

ORDINANCE NO. 16-2021

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 134, ZONING, AS FOLLOWS: AT ARTICLE I, IN GENERAL, SECTION 134-2, CREATING A DEFINITION FOR OUTDOOR CAFÉ SEATING; AT ARTICLE VI, DISTRICT REGULATIONS, SECTIONS 134-791, 134-841, 134-891, 134-946, 134-1001 AND 134-1053, ACCESSORY STRUCTURES, IN THE R-AA, R-A, R-B, R-C, R-D(1) AND R-D(2) RESIDENTIAL DISTRICTS BY ALLOWING ONLY ONE DOCK ON A PROPERTY AND CROSS REFERENCING THE SETBACK AND OTHER DIMENSIONAL REQUIREMENTS FOR A DOCK IN SECTIONS 62-74, 62-75 AND 134-1697 OF THE CODE; AT SECTION 134-1053, ACCESSORY USES, BY ELIMINATING AS AN ACCESSORY USE ADMINISTRATIVE APPROVAL OF OUTDOOR SEATING IN THE R-D(2) RESIDENTIAL DISTRICT; SECTION 134-1055, SPECIAL EXCEPTION USES, BY CHANGING FROM OUTDOOR SEATING TO OUTDOOR CAFE SEATING RELATED TO HOTELS, CONDO HOTELS AND DINING ROOMS AND CROSS REFERENCING SECTIONS 134-2104 THROUGH 134-2108 RELATED TO REQUIREMENTS AND CONDITIONS ALLOWING SAID SEATING; SECTION 134-1056, STANDS, SEATED DINING AREAS AND OPEN COUNTERS FOR EATING AND DRINKING, BY ELIMINATING SAID SECTION IN THE R-D(2) DISTRICT AND RENUMBERING SUBSEQUENT SECTIONS OF THE CODE; SECTION 134-1057, ACCESSORY STRUCTURES, AND 134-1057, ACCESSORY STRUCTURES, IN THE R-D(2) RESIDENTIAL DISTRICTS BY ALLOWING ONLY ONE DOCK ON A PROPERTY AND CROSS REFERENCING THE SETBACK AND OTHER DIMENSIONAL REQUIREMENTS FOR A DOCK IN SECTIONS 62-74, 62-75 AND 134-1697 OF THE CODE; SECTIONS 134-1108, 134-1158, 134-1208 AND 134-1303, ACCESSORY USES, BY ELIMINATING AS AN ACCESSORY USE ADMINISTRATIVE APPROVAL OF OUTDOOR SEATING IN THE C-TS, C-WA, C-OPI AND C-B COMMERCIAL ZONING DISTRICTS; SECTIONS 134-1109, 134-1159 AND 134-1259 SPECIAL EXCEPTION USES IN THE C-TS, C-WA AND C-PC COMMERCIAL ZONING DISTRICTS, BY CHANGING OUTDOOR SEATING TO OUTDOOR CAFÉ SEATING ONLY FOR RESTAURANTS, RETAIL SPECIALTY FOOD INCLUDING THE SALE OF PREPARED FOOD FOR TAKEOUT ONLY AND PRIVATE, SOCIAL, SWIMMING, GOLF, TENNIS AND YACHT CLUBS AND CROSS REFERENCING SECTIONS 134-2104 THROUGH 134-2108 RELATED TO REQUIREMENTS AND CONDITIONS ALLOWING SAID SEATING; SECTIONS 134-1111, 134-1161, 134-1210, 134-1260 AND 134-1305, STANDS, SEATED DINING AREAS AND OPEN COUNTERS FOR EATING AND DRINKING, BY ELIMINATING THOSE SECTIONS IN THE C-TS, C-WA, C-OPI, C-PC AND C-B COMMERCIAL ZONING DISTRICTS AND RENUMBERING SUBSEQUENT SECTIONS OF THE CODE; SECTION 134-1304, SPECIAL EXCEPTION USES, IN THE C-B COMMERCIAL ZONING DISTRICT BY CHANGING OUTDOOR SEATING TO OUTDOOR CAFÉ SEATING FOR ONLY HOTELS, CONDO-HOTELS AND DINING ROOMS AND CROSS REFERENCING SECTIONS 134-2104 THROUGH 134-2108 RELATED TO REQUIREMENTS AND CONDITIONS ALLOWING SAID SEATING; SECTION 134-1209, SPECIAL EXCEPTION USES IN THE C-OPI COMMERCIAL DISTRICT BY

