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FROM: Sean Suder, ZoneCo, Project Manager
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RE: Town of Palm Beach Zoning Code Review – Regulating Restaurant Capacity

The Town of Palm Beach has placed a six-month moratorium (a/k/a “zoning in progress”) on the issuance of restaurant permits. The purpose of the moratorium is to study whether zoning regulations may be able to address externalities associated with a proliferation of restaurant seats in Palm Beach.

The term “carrying capacity” has been used to describe whether a concentration of land uses, such as restaurants, can be sustained by the availability of public resources like public parking facilities and roads. In other words, whether the current and projected number of restaurant seats in Palm Beach is sustainable or whether it will unsustainably tax public resources with greater externalities (a side effect or consequence).

It is without question that dining out is an important part of life in Palm Beach. The combination of the popularity of dining out and a sophisticated, high-end dining clientele has created a very fertile environment for restaurant businesses. The number of restaurants in Palm Beach has steadily increased to sixty food and beverage establishments per 10,000 residents (applying the full-time population) or twenty restaurants per 10,000 residents (applying the seasonal population). This ratio is among the highest in the United States, in the company of large cities and restaurant meccas such as San Francisco, Boston, and New York City. There are a total of 9,922 restaurant seats in the Town of Palm Beach – nearly one for every permanent resident.

We were able to locate monthly visitor data for several popular Palm Beach restaurants:¹

Buccan = 11,300 visits per month = 300-400 per day

Cucina = 7,900 visits per month = 200 per day

¹ www.placer.ai.

Bice = 6,300 visits per month = 175 per day

By comparison, formula restaurants in West Palm Beach see thrice the number of monthly visitors than even the most popular Palm Beach restaurants. For example, both E.R. Bradley's and the Cheesecake Factory serve in excess of 33,000 visitors each month.

Unlike most cities, nearly all Palm Beach restaurants are sit-down, full-service restaurants. Diners dwell longer in full-service, sit-down restaurants than in quick-serve restaurants. Dwelling longer means less turnover of tables and parking spaces. While people dwell, so do their automobiles. This creates less turnover in restaurants and in parking spaces.

The general concentration of restaurants within four primary commercial corridors (N. and S. County Road, Worth and Peruvian Avenues, Sunrise and Sunset Avenues, and Royal Poinciana Way) also concentrates traffic and parking within those areas during peak dining times. Lingering vehicles for lingering diners allows fewer spaces for other users.

The relaxed dining culture of Palm Beach is not changing, nor is anyone advocating for a cultural change. Balanced against the culture is the reality that Palm Beach is almost entirely built out. There is no room for or desire to use more precious Palm Beach land for parking or expanded roadways to accommodate the externalities of restaurants. If public resources are largely finite, then controlling for externalities necessarily requires a focus on the number of food and beverage establishments and, more importantly, the number of restaurant seats.

Palm Beach's tourism has had a robust recovery following the pandemic. As compared with 2019, Palm Beach tourism in 2024 has increased by 32%.² Retail foot traffic in Palm Beach is up 21% as compared with 2019.³ Dining out is up by 49% over 2019.⁴ If Palm Beach's restaurants seem more crowded than ever, it is because they are.

Anecdotally, the continued popularity and growth of the Palm Beach restaurant scene is causing externalities relative to traffic and parking congestion and is crowding commercial districts. To more fully understand the extent and nature of the externalities requires data. The following questions need to be answered to assess the existence and extent of such externalities.

1. Whether traffic counts at peak dining times indicates the congestion of public roads and ways attributable to restaurant-generated traffic; and/or

² Id.

³ Id.

⁴ Id.

2. Whether a concentration of restaurants has limited other land uses from locating within the Town of Palm Beach generally and specifically the commercial areas where restaurants concentrate.

At this juncture, we do not have access to data that will answer either question. Further data collection, study, and analysis is needed to determine these questions.

