

ORDINANCE NO. 08-22

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES BY AMENDING CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.4, "BASE ZONING DISTRICT," SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT," TABLE 4.4.13(A), "ALLOWABLE USES AND STRUCTURES IN THE CBD SUB-DISTRICTS" TO ADD OUTDOOR USE AREAS AT STAND ALONE BARS AS A CONDITIONAL USE AND ACCESSORY USE; AND AMENDING ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS," SECTION 4.6.6, "COMMERCIAL AND INDUSTRIAL USES TO OPERATE WITHIN A BUILDING," SUBSECTION (B), "ALLOWABLE OUTSIDE USAGE," TO ALLOW OUTDOOR USE AREAS FOR STAND ALONE BARS SERVING BEER AND WINE, SUBJECT TO THE REGULATIONS HEREIN; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Keiser Legal, PLLC ("Agent") has initiated an amendment to the Land Development Regulations ("LDR") of the City of Delray Beach, Code of Ordinances on behalf of Hoppportunities Taproom, Inc., located at 440 NE 5th Avenue, Delray Beach ("Petitioner"); and

WHEREAS, the State of Florida has retained primary regulatory authority over the activities of licensees under the Beverage Law and has delegated its legislative authority to the Division of Alcoholic Beverages and Tobacco ("Division") within the Department of Business and Professional Regulation; and

WHEREAS, pursuant to the rulemaking authority granted under Florida Statute Chapters 561 and 120, the Division has adopted rules regulating alcohol licenses, has established differing classifications of vendor licenses based on alcohol type, and thus has created the 2COP license for the sale and consumption of beer and wine only with the specific intent to exclude liquor; and

WHEREAS, a vendor with an approved 2COP license is authorized by the state to sell beer and wine for consumption on and off the premises where sold, including outdoor areas, in accordance with the governing municipality's local zoning laws; and

WHEREAS, because of the significant disparity in alcoholic strength and consistent with the Division's classifications, the Petitioner desires to propose an amendment exclusively intended for 2COP licenses in order to protect the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large; and

WHEREAS, this Ordinance proposes to amend the LDR to allow the outdoor consumption of alcohol as a conditional use in permanent outdoor use areas of stand alone bars with a 2COP license in a portion of the Central Core Sub-District located north of Lake Ida Road; and

WHEREAS, the proposed amendment imposes restrictions on the hours of operation and use of amplified music and includes requirements to provide screening and permanent outdoor seating in the accessory outdoor use areas to support the health, safety, and general welfare of the public; and

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, considered this item at a public hearing on January 24, 2022, and voted 4 to 1 to recommend these proposed text amendments be denied, finding the request and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in the Land Development Regulations; and

WHEREAS, the City Commission of the City of Delray Beach finds this Ordinance is consistent with the Comprehensive Plan, meets the criteria set forth the Land Development Regulations, and is in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitations set forth above are incorporated herein.

Section 2. Article 4.4, “Base Zoning District,” Section 4.4.13, “Central Business (CBD) District,” Table 4.4.13(A), “Allowable Uses and Structures in the CBD Sub-districts,” of the Land Development Regulations of the City of Delray Beach Code of Ordinances, be and the same is hereby amended as follows:

Table 4.4.13(A)—Allowable Uses and Structures in the CBD Sub-Districts					
Uses	Central Core	Railroad Corridor	Beach Area	West Atlantic Neigh.⁵	South Pairs Neigh
General retail uses and/or facilities, as in GC district (4.4.9) ¹	P	P	P	P	P
Business, professional, and medical uses, as in GC district (4.4.9)	P	P	P	P	P
Services and facilities, as in GC district (4.4.9) ² , excluding drive-through facilities	P	P	P	P	P
Multiple-family dwellings ³	P	P	P	P	P
Astrologist, clairvoyants, fortune tellers, palmists, phrenologists, psychic reads, spiritualists, numerologists and mental healers as in GC district (4.4.9)	-	-	-	-	P
Community residences	See 4.4.13(C)(4)(a)				
Nursing homes, abused spouse residences, continuing care facilities, and assisted living facilities that do not comport with the definition of "community residence"	P	P	P	P	C
Live/work units (see 4.3.3(KKK))	P	P	P	P	P

Hotels, motels, and residential-type inns ³ (see 4.3.3(M) and 4.3.3 (X))	P	P	P	C	C
Bed and breakfast inns (see 4.3.3 (Y))	P	P	P	C	C
Public Parking Garages, as mapped on a Regulating Plan	P,S	P,S	P,S	P,S	P,S
Fabrication and/or Assembly	-	P	-	-	-
Wholesaling, Storage, and Distribution ⁴	-	P	-	-	-
Contractor and trade services	-	P	-	-	P
Automobile brokerage, including vehicle display within an enclosed structure	-	P	-	-	-
Tattoo Establishments (see 4.3.3(ZB))	P,A	P,A	P,A	P,A	P,A
CBD Oil Establishments (see 4.3.3 (CC))	P,A	P,A	-	-	-
Family day care homes (see 4.3.3(T))	A	A	A	A	A
Home occupations (see 4.3.3(K))	A	A	A	A	A
Mechanical parking lifts (see 4.6.9(D)(11) and 4.6.9(F)(4))	A,S	A	A,S	A,S	A,S
Parking areas, passenger drop-off, loading/unloading, refuse and service areas	A,S	A	A,S	A,S	A,S
Automated Parking Garages	-	S	-	-	-
Refuse and service areas	-	-	-	-	-
Recreational facilities (for a multiple-family development)	A	A	A	A	A
Services and repair (incidental to the associated principal use)	A,S	A	A,S	A,S	A,S
Single-family dwelling (occupied by owner, proprietor, or employee of the principal use)	A	A	A	A	A
Storage of inventory (not shared or leased independent of the principal use)	A,S	A	A,S	A,S	A,S
Automobile repair, service	-	C	-	-	-
Neighborhood Automotive Rental facility (See 4.3.3(C))	-	-	-	-	C
Child care Facilities (see 4.3.3(E)) and adult day care facilities (see 4.3.3(F))	C	C	C	C	C
Commercial recreational facilities, such as bowling alleys, skating rinks, and amusement game facilities	C	C	C	C	C
Drive-through facilities (serving banks, financial institutions, retail uses, etc.) ² See 4.4.13(J)(7)(a)	C	C	C	C	C
Food Preparation and/or Processing including bakeries and catering	-	C	-	-	-
Funeral homes, including accessory uses such as a chapel or crematory	C	C	C	C	C
Gasoline stations (See 4.4.13(J)(7)(b) and/or car washes (See 4.4.13(J)(7)(c))	C	C	-	-	C
Large family child care homes (see 4.3.3(TT))	C	C	C	C	C
Dry-cleaning Processing Plants	-	C	-	-	-
Segway tours and Segway sales (see 4.3.3(ZZZZ))	C	C	C	C	C
Theaters, excluding drive-ins	C	C	C	C	C
Pet Services [See 4.3.3(W)]	C	C	C	C	C
Pet Hotels [see 4.3.3(W)]		C			C
Veterinary Clinics [see 4.3.3(W)]	C	C	C	C	C
24-hour or late-night businesses, within 300 feet of residential zoned property [see 4.3.3(VV)]	C	C	C	C	C

Urban Agriculture [4.3.3 (D)] excluding outdoor Urban Farms	P,A	P,A	-	P,A	P,A
Outdoor Urban Farms [4.4.3(D)]	C	C	C	C	C
Clubs and Lodges as in GC (4.4.9)	-	-	-	-	C
Flea Markets, Bazaars as in GC (4.4.9)	-	-	-	-	C
Sales and service of all terrain vehicles and personal watercraft as in GC (4.4.9)	-	-	-	-	C
Vehicle care (See 4.4.13(C)(4)(f)(5))	-	-	-	-	C
Churches or places of worship (See 4.4.13(C)(4)(c))	-	-	-	C	C
<u>Outdoor Use Area for Stand Alone Bars⁶</u> <u>(see 4.3.3(V) and 4.6.6(B)(6)(b))</u>	<u>C, A</u>	-	-	-	-
LEGEND: P = Principal Use A = Accessory Use C = Conditional Use - = Prohibited Use S = Secondary Street Use					

¹ Sales of automotive parts, lawn care equipment, firearms, or secondhand material (other than verifiable antiques) are not allowed on properties facing a designated Required Retail Street on the Regulating Plan or anywhere within the West Atlantic Neighborhood.

² Drive-thru and Drive-in restaurants are not permitted within the CBD.

³ For density limits, see Table 4.4.13(C).

⁴ Not self-storage facilities; products and materials shall not exceed 55 gallons of any substance which is listed on the Generic Substances List of the Palm Beach County Wellfield Protection Ordinance (Ref.: Palm Beach County LDC, Article 9, Section 9.3)

⁵ See Section 4.4.13(C)(4)(a) for limits on commercial use locations in the West Atlantic Neighborhood Sub-district.

⁶ Outdoor Use Areas for Stand Alone bars are only permitted within the portion of the Central Core Sub-district located north of Lake Ida Road and is subject to the provisions enumerated in Section 4.6.6(B)(7) and 4.6.6(C)(5).

Section 3. Article 4.6, “Supplemental District Regulations,” Section 4.6.6, “Commercial and industrial uses to operate within a building” of the Land Development Regulations of the City of Delray Beach Code of Ordinances, be and the same is hereby amended as follows:

(A) ***Intent.***

- (1) All commercial and industrial uses shall conduct within a completely enclosed building rather than outside regardless of the zoning district. However, certain aspects of a use may be conducted outside and such aspects are identified in (B) below.
- (2) Certain conditional uses that are allowed within commercial, industrial, and mixed use districts can be characterized as outside uses. Such operations may be conducted outside when it is specifically determined through the conditional use process that the outside aspects of the use are appropriate. Conditions may be applied to mitigate visual and other impacts.

- (3) Commercial and industrial uses may be allowed outside on a temporary basis for special events pursuant to Section 2.4.6(F).
- (B) ***Allowable outside usage.*** The following ~~aspects of a uses~~ may be conducted outside, pursuant to the restrictions listed in Section 4.6.6(C) below.
- (1) Off-street parking.
 - (2) Refuse and service areas.
 - (3) Storage of nursery plants.
 - (4) Fruit and vegetable displays.
 - (5) Signage.
 - (6) ~~Outside~~ Dining areas at bona-fide restaurants as part of an approved site plan.
 - (7) Permanent seating areas at stand alone bars.
 - ~~(7)~~(8) Loading and unloading of materials.
 - ~~(8)~~(9) Outside storage where specifically permitted within a zoning district.
 - ~~(9)~~(10) Activities associated with outside conditional uses, pursuant to (A)(2) above.
 - ~~(10)~~(11) Retail displays.
- (C) ***Restrictions on outside usage.***
- (1) Dumpsters, recycling containers, and similar service areas must be enclosed on three sides and have vision obscuring gates on the fourth side, unless such areas are not visible from any adjacent public right-of-way.
 - (2) Outside storage. Materials and equipment stored outside must be screened from view from adjacent public rights-of-way in a manner approved by the Site Plan Review and Appearance Board. Outside storage may not be located within a required setback area. It is not intended that sales or customer service be conducted in an area designated for storage.
 - (3) Outdoor retail displays.

- (a) Outdoor retail displays must be located adjacent to the building containing the main use, on property owned or leased by the business conducting the main use. No display is permitted on public rights-of-way, except when part of an approved special event.
 - (b) Outdoor display areas may not exceed ten percent of the square footage of the interior of the building which contains the main use.
 - (c) When an outside display of plants is associated with nurseries and garden shops, one-half of the ground area devoted to such use shall be considered as "floor area" for the purposes of calculating and providing on-site parking.
 - (d) The Fire Marshal may require the removal or modification of outside displays upon written order, when such displays prevent or impede adequate ingress and egress for emergency purposes.
- (4) The City Manager shall have authority to grant administrative relief from LDR Section 4.6.6(C)(3) provided that:
- (a) The outside display areas are part of an approved special event.
 - (b) The administrative relief shall not exceed ten calendar days in duration.
- (5) Outdoor use areas at stand alone bars.
- (a) Only stand alone bars with a Beer and Wine Consumption on Premises (2COP) license located north of Lake Ida Road within the Central Core Sub-district of the Central Business District may request conditional use approval for the outdoor accessory use.
 - (b) Businesses must obtain approval for the permanent extension of premises from the State of Florida Division of Alcoholic Beverages and Tobacco.
 - (c) Additional off-street parking shall be provided for the outdoor use area at the same parking rate as the principal use.
 - (d) Properties with outdoor use areas are not permitted within 300 feet of any residentially zoned property. The distance shall be measured from the nearest point of the property to the nearest point of a residentially-zoned property.
 - (e) Amplified music, live music, and music played by a disc jockey are only permitted within enclosed spaces.
 - (f) An updated site plan must be provided with the following information:

1. The square footage and dimensions of the outdoor use area, the distance from the property line, and its relationship to the primary indoor use area; and
2. The location of permanent seating, including but not limited to tables, chairs, booths, bar stools, benches and standup counters.
3. The location of protective fences or walls, planters, railings or other similar permanent fixtures, and landscaping. All barriers shall be a minimum of three feet in height.

Section 4. All ordinances or parts of ordinances in conflict herewith be, and the same are, hereby repealed.

Section 5. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 6. Specific authority and direction is hereby given to the City Clerk to codify this Ordinance.

Section 7. This Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2022.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

First Reading _____

Second Reading _____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney