

ORDINANCE NO. 2019-03

AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL AMENDING ARTICLE 3 (DEFINITIONS); AMENDING ARTICLE 6, TABLE 6.4-1 (USE REGULATION SCHEDULE), TABLE 6.8-2 (PLANNED DEVELOPMENT DISTRICT USE REGULATION SCHEDULE), AND TABLE C (EOZD PERMITTED, CONDITIONAL AND PROHIBITED USES); AMENDING SECTION 6.4.4 (SUPPLEMENTARY USE STANDARDS) OF THE LAND DEVELOPMENT REGULATIONS OF THE VILLAGE OF WELLINGTON, FLORIDA, RELATING TO USES; TO REGULATE THE LOCATION OF NIGHTCLUB BUSINESSES AND CREATE OPERATION STANDARDS AND REQUIREMENTS; PROVIDING A CONFLICTS CLAUSE; PROVIDING FOR CODIFICATION; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, Wellington's Council, pursuant to the authority granted to it in Chapters 163 and 166, *Florida Statutes*, is authorized and empowered to consider changes to its land development regulations; and

**WHEREAS**, Wellington's Council recognizes that from time to time amendments to the land development regulations are necessary to provide clarity and to address changing circumstances and resolve evolving and continuing adverse impacts ; and

**WHEREAS**, Wellington's Council has determined that Nightclubs have significant impact on the developments and surrounding areas where they are located with respect to noise, traffic, civil conduct and obedience; and

**WHEREAS**, Wellington's Council desires to allow reasonable location(s) within the Community to accommodate Nightclub businesses, but to limit the location and manner of operation of such businesses to protect the health, safety, welfare and quality of life for its residents; and

**WHEREAS**, the Planning, Zoning and Adjustment Board, acting as the Local Planning Agency, after notice and public hearing on March 13, 2019 has reviewed the proposed Ordinance and determined that the proposed amendments are consistent with Wellington's Comprehensive Plan; and

**WHEREAS**, the Council has taken the recommendations from the Local Planning Agency, Wellington staff and the comments from the public into consideration when considering the amendments to the Land Development Regulations that are the subject of this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF WELLINGTON, FLORIDA, THAT:**

**SECTION 1.** Article 3, Chapter 2 (DEFINITIONS), is hereby amended to modify the definition of Lounge, cocktail and Restaurant, general, as follows:

**Lounge, cocktail** means a use engaged in the preparation and retail sale of alcoholic beverages, including taverns, bars, lounges and similar uses other than restaurants or alcohol sales for off premises consumption. A cocktail lounge is distinct from a restaurant that sells alcohol when the establishment cannot qualify for a "Consumption on Premises, Special Restaurant Exemption" pursuant to the State Beverage Law and/or when on-site prepared food service is not available at all times when the business is open.

**Restaurant, general means** an establishment excluding drive-thrus where the principal business is the sale of food and beverages in a ready-to-consume state and where the design or principal method of operation consists of one or more of the following:

- A sit down restaurant where customers, normally provided with an individual menu, are generally served food and beverages in non-disposable containers by an employee at the same table or counter at which said items are consumed; or
- A cafeteria or cafeteria type operation where foods and beverages generally are served in non-disposable containers and consumed within the restaurant; or
- A restaurant, which may have the characteristics of a fast food restaurant, having floor area exclusively within a shopping or office center sharing common parking facilities with other businesses within the center, and having access to a common interior pedestrian access way.
- ~~This use~~ Restaurants may include the on premise sale, service and consumption of alcoholic beverages as an accessory and secondary use, provided that the sales and service of food is available at all times when the business is open.

**SECTION 2.** Article 3, Chapter 2 (DEFINITIONS) is hereby amended to add in alphabetical order, the definitions of Entertainment and Nightclub, as follows:

**Entertainment, live** means one or more of the following, performed live by one or more persons, whether for compensation or not and whether or not admission is charged: musical act, theatrical act, revue, stand-up comedy, dancing, magic act, disc jockey, or similar activity.

