

ORDINANCE 17-21

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 118, “ZONING” OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES; AMENDING SECTION 118-1 “DEFINITIONS”; AMENDING CHAPTER 118 TO PROVIDE FOR URBAN FARMS AS PERMITTED AND SPECIAL EXCEPTION USES IN CERTAIN ZONING DISTRICTS; AMENDING SECTION 118-7 CONCERNING THE AMENDMENT PROCESS TO REFERENCE REZONING CRITERIA SET FORTH IN THE COMPREHENSIVE PLAN AND NOTICE REQUIREMENTS OF FLORIDA STATUTES; AMENDING SECTION 118-209 CONCERNING REQUIRED PROPERTY OWNER DISCLOSURES PRIOR TO VOLUNTARY ANNEXATION AND TO ADDRESS NO ZONING (NZ) DESIGNATIONS UPON ANNEXATION OF PARCELS; CREATING A NEW SECTION 118-226 TO ADDRESS RESTRICTIONS ON THE OCCUPANCY OF SINGLE-FAMILY DWELLING UNITS; CREATING SECTION 118-227 TO ADDRESS URBAN FARM OPERATIONS; AMENDING SECTION 118-858 GOVERNING PERMITTED USES OF PLANNED UNIT DEVELOPMENTS WITH PRIMARY INSTITUTIONAL USES; AMENDING THE SETBACK WAIVER PROVISIONS OF C-1 ZONING DISTRICT; AMENDING SECTION 118-1323(2)(d) TO PROHIBIT MORE THAN ONE-STORY BOAT DOCKS AND WALKWAYS; PROVIDING FOR CODIFICATION, CONFLICTS, AND SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapters 163 & 166, Florida Statutes; and

WHEREAS, the City desires to clarify the permitted uses for properties that have been annexed into the City without being rezoned to simultaneously with the annexation; and

WHEREAS, the City desires to modify the planned unit development provisions of Chapter 118, City of Winter Garden Code of Ordinances in order to clarify that planned unit developments with primary institutional uses may include community farms and gardens; and

WHEREAS, this Ordinance is consistent with the City of Winter Garden Comprehensive Plan; and

WHEREAS, this Ordinance has received a recommendation from the City's local planning agency, has been properly read and advertised as provided by Florida law and the required meetings and hearings have been conducted on its adoption; and

WHEREAS, the City Commission finds that this Ordinance is in the best interest and welfare of the citizens of the City of Winter Garden.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

SECTION 1: Recitals. The above referenced "Whereas" clauses are true and correct and constitute legislative findings of the City Commission.

SECTION 2: Adoption. Section 118-1 of Chapter 118, Article I of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being modified):

118-1 Definitions

Boardinghouse means a structure containing a dwelling unit or units used for the purpose of providing meals and lodging to persons other than members of the family occupying a dwelling as their residence, or any structure containing a dwelling unit or units designed, operated or marketed to have individual bedrooms rented or leased separately and common facilities available to the occupants of the dwelling unit or units.

Lodging house or rooming house means a structure containing a dwelling unit or units used for the purpose of providing lodging to persons other than members of the family occupying a dwelling as their residence, or any structure containing a dwelling unit designed, operated or marketed to have individual bedrooms rented or leased separately and common facilities available to the occupants of the dwelling unit or units.

Family means an individual or two or more persons related by blood, marriage or adoption who are living together in a single housekeeping unit.

Family or single-family means any one of the following:

(1) One individual, or two or more persons related by blood, marriage, legal guardianship or adoption, exclusive of a compensated household servant, when living together in a single, non-profit housekeeping unit;

(2) Six (6) or fewer persons unrelated by blood, marriage, legal guardianship or adoption, when living together in a single, non-profit housekeeping unit, subject to the provisions of section 118-226; or

(3) Florida and Federal Statutes or case law deems such persons to be a family unit or otherwise permitted to occupy a single-family dwelling as a matter of law.

The term "family" shall not be construed to mean a fraternity, sorority, club, monastery, convent, institutional group, boardinghouse, lodging house, rooming house, motel or hotel.

Farm stand means a temporary structure for the display and sale of food or ornamental crops grown at a community garden or urban farm.

Urban farm means an establishment where food or ornamental crops are grown or processed to be sold or donated that includes, but is not limited to, outdoor growing operations, indoor growing operations, vertical farms, aquaponics, aquaculture, hydroponics and rooftop farms.

SECTION 3: Adoption. Section 118-7 of Chapter 118, Article I of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being modified):

Sec. 118-7. - Amendment procedure.

