

**ORDINANCE NO. 2019-24**

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, FLORIDA, PROVIDING FOR THE ESTABLISHMENT OF REGULATIONS, PROCEDURES, AND CRITERIA FOR THE REVIEW, DENIAL, APPROVAL, OR APPROVAL WITH CONDITIONS OF EXTRAJURISDICTIONAL DEVELOPMENTS THAT REQUIRE INFRASTRUCTURE IMPROVEMENTS WITHIN THE CITY OF WEST MELBOURNE DUE TO SIGNIFICANT AND ADVERSE IMPACTS ON INFRASTRUCTURE AND EXISTING COMMUNITIES OR NEIGHBORHOODS WITHIN THE CITY OF WEST MELBOURNE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

**RECITALS**

**WHEREAS**, the City of West Melbourne is charged with establishing responsible policies for the growth and development of the City; and

**WHEREAS**, the City has recently been faced with growth and development within the City limits in areas abutting the boundaries of other local governments; and

**WHEREAS**, conversely, the City has also been faced with growth and development in other local government jurisdictions abutting developed areas within the City of West Melbourne; and

**WHEREAS**, growth in undeveloped portions of abutting local government jurisdictions can have a direct and substantial impact on existing infrastructure within the City of West Melbourne, including roads, sewer, water, and parks; and

**WHEREAS**, the City of West Melbourne has adopted an intergovernmental coordination element within its comprehensive plan; and

**WHEREAS**, Policies 1.1, 1.4, 1.5, and 1.6 of the Comprehensive Plan's Intergovernmental Coordination Element provide for:

- a. the establishment of effective working relationships with the City's local, regional, and state partners by reviewing and coordinating the City's planning and service efforts with its partner governments;
- b. the coordination of the development, expansion, maintenance, and financial feasibility of public services and infrastructure system needs of the West Melbourne community and the surrounding local area including water, wastewater, stormwater, solid waste, and transportation systems including roadways;

- c. the employment of intergovernmental partnerships to provide for the community's current and future public services needs, including services related to multi-modal transportation initiatives, potable water, sanitary sewer, and solid waste needs, among other services;
- d. the coordination of the City's future development projects and long-range planning efforts with its local, regional, and state partners, to include development of long-range plans for public services and infrastructure systems such as utilities and transportation, among others;
- e. coordination of the development, expansion, maintenance, and financial feasibility of public services and infrastructure systems needs of the West Melbourne community and the surrounding local area including transportation systems;
- f. the utilization of intergovernmental partnerships to ensure that the community's current and future public service needs, and demands are provided;
- g. execution of developer agreements through which private developers construct infrastructure enhancements that meet community needs while limiting public expenditures; and

**WHEREAS**, Objective 1 of the Capital Improvements Element of the City Comprehensive Plan states that the City will deliver a highly valued, well-managed, and fiscally responsible public services and infrastructure system based upon:

- a. established adopted levels of service (LOS) for public facilities;
- b. future development paying a proportionate share of facility improvement and maintenance costs needed for future development needs and LOS standards; and
- c. the coordination of facility improvements and capacity increases with the City's LOS standards, fiscal planning, and budgeting processes; and

**WHEREAS**, Policies 1.2 through 1.6 of the Capital Improvements Element of the City Comprehensive Plan provide for:

- a. LOS compliance, by requiring that development orders shall only be issued when the City has determined that the adopted LOS standards for public facilities will be maintained, or that:
  - 1. the development is timed to ensure that as phases of the development are completed, necessary improvements to the service system are also completed;