**Nightclub** means any commercial establishment at which alcohol is sold and consumed and which, at any one time, is determined to be a nightclub by application of the factors set forth in Article 6, Chapter 4, Sec. 6.4.4.76(A). If a commercial use could reasonably be classified as either a nightclub or some different use, it shall be deemed a nightclub for the purpose of this Code. If a commercial establishment functions as another use for portions of a day or week and as a nightclub for portions of a day or week, it shall be deemed a nightclub.

1        **SECTION 3.** Article 6, Chapter 4, Sec. 6.4.4 (Supplementary Use Standards) is hereby  
2 amended to add in numerical order a new subsection 6.4.4.76(A) to establish standards and  
3 criteria for nightclub, as follows:  
4

5        **76. (A). Nightclub** means any commercial establishment open after 10:00 PM at which  
6 a cover charge, door charge, contribution requirement or one (1) time membership fee  
7 is paid at the door, or has a minimum drink requirement (excluding temporary events  
8 where a Special Use Permit has been granted by Wellington), or:  
9

10       a.) If none of the factors listed above exist and no Special Use Permit has been  
11 approved by Wellington, then if any four (4) of the following conditions exist, the  
12 establishment is a nightclub:  
13

- 14       1. There is a dance floor or other open area for use by patrons for dancing or  
15 viewing of live entertainment (permanently or which can be established by  
16 temporary removal or rearrangement of furniture).
- 17       2. The establishment is open to the public anytime between 12:00 a.m. and 8:00  
18 a.m. on any day of the week.
- 19       3. The maximum capacity of the establishment as set by the fire officials through  
20 fire, building structure and other relevant laws and ordinances is one hundred  
21 fifty (150) or more persons. Voluntary reduction of capacity by the  
22 establishment shall not prevent the building or fire officials from determining a  
23 different and increased capacity.
- 24       4. Alcohol is sold, served and/or consumed on the premises at any time.
- 25       5. Advertisements for the establishment describe specific entertainment events or  
26 encouragements (e.g. "House Party Saturday Night"; "DJ Saturday Night";  
27 "Live Music Tonight").
- 28       6. The establishment features a platform or musical staging area used in  
29 connection with performances or entertainment.  
30

31       b.) Security- All nightclubs shall supply interior and exterior security personnel of a  
32 number equaling one security officer for every one hundred fifty (150) occupants or  
33 portion thereof. Security officers employed or contracted by the owners/operators of  
34 the business must possess a class D license established pursuant to Florida  
35 Statutes, Sec. 493.6303. Alternatively, off duty law enforcement officers can be  
36 utilized to meet this requirement. A reduction in the number of required security  
37 personnel can be requested annually by any nightclub that has had less than four (4)  
38 incidents which required a law enforcement response within the preceding calendar  
39 year and which are attributable to events held at the nightclub. Such reduction may  
40 be granted by the Planning, Zoning and Building Director (or his/her designee) on an  
41 annual basis, with a recommendation of approval from the Sheriff's Department.  
42 Neither the Sheriff's office nor the Village of Wellington shall be under any obligation  
43 or duty to any person hereunder by reason of this Article. The Sheriff and  
44 Wellington specifically disclaim liability for any damages which may be caused by  
45 failure to provide security.  
46

47       c.) Patron age restriction- It shall be unlawful for persons under the age of twenty- one  
48 (21) to patronize, visit, loiter, be admitted or allowed access in any nightclub; except

this restriction shall not apply to:

1. Persons employed by or at the nightclub.
2. During periods when the establishment is not functioning as a nightclub, such as when such establishment is functioning as a restaurant.
3. Members of the military or armed services with proper military identification which reflects that they are currently on active duty.

d.) Any person who gains access to a nightclub by using fraudulent identification shall be in violation of this Ordinance.

e.) Nightclub establishments located at Equestrian facilities within the EOZD may only be open for business during the days that equestrian competition events are being conducted on the property where they are located.

f.) Enforcement and penalties- violations of this Section shall be subject to enforcement as provided in Articles 5 and 14 of the Wellington Land Development Regulations and Chapter 36 of the Wellington Code of Ordinances as well as additional penalties as provided by F.S. Sec.125.69(1).

g.) Applicability-The provisions of this Ordinance shall apply to all existing establishments and all new establishments meeting the definition of "nightclub." All establishments existing at the time of the adoption of this Ordinance are deemed to be conforming uses.

