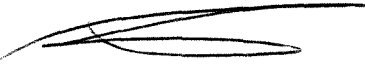


CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #08-009

TO: Honorable Marc Sarnoff, Commissioner
District 2
FROM: Julie O. Bru, City Attorney 
DATE: October 7, 2008
RE: Legal Opinion - Bona Fide Restaurant - Hours of liquor sales

You have requested a legal opinion on substantially the following questions:

1. Must a restaurant stop the sale of alcohol at 3:00 a.m. no matter what license it possesses?

Brief Answer: Generally yes, unless the restaurant has obtained approval for a "supper club" or "nightclub" use as defined in the City Code, and the establishment is not located in the SD-2 Zoning District.

2. Is it correct to say that in order for an establishment to serve alcohol until 5:00 a.m. it must be a supper club or nightclub?

Brief Answer: No, in addition to nightclubs and supper clubs, the City Code permits the following establishments to serve alcohol between the hours of 3 a.m. and 5 a.m.: hotels, motels and apartments with 100 or more guestrooms; any of the establishments in a retail or waterfront specialty center; and establishments within certain entertainment specialty districts.

3. Must an establishment obtain a Special Exception in order to be designated as a nightclub or supper club?

Brief Answer: Generally, nightclubs and supper clubs need special exceptions, but not in all cases. Some zoning special districts allow them by right or by Class II permit.

4. May a bona fide restaurant file for a Special Exception to serve alcohol until 5:00 a.m.?

Brief Answer: Bona fide restaurants that meet certain criteria may file for a Special Exception to serve alcohol until 5:00 a.m.

5. If the establishment has a Certificate of Use for a restaurant can it then act as a nightclub or supper club and what is the role of the Certificate of Use?

Brief Answer: No. If the Certificate of Use is for restaurant they are still limited to the City's rules for use as a restaurant. The role of the Certificate of Use is discussed below.

6. What is a "bona fide restaurant?"

Brief Answer: Section 4-2 of the City Code provides the definition for a restaurant, see below.

7. Can an establishment be both a bona fide restaurant and night club or supper club or does the establishment have to choose one or the other?

Brief Answer: Yes, an establishment can be both a bona fide restaurant and nightclub or supper club.

8. What are the distance requirements to schools, residential, and other clubs and restaurants serving alcohol?

Brief Answer: The City Code provides the following distance limitations (these general distance limitations may be modified in certain districts or may be waived pursuant to Chapter 4 of City Code):

From residential district: 500 ft.

From another alcoholic beverage establishment: 500 ft

From churches and schools:
300 feet in downtown

All other parts of City:
300 ft. for churches
1000 ft. for schools

Question 1 and 2

The State of Florida has delegated the power to regulate the hours of sale for alcoholic beverages to the municipalities and counties. *See Section 562.14 Florida Statutes.* The City of Miami has consequently enacted ordinances that set forth the hours of sales for alcoholic beverages within the City limits. The ordinances are codified in Chapter 4 of the Code of the City of Miami, Florida ("City Code"). The majority of the provisions in the City Code are found in Section 4-3 of the City Code, while some other provisions are in other sections of Chapter 4.

You ask whether a restaurant must stop serving alcohol at 3:00 a.m. regardless of the license that it possesses. To determine the time when a particular establishment must stop serving alcoholic beverages on a given night it is first necessary to determine the classification of the establishment. Your question relates to the hours during which a restaurant may serve alcoholic beverages. Section 4-3 (a) (4) of the City Code provides:

“the hours of sale for alcoholic beverages by the following establishments are weekdays, including Saturday, from 7:00 a.m. to 3:00 a.m. on the following day; Sunday, from 12:00 noon to 3:00 a.m. on the following day:

- a. Bars;
- b. Bottle Clubs;
- c. Restaurants;
- d. Hotel, motel and apartments, with fewer than 100 guestrooms;
- e. Private clubs;
- f. Any of the establishments (above) in a retail or waterfront specialty center.”

Certain restaurants have obtained the additional designation of a “Nightclub” or “Supper club.” The “Nightclub” or “Supper club” designation has the effect of extending the hours in which alcoholic beverages may be served, sold or allowed to be consumed on the premises of the establishment. Section 4-3 (a) (6) of the City Code provides:

“The hours of sale for alcoholic beverages by the following establishments are weekdays, including Saturday, from 7:00 a.m. to 5 a.m. on the following day; Sunday, from 12:00 noon to 5 a.m. on the following day, except in the SD-2 Coconut Grove Central Commercial district where the hours of sale for alcoholic beverages by the following establishments are weekdays, including Saturday, from 7:00 a.m. to 3:00 a.m. on the following day; Sunday, from 12:00 noon to 3:00 a.m. on the following day:

- a. Nightclubs;
- b. Supper clubs;
- c. Hotels, motels and apartments with 100 or more guestrooms;
- d. Any of the establishments (above) in a retail or waterfront specialty center.

However, if the restaurant is located in the SD-2 Coconut Grove Central Commercial District and has obtained the classification of a supper club or nightclub, then such a restaurant is only permitted to sell or serve alcoholic beverages until 3:00 a.m.

A restaurant may also serve alcohol beyond the 3:00 a.m. time limit if it is located in a retail or waterfront specialty center. A restaurant may also serve alcohol after 3:00 a.m. if it is located in an entertainment specialty district, such as the Brickell Village district; Brickell

Riverside district; Park West; Media Entertainment and Overtown district and it has obtained a Class II zoning permit. *See Section 4-11 (i)(4) of the City Code.*

Therefore, a restaurant may serve alcoholic beverages beyond 3:00 a.m. if it is not located in the SD-2 Coconut Grove Central Commercial District; is located in a retail or waterfront specialty center; is classified as a nightclub or supper club; is located in a hotel or motel and meets certain criteria; or has obtained a Class II special zoning permit and is located in an entertainment specialty district.

