

ORDINANCE NO. 02-20

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 FOUR, "ZONING REGULATIONS", ARTICLE 4.3, "DISTRICT REQUIREMENTS, GENERAL PROVISIONS", SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", BY AMENDING SUBSECTION 4.3.3(V), "USES INVOLVING ALCOHOLIC BEVERAGES", AND ADDING (5), "STANDALONE BARS WITH OUTDOOR USE AREAS", TO SPECIFY A PROCESS AND PROVIDE REGULATIONS FOR OUTDOOR USE AREAS ASSOCIATED WITH STANDALONE BARS; AMENDING ARTICLE 4.4, "BASE CONING DISTRICT", SECTION 4.4.13, "CENTRAL BUSINESS DISTRICT", SUBSECTION 4.4.13(C), "ALLOWABLE USES"; TABLE 4.4.13(A), "ALLOWABLE USES AND STRUCTURES IN THE CBD SUB-DISTRICTS", TO LIST STANDALONE BARS WITH OUTDOOR USE AREAS AS AN ALLOWED CONDITIONAL USE IN THE WEST ATLANTIC NEIGHBORHOOD SUB-DISTRICT; AND, AMENDING ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS", SECTION 4.6.6, "COMMERCIAL AND INDUSTRIAL USES TO OPERATE WITHIN A BUILDING", SUBSECTION 4.6.6(B), "ALLOWABLE OUTSIDE USAGE", TO CLARIFY OUTDOOR DINING AREAS ASSOCIATED WITH A RESTAURANT, AND TO LIST STANDALONE BARS WITH OUTDOOR USES; AND, PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a privately-initiated amendment to the Land Development Regulations (LDR) of the City of Delray Beach, Code of Ordinances, is requested by Neil M. Schiller, Attorney at Law, on behalf of Delray Spirits; and,

WHEREAS, the amendment provides the approval process for standalone bars with outdoor use areas, and identifies those regulations that must be followed to mitigate impacts on surrounding properties; and,

WHEREAS, the amendment will limit the listed use of "standalone bars with outdoor use area" to the West Atlantic Neighborhood Sub-district of the Central Business District; and,

*NOTE: The proposed amendments assume the adoption of Ordinance 06-19 (formerly 36-19).

ORD NO. 02-20

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 December 16, 2019 and voted _ to _ to recommend that the changes be approved; and

WHEREAS, the City Commission of the City of Delray Beach adopted 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 4.3.3, “Special Requirements For Specific Uses”, Subsection (V) “Uses involving alcoholic beverages”, of the Land Development Regulations of the City of Delray Beach Code of Ordinances, be and the same is hereby amended as follows:

(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.

(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:

- (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.
- (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.
- (c) To be allowed to begin operating a business as a standalone bar, the following rules shall apply:
 1. A written request to establish a standalone bar shall be submitted to the Planning and Zoning ~~Division~~ Department. Attached to the written request shall be a copy of a valid 4COP License, evidence of an executed lease to

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ORD NO. 02-20

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 Division ~~Department~~. The submission shall be valid for a period of six months.

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.
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: criteria. 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.
 - a. Compliance with code requirements,
 - b. site's physical appearance,
 - c. location,
 - d. consistency with the Comprehensive Plan, ~~and~~
 - e. capacity of infrastructure to accommodate the proposed use, and,
 - f. whether the standalone bar will have a ~~deleterious effect~~ negative impact on adjacent businesses.

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ORD NO. 02-20

~~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.~~

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 standalone 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.
 5. New letters with attachments set forth above may be submitted once every six months.
- (3) **Prohibition by proximity ~~(to schools and churches)~~:** Alcoholic beverages shall not be sold at any establishment which is located within 300 feet of an established school or church, as follows:-
- (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.~~ property line to property line.
 - (b) With respect to churches, 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 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.
- (5) **Standalone bars with Outdoor use area:** A conditional use approval is required for standalone bars with outdoor use area. and must comply with the following regulations:
- (a) All proposed outdoor service, game, or activity areas, and accessory structures shall be represented on a site plan and considered as a part of the conditional use.
 - (b) Amplified music is limited to the provisions of the conditional use approval, unless located within an enclosed building. Requests for amplified music must include the following:

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ORD NO. 02-20

1. a noise management plan; and,
2. a plan illustrating the setup of any live entertainment.
- (d) Screening. The outdoor use area must be screened at the property line by a fence or wall and landscaping to provide adequate screening and 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.

Section 3. That Section 4.4.13, “Central Business District (CBD)”, Subsection (C) “Allowable uses”, 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) ^{1,2}	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 ⁷	See 4.4.13(C)(4)(a)				
Nursing homes, 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
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

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ORD NO. 02-20

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
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, and 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
Veterinary Clinics	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
Standalone Bar with Outdoor Use Area (See 4.3.3(V), 4.6.6(B))	-	-	-	C	-
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).

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ORD NO. 02-20

⁴Not 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)

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

Section 4. That 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 be conducted within a completely enclosed building rather than outside regardless of the zoning district. However, certain uses or aspects of a use that 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 uses or aspects of a use 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 associated with bona fide restaurants or businesses where the food product is prepared, processed, or assembled on the premises where the food product preparation is the main or sole purpose of the business.
- (7) Loading and unloading of materials.
- (8) Outside storage where specifically permitted within a zoning district.
- (9) Activities associated with outside conditional uses, pursuant to (A)(2) above.
- (10) Retail displays.
- (11) Standalone bars with outdoor use area that are listed as an allowable use within a zoning district, subject to the provisions of Section 4.3.3(V), Uses involving alcoholic beverages.

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ORD NO. 02-20

Section 5. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 6. 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 7. Specific authority is hereby given to codify this Ordinance.

Section 8. 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 _____, 2020.

ATTEST:

Shelly Petrolia, Mayor

Katerri Johnson, City Clerk

First Reading_____

Second Reading_____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

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ORD NO. 02-20