**SECTION 4.** Article 6, Chapter 4, Table 6.4-1 (Use Regulation Schedule) is hereby amended to add the use Nightclub to the schedule in alphabetical order:

Table 6.4—01  
Use Regulations Schedule

Use Type	ZONING DISTRICTS ≤Blank≥ = Not Permitted; P=Permitted; S=Special Use; D=DRC; C=Conditional Use												N O T E S  §6.4.4	
	Residential								Commercial			Industrial/ Public		
	A R	R S E R	C R S	R E	R T S	R S	R M	R H	C N	C C	C R E	I L		C F
<u>Nightclub</u>										<u>C</u>				<u>76A</u>

**SECTION 5.** Article 6, Chapter 8, Table 6.8-2 (Planned Development District Use Regulation Schedule) is hereby amended to add the use Nightclub to the schedule in alphabetical order:

Table 6.8-2  
Planned Development District Use Regulations Schedule

Use Type	Planned Development –Zoning District (≤Blank≥ = Not Permitted; A=Accessory Use Only; C=Conditional Use; D=Development Review Committee; P=Permitted Use; S=Special Permit)																	N O T E S  §6.4.4		
	PUD							M A P D	M X P D	MUPD						F L E X	M C P D			
	Land Use Category (LUC)							L U C	L U C	LUC						L U C	L U C			
	O S &  R E C	R E S	C I V/P	C O M				C O N S	M C	M U	C C	M U	N C	O C	C C	C R	I N D		I N D	M C
C R				N C	C C	O C														
Nightclub						C					C				C					76A

**SECTION 6.** Article 6, Chapter 10 (EOZD), Section 6.10.7 Table C (Permitted, Conditional and Prohibited Uses) is hereby amended to add the use Nightclub to the schedule in alphabetical order:

Table C.  
Permitted, Conditional and Prohibited Uses

Use	Properties with No Current PUD Master Plan	Residential Pods of PUDs	Commercial		Additional Standards (§ 6.10.7.2) and this Section
			Comm. Pods of PUDs & Comm. Plnnd. Devels.	Comm. Rec.	
Legend C = Conditional Use • P = Permitted Use • Blank = Prohibited Use D = Development Review Committee • S = Special Permit					
<u>Nightclub</u>			<u>C</u>	<u>C</u>	<u>Sec. 6.4.4.76A</u>

**SECTION 7.** Should any section, paragraph, sentence, clause, or phrase of this Ordinance conflict with any section, paragraph, clause or phrase of any prior Wellington Ordinance, Resolution, or Municipal Code provision; then in that event the provisions of this Ordinance shall prevail to the extent of such conflict.

**SECTION 8.** Should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion or part thereof, other than the part so declared to be invalid.

**SECTION 9.** This Ordinance shall become effective immediately upon adoption of the Village Council following second reading.

**PASSED this** 9th day of April, 2019 on first reading.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019, on second and final reading.

**WELLINGTON**

**FOR**

**AGAINST**

BY: \_\_\_\_\_

Anne Gerwig, Mayor

\_\_\_\_\_  
Michael J. Napoleone, Vice Mayor

\_\_\_\_\_  
John T. McGovern, Councilman

\_\_\_\_\_  
Michael Drahos, Councilman

\_\_\_\_\_  
Tanya Siskind, Councilwoman

**ATTEST:**

BY: \_\_\_\_\_

Chevelle D. Nubin, Village Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

BY: \_\_\_\_\_

Laurie Cohen, Village Attorney