

Memo

To: Mayor and Town Council
Cc: Kirk Blouin, Jay Boodheshwar, Wayne Bergman
From: John C. Randolph
Date: July 12, 2021
Subject: Zoning Ordinance Restricting Restaurants

Pursuant to your request we have prepared a legal memorandum relating to the matter of regulating the number of restaurants or, in the alternative, the distance between restaurants in the commercial zoning classifications within the Town.

Although this research generally supports the ability of the Town to regulate restaurants in this manner, if you choose to pursue this course of action, there is a considerable amount of study and research which would need to be undertaken prior to proposing any zoning changes. Any changes made in this regard are required to bear a reasonable relationship to the public health, safety, morals and general welfare of the Town, in this case to alleviate traffic and intensity concerns. At the very least, therefore, a study should be undertaken in regard to the effect existing restaurants, as opposed to other commercial establishments, have on traffic and congestion within a particular zoning district. The study should then include the potential effect on traffic and congestion resulting from additional restaurants within the same zoning district. A question which would need to be addressed, as well, is whether it is the close proximity of restaurants in a particular location which causes the problem. A traffic study should be undertaken to determine the effect, the number and/or location of restaurants have upon the public health, safety and welfare.

At this point, we have not been able to locate any other municipalities which regulate the number or location of restaurants within a particular commercial zone, although it is common to regulate by distance, the location of establishments which sell liquor for onsite or offsite consumption, excepting restaurants which serve cooked, full-course meals. It would be helpful to locate precedent for this type of regulation.

We will be prepared to discuss this matter in greater detail at the July Town Council meeting. In the meantime, if you have any questions, please do not hesitate to contact me.

JCR/jsr

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Memo

To: Mayor and Town Council
Cc: Kirk Blouin, Jay Boodheshwar, Wayne Bergman
From: John C. Randolph
Date: July 12, 2021
Subject: Town of Palm Beach (File No. 13156.8)
Research re: Restricting Restaurants in Zoning Districts

ISSUE

Can the Town of Palm Beach ("Town") restrict the number of restaurants in a particular zoning category or, alternatively, create a distance requirement between restaurants and bars to avoid the congregation of these facilities in close proximity to each other, creating traffic and intensity concerns?

SHORT ANSWER

The Town can limit the number of restaurants in a particular zoning category and/or create a distance requirement between restaurants as long as the restrictions on restaurants bear a reasonable relationship to the public health, morals, or general welfare.

Here, the Town's basis for limiting the number of restaurants in a zoning district or, alternatively, establishing a distance requirement between restaurants (i.e., to alleviate traffic and intensity concerns) appears to bear a reasonable relationship to the public health, safety, morals, and general welfare of the Town. Therefore, the Town could likely establish an ordinance restricting the number of restaurants within a particular zoning category or, alternatively, create a distance requirement between restaurants and bars.

DISCUSSION

I. Town Can Limit Number of Restaurants in Zoning Category If There is a Reasonably Identifiable Rational Relationship Between Restricting Number of Restaurants and Demands of Public Welfare

In order to be a valid exercise of police power, a zoning ordinance must bear a substantial relation to, or be reasonably necessary for, the public health, safety, morals, or general welfare. *City of Miami Beach v. 8701 Collins Ave., Inc.*, 77 So. 2d 428 (Fla. 1954). Where there is no relation whatsoever between a zoning ordinance and the general welfare of the community, the ordinance will be declared unconstitutional. *Lippow v. City of Miami Beach*, 68 So. 2d 827 (Fla. 1953). Conversely, however, a zoning regulation must be upheld under the rational basis test if reasonable persons could differ as to its propriety; in other words, if the validity of the legislative classification for zoning purposes is fairly debatable, the legislative judgment must be allowed to control. *Kurin v. City of Coral Gables*, 62 So. 3d 625 (Fla. 3d DCA 2010).

A zoning ordinance that restricts or designates the locations of certain uses or types of buildings is a reasonable exercise of police power, pursuant to the authority conferred on municipalities to adopt regulations designed to promote health and the general welfare and to accomplish this with a view to conserving the value of buildings and encouraging the most appropriate use of land. *Cooper v. Sinclair*, 66 So. 2d 702 (Fla. 1953). However, an ordinance whereby the city council delegates to itself the arbitrary and unfettered authority to decide where and how a particular structure will be built or located, without at the same time setting up reasonable standards that would be applicable alike to all property owners similarly conditioned, is invalid. *North Bay Village v. Blackwell*, 88 So. 2d 598 (Fla. 1956).

