

ORDINANCE No. \_\_\_\_

AN ORDINANCE AMENDING SECTIONS 140-24, 140-128, AND 140-152 OF THE OCEAN VIEW LAND USE AND DEVELOPMENT CODE BY DEFINING VARIOUS TYPES OF FAST-FOOD RESTAURANTS, ADDING THEM TO THE TABLE OF PERMITTED USES AS SPECIAL EXCEPTIONS IN CERTAIN ZONING DISTRICTS, ADDING DEVELOPMENT STANDARDS FOR EACH, AND AMENDING SECTION 140-121 TO ADD SURGICAL CENTERS FOR RENUMBERING PURPOSES ONLY.

WHEREAS, the Town Council has the power to adopt ordinances for the protection and preservation of town property and for securing the protection and promotion of health, safety, comfort, convenience, welfare, and happiness of the residents of the town; and

WHEREAS, the Town Council is desirous of providing for the welfare and happiness of its residents by providing regulations that govern these uses within the Town; and

WHEREAS, the Town Council of Ocean View is of the opinion that it promotes the health, safety, morals, beauty, and good appearance of the Town to provide regulations governing various types of fast-food restaurants.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE TOWN COUNCIL OF THE TOWN OF OCEAN VIEW:

Section 1. Amend Ocean View Code Chapter 140, Article IV, Section 140-24 by amending the 140 Attachment 1 Table, Permitted Uses and Structures, by adding the underlined language after Retail Uses after “Supermarket”:

Restaurant, Fast-Food: Permitted by Special Exception in GB-1/GB-2 and MXPC

Restaurant, Fast-Food with drive-through: Permitted by Special Exception in GB-1/GB-2

Restaurant, Fast-Food with drive-in: Permitted by Special Exception in GB-1/GB-2.

Section 2. Amend Ocean View Code Chapter 140, Article XVIII, Section 140-121 by deleting the title in its entirety and replacing it with the title per the underlined language as follows: “Clinic, medical or dental, or Surgical Center”.

Section 3. Amend Ocean View Code Chapter 140, Article XVIII, Section 140-128 by deleting the Section in its entirety and replacing it with the underlined language as follows:

**§140-128. Fast-Food Restaurant; Fast-Food Restaurant with Drive-Through; Fast-Food Restaurant with Drive-In.**

A. Purpose. The purpose of this section is to establish additional criteria, standards or conditions, in addition to Section 140-116, for a special exception application for a Fast-Food Restaurant, Fast-Food Restaurant Drive-Through, or Fast-Food Restaurant Drive-In.

B. **Fast-Food Restaurant.**

47 (1) The use at the proposed location will not create a traffic hazard or traffic nuisance  
48 because of its location in relation to similar uses, necessity of turning movements in relation  
49 to its access to public roads and intersections, or its location in relation to other buildings  
50 or proposed buildings on or near the site and the traffic patterns from such buildings or  
51 cause frequent turning movements across sidewalks and pedestrian ways, thereby  
52 disrupting pedestrian circulation within a concentration of retail activity.

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54 (2) Applications for such uses that take access from Town rights-of-way shall require a  
55 traffic operational analysis or a traffic impact study report prepared by a Delaware  
56 registered engineer with experience and qualifications in the preparation of operational  
57 analysis and traffic impact studies. The administrative official shall determine what level  
58 of analysis is required and shall set the scoping limits for the analysis. Applications for  
59 such uses that take access from State of Delaware rights-of-way shall provide whatever  
60 analysis is required by the State for the review and consideration of the Town, or shall  
61 provide documentary evidence from the State stating that no analysis is required.

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63 (3) When such uses abut a lot in a residential district, any lot upon which there is a dwelling  
64 as a permitted use under this chapter, or a right-of-way that serves a residential district, the  
65 use shall be screened, along the entire length of the property boundary abutting the  
66 residential district, dwelling, or right-of-way by a solid wall or a substantial, sightly, solid  
67 fence, not less than eight (8) feet in height, together with a twenty (20) feet wide planting  
68 strip on the outside of such wall or fence, which shall be maintained in good condition.  
69 Screening requirements within this planting strip shall be as provided for in other sections  
70 of these regulations. For such uses proposed within existing developments that do not  
71 provide the width required above, alternate screening requirements may be approved by  
72 the Board of Adjustment, provided that planting strip meets the minimum screening  
73 requirements of the Code.

