



## Legislation Text

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File #: 21-800, Version: 1

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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. 19-21: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING LAND PRESENTLY ZONED GENERAL COMMERCIAL IN PART, NEIGHBORHOOD COMMERCIAL IN PART, AND PROFESSIONAL OFFICE DISTRICT IN PART, TO CENTRAL BUSINESS DISTRICT; SAID LAND CONTAINING APPROXIMATELY 39.42 ACRES, AND 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; AMENDING THE "CITY OF DELRAY BEACH, ZONING MAP, MAY 4, 2021"; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.(SECOND READING/PUBLIC HEARING)

### **Recommended Action:**

Review and consider Ordinance No. 19-21 on Second Reading, a rezoning of approximately 39.42 acres of land from General Commercial in part, Neighborhood Commercial in part, and Professional Office District in part, to Central Business District for the 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 Street, and on the west by SE SE 4th 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(D)(1)**, *the City Commission may amend the Official Zoning Map by ordinance after review and recommendation for approval by the Planning and Zoning Board.*

**LDR Section 2.4.5(D)(2)** outlines the procedures for a zoning change, which includes the standard application items in Section 2.4.3. Valid reasons for approving a change in zoning, pursuant to **LDR Section 2.4.5(D)(2)** are:

- *That the zoning had previously been changed, or was originally established, in error;*
- *That there has been a change in circumstance which makes the current zoning inappropriate;*
- *That the requested zoning is of similar intensity as allowed under the Future Land Use Map and that it is more appropriate for the property based upon circumstances particular to the site and/or neighborhood.*

The requested rezoning is to be considered under the third criteria. The proposed intensity (Floor Area Ratio-FAR) under the CBD zoning designation is the same (3.0) for 97% of the area; the FAR will increase from a 1.0 for two parcels that total 1.42 acres. The proposed standard density is 12 du/ac, which is the same as GC. Two incentives are incorporated into the zoning: one allows up to 22 du/ac to promote three story townhouses between the Osceola Park neighborhood and the South Federal Highway corridor to improve compatibility with the neighborhood. The other allows 30 du/ac and, for the next four years only (until December 31, 2025), a limited duration incentive (up to 50 du/ac) for properties in the block between SE 5<sup>th</sup> and SE 6<sup>th</sup> Avenues to spur redevelopment and promote the inclusion of workforce units. There are no density incentives for parcels located along the east side of SE 6<sup>th</sup> Avenue. Given the location of four parcels within the Coastal High Hazard area and the adjacent single-family neighborhoods, the density is limited to 12 du/ac along the east side of SE 6<sup>th</sup> Avenue.

Pursuant to **LDR Section 3.2.2, Standards for Rezoning Actions**, *in addition to the standards listed*

*below, rezoning actions shall be consistent with the land use designation applied to the land to be rezoned. Table NDC-1, Land Use Designations: Density, Intensity, and Implementing Zoning Districts, of the Neighborhoods, Districts, and Corridors Element, identifies the land use designations and implementing zoning districts that provide appropriate development and improvements that further the adopted strategies of and are compatible with the assigned land use designation.*

*(A) The most restrictive residential zoning district that is applicable given existing development patterns and typical lot sizes shall be applied. Requests for rezonings to a different zoning designation, other than Community Facilities, Open Space, Open Space and Recreation, or Conservation shall be denied unless the proposed changes implement an adopted neighborhood or redevelopment plan.*

Not applicable. The subject corridor is not considered a residential neighborhood. Osceola Park is categorized as “Needing Revitalization”, while the Del Rio Shores neighborhood on the east side is categorized as Stable.

*(B) Rezoning of land located west of Interstate-95 to accommodate auto dealerships or to AC (Automotive Commercial) is prohibited pursuant to Policy NDC 2.5.2 of the Neighborhoods, Districts, and Corridors Element of the adopted Comprehensive Plan.*

Not applicable. Auto dealerships are not a proposed use for the South Pairs Neighborhood Sub-district, and are not an allowed use listed within the current CBD regulations.

*(C) Zoning changes that would result in strip commercial development shall be avoided. Where strip commercial developments or zoning currently exists along an arterial street, consideration shall be given to increasing the depth of the mixed-use zoning to provide for more substantive, mixed use projects that provide compatible transitions in form and use to the surrounding area.*

The proposed CBD zoning is a form-based code and does not permit strip-type commercial development. The proposed zoning will result, over time, in a change from strip development to mixed use development that helps shape the corridor into an attractive pedestrian-friendly area with neighborhood serving uses.

*(D) Rezoning of land shall result in allowing land uses deemed compatible with adjacent and nearby land uses both existing and proposed; or that if an incompatibility may occur, that sufficient regulations exist to properly mitigate adverse impacts from the new use.*

Under the proposed Commercial Core land use designation, the proposed CBD zoning district is compatible. The existing zoning and uses surrounding the proposed development are as follows:

<u>Zoning Designation</u>	<u>Use</u>
<u>North</u> Central Business District	Townhomes
<u>South</u> General Commercial (GC)	Commercial
<u>East</u> Single Family Residential (R-1-AA)	Single family residential
Multiple Family Residential, Medium Density (RM)	Condominium
<u>West</u> Single Family Residential (R-1-A)	Single family residential

The requested rezoning from RM to CBD will result in compatibility among existing and future land uses with the surrounding area. The CBD regulations utilize form-based techniques to ensure compatible transitions in building scale and intensity. There are several examples throughout Delray Beach where CBD zoned property directly abuts single family and multiple family residential areas, notably in the northwest area. The CBD regulations require additional setbacks from single-family houses and districts. Additionally, the CBD regulations use open space and architectural regulations to provide for a high quality urban environment.

*(E) Remaining infill lots within the Coastal High Hazard Area of the Coastal Planning Area shall be developed using zoning which is identical or similar to the zoning of adjacent properties or that results in less intense development.*

There are four parcels, which are currently developed and not classified as remaining infill lots, that are located within the Coastal High Hazard Area. The density limitations, as required by the Florida Statutes and the Always Delray Comprehensive Plan, are provided for in the regulations for the South Pairs Neighborhood Sub-district. The proposed CBD regulations will provide additional commercial opportunities by allowing a greater variation of uses than the existing zoning (GC, NC, POD) for those parcels. It is not anticipated that the result will be more intense than what is currently allowed given the prescribed development standards and regulations proposed in the LDR.

**City Attorney Review:**

Approved as to form and legal sufficiency.

**Funding Source/Financial Impact:**

N/A

**Timing of Request:**

This Ordinance shall become effective concurrent with the effective date of Ordinance No. 18-21.