



City of Omaha
Mike Fahey, Mayor

RECEIVED

CITY
OF OMAHA

Law Department

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Paul D. Kratz
City Attorney

*amended by Doc. No. 409
of 4/15/08. S*

Honorable President

and Members of the City Council,

The attached ordinance is submitted at the request of Councilmember Suttle. The ordinance amends the City's prohibitions on the presence of minors on premises that are licensed to sell alcoholic beverages for consumption on the premises.

Current City ordinances prohibit the presence of minors on licensed premises where alcohol is consumed except when (a) they are accompanied by a parent or guardian; (b) they are at least 18 years of age and no alcohol is being sold; (c) the sale of alcohol is incidental to some other business conducted on the premises; (d) they are lawfully employed on the premises; and (e) it is after 2:00 a.m. and an after-hours dance permit is in place. This ordinance does two things. It removes the minimum age for minors who are present when alcohol is not being sold and it will allow minors to be present during live music performances at locations that are designated through a permit system as "music venues". The locations must have a permanent stage and sound and lighting equipment; must check ages and follow a specific method of readily distinguishing adults and minors; must sell alcohol in containers different from containers with other beverages; and must have a minimum number of security personnel on duty. The age checking, wristband, container, and security requirements are similar to requirements imposed by Liquor Control Commission rules on temporary liquor licenses at events where minors are expected (e.g., church festivals).

This amendment was initiated at the request of the owners of The Waiting Room, Jim Johnson and Marc Leibowitz, and of Slowdown, Robb Nansel and Jason Kulbe!. These businesses are attempting to regularly present live music in Omaha and have encountered questions about presenting all-ages shows.

Respectfully submitted,

Thomas O. Mumgaard
Thomas O. Mumgaard
Deputy City Attorney

ORDINANCE NO. 38067

1 AN ORDINANCE to amend section 15-41 of the Omaha Municipal Code regulating minors on
2 premises licensed to sell alcohol; to remove the minimum age of 18 when no alcohol is being
3 served; to permit minors to be present at certain live music venues; to establish the
4 requirements to qualify as a music venue; to repeal the section as previously existing; and to
5 provide an effective date hereof

6 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

7 Section 1. Section 15-41 of the Omaha Municipal Code is hereby amended as follows:

8 Sec. 15-41. Presence of minors on licensed premises.

9 No person who holds a license to sell alcoholic liquors by the drink may allow any
10 minors to be on the licensed premises except as provided herein. This section shall control
11 the presence of minors on licensed premises at all times, including when alcoholic liquors are
12 not being sold or consumed. Nothing herein shall permit minors to do any of the prohibited
13 acts specified in section 53-180.02, Reissue of Revised Statutes of Nebraska, 1943, or
14 section 15-9 of this Code, as amended.

15 (a) Minors may be on licensed premises when they are accompanied by a parent or legal
16 guardian.

17 (b) Minors 18 years of age or older may be on licensed premises during times when:

18 (1) no alcoholic beverages are being sold, served, or consumed on any portion of the
19 licensed premises;

20 (2) all alcoholic beverages are stored in a manner out of sight and the physical reach
21 of any customer;

22 (3) all beer taps or other dispensers are disconnected, disabled, or made inoperable;

23 (4) a notice is prominently displayed at all public entrances to the premises
24 announcing that no alcohol is served or consumed on the premises; and,

25 (5) the licensee has given the police department a 72-hour written notice, including
26 dates and times, that minors will be allowed on the premises.

27 (c) Minors may be on areas of licensed premises where the sale or consumption of
28 alcoholic liquor is occurring or permitted if the sale or consumption is incidental to

I the business or activity conducted on the premises. Such areas of licensed businesses
 2 may include, but not be limited to, the bowling lanes and associated areas of bowling
 3 alleys; areas in hotels or motels that are not designated or used as bar or lounge areas,
 4 such as lobbies, resident rooms, meeting rooms, recreation areas, and hallways;
 5 grocery stores; drug stores; amusement parks; golf courses (including clubhouses and
 6 concession areas); areas of sport stadiums and arenas that are not designated or used
 7 as bar or lounge areas; theaters; and restaurants. Sale or consumption of alcohol is
 8 incidental to a business or activity only when it is subordinate to, and plays only a
 9 supporting role to, the principal business or activity. Whether sale or consumption is
 10 incidental shall be determined by considering all the facts and circumstances
 11 including comparative space used by the activities, revenue generated by the
 12 activities, the promotion given or not given to the activities, and employee time
 13 commitments to the activities.

14 (d) Minors may be employed on licensed premises as permitted by the Nebraska Liquor
 15 Control Act.

16 (e) Minors may be on licensed premises as expressly permitted by section 5-64 of this
 17 Code, as amended.

