

Anne Dalton, Esquire
2044 Bayside Parkway
Fort Myers, Florida 33901
(239) 337-7900

Memorandum

To: Chair, Vice Chair, LPA Members, Town of Fort Myers Beach
CC: Town Manager, Community Development Director, Town Clerk
Date: July 3, 2009
Subject: Draft Open Alcoholic Beverage Container Ordinance/Legal
Comments

LDC changes which affect the regulation of Sexually Oriented Businesses (Chapter 34, Division 3), Alcoholic Beverages (Chapter 34, Division 5), Entertainment and Conduct (Chapter 34, Subdivision IV) and related subjects have been prepared pursuant to LPA direction.

However, it is requested that further direction be provided by the LPA prior to legal review being conducted, since this is a very comprehensive revision to this section of the Land Development Code.

FORT MYERS BEACH LAND DEVELOPMENT CODE

DIVISION 1. GENERALLY

CHAPTER 34 ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

Division 3. Sexually-oriented Businesses

- Sec. 34-1201. Applicability of division.*
Sec. 34-1202. Definitions.
Sec. 34-1203. Purpose of division.
Sec. 34-1204. Prohibited locations.
Secs. 34-1205--34-1230. Reserved.

Division 4. Aircraft

- Secs. 34-1231. Use of engine-propelled aircraft.*
Secs. 34-1232--34-1260. Reserved.

Division 5. Alcoholic Beverages

Subdivision I. Generally

- Sec. 34-1261. ~~Definitions~~Purpose and intent.*
Sec. 34-1262. Compliance with applicable regulationsDefinitions.

Subdivision II. Hours of Business

- Sec. 34-1263. Sale for off-premises consumptionHours of business during which sales or service, consumption, and occupancy are prohibited.*

Subdivision III. Location

- Sec. 34-1264. Sale or service for on-premises consumptionAlcoholic beverage establishments; prohibited locations; measuring distances; exceptions.*

- Sec. 34-1265. Bottle clubs.*

- Sec. 34-1266. Consumption, possession in public areas.*

- Sec. 34-1267. Alcoholic beverage establishments; prohibited locations; measuring distances; exceptions.*

Subdivision IV. Entertainment and Conduct

- Sec. 34-1268. Hours music or disturbing noises prohibited.*

- Sec. 34-1269. Nudity, specified sexual activities, and exposure of specified anatomical areas prohibited.*

- Sec. 34-1270. Sale of food prerequisite to consumption on the premises of alcoholic beverages for bona fide restaurants and certain other alcoholic beverage establishments.*

- Sec. 34-1271. Ratio of alcoholic beverage to food sales; gross revenues; record keeping and reporting.*

- Sec. 34-1272. Package stores.*

- Sec. 34-1273. Permitting intoxicated persons to loiter about premises.*

- Sec. 34-1274. Serving of set-ups, etc., by vendors not licensed to sell for consumption on the premises.*

- Sec. 34-1275. Use of licensed premises for criminal purposes.*

Subdivision V. General Health, Safety, and Welfare.

- Sec. 34-1276. Adequate and sanitary equipment, compliance with applicable regulations.*

Subdivision VI. Patron Age Restrictions

- Sec. 34-1277. Patron age restrictions.*

Subdivision VII. Enforcement and Penalties

- Sec. 34-1278. Enforcement and penalties.*
Secs. 34-12651279--34-1290. Reserved.

DIVISION 3. SEXUALLY-ORIENTED BUSINESSES

Sec. 34-1201. Applicability of division.

This division shall apply to all sexually-oriented businesses (as defined in the Fort Myers Beach Obscenity, Public Nudity, and Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04).

Sec. 34-1202. Definitions.

Sexually-oriented business means a sexually-oriented business as defined in the Fort Myers Beach Obscenity, Public Nudity, and Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04.

Sec. 34-1203. Purpose of division.

The purpose of this division is to provide reasonable regulations to promote the health, safety, morals, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually-oriented businesses within the town and alleviate the adverse effects of sexually-oriented businesses on adjacent and nearby uses of land. The provisions of this division have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. It is neither the intent nor effect of this division to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. It is neither the intent nor effect of this division to condone or legitimize the distribution of obscene material.

Sec. 34-1204. Prohibited locations.

(a) No use of land for purposes Sexually-oriented businesses governed by this division shall must not be located closer than 1,000 feet, measured on a straight horizontal line to from the closest point on the perimeter boundary of the parcel of land on which the business is located to; from:

- (1) The closest wallpoint on the perimeter boundary of parcel of land of any buildingpremises containing a similar use; or
- (2) The closest point onAny zoning district boundary line whichof a zoning district that allows residential uses; or
- (3) The closest point on the perimeter boundary line of the parcel of land on whichAny alcoholic beverage establishment, hotel, motel, restaurant, school (noncommercial or operated as a business), day care center (child), park, playground, place of worship, religious facility, public recreation facility, or cultural facility is located; or
- (4) The closest point on the perimeter boundary line of the parcel of land on which any membership organization, personal services, recreational facilities, retail store, or temporary use oriented primarily toward children or families is located.

(b) A person commits a violation of this code if the person operates or causes to be operated a sexually-oriented business within 1,000 feet of the prohibiting uses provided by this division.

(c) For the purposes of this section, measurement must be made in a straight line, without regard to the intervening structures or objects from the nearest point on the property line of the premises where the sexually-oriented business is conducted or proposed to the nearest property or district boundary line of the premises of a prohibiting use provided by this division. Presence of a municipal, county, or other political subdivision boundary is irrelevant for purposes of calculating and applying the distance requirements of the division.

(c) Any sexually oriented business lawfully operating on [the effective date of this ordinance], 2009, but in violation of any provision of this division is a non-conforming use. Such nonconforming use may continue for a period not to exceed one (1) year from the effective date of this division, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use must not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two (2) or more sexually-oriented businesses are within 1,000 feet of each other and otherwise in a permissible location, the sexually-oriented business that was first lawfully established and continually operated at a particular location is the conforming use and the later established business(es) (is)(are) nonconforming.

(d) A sexually-oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually-oriented business license, or a use listed in subsection (b) of this section within 1,000 feet of the sexually-oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

Secs. 34-1205--34-1230. Reserved.

**DIVISION 4.
AIRCRAFT**

Sec. 34-1231. [No changes].
Secs. 34-1232--34-1260. Reserved.

[The remainder of this page intentionally left blank].

Alcoholic Beverages

DIVISION 5. ALCOHOLIC BEVERAGES

Subdivision 1. Generally

Sec. 34-1261. ~~Definitions~~Purpose and intent.

For purposes of this division and when referred to elsewhere in this chapter, certain terms or phrases shall have the following meaning:

~~—*Alcoholic beverage* means distilled spirits and all beverages, other than medicine, intended for human consumption and containing one-half of one percent or more alcohol by volume.~~

~~—*Beer, wine, and liquor* have the same meanings as provided in F.S. chs. 563, 564, and 565, respectively.~~

~~—*Full course meals* means items on a menu at a restaurant which include soups and salads, main dishes with side orders, and desserts.~~

~~—*Kitchen, commercial* means a facility used for the preparation of food which is sold to the public and that is subject to state and local health department inspections.~~

~~—*Liquor license* means a license issued by the state for the retail sale, service, and consumption of liquor.~~

~~—*Park*, only when used in this division, means a park facility which is owned, leased, or operated by a governmental agency. It does not include beach access strips.~~

~~—*Sale of*, only when used in this division, includes the term "or service."~~

It is the purpose and intent of this subdivision to establish provisions for hours of operation, location of places of business, sanitary regulations, the type of entertainment and conduct permitted, patron age restrictions, provisions for enforcement, penalties

for violations, and procedures for the town to follow with regard to alcoholic beverages in commercial establishments. The procedures established by this division, in furtherance of § 34-1 of this code, are designed to promote and protect the general health, safety, and welfare of the public, and to treat all regulated establishments in a non-discriminatory manner consistent with the manner of treatment of any other lawful business transacted in the town.

Sec. 34-1262. ~~Compliance with applicable regulations~~Definitions.

For purposes of this division and when referred to elsewhere in this chapter, the following phrases, terms or words have the following meaning, except where the context clearly indicates a different meaning:

Alcoholic beverage means distilled spirits and all beverages containing one-half (1/2) of one percent (1%) or more alcohol by volume. This definition is intended to accord with the definition in the Beverage Law.

Alcoholic beverage establishment means any establishment within the municipal limits of the town that meets all local zoning requirements, possesses all municipal and county permits required by law, and is currently licensed by the division of alcoholic beverages and tobacco for the sales or service of alcoholic beverages for consumption off the licensed premises, on the licensed premises, or both.

