

# MEMORANDUM

## Development Services

**ADMINISTRATIVE MEMORANDUM NO. 18-010**

**DATE:** January 10, 2018  
**TO:** Planning and Zoning Board  
**VIA:** David L. Recor, ICMA - CM, Development Services Director  
Jennifer Gomez, AICP, Assistant Director of Development Services  
**FROM:** Jean E. Dolan, AICP, Principal Planner  
**RE:** EOD Code Amendment  
January 24, 2017 Meeting

Staff had recommended the area subject to the East Overlay District (EOD) be provided the same exemption from the alcoholic beverage establishment separation requirements that is currently provided for the Atlantic Overlay District (AOD). The AOD east of the Intracoastal is being replaced by the EOD. The EOD boundary is larger than the current AOD and would extend the exemption from these separation requirements east along Atlantic Boulevard to NE 5<sup>th</sup> Avenue on the north side of Atlantic Boulevard and Cypress Road on the south side of Atlantic Boulevard (see map provided in Attachment 1).

On December 20, 2017, the P&Z Board raised an issue with exempting the separation requirements from Child Care Centers and Churches only. Since schools are included in the separation regulations with child care and churches, the location of schools was also included in this analysis.

The language of the P&Z motion is shown below. The text in parentheses was added for clarification.

*MOTION was made by Dr. Mills and seconded by Ms. Kovac to recommend approval of the text amendments (TO, EOD and related amendments) per the staff recommendation provided that staff present additional information regarding existing churches and daycare facilities (in the EOD) to the Board so that the issue can be further discussed before second reading of City Commission.*

The City Manager's office determined that this item should be brought back before the P&Z Board before first reading of the text amendments for the TO, EOD and related code amendments so that both Staff and the P&Z Board can make recommendations to the City Commission on this issue based on district specific information.

### CURRENT SEPARATION REQUIREMENTS

The separation requirements for alcoholic beverage establishments are shown below. In summary, these regulations affect small restaurants with full bar (small being less than 150 seats and 2,500 square feet) and free standing bars and lounges. Restaurants with over 150 seats and 2,500 square feet of indoor area

are exempt. Restaurants such as Gianni's, The Foundry and Houston's, which are all within the EOD, for example, would be exempt due to their size.

Current regulations prohibit new bars or small restaurants with full bar from locating within 300-500 feet of any existing church, school or child care center. Interestingly, a new church, school or child care center is allowed to locate anywhere, regardless of the existing location of bars or small restaurants with full bar. Given the frequency of "store-front churches", applying these separation requirements can have a negative effect on the creation of active mixed use and commercial corridors where restaurant uses are more desirable than a church tenant which is inactive most of the week.

## 155.4501. SEPARATION REQUIREMENTS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS

### A. General

Except as otherwise provided in [Table 155.4501.B](#) below, any alcoholic beverage establishment shall be separated from certain existing uses in accordance with [Table 155.4501.A](#), Minimum Separation from Certain Existing Uses.

### **TABLE 155.4501: MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES**

**Note:** This table is best viewed in PDF, click [HERE](#)

TABLE 155.4501.A: MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES <sup>1</sup>	
Existing Use	Minimum Separation <sup>2</sup>
Any other use involving the sale of alcoholic beverages other than those uses listed in Section <a href="#">155.4501.B</a>	1,000 feet (Measurement Type 1)
Sexually oriented business	
Child care facility	500 feet (Measurement Type 2) and 300 feet (Measurement Type 3)
School	
Place of worship	
NOTES: 1.Measurement Type 1: Separation shall be measured from main entrance to main entrance of the establishments by airline route 2. Measurement Type 2: Separation shall be measured from main normal public entrance of Alcoholic Beverage Establishment to the nearest point of the Child Care facility, School, or Place of Worship's property used as a part of the facility measured along public thoroughfares by the shortest route of ordinary pedestrian traffic. 3. Measurement Type 3: Separation shall be measured from main normal public entrance of Alcoholic Beverage Establishment to the nearest point of the Child Care facility, School, or Place of Worship's property used as a part of the facility measure by airline route. 4. All separations shall be measured from establishments located within or outside of the City limits. 5. Compliance with these separation standards shall not be affected by the subsequent rezoning of the site of the alcoholic beverage establishment to AOD, conveyance of city -owned property, or the establishment of one of the uses from which separation is required on a property closer than the required separation distance. In such case, the alcoholic beverage establishment shall be construed as continuing to comply with the separation standards.	

