

additional or specific exceptions, the application to be accompanied by supporting evidence that one or more of the following conditions exist:

- (1) There will be no value in underground utility installations for purposes of esthetics or consistency because of the presence of existing overhead utility facilities in a substantial portion of the area within or surrounding the new addition or subdivision.
- (2) Underground construction would not be practicable or feasible due to the nature of the services to be rendered or required; the presence of existing, impeding underground drainage or sanitary sewers and structures, and impediments of like nature; or because of some other unusual circumstances.
- (3) The cost of the installations will be unduly burdensome or confiscatory when compared with the revenue which could reasonably be anticipated therefrom.

(Code 1988, § 19-179)

Sec. 110-266. Authority for charging costs; conflicts.

(a) Nothing contained in this division shall be construed or operated to prohibit any utility company or other entity furnishing utility service within the city from charging, collecting and receiving, as a condition precedent to the installation of service facilities, any charge, fee, prepayment or contribution in aid of construction, which may be required or authorized by any order, rule, regulation or rate schedule promulgated or ap-

proved by the state public service commission or any other regulatory agency, including the courts, having jurisdiction in the premises.

(b) If a conflict occurs between any of the sections of this division and rules, regulations, rate schedules or orders promulgated or approved by the state public service commission or other regulatory authority having jurisdiction in the premises, the latter shall prevail, providing such do not infringe upon the police regulatory powers of the city.

(Code 1988, § 19-180)

Secs. 110-267—110-295. Reserved.

ARTICLE V. OPEN SPACES

DIVISION 1. GENERALLY

Secs. 110-296—110-320. Reserved.

DIVISION 2. PARKS AND RECREATION AREAS

Sec. 110-321. Definitions.

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

Developer means any person undertaking any residential development, as defined in this section.

Residential development means and includes new construction of subdivisions, multifamily development, mobile home parks and single-family residential dwelling units. Excluded are the following types of new construction:

- (1) Expansion of a residential dwelling;
- (2) Remodeling or rebuilding of any structure;
- (3) Construction of any public purpose structure by the federal, state or local government or any agency, subdivision or instrumentality thereof; and

(4) Construction under any building permit issued preceding the effective date of the ordinance from which this section derives.

(Code 1988, § 19-211)

Cross reference—Definitions generally, § 1-2.

Sec. 110-322. Purpose.

This division is enacted pursuant to the authority granted by F.S. ch. 166. The park and recreational facilities for which dedication of land or payment of a fee is required by this division are in accordance with the recreational element of the comprehensive development plan of the city.

(Code 1988, § 19-212)

Sec. 110-323. Requirements.

As a condition of final approval of a final residential development, the developer shall dedicate land, pay a fee in lieu thereof or both, at the option of the city, for park or recreational purposes at the time and according to the standards and formula contained in section 110-325.

(Code 1988, § 19-213)

Sec. 110-324. Findings.

It is found and determined that the public interest, convenience, health, welfare and safety require that five acres of property for each 1,000 persons residing within this city be devoted to city park and recreational purposes.

(Code 1988, § 19-214)

Sec. 110-325. Standards and formula for dedication of land.

Where a park or recreational facility has been designated in the comprehensive development plan and is to be located in whole or in part within the proposed residential development to serve the immediate and future needs of the residents of the residential development, the developer shall dedicate land for a city park sufficient in size and topography to serve the residents of the residential development. The amount of land to be provided shall be one acre of property for every 200 persons ultimately anticipated to reside in the residential development. For purposes of this section, it shall be conclusively presumed that 2.64 persons shall ultimately reside in each unit

in the residential development. Dedication of the land shall be made in accordance with the procedures contained in this division.

(Code 1988, § 19-215)

Sec. 110-326. Formula for fees in lieu of land dedication.

(a) *General formula.* If there is no city park or city recreational facility designated in the comprehensive development plan to be located in whole or in part within the proposed residential development to serve the immediate and future needs of the residents of the residential development, the developer shall, in lieu of dedicating land, pay a fee equal to the value of the land prescribed for dedication in section 110-325 and in an amount determined in accordance with section 110-328, such fee to be used for city park purposes, which city park will serve the residents of the area being developed.

(b) *Fees in lieu of land.* If the proposed residential development contains 50 units, lots, parcels or less, the developer shall pay a fee equal to the land value of the portion of the city park required to serve the needs of the residents of the proposed residential development as prescribed in section 110-325 and in an amount determined in accordance with section 110-328. For individual single-family residential units, which are not located within subdivisions for which fees had previously been paid under this division, the fee shall be \$100.00 per unit.

(c) *Use of money.* The money collected under this section shall be separately held and accounted for in trust to be used only for the purpose of providing park or recreational facilities reasonably related to serving the residential development by way of the purchase of necessary land or, if the city commission deems that there is sufficient land available for the residential development, for improving of such land for park and recreational purposes.

(Code 1988, § 19-216)

Sec. 110-327. Criteria for requiring both dedication and fees.

