

Town of Fort Myers Beach

Memorandum

To: Local Planning Agency
From: Walter Fluegel, Community Development Director
CC: Outdoor Display Working Group
Date: August 6, 2013
Re: LPA Workshop on Outdoor Display

For the past few months, DCD Staff has held numerous workshops with retail merchants regarding outdoor display. The purpose of the workshops with the merchants started as an effort to inform the merchants about the outdoor display requirements from the Town's Land Development Code. This effort evolved into an ongoing dialogue about ways to simplify and streamline the outdoor display regulations. Accordingly, the purpose of workshop on the August 13, 2013 LPA agenda is to facilitate a dialogue between the retail merchants and the LPA and to continue the effort to identify ways to streamline the outdoor display regulations.

Background Information:

Chapter 34 of the Town's Land Development Code contains two sections that deal with the regulation of outdoor display, Sections 34-678 and 34-3004 (Exhibit A). These sections prescribe the type of display allowed, where it is allowed, the amount of display allowed, the merchandise allowed to be displayed and the annual permitting requirements.

During the recent past tourist season, Town Code Enforcement conducted a sweep of outdoor display, due to ongoing complaints about the amount of display and due to the number of retailers who had not obtained the required annual outdoor permit. During the course of the code enforcement sweep, it became clear that a lot of the retail merchants were unfamiliar with the working details of the outdoor display requirements, which resulted in DCD Staff holding a workshop for the retail merchants. At the initial workshop, it became clear that the merchants found the existing ordinance to be cumbersome and difficult. Likewise, DCD Staff has found enforcement of the ordinance to be problematic.

Accordingly, DCD Staff held two more roundtable meetings with the merchants, to identify ways the merchants felt the ordinance could be revised to make it less cumbersome for both the merchants to understand, DCD Staff to permit, and for Code Enforcement to administer.

Retail Merchants Recommendations:

Given the Comprehensive Plans emphasis on the importance of the relationship between the pedestrian realm and the business realm, DCD Staff recognizes the delicate balance between creating a warm and inviting pedestrian experience for residents and visitors alike, while maintaining and improving the community aesthetic standards of the Town's vital corridors. Accordingly, the retail merchants developed a list of general changes to the ordinance, which they believe will make the ordinance less cumbersome, while protecting the community aesthetic standards. DCD Staff suggested to the retail merchants working group that they should hold a workshop with the LPA to discuss the proposed changes, prior to Staff embarking upon drafting the actual code amendments.

The following are the changes to the ordinance being proposed by the retail merchants working group:

- Outdoor display may not be subleased to a separate business/tenant/etc.
- Expressed a desire to adopt the definitions and changes as provided by Beverly Grady in regards to outdoor space, under engineered roof that can be secured at night (examples: Teeki Hut and Ocean Jewels), Exhibit B
- Restrict outdoor displays to private property only
- All merchandise displayed outdoor must be moved and stored inside at the close of business everyday (except for the Teeki Hut example)
- No limits on numbers or types of displays
- No kiosk carts
- All outdoor displays must be on a porch – no displays on patios, concrete, ground level
- Annual permit is required – fee to be determined
- No vending or displaying of any food items
- Point of sale must be indoors
- No changes to the allowances for tables and chairs for restaurants

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Sec. 34-677. Additional requirements.

(a) *Commercial design standards.* The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

(b) *Open space and buffers.* There are no minimum open space and buffer requirements in the DOWNTOWN district comparable to the standards found in ch. 10, except in three instances:

- (1) Portions of properties that lie east of Palermo Circle and more than 300 feet beyond the north edge of the Estero Boulevard right-of-way shall retain 50% of that portion as open space. This open space may be a stabilized sodded area useable for overflow parking.
- (2) Residential buffers are required between commercial or mixed-use buildings and single-family residential lots for properties on the north side of Estero Boulevard east of Palermo Circle. These buffers shall be constructed in accordance with the buffer requirements of ch. 10 of this code.
- (3) Buffers are required between any off-street parking lot and a public street in accordance with the buffer requirements of ch. 10 of this code.

(c) *Core area overlay district.* An optional core area overlay district was adopted by the town by Ordinance 96-20. That district was replaced with the DOWNTOWN zoning district by Ordinance 03-03. Landowners who chose to be governed by the core area overlay district agreed in writing to be bound by its provisions for ten years. Compliance with this code, including all requirements of the DOWNTOWN zoning district, is deemed by the town as satisfying those agreements. However, all provisions of those agreements relating to off-site parking remain in full effect.

