

ORDINANCE NO. 33-20

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES, BY AMENDING CHAPTER FOUR, "ZONING REGULATIONS," ARTICLE 4.3, "DISTRICT REQUIREMENTS, GENERAL PROVISIONS," SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES," BY AMENDING SUBSECTION 4.3.3(V), "USES INVOLVING ALCOHOLIC BEVERAGES," AND ADDING (5), "RESTAURANT-BAR HYBRIDS," TO SPECIFY A PROCESS AND PROVIDE REGULATIONS FOR RESTAURANT-BAR HYBRIDS; AMENDING ARTICLE 4.4, "BASE ZONING DISTRICT," SECTION 4.4.13, "CENTRAL BUSINESS DISTRICT," SUBSECTION 4.4.13(C), "ALLOWABLE USES," TABLE 4.4.13(A), "ALLOWABLE USES AND STRUCTURES IN THE CBD SUB-DISTRICTS;"AMENDING SECTION 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)," SUBSECTION 4.4.24(D), "CONDITIONAL USES AND STRUCTURES ALLOWED," TO LIST RESTAURANT-BAR HYBRID AS A CONDITIONAL USE; AMENDING ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS," SECTION 4.6.6, "COMMERCIAL AND INDUSTRIAL USES TO OPERATE WITHIN A BUILDING," TO CLARIFY OUTDOOR DINING AREAS ASSOCIATED WITH A RESTAURANT, AND TO LIST RESTAURANT-BAR HYBRIDS; AMENDING ARTICLE 6.3, "USE AND WORK IN THE PUBLIC RIGHT-OF-WAY," SECTION 6.3.3, "SIDEWALK CAFÉ" TO INCLUDE RESTAURANT-BAR HYBRIDS IN THE LIST OF PLACES WHERE SIDEWALK CAFES MAY BE PERMITTED; AND AMENDING APPENDIX A, "DEFINITIONS," TO ADD A DEFINITION FOR RESTAURANT-BAR HYBRID; AND PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a privately-initiated amendment to the Land Development Regulations ("LDRs") of the City of Delray Beach, Code of Ordinances, is requested by Matthew Scott, Attorney at Law, on behalf of Tin Roof Acquisition Company, LLC; and

WHEREAS, the amendment aims, with appropriate safeguards, to allow for and promote high quality restaurants with entertainment and night-life components; and

WHEREAS, the amendment updates the definition of “Restaurant (Bona Fide)”;

WHEREAS, the amendment provides the definition and the approval process for “Restaurant-Bar Hybrid” use and identifies regulations that must be followed to protect the general public welfare, safety, and quality of life for Delray Beach residents and visitors;

WHEREAS, the amendment limits the “Restaurant-Bar Hybrid” use of to those properties located within the Central Core Sub-district and zoned Central Business District or Old School Square Historic Arts District within the Central Business District Overlay and provides distance separation requirements between approved Restaurant-Bar Hybrid uses;

WHEREAS, the Downtown Development Authority reviewed the proposed amendments on July 13, 2020; and, the Historic Preservation Board reviewed the proposed amendments on July 1, 2020;

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, reviewed the proposed text amendment to the Land Development Regulations at a public hearing on June 16, 2020 and voted x to x to recommend that the proposed text amendments be approved, finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations;

WHEREAS, the City Commission of the City of Delray Beach finds the Ordinance is consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Section 4.3.3, “Special Requirements for specific uses,” Subsection (V) “Uses involving alcoholic beverages”, of the LDRs of the City of Delray Beach Code of Ordinances be and the same is hereby amended as follows:

(1) ***Defined:*** For this subsection, alcoholic beverage is defined as: distilled spirits and all beverages containing one-half of one percent or more alcohol by volume.

~~* Distilled spirits and all beverages containing one-half of one percent or more alcohol by volume.~~

(2) ***Prohibitions by frequency:*** The sale of alcoholic beverages for on-site consumption shall be allowed as a principal use within standalone bars and as an accessory use in chartered private clubs and golf courses with the restriction that:

- (a) Not more than one standalone bar shall be located within any one block, nor within 750 feet of another standalone bar measured from lot line to lot line in a straight line.
- (b) The above restriction does not apply to a duly licensed grocery store which sells beer and wine in packages for off-site consumption nor does it apply to a restaurant which holds a special restaurant license issued by the Department of Business Regulations of the State Division of Alcoholic Beverages and Tobacco.
- (c) To be allowed to begin operating a business as a standalone bar, the following rules shall apply:
 - 1. A written request to establish a standalone bar shall be submitted to the Planning and Zoning Department. Attached to the written request shall be a copy of a valid 4COP License, evidence of an executed lease to operate the business at the proposed location and a copy of an approved site plan for a restaurant or bar use (hereinafter referred to as the submission). The submission shall be date and time stamped by the Planning and Zoning Department. The submission shall be valid for a period of six months.
 - 2. If locational requirements allow for a standalone bar to be established, a person or entity that has filed a submission as set forth above at the earliest time and date will be notified that the use may be established. If the stand alone bar use is not legally established pursuant to LDR Section 2.4.4(D) within 60 days after notification, the person or entity who filed a submission next in time and date shall have an opportunity to establish a standalone bar use. That person or entity and subsequent persons or entities that have a submission on file must also comply with the 60-day establishment requirement. Persons or entities that fail to establish the stand alone bar use in accordance with LDR Section 2.4.4(D) within the 60-day period shall not have any further priority to establish the stand alone bar use and the submission shall be deemed void unless no other persons or entities have filed a submission wherein a longer time to establish the use may be permitted upon request.
 - 3. If for any reason the City is unable to determine who was first in time or unable to determine if the use was legally established and operational within the time permitted, the Planning and Zoning Board shall review all valid submissions on file regardless of time or date of the submission or establishment of the use, based on the required findings of LDR Section 2.4.5(E) and make a recommendation to the City Commission. The City Commission will then determine which standalone bar use is the most compatible with surrounding uses, based on the following:

- a. Compliance with code requirements,
- b. site's physical appearance,
- c. location,
- d. consistency with the Comprehensive Plan,
- e. capacity of infrastructure to accommodate the proposed use, and
- f. whether the standalone bar will have a deleterious effect on adjacent businesses.

The standalone bar use deemed most compatible will then have the right to establish a standalone bar use as a permitted use within 60 days of the decision of the City Commission.

- 4. No assignment of any submission or rights obtained as a result of a submission to establish a standalone bar use under this section shall be permitted, provided, however, an established standalone bar use may continue to exist at the same location without participating in the process outlined in Subsection (c) for as long as the use is operational. If the standalone bar use is not operational for a period of 180 days or the business location has been occupied by an intervening use, then the process described in subsection (c) herein shall apply.
- 5. New letters with attachments set forth above may be submitted once every six months.

(3) ***Prohibition by proximity (schools and churches):*** Alcoholic beverages shall not be sold at any establishment ~~which is~~ located within 300 feet of ~~an~~ legally established educational facility ~~school, whether public or private, or church or other places of worship.~~

- (a) With respect to schools, the 300 feet distance shall be measured from the nearest point of the building of the place of business, location, or establishment to the nearest point of the school grounds in use as a part of the school facilities.
- (b) With respect to churches, the 300 feet distance shall be measured from the nearest point of the building of place of business, location, or establishment to the nearest point of the church building or buildings.
- (c) The 300 feet distance shall be measured in a straight line.

- (d) The above restriction does not apply to a duly licensed grocery store which sells beer and wine in packages for off-site consumption nor does it apply to a restaurant which holds a special restaurant license issued by the Department of Business Regulations of the State Division of Alcoholic Beverages and Tobacco.
- (4) ***Bottle clubs prohibited:*** Bottle Clubs as defined in Appendix A are prohibited in all zone districts.
- (5) ***Restaurant-Bar Hybrids:*** Restaurant-Bar Hybrid establishments are-subject to the following requirements:
 - (a) Restaurant-Bar Hybrids shall meet all bona-fide restaurant standards and operations during all hours of operation until at least 10pm.
 - (b) The Bona Fide Restaurant operation is required between the hours of 5:00pm -10:00pm prior to operating under the approved hybrid modifications.
 - (c) After 10pm, Restaurant-Hybrid Bars may modify the indoor seating layout of tables and chairs required for the bona-fide restaurant. Approved arrangement of tables and chairs may be rearranged to reduce restaurant seating, but in no case shall the amount of seating provided be reduced by more than 75%, excluding sidewalk café seating. Storage of tables and chairs and the modified seating arrangements must be in accordance with an approved life-safety plan.
 - (d) After 10pm, the serving of food may be incidental to the sale of alcohol, but must be made available. A limited menu from the Bona Fide Restaurant menu may be offered.
 - (e) Sidewalk café seating is allowed until 10pm, subject to an approved permit, or for as long as the restaurant (bona fide) use is in operation; sidewalk café seating is not allowed during the hybrid hours of operation.
 - (f) No more than one Restaurant-Bar Hybrid shall be located within any one block face. For Corner properties, a main entrance, doors allowing public access, or outdoor use area counts as that block face (e.g. if a corner restaurant has doors allowing public access from both sides).
 - (g) Applications for conditional use approval of a Restaurant-Bar Hybrid shall also include:
 - 1. All required information for establishment of a “Bona Fide Restaurant” (as defined in Appendix A) and all required licensure/approvals from applicable government agencies.