**B. Exceptions**

[Table 155.4501.B](#) lists uses that are exempt from the separation requirements in [Table 155.4501.A](#).

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TABLE 155.4501.B: EXCEPTIONS TO THE MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES		
Use and Criteria	Required Separation	
	Any other use involving the sales of alcoholic beverages; and Sexually oriented business	Child Care Facility; School; and Place of Worship
An establishment limited by its state beverage license for the distribution of alcoholic beverages to vendors and other distributors.	Exempt	Exempt
Grocery or convenience store with accessory sales of beer or wine. Sales of beer or wine may only be considered an accessory use to a grocery or convenience store provided the display area for the sales of beer or wine does not exceed 20% of the total display area used for all other merchandise and no exterior signage for the sale of beer or wine is provided.	Exempt	Exempt
Beer or wine store which meets the definition of a specialty store.	Exempt	Exempt
An enclosed restaurant which sells only beer and/or wine for consumption on the premises.	Exempt	Exempt if no externally visible display window or sign indicating the sale of alcoholic beverages
A food and/or beverage manufacturer limited by its state beverage license for manufacturing of wines and cordials, brewing malt beverages, or distiller of spirituous liquor.	Exempt	Exempt
Alcoholic beverage sales as an accessory use to a brewery, winery, or distillery.	Exempt	Exempt
A bowling alley that contains more than nine bowling lanes.	Exempt	Exempt
A motion picture theater that contains more than 100 seats.	Exempt	Exempt
Regional liquor or package store	Exempt	Exempt
A bar or lounge which is operated as an accessory use to a restaurant and therefore meets the following standards: it is operated by the same management, and the restaurant has dining accommodations for service of 150 or more patrons at tables in a covered area, and occupying more than 2,500 square feet of floor space, and deriving at least 51% of the gross revenue from the sale of food and non-alcoholic beverages.	Exempt	Exempt if there is no display window, sign, or other externally visible indication of the bar's or lounge's existence
A bar or lounge which is operated as an accessory use to a hotel or condo hotel that has more than 25 sleeping rooms and/or dwelling units and that is operated by the same management as the hotel or condo hotel.	Exempt	Exempt if there is no display window, sign, or other externally visible indication of the bar's or lounge's existence
A lodge or club which limits on-premise consumption of alcoholic beverages to only lodge or club members.	Exempt	Exempt if no externally visible display window or sign indicating the sale of alcoholic beverages
A use located on property owned by the city.	Not Exempt	Exempt

**TABLE 155.4501.B: EXCEPTIONS TO THE MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES**

Use and Criteria	Required Separation	
	Any other use involving the sales of alcoholic beverages; and Sexually oriented business	Child Care Facility; School; and Place of Worship
Within the Atlantic Boulevard Overlay District (AOD) only, a bar or lounge, brewpub, restaurant, or specialty eating establishment (whether a principal use or an accessory use to a hotel, and including any accessory outdoor seating).	Exempt if no package sales are offered at bar or lounge	Exempt if no package sales are offered at bar or lounge

## **EFFECT OF MAINTAINING SEPARATION FROM CHURCHES SCHOOLS AND CHILD CARE CENTERS IN THE EOD**

The 300 foot radius around known properties with child care centers, churches or schools in or near the EOD is shown on the map in Attachment 2. The areas shown in hatching will not allow the location of small restaurants with full bar or bars or lounges. The areas shown in orange are those parcels where additional analysis is required before a bar or small restaurant with full bar could locate without first testing the walking distance from the entrance of the alcoholic beverage establishment to the nearest point of the child care, school or church “property” which must be less than 500 feet. It must be noted that a shopping center “property” with one small church tenant, will affect the area within 300 feet of any part of the shopping center “property” regardless of the actual location or size of the storefront church tenant.