Bar means an operation the primary activity of which is the sales or service of alcoholic beverages for consumption on the premises.

Beach means the land between the mean high and mean low water lines owned by the State of Florida and the zone of unconsolidated sand extending landward from the mean high water line to the place where there is a marked change in material or physiographic form or the line of permanent vegetation, usually the effective limit of storm waves; including any beach areas owned by the town or Lee County, and any beach area that has arisen upon it a right of customary use by the public

Alcoholic Beverages

or a public easement, prescriptive or otherwise; and the foreshore of tidal navigable waters.

Beer means all brewed beverages, including malt beverages, containing malt. This definition is intended to accord with the definition in the Beverage Law.

Beverage Law means chapters 561 through 565, 567, and 568 of the Florida Statutes.

Bottle club means a commercial establishment, operated for a profit, whether or not a profit is actually made, wherein patrons consume alcoholic beverages that are brought onto the premises and not sold or supplied to the patrons by the establishment, whether the patrons bring in and maintain custody of their own alcoholic beverages or surrender custody to the establishment for dispersing on the licensed premises, and which is located in a building or other enclosed permanent structure. This definition does not apply to sporting facilities where events sanctioned by nationally recognized regulatory athletic or sports associations are held, bona fide restaurants licensed by the division of hotels and restaurants of the department of business and professional regulation whose primary business is the service of full course meals, or hotels and motels licensed by the division of hotels and restaurants of the department of business and professional regulation. This definition is intended to accord with the definition in the Beverage Law.

Cocktail bar means an alcoholic beverage establishment licensed by the state for, and engaged primarily in, sales or service of alcoholic beverages under the Beverage Law for consumption on the premises during the hours of operation not prohibited by this division.

Consumption off the premises means consumption of alcoholic beverages at a place different from the licensed premises where purchased.

Consumption on the premises means consumption of alcoholic beverages upon the premises where purchased.

Container means any bottle, can, cup, glass, or other receptacle.

Customer service area means the area of an establishment available for food or beverage service or consumption, or both, calculated by measuring all areas, including any approved outdoor seating area, covered by customer tables and counter surfaces and all floor area within five (5) feet of the edge of said tables and counter surfaces, measured in all directions where customer mobility is provided. Areas between tables or counters that overlap in measurement with another table or counter must only be included in the calculation once.

Employee means a person who works or performs in an alcoholic beverage establishment, irrespective of whether the person is the owner, manager, or operator of said establishment; is paid a salary or wage by the owner, manager, or operator of said establishment, or accepts gratuities or splits gratuities with the owner, manager, or operator of said establishment.

Expansion means the spatial enlargement of premises, the expansion of an alcoholic beverage establishment approved and licensed for the sales or service of beer and/or wine to include liquor sales or service, and the expansion to a nightclub use from another alcoholic beverage establishment.

Floor area, gross means the sum of the floor areas of all floors of a building or structure, measured from the face of exterior walls, or from the centerline of a wall separating a shared building wall, including any outdoor or patio area approved for use as customer service area.

Full course meals means food items available on a menu that include soups, salads, side orders, entrées, non-alcoholic beverages, and desserts.

Hotel bar means a bar operated in connection with any hotel/motel or multiple-family building with more than 100 units, operated by the same owner or management, licensed by the state as an alcoholic beverage establishment under the Beverage Law for consumption on the premises during the hours of operation of the hotel business

Alcoholic Beverages

and hours of business not prohibited by this division.

Hours of operation means the posted hours that an establishment is open to the public for business within the limitations on hours of business established by this division.

Independent contractor means any person who, pursuant to a formal, informal, written, or verbal agreement, works, performs, or dances in an alcoholic beverage establishment.

Licensed premises means not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit free passage from rooms where alcoholic beverages are stored or sold by the licensee to other rooms over which the licensee has some dominion or control and also includes all of the area embraced within the sketch appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that area included or designated by general law. This definition is intended to accord with the definition in the Beverage Law.

Licensee means a legal or business entity, person, or persons that hold a license issued by the division of alcoholic beverages and tobacco of the department of business and professional regulation and meet the qualifications of § 561.15 of the Florida Statutes. This definition is intended to accord with the definition in the Beverage Law.

Liquor means distilled spirits, spirituous liquors, spirituous beverages, or distilled spirituous beverages containing the substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source by whatever process produced. This definition is intended to accord with the definition in the Beverage Law.

Membership organization means an organization operating with formal membership requirements with the intent to pursue common goals or activities and licensed by the state as an alcoholic beverage

establishment for sales or service of alcoholic beverages under the Beverage Law for consumption on the premises during the hours of operation of the membership organization and hours of business not prohibited by this division.

Nightclub means an alcoholic beverage establishment licensed by the state for, and engaged in, sales or service of alcoholic beverages under the Beverage Law for consumption on the premises during the hours of operation and hours of operation not prohibited by this division, and operating after 11:00 p.m. in connection with dancing, vaudeville, theatrical, or similar entertainment; and where a band, orchestra, or other form of performed entertainment is provided. [The LPA does not recommend this additional use.]

Nudity is defined in the Fort Myers Beach Obscenity, Public Nudity, and Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04.

Open container means any container of alcoholic beverage that has been opened, has its seal broken, had its contents partially removed, or from which consumption is capable immediately.¹

Operation means the sales or service of alcoholic beverages in the normal course of business.

Operator means the person or entity, or combination of persons and entities, operating an alcoholic beverage establishment on licensed premises who either holds or has applied for a license to sell or serve alcoholic beverages from the premises.

Outdoor seating area means a specifically delineated area within the licensed premises, not enclosed by a structure and which may or may not be roofed, and approved by a town permit for dining and consumption on the premises as a commercial accessory use to any alcoholic beverage establishment.

¹ A bottle of wine that has been resealed and is transported pursuant to F.S. § 564.08 is not an open container under the provisions of F.S. § 316.1936.

Alcoholic Beverages

Owner means any person having a legal or equitable interest in property.

Package goods means any container of alcoholic beverages.

Package store means an alcoholic beverage establishment licensed by the state where alcoholic beverages and package goods are sold, during hours of operation and during hours of business not prohibited by this division, only in sealed containers for consumption off the premises.

Parcel of land means real property capable of being described with such definiteness that its location and boundaries may be established, that is designated by its owner or developer as land to be used or developed as a unified whole, or that has been used as a unified whole.

Permit means an official document or certificate required or issued by the town authorizing performance of a specified activity.

Person means any individual, association, corporation, estate, firm, limited partnership, partnership, trust, or other legal entity.

Public area means an area open to the public, including any auditorium, beach, bridge, building, canal, causeway, dock, lake, lagoon, marina, museum, open space, park, parkway, pier, playground, pool, preserve, range, recreational facility and/or field, roadway, semi-public parking lot, sidewalk, stream, waterway, and abutting lands and adjacent littoral waters, and all rights-of-way and public service facilities located on grounds, buildings, and structures that are under the jurisdiction, control, and administration of the town, special district, county, state, or federal government, within the municipal limits of the town.

Restaurant means an establishment engaged primarily in the sales or service of food and beverages in a ready to consume state.

Restaurant, bona fide means a restaurant that is also an alcoholic beverage establishment that:

(a) is engaged primarily in the service of food and non-alcoholic beverages, where the sales or service of alcoholic beverages is incidental to the sale and service of food and non-alcoholic beverages; and

(b) meets all local zoning requirements, and possesses all municipal and county permits required by law; and

(c) is currently and lawfully licensed by the division of hotels and restaurants of the department of business and professional regulation; and

(d) offers and serves full course meals with full kitchen facilities and food preparation staff capable of preparing and serving full course meals continuously during all hours of operation; and

(e) has a customer service area consisting of tables and chairs, or customer counters, and kitchen facilities, restroom facilities, pantries, and storage room(s) that, aggregated together, comprise no less than 75 percent of the gross floor area, and that are adequate to accommodate the service of full course meals; and

(f) has a sufficient total number of seats or chairs at tables, counters, and bars within the customer service area to accommodate the full occupant load as determined by the town in accordance with the provisions of the Florida Building Code and the Florida Fire Code or successor codes.

This definition is intended to accord with the definition in the Beverage Law.

Restaurant bar means a bar operated in direct connection with a bona fide restaurant and by the same owner or management, licensed by the state for sales or service of alcoholic beverages under the Beverage Law for consumption on the premises during the hours of operation and hours of business not prohibited by this division.

