

ORDINANCE NO. 2936-13

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE", ARTICLE III "ZONING", SECTION 58-95 "DEFINITIONS" OF THE CITY CODE TO REVISE THE DEFINITION OF FINE DINING RESTAURANT AND TO CREATE A DEFINITION OF FAST FOOD RESTAURANT; TO AMEND SECTION 58-75 "COMMERCIAL (C-2) DISTRICT" TO ALLOW CERTAIN CATEGORIES OF RESTAURANTS AS PERMITTED USES IN THE PARK AVENUE CORRIDOR; TO AMEND SECTION 58-75 "COMMERCIAL (C-2) DISTRICT" TO PROVIDE THAT CERTAIN CATEGORIES OF RESTAURANTS ARE PROHIBITED NON-CONFORMING USES IN THE COMMERCIAL (C-2) DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission recognizes that the Park Avenue Corridor possesses a particular character due to the large number of locally owned or operated small businesses of high quality; and

WHEREAS, the City Commission recognizes that the Park Avenue Corridor is a valuable asset of the City of Winter Park, which provides significant and substantial economic benefit to the City; and

WHEREAS, the City Commission desires to maintain the charm, appeal and unique characteristics of the Park Avenue Corridor and the surrounding Commercial (C-2) District as a primarily fine dining destination and to promote locally owned or operated small business restaurants, while at the same time providing a number of options for dining in the Park Avenue Corridor and the Commercial (C-2) District; and

WHEREAS, the City Commission recognizes that Policy 1-2.3.3 of the Future Land Use Element of the City of Winter Park's Comprehensive Plan, provides that the Commercial (C-2) District differs from the other commercial, office or planned development designations in terms of the land use policies for this area which strive to maintain and enhance pedestrian orientation, preserve the scale of the historic premiere retail areas, enhance the eclectic mix of architectural styles, preserve and maintain the mix of retail, office and residential uses, preserve the open space vistas and non-commercialization of historic Central Park and the predominance of small distinctive specialty shops; and

WHEREAS, the City Commission recognizes that the Park Avenue Corridor is currently fully leased and that the present distribution of uses is approximately fifty percent retail and

twenty-six percent dining, based upon a survey conducted by the Winter Park Chamber of Commerce; and

WHEREAS, the City Commission recognizes that distribution of dining uses within the Park Avenue Corridor is approximately forty-eight percent fine dining, fifteen percent casual dining, and thirty-seven percent coffee, dessert or bakery, based upon a survey conducted by the Winter Park Chamber of Commerce and contributions of the City of Winter Park Planning Department, the results of which are attached hereto as Exhibit "A"; and

WHEREAS, the City Commission recognizes that business in the Park Avenue Corridor may occasionally convert from restaurant to retail use, but that such conversions occur less frequently than conversions from retail to restaurant use, due to the expense of construction involved in converting to a restaurant use, as well as the impact fee requirements for restaurants; and

WHEREAS, the City Commission seeks to allow some non-fine dining restaurants, but limit the number of such establishments in the Park Avenue Corridor, so as not to diminish the reputation and unique character of the Park Avenue Corridor as a fine dining destination; and

WHEREAS, the City Commission finds that the quick service style of fast food restaurants produces increased traffic and other negative effects on the surrounding neighborhood; and

WHEREAS, the City Commission finds that, due to the increased traffic and other negative effects, fast food restaurants are not compatible with the character of the Commercial (C-2) District, including, but not limited to the characteristics articulated in Policy 1-2.3.3 of the Future Land Use Element of the City of Winter Park Comprehensive Plan; and

WHEREAS, the City Commission finds that prohibiting fast food restaurants will serve the public purpose of maintaining the character of the Commercial (C-2) District; and

WHEREAS, the City Commission finds that it is in the best interest of the citizens of Winter Park to regulate the types of restaurants that are permitted to operate in the Park Avenue Corridor and the Commercial (C-2) District to maintain the particular character of the Park Avenue Corridor and the Commercial (C-2) District, thereby continuing their economic benefit to the City; and

WHEREAS, the City Commission seeks to amend the definition of "Fine Dining Restaurant" to provide more objective criteria for this type of restaurant that is a permitted use in the Park Avenue Corridor and the Commercial (C-2) District; and

WHEREAS, the City Commission seeks to create a definition of "Non-Fine Dining Restaurant" to provide more objective criteria for this type of restaurant and to establish that a "Non-Fine Dining Restaurant" meeting certain criteria is a permitted use in the Park Avenue Corridor, provided that the number of such restaurants does not exceed a certain percentage of businesses within the Park Avenue Corridor; and

WHEREAS, the City Commission desires to create a definition of “Fast Food Restaurant” and to specify that this type of restaurant constitutes a prohibited use in the Commercial (C-2) District; and

WHEREAS, the City Commission has determined that certain restaurants existing in the Park Avenue Corridor that have not been found in violation of the City of Winter Park Code of Ordinances by the Code Enforcement Board, and are identified in Exhibit “A”, will be non-conforming uses after the enactment of this ordinance, and such restaurants may continue to operate under their current business model and subject to Section 58-64(d) of this Code; and

WHEREAS, the City Commission desires that, where a new restaurant takes the place of a restaurant that existed in the Park Avenue Corridor prior to the enactment of this ordinance, such new restaurant will be required to meet the criteria of fine dining, non-fine dining, or coffee shop, bakery and dessert restaurant, as hereafter defined; and

WHEREAS, the City Commission desires that, where a new restaurant takes the place of a restaurant that existed in the Park Avenue Corridor prior to the enactment of this ordinance, and the restaurant use was not discontinued for a period greater than three months, as provided in Section 58-64(d)(6) of this Code, such new restaurant will not be excluded on the basis of the percentage limitations set forth in Section 58-75(b)(6)(b); and

WHEREAS, words with double underlined type shall constitute additions to the original text and ~~strike through~~ shall constitute deletions to the original text, and asterisks (* * *) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1: **Recitals Adopted.** The forgoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2: **Amendment of Section 58-95.** Chapter 58, Article III, Section 58-95 “Definitions” is hereby amended as follows:

Sec. 58-95. Definitions.

Fine dining restaurant means any establishment which is devoted to the retailing and on-premises consumption of meals and food where more than 50 percent of the gross revenue is derived from food sales versus alcoholic beverages ~~where food service is provided by waiters/waitresses and where the menu shall consist of fine dining cuisine with a range of appetizers, entrees and desserts. Fine dining restaurants shall not include establishments where ordering or payment is done at a counter/cashier and shall not include sandwich shops, sub shops~~

or any type of fast food business. Additionally, fine dining restaurants shall meet all of the following criteria:

1. A host or hostess must be regularly present to greet and arrange for seating of patrons;
2. Food and beverage service (other than bar service) is provided via table service by servers;
3. Dinnerware (utensils, plates, etc.) shall be non-disposable;
4. Ordering, food service and payment is done at the table; and
5. The menu shall consist of fine dining cuisine with a range of appetizers, entrees and desserts along with appropriate selections of beverages.

Establishments which include a drive-thru or where ordering or payment is done at a counter/cashier and then the food and/or beverage is brought to the table or customer by restaurant staff shall not be considered fine dining restaurants. Payment at a counter/cashier may be allowed only and exclusively to accommodate take-out orders. Take-out orders shall not exceed 10% of the gross revenue.

Fast Food Restaurant means any restaurant whose normal business model includes two or more of the following criteria or characteristics:

1. A predominance of locations offer drive-thru service;
2. The menu consists of predominantly fast food or take-out food typically: consumed on site, or off the site as to-go food; pre-made and wrapped before customers place orders; served with disposable tableware or typically served in paper or plastic containers;
3. Food is typically ordered from a wall menu at a service counter;
4. Food consumed on the premises is typically ordered while customers are standing;
5. Payment must typically be made by customers before food is consumed;
6. Customers typically bus their own tables;
7. The service counter is closer to an entry/exit than is the seating/dining area; or
8. The business interior is brightly illuminated (greater than eight candle foot power as measured in a horizontal plane three feet above the floor).

Any restaurant meeting the above-definition shall be considered a fast food restaurant under this Code, even if it also meets the criteria for a non-fine dining restaurant under Section 58-75(b)(6).

Non-Fine Dining Restaurants means any restaurant that satisfies all of the following criteria:

1. Upon a patron's request, on-site food and beverage service shall be provided via table service by servers;
2. Appropriate visible signage is provided to notify patrons of the availability of table service;

3. The menu consists of a variety of food options including pre-entrée items (soups, salads, appetizers, etc.) entrees, sides and desserts;
4. Non-disposable dinnerware (utensils, plates, etc.) shall be provided;
5. Food items are predominately freshly prepared on site rather than just the warming, microwaving or final preparation of pre-packaged items; and
6. All tables are bussed by restaurant staff.

SECTION 3: **Amendment of Section 58-75.** Chapter 58, Article III, Section 58-75
 “Commercial (C-2) District” is hereby amended as follows:

Sec. 58-75. Commercial (C-2) District.

(b) *Permitted Uses.* All permitted uses shall be conducted so as to emphasize the pedestrian orientation of the district. Thus, drive-in-type businesses or uses which have a drive-in component as part of their operation shall not be permitted except to a limited degree in the area on Morse Boulevard, west of Virginia Avenue and confined to nonretail use. All uses permitted shall be conducted exclusively within a building except those uses permitted which are customarily conducted in the open such as off-street parking and outdoor patio seating for dining. Storage shall be limited to accessory storage of commodities sold at retail on the premises and storage shall be within a completely enclosed building. Bars, taverns, ~~and~~ cocktail lounges, and fast food restaurants are prohibited in this zoning district.

(6) Fine dining restaurants, as well as ice cream, tea, coffee, cheese, pastry and bakery stores with retail sales and consumption of food and beverage products on premises, except that only those restaurants satisfying the criteria set forth below shall be permitted uses in the Park Avenue Corridor.

(a) *Fine Dining Restaurants.* To qualify for a permitted use, a fine dining restaurant must provide, and continually adhere to, a detailed written description of the business operations and plan layout of dining and food service areas to show the restaurant satisfies the criteria of section 58-95, Fine dining restaurant.

(b) *Non-Fine Dining Restaurants.* Certain other restaurants (other than fast food restaurants, which are a prohibited use) shall qualify for a permitted use in the Park Avenue Corridor, provided that they satisfy the following criteria and do not exceed the percentages set forth in this section:

- i. Upon a patron’s request, on-site food and beverage service shall be provided via table service by servers;

- ii. Appropriate visible signage is provided to notify patrons of the availability of table service;
- iii. The menu consists of a variety of food options including pre-entrée items (soups, salads, appetizers, etc.) entrees, sides and desserts;
- iv. Non-disposable dinnerware (utensils, plates, etc.) shall be provided;
- v. Food items are predominately freshly prepared on site rather than just the warming, microwaving or final preparation of pre-packaged items; and
- vi. All tables are bussed by restaurant staff.

The number of non-fine dining restaurants shall not exceed 20% of the available first floor storefronts of either side of any city block in the Park Avenue Corridor, nor 15% of the total number of businesses in the Park Avenue Corridor. If a restaurant currently operating within the Park Avenue Corridor as of the enactment of this ordinance ceases business operations, any applicant proposing a restaurant use in that location must satisfy the criteria for a permitted use restaurant (fine dining; non-fine dining, meeting the criteria of Section 58-75(b)(6)(b)(i)-(vi); or coffee shop, bakery and dessert restaurant). Provided that the restaurant use has not been discontinued for a period greater than three months, as provided in Section 58-64(d)(6) of this Code, a non-fine dining restaurant will be permitted in the location of an existing restaurant, regardless of the percentage limitations on non-fine-dining restaurants.

(c) *Coffee Shops, Bakery and Dessert Restaurants.* Certain restaurants that do not provide full service of food and beverages, but limit their offerings to particular food and beverages reflecting the core business of the restaurant and a limited number of ancillary non-core items, are permitted uses. These restaurants include, but are not limited to ice cream, frozen yogurt, Italian ice, smoothie, cookie, tea, coffee, wine, cheese, pastry and bakery stores. The restaurants of this category must also provide retail sales and consumption of the named core food or beverage products on premises. Such restaurants shall include, as part of their application for the business tax receipt, a menu identifying the core offerings of the business and a limited number of ancillary non-core items. The restaurants of this category shall not change their core offerings, nor significantly expand their ancillary, non-core offerings, without submitting an application to the City for another business tax receipt.

- (c) *Conditional uses.* The following uses may be permitted as conditional uses following review by the planning and zoning commission and approval by the city

commission in accordance with the provisions of this C-2 district section only. See section 58-90, conditional uses.

(1) Restaurants, outside of the Park Avenue Corridor, with the exception of fine dining restaurants, ice cream, tea, coffee, cheese, pastry and bakery shops, with retail sales and consumption on premises;

(h) *Restaurants.* The following standards and criteria shall apply:

(1) The city has established that outside of the Park Avenue Corridor all existing and proposed restaurants are conditional uses in this zoning district, except fine dining restaurants, and ice cream, tea, coffee, cheese, pastry and bakery stores, with retail sales and consumption on premises, ~~are conditional uses in this zoning district~~. For those restaurants that are conditional uses, renovations, changes in decor, floor plan, menu or operating hours up to midnight are not deemed to be significant changes which require amendment of the conditional use permit. Changes which result in the addition of building area, seating or operating hours beyond midnight are deemed to be significant changes which require amendment/approval of a conditional use.

(2) In order for these restaurant ~~conditional use restrictions~~ C-2 zoning regulations to be effectively applied, this article contains strict definitions of fine dining restaurants, non-fine dining restaurants, and coffee shops, bakery and dessert restaurants, which are either permitted uses or require conditional use approval, ~~restaurants requiring conditional use approval~~, and cocktail lounges, taverns, and bars, as well as fast food restaurants, which are prohibited uses. Generally, if there is consumption of either food or alcoholic beverages on the premises, then the conditional use requirement applies with the exceptions of the permitted uses shown in subsection (b)(6). If the business is solely for food or alcoholic beverage sale for consumption off the premises, then conditional use approval is not required. With food stores or convenience stores where the primary business is the retail sale of food and beverages for consumption off premises, or when prepared sandwiches or other food is clearly incidental to the principal retail activity, then limited consumption on premises (up to 1042 seats) inside the premises is permitted without conditional use approval. Otherwise, if a restaurant does not fit under one of the permitted uses in subsection (b)(6), then conditional use approval is required.

(3) Among the issues reviewed for conditional uses in this district, the adequacy of parking is often the most contentious. A frequent proposition is that the type of business, its menu, its hours or its size will cater exclusively to pedestrian traffic from employees and visitors already in the downtown. In light of the ability for the nature of the business to change, this proposition is not agreed to be an acceptable argument for the inadequacy of private parking.

~~(4) — In the review of these conditional uses, there are determined to be certain types of businesses where conditional use approval is not required. One type is the ice cream, frozen yogurt, Italian ice, cookie or other business selling solely dessert items and accompanying beverages. These businesses have been determined not to be destination oriented such that they generate parking demand in the downtown during the peak lunch period.~~

(45) The hours and types of amplified musical entertainment permitted within any type of restaurants shall be governed by the noise regulations within chapter 10 of the Code of Ordinances.

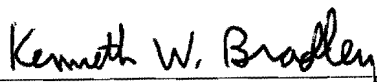
SECTION 4: **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases 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 5: **Codification.** It is the intention of the City Commission and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Winter Park, that the sections of this Ordinance may be renumbered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

SECTION 6: **Conflicts.** All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 7: **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this 9th day of September, 2013.



Mayor Kenneth W. Bradley

ATTEST:


Cynthia S. Bonham, City Clerk

