

ORDINANCE NO. 58-20

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 SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", TO ADD A NEW SUBSECTION (CC), "CBD OIL ESTABLISHMENTS", TO PROVIDE A PURPOSE AND INTENT AND SPECIFIC REGULATIONS REGARDING THE HOURS OF OPERATION, PROHIBITIONS BY FREQUENCY AND PROXIMITY TO CERTAIN USES AND ZONING DISTRICTS, AND ACCESSORY USE REGULATIONS; AMENDING ARTICLE 4.4, "BASE ZONING DISTRICT," SECTION 4.4.9, "GENERAL COMMERCIAL (GC) DISTRICT", SUBSECTION (B), "PRINCIPAL USES AND STRUCTURES PERMITTED", AMENDING SECTION 4.4.12, "PLANNED COMMERCIAL (PC) DISTRICT," SUBSECTION (B), "PRINCIPAL USES AND STRUCTURES PERMITTED", AMENDING SECTION 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT," SUBSECTION (C), "ALLOWABLE USES," (3), "REQUIRED RETAIL FRONTAGE USE LIMITATIONS," TABLE 4.4.13(A) – "ALLOWABLE USES IN THE CBD SUB-DISTRICTS", AMENDING SECTION 4.4.19, "MIXED INDUSTRIAL AND COMMERCIAL (MIC) DISTRICT", SUBSECTION (B), "PRINCIPAL USES AND STRUCTURES PERMITTED", AMENDING SECTION 4.4.20, "INDUSTRIAL (I) DISTRICT", SUBSECTION (B), "PRINCIPAL USES AND STRUCTURES PERMITTED", AMENDING SECTION 4.4.26, "LIGHT INDUSTRIAL (LI) DISTRICT", SUBSECTION (B), "PRINCIPAL USES AND STRUCTURES PERMITTED" TO ADD CBD OIL ESTABLISHMENTS TO THE LIST OF PRINCIPAL USES AND STRUCTURES PERMITTED AND PROVIDE ADDITIONAL LOCATION RESTRICTIONS; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

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 the proposed amendments to the Land Development Regulations ("LDR") at a public hearing on October 19, 2020, and voted 5 to 2 to conditionally recommend the proposed text amendments be approved, finding the request

and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the LDRs; and

WHEREAS, after consideration of all evidence presented to the Planning and Zoning Board and the City Commission, the Commission makes the following findings with respect to establishments that process and sell cannabidiol (“CBD oil establishments”):

- A. The City Commission has a reasonable basis to believe that there are land use compatibility issues relating to the siting of CBD oil establishments and their customers when located adjacent to sensitive land uses such as residential zones, schools, parks, day care facilities, community residences, houses of worship, bars, and other CBD oil establishments.
- B. The City Commission notes that CBD oil is a federally and state regulated product whose effects are the subject of limited research but ongoing study; although legally available under federal and state regulation.
- C. Through its zoning code provisions, the City of Delray Beach seeks to maintain property values, protect tax revenues, provide neighborhoods social and economic stability, attract business and industry, and encourage conditions that make the City of Delray Beach a pleasant and sustainable place to live and work.
- D. Buffer provisions implement the compatibility and other City goals as stated above, as they serve to 1) protect the quality of life and neighborhoods in the City; 2) protect the City’s retail and commercial trade; 3) minimize the potential for nuisances related to the operation of CBD oil establishments; and 4) protect the well-being, tranquility and privacy of the home with the residential buffer. Accordingly, the City finds that it does not serve compatibility or its other goals to allow CBD oil establishments within 300 feet of a residential zone, schools, parks, day care facilities, or houses of worship.
- E. The City Commission also desires to avoid the clustering of CBD oil establishments so that the City does not experience a significant change in the character of the commercial and retail areas of the City. Clustering of specialty uses such as CBD oil establishments can create a specialty destination area that increases traffic and congestion, and is not consistent with nor serves to protect neighborhood serving commercial uses. Moreover, the City has for many years striven to overcome the blighting influence of illegal and inappropriate concentrations of facilities operating to prey on drug addicted persons. The City desires to encourage businesses that are of a scale in keeping with its history as the low key Village by the Sea. Accordingly, the City finds that it serves the interest of the public health, safety and welfare to avoid concentration and require 750 feet of distance between all CBD oil establishments or bars and not more than one per block.