18 (f) Minors may be in areas of licensed premises where a live instrumental and/or
 19 vocal musical performance open to the public is occurring and all of the
 20 following conditions are met. Singing along with recorded music using a
 21 microphone and public address system in which the voice of the original
 22 singer is removed or reduced and substituted by the live singer's voice, with
 23 or without lyrics being displayed to the live singer, commonly known as
 24 "karaoke", is not a live musical performance within the scope of this
 25 subsection. This subsection does not apply to any licensed premises on
 26 which is offered as a form of entertainment a striptease or other dance in
 27 which the performer, commonly known as a "stripper", gradually undresses in
 28 a sexually suggestive manner to music, regardless of whether or not every
 29 item of clothing is removed, or the performer dances in a sexually suggestive
 30 manner with a vertical pole, commonly known as "pole dancing."
 31

32 (1) The minor is 18 years of age or older or, if under age 18, the licensee has a
 33 notarized parental consent form signed by a parent or legal guardian of the minor
 34 consenting to the minor being on the premises as allowed by this subsection. The
 35 City Clerk shall make the authorized parental consent form available to licensees and
 36 the public. The licensee shall keep signed forms submitted by minors available for
 37 inspection and use for at least 18 months;

38 (2) The minor is present during the performance or within one hour before or after
 39 the performance;

40 (3) The performance (i) occurs on a stage or other raised, designated performance

1 space constructed with the purpose that it remain permanently installed on the
2 premises, (ii) utilizes an amplified sound system constructed with the purpose that it
3 remain permanently installed on the premises, and (iii) utilizes stage lighting
4 constructed with the purpose that it remain permanently installed on the premises;

5 (4) The licensee actively conducts age checking at all entrances to the area;

6 (5) Adults are identified by wrist bands that are destroyed by removal and minors are
7 identified in a different, clearly visible manner at all times while on the premises;

8 (6) Alcoholic drinks are served in distinctively different containers than those in
9 which non-alcoholic drinks are served;

10 (7) Alcoholic drinks are not sold or served in pitchers and no person is served or
11 allowed to purchase more than two alcoholic drinks at the same time.

12
13 (8) Security personnel, whether paid or volunteer, are present in the area with no
14 duties other than maintaining order and enforcing liquor laws and license conditions
15 including prohibiting minors from possessing or consuming alcohol. There must be a
16 minimum of one security person for up to 100 attendees and one more security
17 person for each 100 additional attendees. Security personnel performing age
18 checking at an entrance may not be counted toward this minimum number. All
19 security personnel must be dressed in distinctive clothing with visual markings
20 identifying them as security personnel;

21 (9) A ban-and-bar policy is posted and enforced that bans from the premises for a
22 period of no less than one year any person allowing or assisting a minor to possess
23 alcohol on the premises and which provides that anyone violating the ban will be
24 prosecuted for trespassing; and,

25 (10) A music venue permit for the premises has been issued by the City Clerk and
26 thereafter renewed at the time the license is renewed. The application and renewal
27 shall include the licensee's certification of compliance with this subsection and the
28 permit shall be conditioned upon full compliance with this subsection.

29 (i) The permit shall be cancelled upon the licensee's conviction of a violation
30 of this section.

31 (ii) The permit may be cancelled by the City Council for cause. When a permit
32 is cancelled the Council may determine when the licensee is eligible to receive a
33 new music venue permit and the conditions under which a new permit can be
34 granted.

35 (iii) A \$375.00 music venue permit fee shall be paid at the time a permit is
36 issued or renewed.

ORDINANCE NO. 38067

Page 4

1 Section 2. This ordinance is adopted pursuant to the authority granted by Nebraska Revised
2 Statutes section 53-134.03 (Reiss. 2004) to regulate the business of retail liquor licensees carried on
3 within the City of Omaha.

4 Section 3. Section 15-41, as heretofore existing, is hereby repealed.

5 Section 4. This ordinance shall be in full force and take effect fifteen days from and after the
6 date of its passage.

INTRODUCED BY COUNCILMEMBER

James R. Smith

APPROVED BY:

Mike Jolley 4/17/08
MAYOR OF THE CITY OF OMAHA DATE

PASSED APR 5 2008 as amended 5 2 Nays: Stigerson, Brown

ATTEST:

Donna Brown 4/17/08
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

Thomas J. Neumann 4-16-08
DEPUTY CITY ATTORNEY DATE

"SUMMARY SHEET"

April 15, 2008"

CCID No. 409 – Ordinance read

Amendment of the Whole "H" read

Motion by Suttle that Amendment of the Whole "H" be passed as amended.

Seconded by Welch.

Amendment to Amendment of the Whole - Motion by Gernandt to Approve.

LOST for lack of a second.

Amendment "J" to Amendment of the Whole – Approved 4-3

Yeas: Sigerson, Suttle, Thompson, Gernandt

Nays: Vokal, Brown, Welch

Amendment to Amendment of the Whole "H" - Approved 6-1

Yeas: Sigerson, Suttle, Thompson, Vokal, Gernandt, Welch

Nay: Brown

Amendment to Amendment of the Whole - Approved 5-2

Yeas: Sigerson, Suttle, Thompson, Vokal, Welch

Nays: Brown, Gernandt

Amendment of the Whole "H" – **PASSED AS AMENDED** 5-2

Yeas: Suttle, Thompson, Vokal, Gernandt, Welch

Nays: Sigerson, Brown
