



CITY COUNCIL MEETING

City of Greenacres, Florida

Monday, December 05, 2022 at 6:00 PM

City Hall Council Chambers | 5800 Melaleuca Lane

AGENDA

Mayor and City Council

Joel Flores, Mayor

John Tharp, Deputy Mayor

Peter A. Noble, Councilmember, District II

Judith Dugo, Councilmember District III

Susy Diaz, Councilmember, District IV

Paula Bousquet, Councilmember, District V

Administration

Andrea McCue, City Manager

Glen J. Torcivia, City Attorney

Quintella Moorer, City Clerk

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

AGENDA APPROVAL

COMMENTS FROM THE PUBLIC FOR AGENDA ITEMS ONLY

SPECIAL BUSINESS

1. **Presentation:** Accepting a Certificate of Appreciation from Daughters of the American Revolution (DAR) for sponsoring 900 Constitution books to John I. Leonard High School. - Marjorie Ferrer, DAR.
2. **Presentation:** Recognition of Appreciation to Simon Electric and Healing Hearts Foundation. - Mayor Joel Flores.

CONSENT AGENDA

3. **Official Meeting Minutes:** City Council Meeting Minutes, November 7, 2022. - Quintella Moorer, City Clerk.
4. **Resolution 2022-63:** Appointing an alternate Special Magistrate for Code Compliance Hearings pursuant to Section 2.288 of the City's Code of Ordinances; authorizing the City Manager to execute an engagement agreement for the Special Magistrate's service; and providing for an effective date. - Andrea McCue, City Manager.

REGULAR AGENDA

5. **PUBLIC HEARING: Ordinance 2022-23: Second Reading:** Amending Chapter 16, Zoning Regulations, Article 1, in General, Section 16-1, by amending certain definitions and adding definitions; further amending Chapter 16, Article 4, Supplemental District Regulations, Division 1, Generally, by adopting new Section 16-609, to be entitled "Live Entertainment Permit"; Section 16-610, to be entitled "Outdoor storage, Display, Sales, Cooking and sales of propane tanks"; Section 16-611, to be entitled "Placement and use

of portable storage units”; and, Section 16-612, to be entitled “Outdoor seating”; providing for conflicts, severability, codification, an effective date; and for other purposes. - Kara Irwin-Ferris, City Consultant.

6. Ordinance 2022-38: First Reading: Amending Chapter 6, Franchises, Article 5, Solid Waste, Division 1, Generally, Section 6-276, of the City of Greenacres Code of Ordinances, to clarify that all rates under the Franchise Agreement may be amended by City resolution; providing for repeal of conflicting ordinances, severability, codification, retrospective application, and an effective date. - Monica Powery, Director of Purchasing.

7. Ordinance 2022-42: First Reading: Amending Chapter 2 "Administration," Article I "In General," by adding a new Section 2-2 "Naming of City Programs, Events and Facilities;" Providing for severability, conflicts, codification and an effective date. - Andrea McCue, City Manager.

DISCUSSION ITEM - None.

COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

MAYOR AND CITY COUNCIL REPORT

ADJOURNMENT

Upcoming Council Meetings

December 19, 2022

January 9, 2023

Meeting Records Request

Any person requesting the appeal of a decision of the City Council will require a verbatim record of the proceedings and for that purpose will need to ensure that such verbatim record is made. Pursuant to FS. 286.0105, the record must include the testimony and evidence upon which the appeal is to be based. The City of Greenacres does not prepare or provide such verbatim record.

Notice of Council Meetings and Agendas

The first and third Monday of each month are regular meeting dates for the City Council; special or workshop meetings may be called, whenever necessary. Council Agendas are posted on the City's website on the Friday prior to each Council meeting. A copy of the meeting audio and the complete agenda may be requested at CityClerk@greenacresfl.gov or 561-642-2006.

Americans with Disabilities Act

In accordance with the provisions of the Americans with Disabilities Act (ADA), this document can be made available in an alternate format upon request. Special accommodations can be provided upon request with three (3) days advance notice of any meeting, by contacting City Clerk Quintella Moorner at Greenacres City Hall, 5800 Melaleuca Lane, Greenacres, Florida. Phone No. 561-642-2006. Hearing Assistance: If any person wishes to use a Listen Aid Hearing Device, please contact the City Clerk prior to any meeting held in the Council Chambers.



CITY COUNCIL MEETING
City of Greenacres, Florida
Monday, November 07, 2022 at 6:00 PM
City Hall Council Chambers | 5800 Melaleuca Lane

MINUTES

Mayor and City Council
Joel Flores, Mayor
John Tharp, Deputy Mayor

Peter A. Noble, Councilmember, District II
Judith Dugo, Councilmember District III
Susy Diaz, Councilmember, District IV
Paula Bousquet, Councilmember, District V

Administration
Andrea McCue, City Manager
Glen J. Torcivia, City Attorney
Quintella Moorer, City Clerk

CALL TO ORDER AND ROLL CALL

Mayor Flores called the meeting to order at 6PM and City Clerk Moorer called the Roll.

PLEDGE OF ALLEGIANCE

AGENDA APPROVAL

Motion made by Councilmember Diaz, Seconded by Councilmember Bousquet to approve the Consent Agenda.

Voting Yea: Deputy Mayor Tharp, Councilmember Noble, Councilmember Dugo, Councilmember Diaz, and Councilmember Bousquet.

COMMENTS FROM THE PUBLIC FOR AGENDA ITEMS ONLY

None.

SPECIAL BUSINESS

- 1. Proclamation:** National Hunger and Homelessness Awareness Week, November 12-20, 2022. - Pamela Payne, CEO of The Homeless Coalition of Palm Beach County.

Ms. Moorer read the proclamation by title.

Mayor Flores accepted the proclamation and thanked the Homeless Coalition of Palm Beach County for their continued dedication to the City.

Photos were taken.

- 2. Proclamation:** World AIDS Day, December 1, 2022 - Richardo Jackson, CEO and Natacha Etienne of Campbell Health Solutions, Inc.

Ms. Moorer read the proclamation by title.

Ms. Etienne thanked the City for their acknowledgement and welcomed all residents to visit her clinic for free HIV testing during the month of November.

Photos were taken.

Mayor Flores thanked Kara Irwin-Ferris for seven years of dedicated service to the City of Greenacres. Ms. McCue said Ms. Irwin-Ferris was a great access to the City professionally and personally. Mayor Flores presented her a gift from the City.

Photos were taken.

3. Presentation: Certificate of Appreciation to Greenacres Firefighters and Palm Beach County Sheriff's Officers, District 16. - Mayor Joel Flores.

Mayor Flores recognized some Fire Rescue and PBSO members who dedicated time and effort to deploy for eight days in response to Hurricane Ian Recovery.

Certificates of Appreciation were provided.

Photos were taken.

CONSENT AGENDA

4. Official Meeting Minutes: City Council Meeting Minutes, October 17, 2022. - Quintella Moorer, City Clerk.

5. Ratification of the Charter Review Committee Appointment: Appointing Aquannette Thomas to serve a (3) three-year term. - Andrea McCue, City Manager.

Motion made by Councilmember Bousquet, Seconded by Deputy Mayor Tharp to approve the Consent Agenda.

Voting Yea: Deputy Mayor Tharp, Councilmember Noble, Councilmember Dugo, Councilmember Diaz, and Councilmember Bousquet.

REGULAR AGENDA

6. PUBLIC HEARING: Ordinance 2022-29: Second Reading: Amending Chapter 12, Subdivisions and Land Development Regulations, Article 3, Improvements and design standards, Section 12-58, drainage, by adding Sub-section 12-58(K), imposing drainage requirements between properties; providing for repeal of conflicting ordinances; severability, inclusion in the code, and an effective date. - Caryn Gardner-Young, Zoning Administrator.

Ms. Moorer read the ordinance by title.

Ms. Gardner-Young stated the ordinance was Second Reading and was needed to address flooding situations in residential properties.

Ms. Gardner-Young stated no changes had been made since the First Reading. Staff recommend approval of the ordinance.

Motion made by Deputy Mayor Tharp, Seconded by Councilmember Bousquet to approve Ordinance 2022-29 on Second Reading.

Voting Yea: Deputy Mayor Tharp, Councilmember Noble, Councilmember Dugo, Councilmember Diaz, and Councilmember Bousquet.

7. PUBLIC HEARING: Ordinance 2022-23: First Reading: Amending Chapter 16, Zoning Regulations, Article 1, in General, Section 16-1, by amending certain definitions and adding definitions; further amending Chapter 16, Article 4, Supplemental District Regulations, Division 1, Generally, by adopting new Section 16-609, to be entitled "Live Entertainment Permit"; Section 16-610, to be entitled "Outdoor storage, Display, Sales, Cooking and sales of propane tanks"; Section 16-611, to be entitled "Placement and use of portable storage units"; and, Section 16-612, to be entitled "Outdoor seating"; providing for conflicts, severability, codification, an effective date; and for other purposes. - Caryn Gardner-Young, Zoning Administrator.

Ms. Pamela Payne arrived to accept the proclamation. Mayor Flores presented the proclamation to Ms. Payne. She thanked the Council for the proclamation and mentioned the importance of addressing hunger.

Ms. Moorer read the ordinance by title.

Ms. Irwin-Ferris stated the changes would strengthen code regulations for issues that were occurring within the City relative to live entertainment and businesses acting outside of their definitions.

Ms. Irwin-Ferris presented a supplemental regulation for the City. She mentioned a few changes such as definitions, outdoor sales, parking, permit requirements and outdoor seating.

She mentioned the City would use the existing special event permit requirements to regulate the Code. Staff recommended approval.

Deputy Mayor Tharp asked would food trucks fall under Ordinance 2022-23. Ms. Irwin-Ferris stated food trucks were a separate Code and were allowed in the City.

Councilmember Dugo asked the duration of permits. Ms. Irwin-Ferris stated usually a year.

Councilmember Diaz stated she had a few reservations regarding the ordinance as it encompassed various topics. She asked what the requirements were for maintaining the permit and not violate. Ms. Irwin-Ferris replied that the permit would need to be an accessory use. She said the business must maintain the original use. Councilmember Diaz was concerned some businesses would be violated for coming close to the edge of the ordinance and in effort to stop other businesses whom have completed change uses.

Councilmember Diaz asked how the City would educate the businesses so they may remain compliant. Ms. Irwin-Ferris stated letters, internal education and Code officers who were called on complaints would talk to the owners first and advise of requirements. She mentioned the permit cost was \$110.00.

Councilmember Dugo asked about outdoor table use and what was the requirement. Ms. Irwin-Ferris stated the plaza owners must approve. She said cases varied based on ADA, style, walkable traffic flow.

Council and Staff talked about tables outside of businesses and requirements.

Councilmember Dugo was concerned with the amount of language in the ordinance regarding outdoor seating. Ms. Irwin-Ferris stated individual areas of businesses may return for further discussion.