Revenue, gross means all money and other consideration received by or paid to the operator of a alcoholic beverage establishment from the retail sale of alcoholic beverages, food, and non-alcoholic beverages without regard to whether such receipts are

Alcoholic Beverages

represented by check, credit, charge account, exchange, or otherwise. Gross revenue must not include direct taxes that are passed on to and paid by the patrons (such as sales tax) or revenue generate from catering services. Gross revenue also must not include tips and gratuities paid by customers to and retained by employees, independent contractors, or the operator, for which such employees are not accountable to the operator, whether or not such gratuities are credited against wages owed by the operator to such employees. No income tax, franchise tax, tangible or intangible tax, or other tax based on the income, profits, or assets of the operator will be deducted from gross revenue. Each charge or sale on installment or credit is to be treated as a sale for the full price on the date the charge or sale is made, regardless of when the operator actually receives payment.

Sales or service means the distribution or transfer of any alcoholic beverage for a consideration, any gift of an alcoholic beverage in connection with, or as part of, a transfer of property other than an alcoholic beverage for a consideration, or the distribution or transfer of an alcoholic beverage by any establishment licensed under the Beverage Law. This definition is intended to accord with the definition in the Beverage Law.

Semi-public parking lot means any area wherein motor vehicles are parked by the public in conjunction with any business, enterprise, commercial establishment, office building, or multiple-family building.

Sexually-oriented business means a sexually-oriented business as defined in the Fort Myers Beach Obscenity, Public Nudity, and Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04.

Specified anatomical areas means specified anatomical areas as defined in the Fort Myers Beach Obscenity, Public Nudity, and Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04.

Specified sexual activity means specified sexual activity as defined in the Fort Myers Beach

Obscenity, Public Nudity, and Sexually-Oriented Business Regulation Ordinance, Ord. 96-04.

Vendor means any and all persons engaged in the activity of sales or service of any alcoholic beverage regulated by this division.

Wine means all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Sugar, flavor, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine. This definition is intended to accord with the definition in the Beverage Law.

No structure, building, establishment, or premises shall be occupied, used, or maintained for the purpose of the retail sale, service, or consumption of alcoholic beverages except in conformity with all applicable town regulations, including this chapter, and with the applicable state regulations.

Subdivision II. Hours of Business

Sec. 34-1263. Sale for off-premises consumptionHours of business during which sales or service, consumption, and occupancy are prohibited.

(a) **Where permitted.** The sale of alcoholic beverages for consumption off the premises shall be allowed in any zoning district where retail stores are a permitted use, provided that package stores must meet the additional regulations set forth in subsection (d) of this section:

—(b) **Sealed containers only.** Only alcoholic beverages in original factory-sealed containers shall be permitted to be sold for off-premises consumption.

Alcoholic Beverages

—(c) *State liquor laws.* Any establishment engaged in the sale of alcoholic beverages for consumption off-site shall be required to comply with all applicable state liquor laws.

—(d) *Location of package stores.* No package store or other establishment primarily engaged in the retail sale of liquor for consumption off-site shall be permitted closer than 500 feet to any place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or 500 feet from any other establishment primarily engaged in the sale of alcoholic beverages.

—(1) For purposes of this subsection, the distance shall be measured in a straight line from any public entrance or exit of the establishment to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or any public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.

—(2) Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.

—(3) Notwithstanding subsection (d) (1) of this section, where a package store is located in a multiple-occupancy complex which is 25,000 square feet or greater in size, or in a retail sales establishment wherein the sale of alcoholic beverages for consumption off-site is clearly incidental to other retail sales commodities, such as in a grocery store, supermarket, or drugstore, the separation requirements from any dwelling unit shall not apply.

—(4) In any planned development zoning district where the applicant is contemplating the sale of alcoholic beverages for consumption off the premises in an establishment which cannot meet the distance requirements set forth in subsection (d) of this section, the

applicant shall request a deviation from the requirements of subsection (d):

(a) *Sales or service.* The sales or service of alcoholic beverages on any licensed premises of an alcoholic beverage establishment is prohibited between the following hours:

- (1) 11:30 p.m. on Sunday and 7:00 a.m. on Monday.
- (2) 11:30 p.m. on Monday and 7:00 a.m. on Tuesday.
- (3) 11:30 p.m. on Tuesday and 7:00 a.m. on Wednesday.
- (4) 11:30 p.m. on Wednesday and 7:00 a.m. on Thursday.
- (5) 11:30 p.m. on Thursday and 7:00 a.m. on Friday.
- (6) 1:00 a.m. on Saturday and 7:00 a.m. on Saturday.
- (7) 1:00 a.m. on Sunday and 7:00 a.m. on Sunday.
- (8) On legal holidays established by state law, the hours of prohibition are the same for the days on which such holidays fall as for subsection (6), above. [On April 28, 2009, the LPA suggested that this section be removed and the provisions of subsection (b) below be the only limitations on hours of business.]

(b) *Consumption and occupation of establishments licensed for consumption on the premises.* The consumption of alcoholic beverages on and occupation of any alcoholic beverage establishment licensed for on the premises consumption is prohibited between the following hours:

- (1) 12:30 a.m. on Monday and 7:00 a.m. on Monday.
- (2) 12:30 a.m. on Tuesday and 7:00 a.m. on Tuesday.

Alcoholic Beverages

- (3) 12:30 a.m. on Wednesday and 7:00 a.m. on Wednesday.
- (4) 12:30 a.m. on Thursday and 7:00 a.m. on Thursday.
- (5) 12:30 a.m. on Friday and 7:00 a.m. on Friday.
- (6) 2:00 a.m. on Saturday and 7:00 a.m. on Saturday.
- (7) 2:00 a.m. on Sunday and 7:00 a.m. on Sunday.
- (8) On legal holidays established by state law, the hours of prohibition are the same for the days on which such holidays fall as for subsection (6), above.

Alcoholic beverage establishments are prohibited from opening or remaining open to the public for business or to allow patrons, customers, or persons other than employees and vendors to remain on such licensed premises during the hours specified above.

(c) *More limited hours of operation.* Owners or operators of alcoholic beverage establishments or other lawful businesses regulated by this division, for business or other reasons, may choose to restrict an operation's hours within the hours of business not prohibited by this division. Nothing in this division will be construed to prevent an alcoholic beverage establishment from posting hours of operation more restrictive than those provide herein.

Subdivision III. Location

Sec. 34-1264. Sale or service for on-premises consumption Alcoholic beverage establishments; prohibited locations; measuring distances; exceptions.

(a) *Approval required.* The sale or service of alcoholic beverages for consumption on the

premises shall not be permitted until such location has been approved by the town as follows:

- (1) ***Administrative approval.*** The director may administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses if the proposed use satisfies the requirements set forth in this division. When circumstances so warrant the director may determine that administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception. Such circumstances may include the previous denial of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the director shall not approve another request for consumption on the premises which could potentially violate the distance requirements. If the first building is completed within less than one year, and it can be shown the second use would not violate the prescribed distance requirements, the director may approve the second location subject to all other requirements contained in this division:
 - a. *Bars or cocktail lounges* located in commercial zoning districts which permit bars or cocktail lounges, provided the standards set forth in subsections (b)(1) and (3) of this section are met;
 - b. *Charter, party fishing boat, or cruise ship,* provided the standards of section (b)(3) are met. The COP approval is specific to the charter, party fishing boat, or cruise ship operating from a specific location and does not run with the land nor is it transferable;
 - c. *Clubs and membership organizations* located in commercial zoning districts, where permitted, provided the standards set forth in subsections (b)(2)d and (b)(3) of this section are met;
 - d. *Cocktail lounges in golf course clubs,* provided the standards set forth in subsections (b)(2)c and (b)(3) of this section are met;

Alcoholic Beverages

- ~~c. *Hotels/motels*, provided the standards set forth in subsections (b)(2)b and (b)(3) of this section are met; and~~
- ~~f. *Restaurants*, provided the standards set forth in subsections (b)(2)a and (b)(3) of this section are met.~~
- ~~(2) **Special exception:**~~
 - ~~a. A special exception for consumption on the premises shall be required for:

 - ~~1. Any establishment not covered by subsection (a)(1) of this section; or~~
 - ~~2. Any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages; except that a restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership;~~~~
 - ~~b. The burden of proof that the grant of the special exception will not have an adverse effect on surrounding properties lies with the applicant.~~
 - ~~c. A single special exception for consumption on the premises for a multiple-occupancy complex in a conventional zoning district shall be sufficient to permit consumption on the premises in every restaurant which exists or may be established within the multiple-occupancy complex.~~
- ~~(3) **Planned developments:**~~
 - ~~a. No administrative approval is necessary where an individual establishment or other facility proposing consumption on the premises is explicitly designated on the master concept plan and is included on the approved schedule of uses.~~
 - ~~b. If consumption on the premises is shown as a permitted use on the approved schedule of uses for a multiple-occupancy complex, no administrative approval for consumption on the premises shall be required for restaurants within the multiple-occupancy complex.~~
- ~~c. Consumption on the premises for other uses within planned developments require administrative approval or a special exception.~~
- ~~(b) **Location; parking:**~~
- ~~(1) **Prohibited locations:**~~
 - ~~a. Except as may be exempted in subsections (a)(1) or (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall be located within 500 feet of:

