



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### Outdoor Consumption of Alcohol at Stand Alone Bars

Meeting	File No.	Application Type
January 24, 2022	2021-014-LDR	Amendment to the Land Development Regulations
Property Owner	Agent	Applicant
Not applicable.	Andrea Keiser, Esq., Keiser Legal LLLP	Hoppportunities Taproom, Inc.

### Request

Provide a recommendation to the City Commission regarding Ordinance No. 08-22, a privately initiated amendment to Section 4.3.3(V), "Special Requirements for Specific Uses" and Section 4.6.6, "Commercial and industrial uses to operate within a building" of the Land Development Regulations (LDR) to allow outdoor consumption of alcohol at stand alone bars serving only beer and wine, and to provide regulations to support the health, safety, and general welfare of the public.

### Background

Hoppportunities Taproom, Inc. (the "Applicant"), located at 440 NE 5<sup>th</sup> Avenue (property outlined in red on aerial) is a self-serve craft beer and wine bar that specializes in local independent craft beer and natural wines. Hoppportunities is within the Central Core Sub-district of the Central Business (CBD) District. In August 2020, the applicant submitted three concurrent requests:



- Amendment to the LDR to allow food trucks in a limited area of the Central Core Sub-district of the CBD, and to allow accessory outdoor use areas by conditional use at stand alone bars within the CBD.
- Request for Conditional Use Approval to operate an accessory outdoor use area, in anticipation of approval of the LDR amendment.
- Request for Class IV Site Plan Amendment to approve a permanent outdoor area.

At the time of the applicant's submittal, the City had a pending update to Chapter 120 of the Code of Ordinances, *Operation and Sale of Food from Mobile Food Trucks*, to bring adopted regulations for food trucks into statutory compliance subsequent to legislative changes. The applicant requested that the City Commission include a limited area of the CBD Central Core Sub-district in the list of zoning districts where food trucks may operate. Ordinance No. 56-20 was adopted on December 8, 2020, and the permissible zoning districts for food truck operations were expanded to allow their operation north of Lake Ida Road within the Central Core Sub-district of the CBD, subject to Chapter 120. The adopted ordinance rendered further updates to food truck regulations unnecessary for the applicant's intent; subsequently, Hoppportunities began operations of an on-site food truck.

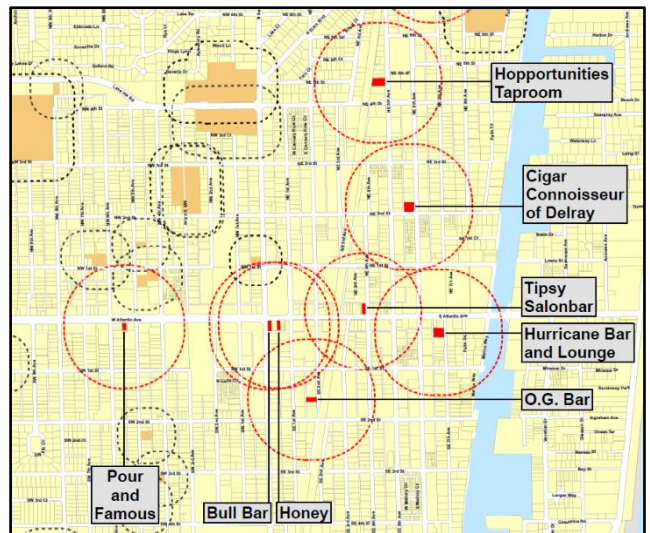
During review of the applicant's request, staff determined that additional updates were necessary to the LDR governing outdoor consumption of alcohol. Code of Ordinances Section 113.02(A)(5) prohibits outdoor consumption of alcohol, "*On business property outside the building with the exception that patrons seated at permanent tables provided by the business may consume alcoholic beverages.*" LDR Section 4.6.6(B), Allowable outside usage, allows outside dining areas, but not outdoor areas at stand alone bars. The Code of Ordinances allows the outdoor consumption of alcohol; the LDR does not.