Mayor Flores questioned live entertainment requirements and were they now considered an event. Ms. Irwin-Ferris stated if a DJ was added it would be considered live entertainment and could be listed under a blanket permit based on frequency.

Mr. Aaron Taylor stated he had witnessed some of the issues Ms. Irwin-Ferris mentioned and agreed that the ordinance would help regulate some of the issues. He also suggested requiring the designated entertainment area be added to the floor plan of the business. Ms. Irwin-Ferris stated the stated suggestion from Mr. Taylor was included.

Mr. Nathan Galang felt certain parts of the ordinance were complicated and unnecessary.

Motion made by Deputy Mayor Tharp, Seconded by Councilmember Bousquet to approve Ordinance 2022-23 on First Reading.

Voting Yea: Deputy Mayor Tharp, Councilmember Noble, and Councilmember Bousquet.

Voting Nay: Councilmember Dugo and Councilmember Diaz.

- 8. QUASI-JUDICIAL PUBLIC HEARING: Resolution 2022-47:** Approving the petition for a Special Exception to allow a 2,016 square foot indoor recreational amusement use in a Commercial Intensive (CI) zoning district, located at 3757 S. Military Trail, as requested by the Petitioner, Aaron Taylor, Agent for the owner, 3757 S. Military Trail, LLC; providing for repeal of conflicting resolutions; and providing for an effective date. - Caryn Gardner-Young, Zoning Administrator.

Mayor Flores recessed the meeting at 7:01pm.

Mayor Flores reconvened the meeting at 7:04pm.

Ms. Gardner-Young read the Quasi-Judicial process.

Ms. Moorer swore in two persons.

Ms. Moorer read the resolution by title.

There was no Ex-parte communication from the Council to report.

Mr. Aaron Taylor stated he was seeking approval of a special exception to allow indoor recreational amusement use in a Commercial Intensive zoning district. He provided some background history of the site since his takeover, such as electrical wiring issues.

Ms. Gardner -Young stated this was a second request of amusement use as the first request had a lack of activity. She said the application met the criteria of the City. Ms. Gardner-Young said the applicant agreed to all seventeen conditions, such as no alcoholic, size, and temporary use permits.

Staff recommended approval.

Mayor Flores questioned the current status of the permits. Mr. Taylor explained since he recently become involved the violations were resolved. Ms. Gardner-Young explained the in lieu process as it related to violations.

Motion made by Councilmember Dugo, Seconded by Councilmember Bousquet to approve Resolution 2022-47.

Voting Yea: Deputy Mayor Tharp, Councilmember Noble, Councilmember Dugo, Councilmember Diaz, and Councilmember Bousquet.

- 9. Resolution 2022-60:** Authorizing the execution of an Interlocal agreement between the City of Greenacres and Palm Beach County, pursuant to Chapter 171.046, Florida Statutes, providing for the annexation of a portion of an enclave totaling approximately 7.9636 acres located at 4148 S. Jog Road, 4080 S. Jog Road, 4020 S. Jog Road, 6492 Lake Worth Road, 6350 Lake Worth Road, and 6323 Lake Worth Road; providing for transmittal to the Palm Beach County Board of County Commissioners for subsequent action; and providing for an effective date. - Kara Irwin Ferris, City Consultant.

Ms. Moorer read the resolution by title.

Ms. Irwin-Ferris stated the resolution was to approve an interlocal agreement with Palm Beach County which allows for annexation under ten acres of parcels. Staff recommended approval.

Councilmember Bousquet thanked Ms. Irwin-Ferris and Ms. McCue for their hard work on this annexation.

Motion made by Councilmember Bousquet, Seconded by Councilmember Noble to approve Resolution 2022-60.

Voting Yea: Deputy Mayor Tharp, Councilmember Noble, Councilmember Dugo, Councilmember Diaz, and Councilmember Bousquet.

- 10. Ratification of the Building Board of Adjustments and Appeals Board:** Appointing six (6) of (9) nine members to serve (4) four-year unlimited staggered terms. - Andrea McCue, City Manager.

Ms. McCue said the BBAA have had some issues with retaining members based on the criteria of the members. She proposed six applicants for approval and stated the total members needed were nine.

Motion made by Councilmember Diaz, Seconded by Councilmember Bousquet to approve the ratification of the BBAA.

Voting Yea: Deputy Mayor Tharp, Councilmember Noble, Councilmember Dugo, Councilmember Diaz, and Councilmember Bousquet.

DISCUSSION ITEM - None.

COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS

Mr. Nathan Galang commented on the power outage at Lakeview Gardens Condo. Mr. Galang felt this was not an isolated incident and felt the City could do more for housing.

CITY MANAGER'S REPORT

Ms. McCue stated Lakeview Gardens situation was brought to the attention of the City later and she thanked Staff for their assistance with getting the some resolution for the residents.

She also mentioned the non-profit organization and electrical company who helped the residents and she desired to recognize them at the next Council meeting.

She mentioned some updates on Storm Nicole.

She mentioned a few reminders for events such as:

Veteran's Day, November 11.

Let's Talk, November 9.

Holiday in the Park, December 3.

Toy Drive for Estero, due by December 2.

Cancelling of the November 21, 2022, Council Meeting. The Council agreed.

CITY ATTORNEY'S REPORT

No report.

MAYOR AND CITY COUNCIL REPORT

Councilmember Bousquet thanked Ms. McCue, Mr. Lee, Mr. Wood and Staff regarding the hard work with Lakeview Gardens.

Councilmember Diaz thanked Ms. Gardner-Young and Ms. Thompson and Ms. Aviles for the Read for the Record event. She also thanked the Team regarding the Lakeview Gardens power outage issue and Ms. Irwin-Ferris for her dedication.

Noble, Dugo, Tharp thanked Ms. McCue and the entire team regarding the Lakeview Gardens power outage.

Mayor Flores said he was looking forward to the Comp Plan feedback. He was proud of the City Staff for their hard work as it related to Lakeview Gardens and he said he was the representative that called the media to bring light to the situation. Mayor Flores said he would not tolerate slumlords in the City. He was very disappointed at what occurred to the residents of Lakeview Gardens.

He thanked Ms. Irwin-Ferris. for her dedication.

ADJOURNMENT

7:44PM

Joel Flores
Mayor

Quintella Moorer, CMC
City Clerk

Date Approved: _____



ITEM SUMMARY

MEETING DATE: December 5, 2022

FROM: City Attorney

SUBJECT: Appointment and Agreement for Special Magistrate

BACKGROUND

The items seeks the appointment of an alternative special magistrate for the Code Compliance Division and execution of an agreement with for magistrate services.

ANALYSIS

The City's Code Compliance program utilizes a special magistrate to hear code compliance cases consistent with the City's Code Compliance ordinance set forth in Article VIII of Chapter 2 of the City's code of ordinances and for other purposes as may be necessary. The Code Compliance Division currently utilizes Florida attorney Myrnabella Roche, as its special magistrate for all hearings. From time to time, Ms. Roche has a hearing conflict and cannot serve as the City's special magistrate. The Code Compliance Division desires to have an alternate special magistrate appointed to utilize when Ms. Roche has a conflict. Amity "Mitty" Barnard with the law firm of Keith Davis & Associates, P.A., is an attorney admitted to The Florida Bar and is Board Certified by The Florida Bar in City, County, and Local Government law. Ms. Barnard is qualified to serve as a special magistrate under section 2-288 of the City's code of ordinances. The City Attorney's office is familiar with Ms. Barnard having worked with her at other municipalities and appeared before her as a special magistrate. The City Attorney's office recommends Ms. Barnard for the City's alternate special magistrate.

FINANCIAL INFORMATION

The proposed agreement for special magistrate services is similar to the agreement with the current special magistrate and provides an hourly rate of \$175 with a two hour minimum for hearings. Travel time is not authorized under the agreement.

LEGAL

City Attorney has reviewed the item and all supporting documents for legal sufficiency and compliance.

STAFF RECOMMENDATION

Recommend approval of Resolution No. 2022-___ appointing Ms. Barnard as the alternate special magistrate and authorizing the execution of an engagement agreement for the services of the same.

RESOLUTION NO. 2022-63

A RESOLUTION ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, APPOINTING AN ALTERNATE SPECIAL MAGISTRATE FOR CODE COMPLIANCE HEARINGS PURSUANT TO SECTION 2-288 OF THE CITY'S CODE OF ORDINANCES; AUTHORIZING THE CITY MANAGER TO EXECUTE AN ENGAGEMENT AGREEMENT FOR THE SPECIAL MAGISTRATE'S SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City's Code Compliance program utilizes a special magistrate to hear code compliance cases consistent with the City's Code Compliance ordinance set forth in Article VIII of Chapter 2 of the City's code of ordinances and for other purposes as necessary; and

WHEREAS, the Code Compliance Division currently utilizes Florida attorney Myrnabella Roche, as its special magistrate for all hearings; and

WHEREAS, from time to time, Ms. Roche has a hearing conflict and cannot serve as the City's special magistrate; and

WHEREAS, the Code Compliance Division desires to have an alternate special magistrate appointed to utilize when Ms. Roche has a conflict; and

WHEREAS, Amity "Mitty" Barnard is an attorney admitted to The Florida Bar and is Board Certified by The Florida Bar in City, County, and Local Government law, and qualified to serve as a special magistrate under section 2-288 of the City's code of ordinances; and,

WHEREAS, the City Council has determined that appointing Ms. Barnard as the City's alternate special magistrate is in the best interests of the City and serves a valid public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, THAT:

SECTION 1. The foregoing recitals are incorporated into this Resolution as true and correct statements and findings of the City Council of the City of Greenacres.

SECTION 2. The City Council appoints Mitty Barnard, Esq., as the City's alternate

Resolution No. 2022-63___ | Alternate Special Magistrate

Page No. 2

special magistrate and authorizes the City Manager to execute an engagement agreement with Ms. Barnard.

SECTION 3. This Resolution shall be effective upon its adoption.

RESOLVED AND ADOPTED this 5th day of December 2022

Voted:

Joel Flores, Mayor

John Tharp, Deputy Mayor

Attest:

Voted:

Quintella Moorer, City Clerk

Peter Noble, Council Member, District II

Voted:

Judith Dugo, Council Member, District III

Voted:

Susy Diaz, Council Member, District IV

Voted:

Paula Bousquet, Council Member, District V

Resolution No. 2022-63___ | Alternate Special Magistrate
Page No. 3

Approved as to Form and Legal Sufficiency:

Glen J. Torcivia, City Attorney



ITEM SUMMARY

MEETING DATE: December 5, 2022

FROM: Kara Irwin-Ferris, AICP, Planning Consultant

SUBJECT: **Ordinance 2022-23, ZTA-22-11**
Supplemental Regulations

BACKGROUND

The city has regulations relative to outdoor sales in different areas of the code but is pursuing these changes to centralize the regulations within Chapter 16, Article IV. Supplemental Regulations. Some of the changes are simple reactions to new types of businesses, such as storage pods, which drop the containers on lots and leave them there for a period of time for loading and unloading. Regulations managing timing and location were needed. In addition, retail stores were placing items on the sidewalk for sale, which is not permitted. The code amendment will further clarify that it is prohibited in all zoning districts.

