



**CITY COMMISSION AGENDA
CITY HALL COMMISSION CHAMBERS
300 W. Plant Street**

REGULAR MEETING

MARCH 26, 2009

6:30 P.M.

CALL TO ORDER

Determination of a Quorum

Invocation and Pledge of Allegiance

1. **APPROVAL OF MINUTES** - Regular Meeting of March 12, 2009
2. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCE**
 - A. **Ordinance 09-10:** AN ORDINANCE OF THE CITY OF WINTER GARDEN ADOPTING THE EVALUATION AND APPRAISAL REPORT OF THE CITY'S COMPREHENSIVE GROWTH MANAGEMENT PLAN; PROVIDING FOR THE CITY'S INTENT TO AMEND THE COMPREHENSIVE PLAN BASED ON THE RECOMMENDATIONS SET FORTH IN THE REPORT; APPROVING THE TRANSMITTAL OF THE REPORT TO THE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being advertised in the future for a date certain** – Chief Planner Wilson
3. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE**
 - A. **Ordinance 09-18:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 50-193, 50-194, AND 50-195 OF THE WINTER GARDEN CITY CODE; ALTERING THE DEFINITIONS OF "PERMANENT RESIDENCE" AND "TEMPORARY RESIDENCE" CONTAINED IN SECTION 50-193 OF THE CITY CODE TO BE CONSISTENT WITH SUCH DEFINITIONS AS AMENDED IN § 775.21(2), FLA. STAT.; EXPANDING THE APPLICABILITY OF THE CITY'S CURRENT RESIDENCE RESTRICTIONS CONCERNING SEXUAL OFFENDERS TO INCLUDE THOSE INDIVIDUALS WHO COMMITTED A SEXUAL OFFENCE AGAINST A MINOR OUTSIDE THE JURISDICTION OF THE STATE OF FLORIDA AND ANY PERSON COMMITTING A SEXUAL OFFENSE AGAINST PERSONS YOUNGER THAN 18 YEARS OF AGE AT THE TIME SUCH OFFENSE WAS COMMITTED; INCLUDING SCHOOL BUS STOPS AS BEING AMONG THOSE AREAS A SEX OFFENDER MAY NOT RESIDE WITHIN 2,500 FEET OF; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE – Police Chief Brennan
4. **PUBLIC HEARING MATTER**
 - A. Interlocal Agreement with Orange County regarding the widening of County Road 535 from Magnolia Park Court to State Road 429 – City Manager Bollhoefer

5. **REGULAR BUSINESS**

- A. **Resolution 09-07:** A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, SUPPORTING THE ADDITION TO THE EXISTING CORRIDOR OF THE GREEN MOUNTAIN SCENIC BYWAY OF THE SEGMENT OF PLANT STREET BEGINNING AT THE INTERSECTION WITH ORANGE COUNTY ROAD 545 AND RUNNING EAST TO THE INTERSECTION WITH DILLARD STREET – City Manager Bollhoefer
- B. Recommendation to approve agreement with SCI Funeral Services of Florida, Inc. for right-of-way property acquisition of (Parcel 102) on Plant Street – Planning Director Williams
- C. Recommendation to approve agreement with SCI Funeral Services of Florida, Inc. for maintenance of their wastewater system by the City until the sewer line is installed and connected – Planning Director Williams
- D. Recommendation to approve Emergency Medical Services Agreement with Orange County to receive two Auto Pulse Systems and related equipment through grant funding – Fire Chief Williamson
- E. Recommendation to approve construction contract with Southern Building Services, Inc. for \$1,504,990 to renovate the Jessie Brock Community Center on Dillard Street – Recreation Director Conn
- F. Appointments to the election Canvassing Board – City Clerk Golden

6. **MATTERS FROM CITIZENS** (*Limited to 3 minutes per speaker*)

7. **MATTERS FROM CITY ATTORNEY** – Kurt Ardaman

8. **MATTERS FROM CITY MANAGER** – Mike Bollhoefer

- A. Update on Sandy Rice's property

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

ADJOURN to a regular City Commission meeting on April 9, 2009 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

Please Note: In accordance with Florida Statutes 286.0105: Any person who desires to appeal any decision at this meeting will need a record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is based, which such written record is not provided by the City of Winter Garden.

Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Director.

Also, in accordance with Florida Statute 286.26: Persons with disabilities needing assistance to participate in any of these proceedings should contact the Office of the City Clerk, 300 W. Plant Street, Winter Garden, FL 34787, (407) 656-4111 x 2254 48 hours in advance of the meeting.

ORDINANCE 09-10

AN ORDINANCE OF THE CITY OF WINTER GARDEN ADOPTING THE EVALUATION AND APPRAISAL REPORT OF THE CITY'S COMPREHENSIVE GROWTH MANAGEMENT PLAN; PROVIDING FOR THE CITY'S INTENT TO AMEND THE COMPREHENSIVE PLAN BASED ON THE RECOMMENDATIONS SET FORTH IN THE REPORT; APPROVING THE TRANSMITTAL OF THE REPORT TO THE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, under section 163.3191 of the Local Government Comprehensive Planning and Development and Land Development Regulation Act, the City has the responsibility to adopt an Evaluation and Appraisal Report every seven years to assess the progress of implementing the City's Comprehensive Plan and evaluate the City's Comprehensive Plan in effect at the time the Evaluation and Appraisal Report process was initiated; and

WHEREAS, the Evaluation and Appraisal Report serves as the audit and critique of the actions the City has already undertaken and identifies changes that are needed for future comprehensive planning with the City; and

WHEREAS, the City's Planning and Zoning Commission serving as the City's Local Planning Agency prepared the report and recommended adoption of the report to the City Commission; and

WHEREAS, the City held a scoping a meeting regarding the report in April 2008 with local cities, the FDOT and the Regional Planning Council; and

WHEREAS, in May 2008, the City forwarded its list of major issues to, and received significant comments from, the Florida Department of Community Affairs; and

WHEREAS, the City has provided effective public notice of the Evaluation and Appraisal Report adoption process and at least two (2) public hearings to allow for public input; and

WHEREAS, the City transmitted the Evaluation and Appraisal Report to the Florida Department of Community Affairs prior to final adoption; and

WHEREAS, the City Commission intends to adopt the Evaluation and Appraisal Report dated February 2009 that is in compliance with Section 163.3191 of the Florida Statutes to allow for amendment to the Comprehensive Plan.

NOW THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

Section I: Adoption: The Evaluation and Appraisal Report (EAR) dated February 2009 is hereby adopted to allow for amendment to the City's Comprehensive Plan. A copy of the EAR is attached to this ordinance as Exhibit "A".

Section II: Intent to Amend Comprehensive Plan: The City Commission hereby states its intention to amend the City's Comprehensive Plan in accordance with the recommendations set forth in the EAR.

Section III: Transmittal After Adoption: The City Planning Department is directed to transmit this Evaluation and Appraisal Report within ten days to the Florida Department of Community Affairs in accordance with Section 163.3191, Florida Statutes, and Rule 9J-11.018, F.A.C. for a determination of sufficiency.

Section IV: Conflicts: In the event of a conflict or conflicts between this ordinance and any other ordinances, this Ordinance controls.

Section V: Severability: If any portion of this Ordinance is determined to be void, unconstitutional, or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section VI: Effective Date: The effective date of this Evaluation and Appraisal Report shall be the date the Department of Community Affairs issues its written notice of final sufficiency determination. This Evaluation and Appraisal Report shall not be utilized as a basis for approving or issuing any development orders, development permits or land uses before plan amendments based upon the Report have become effective.

FIRST READING AND PUBLIC HEARING March 26, 2009.

SECOND READING AND PUBLIC HEARING _____ 2009.

ADOPTED this ____ day of _____, 2009, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

“EXHIBIT A”

Evaluation and Appraisal Report (EAR)

ON FILE IN THE CITY CLERK’S OFFICE

ORDINANCE 09-18

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 50-193, 50-194, AND 50-195 OF THE WINTER GARDEN CITY CODE; ALTERING THE DEFINITIONS OF “PERMANENT RESIDENCE” AND “TEMPORARY RESIDENCE” CONTAINED IN SECTION 50-193 OF THE CITY CODE TO BE CONSISTENT WITH SUCH DEFINITIONS AS AMENDED IN § 775.21(2), FLA. STAT.; EXPANDING THE APPLICABILITY OF THE CITY’S CURRENT RESIDENCE RESTRICTIONS CONCERNING SEXUAL OFFENDERS TO INCLUDE THOSE INDIVIDUALS WHO COMMITTED A SEXUAL OFFENSE AGAINST A MINOR OUTSIDE THE JURISDICTION OF THE STATE OF FLORIDA AND ANY PERSON COMMITTING A SEXUAL OFFENSE AGAINST PERSONS YOUNGER THAN 18 YEARS OF AGE AT THE TIME SUCH OFFENSE WAS COMMITTED; INCLUDING SCHOOL BUS STOPS AS BEING AMONG THOSE AREAS A SEX OFFENDER MAY NOT RESIDE WITHIN 2,500 FEET OF; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Winter Garden (“City”) is deeply concerned about the numerous occurrences in the State of Florida and the United States, where sexual offenders have been released from custody and repeat the unlawful acts for which they had initially been sentenced;