In response to COVID-19, the City of Delray Beach authorized a program in May 2020 to temporarily allow businesses to expand their business footprint to add new outdoor use areas, or to increase the footprint of existing outdoor uses, to assist businesses with continued operations in a safe manner. As part of the temporary approval, businesses were permitted to expand commercial uses to private

outdoor areas, such as parking lots during normal business operating hours, subject to Development Services Department review and approval. Hoppportunities requested approval in September 2020 and received such approval in October 2020. The program is currently in place until May 1, 2022. Because of the temporary use approval granted to Hoppportunities, the request to amend the outdoor alcohol regulations in the LDR was placed on hold until the temporary outdoor use regulations are scheduled to sunset. Hoppportunities has received no Code Enforcement citations related to the temporary outdoor use area.

During discussions of the evolving COVID policies locally and statewide, the City Commission indicated that a permanent allowance for outdoor consumption might be acceptable with appropriate regulations limited specifically to establishments serving only beer and wine. Development Services and the City Attorney's office worked with the applicant to draft the proposed regulations in Ordinance No. 08-22 to fully address the applicant's request while developing general policies governing outdoor alcohol consumption to protect the health safety and general welfare of the public.

In consideration of the amendment, it is important to note that there are currently separation requirements between stand alone bars and churches and schools. The map to the right provides a portion of the map of established stand alone bars in the city; the complete map is provided as an attachment. The red dashed circles indicate the required 750-foot separation between all bars. The properties in gold with a black dashed 300-foot radius around them are either churches or schools; stand alone bars cannot be located within the radius area.



NOTE: The subject request is the last amendment submitted to the City prior to the adoption of the new local rules that require Commissioner sponsorship of a request to amend the LDR.

### Description of Proposal

The proposed LDR amendment provides regulations to allow outdoor consumption of alcohol at approved stand alone bar establishments located anywhere within the municipal limits of Delray Beach. The proposed amendments are summarized as follows:

Section 4.3.3(V), Special Requirements for Specific Uses, Uses Involving Alcoholic Beverages: Modification to existing section adding that outdoor consumption of alcohol is allowed in an approved accessory outdoor use area with permanent seating at stand alone bars that have a license limited to service of beer and wine, subject to the following requirements and specifications:

- Proof of approval from the applicable regulatory agency that the license allows outdoor consumption of alcohol.
- Off-street parking must be provided for the outdoor use area at the same parking rate as the main (inside) use.
- The outdoor use area must be accessory to the indoor use area.
- Stand alone bars are not permitted to have an outdoor use area within 300 feet of a residentially zoned district as measured from the entire boundary of the outdoor use area to the closest property line of the residentially zoned property.
- The outdoor use area and adjacent areas must be well-maintained.
- The outdoor use area must be reflected on the site plan associated with the establishment's approved site plan or Zoning Certificate of Use.
- Amplified music, live music, or music played by a disc jockey are not permitted in the outdoor use area.
- Outdoor use areas may have the same hours as the indoor use area. The outdoor use area hours are subject to approval as part of the conditional use process, and must be posted in the outdoor use area.

- A site plan must provide the following information:
  - The square footage and dimensions of the outdoor use area and the configuration of the area in relationship to the primary indoor use area and the distance from the property line; and
  - Location of permanent seating; and
  - Proposed location of screening and barriers such as fence or wall, planters, railings or other similar permanent fixtures and landscaping to provide visual screening, adequate protection from vehicular use areas, and sound buffering.

Section 4.6.6(B), Commercial and Industrial Uses to Operate Within a Building, Allowable Outside Usage: Modification to existing language to add “*stand alone bars with permanent seating that have a license limited to service of beer and wine, subject to the restrictions in Section 4.3.3(V)(5)*” as an allowable outdoor use.

## Review and Analysis

Pursuant to **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. Pursuant to **LDR Section 2.4.5(M)(1)**, amendments to the Land Development Regulations may be initiated by the City Commission, Planning and Zoning Board or City Administration; or an individual. The proposed amendment is privately initiated.

