



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## PLANNING AND ZONING BOARD STAFF REPORT

### Restaurant Definitions

Meeting	File No.	Application Type
January 23, 2023	2020-160-LDR	Amendment to the Land Development Regulations

### Request

Provide a recommendation to the City Commission on Ordinance No. 40-22, amending Section 4.3.3, "Special Requirements for Specific Uses," Section 4.4.9, "General Commercial (GC) District," Section 4.4.11, "Neighborhood Commercial (NC) District," Section 4.4.13, "Central Business (CBD) District," Section 4.4.14, "Resort/Tourism (RD) District," Section 4.4.15, "Planned Office Center (POC) District," Section 4.4.24, "Old School Square Historic Arts District (OSSHAD)," Section 4.6.9, "Off-Street Parking Regulations," and Appendix A - "DEFINITIONS" of the Land Development Regulations (LDR), for the purpose of updating restaurant definitions, providing provisions for limited indoor dining in certain establishments, and updating language for clarity.

### Background Information

The proposed LDR amendment seeks to provide clear definitions for different types of restaurant establishments, while also establishing provisions for limited indoor dining at retail establishments. The LDR specifies certain uses within zoning categories, as defined within the Appendix. For example, the sale of antiques, cosmetics, meats, foods, music and musical instruments, sporting goods, and many other categories are considered retail. Generally, retail uses are not intended for consumption or use on site, but it does occur in some instances. Ice cream shops are one such example of an establishment where both the retail sale and consumption occurs on site. The impetus for this LDR Amendment is a request received by Development Services for an ice cream shop, which required an administrative interpretation of the parking requirement, related to the provision of limited indoor seating.

The LDR provide direction for similar uses if the limited seating is located outdoors, and an establishment qualifies as a Sidewalk Café:

***All other uses (deli, sandwich shops, coffee shops, sub shops, etc.) not classified as a restaurant, but otherwise qualifying for a sidewalk café permit which have no inside seating shall be considered a general commercial use with respect to parking requirements. All other uses (deli, sandwich shops, coffee shops, sub shops, etc.) which have inside seating shall be considered a restaurant use with respect to parking requirements (LDR Section 4.6.9(C)(3)(d).***

For establishments with both indoor retail sales and limited indoor dining, however, the LDR does not clearly define whether or not this establishment would be classified as a restaurant or retail use. Thus, the parking requirements are not clear for such establishments. During the process of drafting an LDR amendment to address the ice cream shop use, staff identified a need to more broadly address the terminology for restaurants, due to both inconsistencies in language and the rise in popularity of new restaurant types that do not fit into any of the existing categories. This amendment would clarify the parking required for restaurants and retail establishments with sidewalk cafés, outdoor dining, and provide new provisions for limited indoor dining.

## Description of Proposal

The proposed LDR amendment provides clarity to uses, parking requirements for restaurants, and redefines or modifies the definitions of restaurants to reflect changes to the restaurant industry. Major changes are summarized in this section.

## Appendix A: Definitions

The table below provides an overview of the proposed changes to definitions, and the justification for the proposed change.

Definition	Description of Changes	Justification
Drive-Through	New definition; general to any drive-through use.	
Drive-in Restaurant or Refreshment Stand	Definition repealed.	The definition was poorly written and created an unnecessary category.
Drive Thru Restaurant	Definition repealed.	The definition was poorly written and duplicative; a new definition was more appropriate.
Limited Indoor Dining	New definition allowing for the provision of up to eight seats within a retail or certain type of restaurant.	Many establishments and proposed establishments have requested a policy change that would allow smaller spaces that operate closer to a retail model of operations to do so without providing parking at the restaurant rate. Staff consulted with Neighborhood and Community Services, Clean and Safe Team to establish a reasonable threshold that can be counted and enforced.
Restaurant (Drive-Through)	New definition.	The new definition replaces outdated language; it specifies that a drive-through use can be principal or ancillary.
Restaurant (Fast-Casual)	Provides a new definition for this type of restaurant where food is prepared for take-out or seated dining without table service and without a drive through.	This type of restaurant has become more prolific throughout the area (mimicking the national trend) and was not previously well defined in the City's LDR Definitions.  <b><u>This definition includes anything that is not a bona fide restaurant.</u></b>
Restaurant (Bona Fide)	Grammatical and syntax corrections; relocating regulations to Section 4.3.3	Readability; regulations do not belong in definitions.