- F. The City Commission by these regulations does not intend to totally prohibit the location of CBD oil establishments, but to regulate their location within the City.

WHEREAS, the City Commission considered these LDR text amendments after duly noticed public hearings held according to law.

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

Section 1. That the findings set forth in the above Whereas clauses are adopted and incorporated as if specifically set forth herein.

Section 2. That Article 4.3, “District Regulations, General Provisions”, Section 4.3.3, “Special Requirements for Specific Uses”, of the Land Development Regulations of the City of Delray Beach, Florida, be, and the same is hereby amended by adding a new Section 4.3.3(CC), “CBD Oil Establishments”, to read as follows:

Section 4.3.3 Special Requirements for Specific Uses.

* * *

(CC) CBD Oil Establishments

- (1) **Purpose and intent.** The purpose of this section is to regulate the location and operation of establishments that sell and distribute cannabidiol products (“CBD oil establishments”) to protect: the unique character and aesthetic of the City of Delray Beach’s family-friendly, historic downtown and neighborhoods and renowned beach resort community; property interests and rights; the public health, safety, and welfare; and the administration of local laws.
- (2) **Hours of Operation:** CBD oil establishments are limited to operating between 8 a.m. to 10 p.m.
- (3) **Accessory Use Regulations:**
 - a) CBD oil sales shall be permitted as an accessory use within Medical, Medical Clinics and Pharmacies pursuant to all other provisions of the LDRs, without regard to the distance provisions of Section 4.3.3.(CC)(4) of the LDRs.
 - b) Where a CBD oil establishment would otherwise be a permitted principal use but for the prohibition set forth by Section 4.3.3(CC)(4), CBD oil establishments shall be permitted as an

accessory use pursuant to all other provisions of the LDRs. For example, CBD oil establishments, even as an accessory use, shall not occupy “Required Retail Frontage” within any of the CBD Sub-districts.

- c) When permitted as an accessory use, CBD oil establishments shall be limited as follows:
 - i) 40% or less of gross floor area of the overall tenant space of the principal use.
 - ii) No exterior signage specifically for CBD oil establishments or related activities.
- (4) Prohibition by Frequency. CBD oil establishments shall be located no more than one per block or within 750 feet of another such use, or from a bar, as measured from lot line to lot line in a straight line.
- (5) Prohibition by Proximity. CBD oil establishments, whether principal or accessory, shall not be located within 300 feet of an established residential zone, school, public park, day care facilities, or houses of worship.
 - a) With respect to schools and parks, the 300 feet distance shall be measured from the nearest point of the property of the place of business, location, or establishment to the nearest point of the school property in use as a part of the school facilities.
 - b) With respect to houses of worship and day care facilities, the 300 feet distance shall be measured from the nearest point of the property of place of business, location, or establishment to the nearest point of the property of the house of worship building or buildings.
 - c) With respect to established residential zones, 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 residential zoning district boundary.
 - d) The 300 feet distance shall be measured in a straight line.

Section 3. That Article 4.4, “Base Zoning District”, Section 4.4.9, “General Commercial (GC) District”, Paragraph (B), “Principal Uses and Structures Permitted”, of the Land Development Regulations of the City of Delray Beach, Florida, be, and the same is hereby amended to read as follows:

Section 4.4.9 General Commercial (GC) District:

* * *

(B) **Principal Uses and Structures Permitted:** The following are allowed within the GC District as permitted uses, except as modified in the Four Corners Overlay District by Section 4.4.9(G)(3)(a).

