


**MEMORANDUM**

**TO:** Mayor England  
Vice Mayor Samora  
Commissioner George  
Commissioner Rumrell  
Commissioner Torres

**FROM:** Max Royle, City Manager 

**DATE:** July 7, 2021

**SUBJECT:** Ordinance 21-07, Second Public Hearing and Final Reading: to Provide Addition to Prohibited Uses in Section 3.02.03 of the Land Development Code

BACKGROUND

This ordinance is the result of a drug/alcohol rehab clinic that allegedly opened for business in the Sea Grove Town Center. Residents became concerned, though an investigation by the City's Code Enforcement Officer found no evidence of the rehab clinic.

Mr. Lex Taylor, the City Attorney, researched Chapter 397, Florida Statutes, concerning substance abuse services because the Chapter has a narrow definition of rehab businesses and requires full licensing of these types of businesses with the Florida Health Department.

Mr. Taylor prepared an ordinance, 21-07, which you reviewed at your June 7<sup>th</sup> meeting, when you passed it on first reading.

The Planning Board reviewed Ordinance 21-07 at its June 15<sup>th</sup> meeting and by unanimous vote recommended that it be approved. The Board's motion and vote is stated in the memo (page 1 attached) from the Building Department's Executive Assistant, Ms. Bonnie Miller.

You held the first public hearing on Ordinance 21-07 at your July 6<sup>th</sup> meeting, when you passed it on second reading. There were no public comments concerning it. The Ordinance now has been scheduled for its second public hearing and final reading at your August 2<sup>nd</sup> meeting.

ACTION REQUESTED

It is that you hold the public hearing and approve Ordinance 21-07 on its third and final reading.

**ORDINANCE NO. 21- 07**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF SAINT AUGUSTINE BEACH PROVIDING FOR AN ADDITION TO THE PROHIBITED USES LISTED IN SECTION 3.02.03; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WITNESSETH:**

**WHEREAS**, the City Commission has the plenary power under its Charter to establish zoning rules for the City;

**WHEREAS**, the City Commission continues to seek to promote the health and welfare of its citizens;

**WHEREAS**, It is the goal of the City Commission to discourage substance abuse by promoting healthy lifestyles; healthy families; and drug-free schools, workplaces, and communities;

**WHEREAS**, Substance abuse is a major health problem that affects multiple service systems and leads to such profoundly disturbing consequences as serious impairment, chronic addiction, criminal behavior, vehicular casualties, spiraling health care costs, AIDS, and business losses, and significantly affects the culture, socialization, and learning ability of children within our schools and educational systems. Substance abuse impairment is a disease which affects the whole family and the whole society and requires a system of care that includes prevention, intervention, clinical treatment, and recovery support services that support and strengthen the family unit;

**WHEREAS**, the Florida legislature regulates Substance Abuse Services under Florida Statute Chapter 397 – Substance Abuse Services and has similar concerns about the effects of substance abuse on substance abusers and those around substance abusers;

**WHEREAS**, the Florida legislature as of May 4, 2021 has identified in Fla. Stat. 397.4012 that the following are exempt from being required to hold a license under Chapter 397 and the City Commission recognizes that these uses would be permitted because they do not require a license under Chapter 397:

1. A hospital or hospital-based component licensed under chapter 395.
2. A nursing home facility as defined in s. 400.021.
3. A substance abuse education program established pursuant to s. 1003.42.
4. A facility or institution operated by the Federal Government.
5. A physician or physician assistant licensed under chapter 458 or chapter 459.

6. A psychologist licensed under chapter 490.
7. A social worker, marriage and family therapist, or mental health counselor licensed under chapter 491.
8. A legally cognizable church or nonprofit religious organization or denomination providing substance abuse services, including prevention services, which are solely religious, spiritual, or ecclesiastical in nature. A church or nonprofit religious organization or denomination providing any of the licensed service components itemized under s. 397.311(26) is not exempt from substance abuse licensure but retains its exemption with respect to all services which are solely religious, spiritual, or ecclesiastical in nature.
9. Facilities licensed under chapter 393 which, in addition to providing services to persons with developmental disabilities, also provide services to persons developmentally at risk as a consequence of exposure to alcohol or other legal or illegal drugs while in utero.
10. DUI education and screening services provided pursuant to ss. 316.192, 316.193, 322.095, 322.271, and 322.291. Persons or entities providing treatment services must be licensed under this chapter unless exempted from licensing as provided in this section.
11. A facility licensed under s. 394.875 as a crisis stabilization unit.

**WHEREAS**, Florida Statute 397.6774 requires the Department of Children and Families to provide each municipality and county public safety office with a listed of licensed hospitals, detoxification facilities, and addiction receiving facilities including the name, address, phone number and the services offered by a licensed service provider;

**WHEREAS**, the City of Saint Augustine Beach is an oceanfront community which is only 1.9 square miles in total area, and it has a unique development that does not have, nor allow, many high intensity uses within its City limits for example the City does not have a school or hospital within its jurisdiction and relies upon those services to be located within the neighboring areas of unincorporated Saint Johns County;

**WHEREAS**, the City Commission finds that all business licensed under Florida Statute Chapter 397 – Substance Abuse Services are not the highest and best uses of real property within the City limits; and

**WHEREAS**, the City Commission hereby finds that adoption of this ordinance serves the best interest and welfare of the residents of the City of St Augustine Beach.

