

Meeting Date: February 10, 2015

Agenda Item 27

Memorandum No. #15-050

REQUESTED COMMISSION ACTION:

Consent	Ordinance	Resolution	X	Consideration/ Discussion	Presentation
_____	_____	_____	_____	_____	_____

SHORT TITLE **A discussion item about the separation requirements for liquor stores; the state and city definitions of restaurants with accessory bars; and the lack of separation requirements for restaurants with accessory bars in the AOD and DPOD Districts.**

Summary of Purpose and Why:

During the Reports portions of both the December 9, 2014 and the January 13, 2015 City Commission hearings, the Staff was directed to report back regarding alcoholic beverage establishments. In particular Staff was directed to report as to the distance requirements of liquor stores, the differences between the state and city definitions of restaurant with accessory bars, and the lack of distance requirements of restaurants with accessory bars in the AOD and DPOD Districts. Memo #15-049 (copy attached) includes staff's analysis and request for direction regarding Liquor Stores. Specifically Staff is seeking direction as to undertaking a study to determine if additional distance requirements are needed. Memo #15-048 (copy attached) includes staff's analysis and recommendation regarding restaurants with accessory bars. Staff is recommending the city's definition be revised to be consistent with the state's recently changed definition. Staff is not recommending any revisions to the distance requirements for restaurants with accessory bars.

- (1) Origin of request for this action: Development Services Dept.
- (2) Primary staff contact: Robin M. Bird/ Karen Friedman KBF Ext. 7792
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	01/22/2015		Memo #15-049 <i>[Signature]</i>
Dev. Services	01/23/2015		Memo #15-048 <i>[Signature]</i>
X City Manager			<i>[Signature]</i>

<u>Ordinance Workshop</u>	<u>Resolution</u>	<u>Consideration</u>
1 st Reading	1 st Reading	Results: _____
2 nd Reading		Results: _____
		Results: _____
		Results: _____



MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-049

DATE: January 22, 2015
TO: Robin M. Bird, Development Services Director
FROM: Karen Friedman, AICP, Planner *KBF*
RE: Liquor store locations and distance requirements

At the December 9, 2014 City Commission Hearing, the Commission directed staff to research the proliferation of liquor stores in the NW section of the City and separations between liquor stores and residential areas.

This memo contains Staff's analysis.

ANALYSIS: POMPANO BEACH

Existing Liquor Stores in Pompano Beach

Liquor stores aka package stores are alcoholic beverage establishments with a 3PS license ("Beer, Wine, and Liquor; package sales only in sealed containers. No sales by the drink or consumption on premises").

The City currently has 13 establishments with a 3PS license (A copy of the list of liquor stores is attached). The location of the 13 establishments is shown on the attached map. Four of the establishments are located west of I-95, with the remainder located east of I-95. The 13 establishments range in size from 2,500 sq ft to 10,000 sq ft.

Pompano Beach Regulations of Liquor Stores

The Zoning Code regulates the location of Liquor or Package Stores via §155.4222.K (Liquor or Package Stores) and §155.4501 (Alcoholic Beverage Establishments).

- §155.4222.K (Liquor or Package Stores) Permitted Zoning Districts: B-1, B-2, B-3, B-4, TO and PD Districts.
- §155.4501 (Alcoholic Beverage Establishments) Required Separation Distances:
 - 1,000 feet from another Alcoholic Beverage Establishment (airline route)
 - 1,000 feet from a Sexually Oriented Business (airline route)
 - 500 feet from a Child Care facility, School and/or Place of Worship (shortest route of normal pedestrian traffic)
 - 300 feet from a Child Care facility, School and/or Place of Worship (airline route)
- *Liquor or Package Stores that are an anchor store containing more than 10,000 square feet of gross floor area are exempt from separation standards in §155.4501. (An example of a liquor store that would likely receive this exemption is a Total Wine located within a shopping center).*

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Development Services

Estimated Additional Liquor Stores in Pompano Beach

Based on the permitted Zoning Districts as well as the required separation distances, Staff has estimated 25 new liquor stores could be established in the city.

