

TAB 6

POINT PAPER

Sale of Alcoholic Beverages July 27, 2009

Problem: The current City code does not contain exclusion language that will allow restaurants to sell beer and wine if they are inside the current distance limitation of 300 feet from a school or church.

Background:

Recently, a local restaurant owner applied for a beer and wine license to help supplement existing food sales at his establishment. During the application process with the City, it was determined the restaurant is located within 300 feet of a nearby school property line. Pursuant to our code, intoxicating beverages can not be sold if they are within the 300 foot distance limitation. In researching this issue, staff discovered other jurisdictions that have similar restrictions. Some cities have added exception language to their ordinance that will allow restaurants with a majority of revenue coming from food sales to be excluded from the distance limitation. Staff has included sample language for Commission to consider that would allow beer and wine sales for restaurants within the 300 foot distance limitation provided the majority of revenues are associated with food sales.

Current Alcohol Ordinance (Exhibit "A")

Proposed language to be added (Exhibit "B")

Alternatives:

1. Do nothing.
2. Authorize the staff to incorporate exclusionary language for restaurants who sell beer and wine within the 300 foot limitation.

Recommendation: Alternative #2

Budget Impact: No budget impact identified.

Chapter 4

ALCOHOLIC BEVERAGES*

Sec. 4-1. Hours of sale.

(a) It shall be unlawful for any person to sell, offer for sale, serve or dispense intoxicating beverages in the city in any place or establishment licensed by the state for the sale of intoxicating beverages, on weekdays between the hours of 2:30 a.m. and 6:00 a.m.

(b) It shall be unlawful for any person to sell, offer for sale, serve or dispense intoxicating beverages in the city in any place licensed by the state for the sale of intoxicating beverages between 2:30 a.m. Sunday until 6:00 a.m. the following day, except that when Christmas Eve and New Year's Eve occur on Sunday, the sale of intoxicating beverages shall be permitted from 12:30 p.m. Sunday until 2:30 a.m. the following day. In situations in which properties have establishments located upon them which sell alcoholic beverages on Sunday and the properties are annexed into the city by means of the involuntary annexation statute, the sale of beer and wine for off-premises consumption shall be allowed to continue on only the properties subject to the annexation wherein such sales took place until such time as such use is discontinued for a continuous period of ninety (90) days. In the event that the use is discontinued for a period exceeding ninety (90) days, the property would then be subject to prohibition against Sunday sales of alcoholic beverages as set forth in this paragraph.

(c) Notwithstanding the restriction in subsection (b), the sale of intoxicating beverages shall be permitted on Sundays between the hours of 12:30 p.m. and 11:59 p.m. by any bona fide restaurant, and 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 such statute by the 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. No alcoholic beverages shall be sold in packages or for consumption off the premises.
(Code 1975, § 4-1; Ord. No. 359, § 1, 3-6-89; Ord. No. 460, § 1, 9-23-91)

State law reference—Authority to regulate hours, F.S. §§ 562.14(1), 562.45(2). /

Sec. 4-2. Selling, where prohibited.

(a) No intoxicating beverages shall be sold within three hundred (300) feet of an established church or school. This distance shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business wherein the intoxicating beverages are sold to the main entrance of the church, and in the case of a school, to the nearest point of the school grounds in use as part of the school facilities.

*Cross references—Administration, Ch. 2; minors prohibited from entering any pool-room or billiard room where alcoholic beverages are sold, § 5-46; licenses and business regulations, Ch. 19.

(b) No alcoholic beverages shall be sold in any establishment within two hundred (200) feet of Tenth Street, west of Fourteenth Avenue, within the city, except there shall be no prohibition against the sale of beer and wine for consumption off the premises between Twenty-eight Avenue and Thirty-first Avenue.

(c) It shall be unlawful for any person or the agent or employee of any person to sell or offer for sale, any intoxicating liquor, except beer or wine, at any place in the city except the following:

- (1) Along Tenth Avenue from Riverside Drive to Fifty Street;
- (2) Along Riverside Drive from Tenth Avenue to Eighth Avenue;
- (3) Along Eighth Avenue from Riverside Drive north to the northern city limits;
- (4) Along Seventeenth Street from Eighth Avenue east to the S.A.L. railroad crossing on Seventeenth Street;
- (5) Along Tenth Street from Tenth Avenue east to the easternmost city limits;
- (6) Along Seventh Street east from Sixth Avenue to Highways 19, 41 and 301;
- (7) Along Highways 19 and 41 and 301 south from Tenth Street to the DeSoto Bridge;
- (8) Along Third Avenue from Ninth Street to Tenth Street;
- (9) Along the east 200 feet of Ninth Street Drive;
- (10) Along Eighth Avenue from Fourth Street to Riverside Drive;
- (11) Along Sixth Street from Eighth Avenue to Ninth Avenue;
- (12) Areas designated as commercial in PUD zoned areas upon compliance with Ordinance No. 196, the conditional use ordinance, which is on file in the city clerk's office;
- (13) Along the entire length of Haben Boulevard including only all commercially zoned property within an area bounded on the north by Highway 301, on the west by Highway 301/41, on the south by the Manatee River, and on the east by the easternmost city limits;
- (14) Along Tenth Street west, but only within a radius of one thousand (1,000) feet from the center of the bridge at Government Cut.

(Code 1975, §§ 4-4, 4-5(a), (c); Ord. No. 254, § 1, 10-7-85; Ord. No. 324, § 2, 8-17-87; Ord. No. 368A, § 1, 4-17-89)

Sec. 4-3. Consumption prohibited in certain areas.