2. A floor plan and life safety plan for hours of operation when food service is offered and a floor plan and life safety plan for the hours between 10:00PM-2:00AM which may show rearrangement and/or removal of tables and chairs to accommodate a dance floor or similar bar/lounge assembly use areas. The latter floor plan and life safety plan must show the proposed locations for removed tables and chairs.
3. A security plan detailing the manner in which the business intends to address the security of the establishment, its patrons, employees, and nearby residents. The security plan shall include, at minimum, external lighting information and external security measures, and security personnel.

(h) Parking. Off-street parking shall be provided at the same parking rate as “Restaurant (Bona Fide)” use.

Section 3. That Section 4.4.13, “Central Business District (CBD),” Subsection (C) “Allowable uses,” Table 4.4.13(A), Allowable Uses and Structures in the CBD Sub-districts, of the LDRs of the City of Delray Beach Code of Ordinances be and the same is hereby amended as follows:

Table 4.4.13(A)—Allowable Uses and Structures in the CBD Sub-Districts				
	Central Core	Railroad Corridor	Beach Area	West Atlantic Neigh. ⁵
<u>Restaurant-Bar Hybrid [See 4.3.3(V)]</u>	<u>C</u>	=	=	=
LEGEND: P = Principal Use A = Accessory Use C = Conditional Use - = Prohibited Use S = Secondary Street Use				

Section 4. That Section 4.4.24, “Old School Square Historic Arts District (OSSHAD),” Subsection (D), “Conditional uses and structures allowed,” of the LDRs of the City of Delray Beach Code of Ordinances be and the same is hereby amended as follows:

(D) **Conditional uses and structures allowed.** The following uses are allowed as conditional uses within the OSSHAD:

~~DELETED (1) AND (2) AND RENUMBERED.~~

- (1) Outdoor dining which operates at night or which is the principal use or purpose of the associated restaurant.
- (2) Child Care, and Adult Day Care.
- (3) Public Parking lots not associated with a use.
- (4) Residential-type inns, not to exceed more than 18 individually leased suites or rooms per acre.
- (5) Community Residence housing four to ten individuals, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more

individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

- (6) Large Family Child Care Home, subject to Section 4.3.3(TT).
- (7) Restaurant-Bar Hybrid, subject to Section 4.3.3(V), available only to those properties listed in 4.4.24(F)(1) and located within the Central Core Sub-district of the Central Business District.

Section 5. That Section 4.6.6, “Commercial and Industrial uses to operate within a building,” of the LDRs of the City of Delray Beach Code of Ordinances, be and the same is hereby amended as follows:

(A) ***Intent.***

- (1) All commercial and industrial uses shall conduct within a completely enclosed building rather than outside regardless of the zoning district. However, certain aspects of a use may be conducted outside and such aspects are identified in (B) below.
- (2) Certain conditional uses that are allowed within commercial, industrial, and mixed-use districts can be characterized as outside uses. Such operations may be conducted outside when it is specifically determined through the conditional use process that the outside aspects of the use are appropriate. Conditions may be applied to mitigate visual and other impacts.
- (3) Commercial and industrial uses may be allowed outside on a temporary basis for special events pursuant to Section 2.4.6(F).

(B) ***Allowable outside usage.*** The following aspects of a use may be conducted outside, pursuant to the restrictions listed in Section 4.6.6(C) below.

- (1) Off-street parking.
- (2) Refuse and service areas.
- (3) Storage of nursery plants.
- (4) Fruit and vegetable displays.
- (5) Signage.
- (6) Outside dining areas associated with Restaurants (Bona Fide) or Restaurant-Bar Hybrids, subject to the provisions of Section 4.3.3(V), Uses involving alcoholic beverages.
- (7) Loading and unloading of materials.
- (8) Outside storage where specifically permitted within a zoning district.
- (9) Activities associated with outside conditional uses, pursuant to (A)(2) above.
- (10) Retail displays.

Section 7. That Appendix A, “Definitions,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

RESTAURANT-BAR HYBRID. A Restaurant-Bar Hybrid shall refer to an establishment that operates as and complies with all requirements of a Restaurant (Bona Fide), during all hours of operation except between the hours of 10:00pm-2:00am when it may operate as a restaurant with a modified floor plan, higher occupancy load, and limited menu.

Section 8. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 9. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

Section 10. Specific authority is hereby given to codify this Ordinance.

Section 11. That this Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the ____ day of _____, 2020.

ATTEST:

Shelly Petrolia, Mayor

Katerri Johnson, City Clerk

First Reading_____

Second Reading_____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney