

TAB 2

POINT PAPER

ORDINANCE 09-996 AMENDING THE CODE OF ORDINANCES TO REVISE THE REQUIREMENTS FOR PERSONS UNDER THE AGE OF TWENTY-ONE YEARS OLD IN ESTABLISHMENTS WHICH SERVE ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES

07/12/09

ISSUE: Adoption of Ordinance 09-996 to amend the City Code regarding the requirements for persons under the age of 21 in establishments which serve alcoholic beverages for consumption on premises.

BACKGROUND: The City's Police Department has struggled with regulating the consumption of alcohol by persons under the age of 21 in establishments which serve alcoholic beverages. The current ordinance does not prohibit persons who are 18 years of age from being present in such establishments when alcoholic beverages are being served for consumption on premises.

The ordinance as drafted would prohibit persons under the age of 21 from being admitted to, or remaining in, such establishments while alcoholic beverages are being served. The ordinance establishes a definition for alcoholic beverages as those beverages containing more than 1% alcohol by weight. This definition is consistent with the definition currently found in the City's Land Development Code.

The ordinance provides exceptions for persons under the age of 21 to be present in such establishments when they are working in or providing services to such an establishment. The ordinance also provides exceptions to allow persons under the age of 21 to have access to restaurants and other establishments, such as hotels, fairgrounds, and other similar establishments which are not in the primary business of serving alcohol. Those establishments have special licensure requirements through the Division of Alcoholic Beverages and Tobacco, and the requirements are laid out by the Florida Statutes and the Florida Administrative Code.

The definition of restaurant in the proposed ordinance requires at least 51% of the gross revenues of the establishment to be derived from the sale of food and non-alcoholic beverages. There are also other requirements to ensure that the establishment functions as a bona fide restaurant, including the requirements that the establishment serve full-course meals, advertise itself as a restaurant, contain the necessary dining facilities and equipment to accommodate full-course dining, and provide sufficient staffing for full-course dining.

The ordinance also requires all establishments which serve alcohol for consumption on premises to work with the Palmetto Police Department to establish a written policy for verifying the age of persons being permitted access to the establishment.

RECOMMENDATION: Adopt Ordinance 09-996.

BUDGET IMPACT: None

ORDINANCE 09-996

AN ORDINANCE OF THE CITY OF PALMETTO, FLORIDA, PERTAINING TO THE SALE, SERVING AND ALLOWING CONSUMPTION OF ALCOHOLIC BEVERAGES BY PERSONS UNDER THE AGE OF TWENTY-ONE; REGULATING ACCESS BY PERSONS UNDER THE AGE OF TWENTY-ONE TO ESTABLISHMENTS WHERE ALCOHOLIC BEVERAGES ARE SERVED FOR CONSUMPTION ON PREMISES; PROHIBITING THE USE OF FALSE IDENTIFICATION TO OBTAIN ENTRY TO ESTABLISHMENTS WHERE ALCOHOLIC BEVERAGES ARE SOLD FOR CONSUMPTION ON 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 alcoholic beverages 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's Code of Ordinances currently makes it unlawful for owners and operators of such establishments to permit access to persons 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 alcoholic beverages 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 alcoholic beverages are sold for consumption on the premises to permit access to persons under the age of twenty-one (21) years old; and

WHEREAS, the City Commission further finds that prohibiting the use or attempted use of false identification to gain entry to establishments where alcoholic beverages 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 and 4-5, of the City of Palmetto Code of Ordinances, are hereby amended to read in their entirety as follows:

Sec. 4-4. Persons under the age of twenty-one in alcoholic beverage establishments.

(a) 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 alcoholic beverages are sold or served, while that establishment is selling and/or serving alcoholic beverages for consumption on premises.

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

(c) It shall be unlawful for any establishment where alcoholic beverages are sold or served, 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 premises.

(d) Nothing herein shall prohibit a person under the age of twenty-one (21) years old from being present at and remaining 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 statutory subsections 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.

(e) Each establishment where alcoholic beverages 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 alcoholic beverages 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.

(f) 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 alcoholic beverages are sold for consumption on the premises as an employee of that establishment to perform work duties;

(2) Being present in an establishment where alcoholic beverages 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 alcoholic beverages are sold for consumption on the premises for the purposes of making a delivery of goods to that establishment;

(4) Being present in an 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 alcoholic beverages 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.

Sec. 4-5. Definitions.

For the purposes of this Chapter 4, 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.
- 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. Primarily advertise and hold itself out to the public to be a place where meals are served.
- e. Contain necessary tableware, seating and dining room equipment to handle the seating capacity found within the restaurant.
- f. Employ such number and types of employees for serving full-course meals to guests.
- g. Have as its primary operation, the serving of meals and not 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.

(3) *Alcoholic beverages.* The term "alcoholic beverages" shall be defined as those beverages containing more than one (1) percent of alcohol by weight including, but not limited to, beer, wine, malt beverages, liquor and distilled spirits.

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	July 20, 2009
PUBLICATION DATE	July 24, 2009
SECOND READING	August 3, 2009

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
3rd day of August, 2009.

By: _____

Shirley Groover Bryant, Mayor

ATTEST:

By: _____

James R. Freeman, City Clerk