If the Town can answer either or both questions in the affirmative, and the Town desires to proceed with legislation to address restaurant capacity, then the following possible solutions are presented for consideration and discussion purposes only (nothing in this memo is recommending any course of action at this time):

1. Cap and license restaurant seats.
2. Re-calibrate off-street parking requirements.
3. Limit the conversion of other uses to restaurants.

Cap and License Restaurant Seats

To our knowledge, no community in the United States has directly limited the number of restaurant seats except in the context of fast-food restaurants. To do so would require (i) a study showing that the current number of restaurant seats per capita well exceeds available commercial space thereby crowding out other land uses necessary to make Palm Beach an economically viable community, and/or (ii) a finding that a proliferation of restaurants is causing or has the potential to cause harm to the public's health, safety, or welfare.

A maximum permitted number of restaurant seats could be established. This would limit the total maximum capacity of seats so that no seats beyond the maximum capacity would be allowed. New seats would only be allowed to replace existing seats. This is akin to a "cap and replace" strategy employed by many communities to control the proliferation of billboards. It is also like a cap on the number of available liquor licenses in a jurisdiction.

For example, if a market saturation study shows that "x" number of seats would saturate the market for restaurants in the Town of Palm Beach based on current and projected demand and relative to public resources such as public parking and roadway capacity, then the total number of seats would be capped at that number. Town Council would determine the cap. When a restaurant closes it would relinquish or transfer the seat licenses to another restaurant. This system would ensure that the number of restaurant seat licenses would remain constant for a period to be determined by Town Council. The cap could be revisited from time to time based on updated market demand studies.

This approach would guarantee that the externalities associated with restaurants would not become worse for a period. A known quantity of restaurant seats would allow the Town to better plan for public resources such as on-street and public parking. It would also allow the Town to better plan for the distribution of land uses in its zoning regulations.

On the other hand, this approach would create scarcity. Creating scarcity in the face of robust and growing demand would likely result in increased costs for restaurants and patrons alike. These private costs would need to be weighed against the costs to the public of growing externalities.

To allow for the number of restaurant seats to be expanded from time to time, an application for the issuance of additional seat licenses could be made upon a determination of need and a credible showing that public resources will not be additionally taxed by the additional seats. Such determination could be made by Town Council or a separate restaurant licensure board. This approach is akin to a continuing care bed license certificate of need (CON) program. The burden would be on an applicant to prove that additional restaurant licenses are justified by a needs analysis and will not additionally tax public resources. An applicant would be required to submit a credible land use study evidencing that other desired land uses are not being crowded out by the additional licenses and a credible traffic and parking study showing the impact on public resources. The board's decision could be appealable to the Town Council.

Increase Parking Requirements

Off-street parking requirements applicable to restaurants should be tied to the off-street parking generation of restaurants in the Town of Palm Beach relative to the availability of public parking resources. If this number is resulting in overcrowding of the public realm and public resources, such as public parking, then an increase in the number of off-street parking spaces or access to off-street parking spaces may be justified. Shifting any additional burden to private properties is within the police power of zoning.

Currently, the Zoning Code requires one parking space for each three proposed fixed seats, and/or one for each forty-five square feet of floor area in the proposed public seating area not having fixed seats, plus one for each three hundred square feet of floor area in the remainder of the floor area. Without further study, it is unknown whether the empirical data supports the current number or requires adjustment. Anecdotal evidence seems to justify increasing the

off-street parking requirements, but the amount and nature of such increases cannot be known without further study and analysis.

Restrictions on Conversions

Restrictions on the conversion of other land uses to restaurant uses could be included in the Zoning Code. For example, the Zoning Code could limit locations or districts within Palm Beach where land uses could be converted to restaurants based on demand and capacity for other land uses within the district. Alternatively, restaurant overlays could be created that allow for restaurant conversions only in certain areas that are justified by a minimal risk of crowding out other land uses and a minimal risk of creating externalities such as traffic and parking congestion.

Each of these approaches could be combined to create more robust guardrails around the proliferation of restaurants. We look forward to discussing these approaches further with you.