

Draft LDR Amendments – “Outside Uses”

Sec. 4.6.6. - Commercial and industrial ~~uses to operate within a building~~operations.

(A) Intent.

- (1) All commercial and industrial uses shall be conducted 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. [Amd. Ord 27-08 6/17/08]; [Amd. Ord 60-93 10/12/93]
- (2) Certain conditional uses or associated aspects of a use that are allowed within commercial, industrial, and mixed use districts can be characterized as outside uses. Such ~~operations~~ uses or associated aspects 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. [Amd. Ord. 60-93 10/12/93]
- (3) Commercial and industrial uses may be allowed outside on a temporary basis for special events pursuant to Section 2.4.6(F). [Amd. Ord 27-08 6/17/08]

(B) ~~Allowable outside usage~~Outdoor use(s) allowed. The following aspects of a use may be conducted outside, pursuant to the restrictions listed in Section 4.6.6(C) below. [Amd. Ord. 60-93 10/12/93]

- (1) Off-street parking.
- (2) Refuse and service areas. [Amd. Ord. 60-93 10/12/93]
- (3) Storage of nursery plants.
- (4) Fruit and vegetable displays.
- (5) Signage.
- (6) Outside dining areas. [Amd. Ord. 60-93 10/12/93]
- (7) Loading and unloading of materials. [Amd. Ord. 60-93 10/12/93]
- (8) Outside storage where specifically permitted within a zoning district. [Amd. Ord. 60-93 10/12/93]
- (9) Activities associated with outside conditional uses, pursuant to (A)(2) above. [Amd. Ord. 60-93 10/12/93]
- (10) Retail displays. [Amd. Ord. 60-93 10/12/93]

(C) ~~Restrictions on outside usage~~Outside use restrictions.

- (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. [Amd. Ord. 60-93 10/12/93]
- (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.

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It is not intended that sales or customer service be conducted in an area designated for storage. [Amd. Ord. 60-93 10/12/93]

(3) Outdoor retail displays. [Amd. Ord. 60-93 10/12/93]

- (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. [Amd. Ord. 60-93 10/12/93]
- (b) Outdoor display areas may not exceed ten percent of the square footage of the interior of the building which contains the main use. [Amd. Ord. 60-93 10/12/93]
- (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. [Amd. Ord. 60-93 10/12/93]
- (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. [Amd. Ord. 60-93 10/12/93]

~~(4)~~(e) The City Manager shall have authority to grant administrative relief from LDR Section 4.6.6(C)(3) provided that: [Amd. Ord. 76-94 10/18/94]

~~(a)~~1. The outside display areas are part of an approved special event. [Amd. Ord. 76-94 10/18/94]

2. The administrative relief shall not exceed ten calendar days in duration. [Amd. Ord. 76-94 10/18/94]

(4) Outside uses associated with a standalone bar. A conditional use approval is required for one or more aspects of the outdoor use in Section (4) as defined below.

(a) Location, size, and outdoor “services” and activities

- 1. Outdoor uses associated with a standalone bar must be located adjacent to the building containing the main use and on property owned or leased by the business conducting the main use, but may not be located within setbacks or forward of the front facade. does not change sidewalk cafe rules
- 2. Any outdoor use area greater than the gross square footage of the main (inside) use area may require additional conditions to mitigate potential impacts.
- 3. All proposed outdoor service, stage, game, or activity areas, and accessory structures shall be represented on a site plan and considered as a part of the conditional use.

