



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### Adult Entertainment Uses in Mixed Industrial and Commercial

Meeting	File No.	Application Type
February 24, 2025	2025-094-LDR	Amendment to the Land Development Regulations
Applicant	Agent	
Not applicable; City-initiated.	Not applicable; City-initiated.	Not applicable; City-initiated.

### Request

Provide a recommendation to the City Commission on Ordinance No. 06-25, a City-initiated amendment to Section 4.3.3, "Special Requirements for Specific Uses," Subsection (AA), "Adult Entertainment Establishments" to adopt regulations prohibiting the location of Adult Entertainment Establishments south of Atlantic Avenue.

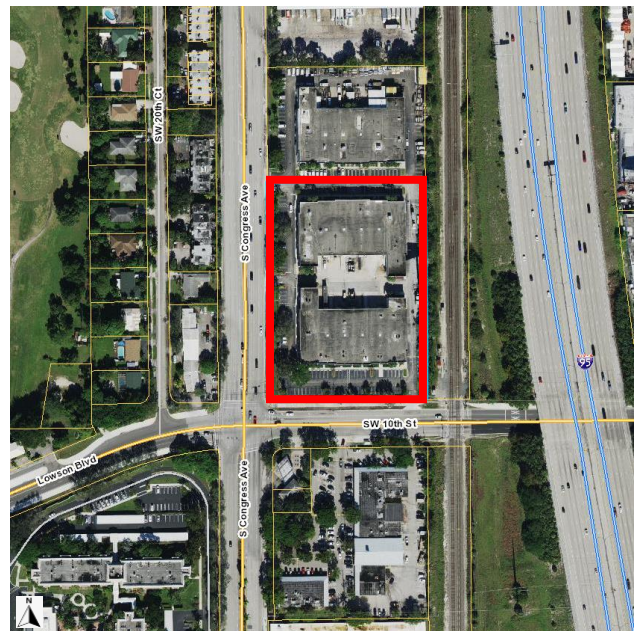
### Background Information

In response to the citizen-initiated Next Great Street Plan, the Congress Avenue Mixed Use (CMU) land use designation and Mixed Residential, Office and Commercial zoning district were created (Ordinance No. 33-06 and Ordinance No. 05-07) as part of a greater vision to develop the Congress Avenue as a mixed-use destination. The MROC zoning district, which dominates the Congress Avenue corridor south of West Atlantic Avenue to the southern City boundary, provides for a mix of residential, office, and commercial uses at a higher density and intensity, by encouraging transit-oriented development in proximity to the Tri-Rail station. The CMU land use designation was created to support MROC by providing the maximum density and intensity for the implementing zoning district, establishing a workforce housing revitalization incentive, and establishing allowances for higher densities based on the proximity of residential development to the Tri-Rail station.

The proposed LDR amendment is related to a privately-initiated small-scale Land Use Map Amendment from Congress Avenue Mixed Use (CMU) to Commerce (CMR) (Ordinance No. 02-25), and a privately-initiated rezoning from Mixed Residential, Office, and Commercial (MROC) to Mixed Industrial and Commercial (MIC) (Ordinance No. 01-25) for a 4.27-acre parcel located at 955-975 South Congress Avenue - south of Atlantic Avenue.

The property was rezoned (Ordinance No. 05-07) from MIC to MROC as a companion to a Land Use Map Amendment (Ordinance No. 38-06) from CMR to CMU. The site is currently developed with two 35,703 square foot buildings used for commercial, office, and warehouse space constructed in 1988. However, the property owners have had challenges leasing the plaza because the MROC zoning district created and applied in 2006 does not match the characteristics of the plaza, and the aspirational nature of the MROC zoning district has not resulted in a whole-scale redevelopment.

Comprehensive Plan Policy NDC 1.4.7, however, says that the Commerce land use designation should be used *for property located along or adjacent to the North Congress Avenue corridor, north of West Atlantic Avenue, where it is appropriate to accommodate a mix of industrial, service, and commercial uses, and limited residential development opportunities*. The application of CMR land use is a prerequisite to requesting MIC zoning.