**NOW THEREFORE BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAINT AUGUSTINE BEACH:**

**SECTION 1.** Recitals Adopted: The recitals set forth above are true and correct and incorporated herein by this reference.

**SECTION 2.** Amend Section 3.02.03 of the City's Land Development Code Section 3.02.03 as follows:

Sec. 3.02.03. - Prohibited uses.

A. In addition to the uses prohibited under section 3.02.02 and Table 3.02.02, and other provisions of this Code, the following uses are prohibited:

1. Keeping, breeding, or raising of bees, insects, reptiles, pigs, horses, cattle, goats, hogs, or poultry.
2. The sale, offer for sale, rental, storage or display of any merchandise, outside of an enclosed building on the premises of any business except as provided herein.
  - a. As used herein the term "outdoor" shall mean any area which is outside of the heated or cooled area of a building and visible from a public street. Provided, however, that the outdoor display or sale of merchandise shall be permitted:
    - (1) In conjunction with and pursuant to any outdoor sale or display of merchandise authorized in conjunction with a special event pursuant to section 3.02.05 hereof:
    - (2) When the display is limited to merchandise identical to that actually in stock and available for purchase on the premises where the display is maintained, the display is limited in size to an area no greater than five (5) feet high, three (3) feet wide, and three (3) feet in length and is not located within six (6) feet of any other such display. No such display may be located within any public right-of-way, mandatory building setback under this chapter or so as to interfere with any fire exit required under any building code of the city. Any display rack, shelves or other device used in conjunction with the display of merchandise shall be made of wood which shall have either a natural finish or shall be painted only in colors which have been approved by the comprehensive planning and zoning board as a part of the supplemental criteria for community appearance standards or shall be made of brass, copper, bronze, nickel, tin or iron; provided, however, that painted, polished, anodized or chromed metals shall be prohibited.
3. The sale, offer for sale, or rebuilding of secondhand merchandise on any business premises, including secondhand household and commercial goods, such as but not limited to: refrigerators, stoves, sinks, plumbing fixtures, carports, tents, air conditioners, windows, vehicle parts, and the like.
4. The manufacture, assembly or preparation of any merchandise, food or beverages outside of an enclosed building on any business premises.
5. The sale, offer for sale, or rental of any merchandise, food or beverages from a motorized or nonmotorized vehicle or trailer of any type on any business premises.
6. The operation of a business from any temporary quarters, such as but not limited to: tents, pushcarts, sheds, carports, motor vehicles, and trailers.
7. Package stores; provided, however, that package stores having an area of less than eight thousand (8,000) square feet and located within a shopping center having greater than fifteen thousand (15,000) square



feet under roof and package stores operated in conjunction with a restaurant having a 4-COP license as of the effective date of this section shall be an authorized use within commercially zoned areas.

8. Pawn shops.
9. Sewer treatment plants.
10. Car wash, unless ancillary to a service station.
11. Wireless communication towers in all districts; provided, however, that such towers may be allowed as a conditional use in commercial districts at locations more than three hundred (300) feet from residential uses upon a showing by the applicant that wireless telephone signals will not otherwise be adequately available within the corporate limits of the city from a site outside the corporate limits of the city. Nothing in this section shall be deemed to prohibit towers for governmental use such as fire, police and public works. To protect the vision and scenic beauty of A1A Beach Boulevard and the beaches, as set forth in various studies and reports conducted by the city, including the Visioning Plan, no tower greater than forty (40) feet in height may be located within three hundred (300) feet of the western boundary of A1A Beach Boulevard or east of A1A Beach Boulevard unless this requirement would result in a prohibition of communication service to a particular area of the city.
12. Transient lodging establishments within low density residentially zoned areas.
13. Any business or organization which is required to be regulated under Fla. Stat. Chapter 397 -- Substance Abuse Services.

- B. The preceding paragraph A. does not prohibit the following uses when in conformity with all other provisions of this Code and with required city permits:
  1. A temporary construction trailer is allowable in accordance with section 7.03.01 of this Code.
  2. Farmers markets, seasonal sale of Christmas trees, merchandise not visible from a public right-of-way, and nursery stock in containers, garden supplies and equipment, lawn and patio furniture and ornamental articles for use in garden or patio area, shall be permitted as a conditional use, provided further that the items are within an area other than the required setback or parking area and that such displays are accessory to a permitted use and adjacent to a permitted structure. All existing display or storage not permitted as a conditional use shall conform with this provision within six (6) months of the effective date hereon.
- C. Notwithstanding any provision within the definition of "Conditional Use Permit" as contained in section 2.00.00, any provision contained in section 10.03.02, or any provision of table 3.02.02, all of these land development regulations, a conditional use permit shall not be permitted for a residential use, multifamily, or a residential condominium use within a commercially zoned district without a specific finding by the city commission that, due to the size or configuration of the property for which residential use is sought, a commercial use is not economically viable. The burden of proof of showing lack of economic viability

shall be upon the applicant and not upon the city, there being a presumption of such viability.  
(Ord. No. 18-07, § 1(Exh. 1), 5-7-18; \_\_\_\_\_)

**SECTION 3.** All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

**SECTION 4.** If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then said holding shall not be so construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

**SECTION 5.** This Ordinance shall take effect ten (10) days after passage, pursuant to Section 166.041(4), Florida Statutes

**PASSED, APPROVED AND ADOPTED** at the regular meeting of the City Commission of the City of Saint Augustine Beach, Florida this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

EXAMINED AND APPROVED by me this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
MAYOR

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