

ORDINANCE NO. 2021-17

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, BREVARD COUNTY, FLORIDA, PROVIDING FOR CITY COUNCIL REVIEW OF CERTAIN MULTIFAMILY INITIAL SITE PLANS PREVIOUSLY SUBJECT TO REVIEW BY THE PLANNING AND ZONING BOARD; AMENDING CHAPTER 66, ADMINISTRATION, ARTICLE III, BOARDS, COMMITTEES, COMMISSIONS, DIVISION 3, BOARD OF ADJUSTMENT, DIVISION 4, PLANNING AND ZONING BOARD, AND ARTICLE X, SITE PLANS; AMENDING CHAPTER 71, NATURAL RESOURCES AND STORMWATER, ARTICLE V, HABITAT MANAGEMENT; AMENDING CHAPTER 86, SUBDIVISIONS, ARTICLE I, IN GENERAL; AMENDING CHAPTER 98, ZONING, ARTICLE III, DISTRICTS, DIVISION 6, ONE-, TWO- AND MULTIPLE-FAMILY DWELLING DISTRICT, DIVISION 7, AND R-3 MULTIPLE-FAMILY DWELLING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to amend the Land Development Regulations of the Code of Ordinances of the City of West Melbourne to provide for City Council review of, and action on, certain multifamily initial site plans that are currently subject to Planning and Zoning Board final action; and

WHEREAS, the City Council desires to amend the Land Development Regulations of the Code of Ordinances of the City of West Melbourne to make clear that the City Council acts on all subdivision plats, and that no subdivision plats are subject to a final determination by the Planning and Zoning Board; and

WHEREAS, the City Council desires that the Planning and Zoning Board review and submit recommendations to the City Council regarding multifamily initial site plans on multifamily developments consisting of fifty (50) or more dwelling units; and

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WHEREAS, the City Council finds that the amendments to the Land Development Regulations set forth herein comply with the comprehensive plan and in the best interests of the public health, safety, and general welfare.

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

Section 1. Chapter 66, Administration, Article III, Boards, Committees, Commissions, Division 3, Board of Adjustment, Section 66-117, Powers and duties, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-117. – Powers and duties.

The board of adjustment shall have the powers listed in this section. In exercising the powers, the board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as may be required in order to do justice, and to that end, shall have all of the powers of the administrative official from whom the appeal was taken. The board of adjustment shall have the power to:

* * *

- (4) Consider and act on applications for initial site plan approval that are referred to the board by the city staff for industrial, commercial, and professional office uses based on the size of the property. The board's actions on initial site plans may include approval, denial, or approval with conditions and/or modifications.

Section 2. Chapter 66, Administration, Article III, Boards, Committees, Commissions, Division 4, Planning and Zoning Board, Section 66-157, Powers and duties, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-157. – Powers and duties.

The planning and zoning board shall act in an advisory capacity to the city council in all matters relating to the comprehensive plan and this subpart B and

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shall serve as the local planning agency pursuant to F.S. § 163.31.74. Duties assigned to the planning and zoning board include, but are not limited to the following:

* * *

- (3) Consider and act on applications for initial site plan approval that are referred to the board by the ~~community development department~~city staff for institutional and multifamily uses based on the size of the property. Consider and submit recommendations to the city council on applications for initial site plan approval that are referred to the board for multifamily uses with fifty or more dwelling units. The board's actions or recommendations to the city council on site plans may include approval, denial, or approval with conditions and/or modifications.
- (4) Review applications for subdivision plat approval and submit recommendations to the city council. The board's recommendations to the city council on subdivision plats may include approval, denial, or approval with conditions and/or modifications.~~Consider applications for subdivision plat approvals as follows:~~
 - a. ~~Act on applications for subdivision plat approval that are referred to the board by city staff for projects generating less than 500 average daily trips. The board's actions on site plans may include approval, denial, approval with conditions and/or modifications. Plats that can be referred to the planning and zoning board will be either:~~
 1. ~~Residential plats with less than 55 lots, or the amount of lots according to the Institute of Transportation Engineers Manual to equate to 500 average daily trips for residential development.~~
 2. ~~Nonresidential plats containing lots able to accommodate buildings with less than 25,000 square feet of gross floor area (combined under one roof), or the amount of maximum building space according to the latest version of the Institute of Transportation Engineers Manual to equate to 500 average daily trips or more.~~
 - b. ~~Review applications and submit recommendations to the city council for subdivision plats that are projected to generate 500 average daily trips or more.~~
- (5) Update the land use and zoning designations in the city and interpreting boundary lines with the assistance of staff.

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- (6) Issue findings of fact and conclusions of law for every determination of the planning and zoning board in enforcement of the land development regulations known as subpart B.

