

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):

[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.

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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.

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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:

Quintella Moorer, City Clerk

Voted: _____
John Tharp, Deputy Mayor

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

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

Voted: _____
Suzy Diaz, Council Member, *District IV*

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

Approved as to Form and Legal Sufficiency:

Glen J. Torcivia, City Attorney