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75 (4) Hours of operation for such uses shall be limited to 5:00 am to 11:00 pm.

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77 (5) Such uses shall not share dumpster facilities within developments with multiple uses.  
78 Separate dumpster facilities shall be provided for such uses. Screening for these facilities  
79 shall be as provided for in other sections of these regulations.

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81 (6) Outdoor above ground grease traps are prohibited.

82  
83 (7) Any revisions, modifications, changes, or additions to an approved application shall be  
84 approved by the Board of Adjustment and shall be subject to all applicable sections of this  
85 Land Use and Development code.

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88 **C. Fast - Food Restaurant with Drive-through**

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90 (1) The use at the proposed location will not create a traffic hazard or traffic nuisance  
91 because of its location in relation to similar uses, necessity of turning movements in relation  
92 to its access to public roads and intersections, or its location in relation to other buildings

or proposed buildings on or near the site and the traffic patterns from such buildings or cause frequent turning movements across sidewalks and pedestrian ways, thereby disrupting pedestrian circulation within a concentration of retail activity.

(2) Applications for such uses shall provide whatever traffic analysis is required by DelDOT for the review and consideration of the Town, or shall provide documentary evidence from DelDOT stating that no analysis is required.

(3) Such uses shall be located on an arterial or collector street, as depicted on the DelDOT Functional Classification Map. Such uses shall only take access from an arterial or collector street, as depicted on the DelDOT Functional Classification Map.

(4) When such uses abut a lot in a residential district, any lot upon which there is a dwelling as a permitted use under this chapter, or a right-of-way that serves a residential district, the use shall be screened, along the entire length of the property boundary abutting the residential district, dwelling, or right-of-way by a solid wall or a substantial, sightly, solid fence, not less than eight (8) feet in height, together with a twenty (20) feet wide planting strip on the outside of such wall or fence, which shall be maintained in good condition. Screening requirements within this planting strip shall be as provided for in other sections of these regulations.

(5) When a drive-through facility is placed adjacent to the public right-of-way or other public access thoroughfare, the drive-through cartway shall be screened from view with a combination of structures and landscaping as determined by the Board of Adjustment.

(6) Such uses shall be limited to one drive-through pre-order board, one order board and one associated stacking lane.

(7) Stacking lanes for such uses shall be at least one-hundred eighty (180) feet in length measured from the point of ordering and shall not block any parking spaces or drive aisles.

(8) There shall be a bypass lane of at least ten (10) feet in width along the entire length of the drive-through lane.

(9) Drive-through lanes shall be separated from other aisles by a mountable curbed island.

(10) The allowable dimensions of the order board and any associated canopy shall be as provided for in other sections of these regulations.

(11) Such uses may install an overhead clearance bar to warn of over height vehicles. The bar shall only include the words "maximum height" or "clearance" and the height measurement. No logos or advertisement are allowed. The bar must be placed within the developable area of the site outside of any required buffering, within the drive through lane, and be attached to the Pre-Order Board if one is to be installed. The bar shall be a single arm pivoting or break away type and may have no hanging appurtenances, and may not be illuminated.

140 (12) Hours of operation for such uses shall be limited to 5:00 am to 11:00 pm for the indoor  
141 portion of the restaurant and 5:00 am to 9:00 pm for the drive-through.

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143 (13) Such uses shall not share dumpster facilities within developments with multiple uses.  
144 Separate dumpster facilities shall be provided for such uses. Screening for these facilities  
145 shall be as provided for in other sections of these regulations.

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147 (14) Outdoor above ground grease traps are prohibited.

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149 (15) Any revisions, modifications, changes, or additions to an approved application shall  
150 be approved by the Board of Adjustment and shall be subject to all applicable sections of  
151 this Land Use and Development code.

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154 **D. Fast – Food Restaurant with Drive-In**

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156 (1) The use at the proposed location will not create a traffic hazard or traffic nuisance  
157 because of its location in relation to similar uses, necessity of turning movements in relation  
158 to its access to public roads and intersections, or its location in relation to other buildings  
159 or proposed buildings on or near the site and the traffic patterns from such buildings or  
160 cause frequent turning movements across sidewalks and pedestrian ways, thereby  
161 disrupting pedestrian circulation within a concentration of retail activity.

