



## Legislation Details (With Text)

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**On agenda:** 12/7/2021      **Final action:** 12/31/2023

**Title:** ORDINANCE NO. 18-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ADOPTING A LAND USE MAP AMENDMENT RE-DESIGNATING THE FUTURE LAND USE FOR 39.42 ACRES OF LAND FROM GENERAL COMMERCIAL (GC) IN PART, AND TRANSITIONAL (TRN) IN PART, TO COMMERCIAL CORE (CC), PURSUANT TO SECTION 163.3187, FLORIDA STATUTES, FOR PROPERTIES GENERALLY LOCATED WITHIN THE AREA BOUNDED ON THE NORTH BY SE 4TH STREET, ON THE SOUTH BY SE 10TH STREET, ON THE EAST BY SE 7TH AVENUE, AND ON THE WEST BY THE ALLEY BETWEEN SE 4TH AVENUE AND SE 5TH AVENUE, ALL OF WHICH ARE ADJACENT TO EITHER SE 5TH AVENUE OR SE 6TH AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN, PROVIDING A CONFLICTS CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (SECOND READING/PUBLIC HEARING)

**Sponsors:** Development Services Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Agenda Cover Report, 2. Ord. No. 18-21: Land Use Map Designation to CC, 3. Ord. No. 18-21: PZB Staff Report, 4. Ord. No. 18-21: Location Map of CBD Expansion, 5. Ord. No. 18-21: Proposed Land Use Map, 6. Ord. No. 18-21: Legal Review

Date	Ver.	Action By	Action	Result
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**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotis, Development Services Director  
**THROUGH:** Terrence R. Moore, ICMA-CM  
**DATE:** December 7, 2021

ORDINANCE NO. 18-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ADOPTING A LAND USE MAP AMENDMENT RE-DESIGNATING THE FUTURE LAND USE FOR 39.42 ACRES OF LAND FROM GENERAL COMMERCIAL (GC) IN PART, AND TRANSITIONAL (TRN) IN PART, TO COMMERCIAL CORE (CC), PURSUANT TO SECTION 163.3187, FLORIDA STATUTES, FOR PROPERTIES GENERALLY LOCATED WITHIN THE AREA BOUNDED ON THE NORTH BY SE 4<sup>TH</sup> STREET, ON THE SOUTH BY SE 10<sup>TH</sup> STREET, ON THE EAST BY SE 7<sup>TH</sup> AVENUE, AND ON THE WEST BY THE ALLEY BETWEEN SE 4<sup>TH</sup> AVENUE AND SE 5<sup>TH</sup> AVENUE, ALL OF WHICH ARE ADJACENT TO EITHER SE 5<sup>TH</sup> AVENUE OR SE 6<sup>TH</sup> AVENUE, AS MORE PARTICULARLY DESCRIBED HEREIN, PROVIDING A CONFLICTS CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES. (SECOND READING/PUBLIC HEARING)

### **Recommended Action:**

Review and consider Ordinance No. 18-21 on Second Reading, a Land Use Map amendment to redesignate approximately 39.42 acres of land from General Commercial in part and Transitional in

part, to Commercial Core, generally located within the area bounded on the north by SE 4th Street, on the south by SE 10th Street, on the east by SE 7th Street, and on the west by the alley between SE 4th Avenue and SE 5th Avenue, all of which are adjacent to either SE 5th Avenue or SE 6th Avenue.

**Background:**

On September 9, 2018, the City Commission approved Resolution No. 110-18, to enter into an Interlocal Agreement with the Treasure Coast Regional Planning Council (Consultants) for the provision of planning services to facilitate the expansion of the Central Business District (CBD) zoning designation boundary south, from SE 4th Street to SE 10th Street along SE 5th Avenue and SE 6th Avenue. The intent of the CBD expansion is to use the Land Development Regulations (LDR) to provide a higher level of design criteria for future development and encourage investment in the area, while providing compatible transitions between the commercial corridor and the adjoining residential neighborhoods.

