

# CITY OF DELRAY BEACH

## NOTICE OF PROPOSED AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS

The City Commission of the City of Delray Beach proposes to adopt the following privately-initiated Ordinance:

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 REGULATIONS, GENERAL PROVISIONS," SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES," BY AMENDING SUBSECTION 4.3.3(V), "USES INVOLVING ALCOHOLIC BEVERAGES," AND ADDING SUBSECTION (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 AMEND THE DEFINITION OF RESTAURANT AND ADD A DEFINITION FOR RESTAURANT-BAR HYBRID; AND PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE.

The City Commission will conduct a Virtual Public Hearing on **Tuesday, August 18, 2020. The meeting will begin at 4:00pm, and the Public Hearing will be held after 5:00pm** (or as soon thereafter as may be heard by the City Commission) for the purpose of accepting public testimony regarding the proposed Ordinance.

Pursuant to Executive Order 20-69, during the COVID-19 State of Emergency, City Commission meetings may be held virtually. Members of the public wishing to view City Commission meetings should log into the City's website, <https://www.delraybeachfl.gov/i-want-to/watch/city-meetings>, where the meeting will be live-streamed for the public. The meeting agenda is available online at: <https://delraybeach.legistar.com/Calendar.aspx>.

Due to the closure of City Hall, members of the public wishing to participate may do so by submitting their comments via voicemail. Any member of the public wishing to comment publicly on any matter, including public comment or public hearing items, may submit their comments by dialing (561) 243 - 7555 and leaving a voicemail message that will be played during the City Commission meeting and made a part of the public record:

1. State your full name
2. State your address
3. Leave a comment no longer than 3 minutes.

Public comment on items that have been set for a formal public hearing shall only be made during the presentation of the item. After the Commission has heard from both the applicant and the City, the Commission will take a recess in order to afford the public an opportunity to comment on the specific agenda item. After the recess, comments from the public will be played into the record for the Commission's consideration.

Please be advised that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at the hearing, such person will need a verbatim record of the proceedings, and for this purpose such person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. The City does not provide or prepare such record pursuant to F.S. 286.0105.

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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)”;

and  
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;

and  
WHEREAS, the amendment limits the “Restaurant-Bar Hybrid” use 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;

and  
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;

and  
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 July 20, 2020 and voted 4 to 0 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;

and  
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 Land Development Regulations 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 Development Services 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 Development Services 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~~ educational facilities, 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~~ educational facilities.
- (b) With respect to churches or other places of worship, 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 uses applicable to a bona fide restaurant during all hours of operation until at least 10:00 p.m.
- (b) Restaurant-Bar Hybrids are required to operate as a bonafide restaurant between the hours of 5:00 p.m. and 10:00 p.m. in order to qualify as a Restaurant-Bar Hybrid.
- (c) After 10:00 p.m., Restaurant-Hybrid Bars may modify the indoor seating layout of tables and chairs required during use as a bonafide restaurant, but in no case shall the amount of provided seating 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 10:00 p.m., the serving of food may be incidental to the sale of alcohol, but must be made available. A limited menu consisting of items available while in use as a bona fide restuaruant shall be offered and prepared on site.
- (e) Subejct to an approved permit, sidewalk café seating is allowed until 10:00 p.m. or for as long as the Restaurant-Bar Hybrid is being operated as a bonafide restaurant; 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 it counts for each block face).
- (g) Applications for conditional use approval of a Restaurant-Bar Hybrid shall also include:
  - 1. All required information for establishment of a “Restaurant (Bona Fide)” (as defined in Appendix A) and all required licensure/approvals from applicable government agencies.
  - 2. A floor plan and life safety plan, including the hours of operation, for use as a bona fide restaurant.
  - 3. A floor plan and life safety plan, including the hours of operation, for when reduced seating capacity is in use, which reflects the modified arrangement and/or removal of tables and chairs and designates the intended use of the now vacant areas. The floor plan and life safety plan must show the proposed locations for removed tables and chairs.

4. 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:

