



DOWNTOWN AFTER-MIDNIGHT LDC AMENDMENT

SUMMARY

<p>Owner N/A</p> <p>Applicant City of Orlando</p> <p>Project Planner Jason Burton, AICP</p>	<p>Request: Amendment to the Land Development Code, creating an administrative Special Use Permit process for the discretionary approval of uses that are open to the public that operate after midnight.</p>	<p>Location: Downtown Entertainment Area</p> <p>Staff's Recommendation: Approval of the request.</p> <p>Public Comment Staff posted this item on the city's website and placed a classified ad in the Orlando Sentinel. The concepts were also presented to the CRA/DDB's Nighttime Economy Committee in March 2022.</p>
<p>Updated: May 10, 2022</p>		

Overview.

The City of Orlando has begun a process to better control behavior in the Downtown area that is peripheral to the robust bar and nightclub scene. The ultimate goal of Downtown Orlando is to become the premiere urban neighborhood of Central Florida, built upon a “live, learn, work and play” model that makes our region competitive with other metropolitan areas. In order to realize these goals, the City Planning staff is bringing forward three key amendments to the Land Development Code with a related Growth Management Plan amendment. These amendments seek to refine the nighttime operations of the Downtown in order to increase safety, ensure compatibility of uses, and reduce nuisances. These three subjects include:

- Parking Facilities,
- Sound/Noise Attenuation, and
- After-Midnight uses (the subject of this staff report).

Like many cities, Downtown Orlando’s thriving Downtown Entertainment Area works to strike a balance between the economic vitality of businesses, a hospitable location for visitors, and providing a livable place for residents as Central Florida’s premier urban neighborhood.

Background

Currently, there are approximately 100 after-midnight bars, restaurants and nightclubs open to the public that are within the Downtown Entertainment Area (See map, Figure 2, at the end of this report). Most of these uses are alcohol intensive uses, where large crowds are able to gather and “bar-hop” between a variety of late-night businesses. This concentration of after-midnight uses may also attract non-patrons (incl. underage persons) that come just to be part of the street scene that develops around these establishments. The sheer numbers of people also attracts crimes of opportunity on patrons of these businesses, as many patrons have been drinking heavily. Policing and Code Enforcement is also challenging, ensuring that businesses operate within the rules of the City while ensuring the safety of the public, controlling for nuisances, and creating a compatible use environment within the most intense, mixed-use and urban area in Central Florida.

In order to better manage the safety of the public that are attending these late-night uses, staff proposes to require security operation plans and safety improvements for both new after-midnight uses and changes in ownership when a new certificate of use is required within the Downtown Entertainment Area. The process proposed is a new Special Use Permit process, which is envisioned as an administrative process that reflects the findings of Conditional Use Permits. Appeals to a Special Use Permit would be reviewed by the Municipal Planning Board, and further into the Quasi-Judicial process if appealed.

Analysis

Recent violent crime in Downtown associated with late-night uses have caused concerns for the overall safety of the public within the Downtown Entertainment Area. These events have included:

- A shooting in April 2021 with one man shot following a fight that occurred in the area of Pine Street and Court Avenue.
- In May 2021, an Orange Avenue murder on a crowded sidewalk opposite of Wall Street, where an Army veteran was killed for walking through a group on the sidewalk.
- 7 injured in Downtown Orlando amid Halloween 2021 celebrations, with 4 people hurt in the vicinity of Wall Street, and 3 additional persons injured near Lake Eola in a separate incident. Some of the victims near Wall Street included a 13 and 16-year old.
- In March 2022, a 40-year old woman was shot in the leg while sitting at a Sidewalk Café on Central Blvd and Court street after a fist fight at a downtown bar turned into a violent road rage incident.

The above incidents may be attributed to national trends in violence in a post-COVID environment, where there is both greater public attendance at late-night uses, and more firearms that have been acquired over recent years. Random anger and conflict have seemed to quickly escalate with the increased presence of firearms. Over the past year, several cities have reported double digit increases in shootings and homicides, and some months have experienced similar increases of violence in the Downtown.

Under current Florida Law, a person is not allowed to carry firearms inside an establishment whose main purpose is to sell alcohol, such as a bar or nightclub. However, the amount of gun violence over the past year has been so pronounced around late-night uses, that the Orlando Police Department has cooperated with the Downtown Development Board to create “checkpoints” for coordinated entry into the central Downtown Entertainment Area with gun detecting dogs on busy nights (e.g. St Patrick's Day).

In order to create greater safety, it is important that the security and policing of the Downtown Entertainment Area become proactive, rather than reactive to crimes and rowdiness that occur late at night. The most effective way to do this is requiring increased security standards where there is a concentration of bars and nightclubs. This can be coupled with other physical improvements that are designed to limit the tendency toward violent behavior. The proposed Special Use Permit process is designed to accomplish this goal, reviewing individual sites for needed security improvements (topics like cameras, lighting, and access) as well as a review of the security plans needed to serve a proposed late-night use.

The process is also designed to appropriately document the operations of a late-night use so the correct occupancy and related licensing may be entered within the permitting process. For example, a restaurant has a different building occupancy classification than a nightclub; yet, we have had several restaurants over the years that remove tables and turn into a nightclub after the kitchen closes. The space itself may not be rated for these levels of “assembly” occupancy, causing safety concerns for adequate exiting in cases of emergency; further, a restaurant’s state alcohol license typically requires that food be served at all times the establishment serves alcohol.

Special Use Permit Review. The proposed regulatory structure reflects a paramount concern with maintaining an “orderly” commercial trade in the Downtown Entertainment District. Also reflected in these proposed regulations, though less visibly, is a concern for promoting public safety and protecting the public from adverse consequences of drinking. The following Special Use Permit aims to establish responsibility for employees and owners of new establishments and to ensure there is not a lack of security, inadequate licensing, or other issues with the site that conflict with the public welfare.

ANALYSIS CONTINUED...

As part of the review of a proposed after-midnight use by the Planning Official, the following information must be submitted for review:

- Description of the Operations. The description shall be accompanied by floor and site plans of the establishment. The description and plans shall clearly indicate locations for any dancing, live music, DJ's, (assembly areas), identify all seating and bar areas, and identify any proposed tenant improvements. The site plan shall include exterior improvements (whether permanent or temporary), including the use of the public rights-of-way (proposed sidewalk cafes, queuing lines, barriers, podiums, or any other appurtenances used). The description shall include whether any persons under the age of 21 will be allowed within the premises, and the proposed plans for checking ID's.
- Alcohol Licensing. The type of alcohol license, and any paperwork being submitted to the State of Florida (site plans defining the premises). Per existing codes, a catering license cannot be utilized for a bar or nightclub operation.
- Security Plan. A security plan must be provided. The security plan shall identify the location and operation of doormen, in-house security and any third party security guards for the establishment (including any off-duty police officers). The employees identified on the security plan must be working exclusively in the security role and not working in any non-security capacity. The plan shall provide details, at minimum, for weekend and weekday operations based on the anticipated attendance.
- Outdoor Speakers. Any outdoor speakers shall be identified on a separate site plan, and be accompanied by a noise report detailing compliance with the Noise Ordinance (see sound attenuation staff report on today's agenda).
- Crime Prevention. Separate site and floor plans shall be submitted for security and crime prevention improvements, including but not limited to, exterior lighting improvements, security cameras, etc. The physical improvements may be reviewed by the Police Department, and improvement must be provided prior to the establishment being open and operating.

In reviewing the above, the Planning Official, in consultation with affected City Departments, may appropriately apply conditions to the after-midnight use based on the findings of the Conditional Use Permit process. Persons dissatisfied with the Planning Official's decision may appeal to the Municipal Planning Board for consideration as a full Conditional Use Permit review.

Requirements for All After-Midnight Businesses. Accidents and violent crime that may result from acute episodes of intoxication in public drinking places are a central concern of on-premise control of alcohol. The current trend toward increases in the number and variety of drinking premises deserves attention and thoughtful analysis, for the cumulative effect on drinking practices may be substantial. The proposed requirements for all after-midnight business aims to identify responsible management for these businesses and address the propagation of intoxicated patrons being served. Additionally, there has been an increase in "promoters" taking over these after-midnight establishments. We propose a requirement that any agent involved in promoting the establishment be required to obtain a business tax receipt so that there is a record of all entities conducting business within the Downtown Entertainment Area.

ANALYSIS CONTINUED...

