



Agenda Item # ÜÄÄ

**Village of Royal Palm Beach  
Village Council  
Agenda Item Summary**

**Agenda Item:**

**PUBLIC HEARING FOR SECOND READING AND ADOPTION OF ORDINANCE NO. 976, AMENDING CHAPTER 26. ZONING. OF THE VILLAGE’S CODE OF ORDINANCES IN ORDER TO AMEND THE DEFINITIONS OF “BAR AND/OR COCKTAIL LOUNGE” AND “RESTAURANT” TO PROVIDE ADDITIONAL CLARITY AND DISTINCTION BETWEEN THE TWO USES, TO CREATE NEW DEFINITIONS FOR “NIGHTCLUB” AND “LIVE ENTERTAINMENT”, TO PROVIDE SPECIFIC PROCEDURES FOR MODIFYING OR REVOKING PREVIOUSLY APPROVED SPECIAL EXCEPTION USES UNDER CERTAIN CIRCUMSTANCES, AND TO DELETE “RESTAURANT, WITH LIVE ENTERTAINMENT” FROM THE LIST OF SPECIAL EXCEPTION USES IN THE CN-NEIGHBORHOOD COMMERCIAL DISTRICT. BY COMMUNITY DEVELOPMENT DIRECTOR ROB HILL.**

**Issue:**

Recently, the Village has had multiple incidents where restaurants have been operating as after-hours bars and nightclubs with live entertainment. Nightclubs are prohibited in the Village. Live entertainment requires a special exception use approval, which these establishments have not obtained. Live entertainment events at these establishments have resulted in a significant use of PBSO and code enforcement resources to preserve the peace and prosecute violations.

Ordinance No. 976 seeks to give the Village additional enforcement mechanisms to address these unlawful operations by amending Chapter 26. Zoning as follows:

- Revises the definitions for “bar and/or cocktail lounge” and “restaurant” in Sec. 26-22 in order to provide more distinction between the two uses. For example, a restaurant is an establishment primarily engaged in the service of food and nonalcoholic beverages while a bar and/or cocktail lounge is primarily engaged in the sale of alcoholic beverages. These two uses require different business tax receipts and have to abide by different regulations under federal, state and local laws.
- Adds a definition for “nightclub” in Sec. 26-22 in order to describe a nightclub use based on certain criteria. The Village does not currently allow nightclub uses.

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The definition further provides that if an establishment could reasonably be classified as either a nightclub or something else (i.e., restaurant or bar), then it shall be deemed a nightclub.

- Adds a definition for “live entertainment” in Sec. 26-22. Restaurants, bars, lounges, brewpubs and microbreweries may have live entertainment by special exception use only in certain zoning districts. Village Code does not currently define “live entertainment.” Village Staff wants to provide clarity about when a special exception use approval is required.
- Amends Sec. 26-88 in order to remove “Restaurant with live entertainment” as a special exception use within the CN-Neighborhood Commercial District. Village Staff believes that live entertainment in the CN District is incompatible with the characteristics of the surrounding communities given the CN District’s close proximity to residences. Live entertainment for restaurants, bars, lounges, brewpubs and microbreweries is still available as a special exception use in other zoning districts (i.e., CG-General Commercial District).
- Amends Sec. 26-31 in order to provide a process by which the Village Council may modify or revoke a special exception use approval (i.e., for live entertainment) under certain circumstances such as: (1) the applicant has misrepresented the proposed use at the property; (2) the applicant has violated laws relating to the special exception use, or has failed to correct violations when notified by the Village to do so; (3) the applicant has failed to comply with the Village Council’s conditions of approval related to the special exception use; (4) the premises have been condemned for failure to meet sanitation standards; (5) the applicant does not have a valid business tax receipt or other government approval required to operate at the premises; or (6) the use on the premises has become detrimental to the health, safety and welfare of the public. The goal of this section is to provide the Village Council with an additional enforcement mechanism to protect Village residents and businesses from bad actors. The Village Council must be the entity to modify or revoke the special exception use approval given that the Council is the entity that first grants the approval.