Many changes have occurred in the past year in how business is conducted, and code changes are needed to address the impacts. Some restaurants in the city are closing their kitchens at 10:30 pm and bringing in live music, including DJs, to change the venue into a night club, which is not permitted in the zoning district. While live entertainment has been considered an accessory use within restaurants and bars, the changing of the nature of the business with the music is an issue that must be addressed. It has caused public safety issues for police and assembly issues for Fire Rescue. These businesses have not been inspected to do business in that manner, nor would it be permitted by Code. The safety of the customers is an area of concern for the city's public safety providers.

Finally, outdoor seating has become an issue after the pandemic. When restaurants were limited to 50% capacity, many reached out to the city to add outdoor areas for service. Under the State Governor's Emergency Order, the city allowed for temporary outdoor seating through a temporary use permit. In addition, there have been limited approvals for non-service outdoor seating through the site plan approval process, but some restaurants have put out chairs and seating without approval. While this has been addressed through code enforcement, it was determined that some regulations needed to be added to the code.

The Land Development Staff has reviewed these text amendments and is recommending approval. The Planning Commission reviewed this staff-initiated text amendment on July 14, 2022, and recommended approval by a vote of 5-0. The City Council voted three (3) to two (2) to recommend approval of Zoning Text Amendment ZTA-22-11 as presented by staff on November 7, 2022.

ANALYSIS

City staff initiated this code change to address the need for strengthening code regulations for issues that were occurring within the city relative to live entertainment and businesses acting outside of their definitions. After reviewing the City's current standards, staff determined that there was a need to add supplemental regulations to include live entertainment, outdoor storage, outdoor sales, and outdoor seating.

FINANCIAL INFORMATION

N/A

LEGAL

Ordinance 2022-23 was prepared in accordance with all applicable state statutes and City Code Requirements.

The Ordinance was advertised in accordance with Florida State Statutes 166.041(3)(c)1.

STAFF RECOMMENDATION

Approval of ZTA-22-11 through the adoption of Ordinance 2022-23.

ORDINANCE NO. 2022-23

AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, AMENDING CHAPTER 16, ZONING REGULATIONS, ARTICLE I, IN GENERAL, SECTION 16-1, BY AMENDING CERTAIN DEFINITIONS AND ADDING DEFINITIONS; FURTHER AMENDING CHAPTER 16, ARTICLE IV, SUPPLEMENTAL DISTRICT REGULATIONS, DIVISION 1, GENERALLY, BY ADOPTING NEW SECTION 16-609, TO BE ENTITLED “LIVE ENTERTAINMENT PERMIT”; SECTION 16-610, TO BE ENTITLED “OUTDOOR STORAGE, DISPLAY, SALES, COOKING AND SALES OF PROPANE TANKS”; SECTION 16-611, TO BE ENTITLED “PLACEMENT AND USE OF PORTABLE STORAGE UNITS”; AND, SECTION 16-612, TO BE ENTITLED “OUTDOOR SEATING”; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City Council has determined that a need exists to update and modify criteria for current trends with live entertainment, outdoor sales, placement and use of portable storage units, and outdoor seating; and

WHEREAS, the City Council of the City of Greenacres has determined that various sections of Chapter 16 of the City’s Code of Ordinances need to be amended to provide clarity, consistency, and updates to account for these current trends; and

WHEREAS, the amendments set forth in this Ordinance are to ensure the allowed uses and activities are addressed through clear guidelines in furtherance of the City’s inherent police and regulatory powers; and

WHEREAS, this Ordinance was reviewed by the Planning and Zoning Board of Appeals at a public hearing on June 9, 2022, and the Board recommended approval by a vote of 5 to 0; and

WHEREAS, minor revisions were made to this Ordinance after Planning and Zoning Board of Appeal’s review to further clarify the provisions and streamline the content; and,

WHEREAS, the City Council deems approval of this Ordinance to be in the best interest of the residents and citizens of the City of Greenacres and serving a valid public purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, THAT:

SECTION 1. The foregoing recitals are incorporated into this Ordinance as true and correct findings of the City Council of the City of Greenacres, Florida.

SECTION 2. Chapter 16, Zoning Regulations, Article I, In General, Section 16-1, Definitions is hereby amended as follows (underlined text is added and strike-through text is deleted):

Ordinance No. 2022-23 | Supplemental Regulations
Page No. 2

[The following definitions shall be placed within the list of definitions in alphabetical order. All other text to remain as-is and is omitted for brevity.]

Sec. 16-1. – Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this ~~section~~chapter, except where the context clearly indicates a different meaning:

Amplified sound shall mean any sound that is naturally, electronically, mechanically, or otherwise made louder through another device including, but not limited to, a speaker, amplifier, microphone, bullhorn, or drum.

Outdoor sales shall mean the selling of any goods, material, merchandise, or vehicles for ~~more than twenty-four (24) hours~~, in an area open to the sky and/or visible from adjacent properties or rights-of-way and is prohibited unless authorized in accordance with a specific provision of this Code or by special event or temporary use permit.

Outdoor storage shall mean the keeping of any goods, material, merchandise, or vehicles for ~~more than twenty-four (24) hours~~, in an area open to the sky and/or visible from adjacent properties or rights-of-way and is prohibited unless authorized in accordance with a specific provision of this Code or by special event or temporary use permit.

Portable storage unit shall mean any portable, weather-resistant receptacle designed and used for the temporary storage and/or shipment of goods, supplies, or other materials and includes, but is not limited to, storage containers and portable household good pods.

SECTION 3. Chapter 16, Zoning Regulations, Article IV, Supplementary District Regulations, Division 1, Generally, is hereby amended by adding section 16-609, as follows:

Section 16-609. – Live entertainment permit.

(a) *Purpose.* The purpose of this section is to provide regulations which govern the provision of live entertainment at commercial establishments while protecting the quiet enjoyment of adjacent properties.

(b) *Applicability of permit.*

- (1) A live entertainment permit is required for all new and existing restaurants, bars, cocktail lounges, or other permitted commercial establishments to provide or use the following:
 - a. Outdoor live entertainment with or without amplified sound; and
 - b. Indoor live entertainment with amplified sound.
- (2) A live entertainment permit is valid only for the specific establishment, location, and operator of establishment to whom it is issued.
- (3) A live entertainment permit is not required for conducting a special event in accordance with section 16-718, which requires a permit for temporary uses.

- (4) Live entertainment is accessory to the principal use of the establishment and cannot be a principal use for all or portion of the establishment, such as a concert or night club use.
- (c) Permit required; submittals. Applications for a permit and renewal of a permit under this section shall be made to the building division on a form provided for such purpose by the city, and shall include, along with any other such information deemed reasonably necessary by the reviewers to implement and enforce the provisions of this section, the following:
- (1) The applicant shall submit the application for live entertainment with an application fee and performance bond in amounts as set forth in the city's fee schedule;
 - (2) The name, location, and mailing address of the property owner and tenant (if applicable) proposing to use or provide live entertainment;
 - (3) The name, mailing address, and telephone contact information of the applicant and the written authorization of the property owner(s);
 - (4) A location plan indicating the location of the live entertainment, stage/area for entertainment, speakers, and/or location of any other equipment/facilities that will be used as a part of the live entertainment activities; and
 - (5) A sound management plan which sets forth the methods to be utilized to ensure compliance with the noise limitations set forth in this Code and any other requirements set forth in this Code or the city's Standard Operating Procedures (SOP) for live entertainment permitting (if adopted by the development and neighborhood services department).
- (d) Transferability. A live entertainment permit may be transferred in accordance with the following provisions:
- (1) When a sale or change in ownership occurs to an establishment that has an existing valid live entertainment permit, a request to transfer the permit may be made with the new business tax receipt to the planning, engineering and gis division;
 - (2) The transfer request shall not include any proposed changes to the previously-approved sound management plan. If changes are proposed, the applicant shall apply for a new live entertainment permit;
 - (3) The performance bond as required by this section shall be provided by the new holder of the business tax receipt; and,
 - (4) Upon the issuance of any new live entertainment permit, a new twelve-month period shall commence in accordance with subsection (f) below.
- (e) Standard conditions of approval for all permits. The following are standard conditions of approval for all live entertainment permits.
- (1) Sound generated by or emanating from establishments that are using or providing live entertainment shall comply with the noise limitations set forth in this Code;
 - (2) Hours of live outdoor entertainment shall not extend beyond 10:00 p.m. unless:
 - a. Specific approval is received through the application and issuance of a special events permit in accordance with section 16-718, special events; or

- b. The applicant submits a sound management plan, certified by an acoustical engineer, which verifies that sound levels generated will remain within the standards set forth in this Code and further complies with the SOP (if any) for live entertainment permitting. A copy of the adopted SOP (if any) shall be kept on file with the city clerk and shall be available for public inspection during normal business hours.
- (3) Such other conditions of approval to ensure the live entertainment does not negatively impact the quiet enjoyment of adjacent properties.
- (f) Standards for review. When considering applications for a live entertainment permit, the city shall consider the following:
- (1) The amount and type of screening, buffering, or separation between the establishment and adjacent properties, with reference to type, dimensions, and character, shall be fully and clearly depicted on the submitted plans and must be adequate to mitigate sound impacts upon adjacent properties; and
- (2) The land and buildings which are the subject of the application must be of sufficient size, shape, type of building, and the like to ensure the proposed live entertainment can be accommodated without negative impact on adjacent properties.
- (g) Issuance, renewal and revocation.
- (1) If the city issues a live entertainment permit or renews a live entertainment permit, the permit shall be in effect for 12 months from the date of issuance or renewal by the city unless earlier revoked as stated herein.
- (2) After 12 months, the permit or renewed permit shall expire and the commercial establishment must apply for a new permit or a renewal of the permit. A renewed permit may be granted by the city if there are no changes to the conditions for granting the original permit including without limitation no changes in the sound management plan. If the performance bond submitted with the previously issued permit has expired, a new performance bond must be submitted with the application to renew. If a live entertainment permit expires and a renewal is not sought within thirty (30) days, the city will return the performance bond to the commercial establishment.
- (3) The city may revoke a live entertainment permit if the commercial establishment violates any terms and conditions of the permit, the sound management plan, this section, or is found in violation of other provisions of this Code which relate to the operation of the commercial establishment. If the city revokes a live entertainment, it shall send written notice to the commercial establishment of the revocation and may retain the performance bond if the grounds for the revocation include a violation of the sound management plan. The commercial establishment may appeal the revocation to the city's special magistrate within twenty (20) days of receipt of the notice of revocation. Such appeal will then be heard within thirty (30) days of the city's receipt of the appeal and notice of the hearing will be sent to the commercial establishment by regular first class mail. A commercial establishment whose live entertainment permit is revoked (and such revocation upheld if appealed) may re-apply for a new live entertainment permit six (6) months after the date of revocation with sufficient showing that all grounds for the revocation have been corrected.