As an amendment to Chapter 33 of the Municipal Code, relating to all alcohol uses operating after midnight with the Downtown Entertainment Area, all proposed and existing after-midnight uses shall comply with the following by October 1, 2022:

- **Responsible Person.** Each establishment selling alcohol after midnight within the Downtown Entertainment Area shall identify a Responsible Person for operating the establishment at any time that alcohol is sold or provided on the site. Each responsible person shall register and provide fingerprints to the Orlando Police Department. The Responsible Person must remain on-site during all operations of the establishment until closing. The Responsible Person may not consume alcohol, nor have a measurable level of alcohol in their blood, while on duty.
- **Non-Admittance and Aid to Intoxicated Patrons.** The establishment shall refuse admittance to, and will immediately remove from the establishment, all patrons who are impaired or so obviously intoxicated that they exhibit one or more of the following behaviors: incoherent or slurred speech, poor muscular coordination, a staggering or unsteady walk, loss of balance, vomiting or unconsciousness. If an intoxicated person becomes unconscious or impaired while at the establishment, the Responsible Person shall immediately contact emergency service personnel to render medical aid. The intoxicated person shall be removed by security personnel from the establishment. At least one employee will wait with such patron until the emergency personnel arrive.
- **Promoters Required to Obtain BTR.** Any agent involved in promoting the establishment shall be an employee of the establishment, or register separately for a Business Tax Receipt from the City of Orlando and Orange County.
- **Trash and Litter.** All litter shall be removed from the exterior of the property in the immediate public rights-of-way up to 25-ft adjacent to the business, prior to 3:00 AM each operating night.
- **Documentation Binder.** All state and local licenses for the establishment, including a list of the Responsible Persons registered with the Police Department, shall be kept and surrendered upon demand to any agent of the City, including and not limited to Code Enforcement, Police, and Fire or Building inspectors.

Growth Management Plan Analysis.

Simultaneously with these three code amendments regarding Downtown parking facilities, sound attenuation, and after-midnight uses, a City initiated Growth Management Plan amendment is proposed to our Future Land Use Element. The intent is to specifically bolster the effort of creating the premier urban neighborhood in Central Florida, by regulating these particular subjects for better use compatibility, diminution of nuisances, and promoting the management of uses, noise and parking.

Therefore, the following policy is proposed to be added to Future Land Use Goal 5 (Downtown Orlando—Planning for the Future) Objective 5.1:

Policy 5.1.2 The City of Orlando shall manage late-night uses, sound attenuation and parking facilities to bolster Downtown as the premier urban neighborhood of Central Florida, diminish nuisances, and promote use compatibility. The techniques for the management of these issues shall be provided by regulations within the Land Development Code.

This new policy specifically creates the concept of furthering the management of these issues, provides a specific requirement for the land development code amendment proposed, and relates to the other policies that control the development of Downtown Orlando. With the proposed Growth Management Plan Amendment, the proposed amendments are compatible and specifically consistent with the goals, objectives and policies of the Growth Management Plan.

The proposed GMP amendment is being processed as a text amendment in accordance with the requirements of Chapter 163.3184(3), Florida Statutes.

Specific Findings for LDC Amendments.

At minimum, the City staff report to the Municipal Planning Board (MPB) is required to provide concepts sufficiently developed to give the MPB adequate information to make a Growth Management Plan consistency determination; whether the proposed amendment is consistent with the public health, safety and welfare; whether the proposal will likely result in compatible or incompatible land uses; and results in orderly and logical development patterns.

The amendment is crafted to address potentially incompatible after-midnight uses within a intensive mixed-use environment that is Downtown Orlando. Both improvements and security operation plans are needed to establish logical requirements for the operation of after-midnight businesses, and ensure the overall safety of the public.

Downtown Development Board/Community Redevelopment Agency Investments.