**Recommended Action:**

Upon Council review, staff recommends a motion to approve Ordinance No. 976 on second reading.

Initiator:	Village Manager	Agenda Date	Village Council
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**ORDINANCE NO. 976**

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ROYAL PALM BEACH, FLORIDA, AMENDING CHAPTER 26. ZONING. TO PROVIDE FOR AN AMENDMENT TO THE PREVIOUSLY ADOPTED ZONING CODE; SPECIFICALLY AMENDING ARTICLE II. CONSTRUCTION OF LANGUAGE AND DEFINITIONS. AT SEC. 26-22. DEFINITIONS. BY AMENDING THE DEFINITIONS OF “BAR AND/OR COCKTAIL LOUNGE” AND “RESTAURANT” IN ORDER TO PROVIDE ADDITIONAL CLARITY AND DISTINCTION BETWEEN THE TWO USES, AND TO CREATE NEW DEFINITIONS FOR “NIGHTCLUB” AND “LIVE ENTERTAINMENT” AND TO INSERT THOSE NEW DEFINITIONS ALPHABETICALLY INTO THE EXISTING LIST OF DEFINITIONS; FURTHER AMENDING ARTICLE III. ADMINISTRATION AND PROCEDURES. AT SEC. 26-31. ADMINISTRATIVE REMEDIES. BY ADDING AN ENTIRELY NEW SUBSECTION (C). MODIFICATIONS AND REVOCATIONS OF SPECIAL EXCEPTION USE APPROVALS. IN ORDER TO PROVIDE SPECIFIC PROCEDURES FOR MODIFYING OR REVOKING PREVIOUSLY APPROVED SPECIAL EXCEPTION USES UNDER CERTAIN CIRCUMSTANCES; FURTHER AMENDING ARTICLE V. ZONING DISTRICTS. AT SECTION 26-88. CN NEIGHBORHOOD COMMERCIAL DISTRICT. BY DELETING “RESTAURANT, WITH LIVE ENTERTAINMENT” FROM THE LIST OF SPECIAL EXCEPTION USES FOR THAT DISTRICT; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUB-SECTION OF CHAPTER 26. ZONING. SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Zoning Code for the Village of Royal Palm Beach currently contains definitions of permitted and special exception uses that may occur throughout the Village; and

WHEREAS, from time to time, amendments to these definitions are necessary to provide clarity and guidance to the general public; and

WHEREAS, the Zoning Code for the Village of Royal Palm Beach also currently provides the Village Council’s process for evaluating special exception use requests, and for imposing conditions of approval relating to those requests, but does not provide a clear process on how the Village Council may modify or revoke its approval if an applicant violates the law or a condition of approval; and

WHEREAS, the Village Council of the Village of Royal Palm Beach desires to amend certain Zoning Code definitions to provide clarity, and to provide a process for revoking or modifying special exception use approvals; and

WHEREAS, the Zoning Code for the Village of Royal Palm Beach also currently allows for restaurants to have live entertainment by special exception use approval in the CN-Neighborhood Commercial Zoning District; and

WHEREAS, due to the close proximity of properties zoned as CN-Neighborhood Commercial to residences, and given the impact that live entertainment may have on such residences including, but not limited to, noise and parking impacts, the Village Council of the Village of Royal Palm Beach desires to eliminate the live entertainment special exception use for restaurants within such Zoning District; and

WHEREAS, the Village of Royal Palm Beach has held all required public hearings and has provided public notice in accordance with applicable State statutes and Village ordinances; and

WHEREAS, the Village Council of the Village of Royal Palm Beach has determined that the proposed revisions to Chapter 26. are in the best interests of the general welfare of the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF ROYAL PALM BEACH, FLORIDA, THAT:

**Section 1:** Chapter 26. Zoning. of the Code of Ordinances of the Village of Royal Palm Beach is hereby amended at Article II. Construction of Language and Definitions. at Sec. 26-22. Definitions. by amending the definitions of “Bar and/or cocktail lounge” and “Restaurant” in order to provide additional clarity and distinction between the two uses, and to create new definitions for “Nightclub” and “Live entertainment” and to insert those new definitions alphabetically into the existing list of definitions; providing that Sec. 26-22. Definitions. shall hereafter read as follows:

**Sec. 26-22. - Definitions.**

[When used in this chapter, the following terms or conjugations and variations thereof shall have the meanings herein described to them.]

*Bar and/or cocktail lounge.* Any premises wherein alcoholic beverages are sold at retail for consumption on the premises and from which minors are excluded. Bars and/or cocktail lounges may have *live entertainment* only by special exception in the CG ~~and CR~~ zoning district. This term shall not include bona-fide restaurants or nightclubs. (See definitions for Restaurant, and Nightclub.)

Nightclub. A commercial use which is determined to be a nightclub by application of the factors set forth in this definition. If a commercial use could reasonably be classified as either a

nightclub or some different use, it shall be deemed a nightclub for purposes of this code. For example, a use operating as a bar, cocktail lounge or restaurant during some hours of the day, but operating as a nightclub during other hours of the day, shall be deemed a nightclub. In determining whether an establishment is a nightclub, the following factors shall be considered:

- (a) If the establishment charges a cover charge, door charge, required contribution, or one (1) time membership fee which is paid at the door, or has a minimum drink requirement, without a special event permit approved by the village in place, then the establishment is a nightclub; or
- (b) If none of the factors listed in subsection (a) above are present, and no special event permit has been approved by the village, then if four (4) of the following conditions exist, the establishment is a nightclub:
  - 1. The establishment has a dance floor or other open area used by patrons for dancing or for viewing of entertainment, or used for a band, orchestra or other live entertainment act (such dance floor or open space may be established by the removal or rearrangement of furniture or tables);
  - 2. The establishment is open to the public anytime between 12:00 a.m. and 7:00 a.m. on any day of the week;
  - 3. The maximum capacity for the establishment as set by the fire officials through fire, building, structure, and other relevant laws and ordinances, is one hundred fifty (150) or more persons. The fact that the establishment may restrict its capacity to some lesser number shall not prevent the building or fire officials from determining a different and increased capacity;
  - 4. Alcohol is sold and consumed on the premises of the establishment at any time;
  - 5. Advertisements for the establishment describe specific entertainment events or engagements (e.g., “House Party Saturday Night”; “DJ Saturday Night”; “Live Music Tonight”);
  - 6. The establishment features a platform or musical staging area used in connection with performances or entertainment.

*Restaurant.* A commercial use engaged primarily in the service of food and nonalcoholic beverages, where the sale or service of alcoholic beverages is incidental to the sale and service of food and nonalcoholic beverages, and meets all of the following criteria:

- (a) A restaurant must, during all hours of operation, continually offer food service consisting of full course meals. Full course meals shall include a salad or vegetable, entrée and beverage. Customers shall generally be able to order any item on the applicable menu during all hours of operation;
- (b) A restaurant must, during all hours of operation, continually have full kitchen facilities, equipment, supplies, and preparation staff capable of preparing and serving full course meals for the full occupant load of its establishment;
- (c) ~~commercial use containing all necessary equipment and supplies for serving full-course meals on a regular basis; however, a~~ Any restaurant granted an alcoholic beverage license must receive at least one-half (1/2) of its gross proceeds from the sale of food and not alcoholic beverages. Additionally, no restaurant shall be permitted to sell alcohol beverages for off-premises consumption or to operate a package store at the same location; ;
- (d) Restaurants may have live entertainment only by special exception use approval in the CG zoning district; and
- (e) The term restaurant shall not include bar and/or cocktail lounge, or nightclub. (See definitions for Bar and/or cocktail lounge, and Nightclub.)