ANALYSIS: OTHER MUNICIPAL REGULATIONS

Local Municipal Regulations

In order to determine if the City's distance / separation standards are consistent with those required by local municipalities, Staff researched the distance requirements utilized by Coconut Creek, Coral Springs, Deerfield Beach, Fort Lauderdale, Hollywood, Lauderdale By The Sea, Lauderdale Hill, Margate, Miami Beach, and Oakland Park (*a copy of the table is enclosed*). The research indicates that Pompano Beach's separation standards are more restrictive than all reviewed cities.

Orange County, FL Regulations

Therefore Staff expanded the research to other municipal regulations throughout the state. Orange County Florida §38-1414, requires 5,000 feet between package stores. This regulation was challenged by Costco Wholesale. In 2002 the Florida Supreme Court upheld the distance requirement (*a copy of the decision is enclosed*). In the Supreme Court's decision, the testimony of the County's Planning Director was provided. The Planning Director stated the 5,000 foot distance provides residents enough opportunity to use such facilities without allowing such businesses to become so dense that they, along with activities they generate, become a problem. He noted that Orange County is far different from other jurisdictions in that it has "more commercial acreage per thousand population than just about any other jurisdiction in the country."

STAFF REQUEST / RECOMMENDATION

While Orange County's regulations are a precedent for an increased distance separation for liquor or package stores, the Supreme Court's decision noted time and again there must be a rational basis for establishing an expanded distance requirement (including additional distance or from additional uses such as residential use). In order to implement an additional distance requirement, a study would need to be undertaken. Staff is therefore seeking further direction from the City Commission as to the following specific questions:

- Does the City Commission want to undertake a study to determine additional distance requirements and/or other limitations on the location or operation of liquor stores?
- Does the City Commission want to enact a moratorium on the establishment of new Liquor Stores until such time as the study is complete?

Distance / Separation Requirements for Alcoholic Beverage Establishments with Consumption Off Premises Only				
City	Distance	From	Measurement	Additional Information
Coconut Creek	500 feet	Place of Worship or School	Pedestrian travel on public-right-of way, main entrance to main entrance. Except for school, to the nearest point of the school grounds used as part of the school facilities.	Does not apply to – <ul style="list-style-type: none"> Establishments that are licensed for beer, wine, or beer and wine, only. Beverages containing alcohol of 14% or less by weight.
Coral Springs	Only has separation for consumption on the premises			
Deerfield Beach	Only has separation for consumption on the premises			
Fort Lauderdale	300 feet	Another place of business for sale of alcoholic beverages for consumption on or off site	Main normal public entrances along public thoroughfares by the shortest route of ordinary pedestrian traffic	Schools do not include pre-kindergarten school, nursery school or day care center, or adult education center
	500 feet	Church or public or private school	Main normal public entrance of ABE to the nearest point of the church or school property used as part of such facility along public thoroughfares by the shortest route of ordinary pedestrian traffic	
Hollywood	500 feet	Place of Worship or School	Nearest pedestrian travel on the public right-of-way from main entrance to main entrance, except that in case of a school, to the nearest point of the school grounds used as part of the school facilities	Does not apply to – <ul style="list-style-type: none"> Sale of malt beverages and wine for off-premise consumption.
Lauderdale by the Sea	500 feet	Another such establishment	Airline measurement from main entrance to main entrance	Does not apply to – <ul style="list-style-type: none"> Food Store (which does not include package store)
Lauderhill	1000 feet	Any other alcoholic beverage establishment OR Public or private elementary or secondary school OR Place of Worship	Shortest route of ordinary pedestrian travel along the public thoroughfare or any walkway made available for public use from the main entrance of the establishment in question to the main entrance of the other establishment	Does not apply to – <ul style="list-style-type: none"> grocery store, supermarket, a pharmacy Within the Commercial Entertainment (CE) and Town Center (TC) zoning districts
Margate	No distance separation required but city limits the number of licenses to be issued both city-wide and within five alcoholic beverage districts			
Miami Beach	300 feet	Public or private school operated for the instruction of minors in the common branches of learning OR Place of Worship OR Retail stores primarily selling alcohol beverages for consumption off the premises as a main permitted use	Straight line from the main entrance or exit in which the use associated with alcohol beverages occurs to the nearest point of the property used for a public or private school. In cases where a minimum distance is required between two uses associated with the alcohol beverages for consumption on or off the premises, the minimum requirement shall be determined by measuring a straight line between the principal means of entrance of each use.	Liquor can not be sold at filling stations
Oakland Park	500 feet	Church or school	Closest feasible route on public right-of-way from main entrance to main entrance, except, in case of a school, to the nearest point of the school grounds used as part of the school facilities	School shall mean any state-accredited elementary, middle or high school.