(h) Enforcement. The provisions of this section may be enforced through standard code enforcement procedures and the alternative citation procedures provided in Chapter 2. If an establishment provides live entertainment without a permit or in violation of an establishment's permit or in violation of the requirements of this section, the violation is deemed irreparable in nature and the violator may be required to pay a fine not to exceed \$5,000 per violation. Each day such a violation continues to exist shall be deemed a new violation. The city may retain the performance bond, in whole or in part, to pay any fines or costs assessed if the commercial establishment is found in violation.

SECTION 4. Chapter 16, Zoning Regulations, Article IV, Supplementary District Regulations, Division 1, Generally, is hereby amended by adding section 16-610, as follows:

Section 16-610. – Outdoor Storage, Display, Sales, Cooking and Sales of Propane Tanks.

(a) Outdoor Storage, Display, and Sales.

- (1) Enclosed activities. Commercial sales, displays, retail activities, and all other similar commercial business activities including, but not limited to, the storage of goods and materials, shall be conducted within a completely enclosed building. No outdoor commercial sales, display, retail activities, or other similar commercial business activities including, but not limited to, the storage of goods and materials, shall be permitted at any time unless authorized by this section, other specific provision of this Code, or by special event or temporary use permit.
- (2) Outdoor storage, display, and/or sales may be permitted in the Commercial Intensive (CI) zoning district where such outdoor storage, display, and/or sales are customarily incidental to the principal use of the permitted commercial business and the outdoor storage, display, and/or sales are permitted by existing special exception criteria governing the principal use. There shall be no outdoor storage, display, or sales by any person operating or conducting a commercial business which is different or distinct from the permitted principal use at such location.
- (3) Outdoor storage and display of loose materials such as sand, gravel, lumber, cardboard boxes, pallets, or other similar materials which are subject to being scattered or blown about the premises by normal weather conditions is prohibited.
- (4) Unless specifically authorized by this section, by other specific provision of this Code or by special event or temporary use permit, outdoor storage, display, and sales is prohibited within all zoning districts.

(b) Outdoor Cooking. Commercial establishments are prohibited from cooking outdoors of an enclosed and properly permitted building or structure including, but not limited to, grilling, smoking, frying or other heating or preparation of food, unless specifically approved through the issuance of a special event or temporary use permit.

(c) Propane Tanks for Retail Sales. Notwithstanding the other provisions of this section, propane tanks offered for retail sales will be permitted by right for certain uses in zoning districts which allow retail sales. No additional business tax receipt will be required for

permitted propane tank retail sales; however, the public service tax for the propane tank sales is applicable. A retailer will be considered eligible for propane tank retail sales for the purposes of this Code if the following criteria are met:

- (1) Retail sales must be a permitted use in the applicable zoning district.
- (2) Only retail drugstores, retail hardware stores, supermarkets, convenience stores, and existing licensed LP Gas retailers shall be permitted to sell propane tanks for retail sales.
- (3) Food markets shall not be permitted to sell propane tanks for retail sales.
- (4) A building permit clearly indicating the dimensions and setbacks of the location of the proposed metal case or propane locker shall be required prior to installation. The maximum capacity of the metal case or propane locker will be used to determine the number of propane tanks which may be offered for sale at a given time.
- (5) The metal case or propane locker shall be located under an overhang and on an accessible route. Installation shall not obstruct the accessible route.
- (6) The Fire Marshall shall review and approve the location of the metal case or propane locker in accordance with NFPA Storage Requirements for LP Gas Cylinders.

SECTION 5. Chapter 16, Zoning Regulations, Article IV, Supplementary District Regulations, Division 1, Generally, is hereby amended by adding section 16-611, as follows:

Section 16-611. - Placement and use of portable storage units.

- (a) Purpose. The purpose of this section is to provide for uniform guidelines for the placement and use of portable storage units.
- (b) Time limitation. For residentially zoned districts or zoning districts where residential uses are permitted or legally grandfathered in, portable storage units may be located and utilized for no more than fourteen (14) consecutive days. The development and neighborhood services director or designee may grant one (1) extension not to exceed fourteen (14) additional consecutive days for good cause. Only one (1) portable storage unit per residential dwelling is permitted in any twelve (12)-month period unless there is a change of ownership of the residential dwelling during such twelve (12)-month period.
- (c) Placement. The placement of the portable storage unit shall be on a paved driveway or other approved parking area surface and shall be accomplished in such a manner that no landscaping is damaged as a result of the placement. Portable storage units shall not be located in the street or any portion of the public right-of-way or any easement and shall be placed on in such a manner as to not create a visibility obstruction for any adjacent public right-of-way, driveway or sidewalk.
- (d) Removal of portable storage units during tropical storm watch or warning and hurricane warning or watch required. In the event the National Weather Service, National Hurricane Center, or appropriate weather agency declares a tropical storm watch or warning or a hurricane watch or warning that may impact the city, all portable storage units located

within the city shall be immediately removed from the residential property so as not to create a safety hazard because of hurricane or tropical storm force winds. The removal and replacement of any portable storage unit pursuant to this subsection shall not count toward the twelve (12)-month limitation period as set forth in subsection (b) above nor shall compliance with this subsection diminish the total number of days allowed.

- (e) A commercial establishment may be permitted by temporary use permit to locate and utilize a portable storage unit at the commercial establishment's premises. Only one (1) portable storage unit per the specific commercial establishment is permitted in any twelve (12)-month period unless there is a change of ownership of the commercial establishment during such twelve (12)-month period. Placement and location shall be addressed through the temporary use permitting process.

SECTION 6. Chapter 16, Zoning Regulations, Article IV, Supplementary District Regulations, Division 1, Generally, is hereby amended by adding section 16-612, as follows:

Section 16-612. – Outdoor Seating.

(a) For the purposes of this section, *serve* or *service* shall mean the act of a waiter, waitress, server, or other employee or agent of a restaurant, establishment, or institution taking food and/or beverage orders from customers in a seated area and/or providing food and/or beverages to customers in a seated area.

(b) *Authorization.* Outdoor seating shall be permitted as an accessory use to a restaurant, establishment, or institution serving food and/or beverages in an enclosed area, subject to the following requirements:

- (1) *Access.* The outdoor seating area is adjacent to, and has direct access through, a doorway to that portion of the restaurant, establishment, or institution which is enclosed.
- (2) *Location.* The outdoor seating area is located adjacent to the restaurant, establishment, or institution and is owned or leased for this purpose.
- (3) *General circulation.* The outdoor seating area can be accommodated without impeding the access of the general public to one (1) or more of the following:
 - a. The enclosed portion of the restaurant, establishment, or institution selling food and/or beverages;
 - b. Any other use located within the same building or structure; or
 - c. Any unauthorized common elements shared by the restaurant, business, or institution and any other users of the same building or structure.
- (4) *Safety.* Outdoor seating shall comply with all building, fire, and applicable safety code requirements.
- (5) *Parking.* Parking for areas utilized for outdoor seating, with or without service, shall be calculated and provided as outlined below. Outdoor seating shall not be established if required parking cannot be provided on site or if a nonconformity is created.
 - a. Outdoor seating area, without service, which constitutes no more than twenty-five (25) percent of the Gross Floor Area (GFA) of the restaurant, establishment, or institution serving food and/or beverages, shall be exempt

- from the parking requirements set forth in this Code. Outdoor seating area, without service, consisting of more than twenty-five (25) percent of the GFA shall provide parking for the entire outdoor seating area at a rate of 1 space per 250 sq. ft. of GFA of the outdoor seating area.
- b. Outdoor seating area, with service, shall provide parking at a rate of 1 space per 250 sq. ft. of GFA of the outdoor seating area.
- c. An indoor seating area may be restricted to be replaced by an outdoor seating area on a per-square-foot basis without increasing the required number of parking spaces as originally approved in the development order.
- (6) Outdoor furniture. Only furniture that is designed as outdoor furniture, which can withstand the elements, rain, and intense sun, shall be utilized in the outdoor seating area.
- (c) Review. Outdoor seating may be included as an element of an overall application for development order approval or as an amendment to an existing development order through a Minor Site Plan Amendment application. In addition to any other requirements contained herein, each application for approval of outdoor seating shall include the following information:
- (1) Site plan. A site plan, at a scale acceptable to the city, illustrating how the outdoor seating may be reasonably accommodated and indicating the following:
- a. The building or structure for which the outdoor seating area is proposed as an accessory use and whether service will be provided in the outdoor seating area;
- b. The location of the restaurant, establishment, or institution and its permitted primary use;
- c. The proposed location of the outdoor seating area, including number of tables and chairs, any fencing, required screening, or materials to separate the seating area from adjacent areas and/or properties with approximate distances shown;
- d. The location of any sidewalks or other pedestrian walkways or passageways adjacent to or affected by the proposed outdoor seating area, and the location of all existing or additional parking to be provided for the outdoor seating area;
- e. If applicable, a copy of a valid and current state alcoholic beverage license to serve alcohol where the proposed outdoor seating area will be, or any other license or permit required by the city for operation; and,
- f. The location of any indoor seating area that is being restricted and replaced by an outdoor seating area.
- (2) Consent. A copy of the written consent of the individual, corporation, or other entity that owns the property upon which the outdoor seating will be located.
- (3) Indemnification. The applicant shall provide, in a form acceptable to the city attorney, indemnification of the city for any liability for personal injury and property damage due to the approval and use of the outdoor seating area.
- (4) Renderings. Photographs, renderings, elevations, samples, and other materials as may be required by the city which illustrate the following: the style and color of all furnishings and menu boards, and the color, style, and materials used for storage, fencing, screening, or otherwise separating the outdoor seating area from other areas and adjacent properties.

(5) Alcohol. Alcoholic beverages may be consumed in the outdoor seating area provided the primary use is licensed to serve alcoholic beverages in accordance with Chapter 8, Article II of this Code and all alcoholic beverages are furnished from an enclosed area. Outdoor bars are prohibited.

(d) Minimum standards. Outdoor seating shall, at a minimum, comply with the following requirements:

- (1) Walkways. Outdoor seating shall be arranged, when in use, in a manner that provides pedestrian accessibility, maintains compliance with the Americans with Disabilities Act (ADA), and meets all building codes.
- (2) Multiple tenants. Outdoor seating located on a pedestrian walkway which provides access to more than one (1) occupant of a building shall provide an unobstructed passageway of at least six (6) feet in width. The unobstructed passageway shall be located adjacent to, but not through, the outdoor seating area.
- (3) Location. Outdoor seating shall be located only adjacent to the principal use provided by the restaurant, establishment, or institution, and shall not be located in front of or adjacent to any other use, user, or tenant, unless otherwise approved by the development and neighborhood services director or designee.
- (4) Prohibited location. Outdoor seating shall not be located within any area designated and required for parking.
- (5) Fencing or screening. Fencing or screening may be required as a means to physically separate such use from any adjacent public passageway, street, or community as a means for public safety and to avoid nuisances. When outdoor seating is proposed adjacent to parking spaces or drive aisles, safety elements such as bollards or reinforced planters shall be utilized to prevent vehicle intrusion. In areas located within a courtyard or developments that are designed to accommodate the outdoor seating in a safe manner, fencing or screening may not be necessary.
- (6) Compatibility. Outdoor seating, including fencing and screening materials, shall be compatible in color and style with the exterior of the building. Signs, lettering, or advertising, shall not be attached to outdoor seating areas or fencing or screening of such areas. Small labels may be permanently attached to the furnishing to identify ownership for security purposes.
- (7) Storage. Outdoor seating and furnishings shall be stored in a secure manner when not in use. If seating and furnishings are stored outside, solid colored tarps shall be used to cover. Heaters and other seasonal equipment shall not be visible from the public right-of-way when not in use. If a hurricane or tropical storm watch or warning is issued for the city, all unaffixed outdoor seating and furnishings shall be stored inside a secure building or structure.
- (8) Hours of operation. Excluding outdoor seating located in inner courtyards, outdoor seating, with or without service, shall comply with the following hours of operation:
 - a. Sunday through Wednesday. Use of the outdoor seating is prohibited between the hours of 10:30 p.m. and 7:00 a.m.
 - b. Thursday through Saturday. Use of the outdoor seating is prohibited between the hours of 11:30 p.m. and 7:00 a.m.

(9) Live Entertainment. Live entertainment in outdoor seating areas is prohibited unless approved under a live entertainment permit.

(e) Exemptions. The following are exempt from formal review of outdoor seating but shall comply with all other applicable requirements of this section and this Code:

(1) Casual seating without service. Restaurants, establishments, and institutions, or other permitted uses that serve food and/or beverages in an enclosed building or structure may have outdoor casual seating, such as a bench or tables and chairs, and shall meet all accessibility standards.

(2) De minimus standard. Restaurants, establishments, and institutions, or other permitted uses that serve food and/or beverages in an enclosed building or structure may be approved for outdoor seating without service for a maximum of three (3) tables (twelve (12) seats) or no more than two hundred (200) square feet, whichever is less, provided the outdoor seating meets all accessibility standards.

* * * * *

SECTION 7. Repeal of Conflicting Ordinances. All Ordinances or parts thereof or parts of the Code conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION 8. Severability. If any section, part of a section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings of invalidity shall not affect the remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass the Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part or parts had not been included therein, or if this Ordinance or any of the provisions thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

SECTION 9. Inclusion in Code. It is the intention of the City Council, entered as hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Greenacres, Florida; that the Section(s) of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that the word “Ordinance” may be changed to “Section”, “Article” or another word.

SECTION 10. Effective Date. The provisions of this Ordinance shall become effective after it is adopted.

[The remainder of this page intentionally left blank.]

Passed on the first reading this 7th day of November, 2022.

PASSED AND ADOPTED on the second reading this 5th day of December, 2022.

Joel Flores, Mayor
Attest:

Voted:

John Tharp, Deputy Mayor

Quintella Moorer, City Clerk

Voted:

Peter Noble, Council Member, *District II*

Voted:

Judith Dugo, Council Member, *District III*

Voted:

Suzy Diaz, Council Member, *District IV*

Approved as to Form and Legal Sufficiency:

Voted:

Paula Bousquet, Council Member, *District V*

Glen J. Torcivia, City Attorney

ZTA-22-11 (Ordinance 2022-23)
 Exhibit "A"
 Date: July 7, 2022

Revised: 07/14/2022
10/28/2022
11/7/2022

	LAND DEVELOPMENT STAFF REPORT AND RECOMMENDATION
-----------------------------------------------------------------------------------	---------------------------------------------------------

Subject/Agenda Item:

Ordinance 2022-23: ZTA-22-11 – Supplemental regulations for Outdoor Sales, Entertainment, & Seating

Public Hearing, Second Reading and Adoption: A City-initiated text amendment to the Zoning Code in order to add regulations to address live entertainment, outdoor sales, outdoor storage, and outdoor seating in the city.

Recommendation to APPROVE

Recommendation to DENY

Quasi-Judicial

Legislative

Public Hearing

<p>Originating Department:</p> <p>Planning & Engineering</p> <p>Project Manager</p> <p>_____</p> <p>Kara Ferris</p>	<p>Reviewed By:</p> <p>Project Manager</p> <p>_____</p> <p>Kara Ferris</p>
<p>Approved By:</p> <p>City Manager</p> <p>_____</p> <p>Andrea McCue</p>	<p>Public Notice:</p> <p><input type="checkbox"/> Required</p> <p><input checked="" type="checkbox"/> Not Required</p> <p>PC Dates: 6/30/22, 8/4/22, 10/27/22, 11/24/22</p> <p>Papers LWH, Palm Beach Post</p> <p>Mailing:</p> <p><input type="checkbox"/> Required</p> <p><input checked="" type="checkbox"/> Not Required</p> <p>Notice Distance: _____</p>

<p>Attachments:</p> <ul style="list-style-type: none"> • Ordinance 2022-23 	<p>City Council Action:</p> <p><input type="checkbox"/> Approval</p> <p><input type="checkbox"/> Approve with conditions</p> <p><input type="checkbox"/> Denial</p> <p><input type="checkbox"/> Continued to: _____</p>
--------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

I. Executive Summary

The proposed zoning text amendment is a city-initiated request to add regulations to the city Supplemental Regulations in Zoning. City staff initiated this code change to address the need for strengthening code regulations for issues that were occurring within the city relative to live entertainment and businesses acting outside of their definitions. After reviewing the City's current standards, staff determined that there was a need to add supplemental regulations to include live entertainment, outdoor storage, outdoor sales, outdoor seating, and finally performance standards.

II. Background

The city has regulations relative to outdoor sales in different areas of the code but is pursuing these changes to centralize the regulations within Chapter 16, Article IV. Supplemental Regulations. Some of the changes are simple reactions to new types of businesses, such as storage pods, which drop the containers on lots and leave them there for a period of time for loading and unloading. Regulations managing timing and location were needed. In addition, retail stores were placing items on the sidewalk for sale, which is not permitted. The code amendment will further clarify that it is prohibited in all zoning districts.

Many changes have occurred in the past year in how business is conducted and code changes are needed to address the impacts. Some restaurants in the city are closing their kitchens at 10:30 pm and bringing in live music, including DJs, to change the venue into a night club, which is not permitted in the zoning district. While live entertainment has been considered an accessory use within restaurants and bars, the changing of the nature of the business with the music is an issue that has to be addressed. It has caused public safety issues for police and assembly issues for Fire Rescue. These businesses have not been inspected to do business in that manner, no would it be permitted by Code. The safety of the customers is an area of concern for the city's public safety providers.

Finally, outdoor seating has become an issue after the pandemic. When restaurants were limited to 50% capacity, many reached out to the city to add outdoor areas for service. Under the State Governor's Emergency Order, the city allowed for temporary outdoor seating through a temporary use permit. In addition, there have been limited approvals for non-service outdoor seating through the site plan approval process, but some restaurants have put out chairs and seating without approval. While this has been addressed through code enforcement, it was determined that some regulations needed to be added to the code.

III. Proposed Zoning Code Amendments:

The following Zoning Code regulations are impacted by the proposed Zoning Text Amendments. Text shown in ~~strikethrough~~ is to be deleted. Text shown in underline is to be added:

Proposed Change #1

Sec. 16-1. – Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this ~~section~~chapter, except where the context clearly indicates a different meaning:

Amplified sound shall mean any sound that is naturally, electronically, mechanically, or otherwise made louder through another device including, but not limited to, a speaker, amplifier, microphone, bullhorn, or drum.

Outdoor sales shall mean the selling of any goods, material, merchandise, or vehicles ~~for more than twenty four (24) hours~~, in an area open to the sky and/or visible from adjacent properties or rights-of-way and is prohibited unless authorized in accordance with a specific provision of this Code or by special event or temporary use permit.

Outdoor storage shall mean the keeping of any goods, material, merchandise, or vehicles ~~for more than twenty four (24) hours~~, in an area open to the sky and/or visible from adjacent properties or rights-of-way and is prohibited unless authorized in accordance with a specific provision of this Code or by special event or temporary use permit.

Portable storage unit shall mean any portable, weather-resistant receptacle designed and used for the temporary storage and/or shipment of goods, supplies, or other materials and includes, but is not limited to, storage containers and portable household good pods.

Proposed Change #2

Section 16-609. – Live entertainment permit.

(a) Purpose. The purpose of this section is to provide regulations which govern the provision of live entertainment at commercial establishments while protecting the quiet enjoyment of adjacent properties.

(b) Applicability of permit.

- (1) A live entertainment permit is required for all new and existing restaurants, bars, cocktail lounges, or other permitted commercial establishments to provide or use the following:
 - a. Outdoor live entertainment with or without amplified sound; and
 - b. Indoor live entertainment with amplified sound.
- (2) A live entertainment permit is valid only for the specific establishment, location, and operator of establishment to whom it is issued.
- (3) A live entertainment permit is not required for conducting a special event in accordance with section 16-718, which requires a permit for temporary uses.

- (4) Live entertainment is accessory to the principal use of the establishment and cannot be a principal use for all or portion of the establishment, such as a concert or night club use.
- (c) Permit required; submittals. Applications for a permit and renewal of a permit under this section shall be made to the building division on a form provided for such purpose by the city, and shall include, along with any other such information deemed reasonably necessary by the reviewers to implement and enforce the provisions of this section, the following:
- (1) The applicant shall submit the application for live entertainment with an application fee and performance bond in amounts as set forth in the city's fee schedule;
 - (2) The name, location, and mailing address of the property owner and tenant (if applicable) proposing to use or provide live entertainment;
 - (3) The name, mailing address, and telephone contact information of the applicant and the written authorization of the property owner(s);
 - (4) A location plan indicating the location of the live entertainment, stage/area for entertainment, speakers, and/or location of any other equipment/facilities that will be used as a part of the live entertainment activities; and
 - (5) A sound management plan which sets forth the methods to be utilized to ensure compliance with the noise limitations set forth in this Code and any other requirements set forth in this Code or the city's Standard Operating Procedures (SOP) for live entertainment permitting (if adopted by the development and neighborhood services department).
- (d) Transferability. A live entertainment permit may be transferred in accordance with the following provisions:
- (1) When a sale or change in ownership occurs to an establishment that has an existing valid live entertainment permit, a request to transfer the permit may be made with the new business tax receipt to the planning, engineering and gis division;
 - (2) The transfer request shall not include any proposed changes to the previously-approved sound management plan. If changes are proposed, the applicant shall apply for a new live entertainment permit;
 - (3) The performance bond as required by this section shall be provided by the new holder of the business tax receipt; and,
 - (4) Upon the issuance of any new live entertainment permit, a new twelve-month period shall commence in accordance with subsection (f) below.
- (e) Standard conditions of approval for all permits. The following are standard conditions of approval for all live entertainment permits.
- (1) Sound generated by or emanating from establishments that are using or providing live entertainment shall comply with the noise limitations set forth in this Code;
 - (2) Hours of live outdoor entertainment shall not extend beyond 10:00 p.m. unless:
 - a. Specific approval is received through the application and issuance of a special events permit in accordance with section 16-718, special events; or

- b. The applicant submits a sound management plan, certified by an acoustical engineer, which verifies that sound levels generated will remain within the standards set forth in this Code and further complies with the SOP (if any) for live entertainment permitting. A copy of the adopted SOP (if any) shall be kept on file with the city clerk and shall be available for public inspection during normal business hours.
- (3) Such other conditions of approval to ensure the live entertainment does not negatively impact the quiet enjoyment of adjacent properties.
- (f) Standards for review. When considering applications for a live entertainment permit, the city shall consider the following:
- (1) The amount and type of screening, buffering, or separation between the establishment and adjacent properties, with reference to type, dimensions, and character, shall be fully and clearly depicted on the submitted plans and must be adequate to mitigate sound impacts upon adjacent properties; and
- (2) The land and buildings which are the subject of the application must be of sufficient size, shape, type of building, and the like to ensure the proposed live entertainment can be accommodated without negative impact on adjacent properties.
- (g) Issuance, renewal and revocation.
- (1) If the city issues a live entertainment permit or renews a live entertainment permit, the permit shall be in effect for 12 months from the date of issuance or renewal by the city unless earlier revoked as stated herein.
- (2) After 12 months, the permit or renewed permit shall expire and the commercial establishment must apply for a new permit or a renewal of the permit. A renewed permit may be granted by the city if there are no changes to the conditions for granting the original permit including without limitation no changes in the sound management plan. If the performance bond submitted with the previously issued permit has expired, a new performance bond must be submitted with the application to renew. If a live entertainment permit expires and a renewal is not sought within thirty (30) days, the city will return the performance bond to the commercial establishment.
- (3) The city may revoke a live entertainment permit if the commercial establishment violates any terms and conditions of the permit, the sound management plan, this section, or is found in violation of other provisions of this Code which relate to the operation of the commercial establishment. If the city revokes a live entertainment, it shall send written notice to the commercial establishment of the revocation and may retain the performance bond if the grounds for the revocation include a violation of the sound management plan. The commercial establishment may appeal the revocation to the city's special magistrate within twenty (20) days of receipt of the notice of revocation. Such appeal will then be heard within thirty (30) days of the city's receipt of the appeal and notice of the hearing will be sent to the commercial establishment by regular first class mail. A commercial establishment whose live entertainment permit is revoked (and such revocation upheld if appealed) may re-apply for a new live entertainment

permit six (6) months after the date of revocation with sufficient showing that all grounds for the revocation have been corrected.

- (h) Enforcement. The provisions of this section may be enforced through standard code enforcement procedures and the alternative citation procedures provided in Chapter 2. If an establishment provides live entertainment without a permit or in violation of an establishment's permit or in violation of the requirements of this section, the violation is deemed irreparable in nature and the violator may be required to pay a fine not to exceed \$5,000 per violation. Each day such a violation continues to exist shall be deemed a new violation. The city may retain the performance bond, in whole or in part, to pay any fines or costs assessed if the commercial establishment is found in violation.

Proposed Change #3

Section 16-610. – Outdoor Storage, Display, Sales, Cooking and Sales of Propane Tanks.

- (a) Outdoor Storage, Display, and Sales.
- (1) Enclosed activities. Commercial sales, displays, retail activities, and all other similar commercial business activities including, but not limited to, the storage of goods and materials, shall be conducted within a completely enclosed building. No outdoor commercial sales, display, retail activities, or other similar commercial business activities including, but not limited to, the storage of goods and materials, shall be permitted at any time unless authorized by this section, other specific provision of this Code, or by special event or temporary use permit.
 - (2) Outdoor storage, display, and/or sales may be permitted in the Commercial Intensive (CI) zoning district where such outdoor storage, display, and/or sales are customarily incidental to the principal use of the permitted commercial business and the outdoor storage, display, and/or sales are permitted by existing special exception criteria governing the principal use. There shall be no outdoor storage, display, or sales by any person operating or conducting a commercial business which is different or distinct from the permitted principal use at such location.
 - (3) Outdoor storage and display of loose materials such as sand, gravel, lumber, cardboard boxes, pallets, or other similar materials which are subject to being scattered or blown about the premises by normal weather conditions is prohibited.
 - (4) Unless specifically authorized by this section, by other specific provision of this Code or by special event or temporary use permit, outdoor storage, display, and sales is prohibited within all zoning districts.
- (b) Outdoor Cooking. Commercial establishments are prohibited from cooking outdoors of an enclosed and properly permitted building or structure including, but not limited to, grilling, smoking, frying or other heating or preparation of food, unless specifically approved through the issuance of a special event or temporary use permit.

(c) Propane Tanks for Retail Sales. Notwithstanding the other provisions of this section, propane tanks offered for retail sales will be permitted by right for certain uses in zoning districts which allow retail sales. No additional business tax receipt will be required for permitted propane tank retail sales; however, the public service tax for the propane tank sales is applicable. A retailer will be considered eligible for propane tank retail sales for the purposes of this Code if the following criteria are met:

- (1) Retail sales must be a permitted use in the applicable zoning district.
- (2) Only retail drugstores, retail hardware stores, supermarkets, convenience stores, and existing licensed LP Gas retailers shall be permitted to sell propane tanks for retail sales.
- (3) Food markets shall not be permitted to sell propane tanks for retail sales.
- (4) A building permit clearly indicating the dimensions and setbacks of the location of the proposed metal case or propane locker shall be required prior to installation. The maximum capacity of the metal case or propane locker will be used to determine the number of propane tanks which may be offered for sale at a given time.
- (5) The metal case or propane locker shall be located under an overhang and on an accessible route. Installation shall not obstruct the accessible route.
- (6) The Fire Marshall shall review and approve the location of the metal case or propane locker in accordance with NFPA Storage Requirements for LP Gas Cylinders.

Proposed Change #4

Section 16-611. - Placement and use of portable storage units.

- (a) Purpose. The purpose of this section is to provide for uniform guidelines for the placement and use of portable storage units.
- (b) Time limitation. For residentially zoned districts or zoning districts where residential uses are permitted or legally grandfathered in, portable storage units may be located and utilized for no more than fourteen (14) consecutive days. The development and neighborhood services director or designee may grant one (1) extension not to exceed fourteen (14) additional consecutive days for good cause. Only one (1) portable storage unit per residential dwelling is permitted in any twelve (12)-month period unless there is a change of ownership of the residential dwelling during such twelve (12)-month period.
- (c) Placement. The placement of the portable storage unit shall be on a paved driveway or other approved parking area surface and shall be accomplished in such a manner that no landscaping is damaged as a result of the placement. Portable storage units shall not be located in the street or any portion of the public right-of-way or any easement and shall be

placed on in such a manner as to not create a visibility obstruction for any adjacent public right-of-way, driveway or sidewalk.

- (d) Removal of portable storage units during tropical storm watch or warning and hurricane warning or watch required. In the event the National Weather Service, National Hurricane Center, or appropriate weather agency declares a tropical storm watch or warning or a hurricane watch or warning that may impact the city, all portable storage units located within the city shall be immediately removed from the residential property so as not to create a safety hazard because of hurricane or tropical storm force winds. The removal and replacement of any portable storage unit pursuant to this subsection shall not count toward the twelve (12)-month limitation period as set forth in subsection (b) above nor shall compliance with this subsection diminish the total number of days allowed.
- (e) A commercial establishment may be permitted by temporary use permit to locate and utilize a portable storage unit at the commercial establishment's premises. Only one (1) portable storage unit per the specific commercial establishment is permitted in any twelve (12)-month period unless there is a change of ownership of the commercial establishment during such twelve (12)-month period. Placement and location shall be addressed through the temporary use permitting process.

Proposed Change #5

Section 16-612. – Outdoor Seating.

(a) For the purposes of this section, *serve* or *service* shall mean the act of a waiter, waitress, server, or other employee or agent of a restaurant, establishment, or institution taking food and/or beverage orders from customers in a seated area and/or providing food and/or beverages to customers in a seated area.

- (b) Authorization. Outdoor seating shall be permitted as an accessory use to a restaurant, establishment, or institution serving food and/or beverages in an enclosed area, subject to the following requirements:
- (1) Access. The outdoor seating area is adjacent to, and has direct access through, a doorway to that portion of the restaurant, establishment, or institution which is enclosed.
 - (2) Location. The outdoor seating area is located adjacent to the restaurant, establishment, or institution and is owned or leased for this purpose.
 - (3) General circulation. The outdoor seating area can be accommodated without impeding the access of the general public to one (1) or more of the following:
 - a. The enclosed portion of the restaurant, establishment, or institution selling food and/or beverages;
 - b. Any other use located within the same building or structure; or
 - c. Any unauthorized common elements shared by the restaurant, business, or institution and any other users of the same building or structure.

- (4) Safety. Outdoor seating shall comply with all building, fire, and applicable safety code requirements.
- (5) Parking. Parking for areas utilized for outdoor seating, with or without service, shall be calculated and provided as outlined below. Outdoor seating shall not be established if required parking cannot be provided on site or if a nonconformity is created.
- a. Outdoor seating area, without service, which constitutes no more than twenty-five (25) percent of the Gross Floor Area (GFA) of the restaurant, establishment, or institution serving food and/or beverages, shall be exempt from the parking requirements set forth in this Code. Outdoor seating area, without service, consisting of more than twenty-five (25) percent of the GFA shall provide parking for the entire outdoor seating area at a rate of 1 space per 250 sq. ft. of GFA of the outdoor seating area.
 - b. Outdoor seating area, with service, shall provide parking at a rate of 1 space per 250 sq. ft. of GFA of the outdoor seating area.
 - c. An indoor seating area may be restricted to be replaced by an outdoor seating area on a per-square-foot basis without increasing the required number of parking spaces as originally approved in the development order.
- (6) Outdoor furniture. Only furniture that is designed as outdoor furniture, which can withstand the elements, rain, and intense sun, shall be utilized in the outdoor seating area.
- (c) Review. Outdoor seating may be included as an element of an overall application for development order approval or as an amendment to an existing development order through a Minor Site Plan Amendment application. In addition to any other requirements contained herein, each application for approval of outdoor seating shall include the following information:
- (1) Site plan. A site plan, at a scale acceptable to the city, illustrating how the outdoor seating may be reasonably accommodated and indicating the following:
 - a. The building or structure for which the outdoor seating area is proposed as an accessory use and whether service will be provided in the outdoor seating area;
 - b. The location of the restaurant, establishment, or institution and its permitted primary use;
 - c. The proposed location of the outdoor seating area, including number of tables and chairs, any fencing, required screening, or materials to separate the seating area from adjacent areas and/or properties with approximate distances shown;
 - d. The location of any sidewalks or other pedestrian walkways or passageways adjacent to or affected by the proposed outdoor seating area, and the location of all existing or additional parking to be provided for the outdoor seating area;
 - e. If applicable, a copy of a valid and current state alcoholic beverage license to serve alcohol where the proposed outdoor seating area will be, or any other license or permit required by the city for operation; and,

- f. The location of any indoor seating area that is being restricted and replaced by an outdoor seating area.
- (2) Consent. A copy of the written consent of the individual, corporation, or other entity that owns the property upon which the outdoor seating will be located.
- (3) Indemnification. The applicant shall provide, in a form acceptable to the city attorney, indemnification of the city for any liability for personal injury and property damage due to the approval and use of the outdoor seating area.
- (4) Renderings. Photographs, renderings, elevations, samples, and other materials as may be required by the city which illustrate the following: the style and color of all furnishings and menu boards, and the color, style, and materials used for storage, fencing, screening, or otherwise separating the outdoor seating area from other areas and adjacent properties.
- (5) Alcohol. Alcoholic beverages may be consumed in the outdoor seating area provided the primary use is licensed to serve alcoholic beverages in accordance with Chapter 8, Article II of this Code and all alcoholic beverages are furnished from an enclosed area. Outdoor bars are prohibited.
- (d) Minimum standards. Outdoor seating shall, at a minimum, comply with the following requirements:
- (1) Walkways. Outdoor seating shall be arranged, when in use, in a manner that provides pedestrian accessibility, maintains compliance with the Americans with Disabilities Act (ADA), and meets all building codes.
- (2) Multiple tenants. Outdoor seating located on a pedestrian walkway which provides access to more than one (1) occupant of a building shall provide an unobstructed passageway of at least six (6) feet in width. The unobstructed passageway shall be located adjacent to, but not through, the outdoor seating area.
- (3) Location. Outdoor seating shall be located only adjacent to the principal use provided by the restaurant, establishment, or institution, and shall not be located in front of or adjacent to any other use, user, or tenant, unless otherwise approved by the development and neighborhood services director or designee.
- (4) Prohibited location. Outdoor seating shall not be located within any area designated and required for parking.
- (5) Fencing or screening. Fencing or screening may be required as a means to physically separate such use from any adjacent public passageway, street, or community as a means for public safety and to avoid nuisances. When outdoor seating is proposed adjacent to parking spaces or drive aisles, safety elements such as bollards or reinforced planters shall be utilized to prevent vehicle intrusion. In areas located within a courtyard or developments that are designed to accommodate the outdoor seating in a safe manner, fencing or screening may not be necessary.
- (6) Compatibility. Outdoor seating, including fencing and screening materials, shall be compatible in color and style with the exterior of the building. Signs, lettering, or advertising, shall not be attached to outdoor seating areas or fencing or screening of such areas. Small labels may be permanently attached to the furnishing to identify ownership for security purposes.

- (7) Storage. Outdoor seating and furnishings shall be stored in a secure manner when not in use. If seating and furnishings are stored outside, solid colored tarps shall be used to cover. Heaters and other seasonal equipment shall not be visible from the public right-of-way when not in use. If a hurricane or tropical storm watch or warning is issued for the city, all unaffixed outdoor seating and furnishings shall be stored inside a secure building or structure.
 - (8) Hours of operation. Excluding outdoor seating located in inner courtyards, outdoor seating, with or without service, shall comply with the following hours of operation:
 - a. Sunday through Wednesday. Use of the outdoor seating is prohibited between the hours of 10:30 p.m. and 7:00 a.m.
 - b. Thursday through Saturday. Use of the outdoor seating is prohibited between the hours of 11:30 p.m. and 7:00 a.m.
 - (9) Live Entertainment. Live entertainment in outdoor seating areas is prohibited unless approved under a live entertainment permit.
- (e) Exemptions. The following are exempt from formal review of outdoor seating but shall comply with all other applicable requirements of this section and this Code:
- (1) Casual seating without service. Restaurants, establishments, and institutions, or other permitted uses that serve food and/or beverages in an enclosed building or structure may have outdoor casual seating, such as a bench or tables and chairs, and shall meet all accessibility standards.
 - (2) De minimus standard. Restaurants, establishments, and institutions, or other permitted uses that serve food and/or beverages in an enclosed building or structure may be approved for outdoor seating without service for a maximum of three (3) tables (twelve (12) seats) or no more than two hundred (200) square feet, whichever is less, provided the outdoor seating meets all accessibility standards.

IV. Staff Analysis:

City staff initiated this code change to address the need for strengthening code regulations for issues that were occurring within the city relative to live entertainment and businesses acting outside of their definitions. After reviewing the City’s current standards, staff determined that there was a need to add supplemental regulations to include live entertainment, outdoor storage, outdoor sales, outdoor seating, and finally performance standards.

OUTDOOR SEATING

The city has no regulations, so we currently do not allow, except for outdoor seating approved through the site plan process for recently approved new gas stations, Dunkin donuts, and Zaxby’s. They were approved without service.

LIVE ENTERTAINMENT

This issue is related to the restaurant and bars trying to get away with changing the business after 10:30 when the kitchen is closed and acting more like a nightclub. They are also using restaurant space as an entertainment venue when they sell tickets for shows and require cover charges for entrance into he business, this is no longer a restaurant use and not permitted in many of the zoning districts.

OUTDOOR SALES AND STORAGE

This is an issue that we have been meaning to address. We have limited code sections regarding outdoor sales and storage for businesses. While it is clear in the x-zoning districts that uses are restricted from selling goods outdoors, it needs to be added to the supplemental regulations to address uses like retail stores and businesses.

PARKING AND STORAGE OF PORTABLE STORAGE UNITS

The city has had issues with the storage PODS that get dropped off in yards to be filled and then removed at a later date. This gives them a clear amount of time to allow loading and unloading for these storage services.

Land Development Staff Comments:

The petition was reviewed by the Land Development Staff on May 12, 2022 and May 19, 2022, and recommended for approval.

Planning and Engineering Department:	No objections
Building Department:	No objections
Fire Rescue Department:	No objections
Public Works Department:	No objections
PBSO District #16	No objections

V. Zoning Text Amendment Criteria:

A. The need and justification for these changes:

The proposed change is needed to regulate current business trends that have become a nuisance in the city.

B. The relationship of the proposed amendments to the purpose and objectives of the City's Comprehensive Plan, and whether the proposed change will further the purposes of the City's Zoning Code regulations and other City codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed amendments are consistent with the City's Comprehensive Plan and will further the purposes of the City's Zoning Code regulations and other City codes.

VI. Staff Recommendation:

Approval of ZTA-22-11.

PLANNING, ZONING AND APPEALS BOARD RECOMMENDATION – July 14, 2022

The Planning Commission on a motion made by Commissioner Edmundson and seconded by Commissioner Litowsky, by a vote of four (4) to one (1) with Commissioner Robarts dissenting recommended approval of Zoning Text Amendment **ZTA-22-11** (*Supplemental Regulations*) as presented by staff.

CITY COUNCIL ACTION First Reading – November 7, 2022

The City Council on a motion made by Council Member Tharp and seconded by Council Member Bousquet, by a vote of three (3) to two (2) (with Council Member Dugo and Council Member Diaz dissenting) recommended approval of Zoning Text Amendment **ZTA-22-11** (*Supplemental Regulations*) as presented by staff.

CITY COUNCIL ACTION Adoption Hearing – December 5, 2022



ITEM SUMMARY

MEETING DATE: December 5, 2022
FROM: Monica Powery, Director, Purchasing
SUBJECT: Franchise Agreement Commercial Rate Amendment

BACKGROUND

The City of Greenacres approved Ordinance No. 2019-08 the franchise agreement with Advanced Disposal Services Solid Waste Southeast, Inc. ("Advanced") for solid waste collections with an initial term of October 1, 2019 through September 30, 2024 ("Franchise Agreement"). Section 6-276 of the City's Code of Ordinances incorporates the Franchise Agreement into the Code and addresses the terms, conditions, and continuation of the Franchise Agreement

ANALYSIS

The City and Advanced have previously revised the rates for the residential collections by resolution consistent with the uniform method for non-ad valorem assessments (Section 197.3632, Florida Statutes); and in reviewing the proposed commercial rates for FY 2023, it was discovered that the Franchise Agreement does not specify how the commercial rates are to be amended. Since the commercial rates are subject to change under the Franchise Agreement, the City desires to clarify that all rates in the Franchise Agreement may be amended by City Council resolution; and the City Council of the City of Greenacres finds amending Section 6-276 of the City's Code of Ordinances to address amendments to the rates set forth in the Franchise Agreement is in the best interests of the City, its residents and all Solid Waste customers and serves a valid public purpose.

FINANCIAL INFORMATION

N/A

LEGAL

The City Attorney has reviewed the item and all supporting documents for legal sufficiency and compliance.

STAFF RECOMMENDATION

Approval to clarify language in the Solid Waste Franchise Agreement. Increase in the commercial rate must be made by City Council resolution through the adoption of Ordinance 2022-38.

ORDINANCE NO. 2022-38

AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, AMENDING CHAPTER 6, FRANCHISES, ARTICLE V, SOLID WASTE, DIVISION 1, GENERALLY, SECTION 6-276, OF THE CITY OF GREENACRES CODE OF ORDINANCES, TO CLARIFY THAT ALL RATES UNDER THE FRANCHISE AGREEMENT MAY BE AMENDED BY CITY RESOLUTION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, CODIFICATION, RETROSPECTIVE APPLICATION, AND AN EFFECTIVE DATE.

WHEREAS, by Ordinance No. 2019-08, the City of Greenacres approved the franchise agreement with Advanced Disposal Services Solid Waste Southeast, Inc. (“Advanced”) for solid waste collections with an initial term of October 1, 2019 through September 30, 2024 (“Franchise Agreement”);

WHEREAS, Section 6-276 of the City’s Code of Ordinances incorporates the Franchise Agreement into the Code and addresses the terms, conditions, and continuation of the Franchise Agreement;

WHEREAS, the City and Advanced have previously revised the rates for the residential collections by resolution consistent with the uniform method for non-ad valorem assessments (Section 197.3632, Florida Statutes); and,

WHEREAS, in reviewing the proposed commercial rates for FY 2023, it was discovered that the Franchise Agreement does not specify how the commercial rates are to be amended; and

WHEREAS, since the commercial rates are subject to change under the Franchise Agreement, the City desires to clarify that all rates in the Franchise Agreement may be amended by City Council resolution; and,

WHEREAS, the City Council of the City of Greenacres finds amending Section 6-276 of the City’s Code of Ordinances to address amendments to the rates set forth in the

Franchise Agreement is in the best interests of the City, its residents and all Solid Waste customers and serves a valid public purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREENACRES, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are incorporated into this Ordinance as true and correct statements.

Section 2. Chapter 6, Franchises, Article V, Solid Waste, Division 1, Generally, Section 6-276, of the City's Code of Ordinances, is amended as follows (underlined language is being added):

Sec. 6-276. Award of solid waste franchise to Advanced Disposal Services Solid Waste Southeast, Inc.

- (a) *Exclusive franchise.* The city council hereby grants to Advanced Disposal Services Solid Waste Southeast, Inc., the exclusive right during the term of this franchise to collect and haul residential and commercial solid waste, except for commercial medical waste, commercial recycling and commercial roll-off containers for construction and demolition waste from within the city municipal limits to authorized disposal facilities.
- (b) *Term of franchise.* The franchise is effective for the period October 1, 2019, to September 30, 2024. As authorized herein, the franchise may be extended for five (5) renewal periods of one (1) year each, from October 1, 2024 to September 30, 2029, which shall be approved by mutual consent of the city and Advanced Disposal Services Solid Waste Southeast, Inc.
- (c) *Conditions of the franchise.* The franchise shall continue to be conducted in accordance with the terms contained in the franchise agreement, attached hereto as exhibit 1. The franchise agreement shall remain an exhibit to this section, and shall be remanded to the custody of the city clerk who will maintain such for public inspection.
- (d) *Acceptance and commencement of the franchise.* The franchise shall be considered accepted by Advanced Disposal Services Solid Waste Southeast, Inc. upon written signature to franchise agreement by an authorized representative of Advanced Disposal Services Solid Waste Southeast, Inc., and upon approval by the city council. The franchise shall commence thereafter on October 1, 2019.
- (e) *Continuation of franchise.* The franchise shall continue uninterrupted based upon the terms and conditions of the franchise agreement attached hereto as exhibit 1.

(f) Rates. The rates set forth in the franchise agreement may be amended by the City Council by resolution. All amendments to the rates shall be consistent with the terms and conditions of the franchise agreement.

Section 3. Repeal of Conflicting Ordinances.

All ordinances or parts thereof or parts of the code conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 4. Severability.

If any section, part of a section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings of invalidity shall not affect the remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass the Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part of parts had not been included therein, or if this Ordinance or any of the provisions thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

Section 5. Inclusion in Code.

It is the intention of the City Council, entered as hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of the City of Greenacres, Florida; that the Section(s) of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that the word “ordinance” may be changed to “Section”, “Article” or another word.

Section 6. Retrospective Application. It is the specific intent of this Ordinance to make it retrospective in application to acknowledge, confirm, and reauthorize all prior rate changes as being consistent with the terms of the Franchise Agreement whether by

resolution or other act of the City and upon the passage of this Ordinance all future rate changes shall be by City Council resolution.

Section 7. Effective Date.

The provisions of this Ordinance shall become effective upon adoption.

Passed on the first reading this 5th day of December, 2022.

PASSED AND ADOPTED on the second reading this ____ day of _____, 2022.

Joel Flores, Mayor

Voted:
John Tharp, Deputy Mayor

Attest:

Quintella Moorer, City Clerk

Voted:
Peter Noble, Council Member, *District II*

Voted:
Judith Dugo, Council Member, *District III*

Voted:
Susy Diaz, Council Member, *District IV*

Voted:
Paula Bousquet, Council Member, *District V*

Approved as to Form and Legal Sufficiency:

Glen J. Torcivia, City Attorney



ITEM SUMMARY

MEETING DATE: December 5, 2022
FROM: Andrea McCue, City Manager, Administration
SUBJECT: Naming of City Programs, Events and/or Facilities

BACKGROUND

During the Council's discussion regarding the City's scholarship program, naming of scholarships came up which led to a larger discussion about how the City should go about naming city related programs, events and/or facilities. The Council was interested in having a policy and/or procedure in place to assist in determining how programs, events, and facilities including property are named.

ANALYSIS

The City Attorney office has prepared an Ordinance creating a new section in the City's Code or Ordinances which establishes a uniform methods and procedure for the naming of City programs, events and/or facilities. The naming authority is solely vested in the City Council and through the adoption of the Ordinance a process will be established for naming of City programs, events and/or facilities.

FINANCIAL INFORMATION

Any cost associated with the naming and/or renaming of a city program, event or facility would be included in the budget.

LEGAL

The City Attorney's Office has prepared the Ordinance in accordance with any applicable laws.

STAFF RECOMMENDATION

Staff is recommending approval of Ordinance 2022-42 on first reading.

ORDINANCE NO. 2022-42

AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, AMENDING CHAPTER 2 “ADMINISTRATION,” ARTICLE I “IN GENERAL,” BY ADDING A NEW SECTION 2-2 “NAMING OF CITY PROGRAMS, EVENTS, AND FACILITIES”; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Greenacres, Florida (the “City”) is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the City Council wishes to establish a uniform method and procedure for the naming of City programs, events, and facilities; and

WHEREAS, the City Council finds that the authority to name City programs, events, and facilities is solely vested in the city council; and

WHEREAS, the City Council has reviewed the proposed ordinance and has determined that the ordinance serves a public purpose and is in the best interests of the public health, safety and/or welfare of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, THAT:

SECTION 1. The foregoing recitals are hereby fully incorporated herein by reference as the legislative findings of the City Council of the City of Greenacres.

SECTION 2. The City of Greenacres Code of Ordinances is hereby amended by adding a new section 2-2 “Naming of city programs, events, and facilities” to Chapter 2 “Administration,” Article I “In general” and such new section shall read as follows:

Sec. 2-2. – Naming of city programs, events, and facilities.

(a) Intent and purpose; findings.

1. The intent and purpose of this section is to establish a uniform method and

Ordinance No. 2022-42 | Naming of City Programs, Events, and Facilities

Page No. 2

procedure to name city programs, events, and facilities. The use of the words “name” and “naming” throughout this section shall also include “rename” and “renaming.”

2. The city council hereby finds that the authority to name city programs, events, and facilities is solely vested in the discretion of the city council. The city retains the sole discretion, to the maximum extent allowable by law, to reject any naming petition or donation (offered in exchange for naming rights) for any reason. The decision to associate any name with a city program, event, or facility, or any portion thereof, is made by the city in its proprietary capacity. It is not the city’s intention to create a public forum of any kind with respect to the naming of city programs, events, or facilities.

(b) *Generally.* The naming of a city program, event, or facility may be initiated (i) by the city council, (ii) upon the recommendation of the city manager, or (iii) upon the written petition of any person desiring to recommend a name to the city council.

(c) *Naming guidelines.* When considering the naming of any city program, event, or facility, the city council shall consider the following naming attributes:

1. Recognized geographic names;
2. Natural historic features;
3. Significant contributions to the city, State of Florida, or United States;
4. Significant material or financial contributions to the city;
5. Persons of historic service to the city;
6. Persons of outstanding civic service to the city; and
7. Documented community support for the name.

(d) *Other factors.* When considering the naming of any city program, event, or facility,

Ordinance No. 2022-42 | Naming of City Programs, Events, and Facilities

Page No. 3

the city council shall also consider the following additional factors:

1. Names selected will be commensurate with the significance of the city program, event, or facility;

2. Preference will be given to names that lend dignity to the city program, event, or facility;

3. Persons currently serving on the city council or serving as an existing city employee will not be considered;

4. Whether the name may lead to the undue commercialization of the city program, event, or facility.

5. Names that promote alcohol and tobacco products or political organizations will not be considered;

6. Names with connotations which by contemporary community standards are derogatory or offensive will not be considered;

7. The use of the same name for different city programs, events and facilities will be avoided;

8. The use of multiple names for different parts of a particular city program, event or facility will be avoided;

9. If the name is an individual person, whether the individual has ever been convicted of a felony; and

10. The cost that the naming or renaming will have on the city.

(e) Naming petition process. Any person wishing to recommend to the city council a name for a city program, event, or facility shall submit a naming petition to the city manager for evaluation. The petition shall be in writing on a form approved by the city. The petition shall demonstrate that the name selected satisfies the naming

Ordinance No. 2022-42 | Naming of City Programs, Events, and Facilities

Page No. 4

- guidelines and other factors set forth in this section and that it demonstrates the required minimum community support as set forth in subsection (f). Upon receipt of a petition that meets the requirements of this section, the manager shall make a recommendation to the city council for either the approval or disapproval of the naming petition. The city council will determine, in its sole discretion, whether or not to name a city program, event, or facility in accordance with the recommendation set forth in such petition.
- (f) *Minimum community support for naming petition.* Each naming petition shall include signatures that demonstrate minimum community support for the petition. Minimum community support requires signatures from at least five percent (5%) of the residents of the city based on the last officially reported population statistics maintained by the city. No naming petitions shall be processed by the city manager unless said petition meets the minimum community support requirement.
- (g) *Minimum contribution.* From time to time, the city council may adopt a resolution establishing the minimum contribution required for the naming of a city program, event, and/or facility.
- (h) *Approvals.* The city council shall name, rename, or remove a name from any city program, event, or facility, by resolution. As an alternative to the adoption of a resolution, the city council may enter into sponsorship agreements for naming rights of a city program, event, or facility. Such agreements shall be reviewed by the city attorney for legal sufficiency and approved by the city council. Any term or condition in a sponsorship agreement that is in conflict with this section 2-2 shall be null and void and have no legal effect.
- (i) *No property right.* No property right is conferred upon any person as a result of the

Ordinance No. 2022-42 | Naming of City Programs, Events, and Facilities

Page No. 5

naming of any city program, event, or facility. If at any time the name given to a city program, event, or facility adversely affects the reputation or business of the city or such name is involved with a public scandal or other disreputable situation, incident or occurrence, the city council, in its sole discretion, shall have the right to remove the name from such program, event, or facility. All sponsorship agreements shall include the language set forth in this subsection.

SECTION 3. Repeal Of Conflicting Ordinances. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 5. Codification. The sections of the ordinance may be made a part of the City Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word “ordinance” may be changed to “section”, “division”, or any other appropriate word.

SECTION 6. Effective Date. The provisions of this Ordinance shall become effective immediately upon adoption.

Passed on the first reading this 5th day of December 2022.

PASSED AND ADOPTED on the second reading this ____ day of _____, 2022.

Joel Flores, Mayor

John Tharp, Deputy Mayor

Voted:

Attest:

Quintella Moorer, City Clerk

Peter Noble, Council Member, *District II*

Voted:

Judith Dugo, Council Member, *District III*

Voted:

Susy Diaz, Council Member, *District IV*

Voted:

Paula Bousquet, Council Member, *District V*

Voted:

Approved as to Form and Legal Sufficiency:

Glen J. Torcivia, City Attorney