

TAB 3

ORDINANCE 08-___

AN ORDINANCE OF THE CITY OF PALMETTO, FLORIDA PERTAINING TO THE SALE, SERVING AND ALLOWING CONSUMPTION OF INTOXICATING LIQUORS BY PERSONS UNDER THE AGE OF TWENTY-ONE; REGULATING ACCESS BY PERSONS UNDER THE AGE OF TWENTY-ONE TO ESTABLISHMENTS WHERE INTOXICATING LIQUORS ARE SOLD FOR CONSUMPTION ON THE PREMISES ; PROHIBITING THE USE OF FALSE IDENTIFICATION TO OBTAIN ENTRY TO ESTABLISHMENTS WHERE INTOXICATING LIQUORS ARE SOLD FOR CONSUMPTION N THE PREMISES; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, pursuant to the referenced provision of the Florida Constitution, a city may exercise any power for municipal purposes except as otherwise provided by law; and,

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and,

WHEREAS, within the above-referenced grant of powers, the City of Palmetto (the "City") has the authority to regulate conditions and activities within the City for the protection of the public health, safety and welfare; and

WHEREAS, Florida law prohibits the selling, serving or allowing the consumption of alcoholic beverages to persons under twenty-one (21) years of age; and

WHEREAS, there are establishments within the City that sell intoxicating liquors for consumption on the premises; and

WHEREAS, such establishments often permit persons over the age of eighteen but under the age of twenty-one to be present while alcoholic beverages are being served to persons age twenty-one (21) and older; and

WHEREAS, City staff and members of the Palmetto Police Department have informed the City Commission that persons under the age of twenty-one (21) frequently enter and consume alcohol within such establishments in violation of Florida law; and

WHEREAS, the City Code of Ordinance currently makes it unlawful for owners and operators of such establishments to permit access to person's under the age of eighteen (18) but does not regulate access or consumption of alcoholic beverages by persons between the ages of eighteen (18) and twenty-one (21); and

WHEREAS, the City Commission finds that it is in the best interest of the public to, subject to certain exceptions, make it unlawful for persons under the age of twenty-one (21) to enter or remain in an establishment where intoxicating liquors are sold for consumption on the premises; and

WHEREAS, the City Commission further finds that the public interest is served by making it unlawful for any holder of a license to operate an establishment where intoxicating liquors are sold for consumption on the premises to permit access to minors; and

WHEREAS, the City Commission further finds that prohibiting the use or attempted use of false identification to gain entry to establishments where intoxicating liquors are sold for consumption on the premises is a reasonable means of preventing access to alcoholic beverage establishments by persons under the age of twenty-one (21); and

WHEREAS, consistent with the findings stated above, the City Commission has determined that adoption of this ordinance is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PALMETTO, FLORIDA, as follows:

Section 1. Findings of Fact. The above "WHEREAS" clauses are adopted herein as findings of fact.

Section 2. Revision Language. Chapter 4, Division 4-4, of the City of Palmetto Code of Ordinances is hereby amended to read in its entirety as follows:

Sec. 4-4. Person's under 21 in alcoholic beverage establishments.

(a) It shall be unlawful for any holder of a license to operate a saloon, bar, cocktail lounge or other place where intoxicating liquors are sold for consumption on the premises to allow or permit any person under the age of twenty-one (21) years to visit, loiter, idle, stroll, wander or loaf in such premises, unless such minor is attended or accompanied by his parent or guardian.

(b) Notwithstanding the provision of subsection (a), a person under the age of twenty-one (21) years, without being attended or accompanied by a parent or guardian, may be allowed to be present at and remain on the premises of any bona fide restaurant or any holder of a special license issued by the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation under section 561.20(2) and (7), Florida Statutes, or any rules issued under said statute by Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation; provided, that alcoholic beverages are sold only during the time such holder is actively engaged in the primary business of the holder.

(c) It shall be unlawful for any person under the age of twenty-one (21) to enter or remain on the premises of any establishment where intoxicating liquors are sold for consumption on the premises while that establishment is selling and/or serving alcoholic beverages for consumption on the premises.

(d) It shall be unlawful for any person to present any false, altered or otherwise fraudulent proof of age to attempt to gain entry to, any establishment where intoxicating liquors are sold for consumption on the premises while that establishment is selling and/or serving alcoholic beverages for consumption on the premises.

(e) It shall be unlawful for any establishment where intoxicating liquors are sold for consumption on the premises, or any employee or agent thereof, to knowingly admit, or permit to remain on the premises of such establishment any person under the age of twenty-one (21) while that establishment is selling and/or serving alcoholic beverages for consumption on the premises.

(f) Each establishment where intoxicating liquors are sold for consumption on the premises shall develop a written policy setting forth its system for verifying the age of persons it admits onto its premises and shall provide a copy of such policy to the City of Palmetto Chief of Police. The Palmetto Police Department is authorized to develop, publish and periodically revise a model age verification system for such establishments. Should the Palmetto Police Department publish a model system, any establishment where intoxicating liquors are sold for consumption on the premises which adopts and implements that system may subsequently be found in violation of this section but shall not be fined for an unintentional violation unless it has already been found in violation within the six (6) months preceding the current violation. Each establishment shall only be able to benefit from this fine forbearance once.

(g) Nothing herein shall be deemed to in any way prohibit any person under the age of twenty-one (21) from:

- (1) Being present in an establishment where intoxicating liquors are sold for consumption on the premises as an employee of that establishment to perform work duties;
- (2) Being present in an establishment where intoxicating liquors are sold for consumption on the premises pursuant to an agreement with that establishment to provide some service, including providing security, maintenance, or entertainment to the establishment or its patrons;
- (3) Being present in an establishment where intoxicating liquors are sold for consumption on the premises for the purposes of making a delivery of goods to that establishment;
- (4) Being present in a alcoholic beverage establishment while performing a public or legal duty, such as law enforcement, fire suppression, building inspection, or health inspection;

(5) Being present in an establishment where intoxicating liquors are sold for consumption on the premises when such establishment is not then selling and/or serving alcoholic beverages but is otherwise open to the public, such as when such establishment is holding a "teen night" or similar program. Such establishment shall ensure that all persons under the age of twenty-one (21) have left the premises after any such program prior to resumption of service of alcoholic beverages.

Section 3. **Repeal of Inconsistent Ordinances.** This Ordinance hereby repeals all ordinances, or parts thereof, in conflict herewith to the extent of such conflict.

Section 4. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 5. **Effective Date.** This Ordinance shall take effect as provided for by law and by City Charter, Section 14, upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes.

FIRST READING	
PUBLICATION DATE	
SECOND READING	

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session assembled, this _____, day of _____, 2008.

By: _____

Lawrence E. Bustle, Jr., Mayor

ATTEST:

By: _____

James R. Freeman, City Clerk