In residential developments of over 50 units, lots or parcels, the developer shall both dedicate land and pay a fee in lieu thereof in accordance with the following formula:

- (1) Where only a portion of the land to be developed is proposed on the comprehensive development plan as the site for a city park, such portion shall be dedicated for city park purposes and a fee computed pursuant to section 110-328 shall be paid for any additional land that would have been required to be dedicated pursuant to section 110-325.
- (2) When a major part of the city park or recreational site has already been acquired by the city and only a small portion of land is needed from the residential development to complete the site, such remaining portion shall be dedicated, and a fee computed pursuant to this section shall be paid in an amount equal to the value of the land which would otherwise have been required to be dedicated pursuant to section 110-324, such fees to be used for the improvement of city parks and recreational facilities in the area serving the residential development.

(Code 1988, § 19-217)

Sec. 110-328. Amount of fee in lieu of land dedication.

Where a fee is required to be paid in lieu of land dedication pursuant to this division, the amount of such fee shall be based upon the fair market value of the amount of land which would otherwise be required to be dedicated pursuant to section 110-325. The fee shall be paid pursuant to section 110-326. The fair market value shall be determined at the time of filing the tentative map and shall be determined by reference to assessed valuation for property tax purposes. If either the city or the developer disagrees with the valuation determined in this manner, a qualified independent real estate appraiser acceptable to both the city and the developer shall be retained to appraise the property, and the fair market value of

the property as determined by the appraiser shall be relied upon for purposes of this division. The party requesting the independent appraisal shall bear all costs relating to the appraisal.

(Code 1988, § 19-218)

Sec. 110-329. Residential developments not within general plan.

Where the proposed residential development lies within an area not then but to be included within the city general plan, the developer shall dedicate land, pay a fee in lieu thereof, or both, in accordance with the adopted park and recreational principles and standards of the city general plan and in accordance with this division.

(Code 1988, § 19-219)

Sec. 110-330. Determination of land or fee.

(a) Under this division, whether the city commission accepts land dedication or elects to require payment of a fee in lieu thereof or a combination of both shall be determined by consideration of the following:

- (1) Recreational element of the city's general plan;
- (2) Topography, geology, access and location of land in the residential development available for dedication;
- (3) Size and shape of the residential development available for dedication;
- (4) The feasibility of dedication;
- (5) Compatibility of dedication with the comprehensive development plan; and
- (6) Availability of previously acquired park property.

(b) The determination of the city commission as to whether land shall be dedicated or whether a fee shall be charged or a combination thereof shall be final and conclusive.

(Code 1988, § 19-220)

Sec. 110-331. Credit for private recreation areas.

When a developer provides recreation improvements for the use of his own development, and

such improvements are sufficient to meet the needs of the residents of the particular development, credit shall be given toward the required dedication and fees set forth in this division. Credit toward dedication shall be the ratio of the value of the land used for the improvements to the dedication requirement for the particular development. Credit for fees shall be a dollar-for-dollar reduction based on the fair market value of the land used for the improvements. Credits shall not exceed the lesser of the value of the land set aside or the cost of the improvements placed upon such land. At the time of the approval of the preliminary plat for the subdivision and the issuance of a building permit for multifamily developments, the city commission shall determine what credit, if any, will be given pursuant to this section. If some credit is to be given, the city and the developer shall enter into an agreement satisfactory to the city attorney guaranteeing development and maintenance of the private recreation areas and providing for a bond in an amount and type satisfactory to the city attorney. All legal fees, including those of the city attorney, relating to the negotiation and preparation of the agreement, shall be paid by the developer prior to the signing of the agreement.

(Code 1988, § 19-221)

Sec. 110-332. Procedure.

At the time of approval of the preliminary plat for a subdivision and the issuance of a building permit for multifamily developments, the city commission shall determine, pursuant to section 110-329, the land to be dedicated and fees to be paid by the developer. At the time of the filing of the final plat, the developer shall dedicate the land as previously determined by the city commission. Where the city commission has determined that fees shall be paid in lieu of or in addition to the dedication of land, the developer shall pay fees in accordance with the following schedule:

- (1) For any residential development consisting of ten or more parcels or lots, the fees shall be paid, in their entirety, prior to the issuance of any building permit for any building or structure to be located upon any parcel or lot in the residential development.

- (2) For any residential development consisting of nine or fewer parcels or lots, the fees shall be paid on a lot-by-lot or parcel-by-parcel basis and prior to the issuance of any building permit for any building or structure to be located upon any one of the lots or parcels in the residential development. Open space covenants for private park or recreational facilities shall be submitted to the city prior to approval of the final residential development map and shall be recorded contemporaneously with the final residential development map.

(Code 1988, § 19-222)

Sec. 110-333. Commencement of development.

At the time of approval of the final plat for a subdivision and the final plans for multifamily developments, the city commission shall specify when development of the park or recreational facilities shall be commenced.

(Code 1988, § 19-223)

Secs. 110-334—110-360. Reserved.

