

Sec. 4-9. Patron age restrictions.

(a) Definitions. For the purposes of this section, the following definitions shall apply:

(1) *Alcoholic beverage establishment* shall mean a bottle club, cocktail bar, hotel bar or nightclub as defined in section 4-1 of the Code.

(2) *Bona fide restaurant* shall mean an establishment engaged primarily in the service of food and non-alcoholic beverages, where the sale or service of alcoholic beverages is incidental to the sale and service of food and non-alcoholic beverages and meets all of the following criteria:

a. A bona fide restaurant must during all hours of operation continually offer food service consisting of full course meals;

1. Full course meals shall include a salad or vegetable; entree; and beverage;

b. A bona fide restaurant must have full kitchen facilities and food preparation staff capable of preparing and serving full course meals during all hours of operation;

c. A bona fide restaurant must have a customer service area consisting of tables, chairs or customer counters. The tables or customer counters within the customer service area must be of adequate size to accommodate the service of full course meals;

d. In order for tables, chairs or customer counters to be included in the customer service area, the service of full course meals must be available at each seat or chair at each table or customer counter in accordance with the following:

1. The total number of seats or chairs at the tables, customer counters and bars within the customer service area must be sufficient to accommodate the maximum occupant load of the restaurant;

2. The full occupant load shall be determined in accordance with the provisions of the Standard Florida Building Code or its successor Code.

e. A bona fide restaurant must have the appropriate license issued by the state as well as all municipal or county permits required by law, and must meet all local zoning requirements;

(3) *Concert* shall mean a live musical performance wherein the artist(s) is represented by a licensed talent agency and belongs to a recognized musician's union, as well as a recognized publishing agency such as ASCAP or BMI. Additionally, the alcoholic beverage establishment where the concert is to be held must be a member and licensed by BMI or ASCAP. The artist(s) cannot be an unsigned act accompanying a disc jockey.

a. A requirement for concerts shall be a special permit from the police department requiring proof of the booking contract between the artist and the alcoholic beverage establishment, provisions for sufficient security, the specific hours for the proposed concert, and fire department review, which includes an operational safety plan.

b. The fee for the special permit to reimburse the police department for processing the application for special permits shall be two hundred fifty dollars (\$250.00) per concert held in an alcoholic beverage establishment.

c. As a condition for issuance of a special permit from the police department, the alcoholic beverage establishment shall be required to provide all of the following:

1. Private security beginning one (1) hour before the concert and terminating no sooner than two (2) hours after the concert;

2. Private security entailing no less than three (3) security personnel on the exterior for the purpose of preventing loitering and clearing the parking lot of the alcoholic beverage establishment after the concert;

3. One and one-half (1 1/2) security personnel per one hundred (100) patrons for the occupancy load of the alcoholic beverage establishment.
 - d. Failure to provide the required security shall be grounds for refusal to issue permits for future concerts in the alcoholic beverage establishment.
 - e. Additionally, should the police department be required to provide extraordinary police services to the alcoholic beverage establishment, it shall also constitute grounds for refusal to issue permits for future concerts in the alcoholic beverage establishment.
 - f. The concert exemption shall be limited to fifteen (15) concerts per year at least fifteen (15) days apart per alcoholic beverage establishment.
 - g. Entry to the concert shall be non-discriminatory as to race or gender.
 - h. Patrons between the ages of seventeen (17) and twenty-one (21) are allowed in an alcoholic beverage establishment during the hours of the concert and are required to vacate the alcoholic beverage establishment upon the cessation of the concert artist(s). The term concert does not include or mean a disc jockey performance, a local unsigned act accompanying a disc jockey; dance performance; comedian or other forms of entertainment that are not related to live musicians whether instrumental or vocal in nature. During the concert performance, no other forms of music or entertainment can occur except that performed by the concert artist(s).
- (b) It shall be unlawful for persons under the age of twenty-one (21) to enter or remain in any alcoholic beverage establishment, or to be permitted to do so by owners, managers, employees or independent contractors of alcoholic beverage establishments, except as hereinafter provided. Persons attending job training or orientation shall not be considered exempt under this section. This restriction shall not apply to:
- (1) Persons employed by or at the alcoholic beverages establishments; and
 - (2) Persons accompanied by either of their parents (natural, adoptive, step-parent or legal guardian); and
 - (3) A bona fide restaurant; and
 - (4) An establishment with an "SRX" or special restaurant license issued by the state of Florida; and
 - (5) An alcoholic beverage establishment during any time period in which it is not serving or selling alcoholic beverages to the public, provided that before anyone under the age of twenty-one (21) is admitted into the establishment, all alcoholic beverages previously served to customers are consumed, removed from customer access and otherwise discarded, and the establishment's entire inventory of alcoholic beverages is properly secured from public access. The sale, service or consumption of alcoholic beverages may not resume until all persons under the age of twenty-one (21) have vacated the premises; and
 - (6) Members of the military or armed forces with proper military identification to show that they are currently on active duty with a branch of the United States military.
- (c) It shall be a defense to alleged violations of this section that a person under the age of twenty-one (21) obtained access to an alcoholic beverage establishment by use of a fraudulent identification, and the business used reasonable efforts to determine and prevent the use of fraudulent identifications. Under these circumstances, only the persons who gained access to the alcoholic beverage establishment by presenting fraudulent identification shall be considered in violation of this section.