WHEREAS, the City has previously reviewed the evidence concerning the recidivism rate for released sexual offenders and determined such rate to be alarmingly high, especially for those offenders who commit their crimes against children;

WHEREAS, the City is a family-oriented community that continues to highly value its children and is a locale which families with children have traditionally held in high regard;

WHEREAS, schools, day care centers, public parks and public playgrounds have been determined to be places within the City where children are frequently and regularly located and at which they are involved in activities, and to and from which children walk while passing the residences of persons who may target children for sexual offenses;

WHEREAS, §§ 794.065 and 947.1405, Fla. Stat. (2008), prohibit certain sexual offenders from residing within one thousand (1,000) feet of specified locations, with § 947.1405, Fla. Stat., specifically enumerating school bus stops as being among such locations;

WHEREAS, the City’s current incarnation of its sexual predator ordinance does not prohibit the residence of sexual predators/offenders near designated school bus stops, and the City wishes to incorporate such prohibition into its Code to better protect children residing within the City;

WHEREAS, the City desires to establish a policy providing maximum protection to its citizens from criminal activity, which thereby advances the health, safety, and general welfare of citizens residing within the City;

WHEREAS, the State Legislature has reduced the time in which a sexual offender establishes a “permanent residence” from 14 or more consecutive days to 5 or more consecutive days pursuant to § 775.21(2)(f), Fla. Stat., and the City desires to alter its definition of “permanent residence” to mirror current state law and provide additional protections to its citizens;

WHEREAS, the State Legislature has reduced the time in which a sexual offender establishes a “temporary residence” from 14 or more days to 5 or more days and made other modifications consistent therewith

pursuant to § 775.21(2)(g), Fla. Stat., and the City desires to alter its definition of “temporary residence” to mirror current state law and provide additional protections to its citizens;

WHEREAS, the City, having previously enacted an ordinance restricting individuals who have committed a sexual offense against a person less than sixteen (16) years of age pursuant to the laws of Florida from residing within 2,500 feet of schools, day care centers, parks, or playgrounds, has since noted that such restrictions were inapplicable to persons committing a sexual offense outside the State of Florida and were otherwise inapplicable to persons committing sexual offenses against minors aged sixteen (16) or older;

WHEREAS, the City now desires to extend the applicability of the residence restrictions contained in Section 50-194 of the Winter Garden Code of Ordinances to those individuals committing sexual offenses outside the jurisdiction of the State of Florida and to those individuals who have perpetrated a sexual offense against persons who were less than eighteen (18) years of age at the time such offense occurred;

WHEREAS, Article VIII, § 2(b) of the Florida Constitution and § 166.021, Fla. Stat., provide the City with the authority and power to protect the health, safety and welfare of its citizens;

WHEREAS, this Ordinance is enacted under the general home rule and police powers of the City of Winter Garden and is not a zoning matter or a land development regulation;

WHEREAS, the City has complied with all requirements and procedures of Florida law in processing, noticing and advertising this Ordinance; and

WHEREAS, after public notice and due consideration of public comment, the City Commission of the City of Winter Garden hereby finds and declares that the adoption of this Ordinance is necessary and appropriate to advance and serve the health, safety and general welfare of the citizens of Winter Garden, Florida; now, therefore,

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION I: Section 50-193 of the Winter Garden Code of Ordinances is hereby amended as follows (~~struck out~~ text indicates deletions while underlined text indicates additions):

Sec. 50-193. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Permanent residence means a place where the person abides, lodges, or resides for ~~14~~five (5) or more consecutive days.

Temporary residence means a place where the person abides, lodges, or resides for a period of ~~14~~five (5) or more days in the aggregate during any calendar year and which is not the person's permanent address, or ~~a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence~~for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

SECTION II: Section 50-194 of the Winter Garden Code of Ordinances is hereby amended as follows (~~struck out~~ text indicates deletions while underlined text indicates additions):

Sec. 50-194. Sexual offender and sexual predator residence prohibition; measurement; penalties.