	Central Core	Railroad Corridor	Beach Area	West Atlantic Neigh.
General retail uses and/or facilities, as in GC district (4.4.9)	P	P	P	P
Business, professional, and medical uses, as in GC district (4.4.9)	P	P	P	P
Services and facilities, as in GC district (4.4.9), excluding drive-through facilities	P	P	P	P
Multiple-family dwellings 3	P	P	P	P
Community residences	See 4.4.13(C)(4)(a)			
Nursing homes, abused spouse residences, continuing care facilities, and assisted living facilities that do not comport with the definition of "community residence"	P	P	P	P
Live/work units (see 4.3.3(KKK))	P	P	P	P
Hotels, motels, and residential-type inns 3 (see 4.3.3(M) and 4.3.3 (X))	P	P	P	C
Bed and breakfast inns (see 4.3.3 (Y))	P	P	P	C
Public Parking Garages, as mapped on a RegulatingPlan	P,S	P,S	P,S	P,S
Fabrication and/or Assembly	-	P	-	-
Wholesaling, Storage, and Distribution 4	-	P	-	-
Contractor and trade services	-	P	-	-
Automobile brokerage, including vehicle display within an enclosed structure	-	P	-	-
Tattoo Establishments (see 4.3.3(ZB) (Ord. No. 33-16, § 4, 11-15-16)	P,A	P,A	P,A	P,A
Family day care homes (see 4.3.3(T))	A	A	A	A
Home occupations (see 4.3.3(K))	A	A	A	A
Mechanical parking lifts (see 4.6.9(D)(11) and 4.6.9(F)(4))	A,S	A	A,S	A,S
Parking areas, passenger drop-off, loading/unloading	A,S	A,S	A,S	A,S
Automated parking garages	-	S	-	-
Refuse and service areas	A,S	A,S	A,S	A,S
Recreational facilities (for a multiple-family development)	A	A	A	A
Services and repair (incidental to the principal use)	A,S	A	A,S	A,S
Single-family dwelling (occupied by owner, proprietor, or employee of the principal use)	A	A	A	A
Storage of inventory (not shared or leased independent of the principal use)	A,S	A	A,S	A,S

Automobile repair	-	C	-	-
Child care Facilities (see 4.3.3(E)) and adult day care facilities (see 4.3.3(F))	C	C	C	C
Commercial recreational facilities, such as bowling alleys and skating rinks	C	C	C	C
Drive-through facilities (serving banks, financial institutions, retail uses, etc.) See 4.4.13(J)(7)(a)	C	C	C	C
Food Preparation and/or Processing including bakeries and catering	-	C	-	-
Funeral homes, including accessory uses such as a chapel or crematory	C	C	C	C
Gasoline stations (See 4.4.13(J)(7)(b) and/or car washes (See 4.4.13(J)(7)(c))	C	C	-	-
Large family child care homes (see 4.3.3(TT))	C	C	C	C
Dry-cleaning Processing Plants	-	C	-	-
Segway tours and Segway sales (see 4.3.3(ZZZZ))	C	C	C	C
Theaters, excluding drive-ins	C	C	C	C
Veterinary Clinics	C	C	C	C
24-hour or late-night businesses, within 300 feet of residential zoned property [see 4.3.3(VV)]	C	C	C	C
Urban Agriculture [4.3.3 (D)] excluding outdoor Urban Farms	P, A	P, A	-	P, A
Outdoor Urban Farms [4.4.3(D)]	C	C	C	C
<u>Restaurant-Bar Hybrid [See 4.3.3(V)]</u>	<u>C</u>	<u>-</u>	<u>-</u>	<u>-</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) (This subsection shall remain in full force and effect as previously adopted)
- (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.
  - (11) Event and assembly areas associated with Restaurant-Bar Hybrids, subject to the provisions of Section 4.3.3(V), Uses involving alcoholic beverages.
- (C) (This subsection shall remain in full force and effect as previously adopted)

Section 6. 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 (BONA FIDE).

- (a) A bona fide restaurant shall mean an establishment engaged primarily in the service of food where the sale or service of alcoholic beverages is incidental to the sale and service of food. A cafeteria or fast food establishment shall be deemed a bona fide restaurant for the purposes of zoning classification. All other establishments must meet the following criteria:
  - 1. A bona fide restaurant must, during all hours of operation, continually offer food service consisting of full course meals;

- a. Full course meals shall include a salad or vegetable, entrée and dessert.
2. A bona fide restaurant must have full kitchen facilities, which are located in a completely enclosed room, under roof of the main structure, or in an interior court and food preparation staff capable of preparing and serving full course meals during all hours of operation.
3. A bona fide restaurant must have a customer service area consisting of tables, chairs or customer counters. The tables or customer counters within the customer service area must be of adequate size to accommodate the service of full course meals.
4. ~~In order for tables, chairs or customer counters to be included in the customer service area, the service of full course meals must be available at each seat or chair at each table or customer counter in accordance with the following:~~
  - a. ~~The total number of seats or chairs at the tables, customer counters and bars within the customer service area must be sufficient to accommodate the maximum occupant load of the restaurant;~~
  - b. The full occupant load shall be determined in accordance with the provisions of the standard Florida Building Code or its successor code and the Florida Fire Prevention Code or its successor.
5. A bona fide restaurant must have the appropriate license issued by the state as well as all municipal or county permits required by law, and must meet all local zoning requirements.

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) until at least 10:00 p.m., at which time it may operate with a modified floor plan, modified occupancy load, and limited menu.

Section 7. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 8. 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 9. Specific authority is hereby given to codify this Ordinance.

Section 10. 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