- (1) General retail uses and/or facilities, including, but not limited to:
 - (a) Antiques, arts and crafts, automotive parts, baked goods, books, carpet and floor covering, cheeses, beer, wine, liquor, confectioneries, cosmetics, meats, draperies and slipcovers, pharmacies, electrical fixtures and supplies, fabrics, fish, flowers and plants, fruits and vegetables, food, garden supplies, gifts, glassware, hardware and paints, home furnishings, ice cream, lawn care equipment, leather goods, luggage, medical and surgical equipment, music and musical instruments, nautical supplies, office furniture equipment and supplies, office furniture equipment and supplies, pets and pet supplies, photographic equipment and supplies, sewing supplies, sporting goods, toys, wearing apparel and accessories, appliances, bicycles, business machines, jewelry.

* * *

(10) CBD oil establishments, pursuant to restrictions set forth in Section 4.3.3(CC).

Section 4. That Article 4.4, “Base Zoning District”, Section 4.4.12, “Planned Commercial (PC) District”, Paragraph (B)(1), “Principal Uses and Structures Permitted” of the Land Development Regulations of the City of Delray Beach, Florida, be, and the same is hereby amended to read as follows:

* * *

(B) **Principal Uses and Structures Permitted:** The following types of use are allowed within the PC District as a permitted use, except within the Four Corners Overlay District which shall be pursuant to Section 4.4.9(G)(3)(a):

- (1) All uses allowed as such within the GC District [Section 4.4.9(B)(1) through (5), (7), ~~and (8)~~, and (10)].
- (2) Automobile brokerage, including vehicle display within an enclosed structure, but excluding any preparation, service, or repair work.

Section 5. That Article 4.4, “Base Zoning District”, Section 4.4.13, “Central Business (CBD) District”, Paragraph (C)(3), “Required Retail Frontage Use Limitations” of the Land Development Regulations of the City of Delray Beach, Florida, be, and the same is hereby amended to read as follows:

(3) Required Retail Frontage Use Limitations. Streets designated on the Regulating Plan with Required Retail Frontage are intended to be lively, highly active pedestrian environments that support businesses and reinforce local character. Properties on streets designated with Required Retail Frontage have use and frontage type standards that apply to the sidewalk level story.

(a) (same as adopted)

(b) ***Central Core and Beach Sub-districts.*** One hundred of the building frontage at the sidewalk-level story shall be for the following uses (as described in Table 4.4.13(A)):

1. through 4. (same as adopted)

5. Limitations and exceptions.

a. Tattoo establishments are not permitted.

b. Financial institutions are limited to banks and savings and loan establishments; brokerage firms and private wealth management firms are not permitted. The following regulations also apply:

i. No more than 75 feet of financial institution frontage is allowed per block face; and

ii. No more than a total of 100 feet of financial institution frontage is allowed on facing street frontages. (For example, a new financial institution with 30 feet of street frontage may locate across the street from an existing financial institution with 70 feet of street frontage.)

- c. Sale of automotive parts, lawn care equipment, firearms, or secondhand material (other than verifiable antiques) are not permitted.
- d. Buildings constructed prior to 1980 located in the Beach Sub-district that have 80 percent or more of their frontage at a setback of 25 feet or greater shall be exempted from the 100 percent ground floor retail requirement.
- e. CBD oil establishments as a principal use, or the sale of CBD oil products as an accessory use.

