

ORDINANCE 126 - 07

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 3, ALCOHOLIC BEVERAGES, BY RENUMBERING CHAPTER SECTIONS TO ELIMINATE RESERVED SECTIONS; BY AMENDING SECTION 3-1, DEFINITIONS, TO ADD THE DEFINITIONS OF ALCOHOLIC BEVERAGE ESTABLISHMENT, BONA FIDE RESTAURANT, BOTTLE CLUB, COCKTAIL BAR, CONSUMPTION OFF THE PREMISES, CONSUMPTION ON THE PREMISES, HOTEL BAR, NIGHTCLUB, AND RESTAURANT BAR; AMENDING SECTION 3-8, SELLING OR SERVING TO MINORS, TO CLARIFY AS PERSONS UNDER THE AGE OF 21; ESTABLISHING SECTION 3-9, TO PROVIDE PATRONAGE RESTRICTIONS FOR PERSONS UNDER THE AGE OF 21; ESTABLISHING SECTION 3-10, TO PROVIDE ENFORCEMENT AND PENALTY PROVISIONS; ESTABLISHING SECTION 3-11, TO PROVIDE REMEDY OF INJUNCTIVE RELIEF; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral Code of Ordinances contains, as permitted by state law, various restrictions on the sale of alcoholic beverages within the City; and

WHEREAS, the State of Florida has established the age of 21 as the minimum drinking age for alcoholic beverages within the State; and

WHEREAS, numerous incidents have occurred within the City of persons under the age of 21 being admitted to alcoholic beverage establishments and being served or otherwise obtaining alcoholic beverages in violation of State law, and contrary to the public health, safety, and welfare of the City of Cape Coral; and

WHEREAS, numerous incidents have occurred evidencing the problems associated with minors and other persons under the age of 21 patronizing, visiting and loitering around alcoholic beverage establishments; and

WHEREAS, the City Council of the City of Cape Coral recognizes the importance that parents and legal guardians have with respect to child-rearing, and the need to promote and enhance parental control over minors and other persons under the legal drinking age with respect to the use and abuse of alcohol, and particularly concerning access to where alcohol is sold and consumed; and

WHEREAS, the City Council of the City of Cape Coral deems it necessary to enact regulations to address the problems associated with minors and other persons under the age of 21 patronizing, visiting, and loitering around alcoholic beverage establishments, by restricting the patron age of such establishments.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION 1. Chapter 3, Alcoholic Beverages, of the City of Cape Coral Land Use and Development Regulations, is hereby amended as follows:

Chapter 3

ALCOHOLIC BEVERAGES*

Section 3-1. Definitions.

For the purposes of this Chapter, the words and phrases used in this chapter shall have the meanings respectively ascribed to them by the state alcoholic beverage code, F.S. Chs. 561--567. In

addition to the definitions contained in the state alcoholic beverage code, the following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Alcoholic beverage establishment means any establishment which has as its primary business operation the consumption, sales and service of alcoholic beverages for consumption on the premises, including, but not limited to, a bottle club, cocktail bar, hotel bar or nightclub, as those terms are defined in this Section.

Bona fide restaurant means an establishment with an SRX or special restaurant license issued by the State of Florida or an establishment engaged primarily in the service of food and nonalcoholic beverages, where the sale or service of alcoholic beverages is incidental to the sale and service of food and nonalcoholic 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. Full course meals shall include a salad or vegetable, entree and beverage.
- B. A bona fide restaurant must have full kitchen facilities and preparation staff capable of preparing and serving full course meals during all hours of operation for the full occupant load of its establishment.
- 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 at least 80% of the maximum occupant load of the restaurant.
 - 2. The maximum occupant load shall be determined in accordance with the provisions of the Florida Building Code or its successor code.
- E. A bona fide restaurant must have the appropriate license issued by the Division of Hotels and Restaurants as well as all City or County permits required by law, and must meet all local zoning requirements.

