

**CITY OF WINTER PARK
PLANNING AND ZONING BOARD**

**Staff Report
August 6, 2013**

**REQUEST OF THE CITY OF WINTER PARK FOR:
AN ORDINANCE TO AMEND THE CITY ZONING CODE TO
REVISE THE DEFINITION OF FINE DINING RESTAURANT
AND TO CREATE A DEFINITION AND PROHIBIT FAST FOOD
RESTAURANTS; TO AMEND SECTION 58-75 "COMMERCIAL
(C-2) DISTRICT" TO ALLOW CERTAIN CATEGORIES OF
RESTAURANTS AS PERMITTED USES IN THE
COMMERCIAL (C-2) DISTRICT AND 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.**

This agenda item returns for P&Z Board discussion, the issue of amending the C-2 commercial zoning rules along the Park Avenue corridor for restaurants and other food service establishments. This was discussed by P&Z several times in 2012, at your July 10th meeting and then tabled by the City Commission at their July 23rd meeting. It was then discussed at your September 11th meeting and at a workshop on October 24th with members from the Park Avenue Area Association. Then also at your November 6th meeting when again thereafter it was tabled by the City Commission.

At issue all those times, was the lack of a consensus on how to proceed amongst the various stakeholder groups. The good news is that the current proposal has been developed as a 'bottom-up' approach by the downtown property owners and merchants in concert with the Park Avenue Area Association of the Winter Park Chamber. Thus, it appears that there is now the much needed consensus on how to proceed.

Three other major differences from the 2012 experience is that it treats all of the Park Avenue corridor in the same fashion and does not differentiate such as before for the one block south of Comstock Avenue. It eliminates the previous inequities of conditional use for those locations that could provide off-street private parking (Panera) versus those that could not. It also limits the discussion to restaurants and the other food service establishments and does not affect any other rules for beauty salons, offices, etc.

It is also important to point out that this does not apply universally to all C-2 properties. Those outside of the Park Avenue corridor, such as New England Avenue, for example, remain under the current restaurant rules for the types of establishments but are governed by the new definitions, which is good.

The proposed ordinance makes several changes to the C-2 zoning rules, for restaurants and other food service type establishments as follows:

1. It provides a new much improved definition of what a "fine dining restaurant" is supposed to be. This makes it clear to the existing fine dining restaurants and to any new proposed fine dining restaurant what they are expected to do (operationally) and thus will also then be easier for the City to enforce.
2. It provides a new definition of "fast food restaurants" and makes it clear that they are prohibited, non-conforming uses.
3. It provides a new definition for "coffee shops, bakeries and dessert restaurants" which provides for staff a solution for the menu creep that we have experienced with these establishments that are primarily coffee shops, bakeries or ice cream/dessert places but also which sell some ancillary food or lunch/breakfast items.
4. It also provides within the Park Avenue corridor a new definition for; and a new permitted use for "non-fine dining restaurants" otherwise sometimes referred to as 'fast casual' restaurants. These are not currently permitted unless by conditional use approval based on adequacy of parking. The proposal now is that subject to the defined limitations, new "non-fine dining restaurants" could be established within the Park Avenue corridor. The limitations are no more than 20% of any block storefronts and no more than 15% of total storefronts within the Park Avenue corridor may become "non-fine dining restaurants". This new category of "non-fine dining restaurant" is basically where there is a full menu; the food is prepared on-site; there is non-disposable real dinnerware; where table service is provided upon request with signage indicating that option but where ordering and payment may be done at a counter (no table service). The food or meals are then either brought to the customer's tables or their names are called out.