 - ~~1. A place of worship, religious facility, school (noncommercial), day care center (child), or park;~~
 - ~~2. A dwelling unit under separate ownership, except when approved as part of a planned development; or~~
 - ~~3. Another establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises, excluding those uses listed under subsection (b)(2) of this section.~~~~

~~Distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), dwelling unit, or park, or to the closest public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.~~
 - ~~b. Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship, religious facility, school (noncommercial), day care center (child), park or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.~~
- ~~(2) **Exceptions to location standards.** Exceptions to location standards are as follows:

 - ~~a. *Restaurants*, provided:~~~~

Alcoholic Beverages

- ~~1. The restaurant is in full compliance with state requirements;~~
 - ~~2. The restaurant serves cooked, full-course meals, prepared daily on the premises; and~~
 - ~~3. Only a service bar is used and the sale or service of alcoholic beverages is only to patrons ordering meals, or, if the restaurant contains a cocktail lounge for patrons waiting to be seated at dining tables, the lounge shall be located so that there is no indication from the outside of the structure that the cocktail lounge is within the building.~~
 - ~~4. The other requirements of § 34-1264(k) shall be met.~~
- ~~b. Hotels/motels:~~
- ~~1. The hotel/motel contains at least 100 guest rooms under the same roof and that bars or cocktail lounges are located within the hotel or motel and under the same roof; and~~
 - ~~2. The exterior of the building must not have storefronts or give the appearance of commercial or mercantile activity visible from the street.~~
- ~~If the use contains windows visible from the street, the windows shall be of fixed, obscure glass. Access to the cocktail lounge or bar must be through the lobby. Additional entrances are not permitted unless the additional entrance or door opens into an enclosed courtyard or patio. The additional entrance may not be visible from the street. A fire door or exit shall be permitted, provided that the door or exit is equipped with panic type hardware and is maintained in a locked position except in an emergency.~~
- ~~c. Golf course clubhouses, provided that:~~
- ~~1. The golf course consists of at least nine holes a clubhouse, locker rooms, and attendant golf facilities, and comprises in all at least 35 acres of land.~~
 - ~~2. Failure of such club to maintain the golf course, clubhouse, and golf facilities shall automatically terminate the privilege of the cocktail lounge and sale of beer from the refreshment stands.~~
- ~~d. Membership organizations, provided that:~~
- ~~1. such club or organization conforms to all the requirements of F.S. ch. 561 and other applicable state laws, and~~
 - ~~2. there are no signs or other indications visible from the exterior of the clubhouse, building, or structure that alcoholic beverages are served.~~
- ~~(3) Parking. Restaurants providing alcoholic beverages for consumption on the premises must comply with the parking requirements set forth in § 34-2020(d)(2). Any bar or cocktail lounge must provide parking in accordance with § 34-2020(d)(2). All other uses must meet the parking requirements of the principal use.~~
- ~~(c) Procedure for approval:~~
- ~~(1) Administrative approval:~~
- ~~a. Application. An applicant for a consumption on the premises permit shall submit the following information on a form provided by the town:~~
- ~~1. The name, address, and telephone number of the applicant;~~
 - ~~2. The name, address, and telephone number of the owner of the premises, if not the applicant;~~
 - ~~3. A notarized authorization from the property owner to apply for the permit;~~
 - ~~4. Location by STRAP and street address;~~
 - ~~5. Type of state liquor license being requested;~~
 - ~~6. A site plan, drawn to scale, showing:

 - ~~i. The property in question, including all buildings on the property and adjacent property;~~
 - ~~ii. Entrances to and exits from the building to be used by the public;~~
 - ~~iii. A parking plan, including entrances and exits;~~~~

Alcoholic Beverages

- iv. The floor area of the building and proposed seating capacity. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the lounge shall be shown in addition to the restaurant seating area.
- 7. A town map marked to indicate all of the property within 500 feet of the building to be used for consumption on the premises.
- 8. An notarized affidavit executed by the applicant indicating that no place of worship, religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building to be used.
- b. *Findings by director.* Prior to permit approval, the director shall conclude that all applicable standards have been met. In addition, the director shall make the following findings of fact:
 - 1. There will be no apparent deleterious effect upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises.
 - 2. The premises are suitable in regard to their location, site characteristics, and intended purpose. Lighting must be shuttered and shielded from surrounding properties.
- (2) *Special exception.*
 - a. Applications for special exceptions shall be submitted on forms supplied by the town and shall contain the same information as required for administrative approval.
 - b. Advertisements and public hearings shall be conducted in accordance with the requirements set forth in article II of this chapter.
- (d) *Temporary one-day permit.*
 - (1) *Intent, applicability.* It is the intent of this subsection to require that nonprofit and for-profit organizations and establishments in the town obtain a one-day temporary alcoholic beverage permit for the sale of alcoholic beverages at the specific location where an event is held. This subsection will pertain to but not necessarily be limited to the following uses:
 - a. Grand openings or open houses at residential or commercial developments;
 - b. Special outdoor holiday or celebration events at bars and restaurants;
 - c. Weddings and other special occasions at clubhouses;
 - d. Political rallies or events;
 - e. Block parties; and
 - f. Carnivals.
 - (2) Only twelve temporary alcoholic beverage permits may be issued per year to a specific location. If more than twelve permits are sought per year for a specific location, then the location must obtain a permanent alcoholic beverage special exception. If the event for which the temporary alcoholic beverage permit is sought continues for longer than one day, the applicant may petition the director for an extended permit. A temporary alcoholic beverage permit may not be issued for more than three days.
 - (3) *Procedure for approval.*
 - a. Any owner, lessee, or tenant seeking approval for consumption on the premises for a temporary alcoholic beverage permit, must submit a written request to the director. The written request must include:
 - 1. The name and address of the applicant;
 - 2. A general description of the exact site where alcoholic beverages are to be sold and consumed;
 - 3. The type of alcoholic beverages to be sold and consumed; and
 - 4. A fee in accordance with the adopted fee schedule.
 - b. The director will make a final decision within ten working days. The decision will be in the form of approval, approval with conditions or denial. The director may forward the request to other appropriate agencies for comment.

Alcoholic Beverages

- ~~c. The town council will review all requests for temporary alcoholic beverage permits where an event will run longer than three days. Under no circumstances will a temporary alcoholic beverage permit be issued for more than ten days.~~
- ~~(c) **Expiration of approval.** After the following time periods, the administrative or special exception approval of a location for the sale and consumption of alcoholic beverages on the premises granted in accordance with this section shall expire, and become null and void:~~
- ~~(1) In the case of an existing structure, the approval shall expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this subsection, the term "operation" shall be defined as the sale of alcoholic beverages in the normal course of business.~~
- ~~(2) In the case of a new structure, the approval shall expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. The director may grant one extension of up to six months if construction is substantially complete.~~
- ~~(f) **Transfer of permit.** Alcoholic beverage permits, as noted in subsection 34-1264(i), issued by virtue of this section are a privilege running with the land. Sale of the real property shall automatically vest the purchaser with all rights and obligations originally granted to or imposed on the applicant. Such privilege may not be separated from the fee simple interest in the realty.~~
- ~~(g) **Expansion of area designated for permit.** The area designated for an alcoholic beverage permit cannot be expanded without filing a new application for an alcoholic beverage permit in accordance with the requirements contained in this chapter. The new application must cover both the existing designated area as well as the proposed expanded area. All areas approved must be under the same alcoholic beverage permit and subject to uniform rules and regulations.~~
- ~~(h) **Nonconforming establishments.**~~
- ~~(1) **Expansion.** A legally existing establishment engaged in the sale or service of alcoholic beverages which is made nonconforming by reason of new regulations contained in this chapter shall not be expanded without a special exception. The term "expansion," as used in this subsection, shall include the enlargement of space for such use and uses incidental thereto, the expansion of a beer and wine bar to include intoxicating liquor, as that term is defined by the Florida Statutes, and the expansion of a bar use to a nightclub use. Nothing in this subsection may be construed as an attempt to modify any prohibition or diminish any requirement of the state.~~
- ~~(2) **Abandonment.** An establishment engaged in the sale or service of alcoholic beverages may thereafter become a nonconforming use due to a change in regulations, as provided in division 3 of article V of this chapter. Nonconforming uses may continue until there is an abandonment of the permitted location for a continuous nine-month period. For purposes of this subsection, the term "abandonment" shall mean failure to use the location for consumption on the premises purposes as authorized by the special exception, administrative approval, or other approval. Once a nonconforming use is abandoned, it cannot be reestablished unless it conforms to the requirements of this chapter and new permits are issued.~~
- ~~(i) **Revocation of permit or approval.**~~
- ~~(1) The town council has the authority to revoke an alcoholic beverage special exception, administrative approval, or other approval upon any of the following grounds:~~
- ~~a. A determination that an application for special exception or administrative approval contains knowingly false or misleading information.~~
- ~~b. Violation by the permit holder of any provision of this chapter, or violation of any state statute which results in the revocation of the permit holder's state alcoholic beverage license by the state~~

Alcoholic Beverages

- alcoholic beverage license board or any successor regulatory authority:
- ~~c. Repeated violation of any town ordinance at the location within the 12-month period preceding the revocation hearing.~~
 - ~~d. Failure to renew a state liquor license, or written declaration of abandonment by the tenant and owner of the premises if under lease, or by the owner himself if not under lease.~~
 - ~~e. Abandonment of the premises. An establishment which continually maintains (renews) its state liquor license, even though it has suspended active business with the public, shall not be deemed to have been abandoned for purposes of this subsection.~~
 - ~~f. Violation by the permit holder of any condition imposed upon the issuance of the special exception or administrative approval.~~
 - ~~g. Violation of any of the minimum standards of the special exception.~~
- ~~(2) Prior to revoking an administrative approval, special exception, or other approval for alcoholic beverages, the town council shall conduct a public hearing at which the permit holder may appear and present evidence and testimony concerning the proposed revocation. At the hearing, the town council may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder shall be notified of the grounds upon which revocation is sought prior to any hearing, and shall be given notice of the time and place of the hearing in the same manner as set forth in article II of this chapter.~~
 - ~~(3) When an alcoholic beverage permit is revoked in accordance with the terms of this subsection, the town may not consider a petition requesting an alcoholic beverage permit on the property for a period of 12 months from the date of final action on the revocation.~~
 - ~~(4) Upon written demand of the town council, any owner or operator of an establishment with a COP license, must make, under oath, a statement itemizing the percentage of gross receipts that are from the sale of alcoholic beverages. Failure to comply with such demand within 60 days of the date of demand shall be grounds for revocation of the special exception, administrative approval, or other approval.~~
- ~~(j) Appeals. All appeals of decisions by the director shall be in accordance with procedures set forth in § 34-86 for appeals of administrative decisions.~~
 - ~~(k) Alcoholic beverages in restaurants. The sale of alcoholic beverages for on-premises consumption in restaurants (see § 34-1264(b)(2)) must conform to the following regulations:~~
 - ~~(1) The sale of alcoholic beverages must be incidental to the sale of food, and restaurants permitted to serve alcohol shall provide that food service facilities will remain open serving appropriate food items on the menu at all times coincident with the sale of alcoholic beverages.~~
 - ~~(2) The sale of alcoholic beverages shall be permitted only when it accounts for no more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period.~~
 - ~~(3) Restaurants selling alcoholic beverages shall keep separate books and records reflecting the gross sales of food and nonalcoholic beverages and the gross sales of alcoholic beverages for each month. The failure to keep the books and records required herein shall be a violation of this code.~~
 - ~~(4) The town manager or designee may, during normal working hours, request to inspect and audit the books and records of the business from which alcoholic beverages sales are made wholly for the purpose of verifying that the gross sales of alcoholic beverages are no more than 49% of the gross sales of food and all beverages during any continuous twelve-month period. Refusal of an owner or operator of such business to allow said inspection shall be a violation of this code. Should the audit reveal that this requirement is not being met,~~

Alcoholic Beverages

the town manager shall initiate enforcement proceedings for a violation of this code.

- ~~(5) For any restaurant which has been selling alcoholic beverages for less than twelve months, the provisions of this section shall be interpreted and applied with respect to said lesser period of time.~~
- ~~(6) These regulations may be enforced through the normal code enforcement procedures of this code (for example, § 1-5, or article V of ch.2). In addition to these procedures, violations of these regulations may be restricted by injunction initiated by the Town of Fort Myers Beach, by any citizen thereof, or by any person affected by the violation of such regulations:~~

(a) Prohibited locations. Alcoholic beverage establishments are prohibited within 500 feet of:

- (1) A school (noncommercial);
- (2) A place of worship, religious facility, day care center (child), or park;
- (3) A dwelling unit under separate ownership;
or
- (4) Another alcoholic beverage establishment.

(b) Measuring distances. Distances must be measured on a straight horizontal line, without regard to intervening structures, objects, or political boundaries, from the nearest point on the perimeter boundary line of the parcel of land on which the alcoholic beverage establishment is located, to the nearest point on the perimeter boundary line of the parcel of land on which the prohibiting use is located.

(c) Exceptions.

- (1) **Bona fide restaurants**, provided:
 - a. The bona fide restaurant is in full compliance with the requirements of the state division of hotels and restaurants of the department of business and professional regulation; and
 - b. The bona fide restaurant serves full course meals at all times during its hours of operation; and
 - c. If the licensed premises includes a bar, only a restaurant bar is used and the sales

or service of alcoholic beverages is only to patrons ordering meals or waiting to be seated at tables, and the restaurant bar is located so that there is no indication from the outside of the building and any associated structures that alcoholic beverages are available on the premises. The restaurant bar must be directly connected with the dining room and must be only a service bar for patrons of such restaurant. Stools are permitted at the restaurant bar and alcoholic beverages must be sold by the drink only. A package store or the sale of package goods from a restaurant bar is prohibited on the licensed premises. The sale of alcoholic beverages is prohibited when the restaurant is not actually engaged in and open to the public for the service of full course meals; and

- d. The bona fide restaurant continues to comply with all applicable laws, regulations, and other definitional and regulatory requirements of this code.
- (2) **Hotel/motels and resorts**, provided:
 - a. The hotel/motel or resort is not located within 500 feet of any noncommercial school.
 - b. The hotel/motel or resort contains at least [Option 1]: 100 [On February 10, 2008, the LPA suggested additional Option 2]: 50 units and any alcoholic beverage establishment(s) are under the same roof or on the same premises under unified control; and
 - c. If the licensed premises includes a bar, only a hotel bar is used and the sales or service of alcoholic beverages is only to patrons of the hotel/motel or resort, and the hotel bar is located so that there is no indication from the outside of the building and any associated structures that alcoholic beverages are available on the premises. The hotel bar must be directly connected with the hotel/motel or resort and must be only a service bar for patrons of such hotel/motel or resort. Stools are permitted at the hotel bar and alcoholic beverages must be sold by the drink only.

Alcoholic Beverages

- A package store or the sale of package goods from a hotel bar is prohibited on the licensed premises. The sale of alcoholic beverages is prohibited when the hotel/motel or resort is not actually operating and open to the public as a hotel/motel or resort; and
- d. The hotel/motel or resort and all alcoholic beverage establishment(s) continue to comply with all applicable laws, regulations, and other definitional and regulatory requirements of this code.
- (3) **Membership organizations**, provided:
- a. The membership organization is not located within 500 feet of any noncommercial school;
- b. The sales or service of alcoholic beverages is only to members and member-accompanied guests of the membership organization, and there is no indication from the outside of the building and any associated structures that alcoholic beverages are served on the premises; and
- c. The membership organization continues to comply with all applicable laws, regulations, and other definitional and regulatory requirements of this code.
- (4) **Nonconforming uses**. Any alcoholic beverage establishment lawfully operating on licensed premises prior to July 1, 1999 is exempt from subsection (a) of this section, but is subject to the provisions for nonconforming uses in this code, as long as it continues to comply with all applicable laws, regulations, and other definitional and regulatory requirements of this code. [See LDC Sec. 34-3241 to 3246].
- (5) **Other; town council approval required**.
- a. Distance from schools. Except for a bona fide restaurant, a resolution passed by the town council in conjunction with a zoning decision approving the location of an alcoholic beverage establishment within 500 feet of a parcel of land containing a noncommercial school will be required prior to issuance of a use permit. In addition to the considerations
- and findings required for rezonings by this chapter, prior to approval the local planning agency will review and make recommendations as to whether, and the town council must find that, the location promotes the public health, safety, and general welfare of the community in accordance with § 562.45 of the Beverage Law.
- b. Distance prohibition from all other uses. Except for a bona fide restaurant, hotel/motel or resort, membership organization, or lawfully existing nonconforming use, a special exception for location of an alcoholic beverage establishment within 500 feet of a parcel of land containing a place of worship, religious facility, day care center (child), park, dwelling unit under separate ownership, or another alcoholic beverage establishment is required prior to issuance of a use permit.
- The proceedings for such special approval must be in conformance with the provisions of F.S. § 166.041(3)(c). These restrictions will not be construed to prohibit the issuance of special event permits as provided for in F.S. § 561.422 of the Beverage Law, this code, and all other applicable regulations.
- ~~Secs. 34-1265--34-1290. Reserved. Bottle Clubs.~~**
- ~~[Options]~~**
- ~~[1] Bottle clubs are prohibited uses in any zoning district. [The LPA recommends this option.]~~**
- ~~[2] Prior to opening any bottle club, the owner of the parcel of land on which the proposed bottle club plans to operate must apply for approval of the use through the special exception process provided in this chapter. [The LPA does not recommend this option.]~~**
- ~~[3] Bottle clubs are subject to all regulations and restrictions in this division pertaining to cocktail bars. [The LPA does not recommend this option.]~~**

Alcoholic Beverages

Sec. 34-1266. Consumption, possession in public areas.