This effort has had multiple meetings to gather community input:

1. On November 8, 2018, the concept of extending the CBD in this area was introduced to local stakeholders in a public workshop.
2. On January 10, 2019, a public workshop was held to gain public input on the proposed expansion of the CBD in the area.
3. On March 14, 2019, a public workshop was held focusing on the Osceola Park neighborhood, which included discussion on appropriate transitions between the neighborhood and commercial corridor.
4. On August 29, 2019 another public workshop was held; however, participation was limited by the approach of Hurricane Dorian. The consultants and City Staff met with individuals and small groups who could not attend the August workshop to gain further input.
5. On October 21, 2019, the Planning and Zoning Board reviewed the proposed LDR Amendments in a heavily attended meeting and recommended approval 7-0 with the recommendation that the City Commission consider further restricting certain uses such as adult gaming centers, astrologists, and temporary car lots. Please note that most of the current uses allowed in the GC zoning district were carried forward for the new Sub-district to maintain the properties' current land uses and to prevent the creation of non-conformities. The "Adult Gaming Center" use is not carried forward as an allowed use as no such established businesses with active Business Tax Receipts exist in the area. The Board discussed the use listed as, "Astrologist, clairvoyants, fortune tellers, palmists, phrenologists, psychic reads, spiritualists, numerologists, and mental healers" category; this use was carried forward as one established business is located along SE 5th Avenue with a valid Business Tax Receipt. Temporary Parking Lots are the subject of individual City Commission approval and, as such, are not prohibited via the allowable uses in this zoning district.
6. On February 11, 2020, the City Commission considered the subject request at a public hearing (as Ordinance No. 06-20) and voted 5 to 0 to approve on First Reading; however, further review and consideration was delayed due to restrictions resulting from the Covid-19 State of Emergency.
7. On July 6, 2021, First Reading of Ordinance Nos. 18-21 (Land Use Map Amendment), 19-21 (Rezoning), and 20-21 (LDR amendments) was held regarding the effort to expand the Central

Business District (CBD) along SE 5th and 6th Avenues to SE 10th Street. The City Commission requested that the effort be presented at a workshop to provide a more focused and in-depth discussion of the proposed regulations.

8. On October 12, 2021, a City Commission workshop was held. The consultant provided an in depth presentation of the proposed LDRs for the new CBD Subdistrict. The discussion primarily focused on the concerns raised by different stakeholders and how they were addressed. For example, concerns about the “canyon effect” along the streets were universal and had been addressed through increased setbacks, requirements for public open space, and new streetscape standards - but employing any further provisions limiting scale would begin to affect development potential. The most significant issue discussed was the proposed incentive on the west side of SE 5<sup>th</sup> Avenue to allow an increase in density in exchange for voluntarily limiting building height to three stories. The City Commission directed staff to include the incentive, but to remove the provision for live-work in light of the new home based business legislation recently passed by the state.

There are currently four sub-districts of the CBD, each providing regulations that reflect the unique characteristics of each area: the Central Core Sub-district, the Beach Sub-district, the West Atlantic Neighborhood Sub-district, and the Railroad Corridor Sub-district. Some Sections of the CBD regulations, like Architectural Standards, apply to all districts, while other regulations, such as density and uses, vary slightly among the sub-districts.

To provide regulations that address the unique conditions of the area, the proposed LDR text amendments establish a fifth CBD Sub-district, the South Pairs Neighborhood Sub-district. This sub-district has specific regulations related to the area, including greater front setbacks along South Federal Highway than required in the downtown core, as well as standards related to the three identified conditions:

\* Condition A reflects the area on the west side of southbound South Federal Highway (SE 5th Avenue); this area generally has an alley separating the commercial uses along SE 5th Avenue and the adjacent single-family neighborhood to the west.

\* Condition B reflects the central block area located between the South Federal Highway pairs (SE 5th Avenue and SE 6th Avenue); this block does not adjoin a residential neighborhood. Each avenue of the South Federal Highway pairs accommodates multi-lane through traffic as well as local trips.

\* Condition C reflects the area on the east side of northbound South Federal Highway, between SE 6th Avenue and SE 7th Avenue; this area has the fronts of houses on SE 7th Avenue facing the backs of the commercial uses facing SE 6th Avenue. To date, current LDR limit vehicular access to the commercial properties from the residential street, and landscaping in varying levels of condition provides a buffer for the neighborhood.