Other than perhaps, Panera Bread, none of the existing casual dining places along Park Avenue meet all of the criteria in this "non-fine dining" definition. The percentages might appear potentially large (20% of any block or 15% of the total businesses but the opportunities are far less. The reality is that most (if not all) of the fast casual franchise chains like Five Guys Burgers or Tijuana Flats meet the criteria to be classified as a fast food franchise. So if you meet those criteria you cannot change your operations for just one location on Park Avenue (such as using real dinnerware, busing their tables, etc.) in order to qualify within this "non-fine dining restaurant" definition. So the numbers may look large based on the percentages, but the real opportunities are far less. What this definition does accomplish is to encourage the entrepreneurial start-ups (versus chains) which is what is desired along the Avenue.

STAFF RECOMMENDATION IS FOR APPROVAL: There seems to be no debate that the current zoning rules for restaurants in the Park Avenue corridor are confusing, not well understood and very difficult to enforce as they have evolved over the past 25 years. As staff knows very well, it is very easy to imagine ways to get around our current rules (McDonald's could offer table service) and we also have to realize that people can imagine scenarios where even these current proposals might be abused.

The staff is very grateful to the Park Avenue Area Association for working on this proposal. As we all know, this is a very difficult task to put into words the operational characteristics of the places we feel are good for the 'Avenue' and also to try to do the same for those that are not compatible.

To the planning staff, providing the new and improved definitions for "fine dining restaurants" and for the "coffee shop, bakery, dessert restaurants" will be extremely helpful in enforcing the Code. Even more so, the new definition on "fast food restaurants" is very important to help preserve the character of the Park Avenue corridor that seems to be universally desired. These first three things that the Ordinance accomplishes are very important and much needed.

The only new thing this Ordinance proposes is the new permitted use for "non-fine dining restaurants". There are many fast casual restaurant chains such as Five Guys, Moe's, Tijuana Flats, Chipotle, Italo Cuisine, etc. However, they would meet the definition of fast food franchise and not be eligible. Instead it would encourage independent start-ups versus these chains which the Park Avenue Association and the staff believes are compatible with the character of Park Avenue and the type of new restaurant to be encouraged.

ORDINANCE NO. 2013-__

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 COMMERCIAL (C-2) DISTRICT AND 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 seeks to allow a 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 consistent with the character of the Commercial (C-2) District;

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, non-conforming use in the Commercial (C-2) District; 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 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 wines or alcoholic beverages or both.

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 and/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).

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. Should any restaurant currently operating within the Park Avenue Corridor as of the enactment of this ordinance cease business operations, another permitted use restaurant (fine dining; non-fine dining, as allowed under this section; or coffee shop, bakery and dessert restaurant) shall be allowed at that location, regardless of the percentage limitation.

(c) Coffee Shops, Bakery and Dessert Restaurants. Certain restaurants that do not provide full service of food, beverages, etc. such as coffee and tea shops, wine shops, dessert shops and bakeries are permitted uses so long as their offerings are limited to food and beverages reflecting the core business of the restaurant and a limited number of ancillary non-core items. Ice cream, frozen yogurt, Italian ice, smoothie, cookie, tea, coffee, wine, cheese, pastry and bakery stores with retail sales and consumption of the named core food or beverage products on premises shall be allowed as a permitted use. Such restaurants shall, at the time of application for the business tax receipt, submit a menu of items to be offered to demonstrate the limitations of the menu to the stated food and beverage items, and shall execute an affidavit stating that the restaurant shall not change its offerings to provide a different category of items, nor expand their offerings, without making application to the City for such changes.

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

(1) The city has established that all existing and proposed restaurants except fine dining restaurants, non-fine dining restaurants that satisfy the criteria of Section 58-75(b)(6)(b)(i)-(vi) and do not exceed the percentages set forth in that section, 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 to be effectively applied, this article contains strict definitions of fine dining restaurants, restaurants requiring conditional use approval, and cocktail lounges, taverns, ~~and bars,~~ and 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 12 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.

(5) The hours and types of amplified musical entertainment permitted within 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.