ARTICLE VI. RIGHT-OF-WAY UTILIZATION

Sec. 110-361. Adoption of county right-of-way utilization regulations and permit requirements.

There is adopted by the city for the purpose of establishing minimum acceptable standards for the location, installation and adjustment of any facility on or in city right-of-way or easement in the city that certain county right-of-way utilization regulations document, adopted by the board of county commissioners by county Ordinance 81-8 on April 14, 1981, effective April 27, 1981, with amendments 82-6, 83-29, 86-28, 89-10 and 91-13, 91-13 being effective June 6, 1991 (sometimes referred to as RWUR) save and except such portions as are deleted, modified and amended by this article or by the city commission from time to time. Such right-of-way utilization regulations document shall apply to all locations, installation

and adjustment of all facilities on or in city rights-of-way and easements. One copy of this document is filed in the office of the city clerk. The RWUR is adopted and incorporated as fully as if set out in length in this section, save and except those deletions, modifications and amendments set forth in this article and those adopted by the city commission.

(Code 1988, § 19-227)

Sec. 110-362. General modifications to county's right-of-way utilization regulations.

General modifications to the county's right-of-way utilization regulations adopted in this article shall be as follows:

- (1) All references to "board of county commissions" are replaced with "city commission."
- (2) All references to "county" and "Orange County" are replaced with "city" and "City of Winter Garden," respectively.
- (3) All references to "administrator," "county administrator," and "administration" are replaced with "city manager."
- (4) All references to "county attorney" are replaced with "city attorney."
- (5) All references to "county engineer" are replaced with "city engineer."
- (6) All references to any board, panel, or other body not expressly dealt with in this article are replaced with "city engineer."

(Code 1988, § 19-228)

Sec. 110-363. Modifications to county right-of-way utilization regulations.

The following specific modifications are made to the county's right-of-way utilization regulations adopted in this article:

- (1) Section 21-174 is amended to read as follows: "Fines for violations of the provisions of this article shall be as set by the city commission."

- (2) Section 21-176(a)(1) is amended to read as follows: "Chapter 110 of the Code of Ordinances—City of Winter Garden, Florida (Subdivisions)."
- (3) Section 21-176(a)(2) is amended to read as follows: "Orange County Road Construction Specifications as adopted and modified by the City of Winter Garden."
- (4) Section 21-176(a)(3) is amended to read as follows: "Chapter 78 of the Code of Ordinances—City of Winter Garden, Florida (Utilities)."
- (5) Section 21-176(a)(10) is added to read as follows: "Chapter 62 of the Code of Ordinances—City of Winter Garden, Florida (Streets and Sidewalks)."
- (6) Section 21-196(b) is amended to read as follows: "Applications may be obtained at the city engineer's office at 238 West Smith Street, Winter Garden, Florida 34787."
- (7) Section 21-200(a) is amended to read as follows: "Fees for right-of-way utilization permits shall be set by the city commission, and except as provided herein, a receipt for said payment shall be presented to the engineering department upon submission of the application."
- (8) Section 21-200(b) is amended to read as follows: "Checks, money orders, cash or other acceptable forms of payment will be payable to the board of county commissioners for the exact fee amount. Payment shall be made at the City Municipal Complex located at 251 West Plant Street, Downtown Winter Garden. Prior to payment, confirm required fee amount with the engineering department."
- (9) Section 21-231(b) is amended to read as follows: "Where possible, all longitudinal underground facilities should be placed as follows:
"Water and Sewer—under roadway
"Gas—between curb and sidewalk
"TV Cable, Power and Telephone—behind sidewalk (provided r/w or "easement available)."
- (10) Section 21-232(a)(3) is amended to read as follows: "Air jetting is permitted up to 2" casing. Tunneling and water jetting are prohibited."
- (11) Section 21-233(a) is amended to read as follows: "All street, curb, sidewalk, driveway, curb, etc., construction shall be in accordance with the Orange County Road Construction Specifications as modified by the city, and chapters 62 and 110 of the city Code."
- (12) Section 21-233(j) is amended to read as follows: "When traffic signs are located within the area of approved installation of construction, the permittee is required to notify the public works department to arrange for removal and/or relocation. Costs incurred by the county for the removal and resetting, or relocation of signs will be billed to the permittee."
- (13) Appendix A is amended to read as follows:
- a. All references to "board of county commissioners" are replaced with "city commission."
 - b. All references to "county" or "Orange County" are replaced with "city" or "City of Winter Garden" respectively.
 - c. References to "county engineer" are replaced with "city engineer."
 - d. Under Instructions and Conditions, revise line 5, "Orange County Standards and Specification for Sewerage and Water Facilities," to read "Orange County Standards and Specifications for Sewerage and Water Facilities as Adopted and Modified by the city."
 - e. Under Instructions and Conditions, revise line 6, "Orange County Code Right-of-Way Utilization Regulations," to read "Orange County Code, Right-of-Way Utilization Regulations as Adopted and Modified by the city."

(Code 1988, § 19-229)