(a) It shall be unlawful for any person to drink or consume any alcoholic beverage containing more than one (1) percent of alcohol by weight upon any of the following areas or locations within the city:

- (1) Public streets and sidewalks;

- (2) Any areas available for use by the public for motor vehicle parking purposes where such areas adjoin or are adjacent to any establishment where alcoholic beverages are sold or dispensed;
- (3) The area of public property adjacent to and upon which the police department is located;
- (4) The area adjacent to and upon which the city hall is located;
- (5) The area adjacent to and upon which the maintenance facility is located;
- (6) The area adjacent to and upon which the sewage treatment plant is located;
- (7) The area adjacent to and upon which the cemetery is located;
- (8) All areas included in city parks owned by the city.

(b) It shall be the responsibility of each licensee of any establishment licensed to sell alcoholic beverages containing more than one (1) percent of alcohol by weight to have conspicuously posted at all times a sign, which shall be furnished without charge by the chief of police, calling to the attention of the public the provisions of paragraph (a) of this section.

(Code 1975, § 4-5(d), (e))

Cross references—Cemeteries, Ch. 9; streets, sidewalks and other public places, Ch. 25; utilities, Ch. 29.

Sec. 4-4. Permitting access to minors.

(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 eighteen (18) 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 eighteen (18) 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.

(Code 1975, § 4-2; Ord. No. 460, § 2, 9-23-91)

State law reference—Minors visiting dance halls operated in connection with businesses selling alcoholic beverages, F.S. § 562.48.

Sec. 4-5. Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

- (1) *Restaurant*. To determine whether a "restaurant" is a bona fide restaurant for the purposes of this chapter, such restaurant must:
 - a. Contain all necessary equipment for the service of full course meals.

- b. Serve full-course meals regularly and at all times such restaurant is open for business. A full-course meal shall include, at a minimum, the following:
 1. Salad.
 2. Entree.
 3. Dessert.
 4. Beverage.
 5. Bread and butter.
 - c. Derive at least fifty-one (51) percent of its gross revenue from the sale of food and nonalcoholic beverages. The restaurant shall maintain records regarding the purchase and sale of alcoholic beverages and the purchase and sale of food and nonalcoholic beverages in accordance with the rules and regulations of the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation.
 - d. Contain tables of adequate size to accommodate the service of full-course meals in accordance with the number of chairs found at that table.
 - e. Primarily advertise and hold itself out to the public to be a place where meals are served.
 - f. Contain necessary tableware, seating and dining room equipment to handle the seating capacity found within the restaurant.
 - g. Employ such number and types of employees for serving full-course meals to guests.
 - h. Have as its primary operation, the serving of meals and not for the sale of alcoholic beverages.
- (2) *Actively engaged in a primary business.* The phrase "actively engaged in a primary business of the license holder" means that the holder of such special liquor license as described herein shall primarily engage in a business pursuit other than the sale of alcoholic beverages and of a type suited to and in accordance with the facilities provided at the establishment of the holder and for which the holder holds itself out to the public.

(Ord. No. 460, § 3, 9-23-91)

Sample Language taken from Anna Maria and modified to fit our existing ordinance language.

Exclusion from distance limitation.

Deleted: Sec. 114-507.

(a) The operator of a restaurant who desires to sell or dispense beer and wine may apply for a special use permit excluding the restaurant from the 300-foot distance limitation set forth in section 4-2 (a), provided such restaurant will continuously meet the following criteria:

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(1) The restaurant shall not sell or dispense any alcoholic beverages other than beer and wine without regard to the nature or extent of the alcoholic beverage license held by the operator of the restaurant.

(2) The restaurant shall derive at least 5 percent of its gross revenue from the retail sale of prepared food and non-alcoholic beverages.

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(3) Full course meals must be available at all times when the restaurant is serving beer or wine except the restaurant may continue to serve beer and wine until food service is completed to the final seating of restaurant patrons for full course meals. A full course meal as required by this subparagraph (3) must comply with section 4-5.

(4) The premises where the restaurant is located shall not have an area where the primary purpose is to serve beer and wine.

(5) The restaurant shall have the burden of demonstrating that it continuously qualifies for the exclusion set forth in this paragraph (a) by maintaining the records described in paragraph (b) below.

(6) The operator of the restaurant must hold a license issued by the State of Florida which permits the sale of beer and wine, and must remain in full compliance with the requirements of that license.

(b) The operator of a restaurant who is granted a special use permit to sell or dispense beer and wine pursuant to the exclusion set forth in paragraph (a) above shall maintain books and records which clearly demonstrate that the restaurant continuously meets the requirements for the exclusion. Separate records shall be maintained for the sale of beer and wine and for the sale of prepared food and non-alcoholic beverages. The records shall be maintained on the premises where the restaurant is located, or other designated place approved in writing by the city, and shall be open for inspection by the city during normal business hours. The records required to be kept shall be legible, clear, and in the English language. Records maintained in an electronic form shall be promptly provided to the city in written form at the sole expense of the operator of the restaurant. The city shall have the right to periodically inspect the records maintained in accordance with this paragraph (b) to assure that the restaurant continuously complies with the requirements of subparagraph (a)(2) above.

(c) Notwithstanding the distance limitations set forth in section 4-2, vendors operating places where beer is sold only for consumption off the premises, as authorized in F.S., § 563.02, or any successor statute, may sell wine for off the premises consumption only.

Deleted: 114-504(3)

Deleted: (Ord. No. 2000-579, § 4, 3-23-00; Ord. No. 03-614, § I, 12-18-03