

community subdivision infrastructure are not properly funded, the developer (so long as the developer retains control of the board of directors of the HOA and the provisions of section 110-155 are not completely satisfied), the HOA, and the individual lot owners of the subdivision, jointly and severally, shall release, defend, indemnify, and hold the city and its officers, contractors, consultants and employees harmless from any and all costs, expenses, suits, demands, liabilities, damages, injuries (including death), tort liability or award of damages or otherwise, including attorneys' fees and costs, in connection with, related to, or arising out of the maintenance, repair, replacement, reconstruction, or care of the community subdivision infrastructure, or any component thereof, by or on behalf of the city. (Ord. No. 13-12, § 2, 3-14-13)

Sec. 110-159. Default.

The city shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, the community subdivision infrastructure, or any component thereof, including, but not limited to, any and all private areas, drainage systems (including without limitation, the retention/detention areas and underdrains), common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the city. Further, the city shall have the right, but not the obligation, to cause to be prepared any report, study, or inspection required by this division, if the HOA fails to obtain such reports, studies, or inspections required by this division in the time provided. In the event any or all of the components of the community subdivision infrastructure are not maintained, repaired, or replaced in accordance with the standards of the City Code, good engineering practices, or become a nuisance, or the required reports, studies, or inspections are not obtained, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of reports, studies, inspections, maintenance, repair, replacement and care provided by or for the city, plus administrative costs and attorneys' fees and costs incurred by the city. If said costs are not paid within 15 days of invoicing to the HOA

and the lot owners, then said costs shall constitute a lien on the property of the owner which fails to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the city's exercise of said right, shall not impose any obligation on the city to maintain, repair, replace, or otherwise care for any or all components of the community subdivision infrastructure or cause to be prepared any reports, studies, or inspections.

Without limiting the foregoing, upon any default by the HOA or the developer in any requirement of either this article or the declaration required under this article, the city, at its option (and without limiting its remedies) and after due notice of its declaration of a default and a reasonable time to cure, may prohibit closure of the gates and utilize all HOA monies on deposit in the routine-community subdivision infrastructure-maintenance account and the capital-reserve accounts or, if no monies exist or if an insufficient amount exists, using such other revenues or financing methods as the city may elect, including, but not limited to, special assessments against the all of the subdivision lots. The city shall have the right to enforce against the HOA and developer the requirements of this division and the provisions of the declaration required in this division. Further, without limiting the foregoing, upon any default by the developer of any requirement of this division, the city shall be entitled to withhold the issuance of certificates of occupancy and building permits for improvements within the project and withhold the issuance of development orders, certificates of occupancy and building permits for any other project the developer is the developer of record until such time as the default is cured. (Ord. No. 13-12, § 2, 3-14-13)

Sec. 110-160. Insurance.

The HOA shall provide general liability insurance in the amount of not less than \$300,000.00 per occurrence and \$500,000.00 aggregate and name the city as an additional named insured. Such insurance shall protect the HOA and the city from any claim, suit, demand or damages resulting from or related to any activity by the

city within the subdivision or the community subdivision infrastructure and private amenities, including, but not limited to, the operation, maintenance or repair of streets, subdivision infrastructure, water, sewer and drainage facilities. The insurance shall not include any exclusion that would deny coverage from the operation of sewer lines and shall provide 30-day written notice to the city prior to cancellation or modification of any insurance referred to therein. A signed certificate of insurance showing compliance with the requirements of this section, satisfactory to the city, shall be furnished to the city prior to final plat approval

(Ord. No. 13-12, § 2, 3-14-13)

Sec. 110-161. HOA and member rights.

The HOA, any member of the HOA, and any and all owners of land in the subdivision shall have the right jointly and severally to enforce against the developer the requirements of this chapter and the provisions of the declaration required in this division, with the prevailing party being entitled to attorneys' fees and costs. Any member of the HOA and any and all owners of land in the subdivision shall have the right to enforce against the HOA the requirements of this division and the provisions of the declaration required herein, with the prevailing party being entitled to attorneys' fees and costs against the non-prevailing party. Venue for any such enforcement action shall be in the Ninth Judicial Circuit of Florida, in Orange County, Florida.