- (b) Sound amplification devices. An outdoor use may be approved to operate sound amplification devices if all of the following requirements are met:
1. Comply with noise standards in Section XXX, Code of Ordinances.
 2. A site plan identifying the location and details of all speakers, sound attenuation and outdoor stages which demonstrates the state, sound attenuation and speakers are located on the property to minimize the projection of sound amplification beyond the surrounding property lines of the proposed venue.
 3. Details and specifications that the proposed professional sound system includes a sound limiter. The professional sound system shall have a sound limiter with a tamper-resistant volume control limiter. The volume is to be set and locked at or below the maximum allowable sound level, and the sound levels from the outdoor venue shall not exceed the exterior decibel levels established for the zoning district in which the outdoor venue is located. The sound level from the outdoor venue shall meet the sound levels established for properties in the zoning districts of surrounding properties. An inspection of the sound data report from the sound limiter and access to the sound system shall be permitted at any time upon the request of a city police or code compliance officer. The failure to provide the city with the sound data report, or the refusal to provide the city with access to the sound limiter shall be an irreparable violation of this section.
 4. Sound attenuation of adequate height, length and density such as perimeter walls, landscaping, or other adequate soundproofing barriers around the outdoor stage and/or perimeter of the property are a requirement to ensure that the standards of Section XXX, Code of Ordinances are met at the property line and the sound levels established for the zoning districts of surrounding properties.
- (c) Live entertainment (amplified). A live entertainment permit is required for all amplified live entertainments. The permit requires a sound management plan and a plan illustrating the setup of the live entertainment. An event program shall be submitted which shall be subject to the review and approval of the city commission as a part of the conditional use. The purpose of the event program is to define the hours and frequency of events, performances, or live entertainment.
- (d) Enclosure. The outdoor use area must be enclosed at the property line by a fence, wall, or landscaping to adequately enclose the area with adequate height, length and density such as perimeter walls, landscaping, or other adequate soundproofing barriers around the outdoor area.
- (e) Parking. Off-street parking shall be provided for the outdoor use area at the same parking rate as the main (inside) use.

~~(b)~~

Draft LDR Amendments – “Stand Alone Bar”

APPENDIX A. DEFINITIONS

STAND ALONE BAR. Any licensed premises, including but not limited to, cocktail lounges, bars, nightclubs, dance clubs, piano bars and cigar bars, devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises, in which the serving of food, if any, is merely incidental to the consumption of any such beverage and the licensed premises is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. A place of business constitutes a stand alone bar in which the service of food is merely incidental in accordance with this definition if the licensed premises derives no more than ten percent (10%) of its gross revenue from the sale of food consumed on the licensed premises. [Amd. Ord. 42-03 11/18/03]

Note: The City’s LDR definition is the same as 386.2013(11), FS, definition for stand-alone bar

Additional LDR recommended change:

- Require all residential projects within the CBD to provide a “mixed use noise” disclosure to all tenants and buyers or provide their own mitigation measures such as sound proofing, etc.

LDR Section 4.3.3

(V) Uses involving alcoholic beverages: [Amd. Ord. 42-03 11/18/03]

- (1) Defined: For this subsection, alcoholic beverage is defined as:

*Distilled spirits and all beverages containing one-half of one percent or more alcohol by volume. [Amd. Ord. 42-03 11/18/03]

- (2) Prohibitions by frequency: The sale of alcoholic beverages for on-site consumption shall be allowed as a principal use within standalone bars and as an accessory use in chartered private clubs and golf courses with the restriction that: [Amd. Ord. 42-03 11/18/03]

(a) Not more than one standalone bar shall be located within any one block, nor within 750 feet of another standalone bar measured from lot line to lot line in a straight line. [Amd. Ord. 42-03 11/18/03]

(b) The above restriction does not apply to a duly licensed grocery store which sells beer and wine in packages for off-site consumption nor does it apply to a restaurant which holds a special restaurant license issued by the Department of Business Regulations of the State Division of Alcoholic Beverages and Tobacco. [Amd. Ord. 42-03 11/18/03]

(c) To be allowed to begin operating a business as a standalone bar, the following rules shall apply: [Amd. Ord. 22-05 4/19/05]

1. A written request to establish a standalone bar shall be submitted to the Planning and Zoning Department. Attached to the written request shall be a copy of a valid 4COP License, evidence of an executed lease to operate the business at the proposed location and a copy of an approved site plan for a restaurant or bar use (hereinafter referred to as the submission). The submission shall be date and time stamped by the Planning and Zoning Department. The submission shall be valid for a period of six months. [Amd. Ord. 22-05 4/19/05]

2. If locational requirements allow for a standalone bar to be established, a person or entity that has filed a submission as set forth above at the earliest time and date will be notified that the use may be established. If the stand alone bar use is not legally established pursuant to LDR Section 2.4.4(D) within 60 days after notification, the person or entity who filed a submission next in time and date shall have an opportunity to establish a standalone bar use. That person or entity and subsequent persons or entities that have a submission on file must also comply with the 60-day establishment requirement. Persons or entities that fail to establish the stand alone bar use in accordance with LDR Section 2.4.4(D) within the 60-day period shall not have any further priority to establish the stand alone bar use and the submission shall be deemed void unless no other persons or entities have filed a submission wherein a longer time to establish the use may be permitted upon request. [Amd. Ord. 22-05 4/19/05]