(a) The regulations, restrictions and boundaries set forth in this chapter may from time to time be amended, supplemented, changed or repealed in accordance with the procedures set forth in applicable state statutes.

(b) If, however, a protest against such change is signed by the owners of 20 percent or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending 500 feet therefrom or those directly opposite thereto extending 500 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of the city commission.

(c) Unless specifically permitted otherwise by the city commission, no application for *rezoning*, special exception or variance shall be considered within six months from the time the property described in such application has been decisively acted upon as a result of a previous similar application.

(d) At least ten days' public notice of the time and place of any public hearings in connection with appeal proceedings under this chapter before the planning and zoning board or the city commission shall be published in a newspaper of general circulation in the city.

(e) The criteria for rezonings are as set forth in the comprehensive plan.

(f) Notices and advertisements for rezonings shall be as required pursuant to applicable state statute.

SECTION 4: Adoption. Section 118-209 of Chapter 118, Article III of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken-out~~ are deletions; words that are underlined are additions; provisions not included are not being modified):

Sec. 118-209. - Voluntary annexation.

(1) Disclosure. Prior to voluntary annexation into the city, the owner of the lands to be annexed must identify in writing to the city all current uses and businesses existing and operating on the lands and any and all nonconformities and pending code enforcement proceedings applicable to said lands. Failure of the property owner to identify ~~such~~ nonconformities as required will result in such nonconformities being treated as illegal nonconformities and subject to termination. To the extent nonconformities are identified, the owner of said lands shall obtain a variance for such nonconformities, terminate the nonconformity upon annexation into the city, or the city and owner of said lands shall enter into an agreement which provides for the amortization, termination or continuation of the nonconformities. The foregoing shall not operate in any way to limit the city's power to impose any other terms as a condition of annexation.

(2) No Zoning. Upon annexation of a parcel of land into the city, the city may choose not to initially assign a zoning district classification to such parcel. In such event, the city may identify such parcel of land as having no zoning (NZ) on the city's zoning map. The only permitted uses for a parcel of land with no zoning (NZ) shall be those legally conforming uses that were operating and existing on the date of annexation of the parcel into the city. If a parcel of land has no zoning (NZ) and the owner desires to take advantage of the densities, intensities and uses

that may be allowed under the comprehensive plan, the owner shall seek and obtain a rezoning of the parcel to a zoning district that is consistent with the comprehensive plan, including the parcel's future land use map designation. This provision shall not restrict the city from initiating a rezoning of a parcel that has no zoning (NZ).

SECTION 5: Adoption. A new Section 118-226 and 118-227 of Chapter 118, Article IV, Division 1 of the City of Winter Garden Code is hereby created to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being modified):

Section 118-226. Occupancy of single-family dwelling unit.

(a) The occupancy of a single-family dwelling unit for residential use by persons not constituting a family is prohibited; except that this subsection does not prohibit temporary guests or invitees of a family residing in the dwelling unit from temporarily occupying the dwelling unit.

(b) There shall be at least one bedroom in a dwelling unit for each two persons over the age of fifteen (15) residing in the dwelling.

(c) There shall be a rebuttal presumption that three (3) or more persons living in a dwelling unit that are not related by blood, marriage, legal guardianship or adoption are not a family. Further, there shall be a rebuttal presumption that a dwelling unit having more than two vehicles parked overnight on a regular basis on the premises that are registered in different last names contains a group of persons not constituting a family. When a rebuttal presumption exists, the burden is upon the persons living in a dwelling unit to show by competent, substantial evidence that such persons constitute a family considering the following factors: (i) a single, non-profit housekeeping unit; (ii) permanent and stable living arrangement, rather than transient living arrangement; (iii) headed by a householder caring for children as one would likely find in a biologically unitary family; (iv) persons share the entire dwelling unit and culinary facilities; (v) persons share use of vehicle(s); and (vi) whether Florida Statutes or case law deems such persons to be a family unit or permitted to reside in a single-family dwelling as a matter of law.

Section 118-227. Urban farm. The urban farm use, where permitted under this code, is subject to and shall comply with the following:

(a) No raising, keeping or slaughtering of animals;

(b) Any equipment or supplies needed for farm operations shall be fully enclosed or otherwise effectively screened from the street and any adjacent residential uses;

(c) The use shall not be located in a required interior side yard.

(d) Outdoor growing associated with an urban farm shall be exempt from the enclosed building requirements of the zoning code.

(e) A farm stand is allowed as an accessory use to an urban farm subject to the following conditions:

(i) The farm stand shall only sell products of the urban farm occupied and cultivated by the same producer within the city limits;

(ii) The operation of the farm stand shall not exceed a duration of 75 days in one calendar year;

(iii) Sales shall be limited to between the hours of 7:00 a.m. and sunset;

(iv) The farm stand must be removed from the premises or stored inside a structure when not in operation;

(v) Only one farm stand is permitted per urban farm parcel;

(vi) The farm stand shall not use the public right-of-way for its operations, including in regards to the placement of its signage or for customer or employee parking.

(vii) One temporary sign not exceeding twenty square foot in copy area may be displayed to advertise the farm stand operations. Such sign must be removed from the premises or stored inside a structure at other times of the year when the farm stand is not in operation.

SECTION 6: Adoption. Section 118-538 and of Chapter 118, Article IV, Division 8 of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being modified):

Sec. 118-538. - Minimum yard requirements.

(a) In the C-1 central commercial district, the minimum yard requirements are as follows:

(1) Front yard: 25 feet (see subsection (b) of this section).

(2) Side yard: none, except 15 feet when abutting a public street. (See subsection (c) of this section.)

(3) Rear yard: 25 feet (see subsection (b) of this section).

(b) The ~~planning and zoning board~~ community development director may, upon ~~appeal~~ written request by the applicant, reduce or waive the minimum front and rear yard requirements, provided the following determinations are made:

(1) The required yards would prevent the continuous development of a compact and coordinated row of commercial buildings fronting on an already established commercial block or shopping area.

(2) Off-street parking space required under this division has been provided off the premises in accordance with article VIII of this chapter or within the principal building being proposed or has been waived entirely.

(3) The required yards would severely limit the overall utilization of the property and would detract from the overall desirability of the adjoining buildings and premises.

The community development director may elect to have the city commission make a decision on the applicant's request based on the above criteria after conducting a public hearing.

(c) If a side yard is provided it shall be not less than ten feet in width.

SECTION 7: Adoption. Section 118-579 and of Chapter 118, Article IV, Division 9 of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being modified):

DIVISION 9. - C-2 ARTERIAL COMMERCIAL DISTRICT

Sec. 118-579. - Special exceptions.

In the C-2 arterial commercial district, the uses permitted as special exceptions pursuant to section 118-97 are as follows:

(1) Campgrounds.

(2) Planned shopping centers.

(3) Automobile sales and service.

(4) All types of businesses in buildings not of standard construction or without restroom facilities.

(5) Miniwarehouse facilities.

(6) Truck parking facilities, and other activities of similar nature without adequate buffering from view from a public road and/or adjacent property

(7) Other uses which the planning and zoning board determines are of the type and intensity of activity similar to and compatible with the permitted uses in the C-2 district.

(8) Children day care centers.

(9) Urban farm.

SECTION 8: Adoption. Section 118-727 and of Chapter 118, Article IV, Division 12 of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being modified):

DIVISION 12. - I-1 LIGHT INDUSTRIAL AND WAREHOUSING DISTRICT

Sec. 118-727. - Permitted uses. Permitted uses in the I-1 light industrial and warehousing district are as follows:

(1) Warehousing, wholesaling, and storage facilities within enclosed structures.

(2) Ministorage warehouse facilities.

(3) Light manufacturing, processing, and assembly, including precision manufacturing, electrical machinery, instrumentation, and similar uses.

(4) Research and development facilities, provided that all activities are within an enclosed structure.

(5) Vocational and trade schools.

(6) Public utility equipment and facilities.

(7) Radio or television transmitter, towers, or broadcasting facilities.

(8) Communication towers and communication antennas.

(9) Truck parking facilities (but not transportation terminals or freight handling facilities)

(10) Urban farm.

SECTION 9: Adoption. Section 118-772 and of Chapter 118, Article IV, Division 13 of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being modified):

DIVISION 13. - I-2 GENERAL INDUSTRIAL DISTRICT

Sec. 118-772. - Permitted uses.

Permitted uses in the I-2 general industrial district are as follows:

- (1) Those uses permitted in the I-1 district.
- (2) Transportation terminals and freight handling facilities.
- (3) Commercial garages.
- (4) Food processing, bottling plants, bakeries, fruit packing, dairy products plants, and similar uses.
- (5) Textile and apparel manufacturing, processing, and storage.
- (6) Lumber and wood products manufacturing, processing, and storage.
- (7) Communication towers and communication antennas.
- (8) Urban farm.