Section 6. That Article 4.4, “Base Zoning District”, Section 4.4.13, “Central Business District”, 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, Florida, be, and the same is hereby amended to read as follows:

Table 4.4.13 (A) - Allowable Uses in the CBD Sub-Districts				
	Central Core	Railroad Corridor	Beach Area	West Atlantic Neigh.⁵
General retail uses and/or facilities , as in GC district (4.4.9) ^{1 2}	P	P	P	P
Business, professional, and medical uses , as in GC district (4.4.9)	P	P	P	P
Services and facilities , as in GC district (4.4.9), excluding drive-through facilities	P	P	P	P
Multiple-family dwellings³ , including residential licensed service provider facilities	P	P	P	P
Assisted living facilities, nursing homes, and continuing care facilities	P	P	P	P
Live/work units (see 4.3.3(KKK))	P	P	P	P
Hotels, motels, and residential-type inns³ (see 4.3.3(M) and 4.3.3 (X))	P	P	P	C
Bed and breakfast inns (see 4.3.3 (Y))	P	P	P	C
Public Parking Garages , as mapped on a Regulating plan	P,S	P,S	P,S	P,S
Fabrication and/or Assembly	-	P	-	-
Wholesaling, Storage, and Distribution⁴	-	P	-	-
Contractor and trade services	-	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
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
Home occupations (see 4.3.3(K))	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
Parking areas and refuse and service areas	A,S	A	A,S	A,S
Recreational facilities (for a multiple-family complex)	A	A	A	A
Services and repair (incidental to the principal use)	A,S	A	A,S	A,S
Single-family dwelling (occupied by owner, proprietor, or employee of the principal use)	A	A	A	A
Storage of inventory (not shared or leased independent of the principal use)	A,S	A	A,S	A,S
Automobile repair	-	C	-	-
Child care and adult day care facilities (see 4.3.3(E))	C	C	C	C
Commercial recreation , such as bowling alleys and skating rinks	C	C	C	C
Community residential homes (see 4.3.3(I))	C	C	C	C
Drive-through facilities (serving banks, retail uses, etc.)	C	C	C	C
Food Preparation and/or Processing	-	C	-	-
Flea markets, bazaars, and similar retail uses	C	C	C	C
Funeral homes , including accessory uses such as a chapel or crematory	C	C	C	C
Gasoline stations and/or car washes	C	C	-	-
Group homes, Type 2 only (see 4.3.3(I))	C	C	C	C
Large family child care homes (see 4.3.3(TT))	C	C	C	C
Dry-cleaning Processing Plants	-	C	-	-
Segway tours and Segway sales (see 4.3.3(ZZZZ))	C	C	C	C
Theaters , excluding drive-ins	C	C	C	C
Veterinary Clinics	C	C	C	C
24-hour or late-night businesses , within 300' of residential property (see 4.3.3(VV))	C	C	C	C

Section 7. That Article 4.4, “Base Zoning District”, Section 4.4.19, “Mixed Industrial and Commercial (MIC) District”, Subsection (B), “Principal Uses and Structures Permitted” of the Land Development Regulations of the City of Delray Beach, Florida, be, and the same is hereby amended to read as follows:

(1) Through (8) (same as adopted)

(9) CBD oil establishments, subject to the regulations of Section 4.3.3(CC).

Section 8. That Article 4.4, “Base Zoning District”, Section 4.4.20, “Industrial (I) District”, Subsection (B), “Principal Uses and Structures Permitted” of the Land Development Regulations of the City of Delray Beach, Florida, be, and the same is hereby amended to read as follows:

(1) Through (6) (same as adopted)

(7) CBD oil establishments, subject to the regulations of Section 4.3.3(CC).

Section 9. That Article 4.4, “Base Zoning District”, Section 4.4.26, “Light Industrial (LI) District”, Subsection (B), “Principal Uses and Structures Permitted” of the Land Development Regulations of the City of Delray Beach, Florida, be, and the same is hereby amended to read as follows:

(1) Through (6) (same as adopted)

(7) CBD oil establishments, subject to the regulations of Section 4.3.3(CC).

Section 10. 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 hereof as a whole or part thereof other than the part declared to be invalid.

Section 11. That all ordinances or parts of ordinances in conflict herewith be, and the same, are hereby repealed.

Section 12. That this ordinance shall become effective upon its adoption on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the ____ day of _____, 2020.

M A Y O R

ATTEST:

City Clerk

First Reading_____

Second Reading_____