**Section 2.4.5(M)(5), Findings**, says that “the City Commission must make a finding that the text amendment is consistent with and furthers the Goals, Objectives and Policies of the Comprehensive Plan.” The following objectives and policies of the adopted Always Delay Comprehensive Plan are applicable to the proposed amendment.

### Neighborhoods, Districts, and Corridors Element

Objective NDC 3.5 Update Land Development Regulations: Regularly review and update the Land Development Regulations to provide timely, equitable and streamlined processes including, but not limited to, building permit processes for residential developments and to accommodate mixed-use developments, address market changes and development trends, and other innovative development practices.

The applicant indicates a desire to serve patrons in an outdoor use area in response to the demands of patrons prior to COVID-19. Post COVID-19, the pandemic has resulted in an increased demand for outdoor areas to reduce the risk of COVID-19 contamination in enclosed spaces. The use of outdoor space will allow opportunities for physical distancing and provide ventilation for the enclosed space to reduce the risk of cross-contamination. The proposed amendment provides a permanent solution to the temporary COVID-19 regulations authorized by the City and provides stand alone bars the opportunity to provide an outdoor experience for members of the public.

### Healthy Community Element

Objective HCE 3.7: Sense of Place Foster identity and community pride by creating a sense of place in neighborhoods and public spaces.

Objective 3.8 Built Environment Design & Safety: Promote safety through the design of the built environment.

Policy HCE 3.8.3: Continue promoting mixed-use development and traditional neighborhood design principles to increase pedestrian activity and eyes on the street.

In addition to the benefits that outdoor areas provide related to COVID-19 safety protocols, outdoor use areas can activate the street and contribute to a sense of place. The adopted regulations currently allow outdoor use areas in any restaurant or café (including those that serve alcohol); stand alone bars are the only food and beverage serving establishment that cannot provide service in an outdoor area. Any request for conditional use approval for an outdoor use area would take these policies related to sense of place and design of the built environment into consideration as part of the required findings for a conditional use.

### Housing Element

Objective HOU 1.1 Neighborhood Character: Support and respect the diverse and distinct character of Delray Beach’s neighborhoods.

The proposed regulations establish requirements intended to preserve the character of residential neighborhoods, particularly through the establishment of the proposed distance separation requirement. The proposed regulations in Section 4.3.3(V)(5)(a)4. specify that “stand alone bars are not permitted to have an outdoor use area within 300 feet of a residentially zoned district as measured from the entire boundary of the outdoor use area to the closest property line of the residentially zoned property.” The separation requirements from residentially-zoned areas is intended to protect neighborhoods from the possible impacts from outdoor uses, such as noise or higher levels of activity than expected.

A stand alone bar proposing an outdoor use area located less than the required distance from residentially zoned property would be subject to the waiver process. Generally, distance separation requirements in the LDR are measured from property line to property line, except for the distance separation requirements for tattoo establishments from churches (300 feet measured from the nearest point of the building of the place of business, location, or establishment to the nearest point of the church building or buildings) and schools (300 feet measured from the nearest point of the building of the place of business, location, or establishment to the nearest point of the school grounds in use as a part of the school facilities).

On occasion, there have been instances when relief has been requested and approved to allow a reduced separation between properties. For example, a stand alone bar may be located within a shopping plaza and located greater than 300 feet from a residentially zoned property; while the property line of the shopping plaza is within 300 feet; as a result, relief to the distance requirement is sought, which requires City Commission approval via consideration of a waiver to reduce the distance between the properties. If the Board deems it more appropriate or consistent to require that the outdoor use area be measured from the property line, as opposed to the use area itself, it is important to note that the waiver process to reduce the distance is the path prescribed in the LDR, and the request would be considered as part of the conditional use process.

To establish a conditional use, the City Commission must make the finding that establishment of the conditional use will not (a) *Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;* or (b) *Hinder development or redevelopment of nearby properties.* Any request for conditional use approval for an outdoor use area would take the potential to impact neighborhood character into consideration as part of these required findings.