SECTION 10: Adoption. Section 118-858 of Chapter 118, Article V, Division 2 of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being modified):

Sec. 118-858. - Permitted uses.

Uses permitted in the planned unit development (PUD) may include and shall be limited to the following:

(1) Primary residential uses. Primary residential uses permitted are single-family detached and multifamily residential dwelling units, including apartments, in semidetached, attached, and multistoried structures. The term “residential planned unit development” as used in this article shall mean a planned unit development with primary residential uses and in addition may contain nonresidential uses as provided in subsection (2).

(2) Nonresidential uses with primary residential uses. Nonresidential uses in conjunction with primary residential uses are permitted as follows:

a. Secondary nonresidential uses. Nonresidential uses of religious, public or semipublic, cultural, recreational or commercial character and personal service centers, offices and professional centers providing services to residents of the planned unit development. The nonresidential uses shall be compatible with and secondary to the primary residential use. No building devoted primarily to a commercial use shall be built or established prior to the primary residential buildings or uses it is designed or intended to serve.

b. Hotels and motels. Hotels and motels may be permitted upon consideration of the following criteria:

1. The total acreage used for the hotel and motel, including necessary parking, support buildings and grounds and appurtenances, shall not be considered common open space and shall be included within the maximum five percent of the total acreage permitted under this division for commercial uses.

2. The proposed streets and traffic flow and the streets, thoroughfares and traffic plan in the area adjacent to the site plan shall be adequate to support the anticipated traffic to be generated by the proposed hotel and motel.

3. The proposed hotel and motel use shall be compatible with the proposed primary residential uses, secondary nonresidential uses, and common open space within the planned unit development.

4. The proposed hotel and motel use shall be compatible with the existing land use classifications in the surrounding vicinity.

5. The area of the hotel and motel use shall be calculated as part of the total commercial acreage permitted, and the density shall not exceed 40 rooms per gross acre as per specific area delineated on the development plan.

c. Communication towers. Communication towers may be permitted upon consideration of the requirements set forth in article II of [chapter 70](#).

(3) Primary institutional uses. Primary public, quasi-public, and institutional uses including government buildings, public works facilities, public safety facilities, utility facilities, libraries,

public parks, recreational uses and facilities, sports fields and facilities, community gardens, urban farms and public or private schools.

(4) Secondary uses with primary institutional uses. Residential and commercial uses in conjunction with primary institutional uses are permitted as follows:

a. Commercial uses. No more than twenty-five percent (25%) of the land area within a planned unit development shall be devoted to commercial uses. The commercial uses shall be compatible with the surrounding area.

b. Residential uses. Residential uses within PUD with primary institutional uses shall meet the same development standards as required for residential uses and dwelling units in residential planned unit developments. Residential uses such as school dormitories may be permitted if they are directly related to the primary institutional use.

c. Communication towers. A communication tower may be permitted within a planned unit development upon consideration of the requirements set forth in article II of [chapter 70](#).

(5) Prohibited uses. The following uses shall prohibited within a planned unit development under this division: (i) manufacturing, (ii) industrial uses, (iii) warehouses, (iv) gasoline stations, (v) automobile, motorcycle, recreational vehicle or boat sales, rental, storage, painting, service or repair or any combination thereof; (vi) tattoo or body art establishments, (vii) billboards, (viii) adult entertainment, (ix) adult or pornographic book, magazine, video and novelty stores, (x) nightclubs, (xi) recreational vehicle and mobile home parks, (xii) funeral homes, (xiii) crematorium, (ivx) pawn shop, and (xv) any use not specifically set forth as a permitted use or special exception use in the applicable planned unit development.

SECTION 11: Adoption. Section 118-1323(2)(d) of Chapter 118, Article VI, Division 10 of the City of Winter Garden Code is hereby amended to read as follows (words that are ~~stricken~~ ~~out~~ are deletions; words that are underlined are additions; provisions not included are not being modified):

Sec. 118-1323. - Shoreline improvements—Docks, seawalls, and other shoreline improvements.

(d) Application review. Shoreline improvement applications shall be reviewed and processed by the building department and the engineering department pursuant to the following rules and regulations with additional review to be conducted by the planning and zoning department. Upon compliance with the following procedures and approval of the building, engineering, and zoning departments, the city may issue a permit for the proposed improvement along with any conditions required to meet the requirements of this division:

(1) Notice to neighboring property owners. Upon receipt of an application, the city shall send notices by first class mail to the owners of properties located within 300 feet of the parcel to be served by the shoreline improvement. All such notices shall require that written comments concerning the proposed improvements be sent to the city within 15 days following the date the notices were sent.