Maintaining the separation requirement, therefore, has a significant effect on the ability to allow small restaurants with full bar and other bar and lounges from locating within the EOD, particularly west of Federal Highway.

The church east of Federal Highway just east of NE 23<sup>rd</sup> Avenue is an excellent example of why these separation requirements can be a problem when attempting to activate a street like Atlantic Boulevard in the EOD. This church shares the same space as the Starlight Ballroom. This church tenant has no sign and no external evidence of their presence, however, they are operating in the Starlight Ballroom when the dance studio is not using their space. That tenant affects all of the properties within 300-500 feet of that parcel by precluding the location of any future small restaurant in that radius that would like to have a full bar.

Another example of the unnecessarily restrictive impacts of these regulations is 220 SE 9<sup>th</sup> Avenue which is an apartment building owned by a church. It is unknown what church-related activities are occurring there that would warrant the restriction on the location of small restaurants with full bar or bars and lounges on Atlantic Boulevard. These nonresidential uses are not allowed in the Edge where 220 SE 9<sup>th</sup> Avenue is located, however, the fact that a church owns that apartment building affects a relative wide radius where these uses could be permitted and may be desirable.

## **OPTIONS ANALYZED**

The Staff analyzed several options for addressing the separation requirements between small restaurants with full bar and bars and lounges in the EOD and the churches, schools and child care centers.

**Recommended Option 1: Exemption** – As originally recommended by staff, the EOD can be exempt from these requirements in the same way the AOD is exempt.

TABLE 155.4501.B: EXCEPTIONS TO THE MINIMUM SEPARATION OF USES INVOLVING THE SALE OF ALCOHOLIC BEVERAGES FROM CERTAIN EXISTING USES		
Use and Criteria	Required Separation	
	Any other use involving the sales of alcoholic beverages; and Sexually oriented business	Child Care Facility; School; and Place of Worship

...

Within the Atlantic Boulevard Overlay District (AOD) <b>and the East Atlantic Overlay (EOD)</b> only, a bar or lounge, brewpub, restaurant, or specialty eating establishment (whether a principal use or an accessory use to a hotel, and including any accessory outdoor seating).	Exempt if no package sales are offered at bar or lounge	Exempt if no package sales are offered at bar or lounge
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The full exemption is still being recommended by Staff because the current separation requirements are limiting to small restaurants and bars/lounges in much of the existing EOD, particularly west of Federal Highway and perhaps even more importantly, these requirements create future restrictions to economic development of these active uses in a manner that can't be predicted. Though the number of new churches and schools may be limited, the number of child care facilities in a walkable, mixed use district could be expanded significantly. In an ideal world, it would be a common occurrence for mixed use buildings to include a child care facility for those families working and/or living in that building. It would be unfortunate for this ideal situation to have a chilling effect on the active uses that can locate within the corridor.

**Option 2: Refine the Separation Requirements to Exclude “Storefront” Uses.** The church, child care center and school definitions could be refined to exclude such uses located as a tenant in a multi-tenant building (like the Starlight Ballroom) or a strip shopping center. These refined standards would apply City-wide. The map showing the 300-foot radius around all known free standing churches, child care centers and schools in or near the EOD is provided as Attachment 3. The following addresses were removed as compared to the map in Attachment 2:

230 S. Cypress Road (which did not affect the District)  
1301 East Atlantic Boulevard (multi-tenant office building)  
2305 East Atlantic Boulevard (Starlight Ballroom)

The hatched area on this map shows the 300 foot radius from the property lines of the remaining free standing church, child care and school buildings. Within the hatched area, a small restaurant with full bar or a bar or lounge could not be located and the parcels in orange would require analysis of the distance between the alcohol establishment's entrance and the school, child care center or church's nearest property line. The revised regulations as proposed, therefore, would have less effect on activating Atlantic Boulevard east of Federal Highway in the EOD while still providing an area free of liquor adjacent to free standing churches, child care centers and schools. The revised definition would also exclude future storefront churches, child care and school tenants from affecting the ability to have small restaurants with full bar and/or bars and lounges along mixed use and commercial corridors City-wide.



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Any other use involving the sale of alcoholic beverages other than those uses listed in Section <a href="#">155.4501.B</a>	1,000 feet (Measurement Type 1)
Sexually oriented business	
Child care facility, <a href="#">as single tenant in free standing building</a>	500 feet (Measurement Type 2) and 300 feet (Measurement Type 3)
School, <a href="#">as single tenant in free standing building</a>	
Place of worship, <a href="#">as single tenant in free standing building</a>	
NOTES: 1.Measurement Type 1: Separation shall be measured from main entrance to main entrance of the establishments by airline route 2 .Measurement Type 2: Separation shall be measured from main normal public entrance of Alcoholic Beverage Establishment to the nearest point of the Child Care facility, School, or Place of Worship's property used as a part of the facility measured along public thoroughfares by the shortest route of ordinary pedestrian traffic. 3. Measurement Type 3: Separation shall be measured from main normal public entrance of Alcoholic Beverage Establishment to the nearest point of the Child Care facility, School, or Place of Worship's property used as a part of the facility measure by airline route. 4. All separations shall be measured from establishments located within or outside of the City limits. 5. Compliance with these separation standards shall not be affected by the subsequent rezoning of the site of the alcoholic beverage establishment to AOD, conveyance of city -owned property, or the establishment of one of the uses from which separation is required on a property closer than the required separation distance. In such case, the alcoholic beverage establishment shall be construed as continuing to comply with the separation standards.	

Option 2 is not recommended by Staff because it still leaves much of Atlantic Boulevard west of Federal Highway in an area that would not allow small restaurants with full bar and bars and lounges now and it also creates the potential for new child care, schools and churches to unpredictably restrict the ability to bring in the small restaurant and bar active uses in the future.

**Option 3: Refine the Separation Requirements to Mitigate the Impact of Small Tenants on Large Properties.**

If all child care, churches and schools are continued to be treated equally regardless of whether they are storefront uses or one of several tenants in a building, the measurement of the separation required could be modified to reduce the impact of a large “property” like a shopping center that may have one, small tenant providing church, child care or school services. By measuring “door to door” between the alcohol establishment and the church, child care or school rather than from the door of the alcohol establishment to the property line of the church, child care or school, the effect of the storefront uses will be somewhat mitigated within the EOD as well as City-wide. This effect of the revised code language cannot be shown on a map of the EOD because the locations of both existing use entrances and future alcoholic beverage establishment entrances would have to be known to determine these impacts. The revised code language is shown as follows:

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Staff is not recommending this option because it still has a limiting effect on locating the small restaurant and bar active uses in the EOD both today and in the future in a way that cannot be fully predicted. As noted above, the ideal situation where child care is provided in many of the mixed use buildings in the District could unreasonably impact the ability to have small, upscale restaurants in the neighborhood.