(d) Upon reaching a determination that an alcoholic beverage establishment that claims an exemption from this section as a bona fide restaurant is not in fact operating as a bona fide restaurant, the city shall issue a notice of violation in conjunction with any other legal action (citation, notice to appear, etc.). This notice of violation shall clearly state that the alcoholic beverage establishment is in violation of this section for failure to operate as a bona fide restaurant and shall state the reason why that conclusion was reached.

(e) Alcoholic beverage establishments may appeal the determination by the city as to bona fide restaurant status only to the board of adjustments, which request must be received by the zoning/licensing manager no later than ten (10) days from the date the notice of violation was issued. There shall be a hearing scheduled before the board of adjustments to take place within thirty (30) days from the date of receipt of the appeal notice from the alcoholic beverage establishment. While a hearing before the board of adjustments is pending, the city may continue to enforce the provisions of this section by all legal means. After hearing evidence presented by both the city and the alcoholic beverage establishment, the board of adjustments shall be limited to a determination of whether or not the alcoholic beverage establishment qualifies as a bona fide restaurant as defined in this chapter.

(f) Any alcoholic beverage establishment may, at its option, request a determination from the board of adjustments that the establishment qualifies as a bona fide restaurant for purposes of this section, by submitting a completed application for such a determination to the zoning/license manager. No establishment is required to obtain a determination, and alcoholic beverage establishments must continue to comply with all provisions of this section in order to maintain their exemption. The request for a determination shall include the following information:

- (1) Name and address of the alcoholic beverage establishment;
- (2) The written consent of the property owner, if different from the applicant;
- (3) A copy of a valid occupational license to operate a restaurant at the property that is the subject of the application;
- (4) A copy of the valid certificate of occupancy for the restaurant/building, which is the subject of the application;
- (5) A drawing (minimum scale of one-fourth (1/4) inch equals one (1) foot) showing the layout and dimensions of the restaurant, locations of all tables, countertops and chairs (including the number of tables and chairs to be provided), customer service areas, sufficient detail to establish that it is sufficient to serve full meals to the full occupant load of the establishment, as well as any other information relevant to a determination of compliance with the provisions of this section;
- (6) A copy of the menu of food items being offered and served or to be offered and served, excluding daily specials, if any;
- (7) Any permits or approvals required from any other governmental agency necessary to operate a restaurant.

(g) A determination as to bona fide restaurant status shall be issued as soon as practicable by the city. The applicant must comply with all of the requirements of this section before and after it is issued. The establishment making the request may appeal the city's determination, as provided above subject to the same time frames and limitations.

(Ord. No. 3031, § 2, 1-22-02; Ord. No. 3055, § 1, 2-20-02; Ord. No. 3082, § 1, 8-19-02;
Ord. No. 3117, § 1, 4-21-03; Ord. No. **3198**, § 1, 5-3-04)