Bottle club means any business which does not hold a state license for the sale of alcoholic beverages, but permits its members or customers to bring their own bottles for consumption on the business premises.

Cocktail bar means a place of business licensed under the state beverage law to sell any or all alcoholic beverages for consumption on the premises during the hours permitted under this Chapter.

Consumption off the premises means consumption of beer, wine or alcoholic beverages of any kind at a place different from the place where purchased.

Consumption on the premises means consumption of beer, wine or alcoholic beverages of any kind upon premises where purchased.

Hotel bar means a bar operated in connection with a hotel, apartment hotel, motor court or motel, motel rooms or separate apartments, and operated by the same owner or management, such bar being equipped with adequate and sanitary equipment. The hotel bar must be directly connected with the inside of the hotel.

Nightclub means any place of business operating after 11:00 p.m., where alcoholic beverages are served, and where meals or refreshments may be served, where, in addition to the space occupied by chairs and tables for service of alcoholic beverages and meals or refreshments, there is included a floor space for dancing, a band, orchestra or other form of music or musical entertainment.

Regulated establishments: All places or establishments, within the city, offering for sale beer, ale, wine, or alcoholic liquors or beverages of any kind or places or establishments permitting patrons or customers to consume or serve others beer, ale, wine or alcoholic liquors or beverages of any kind. "Regulated establishments" shall not include private residences or rooms or apartments in motels, hotels or other rentals of similar nature.

Restaurant bar means a bar operated in connection with a bona fide restaurant and by the same owner or management. A restaurant bar must be contained within the restaurant dining room or connected by an adjoining hallway or corridor. A restaurant bar shall not have a separate exterior entrance and can only be accessed by utilizing the main restaurant entrance. Stools shall be permitted at such bar, and intoxicating liquors must be sold only by the drink from such bar.

Section ~~3-1.53-2~~. Hours of operation.

Regulated establishments may sell, serve or permit consumption of alcoholic beverages during the following hours only:

~~(a)~~A. Weekdays and Saturdays; December 24th, 31st: Between the hours of 7:00 a.m. and 2:00 a.m. of the following morning.

~~(b)~~B. Sundays: In addition to the hours stated in Section ~~3-1.5(a)~~ 3-2(A) that allow alcohol to be served from 12:00 a.m. until 2:00 a.m. on Sunday, alcohol may be served at the following times:

~~(1)~~1. Alcoholic beverages containing not more than fourteen (14) percent of alcohol by weight and wines, meaning primarily beer, ales and wines:

a. Consumption off premises--Between the hours of 7:00 a.m. Sunday morning and 12:00 a.m. the following Monday.

b. Consumption on premises--Between the hours of 12:00 noon Sunday to 12:00 a.m. the following Monday.

~~(2)~~2. Alcoholic beverages containing more than fourteen (14) percent by weight of alcohol, except wines:

a. Consumption off premises--Between the hours of 12:00 noon Sunday to 12:00 a.m. the following Monday.

b. Consumption on premises--Between the hours of 12:00 noon Sunday to 12:00 a.m. the following Monday.

~~Sec. 3-2. Reserved.~~

~~Secs. 3-3-3-5. Reserved.~~

Section ~~3-63-3~~. Deliveries permitted.

Persons licensed to sell any alcoholic beverages within this city shall be permitted to make deliveries thereof away from their place of business.

Section ~~3-73-4~~. Premises subject to inspection.

The premises of any regulated establishment within this city shall be subject to inspection during business hours.

Section ~~3-83-5~~. Selling or serving to ~~minors~~, persons under the age of 21.

It shall be unlawful for any person while in a regulated establishment to sell, give, serve or permit to be served intoxicating liquors or beverages to any ~~minor~~ person under the age of 21.

Section ~~3-93~~-6. Selling or furnishing to intoxicated persons.