MIC is one of the implementing zoning districts for CMR land use. The MIC District was created to provide for a mix of industrial, commercial, and office use in a single zoning district. The uses allowed are intended to enhance employment opportunities in the industrial, manufacturing and trade sectors, with supporting business and professional office functions. Retail uses are appropriate on a limited basis, and only as a secondary use within the district. Residential uses are only allowed within the I-95/CSX Railroad Corridor Overlay District. The list of permitted and conditional uses in MIC is largely compatible with the MROC and Special Activities District (SAD) zoning that dominates the Congress Avenue corridor south of Atlantic Avenue. However, Adult Entertainment Establishments (a principal use in MIC – the only district where the use is allowed) could present incompatibility with some of the existing and permitted uses south of Atlantic Avenue, particularly along Congress Avenue. The proposed LDR amendment to restrict Adult Entertainment Establishments south of Atlantic Avenue eliminates any potential conflicts that could arise as a result of the proposed comprehensive plan text amendment.

In 2023, a Congress Avenue Corridor study was completed by CBRE. The City has a list of potential changes pursuant to the CBRE Congress Avenue study, which includes a comprehensive use update citywide, and modifications to the MROC zoning district to implement recommendations in the study to make it more conducive to industrial businesses. Consistent with the recommendations in the study, a City-initiated comprehensive plan text amendment (Ordinance No. 05-25) and City-initiated amendment to the LDR is being proposed as a companion to the privately initiated LUMA and rezoning to allow CMR land use south of West Atlantic Avenue (and thus MIC zoning), to accommodate the request and to support industrial uses.

### Description of Proposal

The intent of the proposed update is to limit the location of adult entertainment in locations adjacent to residential development. The following changes are proposed to LDR Section 4.3.3(AA):

(AA) **Adult entertainment establishments.** In addition to the requirements of the underlying zoning district, other applicable general regulations, County licensing requirements, parking regulations and Section 113.20 of the Code of Ordinances of the City of Delray Beach, the following requirements shall apply to adult entertainment establishments:

- (1) No adult entertainment establishment shall be located on properties with frontage on an arterial road, located south of Atlantic Avenue, or located east of the CSX railroad track.

### Review and Analysis

#### LDR Section 1.1.6, Amendments

*The text of these Land Development Regulations may from time to time be amended, changed, supplemented, or repealed. No such action however, shall be taken until a recommendation is obtained from the Planning and Zoning Board and until a public hearing has been held by the City Commission.*

The recommendation of the Planning and Zoning Board will be provided to the City Commission, where the amendments will be reviewed at two public meetings.

#### LDR Section 2.4.7(A), Amendments to the Land Development Regulations

*Amendments to the LDR may be initiated by the City Commission, Planning and Zoning Board, or City Administration, or by a member of the public.*

The proposed amendment is initiated by Development Services.

#### LDR Section 2.4.7(A)(5), Findings

*For any approval, the City Commission must make a finding that the text amendment is consistent with the Comprehensive Plan, and that the amendment furthers the implementation of an adopted neighborhood plan, if applicable.*

#### LDR Section 3.1.1, Required Findings

*Prior to the approval of development applications, certain findings must be made. These findings relate to (A) the Land Use Map, (B) Concurrency, (C) Consistency, and (D) Compliance with the Land Development Regulations; (C) and (D) apply.*

**(C) Consistency** *A finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within Article 3.2, provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict.*

The following Objectives and Policies of the adopted Comprehensive Plan are applicable to the proposed amendment.

