

ORDINANCE NO. 2021-12

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 98, ZONING, ARTICLE III. DISTRICTS, OF THE CODE OF ORDINANCES TO AMEND DIVISION 8, C-P COMMERCIAL PARKWAY DISTRICT, SECTION 98-832, PRINCIPAL USES AND STRUCTURES, TO REMOVE MULTIPLE-FAMILY DWELLINGS AS A PRINCIPAL USE IN THE C-P COMMERCIAL PARKWAY DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Community Planning Act requires municipalities and certain other units of local government to prepare and adopt comprehensive plans to guide future development; and

WHEREAS, section 163.3161(6), Florida Statutes, provides: “It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof....”; and

WHEREAS, section 163.3194, Florida Statutes, which establishes the legal status of the comprehensive plan, provides, in subsection (1): “After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.”; and

WHEREAS, section 163.3201, Florida Statutes, provides: “It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.”; and

WHEREAS, land development regulations include any local government zoning, subdivision, building and construction, or other regulations controlling the development of land; and

WHEREAS, all development, including construction and building permits therefor, undertaken within a municipality subsequent to the adoption of its comprehensive plan must be in accordance with the land-use elements of that plan regardless of the municipal zoning ordinances in effect at the time of such adoption; and

WHEREAS, a municipality is charged with amending existing zoning ordinances to conform with the land-use elements of its adopted comprehensive plan; and

WHEREAS, the City of West Melbourne's Land Development Regulations include a commercial zoning district known as the "C-P Commercial Parkway" district; and

WHEREAS, the C-P Commercial Parkway zoning district lists "[m]ultiple-family dwellings which meet the lot, structure and density requirements of the R-3 [Multiple-Family Dwelling zoning] district" as a principal use; and

WHEREAS, the C-P Commercial Parkway zoning district is only allowed within the Commercial (COM) future land use designation, as described in the City of West Melbourne's adopted comprehensive plan; and

WHEREAS, the Commercial (COM) future land use designation consists of a variety of commercial, retail, office, professional, service, and hotel/motel lodging activities, along with limited warehouse activities, but does not permit any residential uses, including multiple-family dwellings; and

WHEREAS, it is necessary to amend the C-P Commercial Parkway zoning district so as to conform with the City of West Melbourne's adopted comprehensive plan.

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

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

Section 2. Revised Commercial Parkway (C-P). Chapter 98, Zoning, Article III, Districts, Division 8, C-P Commercial Parkway, Section 98-362, Principal uses and structures, of the Code of Ordinances shall be amended to remove multiple-family dwellings as a principal use in the C-P Commercial Parkway zoning district, and read as set forth in **Exhibit "A"** attached hereto and incorporated by reference herein.

Section 3. 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 4. 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 5. Inclusion in Code. It is the intention of the City Council of the City of West Melbourne that the provisions of this ordinance and **Exhibit "A"** hereto shall be made a part of the City of West Melbourne Code of Ordinances and the sections be renumbered to accomplish such intention.

Section 6. **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 4th day of May, 2021.

1st READING: April 20, 2021

2nd READING: May 4, 2021

Exhibit A

Division 8. – C-P Commercial Parkway District

Sec. 98-362. - Principal uses and structures.

In the C-P commercial parkway district the following uses and structures are permitted for any use or group of uses that are developed, either separately or as a unit with certain site improvements shared in common and developed on a site of three acres or less:

- (1) Retail stores, sales rooms and display rooms, including places in which goods are produced and sold at retail on the premises.
- (2) Personal service establishments such as barbershops and beauty shops, laundry and dry cleaning pickup stations, tailor shops and similar uses.
- (3) Professional offices, studios, clinics, general offices, business schools and similar uses.
- (4) Hotels and motels.
- (5) Restaurants which are either:
 - a. Licensed by the state to sell alcoholic beverages and which hold such a license bearing the designation "SRX" as defined by the division of alcoholic beverages and tobacco of the state department of business and professional regulation; or
 - b. Licensed by the state for the sale of beer and wine for consumption only on the premises of such restaurant and which:
 1. Provide a minimum of 25 seats for the serving of meals.
 2. Receive more than 51 percent of the gross revenues of such restaurant from the sale of food.
 3. Maintain a kitchen for the preparation of all items of food on the regular menu at all times when beer or wine are available for sale.
 4. Offer for sale all items of food on the regular menu at all times when beer and wine are available for sale.
 5. Maintain a regular menu offering for sale bona fide meals including salad, entree and dessert at all times when beer and wine are available for sale.
- (6) Reserved.
- (7) Commercial recreation such as theaters, driving ranges, bowling alleys and similar uses except drive-in theaters.
- (8) Research, design and development activities and accessory laboratories, where:
 - a. The use does not involve:
 1. Operation of heavy machinery or equipment;
 2. Creation of noise, fumes, dirt, or dust; or
 3. Damage to or interference with other properties.
 - b. All work is done within the building.
 - c. No product is manufactured except purely incidental results of such research, design and development of activities for the purpose of these activities only and not for sale.
- (9) Plant nurseries and greenhouses, provided that no outside display of merchandise shall be contained within 20 feet of the existing roadway.
- (10) Retail stores using outside display areas, provided the following are met:

- a. The area of outside display shall not exceed in size one-third the enclosed area of the principal structure.
 - b. The outside display area shall be treated with a hard material suitable for pedestrian traffic.
 - c. The outside display area may be open along the front of the lot but shall be effectively screened rendering the sides opaque in order to avoid any deleterious effect on adjacent properties.
 - d. The outside display area shall be considered the same as the floor area for the purpose of calculating off-street parking requirements and yard and lot coverage.
- (11) Public and private clubs and lodges, including golf courses and club and similar activities.
- (12) New and used motor vehicle, major recreational equipment and mobile home sales or rentals with accessory uses, subject to the following restrictions:
- a. All outside areas where merchandise is displayed shall be paved.
 - b. All servicing and repair facilities except gasoline pumps shall be located in an enclosed structure.
 - c. There shall be no storage of junked or wrecked automobiles other than temporary storage for those awaiting repair. Such temporary storage shall be in an enclosed area, and the vehicles shall not be visible from outside the property.
 - d. Ingress and egress points shall not be placed so as to interfere with the movement of pedestrian traffic on public sidewalks.
- ~~(13) Multiple family dwellings which meet the lot, structure and density requirements of the R-3 district.~~
- (14) (13) Telephone switching stations, electrical substations, and similar operational equipment used by public utilities. Where such a use is housed in a new structure specifically constructed for such use, the following shall apply:
- a. Setbacks other than required elsewhere in this district:
 - 1. Front: Ten feet from the property line.
 - 2. Rear: Ten feet from the property line.
 - 3. Side, interior: None, except where the use borders a single-family residential district, in which case the setback shall be ten feet.
 - 4. Side, corner: Ten feet from the property line.
 - b. Landscaping: The site shall be sodded, and a continuous hedge of ligustrum, viburnum or eleagnus, a minimum of five feet in height upon planting, shall be provided around the entire perimeter of the site. An automated sprinkler system shall be installed to provide adequate irrigation for all plant materials on the site.
 - c. Minimum lot size: 1,200 square feet; minimum lot width; 30 feet; minimum lot depth; 40 feet.
 - d. Maximum building size: 200 square feet.