2. the developer makes improvements to the service system that would allow development without lowering the LOS standard;
  3. the developer reduces the density of the proposed development to a level that would not cause a lowering of the LOS standard;
  4. the developer and the City enter into agreement on a solution which is consistent with the Capital Improvements Element goals, objectives, and policies; or
  5. the existing LOS standard in the Comprehensive Plan is amended to reflect a lower LOS standard;
- b. maintenance of the City's adopted LOS standards and public facility capabilities through the development order and permit process, by:
1. identifying how developers will provide for capital facilities improvements needed to service new development and maintain adopted LOS standards;
  2. ensuring developers complete the installation of public facility improvements in a timely and appropriate manner;
  3. ensuring needed public facility improvements do not:
    - i. exceed the City's fiscal abilities and budgetary constraints;
    - ii. negatively impact adopted LOS standards;
    - iii. impact the City's public facility service and capacities and operational capabilities.
- c. utilization of the City's concurrency management system to evaluate all proposed developments for assurance that projects meet adopted LOS standards prior to the issuance of a development order or certificate of concurrency and, if such levels are not achieved, by:
1. establishing a developer agreement or other mechanism to create to additional capacity;
  2. limiting development in the affected area until the capacity is available; or
  3. denying development permits; and

**WHEREAS**, Policy 2.3 of the Capital Improvements Element provides that the City shall utilize long-range planning and site and development processes to ensure that development adheres to the City's adopted planning priorities as defined by the 2010 Comprehensive Plan, including:

- a. public service and infrastructure demands meet the city's adopted LOS standards;
- b. development pays its proportionate fair share of the cost to provide public services and expand service and facility capacity;

- c. funding for capital improvements is programmed as part of the City's adopted capital improvement program (CIP); and

**WHEREAS**, Policy 2.4 of the Capital Improvements Element provides that the City shall utilize developer agreements to ensure that private developers pay for impacts caused to the City's public service and infrastructure systems. Agreements shall identify how the development will assist the City to finance, develop, and maintain existing and new facilities and services such as:

- a. passive and active parks and public spaces;
- b. potable water, sanitary sewer, stormwater, and solid waste facilities and infrastructure systems;
- c. school facilities and education services;
- d. transportation infrastructure and service systems for biking, walking, mass transit, and driving; and

**WHEREAS**, Policy 2.5 of the Capital Improvements Element provides that the issuance of development orders and permits shall be coordinated with the execution and implementation of the Capital Improvements Element as reflected in the Five-Year CIP; and

**WHEREAS**, Policy 2.6 of the Capital Improvements Element provides that no new development may proceed that would impact the adopted level of service until the necessary funding has been programmed through the CIP, private financing, public-private development agreements, or other identified funding source; and

**WHEREAS**, Policy 2.7 of the Capital Improvements Element provides that future developments that impact a roadway schedule for improvements may receive a development order provided the roadway meets the following criteria:

- a. the improvements are scheduled within the first three years of the adopted the adopted CIP;
- b. the improvements address all LOS needs and requirements;
- c. deleting, delaying, or deferring those improvements are completed through a plan amendment; and

**WHEREAS**, Policy 4.5 of the City's Capital Improvement Element provides that the City's adopted equitable cost participation guidelines shall be implemented through the development review processes for water and sewer utilities, and other facilities, and that such guidelines shall be applied wherever development necessitates improvements

to public facilities with examples of equitable cost mechanisms that could be used to equally share the costs of improvements being:

- a. reimbursement agreements for water and sewer utilities;
- b. pre-annexation agreements;
- c. easement agreements; and

**WHEREAS**, West Melbourne's Intergovernmental Coordination Element provides the basis for establishing and executing interlocal planning and public service partnerships which are essential to enable the City to coordinate land development efforts and provide efficient, effective, and fiscally sound public services; and

**WHEREAS**, the Transportation Element of the City's Comprehensive Plan provides that:

- a. future transportation infrastructure improvements shall support the City's land use goals and community planning vision by providing for:
  - 1. interconnected community neighborhoods;
  - 2. linked commercial areas and employment centers;
  - 3. integrated city-wide development patterns;
- b. transportation infrastructure facilities shall be designed and scaled to be compatible with surrounding land uses and with consideration for the character anticipated by the City's adopted community planning vision;
- c. transportation location criteria shall establish appropriate locations for all new transportation infrastructure systems and facilities, to include:
  - 1. land uses in surrounding area;
  - 2. vehicle trips per day;
  - 3. congestion constraints;
  - 4. funding;
  - 5. right-of-way availability;
  - 6. safety of people using all modes of transportation;
- d. adverse environmental and community impacts caused by auto-centric land uses shall be minimized;
- e. analysis of future roadway impacts of new developments shall include:
  - 1. impacts of proposed developments on roadway LOS standards;
  - 2. impact on specific roadways segments or intersections;