Sec. 34-678. Outdoor display and sales of merchandise and food.

(a) *Generally.* Merchandise, food, and beverages may be displayed or sold outdoors in the DOWNTOWN zoning district only in accordance with this section.

(b) *Purpose.* The purpose of these regulations is to enhance the pedestrian environment of the town’s business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town’s sense of place and property values.

- (1) Outdoor display of merchandise allows retailers an opportunity to inform and interest the public by offering a small sample of the products that are available inside. Outdoor display can also be appropriate for small retail products that are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
- (2) Outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items. The principal purpose of outdoor display in the DOWNTOWN district is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for freestanding businesses or for mobile vendors (which are regulated in § 34-3002).
- (3) Restaurants are encouraged by this code to provide outdoor dining. Outdoor dining between a restaurant and a street is regulated by this section. The sale of alcoholic beverages outdoors is also regulated by state liquor laws and by § 34-1264 of this code.
- (4) See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq.

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(c) *Allowable locations for outdoor activities.* Table 34-4 summarizes the allowable locations for outdoor display of merchandise and outdoor dining in the DOWNTOWN zoning district.

Table 34-4 — Outdoor Activities in the DOWNTOWN Zoning District			
Display Type	Location	PRIVATE PROPERTY <i>(between store & street)</i>	PUBLIC PROPERTY <i>(Times Square pedestrian plaza)</i>
		On porch	On patio
MERCHANDISE , as further limited by other provisions of § 34-678:			
<i>Vending carts – see (d)(1)</i>		no	YES
<i>Clothing racks – see (d)(2)</i>		YES	no
<i>Specialized displays – see (d)(3)</i>		YES	YES
<i>Mannequins – see (d)(4)</i>		YES	YES
<i>Tables/shelves – see (d)(5)</i>		YES	no
<i>Freestanding displays – see (d)(6)</i>		YES	YES
DINING:			
<i>Vending carts – see (d)(1)</i>		no	YES
<i>Dining tables – see (d)(7)</i>		YES	YES

(d) *Types of outdoor displays.*

(1) **Vending carts** are limited to 2 wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts that have been manufactured to be secured at night, with fitted side panels, may be left outside when a business is closed. All other vending carts must be moved indoors when the business is not open. Within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center, all vending carts must be moved indoors, removed from the county, or placed within an approved off-island storage area. Figure 34-9 shows two suggested vending cart designs.

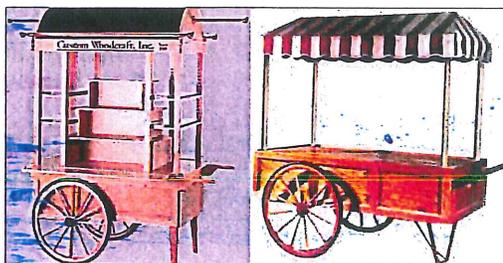


Figure 34-9

(2) **Clothing racks** are limited to one support rod up to 6 feet long on which clothing is hung. Similar displays whose principle function is for the display of clothing, swimwear, and other garments shall be considered a clothing rack. Clothing racks are often mounted on wheels. Figure 34-10 shows a typical clothing rack.



Figure 34-10

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- (3) **Specialized display racks** are unique displays for a specific type of product. An example is a rack to hold beach toys or accessory items. Specialized display racks are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area. Figure 34-11 shows a specialized display rack.

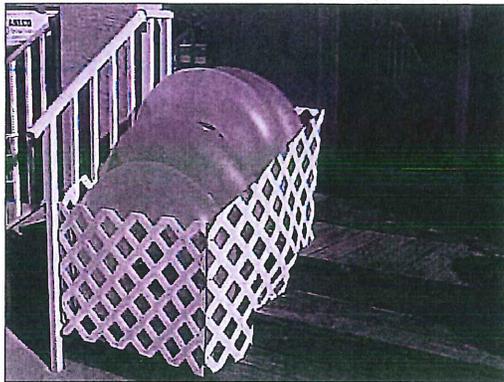


Figure 34-11

- (5) **Tables or freestanding shelves** are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area, and may not be more than 3 feet in height. Figure 34-13 shows a typical freestanding table with merchandise.



Figure 34-13

- (4) **Freestanding mannequins** are used to display clothing or swimwear. Figure 34-12 shows a typical freestanding mannequin.



Figure 34-12

- (6) **Freestanding product displays** can be used for products such as lawn and garden accessories or windsocks that are appropriately displayed on their own. These types of products may be displayed within a 4-foot by 8-foot area or with a maximum of 7 individual products. Figure 34-14 shows typical freestanding product displays.