(a) General prohibition in public areas.

Consuming, using, or selling any alcoholic beverage, or manually possessing any unsealed or open container of any kind that contains any alcoholic beverage while on or within any public area, or while on or within any vehicle located in a public area is prohibited. It is further prohibited for any intoxicated person to enter or remain in any public area.

(b) Exceptions.

(1) A person under a written contract with the town to allow sales or service of beer and wine may distribute, and persons of age not prohibited by the patron age provisions of this division of the code may consume, such permitted beer and wine only within the licensed premises of events designated by the town without violating the provisions of this division.

(2) The consumption or possession of an alcoholic beverage in an open container, in a public area specifically authorized and approved by the town council for outdoor seating or a special event pursuant to this code.

(3) Notwithstanding any other provision of law, an alcoholic beverage establishment licensed to sell wine on the premises may permit a patron to remove one unsealed bottle of wine for consumption off the premises if the patron has purchased a full course meal and consumed a portion of the bottle of wine with such meal on the licensed premises. A partially consumed bottle of wine that is to be removed from the licensed premises must be securely resealed by the licensee or its employee before removal from the licensed premises. The partially consumed bottle of wine must be placed in a bag or other container that is secured in a manner such that it is visibly apparent if the bag or other container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and full course meal must be

provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk or glove compartment capable of being locked.

(c) Resolution procedure, conditions.

Notwithstanding the prohibition in subsection (a) of this section, the town council may approve, by resolution, the sales or service and consumption on the premises of alcoholic beverages at any recreational facility for a one-time event. The entity making application for the resolution must secure a temporary permit or license authorized by § 561.422 of the Beverage Law. All beverages so approved must not be served in glass or other breakable containers and the director may place further restrictions or limitations on the special event.

SECTION 1267. Alcoholic beverage establishments; permitted locations; approval process.

(a) Permitted locations. The following types of alcoholic beverage establishments may be permitted to operate in certain zoning districts classified according to the use group(s) and sub-group(s) employed by Tables 34-1 and 34-2 of this chapter, upon proper approval from the town and with continuous compliance to all applicable laws, regulations, and other definitional and regulatory requirements of this code.

(1) Bona fide restaurant. A bona fide restaurant is allowed in any zoning district permitting the retail use group with the open sub-group, provided the bona fide restaurant complies with the distance requirements for prohibited locations.

(2) Cocktail bar. A cocktail bar is allowed in any zoning district permitting the retail use group with the open sub-group, provided the cocktail bar complies with the distance requirements for prohibited locations.

(3) Excursion or pleasure vessels. Owners of excursion or pleasure vessels, who are

Alcoholic Beverages

licensed under the Beverage Law to sell alcoholic beverages for consumption on the vessel, and their employees, may sell beer, wine, and liquor thereon, provided that such vessels [Option 1: have the minimum restaurant facilities, accommodations, and seating capacity required for a restaurant.]

[Option 2: have the minimum restaurant facilities, accommodations, and seating capacity required for a bona fide restaurant.]

[Option 3: prohibit the sales of alcoholic beverages for consumption on premises whenever the sale of alcoholic beverages accounts for more than 49 percent of the combined gross revenues attributable to the sale of food and non-alcoholic beverages in any 12 month period.]

[Option 4: prohibit the sales of alcoholic beverages for consumption on premises whenever the sale of alcoholic beverages accounts for more than 74 percent of the combined gross revenues attributable to the sale of food and non-alcoholic beverages in any 12 month period.]

[Option 5: prohibit the sales of alcoholic beverages for consumption on premises whenever the sale of alcoholic beverages accounts for more than 89 percent of the combined gross revenues attributable to the sale of food and non-alcoholic beverages in any 12 month period.]

[The LPA recommended on April 28, 2009 that an additional option (Option 1) be added to eliminate the "bona fide" requirement for restaurants]

Such vessels, however, are prohibited from operating in any canal in the town surrounded entirely by residentially zoned property but may be permitted to cruise and operate in the open waters within the municipal limits of the town, subject to regulations of any other governmental entity

having jurisdiction over such waterway(s). The sales or service of alcoholic beverages or food on such boats is allowed only while such boats are underway.

- (4) **Hotel bar.** A hotel bar is allowed in any zoning district permitting the residential or lodging use groups with the open sub-group, provided the hotel bar complies with the distance requirements for prohibited locations.
- (5) **Membership organization.** A membership organization is allowed to sell or serve alcoholic beverages for consumption on the premises in any zoning district permitting the retail use group with the limited and open sub-groups, provided the membership organization complies with the distance requirements for prohibited locations.
- (6) **Outdoor seating area.** An outdoor seating area is allowable in any zoning district permitting the retail use group with the open sub-groups, provided such outdoor seating complies with the distance requirements for prohibited locations. Before a new outdoor seating area may commence operations, the same must be approved through the special exception process provided by this chapter. [On April 28, 2009, the LPA deferred recommendation on this provision to further discussion at a subsequent meeting].
- (7) **Package store.** A package store is allowed in any zoning district permitting the retail use group with the open sub-groups, provided the package store complies with the distance requirements for prohibited locations.
- (8) **Restaurant bar.** A restaurant bar is allowed in any zoning district permitting retail use groups with the open sub-group, provided the restaurant bar complies with the distance requirements for prohibited locations.
- (9) **Nightclub.** A nightclub is allowable in any zoning district permitting the retail use group with the open sub-group, provided the nightclub complies with the distance requirements for prohibited locations. Before a nightclub may commence operations, the same must be approved through the special exception process provided by this chapter.

Alcoholic Beverages

[The LPA does not recommend this additional use.]

(a) **Approval required.** A vendor is prohibited from engaging in the sales or service of alcoholic beverages unless and until such time as the vendor has secured a license from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. No alcoholic beverage establishment may open or operate and the town will not process any application to the state for an alcoholic beverage license until the use has been approved by the town through one of the following processes.

(1) **Administrative review.** The director may administratively approve an alcoholic beverage establishment if the proposed use complies with the requirements of this division, current zoning, all supplemental regulations, and all other applicable regulations. However, the director may, in her sole judgment, require the applicant to apply for a special exception rather than an administrative review. When the director has approved an alcoholic beverage establishment on premises where the building proposed to house the use has not been constructed, the director will not approve through the administrative review process another request that could potentially violate the location requirements of this division. Prior to administrative approval, the director must make the following findings of fact:

- a. There will be no apparent deleterious effect on surrounding property owners and the immediate neighborhood as represented by property owners within 500 feet of the premises, measured in accordance with this division; and
- b. The premises are suitable in regard to their location, site characteristics, and intended purpose.

Prior to administrative approval, the director must conclude that the application and premises are in compliance with all applicable standards and all applicable provisions of this code.