Supreme Court of Florida

No. SC01-382

ORANGE COUNTY,
Petitioner,

vs.

COSTCO WHOLESALE CORPORATION,
Respondent.

[June 27, 2002]

LEWIS, J.

We have for review Costco Wholesale Corp. v. Orange County, 780 So. 2d 198 (Fla. 5th DCA 2001), which expressly and directly conflicts with our decision in Glackman v. City of Miami Beach, 51 So. 2d 294 (Fla. 1951). We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

MATERIAL FACTS

In this case, the respondent, Costco Wholesale Corporation (“Costco”), constructed two membership warehouse clubs in unincorporated Orange County,

Florida. It then sought to transfer two of its package store liquor licenses to these new locations, both of which are located less than 5000 feet from existing package stores.¹ However, section 38-1414(b) of the Orange County Code,² which applies to properties located in unincorporated Orange County, clearly prohibits any new or relocated package liquor sale vendor from opening or starting a package liquor sales business within 5000 feet of an established, licensed package liquor sale vendor's place of business.³ Indeed, except for a hiatus which occurred sometime between

1. A “package store” as defined in the ordinance is an establishment which sells beer, wine, and liquor for off-site consumption.

2. Section 38-1414(c) of the Orange County Code provides:

The purpose of creating the distance requirements mentioned in subsection (b) of this section is to provide and require that no package sale vendor which is located or proposes to locate in the unincorporated portion of the county outside of any municipality shall be permitted to operate at a new location within a distance of five thousand (5,000) feet of the location of any package sale vendor which is both (i) established, existing and licensed at the time of the package sale vendor's application to operate at the new location and (ii) located in any area of the county either unincorporated or within a municipality in the county.

Orange County, Fla., Code of Ordinances § 38-1414(c) (1993).

3. Of some historical interest, in October 1999, the Orange County Zoning Department proposed to the Planning and Zoning Commission (the “P & Z”) that the provision restricting the distance between package stores be repealed, suggesting that it furthered no public health, safety, moral or welfare purpose. In the Zoning Department's presentation to the P & Z, it indicated that the greatest distance separation it had discovered in Florida outside Orange County was in Dade

1964 and 1966, this 5000 foot distance requirement has been in effect in Orange County since 1956. Section 38-1414 was first adopted by the Orange County Board of County Commissioners (the “Board” or the “BCC”) in 1956, at which time the Zoning Commission amended its regulations by designating “County Beverage Zones,” and prohibiting any new package good vendor from opening a new establishment within such zones. The preamble to the resolution stated its purpose was “to prevent the further scattering of business, trade and industrial uses within the unincorporated portions of the (county) to the detriment of homes and uses of higher character.” This continued in effect until sometime after 1964, when the 5000-foot separation distance for package sales vendors was repealed. Subsequently, in 1966, the Board adopted a resolution to once again impose the 5000 foot separation distance on February 14, 1966, which provision was eventually

County (where the distance is 1500 feet), noting that the 5000-foot separation requirement is “extreme when compared to other jurisdictions.” The Zoning Director was of the opinion that the regulation advanced no particular zoning purpose but only served to keep new package stores from locating within three square miles of long-established stores. The Orange County Sheriff's Office was of the view that no additional problems would be created by repeal of the restriction. While it is interesting, but certainly not determinative, that the P & Z subsequently recommended to the Orange County Board of County Commissioners that the restriction be repealed, the representatives elected by the citizens as members of the Board of County Commissioners did not adopt the recommendation to reduce the distance of the separation requirement.

codified as section 38-1414(b). In 1992 and 1993, the BCC amended section 38-1414(b) by adopting Ordinance No. 92-7 and Ordinance No. 93-01, respectively, resulting in section 38-1414(b) of the Orange County Code as it currently exists.