CHANGING OUTDOOR SEATING TO OUTDOOR CAFÉ SEATING FOR ONLY RESTAURANTS, EXCLUDING FORMULA RESTAURANTS AS DEFINED IN SECTION 134-2 AND DINING ROOMS AND CROSS REFERENCING SECTIONS 124-2104 THROUGH 134-2108 RELATED TO REQUIREMENTS AND CONDITIONS ALLOWING SAID SEATING; AT ARTICLE VIII, SUPPLEMENTARY DISTRICT REGULATIONS, SECTION 134-1697, BUILDINGS AND STRUCTURES OVER LAKE WORTH, BY CLARIFYING THAT THERE IS AN EXCEPTION FOR TOWN-OWNED LANDING DOCKS AND PIERS ON MUNICIPAL PROPERTY, PROVIDING FOR ONLY ONE PIER OR LANDING DOCK AND CROSS REFERENCING THE REQUIREMENTS FOR A PIER OF LANDING DOCK IN SECTIONS 62-74 AND 62-75 OF THE CODE; BY ELIMINATING DIVISION 14, ADMINISTRATIVE APPROVAL OF OUTDOOR SEATING IN ITS ENTIRETY AND CREATING A NEW DIVISION 14, SECTION 134-2104 THROUGH 134-2109, CONDITIONAL APPROVAL OF A SPECIAL EXCEPTION FOR SIDEWALK AND/OR PRIVATE PROPERTY OUTDOOR CAFÉ SEATING ONLY FOR RESTAURANTS, DINING ROOMS, RETAIL SPECIALTY FOOD INCLUDING THE SALE OF PREPARED FOOD FOR TAKEOUT ONLY, AND PRIVATE, SOCIAL, SWIMMING, TENNIS, AND YACHT CLUBS, PROVIDING CONDITIONS AND REQUIREMENTS; FEES AND SECURITY DEPOSIT; APPLICATION REQUIREMENTS; STANDARDS AND CRITERIA FOR SPECIAL EXCEPTION AND OUTDOOR CAFÉ PERMIT AND REVIEW; REQUIREMENTS FOR LIABILITY AND INSURANCE, PROVIDING THAT RETAIL SPECIALTY FOOD USES INCLUDING THE SALE OF PREPARED FOOD FOR TAKEOUT ONLY THAT IS UNDER 2,000 SQUARE FEET GROSS LEASABLE AREA CAN REQUEST AN ADDITIONAL EIGHT SEATS OVER THE INSIDE CAPACITY; PROVISIONS FOR DENIAL, REVOCATION AND/OR SUSPENSION OF APPROVAL OF AN OUTDOOR CAFÉ SEATING PERMIT AND APPEAL PROCEDURE FOR DENIAL, SUSPENSION OR REVOCATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, after public hearings pursuant to notice required by law, the Planning and Zoning Commission considered all testimony and recommended modification to the Code of Ordinances; and

WHEREAS, after public hearing pursuant to notice required by law, the Town Council considered the Planning and Zoning Commission's Record and Report and all evidence and testimony and as the Local Planning Agency recommended that the Town Council adopt the subject Ordinance; and

WHEREAS, after public hearing pursuant to notice as required by law, the Town Council does hereby find, determine, and declare that the public health, safety, morals and general welfare of the citizens of the Town of Palm Beach requires that the aforesaid Chapter 134, ZONING, of the Code of Ordinances, be amended as hereinafter set forth.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Article I, IN GENERAL, Sec. 134-2. Definitions and rules of construction is hereby amended to include a new definition to read as follows:

Sec. 134-2. Definitions and rules of construction.

Outdoor café seating is the placing or locating of furniture outdoors, including tables, chairs, and umbrellas, adjacent to a business licensed as a restaurant dining room, retail specialty food including the sale prepared foods for takeout only, or private, social, swimming, golf, tennis or yacht club with the purpose of providing outdoor seating.

Section 2. Article VI, DISTRICT REGULATIONS, Sections 134-791, accessory uses, in the R-AA, district is hereby amended as follows:

Sec. 134-791.- Accessory structures.

- (a) ...
- (b) Unattached accessory structures in R-AA district. Accessory structures without kitchen facilities may be erected in accordance with the following requirements:
 - (1) ...
 - ...
 - (8) One Ddocks, as defined in section 134-2 and as regulated in sections 62-74, 62-75 and 134-1697, shall be unenclosed accessory structures as defined in this section.

Section 3. Article VI, DISTRICT REGULATIONS, Sections, 134-841, accessory uses, in the R-A district are hereby amended as follows:

Sec. 134-841. - Accessory structures.

- (a) ...
- (b) Unattached accessory structures in R-A district. Accessory structures without kitchen facilities may be erected in accordance with the following requirements:
 - (1) ...
 - ...
 - (8) One Ddocks, as defined in section 134-2 and as regulated in sections 62-74, 62-75 and 134-1697, shall be unenclosed accessory structures as defined in this section.

Section 4. Article VI, DISTRICT REGULATIONS, Sections 134-891, accessory uses, in the R-B district is hereby amended as follows:

Sec. 134-891. - Accessory structures.

- (a) ...
- (b) Unattached accessory structures in R-B district. Accessory structures without kitchen facilities may be erected in accordance with the following requirements:
 - (1) ...

...

- (8) One Dock, as defined in section 134-2 and as regulated in sections 62-74, 62-57 and 134-1697, shall be unenclosed accessory structures as defined in this section.