The public welfare with which the zoning authority and the courts must be concerned is the welfare of the whole community. *Fogg v. City of South Miami*, 183 So. 2d 219 (Fla. 3d DCA 1996). A benefit or anticipated benefit to a special group within the community is not enough. *Id.* Thus, a zoning enactment that prohibited businesses from offering drive-in-service, on the grounds that it enhanced business for other proprietors in the area if customers were forced to get out of their cars to go into a store, was not a valid exercise of the police power. *Id.*

Municipalities may not use their zoning powers to restrict competition in business. *Wyatt v. City of Pensacola*, 196 So. 2d 777 (Fla. 1st DCA 1967). Thus, if the sole purpose of a zoning classification is to restrict competition in an industry, that classification is unconstitutional. *Id.* Legislative restraint upon private business will not be permitted when there is no reasonably identifiable rational relationship between such restraint and the

demands of the public welfare. *Eskind v. City of Vero Beach*, 159 So. 2d 209 (Fla. 1963). Neither the state nor a city can arbitrarily interfere in private businesses or impose unreasonable or unnecessary restrictions upon them under the guise of protecting the public. *Id.* However, although the restriction or control of business competition is not a valid objective or purpose of zoning regulations, protection of the economic value of existing uses is a proper purpose. *Wyatt v. City of Pensacola*, 196 So. 2d 777 (Fla. 1st DCA 1967).

Here, the Town's purpose for enacting an ordinance restricting the number of restaurants within a zoning category is to avoid and alleviate traffic and intensity concerns caused by the congregation of people resulting from restaurants being located in close proximity to each other. Because the stated purpose for this ordinance appears to bear a substantial relation to the public health, safety, morals, or general welfare, this ordinance would likely withstand constitutional scrutiny.

II. Town Can Establish Distance Requirement Between Restaurants/Bars if the Distance Requirement Has Reasonable Relationship to the Public Health, Morals, Safety or Welfare

I was unable to find any legal authority on zoning regulations with respect to distance requirements between restaurants. However, zoning regulations with respect to distance requirements between gas stations and liquor stores have been held to be valid exercises of police power. See *City of Boca Raton v. Tradewind Hills, Inc.*, 216 So. 2d 460 (Fla. 4th DCA 1986) (holding that city's classification of filling stations as enterprises needing special spacing restrictions was fairly debatable and therefore valid, absent a showing that plaintiffs' property was useless for any purpose other than a filling station site); *Ross v. City of Miami*, 205 So. 2d 545 (Fla. 3d DCA 1968) (holding that ordinance prohibiting construction of gasoline station in commercial zones within 750 feet of an existing gasoline station is a proper exercise of police power); *City of Miami v. Thompson*, 169 So. 2d 838 (Fla. 3d DCA 1965) (zoning ordinance requiring 1,050 foot distance between churches and filling stations was constitutional as having relationship to public health, safety, and welfare and was not void or arbitrary); *City of Miami v. Walker*, 169 So. 2d 842 (Fla. 3d DCA 1965) (although owners of property zoned for commercial use were precluded from putting it to what they considered its best use, a filling station, inasmuch as there were many other beneficial uses to which land could be put, ordinance prohibiting erection of filling station within 750 feet of another filling station was not arbitrary or confiscatory); *Orange County v. Costco Wholesale Corporation*, 823 Sp. 2d 732 (Fla. 2002) (County's imposition of a 5,000 foot separation distance between package goods stores, selling alcohol for off-premises consumption, was a constitutional exercise of the police powers, basic

purpose of restricting distances was well founded in the protection of the health and morals of the general public).

However, where a municipality presents no evidence as to the rational or logic for the applicability of a distance between service stations, the court will be unable to say that the distance requirement has a reasonable relationship to public health, morals, safety, or welfare. *City of Miami v. Wysong*, 217 So. 2d 603 (Fla. 3d DCA 1996). The fact that a municipality has permitted several hundred filling stations within the prohibited distance requirements for filling stations does not constitute a waiver of the ordinance by the city, nor equitably estop the city from enforcing the ordinance as to the property owners seeking the a variance from the requirements. *Id.*

Here, the Town's purpose for establishing an ordinance creating a distance requirement between restaurants and bars in the Town is to avoid and alleviate traffic and intensity concerns caused by the congregation of people resulting from restaurants being located in close proximity to each other. This rationale for creating a distance requirement between restaurants and bars appears to bear a reasonable relationship to the public health, morals, safety or welfare. Thus, an ordinance establishing a distance requirement between restaurants and bars would likely be valid.