3. accessibility between and within development areas including neighborhoods;
4. safety issues relating to motorists, pedestrians, bikers, and other system users; and
- f. utilization of developer agreements or other legally binding documents to ensure private developers pay for the impacts caused to the city's transportation infrastructure system.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of West Melbourne, Brevard County, Florida, that:

**Section 1. Recitals and Findings.** The foregoing Recitals are hereby ratified and incorporated as findings of the City Council and as the legislative intent of this ordinance.

**Section 2. Purpose.** The purpose of this ordinance is to amend the City's land development regulations to address the traffic impacts of extrajurisdictional roads that are proposed to be connected to City roads that will serve or be connected to extrajurisdictional development. Those impacts may include, but are not limited to:

- a. lack of transportation concurrency;
- b. impacts upon levels of service by the City of West Melbourne within its jurisdiction;
- c. the compatibility or incompatibility of proposed extensions upon the road systems within existing residential neighborhoods;
- d. the consistency or inconsistency of such road extensions with the transportation element, capital improvements element, land use element, and intergovernmental coordination element or other applicable elements of the West Melbourne Comprehensive plan;
- e. the increase of traffic on the existing West Melbourne city roads; and
- f. the need for the expansion of or improvements to the existing public and private road system within the City of West Melbourne caused by the projected increase in vehicular trips to be generated by the connection of a proposed extrajurisdictional development into the existing City of West Melbourne public and private road system serving development within the City.

**Section 3. Definitions.** For the purposes of this ordinance the following terms shall have the meanings set forth below:

- a. *Applicant* means any person, firm, corporation, local government, partnership, limited liability company or other legal entity applying for approval of a road connection permit by the City Council.
- b. *City* means the City of West Melbourne.
- c. *City Road* shall mean any public or private road or street that is either located within the city limits of the City of West Melbourne or maintained by the City of West Melbourne.
- d. *Developer*, means any person, including a governmental agency or entity, undertaking either 1) an extrajurisdictional development, or 2) the construction of an extrajurisdictional road that is proposed to be connected to a city road.
- e. *Development* shall have the meaning set forth in section 380.04, Florida Statutes (2019) as amended from time to time and, for the purposes of this ordinance, shall also include the platting of land upon which a new road is proposed, as well as the construction of a new city road or the extension of an existing city road.
- f. *Development order* shall have the meaning set forth in section 163.3164(15), Florida Statutes (2019) as amended from time to time.
- g. *Development permit* shall have the meaning set forth in section 163.3164(16), Florida Statutes (2019) as amended from time to time, and shall also include a road connection permit approved by the City Council in the manner prescribed by this ordinance.
- h. *Extrajurisdictional development* shall mean any existing or proposed development located on land outside the city limits of the City of West Melbourne that is not yet connected to a city road by an extrajurisdictional road.
- i. *Extrajurisdictional transportation impacts* or *transportation impacts* shall include increases in vehicular trips resulting from extrajurisdictional development that will create the need to improve, widen, upgrade, or expand a city road to increase its carrying capacity or functionality in accordance with the acceptable level of service established for that city road. The terms shall also include such increases in vehicular traffic that necessitate the installation of signalization, signage, striping or other traffic control equipment or traffic control devices necessary to maintain an acceptable level of service for a city road.

- j. *Extrajurisdictional road* shall mean any public road, private road or extension thereof that is not yet connected to a city road and is located, or proposed to be located, outside of the city limits of the City of West Melbourne.
- k. *Acceptable Level of Service* means the level of service established for a city road under the transportation element of the City of West Melbourne Comprehensive plan or applicable City ordinances.
- l. *Road* means a way open to vehicular travel including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, gutters, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of vehicular travel.
- m. *Transportation facilities* shall include, but not be limited to roads; road widening; added road lanes; turn lanes; acceleration or deceleration lanes; signalization or other road improvements, traffic control equipment or transportation modes.