Section 5. Article VI, DISTRICT REGULATIONS, Sections 134-946, accessory uses, in the R-C district is hereby amended as follows:

Sec. 134-946. - Accessory structures.

(a) ...

- (b) Unattached accessory structures in R-C district. Accessory structures without kitchen facilities may be erected in accordance with the following requirements:
(1) ...

...

- (8) One Dock, as defined in section 134-2 and as regulated in sections 62-74, 62-75 and 134-1697, shall be unenclosed accessory structures as defined in this section.

Section 6. Article VI, DISTRICT REGULATIONS, Section 134-1001, accessory uses, in the R-D(1) district is hereby amended as follows:

Sec. 134-1001. - Accessory structures.

(a) ...

- (b) Unattached accessory structures in R-D(1) district. Accessory structures without kitchen facilities may be erected in accordance with the following requirements:
(1) ...

...

- (8) One Dock, as defined in section 134-2 and as regulated in sections 62-62-74, 62-75 and 134-1697, shall be unenclosed accessory structures as defined in this section.

Section 7. Article VI, DISTRICT REGULATIONS, Section 134-1053, accessory uses, in the R-D(2) district is hereby amended and subsequent subsections renumbered as follows:

Sec. 134-1053. - Accessory uses.

The accessory uses in the R-D(2) high density residential district are as follows:

- (1) Private nurseries and greenhouses.
- (2) Private garages.
- (3) Private swimming pools and/or cabanas.
- (4) Newsstands, dining rooms, bars, beauty shops and similar personal service uses for the convenience of tenants and their bona fide guests in a multifamily dwelling.
- (5) Charitable events specifically approved by the town manager.
- (6) Other accessory uses, customarily incident to permitted or approved special exception uses, not involving the conduct of business.

~~(7) Administrative approval of outdoor seating for dining purposes related to hotels, subject to the standards and criteria contained in sections 134-2104 through 134-2108, supplemental district regulations.~~

~~(87)...~~

Section 8. Article VI, DISTRICT REGULATIONS, Section 134-1055, Special exception uses, in the R-D(2) district is hereby amended as follows:

Sec. 134-1055. - Special exception uses.

The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the R-D(2) high density residential district are as follows:

- (1) Planned unit development, PUD-2, PUD-3.
- (2) Public structures/uses.
- (3) Essential services related to town-owned municipal buildings and structures.
- (4) Public or private academic schools.
- (5) Churches, synagogues and other houses of worship.
- (6) Supplemental parking.
- (7) Accessory commercial uses to hotel uses.
- (8) Municipally owned or operated parking areas.
- (9) Beach houses intended for the use of family and guests only.
- (10) Hotels.
- (11) Timesharing uses.
- (12) Roof-deck automobile parking.
- (13) Group home.
- (14) Foster care facility.
- (15) Pedestrian access tunnel to the beach as an accessory use provided that the applicant owns the land on both sides of the roadway, provides unity of title, and provides prior written approval from all governmental agencies having jurisdiction.
- (16) ~~Outdoor seating for dining purposes related to hotels where administrative approval is not being requested. See section 134-1056 for additional conditions.~~ Outdoor café seating for dining purposes related to hotels, condo-hotels and dining rooms provided that all requirements and conditions contained in Sections 134-2104 and 134-2108 are met.
- (17) Condo-hotels in accordance with section 134-2110.
- (18) Municipally owned and operated parks and recreation areas.

Section 9. Article VI, DISTRICT REGULATIONS, Section 134-1056, Stands, seated dining areas and open counters for eating and drinking, in the R-D(2) district is hereby amended to eliminate this section and renumber subsequent sections as follows:

~~Sec. 134-1056. -- Stands, seated dining areas and open counters for eating and drinking.~~
~~No stands or open counters and no open seating arrangement (except as otherwise provided for in article VIII, division 14), whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless contained within a building. However, in the RD 2 zoning district, the town council may permit, as a special exception, the serving~~

~~of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a hotel dining room contained within a building, provided approval of such special exception does not increase the allowable capacity. The following are conditions to the approval of any such special exception:~~

Section 10. Article VI, DISTRICT REGULATIONS, Section 134-1057, accessory structures, in the R-D(2) district is hereby amended as follows

Sec. 134-1057. - Accessory structures.

- (a) ...
- (b) Unattached accessory structures in R-D(2) district. Accessory structures without kitchen facilities may be erected in accordance with the following requirements:
 - (1) ...
 - ...
 - (8) One Ddocks, as defined in section 134-2 and as regulated in sections 62-74, 62-75 and 134-1697, shall be unenclosed accessory structures as defined in this section.

Section 11. Article VI, DISTRICT REGULATIONS, Sections 134-1108, 134-1158, 134-1208 and 134-1303, Accessory uses, in the C-TS, C-WA, C-OPI and C-PC districts are hereby amended as follows

Sec. 134-1108. - Accessory uses.