- (a) It is unlawful for any person who has been convicted of a violation of F.S. §§ 794.011, 800.04, 827.071, or 847.0145, or a similar offense pursuant to the laws of any federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, or of any state or territory of the United States or other jurisdiction, regardless of whether adjudication has been withheld, in which the victim of the offense for which the conviction resulted was less than ~~16~~18 years of age at the time the offense was committed, to establish a permanent or temporary residence within 2,500 feet of any school, designated school bus stop, day care center, park, or playground.
- (b) *Measurement.* For purposes of determining the minimum distance separation, the 2,500 feet requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of a school, designated school bus stop, day care center, park, or playground.
- (c) *Penalties.* A person who violates this section shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment; for a second or subsequent conviction of a violation of this section, said person shall be punished by a fine not to exceed \$1,000.00 or imprisonment for a term not exceeding one year, or by both such fine and imprisonment.
- (d) *Exceptions.* A person residing within 2,500 feet of any school, designated school bus stop, day care center, park, or playground does not commit a violation of this section if any of the following apply: (1) the person established the permanent residence or temporary residence and reported and registered the residence pursuant to F.S. §§ 775.21, 943.0435, or 944.607, prior to the effective date of this article; (2) the person was a minor when he/she committed the offense and was not convicted as an adult; (3) the person is a minor; (4) the school, designated school bus stop, day care center, park, or playground within 2,500 feet of the person's permanent residence was opened after the person established the permanent residence and reported and registered the residence pursuant to F.S. §§ 775.21, 943.0435, or 944.607.

SECTION III. Section 50-195 of the Winter Garden Code of Ordinances is hereby amended as follows (~~struck out~~ text indicates deletions while underlined text indicates additions)

Sec. 50-195. Property owners prohibited from renting real property to certain sexual offenders and sexual predators; penalties.

- (a) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to section 50-194 of this Code, if such place, structure, or part thereof, trailer or other conveyance, is located within 2,500 feet of any school, designated school bus stop, day care center, park, or playground.
- (b) A property owner's failure to comply with the provisions of this section shall constitute a violation of this section and shall subject the property owner to the code enforcement provisions and procedures as provided in this Code, including action before the code enforcement board and the issuance of citation by a police officer as a class IV violation. In the alternative, the City may pursue any other enforcement action or legal remedy available under controlling state law, including but not limited to injunctive relief. If injunctive relief or other civil judicial relief is sought, the city shall be entitled to recover its reasonable attorneys' fees and costs from the defendant. The foregoing shall be supplemental to and not in derogation of any other remedy.

SECTION IV. INCONSISTENCY. If any Ordinances or parts of Ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflict.

RESOLUTION 09-07

**A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA,
SUPPORTING THE ADDITION TO THE EXISTING CORRIDOR OF THE
GREEN MOUNTAIN SCENIC BYWAY OF THE SEGMENT OF PLANT
STREET BEGINNING AT THE INTERSECTION WITH ORANGE COUNTY
ROAD 545 AND RUNNING EAST TO THE INTERSECTION WITH DILLARD
STREET**

WHEREAS, The Secretary of the Florida Department of Transportation has designated Oakland Avenue in the Town of Oakland and certain segments of Lake County Roads 455 and Old Highway 50 as a Florida Scenic Highway known as the Green Mountain Scenic Byway; and

WHEREAS, citizens of Orange and Lake Counties have created the Green Mountain Scenic Byway Committee, Inc, for the purposes of preserving, maintaining and enhancing the intrinsic resources of the Green Mountain Scenic Byway Corridor through community based consensus and partnerships, and

WHEREAS, significant benefits of additional economic development, recreational amenities, resource conservation, aesthetic enhancement and public education can result from Florida Scenic Highway designation, and

WHEREAS, the eastern terminus of the Green Mountain Scenic Byway is currently located at the intersection of Oakland Avenue, Plant Street and Orange County Road 545 in the City of Winter Garden; and

WHEREAS, the 1.8 mile segment of Plant Street lying between the eastern terminus of the Green Mountain Scenic Byway and the intersection with Dillard Street exhibits significant, exceptional and distinctive scenic, historic, cultural and recreational features of the region it traverses, and

WHEREAS, the Green Mountain Scenic Byway Committee, Inc., feels the addition of the 1.8 mile segment of Plant Street described above to the existing Byway Corridor will advance the goals of the Committee and benefit the citizens, economy and natural environment of the City of Winter Garden and the region,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA:

The City Commission supports the Green Mountain Scenic Byway Committee's efforts to add the above described 1.8 mile segment of Plant Street to the Green Mountain Scenic Byway Corridor, and encourages the Florida Scenic Highways Advisory Committee to favorably review any such application submitted by the Byway Committee.

PASSED AND RESOLVED this 26th day of March 2009, by the City Commission of the City of Winter Garden, Florida.

John Rees, Mayor

ATTEST:

Kathy Golden, CMC, City Clerk