To implement the license transfers despite this restriction, Costco applied for a variance from Orange County, which application was denied.⁴ After denial of the variance requests, Costco filed an action seeking declaratory and injunctive relief, asserting that because the distance separation ordinance was arbitrary and capricious, it should be declared unconstitutional. The parties stipulated that the only issue of law to be determined was “whether the County's imposition of a 5,000 foot separation distance between package goods stores is a constitutional exercise of the police powers.” 780 So. 2d at 201.

At trial, Edward John Williams, who had been the director of the Orange County Planning Department at the time all of the county ordinances had been readopted and consolidated into one code, testified that the purpose of the ordinance was to provide a balance between the desired use and the desirability of protecting

4. The district court quoted isolated portions of the variance proceedings which it apparently thought important to the validity of the ordinance which restricted liquor locations, even though the validity of the ordinance was not the subject of the formal hearing.

residential districts. Williams noted that the 5000-foot distance separation requirement represents approximately a one-mile radius, which is “typically the distance for a primary market for a store or facility of this nature.” He observed that this distance provides residents enough opportunity to use such facilities without allowing such businesses to become so dense that they, along with activities they generate, become a problem. He noted that Orange County is far different from other jurisdictions in that it has “more commercial acreage per thousand population than just about any other jurisdiction in the country.” At the time the ordinance was reenacted in 1992, the County had over 8000 acres zoned commercial where package liquor stores could be located, with an additional 7000 acres projected by the year 2010. According to Williams, “there were more than enough opportunities to accommodate and provide reasonable use” for package liquor stores. For that reason, in Williams’ experience, the ordinance was not overly restrictive.

According to Williams, the purpose of section 38-1414 was not to protect the economic interests of package liquor store owners, but to have a reasonable buffer and distance between their businesses, and to respect both residential and business considerations. He had observed that the problem with aggregating such businesses was not necessarily an evil inherent in the stores themselves, but primarily rested in the secondary effects associated with such business operations. He stated that

allowing such stores in close proximity to each other “lowers residential property values and creates an extraordinary amount of traffic in and about those residential areas.” He opined that, because there are certain problematic activities (such as drinking in the parking lots, fights, and driving while intoxicated) typically associated with package stores, “[s]preading them out while allowing sufficient opportunity to accommodate the need for them was [the County's] primary objective.” The regulatory strategy reflected in the distance restriction “seemed to minimize the adverse impacts associated with such uses, while allowing them to congregate seemed to create an impact greater than the number of uses.”

The parties stipulated that there are currently 65 licenses (designated as 3PS) specifically for package liquor stores issued in unincorporated Orange County. There are currently 149 businesses within the unincorporated areas which hold licenses designated as 4COP which permits the sale of package alcoholic beverages. Of these businesses, only about twelve are unable to offer package sales because of the 5000-foot distance separation requirement. Mitch Gordon, Acting Zoning Director of Orange County, testified by affidavit: “At no time have I been told that there is an insufficient supply of package stores in Orange County or that they are located in areas that inconvenienced the shopping public.”

The trial court judicially noticed that alcohol is a harmful and heavily regulated product. It reasoned that because Orange County could ban alcoholic sales completely, the county's less restrictive regulation was substantially related to a legitimate government goal. Id. at 202.

On appeal, the Fifth District strongly disagreed with this rationale, stating:

While the County may have the power to ban alcoholic products completely, the ban, or any ban for that manner, must have a reasonable relationship to public health, morals and welfare. When the lesser regulation impacts constitutionally-protected rights, the government still carries the burden of demonstrating the reasonable relationship. In this case, the record below fails to meet that burden.

Id. at 202-03: Although stating that it recognized that a presumption of constitutionality applied in assessing Costco's facial challenge to the ordinance, the district court reasoned that "the constitutional right of property owners to make legitimate use of the property 'may not be curtailed by unreasonable restrictions under the guise of police power.' If the regulation 'exceeds the bounds of necessity for the public welfare,' it must be 'stricken as an unconstitutional invasion of property rights.'" Id. at 201 (quoting Burritt v. Harris, 172 So. 2d 820, 823 (Fla. 1965)). After applying a "substantial relationship" analysis to the record evidence, the district court concluded: "While we generally agree with established case law that courts should not invade the authority of elected officials absent a paramount

constitutional right and duty, we believe this case represents an exception and presents a situation in which there exists both a right and a duty for this court to hold the regulation unconstitutional.” Id. at 203. This timely petition for review followed.

