

**ORDINANCE #875-23**

**ORDINANCE REPEALING SECTIONS OF § 7-3.8 "RESTAURANT CONDITIONAL LICENSE" OF CHAPTER 7 "ALCOHOLIC BEVERAGE CONTROL" OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF LITTLE SILVER, COUNTY OF MONMOUTH, AND STATE OF NEW JERSEY**

**WHEREAS**, Borough administration and the Mayor and Borough Council have reviewed § 7-3.8 titled "Restaurant Conditional License" of the Revised General Ordinances of the Borough of Little Silver ("Borough Code"); and

**WHEREAS**, the Mayor and Borough Council have found § 7-3.8(b)(1), § 7-3.8(b)(2) § 7-3.8(b)(3), § 7-3.8(b)(4), § 7-3.8(b)(5), § 7-3.8(b)(6), § 7-3.8(b)(7), and § 7-3.8(b)(10) are not essential elements of a Restaurant Conditional License; and

**WHEREAS**, the Mayor and Borough Council believe it to be in the best interest of the Borough to amend § 7-3.8 to remove elements of the Code section that are not essential to the purpose of Restaurant Conditional Licenses.

**NOW THEREFORE BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Little Silver, County of Monmouth, and State of New Jersey, that certain sections of the Borough Code be amended as follows (additions to text indicated by **bold text**; deletions to text indicated by ~~strikeout~~):

**SECTION 1.** Chapter 7, Section 3.8 of the Revised General Ordinances of the Borough of Little Silver is hereby amended as follows:

**§ 7-3.8 Restaurant Conditional License.**

Restaurant conditional licenses may be issued to operators of bona fide restaurants, as defined in N.J.S.A. 33:1-1(t) of the Revised Statutes; subject however, to the following additional conditions:

- a. No such license may be transferred by the licensee to any other person or to any other locality, except to a person operating such a bona fide restaurant as hereinafter more particularly defined and restricted at the same or such other approved locality, at the discretion and approval of Borough Council.
- b. To qualify as a bona fide restaurant under this section, the premises must comply with the following requirements:

~~1. There shall be no food or beverages consumed at counters in any part of the licensed premises that is available to the public. For purposes of this section, a counter shall be any linear footage of~~



~~wood or other material exceeding one foot in length and that is connected to a wall at the perimeter of a room or between posts or other fixtures in such a manner as to provide a horizontal space upon which food and/or drink is permitted or encouraged to be placed. The definition of counter shall not include the bar counter of the bar/lounge area, behind which a bartender or bartenders are located; food and beverages may be consumed at the bar.~~

~~2. The dining area of the licensed premises shall be devoted to the purposes of dining and shall not contain fewer than 300 hundred square feet of floor space. The computation of said dining area shall not include any space used for kitchen, pantry, storage, rest rooms, bar/lounge area or any other purpose than dining.~~

~~3. Men's lavatory. For the first 75 seats or fraction thereof in the dining room area, the men's lavatory shall contain one water closet, one urinal and one wash basin. For each additional 75 or fraction thereof in dining capacity over 75, there shall be one additional water closet and one additional urinal required in the men's lavatory.~~

~~4. Women's lavatory. For the first 150 seats or fraction thereof in the dining room area, the women's lavatory shall contain two water closets and one wash basin. For each additional 75 or fraction thereof in dining seating capacity over 150 there shall be one additional water closet required in the women's lavatory.~~

~~5. Both lavatories. There shall be an additional wash basin in each lavatory for each 75 seats or fraction thereof above 150.~~

~~6. Miscellaneous. The entrances to such lavatories shall be screened from public view.~~

~~7. There shall be suitable facilities on the licensed premises for temporary storage of coats, hats, umbrellas, overshoes and other items of clothing outside the dining area.~~

~~8.1. The licensee shall not sell any alcoholic beverages for consumption off the licensed premises.~~

~~9.2. The licensee shall, at all times, continue to operate the licensed premises as a restaurant as defined herein and as defined in N.J.S.A. 33:1-1.~~

~~10. There shall be no service of food or beverages of any kind on any patio, deck, or other area available to the public that is located~~



~~outside the foundation line of the licensed premises. For purposes of subsection 7-3.8, any patio, deck, or other area available to the public that is located inside the foundation line of the licensed premises shall be considered part of the dining area, and must provide a dining menu at all times it is open.~~

11.3. Live musical performances on the licensed premises shall be confined to the interior of the licensed premises.

12.4. The dining area of the licensed premises may close no sooner than one hour prior to the closing of the bar/lounge area.

- c. Daily food and drink specials shall be permitted. The gift or sale of food or any alcoholic beverages below cost is hereby prohibited. The offering in any manner whatsoever of any other inducement by the licensee, his servants, agents or employees to encourage the consumption of distilled liquors, blended distilled liquors and any brewed, fermented or distilled liquors is hereby prohibited.
- d. No alcoholic beverage shall be sold, served to or consumed by guests in any part of the licensed premises except the rooms/space furnished and used as dining room space and the bar/lounge area.
- e. The licensee shall keep and maintain an accurate record of all sales, sufficient to disclose what receipts were derived from the sale of alcoholic beverages and what receipts from foodstuffs, which record shall be open to inspection at any time by the licensing body or its representative, and may be kept under its supervision as directed, if desired. In the event that inspection of the records of any licensee discloses that over 50 percent of the gross receipts is derived from the sale of alcoholic beverages, the licensing body may, in its discretion, after notice and proper hearing, revoke the license.
- f. Any such license issued under this section for, or transferred to, a restaurant shall only remain in force so long as the premises licensed are being actually operated as such a bona fide restaurant, and so long as such premises are not altered or rearranged without first obtaining approval of the Borough Council, and such license shall be revocable should the owner thereof cease from operating such restaurant, or alter or rearrange the licensed premises without obtaining the necessary approval. The requirements of this provision may be relaxed by the Borough Council in the event a licensee proposes to construct, or is constructing a building that will, upon completion, be in compliance with the provisions of this chapter. A licensee shall have one year from the date of the issuance of the license, or such shorter time as may be set forth in N.J.S.A. 33:1-1, et seq.,



whichever is shorter to complete construction and utilize the license so issued.

g. Any license issued under this section shall be subject to all the conditions of this section. The Borough Council shall have the sole right to determine what is a bona fide restaurant as referred to in this section, and the decision of the Borough Council shall be final. The Borough Council shall further have the right to limit the number of licenses granted under this chapter, whether or not applications may be received conforming to the above regulations and conditions, where they shall deem any application by reason of location, increased traffic congestion, structural inadequacies of the licensed premises, fire or health hazard, or proximity to churches or schools to be detrimental to the health, morals, safety or welfare of this Borough.

h. Anything to the contrary hereinbefore notwithstanding, and for the benefit not of property but of persons attendant therein, no restaurant conditional license shall be issued for the sale of alcoholic beverages within 500 feet of any church or public schoolhouse or private schoolhouse not conducted for pecuniary profit, except to manufacturers, wholesalers, hotels, clubs and fraternal organizations which owned or were actually in possession of the licensed premises on December 6, 1933. The protection of this section may be waived at the issuance of the license and at each renewal thereafter, by the duly authorized governing body on authority of such church or school, such waiver to be effective until the date of the next renewal of the license. Said 500 feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed.

1. The prohibition contained in this section shall not apply to the renewal of any license where no such church or schoolhouse was located within 500 feet of the licensed premises at the time of the issuance of the license.

2. The prohibition contained in this section shall not apply to any license issued prior to the date of this section.

i. Pursuant to subsection 7-9.2f of this chapter, all persons working at an establishment with a plenary retail consumption license shall, prior to serving alcoholic beverages at such establishment, must receive TIPS® (Training for Intervention ProcedureS) training or a similarly recognized training regimen relating to the service of alcoholic beverages. During all hours of operation during which alcoholic beverages are served, in addition to persons serving alcoholic beverages, there shall be a minimum of one additional person on the premises who has TIPS® (Training for





Intervention Procedures) training or a similarly recognized training regimen relating to the service of alcoholic beverages.

j. Any license issued under this section shall bear the notation "Restaurant Conditional License."

k. Bar/Lounge Area of Bona Fide Restaurant.

1. A premises licensed under this section may provide tables and a bar/lounge area at which alcoholic beverages may be served without meals for the use or patrons.

2. The number of bar stools shall be calculated as no more than one bar stool per four seats of dining, but in any event no more than one bar stool for every two feet of bar counter. For purposes of calculating the number of permitted bar stools, "dining seats" shall include the actual number of seats used at tables in the bar/lounge area, out of the 50 seats permitted.

3. The maximum capacity of the bar/lounge area shall not exceed 100 people having a maximum capacity of not more than 50 seats, not more than 25 bar stools and a standing capacity of not more than 25.

4. Such bar/lounge area shall offer a dining menu during all hours of operation.

5. The bar/lounge area should be delineated by a knee wall, railing or architectural feature to designate the limits of the bar/lounge area.

6. The tables in the bar/lounge area shall be at least 42 inches high. Each seat at such tables in the bar/lounge area shall be included in computing the floor space required by this section and shall also be included in the total seating capacity required by any provision in this section to meet the requirement for obtaining such license.

**SECTION 2.** All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed. All portions of the ordinance not modified herein remain in full force and effect.

**SECTION 3.** Should any section, clause, sentence, phrase or provision of this ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

**SECTION 4.** This ordinance shall take effect upon final passage, adoption and publication in the manner prescribed by law.



Council	Motion	2 <sup>nd</sup>	Ayes	Nays	Abstain	Absent
Councilwoman Brannagan						X
Councilman Brennan			X			
Councilman Christensen			X			
Councilman Galante			X			
Councilman Holzapfel		X	X			
Councilman Smith	X		X			
Mayor Neff						
		<b>VOTE</b>	5	0		

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**Public Hearing, December 4, 2023, 7:00pm (Advertised in the Two River Times, November 16, 2023)**

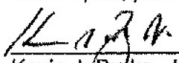
Introduced: November 13, 2023

Passed: December 4, 2023

Adopted: December 4, 2023

Passage of the ordinance has been advertised in the Two River Times (December 7, 2023)

I, Kevin J. Burke, Jr., Borough Administrator/ Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of Ordinance #875-23, that was introduced at a meeting of the Borough Council held on November 13, 2023, and a public hearing was held at a meeting of the Borough Council on December 4, 2023 and voted upon, passed and adopted by a majority affirmative vote of the Borough Council of the Borough of Little Silver.

  
 Kevin J. Burke, Jr.  
 Administrator/Borough Clerk

