

ORDINANCE NO. 24-18

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING CHAPTER 2, "ADMINISTRATIVE PROVISIONS", ARTICLE 2.1, "DEVELOPMENT MANAGEMENT SERVICES GROUP," SECTION 2.1.2, "ADMINISTRATIVE ORGANIZATION AND RESPONSIBILITIES," BY ADDING APPROVAL OF ZONING CERTIFICATE OF USE AND OCCUPANCY AS A RESPONSIBILITY OF THE PLANNING AND ZONING DIRECTOR; AMENDING ARTICLE 2.4, "GENERAL PROCEDURES", SECTION 2.4.4, GENERAL PROCEDURES PERTAINING TO APPROVAL OF LAND USE AND DEVELOPMENT APPLICATIONS", BY AMENDING SUBSECTION (E), "EXPIRATION OF APPROVALS", TO PROVIDE AN EXPIRATION DATE FOR A ZONING CERTIFICATE OF USE AND OCCUPANCY; AMENDING SECTION 2.4.5, "PROCEDURES FOR OBTAINING DEVELOPMENT APPROVALS", BY AMENDING SUBSECTION (F), "SITE AND DEVELOPMENT AND MASTER DEVELOPMENT PLANS (MDP)," TO DEFINE AND CLARIFY THE APPROVAL PROCESS FOR A CLASS V SITE PLAN AND MASTER SITE DEVELOPMENT PLAN; AMENDING SUBSECTION (G), MODIFICATIONS TO SITE AND DEVELOPMENT PLANS," TO FURTHER CLARIFY SITE AND MASTER DEVELOPMENT PLANS, AND ADD A PROCESS FOR ZONING CERTIFICATE OF USE AND OCCUPANCY; AMENDING APPENDIX A, "DEFINITIONS," BY ADDING "ZONING CERTIFICATE OF USE AND OCCUPANCY," PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Delray Beach Land Development Regulations currently require a Class III Site Plan Modification for any change of use which is a change in the intensity of use, even if it is from one permitted use to another; and,

WHEREAS, frequently a change of use from one permitted use to another within an existing commercial or mixed-use structure does not require associated site modifications resulting from the change of use; and,

WHEREAS, there are also instances where business owners seek a business tax receipt prior to obtaining zoning confirmation for the respective use; when there are additional approvals required for the respective use not previously identified by the business owner, this additional time can negatively impact the businesses ability to open within the time programmed by the business operator; and,

WHEREAS, the proposed Zoning Certificate of Use and Occupancy and the associated process provides a zoning review in advance of the business tax receipt request and also provides a more streamlined zoning review and approval for use changes which are within the permitted uses and which do not require any physical site modifications to accommodate the new use; and,

WHEREAS, the Certificate of Use process will support our economic development initiatives by providing businesses a more streamlined process for use approval while still providing the appropriate zoning review; and,

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency (LPA), has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and,

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on September 17, 2018, and voted 5 to 1 to recommend that the changes be approved; and,

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and,

WHEREAS, the City Commission of the City of Delray Beach finds the Ordinance is consistent with the Comprehensive Plan.

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

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Section 2.1.2, “Administrative organization and responsibilities”, Subsection (B) “Responsibilities of required positions”, Sub-Subsection (a) “Director”, of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, be and the same is hereby amended as follows:

(a) Director.

1.4.1(C)	Interpretations of Use
4.3.2(C)(1)	Interpretations of Use
2.4.3	Waivers of, or additions to, individual land development submission requirements
2.4.3(A)(1)	The form of development order applications

2.4.5(G)(3)	Approval of non-impacting site plan modifications <u>and Zoning Certificate of Occupancy and Use</u>
2.4.5(I)(1)(a)	Promulgation of list of items not requiring Architectural Approval
2.4.6(J)(1)(c)	Promulgation of list of items not requiring a C-O-A-
2.4.7(D)	Granting of Administrative Relief
2.4.8(C)(4)	Acceptance of late submissions
2.4.9(B)	Certification of Site Plans
2.4.1(C)(3)	Designation as City Preservation Officer

Additional Items:

- Ensuring compliance with the annual review process established for the Comprehensive Plan as set forth in Part V of said Plan.
- Designation as the Ex-Officio Member to the Planning and Zoning Board.
- Designation as the Ex-Officio Member to the Site Plan Review and Appearance Board.
- Designation as the Ex-Officio Member to the Historic Preservation Board.

Section 3. That Section 2.4.4, “General procedures pertaining to approval of land use and development applications”, Subsection (E) “Expiration of Approvals”, of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

(E) Expiration of approvals.

(1) *Conditional uses, site plans, site plan modifications, preliminary subdivision plats, zoning certificate of use and occupancy.* All approval expiration dates for Conditional Use, Site Plan, Site Plan Modification, ~~and~~ Preliminary Subdivision Plat, and Zoning Certificate of Use and Occupancy shall be determined as follows:

(a) Approvals of Class IV and V Site Plans, Conditional Uses, and Major Conditional Use Modifications shall be valid for a period of 24 months. Class I-III Site Plan Modifications and Minor Conditional Use Modifications to an approved and established project, shall be considered a new approval and have an additional 24-month approval period. Class I-III Site Plan Modifications and Minor Conditional Use Modifications to an approved, yet unestablished project, shall be valid until the expiration date for the original Site Plan and/or Conditional Use approval.

(b) Approval of a Zoning Certificate of Use and Occupancy shall be valid for a period of 60 calendar days from the date of approval by the Director. If a Business Tax Receipt application is not submitted prior to the expiration date, a new Zoning Certificate of Use and Occupancy must be requested, and a new fee will be required.

Section 4. That Section 2.4.5, “Procedures for obtaining development approvals”, Subsection (F) “Site and Development and Master Development Plans (MDP)”, of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

(F) ~~*Site and Development*~~ *and Master Development Plans (MDP).*

(1) ***Rule.*** ~~Site and development plans are divided into five classifications. Class I - Class IV are modifications to site and development plans which include exterior site or building improvements and additions, as and are further described in Section 2.4.5(G). The Site Plan Review and Appearance Board, or the Historic Preservation Board, as applicable, may approve, approve subject to conditions or deny a Class V site and development plan. A Class V Site and Development Plan is described as follows: A Class V Site Plan is an application for new development of vacant land, or modification of a property originally developed as a single-family residence or duplex and which requires full review of Performance Standards found in Section 3.1.1. A Master Development Plan is a plan required for properties within certain zoning districts or for projects which are phased. A Zoning Certificate of Use and Occupancy is a request for a change of use or occupancy to a permitted use where no exterior site improvements are required.~~

~~(a) ***Class V.*** new application for development of vacant land, or for modification of a developed property when no valid site plan of record exists and which requires full review of Performance Standards found in Section 3.1.1.~~

(2) ***Required information.*** The following information must be presented in a site and development plan or a Master Development Plan (MDP) submittal:

- (a) Standard Application Items pursuant to Section 2.4.3(A);
- (b) Standard Site Plan Items pursuant to Section 2.4.3(B);
- (c) Standard Landscaping Plan Items pursuant to Section 2.4.3(C);
- (d) Preliminary Engineering Plans pursuant to Section 2.4.3(D);
- (d) Traffic Statement, Study, Report pursuant to Section 2.4.3(E); and,
- (e) Standard Architectural Elevation Items pursuant to Section 2.4.3(G);

(3) ***Procedure.*** A Class V site ~~and development plan~~ or Master Development Plan application shall be processed through the following sequence:

(a) Receipt and certification as complete;

(b) Administrative review for technical compliance;

~~(b)(c)~~ Consideration at a public meeting before the Planning and Zoning Board, the Site Plan Review and Appearance Board, or the Historic Preservation Board as appropriate, at which time action may be taken.

~~(e)(d)~~ For Class V site plan applications that include a request under the CBD's Incentive Program (see Section 4.4.13(H)): final action on the Class V site plan shall be taken by the City Commission after receiving a recommendation from the Site Plan Review and Appearance Board.

(e) Certification by the Director, or designee, of final approved plans.

(4) **Conditions.** Conditions may be imposed by the appropriate Board for Class V site plans and Master Development Plans pursuant to Section 2.4.4(C).

(5) **Findings.** In addition to provisions of Chapter 3, the approving body must make a finding that development of the property pursuant to the site plan as represented by the Class V site plan or MDP will be compatible and harmonious with adjacent and nearby properties and the City as a whole, so as not to cause substantial depreciation of property values.

(6) **Master Development Plans, Special Provisions.**

(a) A Master Development Plan (MDP) for property not located within a designated historic district and not located on an individually listed property shall be approved by the Planning and Zoning Board. A MDP shall be the guide for any subsequent site plan or subdivision action. A site plan shall be required for any phase or the entire area encompassed by a MDP. Individual site plans shall be processed pursuant to Section 2.4.5(G), (H), and (I) with approval authority of the Site Plan Review and Appearance Board.

(b) A Master Development Plan (MDP) for property located within a designated historic district or on an individually listed property shall be approved by the Historic Preservation Board. A MDP shall be the guide for any subsequent site plan, subdivision, and/or certificate of appropriateness, individual applications for which shall be approved by the Historic Preservation Board.

~~(c)~~ Variances and waivers to the requirements of base district standards and supplemental district regulations, referred to herein, may be granted by the Planning and Zoning Board concurrent with approval of the Master Development Plan ~~(MDP)~~ without the requirement of a public hearing.

(d) Upon approval of a MDP, the approved MDP shall be stamped and certified by the Director. Subsequent to approval of a MDP, all further submissions for review and permits shall conform in every respect with the MDP except as it may be officially modified pursuant to Section 2.4.5(G).

~~(7) Master development plan of record. Upon approval of a MDP, the approved MDP shall be stamped and certified by the Director as to its status. Subsequent to approval of a MDP, all further submissions for review and permits shall conform in every respect with the MDP except as it may be officially modified pursuant to Section 2.4.5(G).~~

Section 5. That Section 2.4.5, “Procedures for obtaining development approvals”, Subsection (G) “Modifications to site and development plans and Master Development Plans”, of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

(G) ***Modifications to site ~~and development~~ plans and Master Development Plans.***

(1) ***Rule.*** No change of use or modification to an approved site and development plan or a Master Development Plan shall be made unless application ~~therefore~~ has been made and the change of use or modification approved. Change of uses and m-Modifications to such plans shall be classified as follows:

(a) ***Zoning Certificate of Use and Occupancy.*** Approval of a change of use for permitted uses which do not require any exterior site improvements or modifications as required for a Class I to IV; these certificates do not require Board action.

(b) ~~(a)~~ ***Class I.*** Approval of items listed in Section 2.4.5(I)(1) such as but not limited to: walls, fences, slabs, dumpster enclosures, sheds, etc. which do not require Board ~~review~~ action; and changes in architectural elevations which require Board ~~review~~ action.

(c) ~~(b)~~ ***Class II.*** Approval of a modification to a site plan (other than Class I applications) which requires no review of Performance Standards found in Section 3.1.1, but which requires action by a Board.

(d) ~~(c)~~ ***Class III.*** A modification to the site plan which represents either a change in intensity of use, or which affects the spatial relationship among improvements on the land, requiring partial review of Performance Standards found in Section 3.1.1.

(e) ~~(d)~~ ***Class IV.*** A modification to a site plan which represents either a significant change in the intensity of use or significant changes which affect the spatial relationship among improvements on the land, requiring full review of Performance Standards found in Section 3.1.1.

(2) ***Required information.*** The following information, along with the appropriate application processing fee, must be presented ~~with a request for a site and development plan modification~~ for the following:

(a) ***Zoning Certificate of Use and Occupancy.*** Completed application along with a site survey, an exhibit showing the business floor plan, any additional documentation requested by the Planning and Zoning Division based upon the proposed use, and the application fee set by Resolution of the City Commission.

(b) ~~(a)~~ ***Class I and II.*** Completed Application along with an exhibit showing that portion of the site plan which is to be changed in its present condition and an exhibit depicting the requested change.

(c) ~~(b)~~ **Class III and IV.** Completed Application, and Required Information as applicable pursuant to Section 2.4.3(A), (B), (C), (D), (E), and (G) shall be provided along with a copy of the original site plan upon which the proposed changes are depicted.

(3) **Procedure.** A certificate of use and occupancy or site and development plan modifications shall be processed as follows:

(a) **Zoning Certificate of Use and Occupancy.** Receipt and acceptance of the submittal; administrative review for compliance with the LDRs, Building Code, and Fire Code; confirmation that no current violations are on file with the Code Enforcement Division; and, action by the Director, or designee, prior to application for a Business Tax Receipt.

~~(a)(b)~~ **Class I and II.** Receipt and acceptance of the submittal, administrative review, and action by the Director, or designee, or appropriate review Board if applicable.

~~(b)(c)~~ **Class III and IV.** Receipt and acceptance of the submittal and action by the appropriate Board.

(4) **Conditions.** Conditions may be imposed by the Director, or designee, or appropriate Board for Zoning Certificates of Use and Occupancy or Class I-IV site plan modifications pursuant to Section 2.4.4(C).

(5) **Findings.** Formal findings are not required for a Class I or II modification. ~~A finding that the proposed changes do not significantly affect the originally approved plan must be made concurrent with approval of a Class III modification.~~ Class IV modification is subject to the same findings required of a new submittal.

Section 6. That Appendix A, "Definitions", of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

Zoning Certificate of Use and Occupancy An inspection method by which the city documents the existing conditions of a non-residential property; identifies any non-conformities to be addressed by occupant/owner; establishes current land use and zoning; and grants approval to occupy a given location for a specified permitted commercial use prior to the issuance of a Business Tax Receipt. A Zoning Certificate of Use and Occupancy is required for any change in use to a permitted use, additional use, or change in business within an existing tenant space.

Section 7. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 8. That 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 this Ordinance.

Section 9. Specific authority is hereby given to codify this Ordinance.

Section 10. That 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 _____, 2018.

Shelly Petrolia, MAYOR

ATTEST:

Katerri Johnson, City Clerk

First Reading _____

Second Reading _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

City Attorney

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