To supplement the regulatory effort in better controlling after-midnight uses, the CRA/DDB has also created significant programs that both defray the costs of private security improvements, and provides an enhancement to public safety units within the Downtown. These public safety efforts include enhancing community policing efforts Downtown and implementing coordinated entry for big event nights, and other enhancements. Some of the elements of these programs include:

- *Policing Enhancements.* \$1.8 Million in funding to enhance community policing innovation in Downtown Orlando.
- *Lighting Enhancements.* Replace all the street lights from metal halide to LED—305 new street lights have been installed. This has been supplemented with light towers near dark surface lots where security was a concern.
- *Police Cameras.* 11 new camera locations, replaced 21 cameras with new technology, and 9 ALPR's (Automated License Plate Reading cameras).
- *Coordinated Entry.* Utilize Orange Avenue's normal weekend closure locations as pedestrian checkpoints and require all guests and employees to go through screenings for the detection of firearms.
- *Safety and Awareness for All Program (SAFE).* Grants up to \$10,000 for security improvements at businesses and even at residential towers (ID readers, security cameras, and metal detection systems).
- *Sidewalk Cafes Grants.* Grants up to \$5,000 for sidewalk café barriers, chairs, umbrellas, decorative plants, heaters, trash receptacles and tables.

CONCLUSION

The City has an interest in creating the best urban environment in Central Florida in Downtown Orlando. The priority is to create an urban living environment that balances several interests, including both residential and nighttime economy uses that make our Downtown regionally competitive with other metropolitan areas. After-midnight uses operating within the Downtown Entertainment Area, especially the ones that sell alcohol, must share in the management of problems that arise from their patrons. New businesses coming to operate within this area require a thorough review of their operations and security practices to ensure the safety of their patrons and nearby residents. The recommendation from staff accomplishes this goal, and furthers the safe and effective management of uses in the downtown.

FINDINGS

In review of the proposed LDC amendment, it is found that:

1. The proposed Land Development Code amendment is consistent with the State Comprehensive Plan (Chapter 187, Florida Statutes).
2. The proposed Land Development Code amendment is consistent with the East Central Florida Strategic Regional Policy Plan.
3. The proposed Land Development Code amendment is consistent with the provisions of Chapter 163, Part II, Florida Statutes.
4. The proposed Land Development Code amendment is consistent with the objectives and policies of the City's adopted Growth Management Plan (GMP).

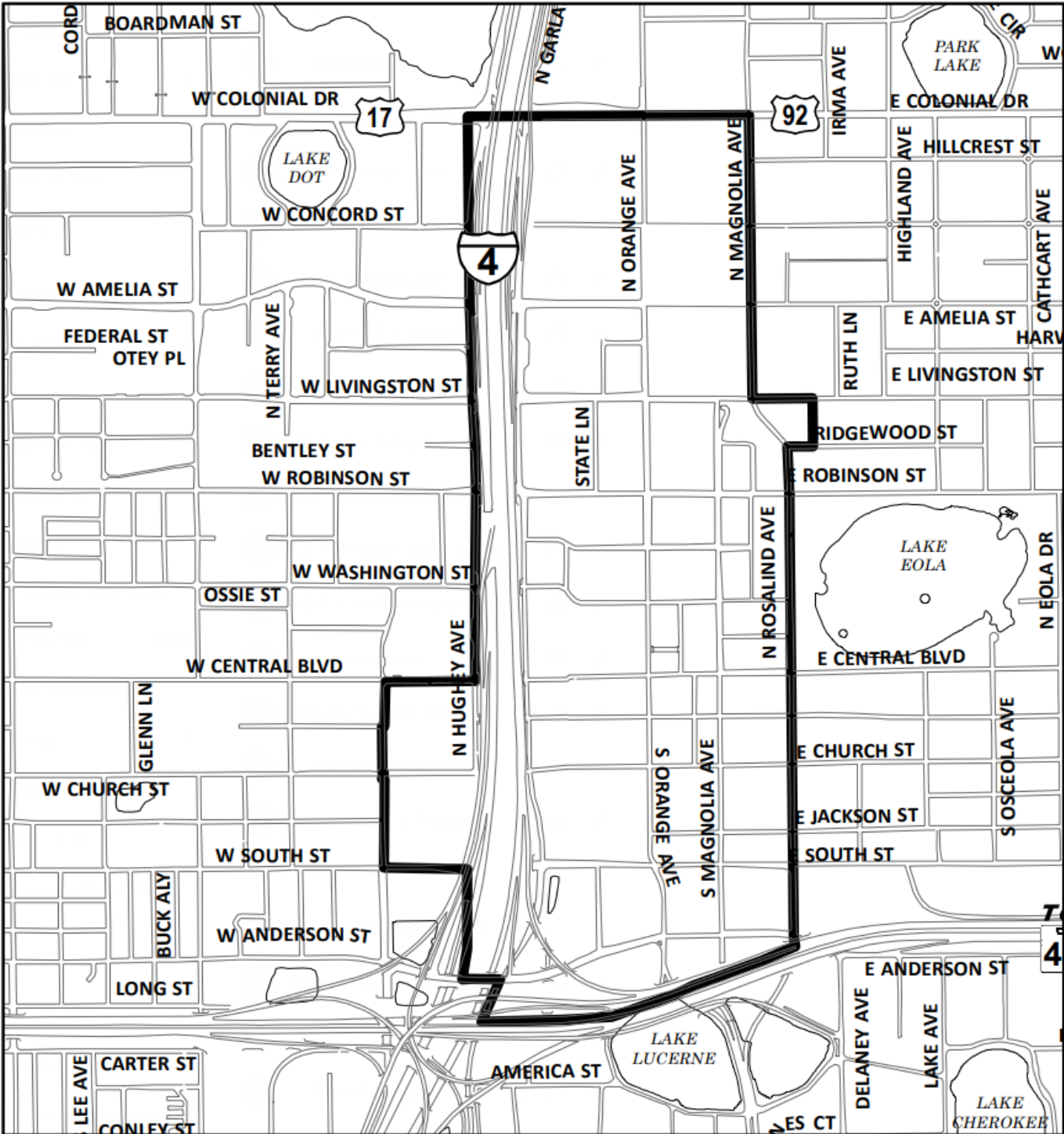
RECOMMENDATION

Staff recommends approval of the proposed amendment to the Orlando Land Development Code.

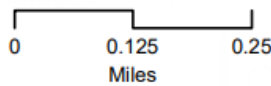
POTENTIAL NEXT STEPS

1. Drafting of the Final Ordinance by City Attorney
2. Acceptance of Municipal Planning Board minutes by City Council—June 20, 2022
3. Potential First Reading of Ordinance—June 20, 2022
4. Potential Second Reading of Ordinance/Adoption—July 18, 2022

Figure 1 Downtown Entertainment Area



LEGEND



PROPOSED LDC2022-10010


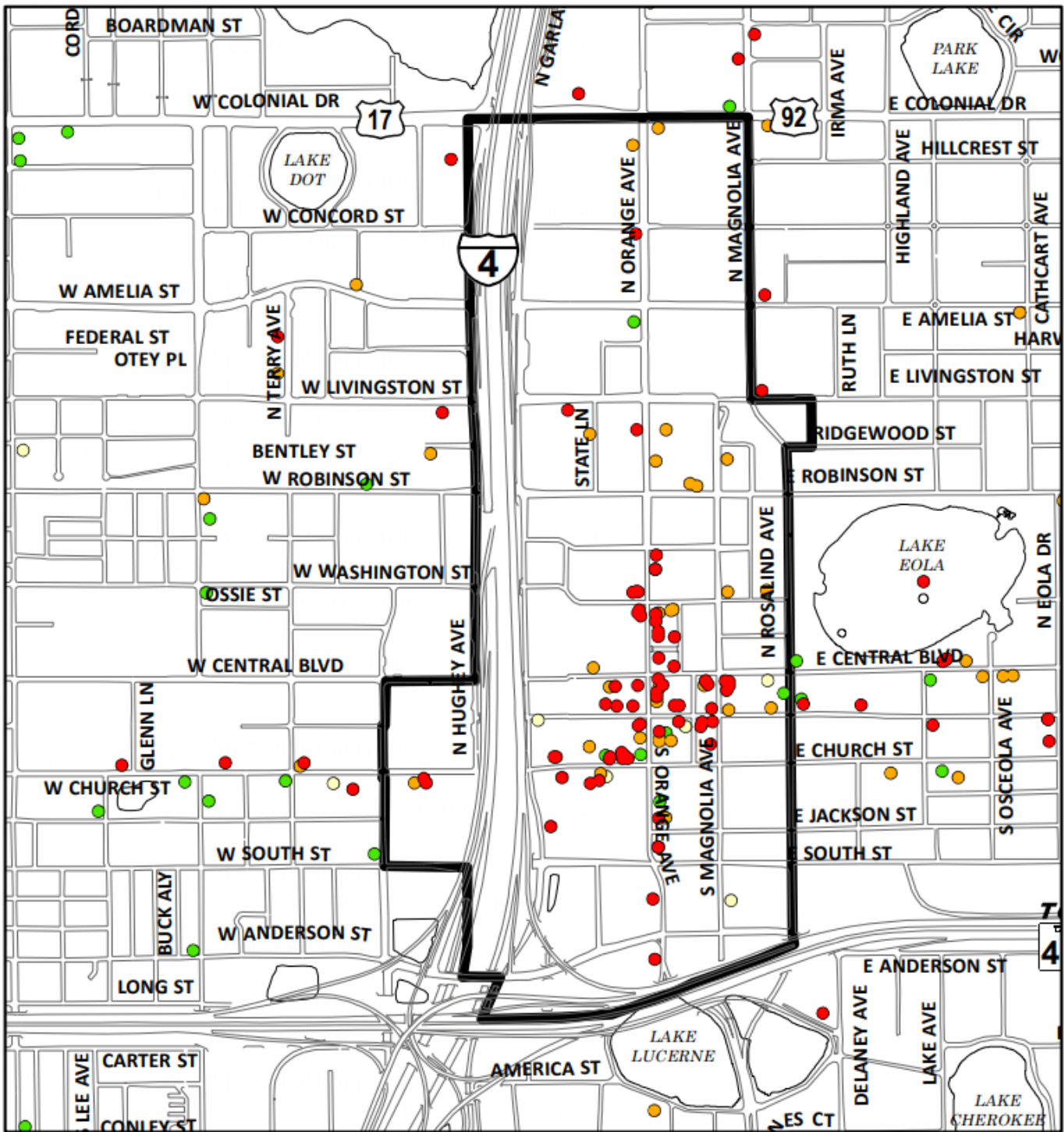
 Downtown Entertainment District

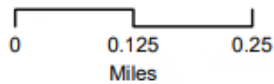


Figure 2

Downtown Entertainment Area



LEGEND



Alcohol Lic Series Type

- 3PS
- 2APS
- 11C
- 2COP
- 11PA
- 4COP
- 13CT



DRAFT CODE LANGUAGE—LDC

Below is a draft section of the Land Development Code (LDC) regarding after midnight uses within the Downtown Entertainment Area.

Sec. 65.539a **After Midnight Uses in the Downtown Entertainment Area.**

All uses open between the hours of midnight and 6:00 AM within the Downtown Entertainment Area shall receive a Special Use Permit from the Planning Official prior to receiving a certificate of use, permits for any improvement, or operating such a business during these hours.

- a) *Special Use Permit.* An administrative Special Use Permit shall be submitted to the Planning Official which follows the requirements and findings of a Conditional Use Permit in Part 2D above. At minimum, the following shall be reviewed as part of the Special Use Permit:
- a. *Description of the Operations.* The description shall be accompanied by floor and site plans of the establishment. The description and plans shall clearly indicate locations for any dancing, live music, DJ's, (assembly areas), identify all seating and bar areas, and identify any proposed tenant improvements. The site plan shall include exterior improvements (whether permanent or temporary), including the use of the public rights-of-way (proposed sidewalk cafes, queuing lines, barriers, podiums, or any other appurtenances used). The description shall include whether any persons under the age of 21 will be allowed within the premises, and the proposed plans for checking ID's.
 - b. *Alcohol Licensing.* The type of alcohol license, and any paperwork being submitted to the State of Florida (site plans defining the premises). A catering license shall not be utilized for a bar or nightclub operation.
 - c. *Security Plan.* A security plan must be provided. The security plan shall identify the location and operation of doormen, in-house security and any third party security guards for the establishment (including any off-duty police officers). The employees identified on the security plan must be working exclusively in the security role and not working in any non-security capacity. The plan shall provide details, at minimum, for weekend and weekday operations based on the anticipated attendance.
 - d. *Outdoor Speakers.* Any outdoor speakers shall be identified on a separate site plan, and be accompanied by a noise report detailing compliance with the Noise Ordinance (see Chapter 62.507)
 - e. *Crime Prevention.* Separate site and floor plans shall be submitted for security and crime prevention improvements, including but not limited to, exterior lighting improvements, security cameras, etc. The physical improvements may be reviewed by the Police Department, and improvement must be provided prior to the establishment being open and operating.
- b) *Appeals.* Appeals to any decision or condition to an administrative Special Use Permit shall be appealed to the Municipal Planning Board for review, and shall be considered as a Conditional Use Permit per Part 2D above.