162  
163 (2) Applications for such uses shall provide whatever traffic analysis is required by DelDOT for  
164 the review and consideration of the Town, or shall provide documentary evidence from DelDOT  
165 stating that no analysis is required.

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168 (3) Such uses shall be located on an arterial or collector street, as depicted on the DelDOT  
169 Functional Classification Map. Such uses shall only take access from an arterial or collector  
170 street, as depicted on the DelDOT Functional Classification Map.

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173 (4) When such uses abut a lot in a residential district, any lot upon which there is a dwelling  
174 as a permitted use under this chapter, or a right-of-way that serves a residential district, the  
175 use shall be screened, along the entire length of the property boundary abutting the  
176 residential district, dwelling, or right-of-way by a solid wall or a substantial, sightly, solid  
177 fence, not less than eight (8) feet in height, together with a twenty (20) feet wide planting  
178 strip on the outside of such wall or fence, which shall be maintained in good condition.  
179 Screening requirements within this planting strip shall be as provided for in other sections  
180 of these regulations.

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182 (5) Such uses shall be limited to three dedicated drive-in spaces. Each drive-in space may  
183 have an individual order board. The drive-in spaces shall not count toward the required  
184 number of parking spaces.

(6) Such uses may install a roof structure above the dedicated drive in spaces. The structure shall be no larger than reasonably necessary to cover the dedicated spaces. The structure shall comply with the applicable setback and height requirements of the zoning. The structure may be labeled with the words “maximum height” or “clearance” and the height measurement only. No logos or advertisement are allowed.

(7) The allowable dimensions of the order boards shall be as provided for in other sections of these regulations.

(8) Such uses proposing drive-through facilities in conjunction with a proposed drive-in shall meet the requirements for fast-food restaurants with drive-through in addition to these requirements.

(9) Hours of operation for such uses shall be limited to 5:00 am to 11:00 pm for the indoor portion of the restaurant and 5:00 am to 9:00 pm for the drive-in.

(10) Such uses shall not share dumpster facilities within developments with multiple uses. Separate dumpster facilities shall be provided for such uses. Screening for these facilities shall be as provided for in other sections of these regulations.

(11) Outdoor above ground grease traps are prohibited.

(12) Any revisions, modifications, changes, or additions to an approved application shall be approved by the Board of Adjustment and shall be subject to all applicable sections of this Land Use and Development code.

Section 4. Amend Ocean View Code Chapter 140, Article XXI, Section 152, by adding to Terms Defined, in the appropriate alphabetical order of the existing terms, the following underlined language:

**Restaurant, Fast – Food**

An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer over the counter in a ready-to-consume state for consumption either within the restaurant building or off the premises. These types of establishments do not offer table service.

**Restaurant, Fast – Food with Drive-Through**

An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer over the counter in a ready-to-consume state for consumption either within the restaurant building or off the premises. These types of establishments do not offer table service. Food may be ordered by the customer and/or served to the customer while remaining in their vehicle at a menu board or building opening, such as a door or window.

**Restaurant, Fast – Food with Drive-In**

An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer over the counter in a ready-to-consume state for consumption either within

the restaurant building, off the premises or in vehicles parked on the premises. These types of establishments do not offer table service. Food may be ordered by the customer and/or served to the customer while remaining in their vehicle at a menu board or building opening, such as a door or window or served to the customer in their vehicle in a designated area intended for consuming the food while parked on the premises.

Section 5. This ordinance shall become effective upon its adoption by a majority of the members of the Town Council present and voting.

#### TOWN COUNCIL OF OCEAN VIEW

By: \_\_\_\_\_  
Mayor

{Seal}

Attest: \_\_\_\_\_  
Town Clerk

Introduction:

Planning & Zoning Commission Review:

First Reading:

Second Reading:

Adopted:

**Synopsis:** This ordinance amends the definition of a fast-food restaurant and sets forth standards for the use as a special exception in General Business Districts and in the MXPC zone. It also adds and defines fast-food restaurant with drive-through as well as fast-food restaurant with drive-in to the Table of Permitted Uses as uses requiring special exceptions in the General Business Districts and sets forth standards for each. It moves surgical centers to Section 140-121 to the extent the Town should ever adopt standards therefore in order to utilize Section 140-128 for fast-food restaurant standards.