(Ord. No. 13-12, § 2, 3-14-13)

Sec. 110-162. Developer liability.

Until such time as turnover of control of the HOA has occurred and the developer has conveyed to the HOA such land and improvements for which the HOA shall have the responsibility for maintaining and repairing, including the community subdivision infrastructure, the developer shall remain jointly and severally liable, to the city, along with the HOA, for the maintenance and repair of the community subdivision infrastructure, for the adequate funding of the HOA accounts required by section 110-157 and for otherwise ensuring compliance with the provisions of this division. If turnover occurs and the

obligations of the developer under this division have not been met, the rights of the city, HOA, any of the HOA's members, and any and all owners of land within the subdivision to enforce the requirements of this division against the developer shall survive the turnover, with the prevailing party to be entitled to attorneys' fees and costs against the non-prevailing party. Venue for any such enforcement action shall be in the Ninth Judicial Circuit of Florida, in Orange County, Florida.

(Ord. No. 13-12, § 2, 3-14-13; Ord. No. 14-29, § 4, 7-24-14)

Secs. 110-163—110-168. Reserved.

DIVISION 6. GATED COMMUNITIES

Sec. 110-169. General.

It is recognized by the city that there exists a market demand for the development and establishment of residential subdivisions which restrict access by the general public through the utilization of entryway gates and other restricted access points. As Florida law generally prohibits the use of public funds for private use, the utilization of such gates and restricted access points as a means of limiting access by the public requires, inter alia, that the roadways, street lights, drainage systems (which includes, without limitation, stormwater detention/retention areas and underdrains), sidewalks, and certain other subdivision infrastructure and improvements be privately owned and maintained. Further, the city recognizes that the public's interest is served only if gated communities and the components of its community subdivision infrastructure are designed, constructed, and maintained in accordance with the applicable provisions of the code and standards for similar non-gated communities. As such, provided the community subdivision infrastructure is privately owned and maintained consistent with the requirements of this chapter and such other applicable city code and state law and upon approval of the city, proposed residential subdivisions may be developed and maintained as a gated community and existing residential subdivisions (i.e., platted of record) may be converted to and maintained as a gated com-

munity. Notwithstanding the foregoing, failure to so comply after approval is obtained may result in, without limitation, the removal of the gates and prohibiting the closure of the gates.
(Ord. No. 04-19, § 2(Exh. A), 6-10-04)

Sec. 110-170. Prohibitions.

Notwithstanding anything to the contrary provided in this article, the planning and zoning board or the city commission may deny the development or establishment of a gated community if one or more of the following findings of fact are made, based on the evidence presented, that such development or establishment of a gated community would:

- (1) Negatively affect traffic circulation on public streets; or
- (2) Impair access to property either on-site or off-site of the residential subdivision; or
- (3) Impair access to or from public facilities, including, but not limited to, schools, parks, or libraries; or
- (4) Delay the response time of emergency vehicles; or
- (5) Include a street designated as an arterial or collector road; or
- (6) Result in a gated community consisting of less than 65 residential lots or units; or
- (7) Be inconsistent with or otherwise not comply with the comprehensive plan; or
- (8) Otherwise not be in the best interest of the public health, safety or welfare.

(Ord. No. 04-19, § 2(Exh. A), 6-10-04)

Sec. 110-171. Access provisions and gate design standards.

(a) *Emergency vehicle access.* Entryway gates and other restricted access gates must be equipped with an emergency vehicle access system inspected and approved by the city police chief and city fire chief before such gates may be closed. After initial approval is obtained from the city police chief and the city fire chief, said emergency vehicle access system may be inspected, from time to time, to ensure that said gates and emergency vehicle access systems are acceptable and

in good working order. Notwithstanding anything herein to the contrary, the fire chief or police chief may require an existing emergency vehicle access system to be updated, modified, or replaced in light of changes in technology, policy, or change in equipment used by the police department or fire department. In the event such change is requested by the fire chief or police chief, the requested change must be made within the time specified, and, if necessary for the health, safety, and welfare, the fire chief or police chief may require such gates to remain in an open position until such changes are affected and approved.