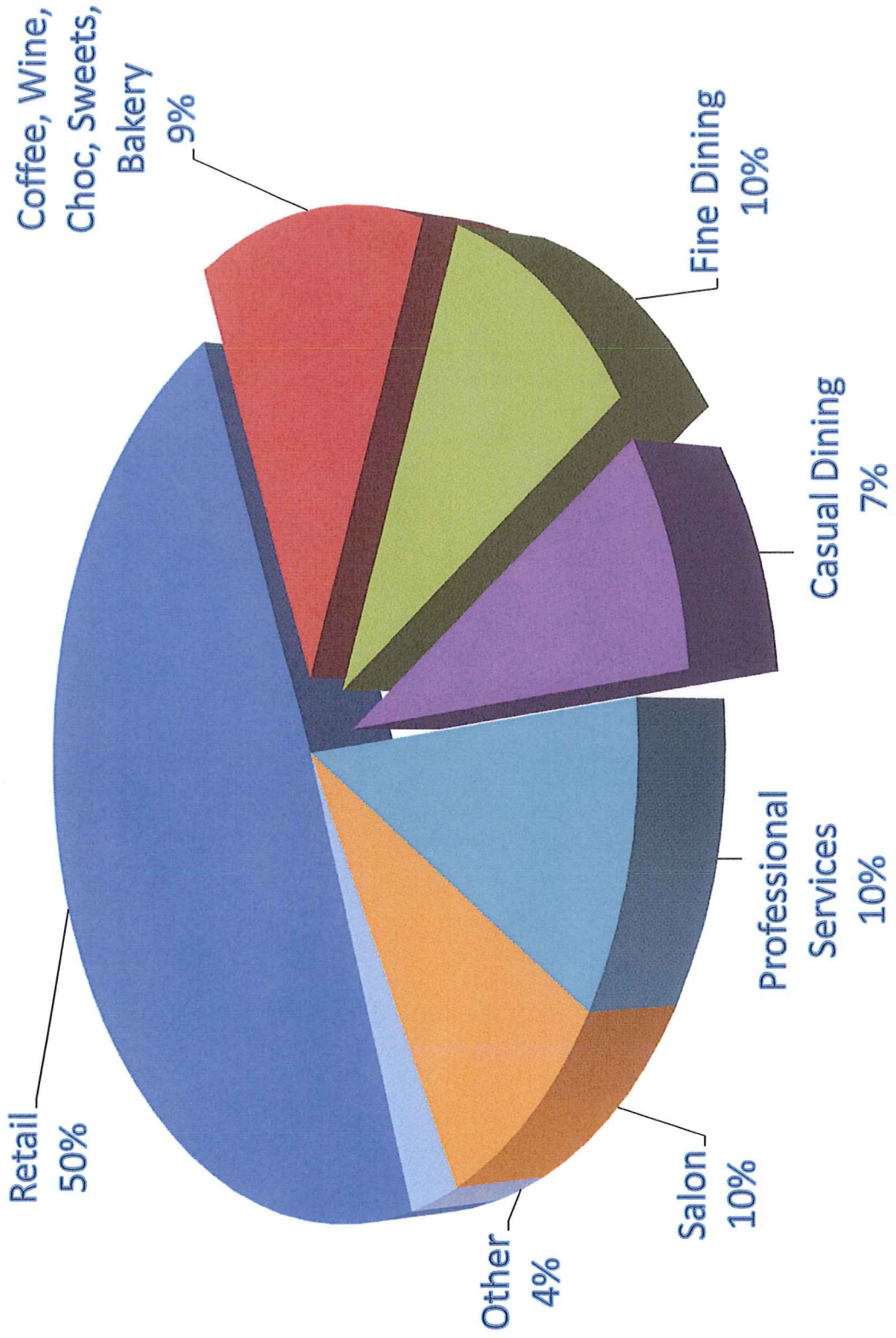
ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this ____ day of _____, 2013.

Mayor Kenneth W. Bradley

ATTEST:

Cindy Bonham, City Clerk

156 Businesses in Park Ave Area



41 DINING EXPERIENCES IN PARK AVE AREA