**Section 4. City Council Approval of Extrajurisdictional Development or Extrajurisdictional Roads.** No developer of an extrajurisdictional development or an extrajurisdictional road may connect to a city road without the approval of the City Council in the form of a road connection permit. No subdivision plat, replat, development order or other form of application for the connection of an extrajurisdictional road to a city road will be approved by the City Council unless the applicant for such a connection has met the requirements of this ordinance.

**Section 5. Procedure and Conditions for Obtaining City Council Approval.** A developer of an extrajurisdictional development or an extrajurisdictional road seeking to connect to any city road must file an application for approval of that connection with the City Manager or designee.

- a. The application shall contain a traffic study containing the traffic data and analysis necessary to evaluate the extrajurisdictional transportation impacts of extrajurisdictional development on city roads to which the applicant is seeking to connect to extrajurisdictional roads, as that impact would be evaluated and determined under the city transportation concurrency evaluation program as applied to similar development within the City.
- b. For the traffic circulation analysis of the extrajurisdictional development that will be directly or indirectly connected to a city road by an extrajurisdictional road, the applicant shall submit the most recent average daily and peak hour traffic counts for those roads using the annual state

department of transportation data or the annual county data, the current level of service as determined using the most recent state department of transportation generalized level of service standards and guidelines manual or the highway capacity manual level of service computer program, the average daily and peak hour trip generation projections for the project using the most recent "Institute of Transportation Engineers (ITE) Trip Generation Report" and taking into account passby trips, and the resulting average daily and peak hour level of service for the those roads after taking into account such trip generation data.

- c. The applicant for a road connection permit shall demonstrate to the satisfaction of the City and shall verify that the city roads directly or indirectly impacted by extrajurisdictional development once connected to an extrajurisdictional road will meet or exceed the minimum level of service (LOS) standards provided for in the City's transportation concurrency management program.
- d. A road connection permit authorizing connection of an extrajurisdictional road to a city road shall not be approved by the City Council unless:
  - 1. the proposed connection of an extrajurisdictional development by an extrajurisdictional road is consistent with the transportation element, capital improvements element, land use element, intergovernmental coordination element and all other applicable elements of the West Melbourne Comprehensive Plan; and
  - 2. the City's transportation concurrency analysis demonstrates that, after the connection, either the level of service on the connected city roads will meet or exceed the minimum standards provided for in the city transportation concurrency program, or that such minimum level of service can be met by adequate planned public transportation facilities, provided such transportation facilities:
    - a. are identified or scheduled for improvements in an annual capital improvements budget; or
    - b. are under construction or under contract for construction; or
    - c. are required to be constructed by the applicant upon a finding by the City Council that:
      - i. a reasonable traffic engineer's interpretation of the applicant's traffic study or other relevant traffic data presented to the City Council determines that the extrajurisdictional development will create more than a possible or incidental need for increased

capacity on a city road that will serve the extrajurisdictional development; and

- ii. that the applicant's construction, financing or accelerated commencement of specific scheduled traffic facilities proposed by the applicant or identified in the City's capital improvements program would offset the projected impacts of the extrajurisdictional development on levels of service in rough proportionality to the burden imposed on the impacted city roads by the extrajurisdictional development; or
  - d. are constructed, provided or paid for by the developer in the manner prescribed by the City's concurrency management ordinance relating to transportation facilities, sections 70-1 through 70-4, of the Code of Ordinances of the City of West Melbourne; and
  - e. the applicant and the City Council have entered into a developer agreement providing that the requirements subsection 1. and 2. above shall be met; or
3. the local government with jurisdiction over the extrajurisdictional development for which the applicant is seeking a road connection permit has:
- a. created a community development district (CDD) authorized to levy assessments or obtain financing for the purpose of bonding and repaying the cost to construct traffic facilities that are reasonably required to offset the impact of the extrajurisdictional development on the city roads serving that extrajurisdictional development once connected; and
  - b. the CDD has entered into an interlocal or other agreement with the City, which other agreement may also include the applicant, that contains the agreement of the CDD, or applicant or both:
    - i. to obtain the financing and provide to the City the funding necessary to pay for constructing specified traffic facilities identified in the agreement as being necessary to offset the roughly proportional impact of the extrajurisdictional development; and
    - ii. to impose and collect special assessments on property owners within the extrajurisdictional development in amounts sufficient to pay debt service on the financing provided by the CDD to the City in the amount of the cost for constructing transportation

facilities necessary to offset the roughly proportional impact of the extraterritorial development; and