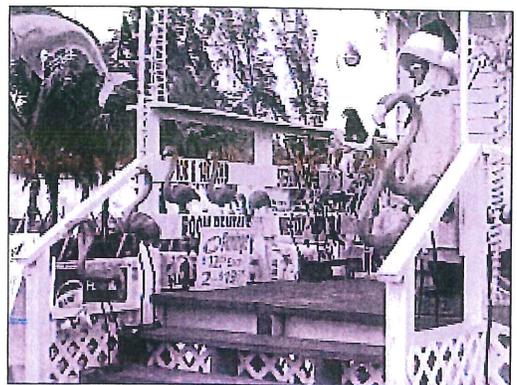


Figure 34-14

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- (7) **Dining tables** are used to serve food and beverages to the public. Figure 34-15 shows typical dining tables on the Times Square pedestrian plaza.



Figure 34-15

(e) **PRIVATE PROPERTY: number, location, and types of outdoor displays and dining tables.** Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way only if the merchandise is placed on a raised porch or a patio, as defined in this subsection. **No business may have more than two outdoor displays of merchandise, as defined in subsection (d).** For example, a business may qualify for two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. **Multiple occupancy structures with two or more businesses are limited to one outdoor display for each business up to a maximum of four outdoor displays per multiple occupancy structure.**

- (1) **Porches and patios.** Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, porches and patios are defined as follows:
- Porch** is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning, roof, or umbrellas. Wood must be painted or stained. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.
 - Patio** is an area covered with paver bricks, concrete, wood, or similar material and

located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio. Patios are encouraged to be shaded with an awning or umbrella or with a roof that is an integral part of the outdoor display. Businesses without porches are encouraged to use patios. New or expanded patios must comply with all chapters of this code.

- (2) **Permitted merchandise and types of outdoor display.** The following types of merchandise may be displayed outdoors using the display type described in subsection (d):
- Art** (prints, sculpture, etc.): 1, 3, 5, 6
 - Bathing suits and swimwear:** 1, 2, 4
 - Beach accessories** (umbrellas, chairs, etc.): 1, 6; rental of beach equipment on the beach is regulated in § 14-5 of this code.
 - Beach towels:** 1, 2, 3, 5
 - Beach toys, rafts, and floats:** 1, 3, 5
 - Clothing:** 1, 2, 4, 5
 - Clothing accessories** (jewelry, purses, etc.): 1, 3, 4, 5
 - Kites and windsocks:** 1, 6
 - Lawn and garden accessories:** 1, 6
 - Small retail items** (souvenirs, suntan lotion, flowers, books, etc.): 1, 5
 - Merchandise not specifically listed:** 1, or on permitted display type for the most similar item.
 - Personal services** including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.
- (3) **Additional rules for outdoor displays of merchandise.**
- A retail store wishing to display merchandise outdoors in the DOWNTOWN zoning district must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code.
 - Merchandise that is displayed outdoors must be available for sale inside the store.
 - All outdoor displays must be brought indoors during any hours that the business is not open, except as provided for vending carts in subsection (d)(1).

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- d. Outdoor displays may contain no business or product identification signage whatever; each display may have one 4 inch by 6 inch sign to display prices.
- e. All outdoor displays must be non-motorized and movable by hand and may be no taller than 10 feet.
- f. Merchandise may not be attached to the building or to a railing unless incorporated into an approved type of outdoor display, such as a specialized display rack, mannequin, or freestanding product display (see subsection (d)).
- (4) **Outdoor dining.** A restaurant wishing to provide outdoor seating between the restaurant and a street must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code. The seating must be located on a porch or patio as defined in this subsection. The sale of alcoholic beverages outdoors is regulated by state liquor laws and by § 34-1264 of this code.
- (5) **Permit required.** A permit is required for each business wishing to display merchandise outdoors or to place outdoor seating in, ... conformance with this section.
- a. Permits may be issued for up to one year and shall expire each year on September 30.
- b. Permit applications may be filed at any time using forms available from town hall. Applications should be accompanied by photographs or drawings that clearly indicate the type, character, number, and size of outdoor displays or dining tables that are being proposed.
- c. Permits may be issued by the town manager. The town manager may also choose to refer an application to the town council for its consideration in lieu of administrative issuance or rejection.
- d. Permits may include modifications to the standards in this section to better accomplish the purposes set forth in subsection (b). Other reasonable conditions may also be imposed regarding the layout and physical design of porches, patios, vending carts, specialized display racks, shelves, tables, and umbrellas.
- e. Outdoor display and dining permits may be suspended by the town manager for noncompliance with the permit. Suspensions may be appealed to the town council in accordance with procedures set forth in § 34-86 for appeals of administrative decisions. Suspension of a permit does not preclude the town from pursuing any of the other enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2).
- (f) **PUBLIC PROPERTY:** No merchandise may be displayed outdoors on public property. Restaurants may extend their operations onto public sidewalks and plazas only as follows:
- (1) **General location.** These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6) and other locations if explicitly approved by the town council.
 - (2) **Who may operate.** Vending rights are available only to the owner of the private property that immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.
 - (3) **Specific location.** Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines. Vending rights may extend onto public property only as far as specified in the annual permit and may be further modified by the town as necessary to provide adequate room for pedestrian movement and to ensure fair treatment for restaurants located on opposite sides of the Time Square pedestrian plaza.
 - (4) **Outdoor dining.** No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted.
 - (5) **Permit required.** Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:

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- a. Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
- b. Restrictions on the extent to which food not available in the abutting business may be sold;
- c. Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
- d. Insurance requirements;
- e. Payment of fees established by the town for vending rights;
- f. Limitations on leasing of vending rights, if any; and
- g. Other reasonable conditions as determined by the town, including full approval rights over the design of umbrellas, carts, tables, etc.

Permitting procedures and enforcement shall be the same as provided in subsection (e)(5).

Secs. 34-679--34-680. Reserved.

DIVISION 33. SIGNS

Sec. 34-2411. Location and construction.

All signs shall be located, erected, and constructed in accordance with ch. 30, except where this chapter provides more explicit regulations for a specific use.

Secs. 34-2412--34-2440. Reserved.

DIVISION 34. SPECIAL EVENTS

Sec. 34-2441. Special events defined.

A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society.

Sec. 34-2442. Permits for special events.

(a) The Town of Fort Myers has established a permitting process for special events through Ordinances 98-01 and 00-16 and any future amendments.

(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.

(c) Special events on the beach shall also comply with § 14-11 of this code.

Secs. 34-2443--34-2470. Reserved.

DIVISION 35. RESERVED

Secs. 34-2471--34-3000. Reserved.

DIVISION 36. STORAGE FACILITIES AND OUTDOOR DISPLAY OF MERCHANDISE

Sec. 34-3001. Applicability of division.

(a) Except as provided in this section, the regulations set forth in this division shall apply to all outdoor display of merchandise which is offered for sale or rent, and to all storage facilities as defined in this division.

(b) The provisions of the division do not apply to garage or yard sales by residents of dwelling units on their own property in accordance with this code (see § 34-2) or to the mooring or docking of watercraft.

Sec. 34-3002. Mobile vendors and transient merchants.

(a) Mobile vendors includes a person who sells food or other product or service to the public from a mobile dispensing vehicle which is self-propelled or otherwise readily moveable from place to place either operated from a base facility or not operated from a base facility.

(b) No mobile vendor shall be permitted to make sales from a vehicle while stopped on the right-of-way or other public property within the limits of the Town of Fort Myers Beach, except in accordance with § 34-3004.

(c) Mobile vendors and transient merchants must comply with all provisions of Ordinance 96-14, the Fort Myers Beach Transient Merchant Regulation Ordinance, and with all subsequent amendments.

Sec. 34-3003. Reserved.

Sec. 34-3004. Outdoor display of merchandise for sale or rent.

(a) Outdoor sales includes all sales or display of merchandise, food, and beverages between the outer wall of stores and public rights-of-way or, where permitted, on public rights-of-way, but does not include merchandise visible through windows or sold to customers using pass-through windows. Merchandise sold or displayed outdoors must not be placed closer than 3 feet to any sidewalk or bike path or to any right-of-way.

(b) This code allow outdoor display and sales of merchandise only as follows:

- (1) In farmers' markets or other special events authorized by the town;
- (2) Beach furniture (in accordance with § 14-5);
- (3) Bicycles, motorbikes, and motorcycles (by dealers or rental agencies in zoning districts where they are permitted);
- (4) Boats (by boat dealers in zoning districts where they are permitted);
- (5) Personal watercraft (in accordance with § 27-49);
- (6) Lawn and garden ornaments (by retail stores in zoning districts where they are permitted), provided the merchandise collectively does not exceed a height of 4 feet and a width (parallel to the right-of-way) of 8 feet;
- (7) On private property in the DOWNTOWN zoning district (in accordance with § 34-678(e)); and
- (8) On public property in parts of the DOWNTOWN zoning district (in accordance with § 34-678(f)).

(c) Artificial lighting used to illuminate premises subject to this division shall be directed away from adjacent properties and streets, shining only on the subject site.

(d) The outdoor display and sales of merchandise, food, and beverages is prohibited within the town limits, except in accordance with this section.

Sec. 34-3005. Storage facilities.

(a) *Indoor storage.*

- (1) *Permitted districts.* Except for warehouses and mini-warehouses, indoor storage is permitted within any zoning district when accessory to the permitted principal use of the property. Warehouses and mini-warehouses are permitted only in zoning districts for which it is specifically stated that such uses are permitted.
- (2) *Setbacks.* All buildings used for indoor storage which are located on the same lot as the principal building shall comply with the setback requirements for accessory buildings. Buildings used for indoor storage which are not on the same lot as the principal building, but are on the same premises, shall meet the

setbacks set forth in the district regulations for principal buildings.

(b) *Open storage.*

- (1) *Fencing and screening.* All commercial outdoor storage shall be shielded behind a continuous visual screening at least eight feet in height when visible from a residential use or residential zoning district, and six feet in height when visible from any street right-of-way or street easement.
- (2) *Storage area.* Storage areas do not need to be paved. Grass or other ground cover may be used provided it is kept in a sightly and dustfree manner.

(c) *Use of vehicles, truck trailers, or shipping containers for storage.* Vehicles, truck trailers, shipping containers, and other similar structures may not be used to store goods, produce, or other commodities except in conjunction with an active building permit or development order (see § 34-3044) or unless approved on a temporary basis in accordance with § 34-3041.

(d) *Bulk storage of flammable liquids.*

- (1) *Firewalls or dikes required.* Whenever aboveground tanks for storage of gasoline, gas, oil, or other flammable liquids are located on any land where such use is permitted, such tanks shall be surrounded by an unpierced firewall or dike of such height and dimensions as to contain the maximum capacity of the tanks. All storage tanks and adjacent structures shall meet the requirements of the Board of Fire Underwriters.
- (2) *Exceptions.* Storage tanks containing liquified petroleum, commonly known as bottled gas, are specifically excluded from the provisions of this subsection.

Secs. 34-3006--34-3020. Reserved.

Section 34-2. Definitions

Enclosed merchandise area. Enclosed merchandise area means that area within a conventional building including that area adjacent and accessory to a conventional building where the conventional building and adjacent area are under a common engineered roof and which area is secure from entry during non-operating hours. Securing the adjacent area by shutters and doors open to the air during operating hours is sufficient to qualify as enclosed merchandise area. The design of the adjacent areas shall be consistent with the Land Development Code Commercial Design Standards Section 34- 677.

Section 34-2. Definitions

Enclosed dining area. Enclosed dining area means that area within a conventional building including the area adjacent and accessory to a conventional building where the building and adjacent area are under a common engineered roof and which area is secured from entry during non-operating hours. Securing the adjacent area by shutters and doors open to the air during operating hours is sufficient to qualify as an enclosed dining area. The design of the adjacent area shall be consistent with the Land Development Code Commercial Design Standards 34- 677.

Section 34-678. **Outdoor display and sales of merchandise and food:**
Enclosed merchandise and dining areas

(a) **Generally.** Merchandise, food, and beverages may be displayed or sold outdoors in the DOWNTOWN zoning district only in accordance with the section.

(b) Enclosed merchandise areas. Enclosed merchandise areas are exempt from this section except for the requirement that all merchandise and materials must be removed from the adjacent accessory area into the conventional building within _____ hours of issuance of a hurricane watch for the DOWNTOWN district. Retail store and personal services uses (permitted uses in the Downtown District) are permitted in the enclosed merchandise area.

(c) Enclosed dining areas. Enclosed dining areas are exempt from this section except for the requirement that all tables, seats and materials must be removed from the adjacent accessory area into the conventional building within _____ hours of issuance of a hurricane watch for the DOWNTOWN district. Restaurant (permitted use in the Downtown district) is permitted in the enclosed dining area. Serving of alcoholic beverages is permitted subject to compliance with LDC Section 34-1261, et al, Division 5 Alcoholic Beverages

(d)(b) Purpose. The purpose of these regulations is to enhance the pedestrian environment of the town's business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town's sense of place and property values. ...