(2) Building permit application. All requests for building permits for a dock, seawall, or other shoreline improvements must meet the following requirements in order to be approved:

i. Docks and seawalls shall have a minimum side setback of 15 feet from the projected property line abutting the shoreline, unless such requirement is reduced by variance, which shall be subject to review by the engineering department and the approval of the planning and zoning board and city commission.

ii. The length and configuration of docks or seawalls and other shoreline improvements shall be designed to assure that the applicant's reasonable use of such improvements will not unreasonably interfere with the riparian or littoral rights of other persons and property owners to use and access the lake. The length of a boat dock, seawall, or other shoreline improvement must be measured from the normal high water elevation on the shoreline as established in relation to a fixed landmark, object or permanent structure on the lot. Consideration will be given to the length and configuration of other existing docks, seawalls, and improvements abutting the lake or waterway and any other applicable policies or restrictions established by the city or state. No work shall be performed in easement areas established to provide for ingress, egress, drainage, or utilities. Under no circumstances shall a permit for the construction of a dock or seawall be utilized to construct any structures or facilities intended for residential habitation. No dock, seawall, or other shoreline improvement may exceed a length of 100 feet when measured waterward from the normal high water elevation.

iii. The minimum height of docks, seawalls, and other shoreline improvements must exceed the normal high water elevation. No dock, seawall, or other shoreline improvement shall stand more than 13 feet above the normal high water elevation, provided that the dock does not unreasonably obscure the view of the adjoining water body when viewed from other waterfront properties. Docks may be equipped with roofs but cannot be enclosed about the sides, regardless of whether such enclosure is constructed from walls, fencing, screening, latticework, or fabric; however, transparent mesh screens shall be allowed to protect against insect intrusion.

iv. Docks, seawalls, and other shoreline improvements, shall not impair or impact wetlands or riparian zones unless all necessary permits are obtained from the city, the Saint John's River Water Management District, the Florida Department of Environmental Protection, and any other state or federal agencies having regulatory jurisdiction over the affected property.

v. No dock, walk, deck, or other similar shoreline improvement shall have a surface area exceeding 1,000 square feet. Docks, decks and walkways are not permitted to have more than one story, including without limitation, a walkway or useable platform above or upon the roof of any boat house.

vi. The application must address standards for docks on canals, rivers, streams, or waterbodies measuring less than 200 feet wide to avoid restricting the navigability of such waters.

vii. All shoreline improvement applications shall be accompanied by professionally prepared drawings of the proposed improvements that are signed and sealed by a professional engineer or architect.

viii. Shoreline improvements cannot be located in easement areas provided for ingress, egress, drainage or utilities.

ix. Walkways, docks, patio and decks located landward of the NHWE shall not exceed 25 percent of the rear setback area.

x. No permit for a shoreline improvement shall be issued if the application demonstrates a reasonable potential that any of the following conditions will occur as a result of the construction or installation of such improvement:

a. Obstruction or impairment to navigability;

b. Unreasonable impairment of the view of the water body from other waterfront properties;

c. Hazardous or unsafe conditions; or

d. Unreasonable interference with the riparian or littoral rights of other nearby property owners. In the context of this criterion, "unreasonable interference" shall include but not be limited to situations in which a proposed structure impedes access to or ingress and egress of boaters and swimmers from other nearby docks and shorelines; infringes upon or otherwise intersects commonly traveled boat routes or established watercraft channels; or creates an unusual configuration of the shoreline that restricts boating access within navigable sections of the waterway.

SECTION 12: Codification: Section 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances. Sections of this Ordinance may be renumbered or re-lettered to accomplish the intent of this Ordinance; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word. The City Clerk is given liberal authority to correct scribes' errors, such as incorrect code cross references, grammatical, typographical and similar or like errors when codifying this Ordinance.

SECTION 13: Control: In the event of a conflict or conflicts between this Ordinance and other ordinances, this Ordinance controls.

SECTION 14: Severability: It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 15: Effective Date: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING: _____.

SECOND READING AND PUBLIC HEARING: _____.

ADOPTED this _____ day of _____, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

| /S/ _____
JOHN REES, Mayor/Commissioner

ATTEST:

| /S/ _____
KATHY GOLDEN, City Clerk

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