## Article 4.4, Base Zoning Districts

Modifications are proposed to several base zoning districts to reflect the updated definitions. The zoning districts to be updated are:

- Section 4.4.9 General Commercial
- Section 4.4.11 Neighborhood Commercial
- Section 4.4.13 Central Business District
- Section 4.4.14 Resort/Tourism
- Section 4.4.15 Planned Office Center
- Section 4.4.24 Old School Square Historic Arts District

## Section 4.6.9, Off-street Parking Regulations

This section is modified to update and clarify the Applicability (Subsection B) and Number of parking spaces required (Subsection C) to improve readability and to be consistent with the proposed changes. ***No changes to the number of parking spaces are proposed with this LDR Amendment.*** The primary purpose of this is to provide consistency with the new definitions, and to ***consider the provision of Limited Indoor Dining for establishments not operating as a restaurant.***

## Review and Analysis

**LDR Section 1.1.6, Amendments** says that *“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 initiated by the Development Services Department.

**LDR 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 Goals, Objectives, and Policies (GOPs) of the adopted 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 proposed amendment will improve the development review process by providing clear policies and procedures to staff and property owners within the city.

Policy NDC 3.5.1 *Review the uses and use descriptions in the Land Development Regulations to provide consistent terminology.*

The parking regulations in the LDR do not govern all types of ice cream shops or similar uses, and require updates to restaurant definitions. Staff have been reviewing these establishments parking requirements based on an administrative interpretation. The new definition of limited indoor dining provides establishments with the option to provide no more than eight seats interior to the buildings structure. Multiple establishments have either requested similar considerations or have modified business operations due to the zoning and parking requirements. Some instances include Whit's Frozen Custard, Pause at 131 Swinton, Kava Bar, Deke's in Delray, Kilwin's, Gelatto Go, Cream, Ben and Jerry's, Delray Goodies, It's Sugar, Tea by the Sea, A Kitchen, and Ramen 369. The proposed amendment will provide applicants and staff clear standards for parking requirements for ice cream shops and other restaurant uses.

### **Economic Prosperity Element**

Objective ECP 6.5 Small Business Growth *Support the growth and development of small businesses that enhance the vitality and quality of life in Delray Beach neighborhoods.*

Establishing clear, common sense standards for small shops that operate with more of a retail than a restaurant model encourages the leasing of smaller spaces, and provides the opportunity for small businesses to provide an amenity that would otherwise be cost prohibitive due to the high cost of providing parking at the restaurant parking rate.

## Review By Others

The amendment was reviewed by the following boards as Ordinance No. 27-21:

- Pineapple Grove Main Street Advisory Board
- Historic Preservation Board
- Chamber of Commerce
- Parking Management Advisory Board
- Site Plan Review and Appearance Board
- Downtown Development Authority
- Community Redevelopment Agency

The amendment will be reviewed in two (2) hearings before the City Commission at dates to be determined.

### Board Action Options

- A. Recommend **approval** to the City Commission of Ordinance No. 40-22, amending Section 4.3.3, "Special Requirements for Specific Uses," Section 4.4.9, "General Commercial (GC) District;" Section 4.4.11, "Neighborhood Commercial (NC) District;" Section 4.4.13, "Central Business (CBD) District;" Section 4.4.14, "Resort/Tourism (RD) District;" Section 4.4.15, "Planned Office Center (POC) District;" Section 4.4.24, "Old School Square Historic Arts District (OSSHAD);" Section 4.6.9, "Off-Street Parking Regulations;" and Appendix A - "DEFINITIONS" of the Land Development Regulations (LDR), 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. 40-22, **as amended**; amending Section 4.3.3, "Special Requirements for Specific Uses," Section 4.4.9, "General Commercial (GC) District;" Section 4.4.11, "Neighborhood Commercial (NC) District;" Section 4.4.13, "Central Business (CBD) District;" Section 4.4.14, "Resort/Tourism (RD) District;" Section 4.4.15, "Planned Office Center (POC) District;" Section 4.4.24, "Old School Square Historic Arts District (OSSHAD);" Section 4.6.9, "Off-Street Parking Regulations;" and Appendix A - "DEFINITIONS" of the Land Development Regulations (LDR), by finding that the amendment 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. 40-22, amending Section 4.3.3, "Special Requirements for Specific Uses," Section 4.4.9, "General Commercial (GC) District;" Section 4.4.11, "Neighborhood Commercial (NC) District;" Section 4.4.13, "Central Business (CBD) District;" Section 4.4.14, "Resort/Tourism (RD) District;" Section 4.4.15, "Planned Office Center (POC) District;" Section 4.4.24, "Old School Square Historic Arts District (OSSHAD);" Section 4.6.9, "Off-Street Parking Regulations;" and Appendix A - "DEFINITIONS" of the Land Development Regulations (LDR), 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.

### Public and Courtesy Notices

☐ Courtesy Notices were sent to:

- Chamber of Commerce

☒ Public Notices are not required for this request.