(b) *Master entry device.* The entryway gate must provide a key pad device by which police, fire and rescue personnel, code enforcement officers, environmental protection workers and, if the residential subdivision is served by city utilities or public works, city utility and public works workers, may gain access to the residential sub-

division. The access code, and such changes to the access code, must be provided to the city police chief, city fire chief, city utilities director, city public works director, and the city manager. Said access code must be provided before the entryway gate may be closed.

(c) *Gate design standards.* Electrically operated gates shall be designed to default to the "open position" in the event of a power failure. Said gates shall remain open until such time as power is restored. Swinging gates for single-direction traffic shall open toward (i.e., swing into) the property being entered. After passing through a gate, the nearest curb of any cross street shall be no closer than 40 feet from said gate. Access for single direction traffic shall be unobstructed to the following dimensions: 16 feet wide and 13.5 feet high. Access for bi-directional traffic shall be unobstructed to the following dimensions: 24 feet wide and 13.5 feet high. No gate shall be installed where access requires the use of a proximity reader or card, unless a turn-out is provided for its use. Direction limiting devices, such as fixed tire spikes, are prohibited. No more than one vehicle access control device or system through which emergency vehicles must pass to reach any address within the residential subdivision shall be permitted.

(d) *Maintenance and compliance.* Maintenance of the emergency vehicle access system and the compliance with the requirements of this section is the responsibility of the HOA, violation of which may result in removal of the gates at the cost of the HOA, code enforcement action and a lien on each of the lots within the residential subdivision.

(e) *Gate hours.* Provided the provisions of this section are fully complied with by the HOA, the gates may be closed during daytime and nighttime hours.

(f) *Existing gated communities.* Gated communities existing as of the effective date of this ordinance or which are annexed into the city, shall, at a minimum, comply with the provisions of subparagraph (a) above within one year of the effective date of this article or annexation into the city and, unless in full compliance with the provisions of this section, shall be required to have

the gate open during daytime hours unless physically and continuously manned by HOA designated security personnel during said hours.

(Ord. No. 04-19, § 2(Exh. A), 6-10-04; Ord. No. 06-08, § 9, 3-9-06)

Sec. 110-172. Traffic control.

Upon the written request of the HOA of a subdivision with private roads, the city may enter into an agreement with the HOA providing for the enforcement of traffic laws within the subdivision, provided that all costs of enforcement incurred by the city shall be paid by the HOA and such agreement otherwise complies with F.S. § 316.006(2)(b). Furthermore, the HOA shall install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the private roads unless an agreement has been entered into between the city and the HOA as authorized under F.S. § 316.006(2)(b), expressly providing that the city has traffic control jurisdiction.

(Ord. No. 04-19, § 2(Exh. A), 6-10-04)

Sec. 110-173. Abandonment of right-of-way within existing subdivisions.

(a) The city may abandon the roads and rights-of-way dedicated in a recorded residential subdivision plat and/or convey the city's interest in such roads, rights-of-way, and, if applicable, appurtenant drainage facilities to a homeowners' association for the subdivision, if the following conditions have been met:

- (1) The homeowners association has requested the abandonment and/or conveyance in writing for the purpose of converting the subdivision to a gated neighborhood with restricted public access.
- (2) No fewer than four-fifths of the owners of record of property located in the subdivision have consented in writing to the abandonment and/or conveyance to the homeowners' association.
- (3) The homeowners' association is both a corporation not for profit organized and in good standing under F.S. Ch. 617, and a "homeowners' association" as defined in

F.S. § 720.301(7), with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks, and pavement in the subdivision.

- (4) The homeowners' association has entered into and executed such agreements, covenants, warranties, and other instruments; has provided, or has provided assurance of, such funds, reserve funds, and funding sources; and has satisfied such other requirements and conditions as may be established or imposed by the city, including, but not limited to, compliance with the regulations set forth in this chapter and with respect to the ongoing operation, maintenance, and repair and the periodic reconstruction or replacement of the roads, drainage, street lighting and sidewalks in the subdivision after the abandonment by the city.
- (5) A title commitment and summary of how the city acquired the right-of-way to be abandoned and/or conveyed shall be provided by the homeowners' association. Also, a boundary survey and legal description of the rights-of-way and roads to be abandoned must be provided by the homeowners' association.
- (6) An explanation which identifies why the proposed use of the land to be abandoned and/or conveyed is of more benefit to the community under private ownership than retention of the land as public right-of-way shall be provided by the homeowners' association.
- (7) It is a condition precedent to the abandonment of rights-of-way within an existing subdivision that the provisions of this chapter shall be complied with and imposed upon the property owners and HOA of the subdivision.
- (8) It is further a condition precedent to the abandonment and/or conveyance of rights-of-way within an existing subdivision that the HOA, and the individual lot owners of the subdivision, jointly and severally, shall release, defend, indemnify, and hold the

city and its elected and appointed officials, officers, contractors, consultants and employees harmless from any and all costs, expenses, suits, claims, demands, liabilities, damages, injuries, tort liability or award of damages or otherwise, including attorneys' fees and costs, in connection with, related to, or otherwise arising out of the abandonment and/or conveyance of rights-of-way, improvements or facilities within the subdivision.

- (9) A plat or replat or such other documentation as may be required by the city shall be submitted to the city combining the abandoned right-of-way into the adjacent platted lots and subsequently conveying such right-of-way to the HOA. Such plat or replat or documentation shall be submitted to the city prior to abandonment. Abandonment of right-of-way shall not be considered complete until such plat or replat or other documentation has been prepared in accordance with the provisions of this chapter, approved by the planning and zoning board and city commission, and recorded in the public records of Orange County, Florida.

(b) Procedure. Formal application for abandonment and/or conveyance of rights-of-way and roads shall be made in the manner prescribed by the city and the required survey and supplementary material shall be processed and considered in accordance with the provisions of this chapter. The city commission shall have the final authority to approve or deny an abandonment request. Applications shall be submitted to the planning and zoning department.

Approval of a conditional abandonment and/or conveyance is valid for six months from the date of city commission approval and shall always be subject to compliance with the provisions of this section. Reapproval of an abandonment by the city commission may be applied for at any time subsequent to the date such abandonment becomes invalid. If the city commission or planning and zoning board should deem changes necessary in the reapproval of an abandonment in light of new or significant information or requirements, it shall so inform the applicant. An ordinance of

abandonment and/or conveyance shall not take effect until such time as compliance with the provisions of this article have been met.

(c) Effect. Upon conveyance of the roads and rights-of-way to the homeowners' association, the homeowners' association shall have all the city's right, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the city. Thereafter, the homeowners' association shall hold the roads and rights-of-way in trust for the benefit of the owners of the property in the subdivision, and shall operate, maintain, repair, and, from time to time, replace and reconstruct the roads, street lighting, sidewalks, and drainage facilities as necessary to ensure their use and enjoyment by the property owners, tenants, and residents of the subdivision and their guests and invitees.

The act of the city in abandoning any such road or rights-of-way, or in renouncing or disclaiming any rights in any land delineated on any recorded map as a road, shall abrogate the easement theretofore owned, held, claimed or used by or on behalf of the public and the title of fee owners shall be freed and released therefrom, subject to rights of reversion, if any; the same will be thereby surrendered and will vest in the abutting fee owners to the extent and in the same manner as in case of termination of an easement for road purposes.

(Ord. No. 04-19, § 2(Exh. A), 6-10-04)

Sec. 110-174. Gated community cost disclosure statement.

Each owner of any lot, parcel or tract within a subdivision petitioning for conversion to a gated community shall be subject to the provisions of this chapter and shall be provided with a disclosure statement by the HOA setting forth the following facts in a single document typed in all uppercase letters in at least 12-point typeface and with the heading "Gated Community Cost Disclosure Statement":

- (1) Conversion of your subdivision to a gated community will subject your subdivision to the provisions set forth in article III, division 6, chapter 110 of the Winter

Garden Code of Ordinances, in addition to other provision of the Winter Garden Code of Ordinances relating to streets and subdivision infrastructure.