ANALYSIS

In State ex rel. Eichenbaum v. Cochran, 114 So. 2d 797 (Fla. 1959), this Court specifically expressed the correct standard of review applicable in determining the validity of a county ordinance regulating the distance between holders of liquor licenses:

We should also retain in our thinking the proposition that the regulation and control of the alcoholic beverage business is peculiarly a legislative function. In this connection, as in all similar situations, when the legislative branch of the government exercises a legislative power in the form of a duly enacted statute or ordinance it is not the function of a court to explore the wisdom or advisability of the enactment in order to bring its enforceability into question. To this end the limit of the court's authority is to measure the validity of the legislative enactment by the requirements of the controlling law. If those standards are met the legislation should be upheld.

Id. at 800. Applying this appropriate standard of review, we conclude that here, the trial court correctly determined that the subject ordinance was within constitutional parameters, as reflected in its final judgment:

The right of the County to regulate locations that sell alcoholic beverages is grounded in Section 562.45(2), Florida Statutes,^[5] and is clearly related to the health, safety and welfare of its citizens.

Glackman v. City of Miami Beach, 51 So. 2d 294 (Fla. 1951). . . .

The Supreme Court of Florida has upheld numerous distance regulations between vendors selling alcoholic beverages. While this 5000-foot restriction in Section 38-1414 is longer than those approved by the Supreme Court of Florida, nothing before this Court has demonstrated that the 5000 foot restriction is arbitrary and capricious or unrelated to the health, safety and welfare of the citizens of Orange County.

5. Section 562.45(1)(a), Florida Statutes (1999), provides:

(2)(a) Nothing contained in the Beverage Law shall be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations therefor, of any licensee under the Beverage Law within the county or corporate limits of such municipality. However, except for premises licensed on or before July 1, 1999, and except for locations that are licensed as restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages, pursuant to chapter 509, a location for on-premises consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location as promoting the public health, safety, and general welfare of the community under proceedings as provided in s. 125.66(4), for counties, and s. 166.041(3)(c), for municipalities. This restriction shall not, however, be construed to prohibit the issuance of temporary permits to certain nonprofit organizations as provided for in s. 561.422. The division may not issue a change in the series of a license or approve a change of a licensee's location unless the licensee provides documentation of proper zoning from the appropriate county or municipal zoning authorities.

Costco Wholesale Corp. v. Orange County, No. C10 00-1136, final judgment at 2 (Fla. 9th Cir. Ct. order filed June. 7, 2000).⁶

Because the challenged ordinance embodies a policy decision of broad application, it reflects a legislative action, rather than conduct that would be classified quasi-judicial. See generally Board of County Comm'rs of Brevard County v. Snyder, 627 So. 2d 469, 474 (Fla. 1993) (“Generally speaking, legislative action results in the formulation of a general rule of policy, whereas judicial action results in the application of a general rule of policy.”). The subject ordinance was, therefore, entitled to a presumption of validity. See Glackman v. City of Miami Beach, 51 So. 2d 294, 295-96 (Fla. 1951) (observing that an ordinance which prohibited a vendor from selling liquors “in any place of business located within 1000 feet in an air line, measured from main entrance to main entrance, from another [like] place” was presumptively valid). Indeed, here, the district court stated that it started “with the presumption of constitutionality and the general rule that courts should try to uphold the constitutionality of the enactment when lawfully possible to do so.” 780 So. 2d at 201. Nonetheless, by shifting the burden of proof to the local government to “[establish] that the regulation here imposed bears

6. We specifically do not comment or rule upon the various separation distances mentioned by the trial court, because such are not before us today. Our decision is limited exclusively to the Orange County ordinance before us.

substantially on the public health, morals, safety or welfare of the community,” id. at 202, the district court effectively disregarded that presumption--conducting, instead, a “de novo” reweighing of the evidence presented in the trial court--and substituted its judgment regarding the wisdom of such restriction for that of the legislative body.