### **Economic Prosperity Element**

Objective ECP 2.1 Small Business Growth: *Support efforts to strengthen the small business-entrepreneurial ecosystem to provide for more in-area resources and services.*

Policy ECP 2.5.1: *Supporting organizations and entities to promote social responsibility within their business.*

Goal ECP 4 Business Climate & Competitiveness: *Cultivate a more business-friendly environment and dynamic entrepreneurial ecosystem which allow local establishments to grow in place, attract new industry clusters and firms and produce new homegrown enterprises.*

Policy ECP 6.3.2: *Encourage predictability and consistency in the City’s Land Development Regulations, while also allowing for flexibility and creativity in the site development process.*

As a response to COVID-19, small businesses are seeking creative ways to deliver goods and services to patrons while maintaining viability. The use of outdoor seating to accommodate patrons at a stand alone bar represents innovative business practices. Providing the regulatory framework for small businesses to request use additional space to meet customer demand, with appropriate safety precautions, provides a vital resource to strengthen small businesses operations of establishments that want to demonstrate social responsibility by seeking creative ways to maintain business operations while protecting the health, safety, and general welfare of patrons during a public health emergency.

The proposed regulations allow the hours of the outdoor use areas to be the same as those of the indoor use area, with the final determination on hours of operation made during the conditional use process. The applicant specifically requested this language to prevent a drop-off in business when patrons are required to move indoors. If the stand alone bar property is located within 300 feet of a residentially zoned property, then the hours of operation are limited to no later than midnight, unless a conditional use request is granted to operate a “late-night business.” The Board should consider if the review of hours during the conditional use process is sufficient and appropriate, particularly when considering the distance from residentially zoned properties, or, if the hours of operation for the

outdoor use areas should be between the hours of 7 a.m. and 10 p.m. Sunday through Thursday, and between 7 a.m. and 11 p.m. on Friday and Saturday, which is consistent with the hours allowed for rooftop uses within the CBD.

### Review By Others

The **Pineapple Grove Main Street Board** reviewed the proposed amendment (as Ordinance No. 35-21) at its meeting on September 22, 2021. There was a split consensus on the recommendation. Those in favor of the amendment felt it provides an avenue for businesses to provide a service option that has grown in popularity; others felt that allowing limited outdoor consumption of alcohol would eventually lead to an expansion of the regulations, which would result in a bar culture that would encroach on residential dwelling units and be out of character with the city.

The **Downtown Development Authority (DDA)** reviewed the proposed LDR amendment (as Ordinance No. 35-21) at the January 10, 2022, meeting and voted unanimously to recommend approval of the proposed amendment with recommended revisions regarding the distance separation requirement and alcohol limitations, as detailed in the attached letter.

The **City Commission** will review Ordinance No. 08-22 at upcoming meetings; the specific meeting dates have not yet been determined.

### Possible Board Actions

- A. Recommend **approval** to the City Commission of Ordinance No. 08-22, amending Section 4.3.3 “Special requirements for specific uses”, Subsection (V) “Uses involving alcoholic beverages”; and Section 4.6.6 “Commercial and industrial uses to operate within a building”, Subsection (B) “Allowable outside uses” of the Land Development Regulations, 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. 08-22, **as amended**, amending Section 4.3.3 “Special requirements for specific uses”, Subsection (V) “Uses involving alcoholic beverages”; and Section 4.6.6 “Commercial and industrial uses to operate within a building”, Subsection (B) “Allowable outside uses” of the Land Development Regulations, by finding that the amendment as amended and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- C. Recommend **denial** to the City Commission of Ordinance No. 08-22, amending Section 4.3.3 “Special requirements for specific uses”, Subsection (V) “Uses involving alcoholic beverages”; and Section 4.6.6 “Commercial and industrial uses to operate within a building”, Subsection (B) “Allowable outside uses” of the Land Development Regulations, 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 were sent to the following:

- Chamber of Commerce

N/A Public Notices are not required for this request at the Planning and Zoning Board hearing; a legal ad and courtesy notice will be provided at 2<sup>nd</sup> reading at City Commission.