Question 3

You ask whether an establishment must obtain a Special Exception in order to be designated as a nightclub or supper club. The answer is that generally an establishment needs a special exception to be classified as a supper club or nightclub. However, some zoning special districts allow supper clubs and nightclubs by right or by Class II special permit. For example, entertainment districts only require a Class II special permit.

Question 4

(Note, an establishment located in the SD-2 Coconut Grove Central Commercial District is only permitted to serve alcoholic beverages until 3:00 a.m. regardless of whether it has a Special Exception for a nightclub or supper club pursuant to Section 4-3 of the City Code.)

You ask whether a bona fide restaurant may file for a Special Exception to serve alcohol until 5:00 a.m. The answer is yes, so long as it meets the criteria found in Section 4-41 of the City Code and it is not located in the SD-2 Coconut Grove Central Commercial District. However, some special districts only require a Class II special permit and not a Special Exception. So the complete answer is that a restaurant that wants to serve alcohol until 5:00 a.m. will need to obtain whatever special permit may be required in its zoning district.

Section 4-41 of the City Code defines a nightclub as an establishment “where meals, alcoholic beverages and refreshments prepared on the premises are served and sold to the public in connection with vaudeville, theatrical entertainment or dancing, and where, in addition to space required by chairs and tables for service of meals to not less than 200 persons, which shall be set up and maintained, there shall be provided a floor space of at least 400 square feet, located in one unit and on the same floor...”

Question 5

You ask what role the Certificate of Use plays and whether an establishment can act as a nightclub or supper club if it has a Certificate of Use for a restaurant.

Section 2-207 of the City Code requires that every building and or premises shall have a zoning certificate of use prior to being occupied. The section further provides that the property must be inspected on an annual basis. The practical effect of the Certificate of Use is that it provides the City the opportunity to verify that the property is being used in accordance with all

the City's codes and regulations. For example, if a person applies for a Certificate of Use to operate a restaurant the City will send a zoning inspector to the premises to verify that the restaurant meets all the necessary requirements, including an operating kitchen and adequate seating. Thus regardless of the establishment is it must have a Certificate of Use for its intended use.

You ask if the Certificate of Use is for a restaurant can it then act as a nightclub or supper club. The establishment can only act as a nightclub or supper club if it

Question 6

You ask what is considered a "bona fide restaurant." The Section 4-2 of the City Code defines 'restaurant' as:

Restaurant: A business licensed as a restaurant by the state division of hotels and restaurants and by the city and is advertised and held out to the public to be a place where full course meals are prepared, in a full service kitchen with a commercial stove, refrigerator and oven, and served on a regular basis from a prepared menu, which facility provides seating for at least 20 patrons with standard height dining room tables or booths of adequate size to accommodate the service of full-course meals in accordance with the number of chairs found at the table, with such seating exclusive of seating at bars, counters, or cocktail tables and has a city local business tax receipt as a restaurant. The primary operation of the restaurant shall be for the serving of full-course meals. No person shall attempt to circumvent the intent of this subsection by an artifice or scheme such as serving of stock meals. The term "stock meal" as used in this subsection, includes but is not limited to the serving of cold plates, snacks, hors d'oeuvres, microwave oven heated foods or previously prepared sandwiches. Restaurants shall be subject to the provisions of this chapter.

The term 'bon fide' means "truly; actually; without simulation or pretense."¹ Thus the use of the term 'bona fide' in front of the term 'restaurant' is intended to denote that the restaurant is really a restaurant and not a sham or a ruse of a restaurant. In order for a restaurant to be considered a 'bona fide restaurant' it must meet all of the criteria of the definition in Section 4-2 of the City Code.

Question 7

You ask whether an establishment can be both a 'bona fide' restaurant and night club or supper club rather than being one or the other. An establishment can be both a bona fide restaurant and night club or supper club. The definition of a 'nightclub' in Section 4-41 of the City Code is actually less restrictive than the definition of a 'restaurant' in Section 4-2 of the City

¹ *Black's Law Dictionary*, fifth edition (1979)

Code. It is therefore possible that a restaurant can meet the requirements for a nightclub or supper club, but a nightclub or supper club may not meet the requirements for a bona fide restaurant.

Question 8

You ask for a list of the distance separation requirements for establishments that serve alcoholic beverages. Sections 4-7 through 4-13 of the City Code provide the distance limitations. The complete list of distance requirements is attached to this opinion. The following is a brief summary of the applicable distance requirements:

From residential district: 500 ft.

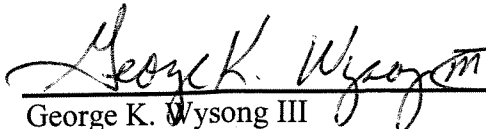
From another alcoholic beverage establishment: 500 ft

From churches and schools:
300 feet in downtown

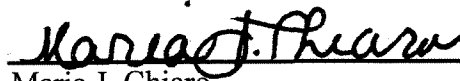
All other parts of city:
300 ft. for churches
1000 ft. for schools

All of these distance requirements may be modified by the applicable exceptions listed in Sec. 4-11 of the City Code.

PREPARED BY:


George K. Wysong III
Assistant City Attorney

REVIEWED BY:


Maria J. Chiaro
Deputy City Attorney

c: Honorable Mayor and Members of the City Commission
Pedro G. Hernandez, City Manager