- (2) **Special exception.** An approved special exception is required for an alcoholic beverage establishment that may not be approved through the administrative review process or that proposes to provide outdoor seating areas for consumption on the premises. [On April 28, 2009, the LPA deferred recommendation on this provision to further discussion at a subsequent meeting.] The burden of proof that the approval of the special exception will not have a deleterious effect on the surrounding properties is on the applicant. A single special exception for consumption on the premises for a multiple-occupancy complex is sufficient to permit consumption on the premises in every bona fide restaurant that operates within the multiple-occupancy complex. Otherwise, request for special exceptions will be administered and decided in conformance with the requirements for special exceptions provided in this chapter.
- (3) **Planned development.** Unless explicitly designated on the master concept plan and included in the schedule of uses, alcoholic beverage establishment(s) may be added to a planned development by administrative or special exception approval, as provided in this code.
- (4) **Variance.** Requests for variances or deviations from the requirements of this section will be administered and decided in conformance with the requirements for variances and deviations that are provided in this chapter.
- (5) **Temporary permit.** An approved temporary permit is required for the sale or service of alcoholic beverages by non-profit organizations and for-profit establishments for any special event or at other than regularly licensed premises. A completed application for a temporary permit must be received by the director no later than 21 calendar days in advance of the beginning date of the event. The director will approve, approve with conditions, or deny the application within ten (10) working days, or require town council review and approval.

Alcoholic Beverages

The town council will review all requests for temporary permits for events proposed to run longer than three (3) days. Under no circumstances will a temporary permit be issued for more than ten (10) days.

No more than twelve (12) temporary alcoholic beverage permits will be issued each calendar year for a specific location. If more than twelve (12) temporary alcoholic beverage permits are proposed or requested, then the applicant must request appropriate permanent approvals.

- (6) **Bona fide restaurant determination.** Any alcoholic beverage establishment may apply for an administrative determination from the town that the establishment qualifies as a bona fide restaurant for purposes of this division. No establishment is required to obtain a determination, and alcoholic beverage establishments must continue to comply with all provisions of this division in order to maintain their exceptions. In addition to the application information required by this section, an applicant for a determination must provide a copy of a valid business tax receipt for the alcoholic beverage establishment on the property that is the subject of the application.
- (b) **Application.** An application for approval of an alcoholic beverage establishment or bona fide restaurant determination must be submitted to the director on forms supplied by the town and must provide the following information:
- (1) The name, address, and telephone number of the applicant operator.
 - (2) The name, address, and telephone number of the owner of the premises, if different from the applicant operator.
 - (3) A notarized authorization from the owner authorizing the applicant operator to apply for the permit.
 - (4) Location of the subject premises by STRAP and street address.
 - (5) Type of state alcoholic beverage license for the premises.
 - (6) Copy of the valid certificate of occupancy for the building that is the subject of the application.
 - (7) A site plan, drawn to scale (minimum one-quarter (1/4) inch equals one (1) foot) indicating the layout and dimensions of the premises, private and public entrances to and exits from the building, locations of all tables, counter-tops, and chairs (including the number of tables and chairs provided), customer service areas, gross floor area; and kitchen facilities with sufficient detail to establish that it is sufficient to serve full course meals to the customer service areas of the establishment, if applicable.
 - (8) A parking plan, drawn to scale, indicating individual parking spaces, total number of spaces, aisles, entrances, and exits, and compliance with all applicable parking requirements of this code. [On April 28, 2009, the LPA recommended this addition.]
 - (9) A copy of the sample menu of food items being offered and served or to be offered and served, if applicable.
 - (10) A town map marked to indicate all the property within 500 feet of the parcel of land on which the premises of the alcoholic beverage establishment will be located.
 - (11) A notarized affidavit executed by the applicant indicating that no place of worship, religious facilities, child day care center, noncommercial schools, dwelling units, or parks are located within 500 feet of the parcel of land on which the premises of the alcoholic beverage establishment will be located; or an accompanying application for a variance.
 - (12) Copies of any approvals, licenses, or other permits required from any other governmental agency necessary to operate the alcoholic beverage establishment.
 - (13) Any additional information relevant to determination of compliance with the provisions of this division.

The town may charge a fee in accordance with the schedule of fees adopted by resolution of town council for the review and processing of an

Alcoholic Beverages

application for approval. In the absence of a resolution by the town council, the director will charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.

(c) **Expiration of approval.** An administrative or special exception approval will expire and become null and void unless operation of the alcoholic beverage establishment has commenced as follows:

- (1) **Existing structure.** Within six (6) months from the date of approval.
- (2) **New structure.** Within twelve (12) months from the date of approval. The director may grant one (1) extension of up to six (6) months if construction is substantially complete and proceeding to completion with due diligence.

(d) **Transfer of approved permit or approval.** Approved alcoholic beverage establishment permits are a privilege running with the land. Sale of real property will automatically vest the purchaser with all rights and obligations originally granted to or imposed on the permittee. Such privilege must not be separated from the fee interest in the real property.

(e) **Expansion of premises.** The premises designated for an alcoholic beverage establishment must not be expanded prior to approval of an application in accordance with the requirements of this chapter. The new application must cover both the existing designated premises as well as the proposed expanded premises. All approved premises must be under the same alcoholic beverage permit and subject to uniform rules and regulations. Nothing in this division may be construed as an attempt to modify any prohibition or diminish any requirement of the state.

(f) **Revocation of permit or approval.**

- (1) **Grounds.** The town council may revoke an alcoholic beverage permit or approval upon any of the following grounds:

- a. Determination that an application for approval contains knowingly false or misleading information.
 - b. Violation by the licensee of any provision of this code, any town ordinance, or any state statute that results in the revocation of the licensee's state alcoholic beverage license.
 - c. Repeated violation by the licensee of any provision of this code, or any town ordinance within the twelve (12) month period preceding the revocation hearing.
 - d. Failure to renew a state alcoholic beverage license, written declaration of abandonment, or actual abandonment of the premises by the licensee. An alcoholic beverage establishment that continually maintains and renews its state liquor license, even though it has suspended operation, will not be deemed to have been abandoned for the purposes of this section.
 - e. Violation by the licensee of any condition imposed upon the issuance of the permit or approval.
 - f. Failure to comply with the reporting requirements of this division for percentage of gross revenues from the sales or service of alcoholic beverages.
 - g. Violation of any of the minimum standards for a special exception.
- (2) **Procedure.** Prior to revoking a permit or approval, the town council will conduct a public hearing at which the licensee may appear and present evidence and testimony concerning the subject matter of the revocation action. Prior to the hearing, the licensee will be notified of the grounds upon which revocation is sought and the time and place of the hearing in the same manner as set forth in article II of this chapter. At the conclusion of the hearing, the town council may revoke the permit if a violation described in this section is established by a preponderance of the evidence.
 - (3) **Subsequent permit or approval.** When a permit or approval is revoked in accordance with the provisions of this section, the town

Alcoholic Beverages

will not consider a petition [Option 1:] from the same operator, owner, or permittee, or [Option 2:] for the same premises, requesting a permit or approval for an alcoholic beverage establishment for twelve (12) months from the date of the revocation decision of town council. If subsequent to revocation, the Town finds that the basis for the revocation has been corrected or abated, the former operator, owner, permittee, or premises may be granted a permit no sooner than ninety (90) days from the effective date of the revocation. [On April 28, 2009, the LPA suggested this additional recommendation.]

(g) Appeals. Except as otherwise provide in this division, all appeals of decisions by the director must be in accordance with procedures provided in § 34-86 for appeals of administrative decisions.

Subdivision IV. Entertainment and Conduct

Sec. 34-1268. Hours music or disturbing noises prohibited.

(a) Music, singing, and other forms of entertainment, whether amplified or not, may be permitted at any time during the hours of operation of an alcoholic beverage establishment. In outdoor seating areas, however, music, singing, and other forms of entertainment are prohibited between the following hours:

(1) 10:00 p.m. on Monday and 12:00 noon on Tuesday.

(2) 10:00 p.m. on Tuesday and 12:00 noon on Wednesday.

(3) 10:00 p.m. on Wednesday and 12:00 noon on Thursday.

(4) 10:00 p.m. on Thursday and 12:00 noon on Friday.

(5) 10:00 p.m. on Friday and 12:00 noon on Saturday.

(6) 10:00 p.m. on Saturday and 11:00 a.m. on Sunday.

(7) 10:00 p.m. on Sunday and 12:00 noon on Monday. [On April 28, 2009, the LPA suggested that all weekday hours (Sunday through Thursday) be extended to 10:00 p.m.]

(8) On legal holidays established by state law, the hours of prohibition are the same as subsection (6), above.

(b) All music, singing, and other forms of entertainment during the hours not otherwise prohibited in this section must comply at all times with Ordinance 96-24. [The Town may wish to revise the Noise Ordinance to be more effective for enforcement. The LPA recommended and the Town Manager agreed to have the Consultant provide a draft proposal for their consideration in conjunction with the COP Ordinance. The Consultant provided the LPA a proposed draft for their consideration on April 28, 2009.]

Sec. 34-1269. Nudity, specified sexual activities, and exposure of specified anatomical areas prohibited.