- (2) By law, Winter Garden cannot pay to maintain the roads, street lights, sidewalks, drainage and other improvements in this community because these things are or will become private property and the general public cannot access the community.
- (3) Although the cost of properly maintaining and repairing roads, street lighting, sidewalks, drainage systems, and other improvements can be very high, only the owners of homes and lots within this community will share these expenses. Tax dollars will not be used. The members must also pay for the cost of liability insurance and traffic enforcement on the community's roads.
- (4) Under Florida law, no reduction in your tax burden will result from the conversion to a gated community.
- (5) Members of this community, through their mandatory homeowners association, must set aside adequate reserves to properly maintain, repair and replace the roads, sidewalks, drainage systems and other improvements, and have a professional engineer regularly inspect the roads, sidewalks, drainage systems, and other improvements and report what work is necessary to maintain and/or repair them. The mandatory homeowners association is obligated to do the necessary work reported and the members of the homeowners association pay for the work through their assessments.
- (6) The extra expenses you incur as a result of the conversion of your community to a gated community are in addition to other expenses charged by your homeowners association to pay for private recreational, security and other amenities and services the community may offer, including the community's gates.

- (7) As with any assessment, the failure or inability to pay may lead to a lien being placed on your home. If a lien is placed and foreclosed, you could lose your home.
- (8) The homeowners association is required to maintain liability insurance adequate to pay claims for injuries and property damage arising on the private roadway, sidewalks, drainage ponds, and other common areas in the neighborhood.
- (9) If Winter Garden determines that the community is not meeting its obligations, it may revoke the community's privilege to close its gates.
- (10) If the community fails to maintain its roads, sidewalks, drainage system and other improvements, the city may require that the gates be removed. In the event the gates are removed, and the HOA dedicates or conveys the roads or other infrastructure to the city, all costs and expenses which the city incurs for such maintenance are recoverable from the community. Funds which have been set aside by the community may become the property of Winter Garden, and the roads in your community shall permanently become open to the public. Winter Garden will not maintain your recreational, security or other amenities under any circumstances.
- (11) You should request written information from your homeowners association about the costs of living in the community as a result of and after the conversion.

(Ord. No. 04-19, § 2(Exh. A), 6-10-04)

Sec. 110-175. Reserved.

DIVISION 7. PLAT VACATIONS

Sec. 110-176. Plat vacations.

(a) An applicant proposing to vacate and abandon a plat or any portion thereof or any dedication set forth in a plat shall show that the proposal meets the minimum requirements of F.S. ch. 177, and is consistent with the provi-

sions of the city Code, the comprehensive plan and applicable development agreements and development orders and conditions thereof.

(b) All requests to vacate and abandon plats or any portion thereof, including a request to vacate city or publicly dedicated rights-of-way and easements shall be made by written petition. Any such petition shall be in a form or forms required by the city and shall be presented along with the following minimum information:

- (1) A legal description of the property subject to the petition.
- (2) The plat or other instrument that identifies the title or interest, which is the subject of the petition.
- (3) A recent boundary survey of the property subject to the petition.
- (4) Sketch and legal description of the area proposed to be vacated and abandoned.
- (5) A listing of the names and addresses of record owners of all abutting properties.
- (6) A title opinion from a licensed attorney or title certificate from a title company certified to the city showing ownership of and any easements, mortgages and other liens and encumbrances on the property subject to the petition.
- (7) In the case of vacation and abandonment of city or publicly dedicated rights-of-way, a certification by the applicant that the vacation and abandonment proposed will not deprive other property owners of access to and from their property.
- (8) In the case of vacation and abandonment of city or publicly dedicated rights-of-way or utility easements, written correspondence from public utility companies that they have no objection to the proposed vacation and abandonment.
- (9) A statement of reasons why the petition should be granted.

The community development director may require such additional information and