this Section by way of Code Enforcement Board action, revocation of any Certificate of Occupancy related to the subject property, and/or all other remedies available to the City in law or equity. Prior to enforcing a violation of this Section, the City shall provide notice as required by applicable law.
- (i) Notice.

If a condemning authority or owner of a Remaining Parcel seeks City Council final approval, or non-binding approval, of a Cure Plan, the party seeking such approval shall provide to the other party written notice of such application by certified mail of such application at the time of submittal of the application and at least fourteen (14) days prior to the public hearing before City Council related to the application.

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SECTION 2. Severability.

It is declared to be the intent of the City Council that, if any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 3. Conflict.

Any portion of the Code of Ordinances, City of Clermont, Florida or any ordinance or part thereof in conflict with this ordinance is hereby repealed to the extent of such conflict.

SECTION 4. Codification.

The provisions of Section 1 of this Ordinance shall be codified as and become and be made a part of the Code of Ordinances of the City of Clermont. The Sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

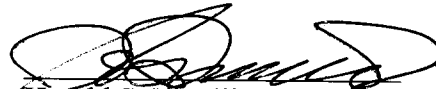
SECTION 5. Effective Date.

This Ordinance shall be published as provided by law and shall take effect immediately upon its Second Reading and Final Passage.


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PASSED AND ADOPTED by the City Council of the City of Clermont, Lake County,
Florida on this 13TH day of April, 2010.

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Harold S. Turville, Jr., Mayor

ATTEST:


Tracy Ackroyd, City Clerk