(a) As provided in Ordinance 09-XX, Nudity, specified sexual activities, exposure of specified anatomical areas, and exposure of any device or covering intended to give the appearance of or simulate specified anatomical areas to public view by any person, as those terms are defined and employed in Ordinance 09-XX, are prohibited on the premises of any alcoholic beverage establishment.

(b) Owners, operators, and vendors of alcoholic beverage establishments who permit persons to engage in conduct in violation of this prohibition may be fined in accordance with the provisions of § 1-5 of this code.

(c) It is not a violation of this division for a mother to breast-feed her infant child.

Alcoholic Beverages

Sec. 34-1270. Sale of food prerequisite to consumption on the premises of alcoholic beverages for bona fide restaurants and certain other alcoholic beverage establishments.

The sales and service of alcoholic beverages for consumption on the premises may be permitted only as an incidental use to the sale of food and nonalcoholic beverages for consumption on the premises, and bona fide restaurants and other alcoholic beverage establishments required to offer and serve food as a prerequisite to sales and service of alcoholic beverages must offer and serve full course meals on the menu at all times coincident with the sales or service of alcoholic beverages.

Sec. 34-1271. Ratio of alcoholic beverage to food sales; gross revenues; record keeping and reporting.

In all bona fide restaurants and other alcoholic beverage establishments where the sales or service of alcoholic beverages is incidental to the sales or service of food and nonalcoholic beverages, the following requirements and restrictions apply:

(a) Ratio of alcoholic beverage to food sales.

The sale of alcoholic beverages for consumption on the premises is prohibited whenever the sale of alcoholic beverages accounts for more than 49 percent of the combined gross revenues attributable to the sale of food and non-alcoholic beverages in any 12-month period.

(b) Record keeping. The owner or operator of an alcoholic beverage establishment must maintain separate books and records reflecting the gross revenues of food and non-alcoholic beverages and the gross revenues of alcoholic beverages for each month. The required books and records must be maintained on the premises where the alcoholic beverage establishment is located, or other designated place approved in writing by the town, and must be available for inspection by the town during normal business hours. The required books and records must be legible, clear, and available in the English language. Books and records maintained in digital or electronic formats must be

promptly provided to the director in printed form at the sole expense of the operator of the alcoholic beverage establishment.

(c) The director or designee may, during normal working hours, request to inspect and audit the required books and records of the alcoholic beverage establishment maintained in accordance with this section wholly for the purpose of verifying that the combined gross revenues of the alcoholic beverage establishment are not less than 51 percent attributable to the sale of food and non-alcoholic beverages during any 12-month period to assure that the alcoholic beverage establishment continuously complies with the requirements of this division. The failure to keep the books and records required by this section or a refusal of an owner or operator of such alcoholic beverage establishment to allow such inspection will be grounds for the town council to revoke the use permit of the alcoholic beverage establishment and notify the state that prior certification of the licensed premises for the sale of alcoholic beverages is no longer valid.

(d) On an annual basis beginning October 1, 2009, and each year thereafter, the owner or operator of an alcoholic beverage establishment in which the sales and service of alcoholic beverages are incidental to the sales and service of food and nonalcoholic beverages must file with the town an annual report and notarized affidavit attesting to the fact that the combined annual gross revenues of such alcoholic beverage establishment are not less than 51 percent attributable to the sales and service of food and nonalcoholic beverages during the immediately preceding 12-month period.

(e) Should an inspection of the required books and records or review of the required annual report reveal that the combined annual gross revenues of such alcoholic beverage establishment are less than 51 percent attributable to the sale of food and non-alcoholic beverages during any 12-month period, the director will notify the owner or operator of the alcoholic beverage establishment that the property upon which the alcoholic beverage establishment operates is in violation of the code and notify the state that the town's prior certification of the licensed

Alcoholic Beverages

premises for the sale of alcoholic beverages is no longer valid. The sales or service of alcoholic beverages by the owner or operator of such business is prohibited for a period of one year from the date of such notice.

(f) The provisions of this section will be interpreted and applied with respect to a lesser period of time for any alcoholic beverage establishment that has been in operation for a period of time less than 12 months.

(g) The owner or operator of an alcoholic beverage establishment may appeal the town's determination of a violation of the gross sales percentage requirement of this division only to the special magistrate for code enforcement, pursuant to the chapter 2, article V, division 2 of this code. While the special magistrate hearing is pending, the town may continue to enforce the provisions of this section by all legal means. After hearing evidence presented by both the town and the owner or operator of an alcoholic beverage establishment, the special magistrate is limited to a determination of whether or not the alcoholic beverage establishment complies with the gross sales percentage requirement in accordance with this division.

Sec. 34-1272. Package stores.

(a) *Consumption on the premises prohibited.* Consumption of any alcoholic beverage is prohibited on or within any parcel of land that is licensed to sell alcoholic beverages for consumption off the premises. The sealed package must not be broken, and the contents must not be consumed in or on the premises under such a license.

(b) *Exception for wine tasting.* A distributor of vinous beverages licensed in accordance with the Beverage Law, or any vendor, is authorized to conduct wine tasting upon any licensed premises authorized to sell wine or liquor as package goods for consumption off the premises, provided the wine tasting is limited to and directed toward the general public of the age of legal consumption, in accordance with the provisions of § 564.08 of the Beverage Law.

Sec. 34-1273. Permitting intoxicated persons to loiter about premises.

(a) Intoxicated persons are prohibited from loitering in and about the licensed premises of alcoholic beverages establishments, and the operator of such premises is prohibited from allowing such intoxicated persons to remain on such licensed premises.

(b) Owners, operators, and vendors of alcoholic beverage establishments who permit persons to engage in conduct in violation of this prohibition may be fined in accordance with the provisions of § 1-5 of this code.

Sec. 34-1274. Serving of set-ups, etc., by vendors not licensed to sell for consumption on the premises.

The sales or service of any glasses, set-ups, or other service to any person for the purpose of consuming liquor is prohibited by any vendor licensed under the Beverage Law who is not licensed to sell liquor to be consumed on the licensed premises.

Sec. 34-1275. Use of licensed premises for immoral or criminal Purposes.

The use of the licensed premises of any alcoholic beverage establishment for any criminal purposes is prohibited, and persons of known criminal habits are prohibited from frequenting, loitering, or assembling on such premises or the entrance thereto.

Subdivision V. General Health, Safety, and Welfare

Sec. 34-1276. Adequate and sanitary equipment, compliance with applicable regulations.

All alcoholic beverages establishments must be maintained in a sanitary manner in compliance with all health codes and other rules established by the state, county, and town. The retail sale, service, or

Alcoholic Beverages

consumption of alcoholic beverages is prohibited in any structure, building, establishment, or premises that does not have adequate and sanitary equipment to accomplish such sale, service, or consumption or that does not conform to all applicable state and local regulations.

Subdivision VI. Patron Age Restrictions

Sec. 34-1277. Patron age restrictions.

(a) **General age prohibition.** It is 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, operators, employees, or independent contractors or alcoholic beverage establishments.

(b) **Exceptions.** This restriction will not apply to:

- (1) Persons lawfully employed by or at the alcoholic beverage establishment;
- (2) Persons accompanied by either of their parents (natural, adoptive, step-parent, or legal guardian) or a responsible adult;
- (3) A bona fide restaurant;
- (4) An alcoholic beverage establishment during any time period outside the hours of operation for the sales or service of alcoholic beverages provided that before anyone under the age of 21 years is admitted into the establishment all alcoholic beverages previously sold or served are consumed, or otherwise discarded, and the establishment's entire inventory of alcoholic beverages is properly secured from public access. The sales or service and consumption of alcoholic beverages must not resume until all persons under the age of 21 have vacated the licensed premises; and

(6) **[optional] Members of the military or armed forces with proper military identification to show they are currently on active military duty with a branch of the United States military.** [On April 28, 2009, the LPA recommended inclusion of this additional exception to the patron age restrictions.]

(c) It may be a defense to alleged violations of this section that the person under the age of 21 obtained access through a fraudulent identification, and the business used reasonable efforts to prevent the use of fraudulent identification(s). Under these circumstances, only the persons who gained access to the alcoholic beverage establishment by presenting fraudulent identification will be considered in violation of this section.

Subdivision VII. Enforcement and Penalties

Sec. 34-1278. Enforcement and penalties.

These regulations may be enforced by the sheriff and in accordance with code enforcement procedures provided in article V, chapter 2 of this code. Violations of these regulations may also be restricted by injunction initiated by the town, any citizen thereof, or by any person affected by the violation of the regulation(s). Penalties for violations of these regulations will be in accordance with § 1-5 of this code as applicable and appropriate.

Sec. 34-1278–34-1290. Reserved.