The accessory uses in the C-TS town-serving commercial district are as follows:

- (1)Off-street parking and loading.
- (2)Signs.
- (3)Accessory uses customarily incident to the permitted or approved special exception uses.
- (4)~~Administrative approval of outdoor seating for dining purposes, subject to the standards and criteria contained in sections 134-2104 through 134-2108, supplemental district regulations.~~

Sec. 134-1158. - Accessory uses.

The accessory uses in the C-WA Worth Avenue district are as follows:

- (1)Off-street parking and loading.
- (2)Signs.
- (3)Accessory uses customarily incident to the permitted or approved special exception uses.
- (4)~~Administrative approval of outdoor seating for dining purposes, subject to the standards and criteria contained in sections 134-2104 through 134-2108, supplemental district regulations.~~

Sec. 134-1208. - Accessory uses.

The accessory uses in the C-OPI office, professional and institutional district are as follows:

- (1) Off-street parking and loading.
- (2) Signs.
- (3) Accessory uses customarily incident to the permitted or approved special exception uses.
- ~~(4) Administrative approval of outdoor seating for dining purposes, subject to the standards and criteria contained in sections 134-2104 through 134-2108, supplemental district regulations.~~

Sec. 134-1303. - Accessory uses.

- (a) The accessory uses in the C-B commercial district require a site plan and review as provided in article III of this chapter.
- (b) The accessory uses in the C-B commercial district are as follows:
 - (1) Off-street parking and loading.
 - (2) Signs.
 - (3) Accessory uses customarily incident to the permitted or approved special exception uses.
 - ~~(4) Administrative approval of outdoor seating for dining purposes, subject to the standards and criteria contained in sections 134-2104 through 134-2108, supplemental district regulations.~~

Section 12. Article VI, DISTRICT REGULATIONS, Section 134-1109, 134-1159 and 134-1259, Special exception uses, in the C-TS, C-WA and district is hereby amended as follows

Sec. 134-1109. - Special exception uses.

- (a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-TS town-serving commercial district are as follows:
 - (1) Public or private parking lots or storage garages.
 - (2) Auto rental lots.
 - (3) Private social, swimming, tennis and yacht clubs.
 - (4) Service stations.
 - (5) Public structures/uses.
 - (6) Essential services related to town-owned municipal buildings and structures.
 - (7) Supplemental parking.
 - (8) Public or private academic schools.
 - (9) Drive-in business service facilities.
 - (10) Churches, synagogues or other houses of worship.
 - (11) Permitted uses, or uses not specifically enumerated under permitted uses in section 134-1107 but having traffic, patronage and intensity of use characteristics similar to those uses cited therein, which are greater than 3,000 square feet gross leasable area.
 - (12) Banks and financial institutions, excluding securities or financial brokerage and trust companies.
 - (13) Roof-deck automobile parking.
 - ~~(14) Outdoor seating in conjunction with permitted restaurants where administrative approval is not being requested. See section 134-1111 for additional conditions.~~ Outdoor café seating is permitted only for restaurants, retail specialty food including the sale of prepared food for

takeout only, and private, social, swimming, golf, tennis and yacht clubs, provided that all requirements and conditions in sections 134-2104 through 134-2108 are met.

(15) Veterinarian offices above the first floor.

(16) Museums occupying building of unique value as designated historical landmarks, as determined by the landmarks preservation commission and the town council.

(17) Nightclubs.

(18) Except as provided for in subsection 134-1107(3), offices (excluding executive office suites), professional services, business services and securities or financial brokerage and trust companies on the first floor provided that there are at least 50 percent existing office uses on all floors of the building in which the office use is proposed and more than 50 percent existing office uses on the first floor within 300 feet of the proposed office use within the same zoning district.

(19) Private parks.

(20) Medical marijuana treatment centers and medical marijuana dispensaries are prohibited, however, should state law preempt said prohibition, said uses shall be permitted subject to the requirements in sections 134-2113 through 134-2114 of this chapter.

(21) Outdoor promotional events. See section 134-2115 for additional conditions and criteria.

(22) Restaurants, retail specialty foods, retail specialty food including the sale of prepared food for takeout only including the sale of prepared foods for takeout and bars/lounges, excluding formula restaurants as defined in section 134-2.

(b) An owner or tenant of a property, located within the C-TS district, which property has received approval of a special exception after March 31, 1980, shall be required to obtain approval by the town council under the provisions of section 134-229 prior to being granted a new business tax receipt. This subsection shall not apply to renewal of an existing business tax receipt.

Sec. 134-1159. - Special exception uses.

(a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-WA Worth Avenue district are as follows:

(1) Pay parking.

(2) Public or private parking or storage garages.

(3) Private social, swimming, tennis or yacht clubs.

(4) Public structures/uses.

(5) Essential services related to town-owned municipal buildings and structures.

(6) Supplemental parking.

(7) Restaurants, retail specialty foods, including the sale of prepared foods for takeout only, nightclubs and lounges/bars, excluding formula restaurants as defined in section 134-2.

(8) Museums and nonprofit cultural centers.

(9) Permitted uses cited under permitted uses in section 134-1157 which contain greater than 4,000 square feet GLA gross leasable area.

(10) Uses not specifically enumerated under permitted uses in section 134-1157 but having traffic, patronage and intensity of use characteristics similar to those uses cited therein.

(11) Outdoor promotional events. See section 134-2115 for additional conditions and criteria.

(12) Roof deck automobile parking.

(13) ~~Outdoor seating in conjunction with permitted restaurants where administrative approval is not being requested. See section 134-1161 for additional conditions.~~ Outdoor café seating is permitted

only for restaurants, retail specialty food including the sale of prepared food for takeout only, and private, social, swimming, golf, tennis and yacht clubs, provided that all requirements and conditions in sections 134-2104 through 134-2108 are met.

(b) An owner or tenant of a property, located within the C-WA district, which property has received approval of a special exception after March 31, 1980, shall be required to obtain approval by the town council under the provisions of section 134-229 prior to being granted a new business tax receipt. This subsection shall not apply to renewal of an existing business tax receipt.

Sec. 134-1259. - Special exception uses.

(a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-PC planned center district are as follows:

- (1) Public or private parking or storage garages.
- (2) Private, social, swimming, tennis and yacht clubs.
- (3) Public structures/uses.
- (4) Essential services related to town-owned municipal buildings and structures.
- (5) Supplemental parking.
- (6) Restaurants, retail specialty foods, including the sale of prepared foods for takeout only, nightclubs and lounges/bars, excluding formula restaurants as defined in section 134-2, theaters, nightclubs, lounges/bars.
- (7) Theaters
- (8) Museums.
- (9) Veterinarian/animal clinic.
- (10) Auto rental.
- (11) Banks and financial institutions.
- (12) All retail and personal service activities exceeding 3,000 square feet gross leasable area not specifically cited under the permitted uses in subsection 134-1257(a)(2).
- (13) Timesharing uses at a maximum of nine units per acre and hotels at a maximum of 26 units per acre.
- (14) Roof-deck automobile parking.
- (15) Nonprofit cultural centers.
- (16) Veterinarian offices.
- (17) ~~Outdoor seating in conjunction to permitted restaurants. See section 134-1260 for additional conditions.~~ Outdoor café seating is permitted only for restaurants, retail specialty food including the sale of prepared food for takeout only, and private, social, swimming, golf, tennis and yacht clubs, provided that all requirements and conditions in sections 134-2104 through 134-2108 are met.
- (18) Outdoor promotional events. See section 134-2115 for additional conditions and criteria.

(b) An owner or tenant of a property, located within the C-PC district, which property has received approval of a special exception after March 31, 1980, shall be required to obtain approval by the town council under the provisions of section 134-229 prior to being granted a new business tax receipt. This subsection shall not apply to renewal of an existing business tax receipt.

Section 13. Article VI, DISTRICT REGULATIONS, Sections 134-1111, 134-1161, 134-1210, 134-1260 and 134-1305 special exception for stands, seated dining areas and open counters for

eating and drinking, in the C-TS district is hereby eliminated and renumber subsequent sections as follows:

~~Sec. 134-1111. -- Special exception for stands, seated dining areas and open counters for eating and drinking.~~

~~(a) No stands or open counters and no open seating arrangement (except as otherwise provided in article VIII, division 14), whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-TS town serving commercial district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a restaurant contained within a building, provided approval of such special exception does not increase the allowable capacity. The following are conditions to the approval of any such special exception:~~

- ~~(1) Open air dining areas must be properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.~~
- ~~(2) Area associated with the outdoor portion of the restaurant will not count toward any maximum square footage limitations associated with the town serving aspects of this chapter.~~

~~(b) In the C-TS town serving commercial district, the town council may permit, as a special exception, extra outdoor patron seating, over and above the inside seating capacity, as part of a take-out food business contained within a building provided the following conditions are met:~~

- ~~(1) The take-out food business inside tenant space does not exceed 2,000 square feet.~~
- ~~(2) Open air dining areas are properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.~~
- ~~(3) The area associated with the outdoor seating of the take-out food business will not count toward any maximum square footage limitations associated with the town serving aspects of this chapter.~~
- ~~(4) Area associated with the outdoor seating cannot encroach into the required ten-foot unobstructed, pedestrian sidewalk.~~
- ~~(5) The amount of outdoor seating can not exceed eight seats, nor can it extend beyond any property line of the take-out business tenant space.~~

~~Sec. 134-1161. -- Stands, seated dining areas and open counters for eating and drinking.~~

~~(a) No stands or open counters and no open seating arrangement (except as provided for in article VIII, division 14), whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-WA Worth Avenue zoning district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a restaurant contained within a building, provided approval of such special exception shall not increase the allowable capacity. The following are conditions to the approval of any such special exception:~~

(1) Open air dining areas must be properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.

(2) Area associated with the outdoor portion of the restaurant shall not count toward any maximum square footage limitations associated with the town serving aspects of this chapter.

Sec. 134-1210. -- Stands, seated dining areas and open counters for eating and drinking.

~~No stands or open counters and no open seating arrangement (except as otherwise provided in article VIII, division 14) whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-OPI zoning district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a dining room or restaurant contained within a building, provided approval of such special exception shall not increase the allowable capacity. The following are conditions to the approval of any such special exception:~~

~~(1) Open air dining areas must be properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.~~

~~(2) Area associated with the outdoor portion of the dining room or restaurant shall not count toward any maximum square footage limitations associated with the town serving aspect of this chapter.~~

Sec. 134-1260. -- Stands, seated dining areas and open counters for eating and drinking.

~~(a) No stands or open counters and no open seating arrangement, whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-PC, Planned Center zoning district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a restaurant contained within a building, provided approval of such special exception shall not increase the allowable capacity. The following are conditions to the approval of any such special exception:~~

~~(1) Open air dining areas must be properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.~~

~~(2) The area associated with the outdoor portion of the restaurant shall not count toward any maximum square footage limitations associated with the town serving aspects of this chapter.~~

Sec. 134-1305. -- Stands, seated dining areas and open counters for eating and drinking.

~~No stands or open counters and no open seating arrangement (except as otherwise provided in article VIII, division 14), whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-B zoning district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a hotel dining room contained within a building, provided the additional special exception shall not~~

~~increase the allowable capacity. The following are conditions to the approval of any such special exception:~~

~~(1) Open air dining areas must be properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.~~

~~(2) Area associated with the outdoor portion of the hotel dining room shall not count toward any maximum square footage limitations associated with the town serving aspects of this chapter.~~

Section 14. Article VI, DISTRICT REGULATIONS, Section 134-1304, special exception uses, in the C-B district is hereby amended as follows

Sec. 134-1304. - Special exception uses.

(a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-B commercial district are as follows:

(1) Public or private parking lots or storage garages.

(2) Auto rental lot.

(3) Supplemental parking.

(4) Public or private academic schools.

(5) Hotels at a maximum of 26 units per acre.

(6) Timesharing uses at a maximum of nine units per acre.

(7) Roof-deck automobile parking.

(8) Permitted uses, or uses not specifically enumerated under permitted uses in section 134-1302 but having traffic, patronage and intensity of use characteristics similar to those uses cited therein, which are greater than 3,000 square feet gross leasable area.

(9) Nonprofit cultural centers.

~~(10) Outdoor seating for dining purposes related to hotels where administrative approval is not being requested. See section 134-1005 for additional conditions.~~ Outdoor café seating for only hotels, condo-hotels, dining rooms, provided that all requirements and conditions in sections 134-2104 through 134-2108 are met.

(11) Condo-hotels at a maximum of 17 units per acre, in accordance with section 134-2110.

(12) Essential services related to town-owned municipal buildings and structures.

(13) Dining rooms when not more than 15 percent of the gross floor area of the structure; no exterior or external advertising to be permitted.

(b) An owner or tenant of a property, located within the C-B district, which property has received approval of a special exception after March 31, 1980, shall be required to obtain approval by the town council under the provisions of section 134-229 prior to being granted a new business tax receipt. This subsection shall not apply to renewal of an existing business tax receipt.

Section 15. Article VI, DISTRICT REGULATIONS, Section 134-1209, special exception uses, in the C-OPI district is hereby amended as follows

Sec. 134-1209. - Special exception uses.

The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-OPI office, professional and institutional district are as follows:

(1) Public or private parking lot or storage garages.

- (2) Auto rental lot.
- (3) Public structures/uses.
- (4) Essential services related to town-owned municipal buildings and structures.
- (5) Supplemental parking.
- (6) Restaurants, excluding formula restaurants as defined in section 134-2.
- (7) Lounges/bars when associated with full-service restaurants.
- (8) Banks and financial institutions, excluding brokerage and trust companies.
- (9) Institutions.
- (10) Roof-deck automobile parking.
- (11) ~~Outdoor seating in conjunction with permitted restaurants where administrative approval is not being requested. See section 134-1210 for additional conditions.~~ Outdoor café seating for only restaurants, and dining rooms, provided that all requirements and conditions in sections 134-2104 through 134-2108 are met.
- (12) Dining rooms when not more than 15 percent of the gross floor area of the structure; no exterior or external advertising to be permitted.

Section 16. Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS, section 134-1697, Buildings and structures over Lake Worth, is hereby amended as follows:

Sec. 134-1697. - Buildings and structures over Lake Worth.

With the exception of essential services, landing docks and piers related to town-owned municipal property, buildings, and structures, no buildings or structures shall be erected or constructed west of the established bulkhead or bulkhead line or over the water of Lake Worth except one pier or land docks on a lot, which shall meet the requirements in Chapter 62, Article III, sections 62-74, and 62-75, construction specifications of the code. No cooking, sleeping, or business activity shall be permitted or conducted on a dock except as associated with the town's operation of its municipal docks.

Section 17. Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS, Division 14, ADMINISTRATIVE APPROVAL OF OUTDOOR SEATING, is eliminated in its entirety and is replaced with a new Division 14 to read as follows:

DIVISION 14. - CONDITIONAL APPROVAL OF A SPECIAL EXCEPTION FOR SIDEWALK AND/OR PRIVATE PROPERTY OUTDOOR CAFÉ SEATING ONLY FOR RESTAURANTS, DINING ROOMS, RETAIL SPECIALTY FOOD INCLUDING THE SALE OF PREPARED FOOD FOR TAKEOUT ONLY, AND PRIVATE SOCIAL, SWIMMING, TENNIS AND YACHT CLUBS.

Sec. 134-2104. - Requirements fees and security deposit.

(a) It shall be unlawful for any person to provide outdoor café seating without an outdoor café seating permit from the town. Outdoor café seating shall only be permitted in the R-D(2), C-TS, C-WA, C-OPI, and C-B zoning districts if conditions of approval set forth in sections 134-2105 through 134-2108 are met and an outdoor café seating permit is issued by the town.

(b) There is an annual outdoor café seating permit fee established in the town's master fee schedule and included in the annual business tax receipt.

(c) Prior to the issuance of an outdoor café permit, the permittee shall provide a security deposit to the Town in the amount as identified in the Town's Master Fee Schedule if any portion of the outdoor café seating is located within a Town right of way or on Town property.

Sec. 134-2105. - Application.

After town council approval of a special exception zoning application, the applicant shall file for an outdoor café seating permit application to the director of the planning, zoning and building department or his or her designee (individually or collectively referred to in this chapter as "director"). The permit application shall be provided by the planning, zoning and building department.

Sec. 134-2106. - Standards and criteria for special exception and outdoor café permit application review.

The standards and conditions required to be met as part of the special exception application and outdoor café seating permit approval are those provisions provided for in Section 123-229 and the following criteria and conditions:

(a) Criteria and conditions required to be met for approval of outdoor café seating on a street sidewalk.

(1) Outdoor café seating is not allowed to increase the capacity of a restaurant, dining room, retail specialty food including the sale prepared foods for takeout only, or private, social, swimming, golf, tennis or yacht club. The exception is that a specialty food use, including the sale of prepared foods for takeout only that is under 2,000 square feet in gross leasable area may request up to 8 addition outdoor café seats over the inside capacity provided that the seating meets the conditions herein.

(2) Bars/lounges and nightclubs are not permitted to have outdoor café seating.

(3) An outdoor café seating area is restricted to the area abutting the boundary lines of the property on which the business owned by the applicant is located.

(4) Outdoor café seating shall not be allowed where the outdoor seating furniture would be placed within five (5) feet of bus stops, loading zones, valet parking stands, sight triangles or other structures or areas determined by the director to require clearance for the public. For the purpose of this chapter outdoor cafe seating furniture is defined as tables, chairs, umbrellas, portable heaters, mist sprayers and any other customarily usual objects used in the outside café seating area.

(5) No outdoor café seating furniture shall be allowed within five (5) feet of a pedestrian crosswalk.

(6) All outdoor café seating furniture shall be located in such a manner that a minimum five foot-wide unobstructed pedestrian path is maintained at all times.

(7) No outdoor café seating furniture shall be permitted around the perimeter of an outdoor seating area that would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian sidewalk.

(8) An outdoor café seating area is prohibited from having music.

(9) No wait stations shall be allowed outside on the sidewalk. All wait stations on private property shall not be visible from a sidewalk or street.

(10) All kitchen equipment used to service the outdoor café seating shall be located within a building.

(11) All outdoor café seating furniture and associated lighting shall be aesthetically and architecturally pleasing and approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable.

(12) An outdoor café seating area shall not count toward any maximum square footage limitations.

(13) All outdoor café seating furniture, including all accessory appurtenances including but not limited to approved space heaters, misters and portable umbrellas that are located within the outdoor seating area shall be stored inside a building after close of business.

(14) No outdoor café seating furniture located within the public right-of-way shall be attached, chained or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area.

(15) The area covered by an outdoor café seating permit, and the sidewalk and street immediately adjacent to it, shall be maintained in a clean, neat and orderly appearance at all times and clear of any trash or refuse by the permittee. The area of the sidewalk, curb and gutter immediately adjacent to the sidewalk cafe shall be cleared of all debris during hours of operation and again at the close of each business day, or as may otherwise be determined by the director.

(b) Criteria and conditions required to be met for approval of outdoor café seating on private property not within a street sidewalk:

(1) Outdoor café seating is not allowed to increase the capacity of a restaurant, dining room, retail specialty food including the sale of prepared food for takeout only, or private, social, swimming, tennis or yacht club. The exception is that a specialty foods use, including sale of prepared foods for takeout only that is under 2,000 square feet in gross leasable area may request up to 8 addition outdoor café seats over the inside capacity provided that the seating meets the conditions herein.

(2) Bars/lounges and nightclubs are not permitted to have outdoor café seating.

(3) Outdoor cafe seating is restricted to boundary lines of the property on which the business owned by the applicant is located.

