

ADDITIONAL SUGGESTED CHANGES TO THE EATING, DRINKING AND ENTERTAINMENT ESTABLISHMENT (EDEE) TEXT AMENDMENT – 1-15-14

New text is shown with underlining.

Page Number	Topic	Issues	Proposed Text as of 9-23-14	Proposed Modification 1-15-14	Rationale
34-36	Eating, Drinking and Entertainment Establishments Type 2 – Certificate of Exemption	Clarify and refine the exemption requirements to address CAG comments and Outreach Presentation Group comments.	<p>Section 12.546, subsection (3):</p> <p>(3) Business establishments that would have met the definition of a Type 2 Eating, Drinking and Entertainment Establishment as of January 1, 2013, and that have an outdoor seating/activity area located within the required separation distances required in Section 12.546, and that provide entertainment between the hours of 11:00 p.m. and 6:00 a.m., are exempt from meeting the separation distance requirement if either of the following apply to that business:</p> <p>(a) An Eating, Drinking, and Entertainment Establishment abuts a public right-of-way that is 60’ or greater in width.</p> <p>(b) A building of at least 1,900 square feet, occupied by a commercial use, is located between the outdoor seating/activity area, and a vacant lot or a residential use (single family, duplex, triplex or quadraplex only) when located in a single family zoning district.</p> <p>The Planning Director, or her or his designee, is authorized to certify whether a business is in compliance with Section 12.546(3) as of January 1, 2013, and to establish the process and requirements of such certification.</p> <p>For an Eating, Drinking and Entertainment Establishment that qualifies for the exemption provided by Section 12.546(3), the outdoor seating/activity area or Eating, Drinking and Entertainment Establishment building, as either existed as of January 1, 2013, may not be moved, expanded, enlarged, or changed. Routine repair and maintenance is permitted.</p> <p>Any outdoor seating/activity area or Eating, Drinking and Entertainment building exempted under Section 12.546(3) that is destroyed or damaged by fire, flood, wind, or other</p>	<ul style="list-style-type: none"> • Clarify, reformat and reorganize the language. • Clarify how large a building qualifies for an exemption. • Modify the exemption requirements. • Adds appeal information. <p><u>(3) Certificate of Exemption</u></p> <p><u>(a) Business establishments that would have met each of the following criteria as of January 1, 2013 are eligible to apply for a Certificate of Exemption from the separation distance requirements of Section 12.546:</u></p> <ol style="list-style-type: none"> <u>1. Met the definition of a Type 2 Eating, Drinking and Entertainment Establishment;</u> <u>2. Had an outdoor seating/activity area located within the required separation distances required in Section 12.546; and</u> <u>3. Provided outdoor entertainment between the hours of 11:00 p.m. and 6:00 a.m.</u> <p><u>(b) The Planning Director, or her or his designee, is authorized to issue a Certificate of Exemption and to establish administrative processes for such issuance.</u></p> <p><u>(c) A Certificate of Exemption shall be issued if the following criteria apply:</u></p> <ol style="list-style-type: none"> <u>1. A Type 2 Eating, Drinking and Entertainment Establishment is, as of the date of application, is in compliance with all applicable land use and development laws, including without limitation, zoning laws and urban design standards for the district in which the use is located; and</u> <u>2. Either of the following applied to the Type 2 Eating, Drinking and Entertainment Establishment, on or after January 1, 2013:</u> 	Clarify and refine the exemption requirements to address CAG comments and Outreach Presentation Group comments.

			<p>acts of God, may be repaired or restored to its original dimensions and conditions as they existed on January 1, 2013, as long as a building permit for the repair or restoration is issued within 12 months of the date of damage.</p> <p>The exemption provided under Section 12.546(3) shall not apply to any Type 2 Eating, Drinking and Entertainment Establishment that has visibly discontinued use as a Type 2 Eating, Drinking and Entertainment Establishment for 12 consecutive months, beginning on or after January 1, 2013.</p>	<p>i. <u>The Type 2 Eating, Drinking and Entertainment Establishment abuts a public right-of-way that is 60 feet or greater in width; or</u></p> <p>ii. <u>A commercial building of at least 1,900 square feet is located between the outdoor seating/activity area of the Type 2 Eating, Drinking and Entertainment Establishment, and a vacant lot or a residential use (single family, duplex, triplex or quadraplex only) when located in a single family zoning district.</u></p> <p>(d) <u>A Type 2 Eating, Drinking and Entertainment Establishment must apply for a Certificate of Exemption within ninety (90) days from the date the Planning Director provides written notice to a Type 2 Eating, Drinking and Entertainment Establishment affected by the separation distances or within one (1) year from the date this ordinance becomes law, whichever first occurs. A pending variance petition shall stay enforcement of the application limitation period. The Planning Department shall make reasonable efforts to notify directly affected businesses of the enactment of this ordinance.</u></p> <p>(e) <u>For a Type 2 Eating, Drinking and Entertainment Establishment that receives a Certificate of Exemption, the outdoor seating/activity area or building(s), as either existed as of January 1, 2013, may not be moved, expanded, enlarged, or changed. Routine repair and maintenance is permitted.</u></p> <p>(f) <u>If a Type 2 Eating, Drinking and Entertainment Establishment receiving a Certificate of Exemption fails to maintain compliance with the requirements of Section 12.546(3) or the conditions represented or specified in its application for exemption, the Planning Director may revoke the Certificate of Exemption. Such revocation shall occur only after written notice and a reasonable opportunity to remedy the violation.</u></p> <p>(g) <u>Any Type 2 Eating, Drinking and Entertainment Establishment building or outdoor seating/activity area exempted under Section 12.546(3) that is destroyed or damaged by fire, flood, wind, other acts of God, may be repaired or restored to its original dimensions and conditions as they existed on January 1, 2013 if a building permit for the</u></p>	
--	--	--	--	--	--

				<p>repair or restoration is issued within 12 months of the date of damage.</p> <p>(h) <u>The exemption provided under Section 12.546(3) shall be revoked for any Type 2 Eating, Drinking and Entertainment Establishment that has visibly discontinued use as a Type 2 Eating, Drinking and Entertainment Establishment for 12 consecutive months or obtains an approved change of use.</u></p> <p>(i) <u>The issuance of a Certificate of Exemption shall not otherwise excuse a violation of federal, state, or local laws and regulations, including the development and urban design standards of the zoning district in which the use is located.</u></p> <p>(j) <u>Appeal of a denial, approval, or revocation of a Certificate of Exemption must be filed with the Zoning Board of Adjustment within thirty (30) days from the date of such action.</u></p>	
--	--	--	--	--	--