

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Marcie Nolan, AICP, Acting Development Services Director/ (954) 797-1101

PREPARED BY: David Abramson, Deputy Planning and Zoning Manager

SUBJECT: Code Amendment: ZB(TXT) 3-1-08, Kiosk

AFFECTED DISTRICT: Townwide

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: CODE AMENDMENT - AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 12, LAND DEVELOPMENT CODE, ARTICLE III. USE REGULATIONS, DIVISION 2. GENERAL REGULATIONS, SECTION 12-33(Q) GENERAL PROVISIONS PERTAINING TO ALL BUSINESS DISTRICTS; PROVIDING DEVELOPMENT REGULATIONS FOR PERMANENT, FREE-STANDING AND UNOCCUPIED KIOSKS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. {Approved on First Reading September 3, 2008 subject to Planning and Zoning's recommendations and Council approval of the site plan after Site Plan Committee review. The vote was as follows: Mayor Truex - yes; Vice-Mayor Luis - yes; Councilmember Caletka - no; Councilmember Crowley - yes; Councilmember Starkey - yes}

REPORT IN BRIEF: The petitioner (Liebler, Gonzalez & Portuondo, P.A.) is proposing a code amendment to Section 12-33(Q) of the Land Development Code to permit and regulate free-standing/unoccupied kiosks within the Town of Davie. The petitioner came before the Local Planning Agency on February 13, 2008 and received consideration to submit a code amendment application to the Planning and Zoning Division. The proposal was also reviewed by the Development Review Committee on May 26, 2008. The proposed language has changed since the original petition to accommodate comments made by Staff and the Local Planning Agency but the petitioner has indicated that they are in agreement with the changes.

Staff has added provisions for review and approval by Town Council and Site Plan Committee as directed by Council on September 3, 2008. Note that Staff has also clarified the allowable locations (commercial and business districts) and that the service provided by the kiosk must be a permitted use within the particular zoning district in which it is proposed.

PREVIOUS ACTIONS: On September 3, 2008, Councilmember Starkey made a motion, seconded by Vice Mayor Luis to approve subject to P&Z recommendations and Council approval of the Site Plan after Site Plan Committee review. In a voice vote, the vote was as follows: Mayor Truex – yes; Vice-Mayor Luis – yes; Councilmember Caletka – no; Councilmember Crowley – yes; Councilmember Starkey – yes. (**Motion carried 4-1**)

CONCURRENCES: At the August 13, 2008, Local Planning Agency meeting, Mr. Busey proposed that the words “free-standing” be added before the words vending machines and that “we say not for purposes of selling food.” In discussion Chair McLaughlin stated “free-standing vending machines for the purposes of the sale of food or beverage are not permitted.” Mr. Busey interjected “nor for the use or sale of food or beverage.” Chair McLaughlin asked if everyone was okay with that and Ms. Turin vocally responded affirmatively and other Agency members expressed no objections. Mr. Busey stated that he would like to make that as a motion, seconded by Mr. DeArmas. In a roll call vote, the vote was as follows: Chair McLaughlin – yes; Vice-Chair Stevens – absent; Mr. Busey – yes; Mr. DeArmas – yes; Ms. Turin – yes. **(Motion carried 4-0, Vice-Chair Stevens was absent)**

Planner’s Note: *The Town’s Clerks Department spoke with Mr. Busey on August 14, 2008, he clarified that “nor for the use or sale of food or beverage” pertained to the kiosks. Since it was not made explicitly clear where to place the phrase, it would be up to staff to place it appropriately in order to convey the intent.*

At the February 13, 2008 Local Planning Agency meeting, Vice-Chair Stevens made a motion, seconded by Ms. Turin, to permit (approve) the submission of a text amendment. In a roll call vote, the vote was as follows: Chair Bender – yes; Vice-Chair Stevens – yes; Mr. Busey – yes; Mr. Pignato – absent; Ms. Turin – yes. **(Motion carried 4-0, Mr. Pignato was absent)**

Planner’s Note: *The board discussed following: getting Development Review Committee (DRC) input; whether the text would allow both a walk-up and drive-up services; whether types of services would be limited; no vending machines; the amount of kiosks at one location; and the distance separation between kiosks.*

On May 26, 2008, the Development Review Committee reviewed the proposed text amendment but had no significant comments.

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Staff recommends approval of this ordinance.

Attachment(s): Ordinance

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 12, LAND DEVELOPMENT CODE, ARTICLE III. USE REGULATIONS, DIVISION 2. GENERAL REGULATIONS, SECTION 12-33(Q) GENERAL PROVISIONS PERTAINING TO ALL BUSINESS DISTRICTS; PROVIDING DEVELOPMENT REGULATIONS FOR PERMANENT, FREE-STANDING AND UNOCCUPIED KIOSKS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to include a provision to the Land Development Code specifically allowing and regulating Kiosks in commercial areas; and

WHEREAS, the Local Planning Agency of the Town of Davie held a public hearing on August 13, 2008; and

WHEREAS, the Town Council of the Town of Davie held two (2) public hearings duly advertised as required by State Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the above foregoing whereas clauses are hereby incorporated.

SECTION 2. That Section 12-33(Q), General Provisions Pertaining to All Business Districts, of the Land Development Code of the Town of Davie, Florida (the "Town"), is hereby amended to read as follows:

(12) Permanent, free-standing and unoccupied kiosks may be approved by Town Council (after consideration by the Development Review Committee and Site Plan Committee) in any of the Commercial, Office and Business Districts, provided that they are used only for financial or retail services which are otherwise permitted within the particular zoning district, specifically excluding the sale of food or drinks. Kiosks shall have a footprint of no more than one hundred (100) square feet, shall not permit customer access to the interior, and shall be consistent with the architecture of existing structures on site. No kiosk shall be located closer than 1,000 feet from another kiosk, nor shall more than two (2) kiosks be located in any one (1) shopping center. A drive-through kiosk is permitted, provided that the site plan provides sufficient traffic circulation and vehicle stacking as determined by the Town Engineer.

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

SECTION 4. If any section, subsection, sentence, clause, phrase, title, 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 portion of this Ordinance.

SECTION 5. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS ____ DAY OF _____, 2008.

PASSED ON SECOND READING THIS ____ DAY OF _____, 2008.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2008.