(4) All tables, chairs, umbrellas, mist sprayer, space heaters or other customarily usual outdoor café seating furniture shall be located in such a manner that a minimum four foot-wide unobstructed pedestrian path is maintained at all times.

(5) No objects shall be permitted around the perimeter of an outdoor cafe seating area occupied by tables and chairs that would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian path.

(6) An outdoor café seating area on private property shall only be allowed to have low-level, background music that does not exceed the maximum noise decibel requirements in sections 42-226 through 42-228 if approved by the Town Council as part of the special exception application approval.

(7) No wait stations shall be allowed outside on a street sidewalk. All wait stations on private property shall not be visible from a sidewalk or street.

(8) All kitchen equipment used to service the outdoor café seating shall be located within a building.

(9) All outdoor café seating furniture, including all accessory appurtenances including but not limited to approved space heaters, misters and portable umbrellas that are located within the outdoor seating area shall be stored inside a building after close of business.

(10) All outdoor café seating furniture, including the tables, chairs, awnings and space heater equipment shall be aesthetically and architecturally pleasing and approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable.

(11) The area covered by an outdoor café seating permit, and the sidewalk and street immediately adjacent to it, shall be maintained in a clean, neat and orderly appearance at all times and clear of any trash or refuse by the permittee. The area of the sidewalk, curb and gutter immediately adjacent to the sidewalk cafe shall be cleared of all debris during hours of operation and again at the close of each business day, or as may otherwise be determined by the director.

(12) Areas associated with the outdoor café seating shall not count toward any maximum square footage limitations.

Sec. 134-2107. Liability and insurance.

(a) Prior to the issuance of a business tax receipt the applicant shall furnish the town with a signed statement that the permit shall hold harmless the town, its officers, employees, Palm Beach County or the Florida Department of Transportation (FDOT) (if within or abutting either governmental entities rights-of-way) for claims of damages to property or injury to person which may be occasioned by any activity carried out under the terms of the business tax receipt and approved outdoor sidewalk café permit. The statement shall include that the permittee shall be responsible, shall indemnify and shall hold the Town, Palm Beach County and/or FDOT harmless for performance of and payment for any environmental remediation that may be necessary, as determined by the FDOT, as a result of permittee's use of the area of the outdoor sidewalk café.

(b) Permittee shall furnish and maintain public liability, food products liability, liquor liability, and property damage insurance for the benefit of the Town and/or Palm Beach County or FDOT (if within or abutting either governmental entities rights-of-way) from all claims and damage to property or bodily injury, including death, which may arise from operations under the business tax receipt or in connection therewith. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000.00) for bodily injury or death to any one (1) person or any number of persons in any one (1) occurrence and property damage, respectively, per occurrence, or a combined coverage of not less than two million dollars (\$2,000,000.00). Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insureds the Town, Palm Beach County and/or FDOT, their officers and employees, if within or abutting either's rights-of-way and shall further provide that the policy shall not terminate or be canceled prior to the completion of the business tax receipt period without forty-five (45) days written notice to the risk manager at the address shown on the business tax receipt.

(c) Damage to the public sidewalk or any public structure as a result of the outdoor café seating operation shall be the responsibility of the property owner to repair to the satisfaction of the town.

(d) The town and its officers and employees shall not be responsible for sidewalk seating components relocated or damaged during emergencies.

Sec. 134-2108. - Denial, revocation or suspension of approval.

(a) An outdoor café seating permit shall be denied if all of the requirement and/or conditions in sections 134-2106 and 134-2107 are not met. An outdoor café seating permit may be modified, suspended or revoked by the planning, zoning and building director if it is determined that the business is violating the requirement and/or conditions in sections 134-2106 and 134-2107 or if it is determined by the town that the outdoor café seating is negatively impacting neighboring property owners or tenants.

(b) The director may require the temporary removal of sidewalk café outdoor seating when street, sidewalk or utility repairs necessitate such action.

(c) If found to be necessary for the protection of the health, safety and welfare of the public, the departments of public works, police and fire-rescue or other emergency service providers may require the applicant to immediately remove or relocate all or parts of the sidewalk outdoor cafe seating and, if necessary, the town may remove or relocate same in emergency situations.

Sec. 134-2109. - Appeal of denial, suspension or revocation by the director of planning, zoning and building department.

The town council shall hear any appeal of a denial, suspension or revocation of an outdoor café seating permit by the planning, zoning and building director or designee pursuant to sections 134-141 through 134-145 of the code.

Section 18. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 19. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 20. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 21. Effective Date.

This Ordinance shall take effect thirty-one days after its adoption, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this ____ day of _____, 2021, second reading and final adoption on this ____ day of _____, 2021.

Danielle H. Moore, Mayor

Margret A. Zeidman, Town Council President

Bobbie Lindsay, Council President Pro Tem

Julie Araskog, Town Council Member

ATTEST:

Edward A Cooney, Town Council Member

Queenester Nieves, CMC, Town Clerk

Lewis S. W. Crampton, Town Council Member