### **Neighborhoods, Districts, and Corridors Element**

Objective NDC 1.4 Industrial Land Use Designations *Apply the industrial land use designations of Industrial and Commerce to those areas where industrial type uses, such as fabrication and assembly of goods, warehousing, and vehicle repair, are the primary economic strategy for the district, to ensure that those industries, which are essential to the local economy, are appropriately accommodated in the city.*

Policy NDC 1.4.3 *Use the Industrial land use designation to accommodate manufacturing, fabrication, assembly, and warehousing uses on properties where such uses currently exist and in areas identified as appropriate to continue or expand industrial-based uses.*

Policy NDC 1.4.5 *Recognize the importance of maintaining the Industrial land use designation for long term economic prosperity by prohibiting amendments to the Land Use Map that diminish the quantity of property with Industrial land use designation.*

Policy NDC 1.4.7 *Use the Commerce land use designation for property located along or adjacent to the ~~North~~ Congress Avenue corridor, ~~north of West Atlantic Avenue~~, where it is appropriate to accommodate a mix of industrial, service, and commercial uses, and limited residential development opportunities. [Proposed changes indicated in strikethrough.]*

Policy NDC 1.4.9 *Analyze the existing land use and zoning designations of Commerce and Congress Avenue Mixed Use assigned to property along the Congress Avenue Corridor for the purpose of accommodating a balanced mix of commercial, industrial, office, and residential uses with a cohesive aesthetic for the corridor.*

Policy NDC 2.7.21 *Evaluate the Congress Avenue corridor study and consider implementing the strategies and recommendations of the Delray Beach's Next Great Street report.*

Policy NDC 2.3.7 *Implement the vision in the "Congress Avenue: Delray Beach's Next Great Street" report by protecting commercial and industrial land uses to maintain and enhance the jobs base; ensuring diverse housing options for varying income levels; attracting higher education institutes; encouraging sustainable redevelopment; and, establishing a balance of uses along the corridor.*

[See Policy ECP 6.4.1]

### **Economic Prosperity Element**

Policy ECP 3.3.7 *Strictly limit activities and comprehensive plan amendments which convert industrial land that would diminish Delray Beach's economic competitiveness.*

Policy ECP 6.3.4 *Discourage the reduction of Commerce land use designations, which involve a mix of light industrial, commercial uses, and research and development, and Industrial land use designations, which are needed to grow Delray Beach's job base.*

Policy ECP 6.4.1 *Implement the vision in the Delray Beach Next Great Street report by protecting commercial and industrial uses to maintain and enhance the jobs base; ensuring diverse housing options for varying income levels; attracting higher education institutes; encouraging sustainable redevelopment; and, establishing a balance of appropriate uses along the corridor.*

The comprehensive plan establishes the preservation of industrial type land use and zoning as a priority. CMR, Industrial (I), and Congress Avenue Mixed Use (CMU) and mixed industrial type land uses dominate the Congress Avenue corridor. However, the vision of CMU land use and the MROC district has experienced limited success; the aspirational mixed office, residential, and commercial uses along Congress Avenue have not been realized. There remains a strong demand for heavier commercial and light industrial uses allowed in CMR land use and MIC zoning. Multiple rezoning requests have been approved to accommodate residential uses, and the City continues to prioritize the retention of industrial and commercial uses.



The proposed LDR amendment provides additional options to support the retention of industrial uses, while adopting limitations that will realize the benefits of MIC without any negative impacts on residential type uses that are more common south of Atlantic Avenue.

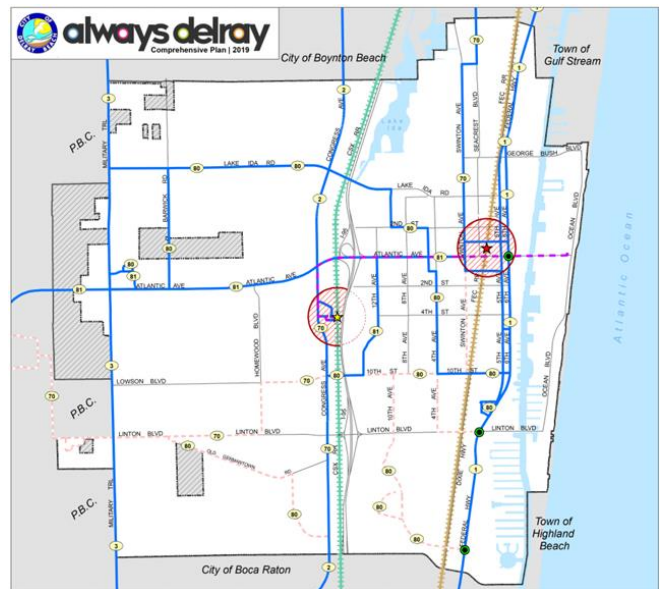
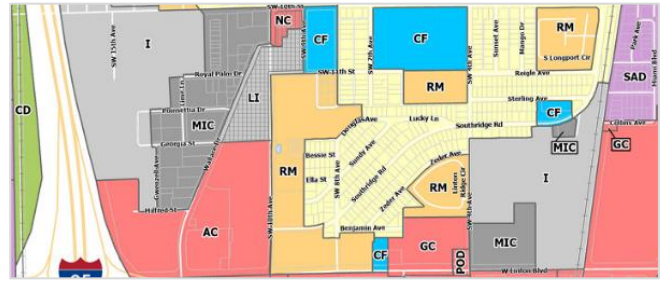
**(D) Compliance with LDR** Whenever an item is identified elsewhere in these Land Development Regulations (LDR), it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in Section 2.4.5 and in special regulation portions of individual zoning district regulations.