This Court’s precedent makes it clear that the substantial relationship test does have application here. See State ex rel. Dixie Inn v. City of Miami, 24 So. 2d 705, 706 (Fla. 1946) (observing, in considering the validity of an ordinance “intended to regulate or restrict the location within the City of Miami where intoxicating liquors could be sold,” that the Court would determine whether the ordinance was “arbitrary and unreasonable and [had] no substantial relation to health, safety, morals or the general welfare”). However, it is the challenger that has the burden to establish, in the first instance, that no such substantial relationship exists.

Further, as this Court observed in Glackman, “the basic purpose for restricting the distances between businesses of this kind seems well founded in the protection of the health and morals of the general public.” 51 So. 2d at 296. In assessing the validity of such a restriction, unless, based upon the record before it, the challenged ordinance is clearly not reasonable, a reviewing court will not substitute its judgment for that of the local governing body:

To adopt the appellant's view would be to hold that the last amendatory ordinance is unconstitutional simply because it imposes the additional restriction that a removal to a place within two hundred feet of the first location may not be made unless the new location is more than one thousand feet from another like business; that the restriction of two hundred feet is reasonable but the one of one thousand feet is not. We are unable to follow the reasoning which leads to such a conclusion. Both appear to us reasonable. The appellant could remove his business for two hundred feet in any direction which would not bring it within the proscribed area; and the basic purpose for restricting the distances between businesses of this kind seems well founded in the protection of the health and morals of the general public.

Id.; see also City of Jacksonville v. Nichol's Alley of Jacksonville, Inc., 402 So. 2d

1319, 1320-21(Fla. 1st DCA 1981) (approving an ordinance requiring that the

location of the premises of a liquor license applicant be no closer than 1500 feet

from the premises of any other valid existing liquor license holder, church, or

school, on the ground that it was “neither arbitrary nor discriminatory,” observing:

“The courts should not substitute their judgment for that of the legislative body as to

the reasonableness of the 1500 feet distance limitation.”). In light of this precedent,

here, the district court, under the rubric of an “equal protection” analysis, applied

the rationale that:

Further, if Orange County were to ban alcohol completely, everyone would be treated the same. However, if Orange County permits some vendors to sell alcoholic beverages, then it must permit all citizens to have an equal right unless there is a reason substantially related to the public health, safety, morals and welfare of the community which justifies unequal treatment under the law. Equal

protection of the governed is the bedrock of constitutional government. Without it, government fails.

780 So. 2d at 203 (emphasis added). Such logic does not accommodate the fact that this Court, as well as many others, has consistently approved distance limitations between liquor license holders as “well founded in the protection of the health and morals of the general public.” Glackman, 51 So. 2d at 296; cf. also 44 Liquormart Inc. v. Rhode Island, 517 U.S. 484, 515 (1996) (“Entirely apart from the Twenty-first Amendment, the State has ample power to prohibit the sale of alcoholic beverages in inappropriate locations.”); Dixie Inn, 24 So. 2d at 707 (observing that the State, in the exercise of its police power, “has the power to regulate and even to prohibit the sale of intoxicating liquors in designated areas and may confer on municipalities similar power”). Under the challenged ordinance, all authorized vendors do have the same right to sell intoxicating liquors--just not within 5000 feet of another such licensee.

Correctly applying the teachings of Glackman, we conclude that, on this record, the challenged ordinance is a valid exercise of police power, bearing a substantial relationship to the health, safety, morals, or general welfare of the community. As reflected in the testimony presented at trial here, Florida’s counties are diverse, and--absent clear proof that a challenged enactment in the area of liquor

license regulation does not bear such a substantial relationship to the health, safety, morals, or general welfare of the community--the legitimate exercise of a governing body's authority in addressing the particular needs of each community cannot be judicially constrained by requiring conformity to a single, inflexible rule. Our precedent in this area does not suggest that such a result would be appropriate, nor is it required by concepts of "equal protection." The means and methods chosen here to address the concerns related to alcohol do not exceed the bounds of lawful State or local government police power authority, nor are the limitations imposed so restrictive as to be unconstitutional.⁷

7. Where, in contrast, no such rational basis undergirds the statutory criteria used to distinguish between license holders, challenged legislation has not withstood attack. Thus, we invalidated a statute which "was enacted to increase revenues at pari-mutuel wagering facilities by providing protection to thoroughbred horse breeders from the state policy against off-track betting" where no rational relationship existed between this purpose and the detailed licensure criteria in the challenged statute. Ocala Breeders' Sales Co., Inc. v. Florida Gaming Centers, Inc., 793 So. 2d 899, 902 (Fla. 2001) (invalidating as a "special law enacted under the guise of a general law in violation of article III, section 10 of the Florida Constitution" a state statutory scheme governing intertrack wagering license applications whose provisions "in tandem created an impenetrable barrier to all intertrack wagering applicants except [the currently licensed wagering facility]"). In Ocala Breeders, prospective licensees were required by statute to conduct "at least one day of nonwagering thoroughbred racing, with a purse structure of at least \$250,000 per year for two consecutive years." As this Court observed, "curiously," Ocala Breeders' Sales Company, Inc. was "the only business entity that had ever obtained a nonwagering thoroughbred racing permit." Id.

Based on the foregoing analysis, we quash the district court's decision, and remand for further proceedings consistent with our opinion in Glackman.

It is so ordered.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, and QUINCE, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal -
Direct Conflict

Fifth District - Case No. 5D00-1728

(Orange County)

James F. Page, Jr., and G. Robertson Dilg of Gray, Harris & Robinson, P.A., Orlando,
Florida,

for Petitioner

Scott A. Glass of Shutts & Bowen, LLP, Orlando, Florida; and Barry Richard of
Greenberg, Traurig, P.A., Tallahassee, Florida,

for Respondent

Frank A. Shepherd, Miami, Florida,

for Pacific Legal Foundation, Amicus Curiae

William H. Adams, III, Jacksonville, Florida,

Amicus Curiae



MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-048

DATE: January 23, 2015
TO: Robin M. Bird, Development Services Director
FROM: Karen Friedman, AICP, Planner *KBF*
RE: Restaurants with Accessory Bars - locations and distance requirements

At the January 13, 2015 City Commission Hearing, the Commission directed staff to research inconsistencies between the State's and City's licensure of restaurants with accessory bars. Further staff was directed to report back as to different distance separation standards for restaurants with accessory bars within the City's two redevelopment Zoning Districts (AOD and DPOD) versus the remainder of the city.

This memo contains Staff's analysis and recommendation.

ANALYSIS

State Regulations: "4COP SRX" Definition and License

The Florida Department of Business and Professional Regulations, Division of Alcoholic Beverages and Tobacco Bureau of Licensing, issues licenses for the sale of alcoholic beverages. Though the licenses are issued by the state, license standards can vary by county (or the city in some locations).

Prior to September 2014, Broward County's requirement for the Special License / Restaurant (4COP SRX / "Beer, Wine and Spirits (Package and Consumption)") was for restaurants with at least 4,000 square feet of service area and equipped to serve 200 persons full course meals at tables one at a time, and deriving at least 51% of the gross revenue from the sale of food and non-alcoholic beverages.

However in September 2014 the standards for a 4COP SRX in Broward County were revised as follows: Restaurants with at least 2,500 square feet of service area and equipped to serve 150 persons full course meals at tables one at a time. The 51% non-alcoholic sales requirement was not revised. These standards are consistent with Florida State Statute §561.20(2)(a)(1) (*copy attached*).

Pompano Beach Regulations: "4COP SRX" Definition and License

The Zoning Code regulates the definition and location of Restaurants with Accessory Bars via §155.4218.A.3 (Bar or Lounge) and §155.4501 (Alcoholic Beverage Establishments).

- §155.4218.A.3 states that a bar or lounge may be considered an accessory use to a restaurant provided it is operated by the same management, and the restaurant has dining accommodations for service of 200 or more patrons at tables occupying more than 3,000 square feet of customer service area, and the sale of alcoholic beverages is strictly incidental to the serving of food.
- §155.4501.B lists uses that are exempt from the required separation standards for alcoholic beverage establishment. §155.4501.B.3 exempts a bar or lounge operated as an accessory use

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to a restaurant whose dining area(s) accommodate 200 or more seated customers and occupy more than 3,000 square feet of floor area.