### STAFF RECOMMENDATION MOTION:

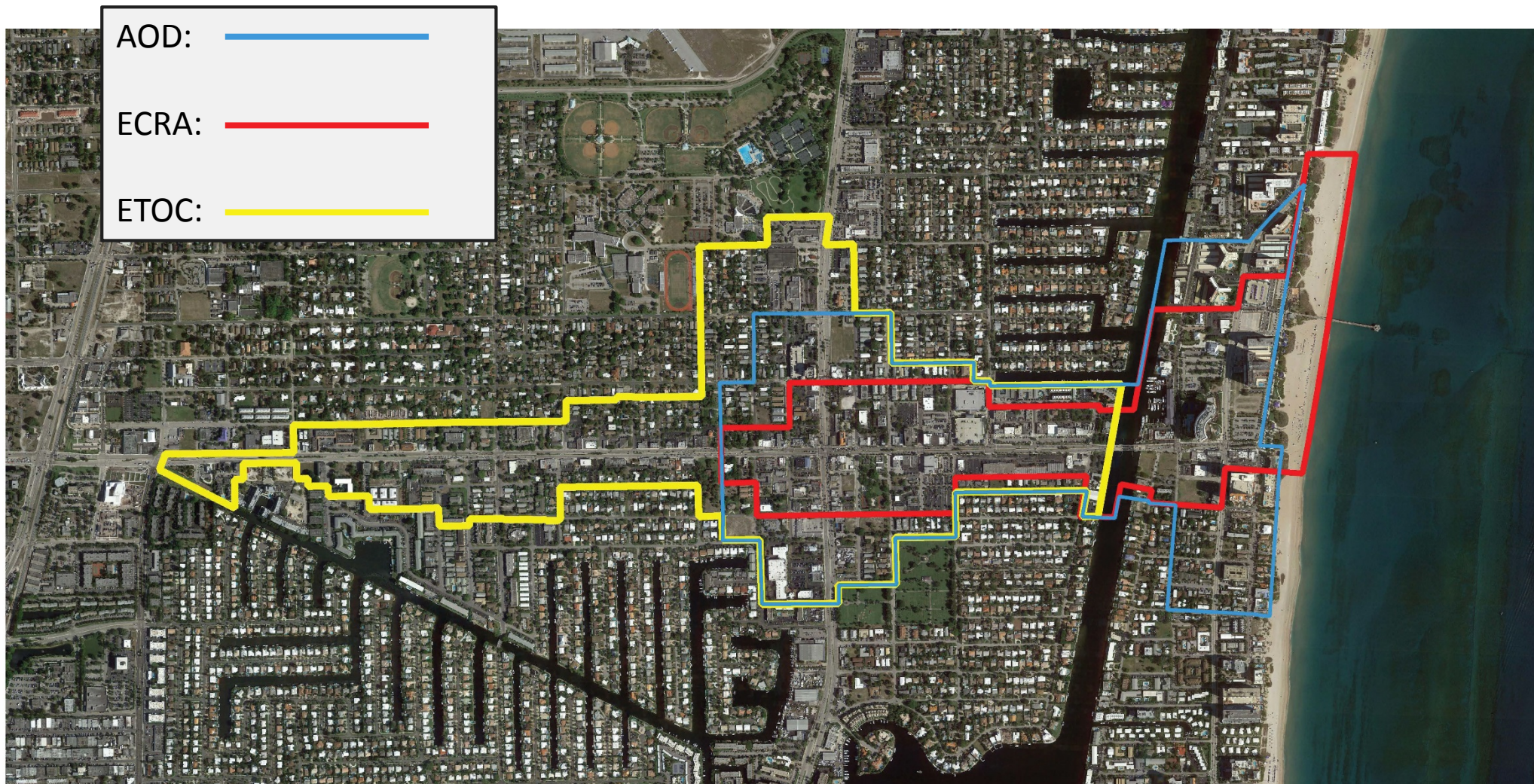
Staff continues to recommend that the EOD regulations include the full exemption from the alcoholic beverage establishment distance requirement because it is the intent of a mixed use, walkable district to have many neighborhood serving uses integrated within walking distance to serve the families and employees within the District including churches, schools, child care facilities as well as small restaurants which may or may not have full bars as well as bars and lounges, without unpredictable limitations. The following motion, therefore, is recommended by Staff.

**Alternative Motion #1:** Exempt all properties within the EOD from the alcoholic beverage establishment distance requirements in the same manner as within the AOD.

Attachment 1

Map of AOD and EOD boundaries





## Attachment 2

Map of Church, Child Care and Schools in and near the EOD and 300 foot radius around those property lines

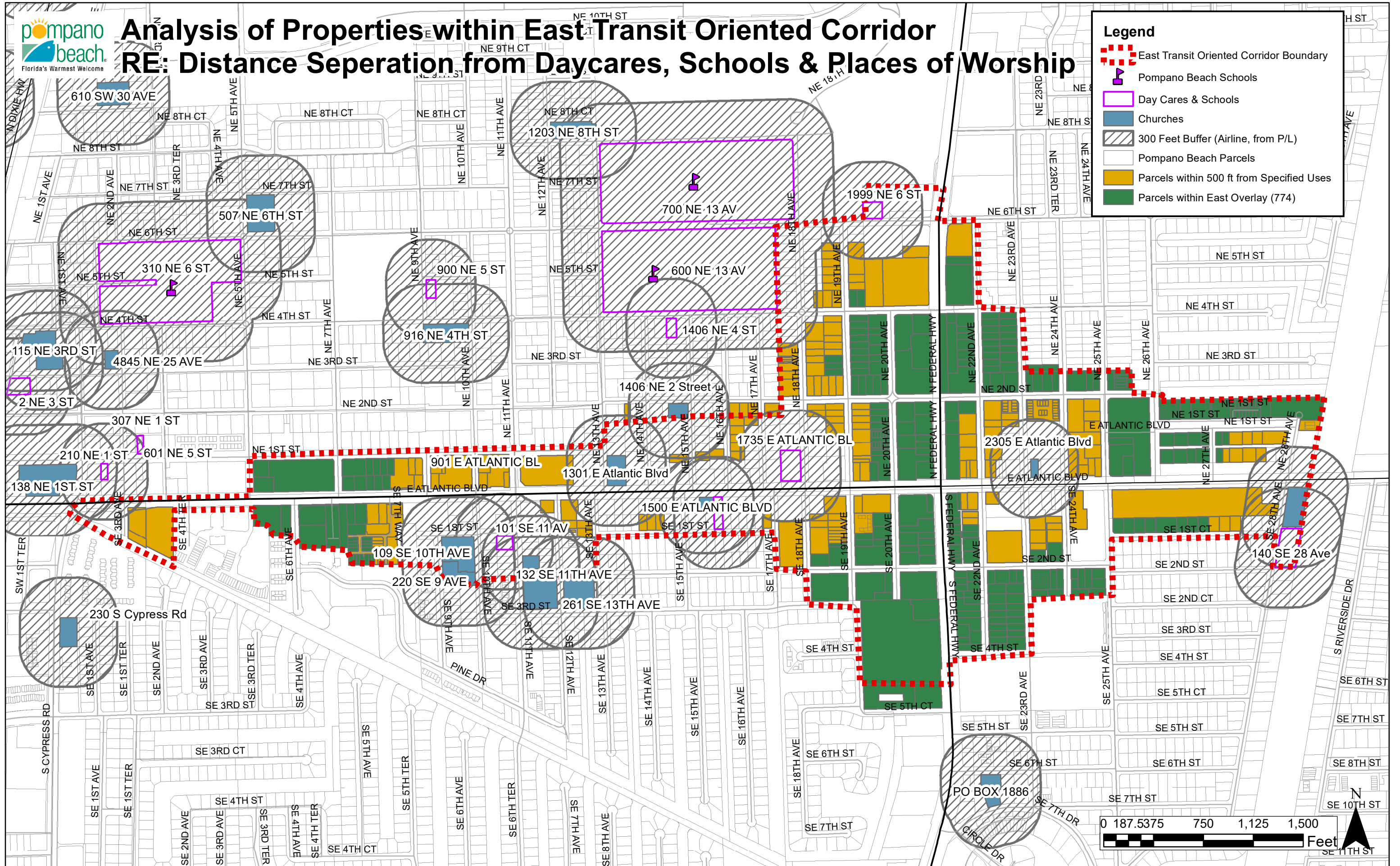


# Analysis of Properties within East Transit Oriented Corridor

## RE: Distance Seperation from Daycares, Schools & Places of Worship

**Legend**

- East Transit Oriented Corridor Boundary
- Pompano Beach Schools
- Day Cares & Schools
- Churches
- 300 Feet Buffer (Airline, from P/L)
- Pompano Beach Parcels
- Parcels within 500 ft from Specified Uses
- Parcels within East Overlay (774)



### Attachment 3

Map of Free-Standing Buildings with Single-Tenant Churches, Schools and Child Care Uses in or near the EOD





# Analysis of Properties within East Transit Oriented Corridor

## RE: Distance Separation from Free-standing Buildings with Daycares, Schools & Places of Worship