Pursuant to **LDR Section 2.4.5(A)**, *amendments to the Comprehensive Plan shall be processed pursuant to FS 163.3184 through F.S. 163.3253*. The Land Use Map is adopted as part of the Comprehensive Plan. Since the area proposed to change land use designation is greater than 10 acres, the subject amendment is being processed for expedited review pursuant to Florida Statutes, F.S. 163.3184 through F.S. 163.3253.

Pursuant to **LDR Section 3.1.1, Required Findings**, “...*findings shall be made by the body which has the authority to approve or deny the development application.*” These findings relate to the Land

Use Map, Concurrency, Comprehensive Plan Consistency, and Compliance with the Land Development Regulations.

A complete review of the required findings is provided in the attached Planning and Zoning Board Staff Report. The staff report provides a review based on the previously adopted Comprehensive Plan. Subsequent to Planning and Zoning Board review, the Always Delray Comprehensive Plan was adopted, which identifies numerous Objectives and Policies that support the subject request, such as incentives for workforce housing and the utilization of a form-based code.

### **Neighborhoods, Districts, and Corridors Element**

Table NDC-1, Land Use Designation: Density, Intensity, and Implementing Zoning District, identifies the preferred and compatible implementing zoning districts for each land use designation. The current land use designations of General Commercial (GC) and Transitional (TRN) are not consistent with CBD zoning. Therefore, both a land use designation change and a rezoning are necessary to meet the consistency requirement. The table below provides a comparison of density and intensity limitations for both the current and proposed land use designations.

<u>Current Land Use Designation</u>	<u>Acres</u>	<u>FAR</u>	<u>Density- Standard/Incentive</u>
General Commercial	38.1	3.0	12 du/ac/ 12 - 30 du/ac
Transitional	1.32	1.0	5-12 du/ac/ 12 to 24 du/ac
<u>Proposed Land Use Designation</u>	<u>Acres</u>	<u>FAR</u>	<u>Density- Standard/Incentive</u>
Commercial Core	39.42	3.0	12 -30 du/ac / 30-100 du/ac

The NDC Policies listed below describe the intent and provide direction regarding the implementation of the existing and proposed land use designations.

**Objective NDC 1.1, Land Use Designation** Establish compatible land use arrangements using land use categories appropriate for the diverse and difference neighborhoods, districts, and corridors throughout Delray Beach.

Policy NDC 1.1.2 *Provide a complementary mix of land uses, including residential, office, commercial, industrial, recreational, and community facilities, with design characteristics that provide:*

- Similar uses, intensity, height, and development patterns facing each other, especially in residential neighborhoods.*
- Uses that meet the daily needs of residents.*
- Public open spaces that are safe and attractive.*

Policy NDC 1.1.3 *Provide transitions between land use designations at the rear of properties or at major corridors so that the prescribed uses and potential development patterns are arranged to achieve compatible and appropriate changes in intensity, height, and scale.*

Policy NDC 1.1.14 *Continue to require that property be developed or redeveloped or accommodated, in a manner so that the use, intensity and density are appropriate in terms of soil, topographic, and other applicable physical considerations; encourage affordable goods and services; are complementary to and compatible with adjacent land uses; and fulfill remaining land use needs.*

**Objective NDC 1.3, Mixed-Use Land Use Designations** *Apply the mixed-use land use designations of Commercial Core, General Commercial, Transitional, Congress Mixed-Use, and Historic Mixed-Use to accommodate a wide range of commercial and residential housing opportunities appropriate in scale, intensity, and density for the diverse neighborhoods, districts, and corridors in the city. Table NDC-1 of the Neighborhoods, Districts, and Corridors (NDC) Element of the Comprehensive Plan identifies those zoning districts that are either preferred or compatible with the land use designations. The proposed CC designation and the requested zoning designation of CBD are consistent with each other.*

Policy NDC 1.3.5 *Use the Commercial Core land use designation to stimulate the vitality and economic growth of the city while simultaneously enhancing and preserving the cultural and historic downtown area.*

Policy NDC 1.3.6 *Allow a maximum floor area ratio of 3.0 and a maximum density of 12 dwelling units per acre east of the Intracoastal Waterway, and a standard density of 12-30 dwelling units per acre with a revitalization/incentive density of 30-100 dwelling units per acre for the Commercial Core land use designation; specific standards in the Land Development Regulations adjust density and intensity based on compatibility, scale, character, adopted Redevelopment or Neighborhood Master Plans, or workforce housing incentives.*

Policy NDC 1.3.7 *Implement the Commercial Core land use designation using form-based code to provide for adaptive-reuse, development, and redevelopment that preserves the downtown's historic moderate scale, while promoting a balanced mix of uses that will help the area continue to evolve into a traditional, self-sufficient downtown. This designation is applied to the Community's downtown area. It includes a substantial portion of the Transportation Concurrency Exception Area described in the Future Land Use Element and graphically shown in Map 9. The Commercial Core designation accommodates a variety of uses including commercial and office development; residential land use upper story apartments; older homes renovated to accommodate office use; and uses such as "bed and breakfast" establishment; and industrial/commerce type uses.*

### **Objective NDC 3.4, Land Use Map Amendments**

Policy NDC 3.4.1 *Amend the Land Use Map only when a demonstrated need for the requested land use is based upon circumstances that are verified and supported by data and analysis, such as shifts in demographic trends, changes in the availability of land, changes in the existing character and Land Use Map designations of the surrounding area, fulfillment of a comprehensive plan objective or policy, annexation into the municipal boundaries, or similar circumstances, and the following findings can be determined:*

- *That the requested land use designation is consistent with the goals, objectives, and policies of the most recently adopted Comprehensive Plan; and,*
- *That development at the highest intensity possible under the requested land use designation meets the adopted concurrency standards; and,*
- *That the requested land use designation is compatible with the land use designations of the surrounding area; and,*
- *That the requested land use designations are compliant with the provisions and requirements of the Land Development Regulations.*

The proposed land use designation does not significantly increase or decrease redevelopment as the intensity level is similar while allowing for a mix of commercial and residential uses. In addition, the

implementing zoning designation for the CC land use is CBD, which uses form-based techniques to create a vibrant, high quality environment and provides for compatible transitions among uses and varying scales. Further, development under the proposed CC land use designation allows for residential uses to be more easily included in redevelopment projects, which allows for the inclusion of more compatible uses with the surrounding neighborhood area.

The proposed land use and zoning designations will continue the revitalization efforts that have been successful in the downtown core area down the commercial corridor. Utilizing the same designations in this area will also help ensure that the redevelopment compliments the recommendations and guidelines found in the redevelopment plan(s) of adjacent neighborhoods, to ensure an overall compatible and appropriate development with respect to site design, intensity, and density.

*Policy NDC 3.4.2 Use the development review process to determine development, redevelopment, and adaptive reuse is consistent with and complementary to adjacent development, regardless of the implementing zoning designations for each land use designation (See Table NDC-1).*

As is the current process, all development proposals (depending on the type of request) within this section of the CBD will require review and approval by the City Commission for requests such as conditional use, or the Site Plan Review and Appearance Board for site plan requests.

Because the designations of GC and CC both allow a 3.0 FAR, redevelopment under the CC land use designation will at most be the same intensity as the current designation for approximately 38 of the 39.42 acres of land affected by the change; established concurrency impacts will either not change or be reduced. The parcels currently designated as TRN (505 and 525 SE 6<sup>th</sup> Avenue), which total approximately 1.32 acres, will increase from a 1.0 FAR to a 3.0. Although there is an increase in FAR for these two parcels, the difference in the impacts is anticipated to be minimal due to development constraints.

The standard density for the change in land use designation from TRN to CC will increase 12 du/ac to 12 - 30 du/ac; however, these two parcels are not eligible to increase density above 12 du/ac as they are located within the Coastal High Hazard Area. Two other parcels (701 and 959 SE 6<sup>th</sup> Avenue) that currently have a land use designation of GC are also located within the Coastal High Hazard Area. This limitation on density is per the Florida Statutes and is also specified in the Always Delray Comprehensive Plan. The proposed LDR amendments carry forward the current density allowed per zoning (12 du/ac) and are not eligible for any density incentives.

**City Attorney Review:**

Approved as to form and legal sufficiency.

**Funding Source/Financial Impact:**

N/A

**Timing of Request:**

Per State Statutes, this ordinance shall become effective thirty-one (31) days after adoption, unless the amendment is timely challenged.