Live entertainment. One or more of any of the following, performed live by one or more persons, whether or not done for compensation and whether or not admission is charged; musical act; theatrical act, including a play, revue, or stand-up comedy; dance; magic act; disc jockey; or similar activity.

**[All other definitions shall remain the same as previously adopted.]**

**Section 2:** Chapter 26. Zoning. of the Code of Ordinances of the Village of Royal Palm Beach is hereby amended at Article III. Administration and Procedures. at Section 26-31. Administrative remedies. by adding an entirely new subsection (c). Modifications and revocations of special exception use approvals. in order to provide specific procedures for modifying or revoking previously approved special exception uses under certain circumstances; providing that Sec. 26-31. Administrative remedies. shall hereafter read as follows:

**Sec. 26-31. - Administrative remedies.**

In addition to the penalties and enforcement procedures available to the code enforcement board or code enforcement special magistrate, and the village's ability to pursue legal remedies, the village may pursue the following administrative remedies for any and all violations of this chapter:

(a)—(b) [Shall remain the same as previously adopted.]

(c) Modifications and revocations of special exception use approvals.

(1) Grounds. A special exception use approval may be modified or revoked by the village council for any of the following reasons:

- a. The applicant has misrepresented, or failed to disclose material facts or information to the village as part of its special exception use application;
- b. The applicant has violated village, county, state or federal laws relating to the special exception use activity on the premises, and has failed or refused to cease or correct the violation after having been notified to cease or correct the violation by the village within a time specified;
- c. The applicant has breached or failed to comply with the terms or conditions contained in the special exception use approval or upon which the approval was granted.
- d. The premises have been condemned by the local health authority for failure to meet sanitation standards;
- e. The applicant is conducting a business from a premises which does not possess a valid and current business tax receipt or other required governmental approval; or
- f. The activity, use or business being conducted on the premises has become detrimental to the health, safety and welfare of the public or community in general due to adverse effects generated, caused or created by the activity,

use or business including, but not limited to, noise, traffic, odor, dust, change/modification to the previously approved full occupant load, square footage, acreage, floor plan, or site plan, or significant history of law enforcement response to reported incidents of criminal and/or illegal acts at the premises.

(2) Procedures.

a. Notice. Upon a determination by the village that one or more of the grounds outlined above has occurred, the village shall schedule a hearing before the village council to consider modification or revocation of the previously approved special exception use. The village shall send the applicant written notice of such hearing at least twenty (20) calendar days prior to the hearing date. The written notice shall set forth specifically the grounds of the violation(s), the place where the hearing shall be held and the time and date thereof. All such notices shall be sent to the applicant by certified mail, and at the option of the village return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. If no such address exists because the applicant is not a property owner, then such notice shall be sent to the address on file with the village that was listed on the special exception use application, the address on file with the village associated with the applicant's most recent business tax receipt, the physical address of the premises at issue, or the mailing address for the applicant's business listed with the Florida Department of State, Division of Corporations. Alternatively, hand delivery or any other manner of notice as provided in section 2-91 of the village code may be utilized. For purposes of this section, the applicant is the person or entity listed on the special exception use application, or if that person or entity no longer has an interest in the subject business, premises or real property, then the applicant shall mean the current owner of subject real property as listed by the county property appraiser. The village shall make an effort to provide this same notice to the owner(s) of the real property if different than the applicant. The lack of

notice to such other interested parties, however, shall not prevent the village from proceeding with the public hearing to modify or revoke the previously approved special exception use.

b. *Public hearing before the village council.* The public hearing before the village council to modify or revoke a previously approved special exception use shall be conducted as follows:

i. Minutes shall be kept of all hearings, specifically including the vote of each councilmember upon each question, and all hearings and proceedings shall be open to the public.

ii. All testimony shall be under oath and shall be recorded. The village council shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

iii. All relevant evidence shall be admitted if, in the opinion of the village council, it is the type of evidence upon which reasonable and responsible persons would normally rely in the conduct of business affair. The village council may exclude irrelevant or unduly repetitious evidence.

iv. Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross examine opposing witnesses, impeach witnesses and rebut evidence.

v. The alleged violator has the right at his own expense to be represented by an attorney at the hearing before the village council.

vi. If notice of the public hearing has been sent to an alleged violator in accordance with this section, then the hearing may be conducted and an order rendered in the absence of the violator.

vii. At the conclusion of the hearing, the village council shall issue a written order that includes findings of fact based on evidence of record and conclusions of law. As part of its order, the village council may modify all or a portion of the special exception approval, revoke all or a portion of the special exception approval, impose additional conditions on the special exception approval, or leave the special exception approval as-is.

viii. The village council's order shall constitute the final administrative action of the village for purposes of judicial review under state law.

ix. A certified copy of such an order may be recorded in the public records of Palm Beach County and shall constitute notice to any subsequent purchasers, successors in interest or assigns.

x. Any continuance of the public hearing, if stated at the public hearing shall not require additional notice to the applicant or the public.

(3) Appeals. Any person, firm or corporation claiming to be injured or aggrieved by final action of the village council under this section may present to the Circuit Court of Palm Beach County a petition for writ of certiorari to review such final action, as provided for under the Florida Rules of Appellate Procedure. Such petition shall be presented to the court within thirty (30) days after the date of such final action by the village council.

(4) Miscellaneous.

a. No refunds. No fees shall be refunded if a special exception use approval is modified or revoked, or if a business is closed pursuant to this section.

b. Enforcement. If the applicant fails to seek timely appellate review of the village council's order, or fails to comply with such order, the village may pursue enforcement remedies including the closure of a business.

**Section 3:** Chapter 26. Zoning. of the Code of Ordinances of the Village of Royal Palm Beach is hereby amended at Article V. Zoning Districts. at Section 26-88. CN Neighborhood Commercial District. by deleting “Restaurant, with live entertainment” from the list of special exception uses for that District; providing that Sec. 26-88. CN Neighborhood Commercial District. shall hereafter read as follows:

**Sec. 26-88. - CN Neighborhood Commercial District.**

- (1) *Purpose and intent.* [Shall remain the same as previously adopted.]
- (2) *Uses permitted.* [Shall remain the same as previously adopted.]
- (3) *Special exception uses.*
  - (a) Automobile parts and accessory sales.
  - (b) Car wash, self-service or other (only when approved as part of a planned commercial development).
  - (c) Child day care center.
  - (d) Financial institution with drive-through.
  - (e) Green market (see additional requirements at section 26-70).
  - (f) Living quarters for a residential employee or caretaker in conjunction with permitted principle use.
  - (g) Planned commercial development.
  - (h) Restaurants, with drive-through.
  - ~~(i) Restaurant, with live entertainment.~~
  - (j i) State licensed massage therapist establishment.
- (4) *Site development standards.* [Shall remain the same as previously adopted.]
- (5) *Special regulations.* [Shall remain the same as previously adopted.]

**Section 4:** Each and every other Section and Sub-section of Chapter 26. Zoning. shall remain in full force and effect as previously enacted.

**Section 5:** All Ordinances or parts of Ordinances in conflict be and the same are hereby repealed.

**Section 6:** Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

**Section 7:** Specific authority is hereby granted to codify this Ordinance.

**Section 8:** This Ordinance shall take effect immediately upon passage.

FIRST READING this 20th day of September, 2018.

SECOND AND FINAL READING this 4th day of October, 2018.

VILLAGE OF ROYAL PALM BEACH

\_\_\_\_\_  
MAYOR FRED PINTO

(Seal)

ATTEST:

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DIANE DISANTO, VILLAGE CLERK