MIC is the only zoning district where Adult Entertainment Establishments are allowed, and must be approved administratively due to their classification as a principal use. The Adult Entertainment Establishment use is currently prohibited on properties with frontage on an arterial road or east of the CSX railroad, which limits the MIC-zoned properties between I-95 and Dixie Highway on the west and east, and between SW 10<sup>th</sup> Street on the north and Linton Boulevard on the south (maps at right). The proposed limitation does not take away a principal use for any existing properties with MIC zoning.

The existing locational restrictions in Section 4.3.3(AA) are as follows:

- (1) No adult entertainment establishment shall be located on properties with frontage on an arterial road or located east of the CSX railroad track.
- (2) No adult entertainment establishment shall be located closer than 1,000 feet from any house of worship, school, residential zoning district, community facilities zoning district (CF, OS, OSR, CD) where the use is or is to be regularly frequented by the general public (i.e. community center, parks, courthouse, child care facilities, offices, etc.) measured from lot line to lot line boundary along a straight airline route, except when the property containing the adult entertainment establishment is separated from the above by the I-95 right-of-way.
- (3) No adult entertainment establishment shall be located within 200 feet of an alcoholic beverage establishment, measured from lot line to lot line boundary along a straight airline route except if the establishment permitting nudity or partial nudity is separated from an alcoholic beverage establishment by a Railroad Corridor or an Arterial Roadway as the width of the Railroad Corridor and/or Arterial Roadway shall be deemed a sufficient separation.

Although the existing regulations provide limitations that are likely to prevent the location of Adult Entertainment Establishments along Congress Avenue south of Atlantic Avenue, the proposed restriction explicitly prohibits it. Overall, the proposed restrictions are consistent with the intent of the existing regulations in LDR Section 4.3.3(AA).



## Reviewing Boards

**City Commission.** First reading of Ordinance No. 06-25 is anticipated in April, and second reading will be scheduled subsequent to response from the Florida Department of Commerce on the companion requested comprehensive plan text amendment.

### Options for Board Action

- A. Recommend **approval** to the City Commission on Ordinance No. 06-25, a City-initiated amendment to Section 4.4.19, "Mixed Industrial and Commercial (MIC) District" to adopt regulations prohibiting the location of Adult Entertainment Establishments to the south of Atlantic Avenue, by finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- B. Recommend **approval** to the City Commission of Ordinance No. 06-25, a City-initiated amendment to Section 4.4.19, "Mixed Industrial and Commercial (MIC) District" to adopt regulations prohibiting the location of Adult Entertainment Establishments to the south of Atlantic Avenue, by finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations, **as amended**.
- C. Recommend **denial** to the City Commission of Ordinance No. 06-25, a City-initiated amendment to Section 4.4.19, "Mixed Industrial and Commercial (MIC) District" to adopt regulations prohibiting the location of Adult Entertainment Establishments to the south of Atlantic Avenue, by finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in Land Development Regulations.
- D. Continue with direction.

### Public and Courtesy Notices

X Courtesy Notices are not required.

X Public Notices are not required for this request.