It shall be unlawful for any person while in a regulated establishment to sell, furnish or deliver, or permit any person in his employ to sell, furnish or deliver, any intoxicating liquor or beverage, or any alcoholic beverage of any kind, whether or not intoxicating, in any quantity to any person who is intoxicated or whom the person reasonably believes to be intoxicated.

Section ~~3-103~~-7. Possession of untaxed beverages.

It shall be unlawful for any person to own or possess within this city any alcoholic beverage containing more than one percent of alcohol by weight, unless full compliance has been had with the pertinent provisions of the beverage law as to payment of excise taxes on beverages of like alcoholic content; provided, that this section shall not apply to manufacturers or distributors licensed under the beverage law, to state-bonded warehouses or to common carriers; provided further, this section shall not apply to persons possessing not in excess of one gallon of such beverages, provided the beverages shall have been purchased by said possessor outside of the state in accordance with the laws of the place where purchased and shall have been brought into this city by said possessor. The burden of proof that such beverages were purchased outside the state and in accordance with the laws of the place where purchased shall in all cases be upon the possessor of such beverages.

Section ~~3-113~~-8. Consuming alcoholic beverages restricted.

It shall be unlawful for any person to drink or consume alcoholic beverages, including liquor, beer or wines on any public street, in any public park or in any other public place, unless such place is licensed by the city for the sale of alcoholic beverages for consumption in such place.

Section 3-9. Patronage Restrictions for Persons Under the Age of 21.

- A. It shall be unlawful for persons under the age of 21 years 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. This restriction shall not apply to:
1. Persons employed by or at alcoholic beverage establishments and/or persons attending job training or orientation in reference to their employment at the alcoholic beverage establishment;
 2. Persons accompanied by a parent (natural, adoptive, step-parent) or legal guardian;
 3. 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 21 years 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 21 years have vacated the premises.
- B. The provisions of Section 3-9(A) shall not apply to persons in a bona fide restaurant as defined in Section 3-1.
- C. It shall be a defense to alleged violations of this Section that a person under the age of 21 years 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 person who gained access to the alcoholic beverage establishment by presenting fraudulent identification shall be considered in violation of this Section.
- D. Any person under the age of 21 and/or alcoholic beverage establishment that is found to be in violation of this Section shall be issued a citation in conjunction with any other legal action (citation, notice to appear, etc.).

- E. Any violation of this Section shall be presented before the Special Magistrate or County Court Judge. Any hearing before the Special Magistrate shall be conducted pursuant to City of Cape Coral Code Section 2-86.
- F. A final order finding that a person under the age of 21 and/or an alcohol beverage establishment is in violation of this Section and issued by the Special Magistrate or County Court Judge may be appealed to the Circuit Court. A notice of appeal shall be filed with the City Clerk with a copy to the Circuit Court, within thirty (30) days of the execution of the final order to be appealed.

Section 3-10. Enforcement and Penalties.

Any person or regulated establishment dealing in alcoholic beverages violating this Chapter shall be guilty of a municipal ordinance violation. Any violation of this Chapter shall be punishable pursuant to Section 1-14 of the City of Cape Coral Code of Ordinances.

Section 3-11. Injunctive Relief.

In addition to the enforcement procedures provided for in this Chapter, regulated establishments, which would include alcoholic beverage establishments, not in conformity with these requirements shall be subject to the appropriate civil action in a court of appropriate jurisdiction. The City may sue any person or entity found to be in violation of this Chapter to enjoin, either temporarily or permanently, any of the activities prohibited by this Chapter.

~~Sec. 3-12. — Reserved.~~

~~Secs. 3-13 — 3-21. — Reserved.~~

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.


ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 19th DAY OF November, 2007.


ERIC P. FEICHTHALER, MAYOR

ATTESTED TO AND FILED IN MY OFFICE THIS 3rd DAY OF December, 2007.


BONNIE J. POTTER, CITY CLERK

APPROVED AS TO FORM:


DOLORES D. MENENDEZ
CITY ATTORNEY
ord/Patronage