3.If for any reason the City is unable to determine who was first in time or unable to determine if the use was legally established and operational within the time permitted, the Planning and Zoning Board shall review all valid submissions on file regardless of time or date of the submission or establishment of the use, based on the required findings of LDR Section 2.4.5(E) and make a recommendation to the City Commission. The City Commission will then determine which standalone bar use is the most compatible with surrounding uses, based on the following: [Amd. Ord. 22-05 4/19/05]

- a. Compliance with code requirements, [Amd. Ord. 22-05 4/19/05]
- b. site's physical appearance, [Amd. Ord. 22-05 4/19/05]
- c. location, [Amd. Ord. 22-05 4/19/05]
- d. consistency with the Comprehensive Plan, and [Amd. Ord. 22-05 4/19/05]
- e. capacity of infrastructure to accommodate the proposed use, [Amd. Ord. 22-05 4/19/05]
- f. whether the stand alone bar will have a deleterious effect on adjacent businesses. [Amd. Ord. 22-05 4/19/05]

The standalone bar use deemed most compatible will then have the right to establish a standalone bar use as a permitted use within 60 days of the decision of the City Commission. [Amd. Ord. 22-05 4/19/05]

4.No assignment of any submission or rights obtained as a result of a submission to establish a standalone bar use under this section shall be permitted, provided, however, an established standalone bar use may continue to exist at the same location without participating in the process outlined in Subsection (c) for as long as the use is operational. If the stand alone bar use is not operational for a period of 180 days or the business location has been occupied by an intervening use, then the process described in subsection (c) herein shall apply. [Amd. Ord. 22-05 4/19/05]

5.New letters with attachments set forth above may be submitted once every six months. [Amd. Ord. 22-05 4/19/05]

(3) Prohibition by proximity (schools and churches): Alcoholic beverages shall not be sold at any establishment which is located within 300 feet of an established school or church.

- (a) With respect to schools, the 300 feet distance shall be 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.

- (b) With respect to churches, the 300 feet distance shall be measured from the nearest point of the building of place of business, location, or establishment to the nearest point of the church building or buildings.
 - (c) The 300 feet distance shall be measured in a straight line.
 - (d) The above restriction does not apply to a duly licensed grocery store which sells beer and wine in packages for off-site consumption nor does it apply to a restaurant which holds a special restaurant license issued by the Department of Business Regulations of the State Division of Alcoholic Beverages and Tobacco.
- (4) Bottle clubs prohibited: Bottle Clubs as defined in Appendix A are prohibited in all zone districts.
[Amd. Ord. 42-03 11/18/03]

Draft Code Amendments – “Alcoholic Beverages”

Sec. 113.02. - PROHIBITION OF CONSUMPTION OR POSSESSION OF OPEN CONTAINERS OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES.

- (A) Within this City it shall be unlawful for any person to consume alcoholic beverages or have in his/her possession any open container containing an alcoholic beverage while such person is:
- (1) On the public streets, sidewalks, alleys and other rights-of-way with the exception that seated patrons of a permitted sidewalk cafe may consume alcoholic beverages;
 - (2) On the beach;
 - (3) In public parks, provided, however, that patrons of the restaurants located at the Delray Beach Municipal Golf Course and Lakeview Golf Course may consume alcoholic beverages on the Delray Beach Municipal Golf Course and Lakeview Golf Course when they are golfing, and patrons attending an Old School Square, Inc. event at Old School Square, patrons attending an event at the Delray Beach Arts Garage/Arts Warehouse, or a Delray Beach Tennis Center event at the Delray Beach Tennis Center may consume alcoholic beverages during the event;
 - (4) In motor vehicles or trailers; or
 - (5) On business property outside the building with the exception that patrons ~~seated at permanent tables provided by the~~ of a business with the appropriate alcohol license and use approval may consume alcoholic beverages.
- (B) Any person may request that the City Manager waive the applicability of subsection (A) for certain public functions or affairs. The City Manager shall have seven (7) days to consider such a request and if denied, the applicant may appeal the denial of the request to the City Commission. Such appeal to the City Commission must be made within seven (7) days and will be considered by the City Commission within thirty (30) days of the denial.

(Ord. No. 4-90, passed 2/27/90; Am. Ord. No. 28-91, passed 2/26/91; Am. Ord. No. 11-98, passed 3/3/98; Ord. No. 46-11, § 1, passed 1/3/12)