- iii. that provides for such other obligations, security agreements, guarantees, other means of financing, or supplemental and related terms as the City, the CDD and the applicant may agree upon; or
4. the applicant, the local government with jurisdiction over the extrajurisdictional development and the City have entered into a joint funding agreement to provide the City with sufficient funding to construct specific city transportation facilities that will create additional trip capacity sufficient to offset the roughly proportional traffic impacts of the extrajurisdictional development on city roads that will serve that development once connected to an extrajurisdictional road; or
5. under the authority of section 200.065, Florida Statutes, the local government with jurisdiction over the extrajurisdictional development has entered into an interlocal agreement with the City to provide the City with:
  - a. tax increment revenue from the extraterritorial development where such revenue is dedicated for the construction of traffic facilities within the City;
  - b. transportation impact fees generated by the extraterritorial development; or
  - c. a combination of bothin an amount sufficient to allow the City to finance the cost of city transportation facilities that would offset the roughly proportional traffic impacts of the extrajurisdictional development on city roads proposed to be connected to that development; or
6. an approval of a traffic impact mitigation plan identifying specific improvements, methods and funding for the reduction of traffic impacts from an extrajurisdictional development where such plan has been approved by a joint planning entity created in accordance with section 163.3171(3), Florida Statutes as an entity comprised of the City and any local government with regulatory jurisdiction over an extrajurisdictional development, where that entity has been vested with the authority to approve traffic mitigation plans or specific mobility improvements within a defined joint planning area; or

7. some combination of the methods set forth in subparagraphs 1-6 above is proposed by the Applicant or the local government with jurisdiction over the extraterritorial development.
- e. If a proposed extrajurisdictional development is determined by the City Manager or designee to have minimal or no additional impact to city roads or transportation facilities, the City Manager may administratively waive some or all of the requirements of this section.

**Section 6. Other Mitigation Conditions.** In addition to, supplemental to, or under circumstances where a proposed extrajurisdictional development would adversely impact traffic on a specific city road to which the development will be directly connected, mitigation by means other than construction or expansion of city traffic facilities, including but not limited to, any combination of the following traffic control techniques may be required by the City Council, where those techniques are reasonably calculated to reduce or offset such transportation impacts on city roads to which the applicant seeks connection:

- a. dedication of all or a portion of newly platted roadway to be built within the city limits as a continuation of, or connection to an existing city road;
- b. installation of speed dampening improvements at specific locations on city roads within the City, which may include signage, traffic control equipment or speed humps;
- c. requiring an undeveloped extrajurisdictional development seeking connection to a city road to provide one or more reasonable alternate points of ingress and egress from the extrajurisdictional development to an arterial or collector road located within the boundaries of the jurisdiction in which the extrajurisdictional development is located where such an alternate access point would reduce the traffic impact on a city road that will serve the extrajurisdictional development upon connection;
- d. access across private roads for maintenance, improvement or regulation of traffic on city roads;
- e. provision of other physical or non-physical regulatory traffic controls, equipment or improvements proposed by the applicant for the reduction of traffic on impacted city roads, upon approval by the City Council.

**Section 7. Severability.** The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses,

sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

**Section 8. Conflict with Other Ordinances.** The provisions of this ordinance shall supersede any provision of existing ordinances in conflict herewith to the extent of said conflict.

**Section 9. Inclusion in Code.** It is the intention of the City Council of the City of West Melbourne that the provisions of this ordinance shall be made a part of the City of West Melbourne Code of Ordinances and the sections may be renumbered to accomplish such intention.

**Section 10. Effective Date.** This ordinance shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** by the City Council of the City of West Melbourne, Brevard County, Florida, this 21st day of January, 2020.