Therefore prior to September 2014, the City's definition of Restaurant with Accessory Bar and the state's licensure requirements for a 4COP SRX license in Broward County were almost the same. The city only required 3,000 sq ft of customer service area, where as the 4COP SRX license required 4,000 sq ft of service area. However both standards required 200 seats.

Pompano Beach Regulations: Separation of Alcoholic Beverage Establishments

Zoning Code §155.4501 requires alcoholic beverage establishments to be separated from certain existing uses, including other Alcoholic Beverage Establishments, Sexually Oriented Businesses, Child Care Facility, Schools, and Places of Worship. Certain uses, however, are exempt from the required separation standards.

- *Specifically within the AOD*, the following uses are exempt: Bar or lounge, Restaurant, or Specialty eating establishment (whether a principal use or an accessory use to a hotel, and including any accessory outdoor seating) (per §155.4501.B.3)
- *Specifically within the DPOD*, and only if directly abutting MLK Boulevard, Dixie Highway, or Atlantic Boulevard, or located within the Historic Core Area, the following uses are exempt: Bar or lounge, Brewpub, Restaurant, Specialty eating establishment, Hotel, and Community Center Community Center, Library, and Civic Centers owned or operated by the City or CRA (per §155.3708.H.4.g)
- *Citywide* there are several exempt uses. The full list of exemptions is attached, and includes restaurants with accessory bars (3,000 sq ft and 200 sets).

The 4COP SRX license's revised requirements, and the resulting discrepancy between the state and city standards for minimum service area size and number of seats, could result in an establishment that is eligible for the 4COP SRX license, but not eligible for the citywide exemption for restaurants with accessory bar.

As to the greater exemptions permitted in the AOD and DPOD, the purpose of the exemptions is not to be punitive to the other locations in the city. Rather the intent is to incentivize redevelopment of the two areas of the city that are recognized as in need of redevelopment.

STAFF RECOMMENDATION

In an effort to be consistent with the state's recently revised standards for 4COP SRX licenses, Staff recommends revising the Zoning Code to be the same as the state's standards. Staff does not recommend revising the exemptions for the AOD and DPOD.

Select Year:

The 2014 Florida Statutes

Title XXXIV
ALCOHOLIC BEVERAGES AND
TOBACCO

Chapter 561
BEVERAGE LAW:
ADMINISTRATION

[View Entire Chapter](#)

561.20 Limitation upon number of licenses issued.—

(1) No license under s. 565.02(1)(a)-(f), inclusive, shall be issued so that the number of such licenses within the limits of the territory of any county exceeds one such license to each 7,500 residents within such county. Regardless of the number of quota licenses issued prior to October 1, 2000, on and after that date, a new license under s. 565.02(1)(a)-(f), inclusive, shall be issued for each population increase of 7,500 residents above the number of residents who resided in the county according to the April 1, 1999, Florida Estimate of Population as published by the Bureau of Economic and Business Research at the University of Florida, and thereafter, based on the last regular population estimate prepared pursuant to s. 186.901, for such county. Such population estimates shall be the basis for annual license issuance regardless of any local acts to the contrary. However, such limitation shall not prohibit the issuance of at least three licenses in any county that may approve the sale of intoxicating liquors in such county.

(2)(a) No such limitation of the number of licenses as herein provided shall henceforth prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(21), with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(21), in a municipality that on the effective date of this act has a population, according to the University of Florida’s Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that the provisions of this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under the provisions of chapter 509, except that the license shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under the provisions of chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners;

~~4. Any restaurant having 2,500 square feet of service area and equipped to serve 150 persons full course meals at tables at one time, and deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages; however, no restaurant granted a special license on or after January 1, 1958, pursuant to general or special law shall operate as a package store, nor shall intoxicating beverages be sold under such license after the hours of serving food have elapsed; or~~

5. Any caterer, deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages, licensed by the Division of Hotels and Restaurants under chapter 509. Notwithstanding any other provision of law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this subparagraph, including licensed vendor receipts for the purchase of alcoholic beverages and records identifying each customer and the location and date of each catered event. Notwithstanding any provision of law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first \$300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072.