

Agenda Item

File ID: 2021-2644

Substitute

8/9/2021

Public Hearing: YES NO

Department: Planning and Sustainability

SUBJECT:

Commission District(s): 4, 5, & 7

Application of the Director of Planning & Sustainability for an amendment to the text of Section 27-3.37.9 and 27-3.37.10 of the Zoning Ordinance, regarding Tier 2 of the Hidden Hills Overlay District, to prohibit late-night establishments and for other purposes.

Petition No.: TA-21-1244945 (2021-2644)

Proposed Use: Late-night establishments in Tier 2 of HHOD as SLUPs.

Location: Enter Location.

Parcel No.: Parcel No.

Information Contact: Brandon White, Current Planning Manager

Phone Number: 404-371-2155

PURPOSE:

Application of the Director of Planning & Sustainability for an amendment to the text of Section 27-3.37.9 and 27-3.37.10 of the Zoning Ordinance, regarding Tier 2 of the Hidden Hills Overlay District, to prohibit late-night establishments and for other purposes.

RECOMMENDATION:

COMMUNITY COUNCIL: CC-4: Full Cycle Deferral; CC-5: Deferral.

PLANNING COMMISSION: 2-Cycle Deferral & Moratorium.

STAFF RECOMMENDATION: Approval.

PLANNING STAFF ANALYSIS: The Department of Planning and Sustainability initially drafted a text amendment that would have simply prohibited late-night establishments in Tier 2 of the Overlay District, as requested. However, based on feedback from the W.O.M. (Women on a Mission) community group, residents' comments at the Districts 4 and 5 Community Council meetings, and comments at the Board of Commissioners' Planning, Economic Development, and Community Service (PECS) Committee, staff understands that some residents want late-night establishments. Additionally, the Planning Commission had a number of concerns regarding late-night establishments including crime statistics, code enforcement activity, noise complaints, consideration of a distance separation provision, and a recommendation for a moratorium on the establishment of new late-night establishments in Tier 2 of the Hidden Hills Overlay District while further study is undertaken. Outside of the overlay district, such establishments are permissible by-right in commercial and mixed-use districts if they are greater than 1,500 feet from residential uses. Those within 1,500 feet are subject to special land use permit (SLUP) approval and other supplemental regulations (Chapter 27, Sec. 4.2.32-Late-night Establishments). In coordination with Legal staff, this updated version includes a SLUP requirement for new establishments within 1,500 feet from the boundary line of property zoned for residential use along with a requirement for adequate soundproofing. This permits community review of each new request and allows for additional mitigation of potential adverse impacts based on conditions unique to each situation. Any establishment permitted before this

text amendment is approved will be a legal, nonconforming use. With the proposed text amendments herein, the Planning and Sustainability Department recommends “approval.”

PLANNING COMMISSION VOTE: Two-Cycle Deferral 7-1-0 and recommendation for a moratorium. April Atkins moved, Jon West seconded for a two-cycle deferral of this text amendment to the November zoning agenda, with a recommendation for a moratorium of late-night establishments in Tier 2, to expire on December 31, 2021. Motion passed 7-1-0; Tess Snipes opposed.

COMMUNITY COUNCIL VOTE/RECOMMENDATION: CC-4: Full Cycle Deferral 12-0-0 with the condition that there be one or two community meetings with the Planning Department involved to allow this text amendment to be fully vetted. **CC-5: Deferral 8-0-0.**

**AN ORDINANCE TO AMEND CHAPTER 27
OF THE CODE OF DEKALB COUNTY,
GEORGIA, AND FOR OTHER PURPOSES.**

WHEREAS, the Board of Commissioners is authorized to exercise zoning powers to protect and promote the County's health, safety, and general welfare;

WHEREAS, the zoning code currently allows late night establishments in Tier 2 of the Hidden Hills Overlay District;

WHEREAS, late night establishments currently operating in Tier 2 of the Hidden Hills Overlay District provide opportunities for relaxation and enjoyment, but also on occasion disrupt the use and enjoyment of adjoining or nearby residential land uses by generating objectionable noise levels and other off-site effects; and

WHEREAS, the Board of Commissioners desires to balance the benefits and secondary effects of late night establishments in Tier 2 of the Hidden Hills Overlay District by enacting supplement regulations to ensure the proper operation of the late night establishments;

NOW THEREFORE, BE IT ORDAINED by the Governing Authority of DeKalb County, Georgia, and be it hereby ordained by the Authority of same, that Chapter 27 of the Code of DeKalb County, as revised in 2015, is hereby amended as follows:

PART I. ENACTMENT

By amending the Section 27-3.37 as follows:

Section 27-3.37.9 Tier 2 principal uses and structures.

The principal uses of land and structures allowed in Tier 2 are provided below subject to the standards and limitations contained within this division. If a use or structure is not listed in this section or is not expressly allowed by special permit, then the principal use or structure is prohibited in Tier 2:

N. Restaurant ~~and late night establishment.~~

Section 27-3.37.11 B - Special permits in Tier 2.

The following uses and structures in Tier 2 shall be authorized only by permits of the type

indicated:

B. Special land use permit from the board of commissioners:

8. Late Night Establishment (see Sec. 3.37.36.).

Section 27-3.37.36. Supplemental regulations for late night establishments located in Tier 2.

- A. Unless indicated to the contrary in this section, all late night establishments shall comply with the requirements of section 27-4.2.32.
- B. Late night establishments shall comply with the DeKalb County Noise Ordinance found in chapter 16, article VII of this Code. The owner or operator shall take measures to soundproof the establishment such that no noise, including bass tones and vibrations, is audible outside the building. The doors and windows of the establishments shall remain closed except when necessary to allow persons ingress and egress from the building.
- C. Every special land use permit application for a late night establishment shall include a scaled drawing of the location of the proposed premises, showing the distance measured in feet from the boundary line of the property proposed to be used as a late-night establishment to the property line of the closest residential use. For shopping plazas or mixed-use developments, the distance will be measured from the property line adjacent to the suite/unit of the proposed establishment. Such drawing shall be certified by a land surveyor or professional engineer registered in the State of Georgia.
- D. Late night establishments operating pursuant to a validly issued business and liquor license issued prior to August 10, 2021, shall be a legal nonconforming use as defined in chapter 27 article IX of the DeKalb County Zoning Code and shall not be required to obtain a special land use permit to continue operating. Those establishments shall not expand, move, enlarge, or otherwise alter the permitted use or alter the buildings on the premise, except for normal maintenance. If a licensee is operating a legal nonconforming late-night establishment and such license is revoked, upon revocation, the legal nonconforming status shall be terminated. Failure to comply with any of the provisions of this Section or other generally applicable code provisions may result in termination of the establishment's legal nonconforming status.

PART II. EFFECTIVE DATE

This ordinance shall become effective immediately on the date of adoption by the board of commissioners and approval by the chief executive officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2021.

STEVE BRADSHAW
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2021

MICHAEL THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

VIVIANE H. ERNSTES
Chief Legal Officer
DeKalb County, Georgia

ANDREW A. BAKER
Planning Director
DeKalb County, Georgia

DRAFT

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