Section 3. Chapter 66, Administration, Article X, Site Plans, Section 66-553, Criteria for planning and zoning board or board of adjustment action, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-553. – Criteria for city council, planning and zoning board or board of adjustment action review.

- (a) The planning and zoning board shall review and take action on conceptual and initial site plans meeting any one of the following criteria:
 - (1) The size of the site is five acres or greater for multifamily developments.
 - (2) Any new institutional development or change of use within the institutional district or increase in size of the use in the institutional district.
 - (3) For multifamily developments consisting of fifty or more dwelling units, the planning and zoning board shall review the initial site plan and submit recommendations to the city council.
- (b) The board of adjustment shall review and take action on initial site plans meeting any one of the following criteria:
 - (1) The size of the site is five acres or greater for industrial, commercial or professional office developments.
 - (2) A conditional use is required in order to grant approval of the site plan.
 - (3) A variance is required in order to grant approval of the site plan.

Section 4. Chapter 66, Administration, Article X, Site Plans, Section 66-554, Authority for administrative review, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-554. – Authority for administrative review.

- (a) For those site plans not subject to city council, planning and zoning board, or board of adjustment action, the city manager or his designee shall have the authority to approve or approve subject to changes, the site plan as

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provided for in the applicable sections of this article, unless the city manager, based on an increase in total site acreage that meets the criteria listed in section 66-553, determines that review by the city council, planning and zoning board, or the board of adjustment is appropriate in view of the size of the site plan being considered.

- (b) The city manager shall additionally have the authority to disapprove any site plan if the administrative review provided for by this article determines that the proposed site plan does not meet the requirements of this article for site plan approval.

Section 5. Chapter 66, Administration, Article X, Site Plans, Section 66-555, Preapplication conference, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-555. – Preapplication conference.

* * *

- (g) For those site plans not subject to the criteria set forth in section 66-553, the city staff, in a timely manner following the preapplication conference, shall make a recommendation to the city manager to allow the site plan to be reviewed administratively or to require site plan review by the city council, planning and zoning board, or board of adjustment. The city manager, with recommendations from the city staff and in his discretion, shall determine whether the site plan can be reviewed administratively.

* * *

Section 6. Chapter 66, Administration, Article X, Site Plans, Section 66-556, Submittal requirements, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-556. – Submittal requirements.

- (a) *Application requiring planning and zoning board or board of adjustment review.* An application for site plan review requiring planning and zoning board or board of adjustment review shall be filed with the city no later than the first business day of the month preceding the month of the next regularly scheduled meeting of ~~the approving~~such board. Meeting this submittal deadline does not guarantee that the initial site plan will be on

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the agenda for the next scheduled planning and zoning board or board of adjustment meeting if the submittal does not contain sufficient information to allow staff and the board to analyze the request. After the initial site plan has been approved or approved with conditions, the applicant may proceed with the submittal of a final site plan. An additional site plan application is not required for final site plan if an application was previously submitted for the initial site plan public hearing process. Copies of the site plan, along with a digital copy, shall be submitted to the city staff at the time of application. The number of copies required shall be as determined by the city staff.

* * *

Section 7. Chapter 66, Administration, Article X, Site Plans, Section 66-557, Content for site plans, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-557. – Content for site plans.

* * *

- (b) *Additional final site plan requirements.* The following additional items shall be shown on final site plan submittals and shall constitute the additional criteria for final site plan review. If applicable, the final site plan shall include any changes required by the planning and zoning board, ~~or~~ board of adjustment, or city council during the initial site plan process. The city staff shall review all final site plan submittals based on the additional requirements which follow:

* * *

Section 8. Chapter 66, Administration, Article X, Site Plans, Section 66-560, Review by board of adjustment, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-560. – Review by board of adjustment.

* * *

- (b) The board of adjustment shall review the initial site plan together with the city staff's technical comments and shall make a decision to approve, approve subject to conditions, ~~or~~ disapprove the site plan. The decision

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shall be based on, but not limited to; the review comments of the city staff, the functional aspects of the site plan, the requirements of this ~~section~~subpart B, and the board's determination as to whether the applicant has sufficiently addressed the requirements for the site plan as set forth in this article.

* * *

Section 9. Chapter 66, Administration, Article X, Site Plans, Section 66-561, Review by planning and zoning board, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-561. – Review by planning and zoning board.

- (a) Following the submittal of an initial site plan that meets the criteria for planning and zoning board review in subsection 66-553(a)(1) or (2), the planning and zoning board shall hold a public hearing at which comments of the applicant and public may be heard. A minimum of 14 days' notice of the public hearing shall be given to the applicant, and public notice shall be published in a newspaper of general circulation in the county not less than seven days prior to the date of the public hearing.
- (b) Following the submittal of an initial site plan that meets the criteria for planning and zoning board review in subsection 66-553(a)(3), the planning and zoning board shall consider the initial site plan at a public meeting and make recommendations to the city council.
- ~~(bc)~~ The planning and zoning board shall review the initial site plan together with the city staff's technical comments and shall make a decision, or recommendation to the city council, to approve, approve subject to conditions, or disapprove the site plan. The decision shall be based on, but not limited to; the review comments of the city staff, the functional aspects of the site plan, the requirements of this subpart B, and the board's determination as to whether the applicant has sufficiently addressed the requirements for the site plan as set forth in this article.
- ~~(cd)~~ No initial site plan shall be approved unless and until the applicant has adequately addressed all outstanding review comments to the city's satisfaction.
- ~~(de)~~ If the initial site plan is denied, the applicant shall have the option to resubmit an application pursuant to all requirements, including payment of fees, as set forth in this article, or appeal the decision per section 66-158.

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Section 10. Chapter 66, Administration, Article X, Site Plans, Section 66-562, Reserved, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-562. – ~~Reserved~~Review by city council.

- (a) Following the recommendation of the planning and zoning board on an initial site plan that meets the criteria for review in subsection 66-553(a)(3), the city council shall hold a public hearing at which comments of the applicant and public may be heard. A minimum of 14 days' notice of the public hearing shall be given to the applicant, and public notice shall be published in a newspaper of general circulation in the county not less than seven days prior to the date of the public hearing.
- (b) The city council shall review the initial site plan together with the city staff's technical comments and shall approve, approve subject to conditions, or disapprove the site plan. The decision shall be based on, but not limited to: the review comments of the city staff, the functional aspects of the site plan, the recommendation of the advisory board, the requirements of this subpart B, and the city council's determination as to whether the applicant has sufficiently addressed the requirements for the site plan as set forth in this article.

Section 11. Chapter 66, Administration, Article X, Site Plans, Section 66-565, Phased construction, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 66-565. – Phased construction.

* * *

- (c) If the concept of a phased project is approved by the planning and zoning board, board of adjustment, city council, or city staff, the phased project shall be in accordance with the following:

* * *

Section 12. Chapter 71, Natural Resources and Stormwater, Article V, Habitat Management, Section 71-131, Administrative review, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

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Sec. 71-131. – Administrative review.

* * *

- (b) For those site plans requiring ~~action~~review by the planning and zoning board ~~or the~~, the board of adjustment, or the city council, the review comments shall be submitted to the approving board as part of the review procedure set forth in this article. In addition, city staff shall provide copies of the city staff's review comments to the applicant prior to the required meeting.

Section 13. Chapter 86, Subdivisions, Article I, In General, Section 86-15, Preliminary plat review by planning and zoning board, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 86-15. – Preliminary plat review by planning and zoning board.

- (a) Following the submittal of a preliminary plat which requires planning and zoning board review ~~or decision~~, the planning and zoning board shall hold a public hearing at which comments of the applicant and public may be heard. A minimum of 14 days' notice of the public hearing shall be given to the applicant, and public notice shall be published in a newspaper of general circulation in the county not less than seven days prior to the date of the public hearing.

* * *

Section 14. Chapter 98, Zoning, Article III, Districts, Division 6, One-, Two- and Multiple-Family Dwelling District, Section 98-281, Interpretation of criteria as minimum requirements, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 98-281. – Interpretation of criteria as minimum requirements.

The criteria as set forth by this division for the R-2 one-, two- and multiple-family dwelling district shall be deemed the minimum necessary for compliance. The planning and zoning board or city council shall reserve the right to determine, at the time of site plan approval, such additional requirements as may be necessary to ensure the safety, health and general welfare of the residents.

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Section 15. Chapter 98, Zoning, Article III, Districts, Division 7, R-3 Multiple-Family Dwelling District, Section 98-326, Interpretation of criteria as minimum requirements, of the Code of Ordinances of the City of West Melbourne, Florida, is hereby amended to read as follows:

Sec. 98-326. – Interpretation of criteria as minimum requirements.

The criteria as set forth by this division for the R-3 multiple-family dwelling district shall be deemed the minimum necessary for compliance. The planning and zoning board or city council shall reserve the right to determine, at the time of site plan approval, such additional requirements as may be necessary to ensure the safety, health and general welfare of the residents.

Section 16. Severability. It is hereby declared to be the intention of the Council that the section, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clauses sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

Section 17. Conflict with Other Ordinances. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 18. Inclusion in Code. It is the intention of the City Council of the City of West Melbourne that the provisions of this ordinance 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 19. Effective Date. This Ordinance shall become effective immediately upon adoption in accordance with the Charter of the City of West Melbourne, except as otherwise specified above.

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PASSED AND ADOPTED by the City Council of the City of West Melbourne,
Brevard County, Florida, this 20th day of July, 2021.

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