

**From:** Robert Bahn <rdbahn@yahoo.com>  
**Sent:** Friday, September 29, 2023 9:11 AM  
**Subject:** Malco new private club permit request

To the esteemed members of the City Council, city attorney, city clerk, and mayor,

I am writing to express my strong opposition to the approval of the new private club permit for Malco Theater.

Upon a recent review of the private club regulations in Jonesboro, I discovered a misconception I had held for years. I had believed that the Alcohol Beverage Control (ABC) mandated the use of zoning requirements for permit approval or denial. However, the truth is that the cities were instructed to establish their own guidelines for approving permits under the new private club legislation passed a number of years ago. This occurred during the tenure of the previous mayor and city council, some of whom are still serving. It has come to my attention that the city opted to solely rely on zoning restrictions and did not explore other valid grounds for reviewing a permit, likely to avoid potential legal repercussions for "arbitrary and capricious" denial decisions, which could have entailed significant costs for the city in lawsuits.

I believe the time has arrived for the city to reevaluate the approval process for additional private clubs in the future. I propose a temporary ban on approving new private club permits for a period not exceeding 180 days. During this period, I urge the city to conduct public meetings to gather input from the residents of Jonesboro regarding any necessary restrictions they feel like should be applied.

In cases where a company/non-profit desires to establish a private club in Jonesboro, I suggest allowing them to seek an existing approved permit and proceed with a transfer. This would necessitate a vote for approval by the city, but ensuring that no additional private clubs are added.

In wet counties in Arkansas, various wards have the authority to vote against allowing private clubs within their jurisdictions. Unfortunately, such a provision is not available in dry counties. I talked to a legislator to propose legislation (in the most recent session) that would grant wards in dry counties "equal protection under the law," but regrettably, we did not secure co-sponsorship for the bill, preventing its submission.

Regarding the specific case of the Malco Theater, I have identified several reasons to oppose the permit. The establishment has indicated the use of advanced software to verify the legal age of individuals purchasing drinks in the private club. However, it remains unclear whether they verify membership status, a requirement by law for alcohol sales in private clubs. Furthermore, I question if the private club permits members to leave with their drinks and take them outside the club to the theater to drink while watching a movie, a potential violation of state law, which mandates that drinks purchased in the private club should be consumed within its premises.

While certain "walk around" guidelines are in place, it appears that the Malco does not meet the criteria for these rules.

Should the Malco fail to provide satisfactory answers regarding their adherence to state laws in the private club on Parker Road, especially concerning membership verification and drink consumption, I firmly believe that you have the duty and authority to reject the application for another private club. I recently visited the Malco location that is requesting a new private club permit and observed considerable construction activities related to the private club, raising concerns about potential unauthorized progress, possibly due to a misunderstanding regarding approval processes. Or they think it is a slam dunk to get approved since the first Malco private club permit was approved by the city and the ABC.

I appreciate your careful consideration of my request to deny the private club application at the upcoming City council meeting. And to consider the moratorium on new private club permits for no longer than 180 days. I hope the city would be able to get new guidelines put together and in place prior to the 180 days.

Sincerely,  
Robert Bahn 2200 Twin Oaks  
Put together with the help of CHAT GPT

---

From: Robert Bahn <rdbahn@yahoo.com>  
Sent: Monday, October 2, 2023 10:44 AM  
Subject: Private Club Application Jonesboro Studio Social Club

Update. 10-2-23

I called the Secretary of States Office to check out the officers of the Jonesboro Studio Social Club. They reflect a totally different group of people other than the ones listed on the application for a private club permit for Jonesboro Arkansas. The name of the non-profit was changed in August. The Jonesboro Social Club did not exist until August of this year via a name change.

The lease agreement for the property to be used for the private club was not signed until after the application for the permit. The lease was not obtained by the city and put on the website until after the second reading. The lease does not specify what space is being leased. The ABC requires a floor-plan. Both are violations. So therefore, the application was incomplete when submitted and the permit application should be denied.

I have some information below where I requested answers to specific questions from the ABC. Please review.

Is it ABC rules that a person in a private club cannot take the drink outside of the private club?

Under ABC Section 1.79(27), it is a violation for a permittee to allow a patron leave the permitted premises while carrying an open container of alcoholic beverages. There are three exceptions to this rule:

1. “A private club may allow a customer, who purchases an unsealed package of wine in conjunction with a food purchase and consumes a portion of the wine on the premises with the meal, to replace the cork and remove the partially filled package from the premises”
2. “Patrons may walk back and forth with an alcoholic beverage between a private club permitted premises and another contiguous permitted premises when both premises are a part of the same business operation and the alcoholic beverage is a type permitted by both premises”
3. “Patrons may walk back and forth with an alcoholic beverage between an on premises permitted outlet and a contiguous outlet issued a casino license by the Arkansas Racing Commission as long as the casino licensee is in operation”

I know some cities in wet counties permit some type of situation in a part of town that people can move from bar to bar with their drink and that is ok. I do not believe this is permissible in a Dry county.

This is called an Entertainment District. It is created by the city council and the rules are incorporated in a local ordinance that creates the Entertainment District. There are a few Entertainment Districts created in dry counties, but the majority exist in wet counties.

Does Under ACA § 3-4-405 cover all the rules and regulations of operating a private club in a dry county?

ACA §3-4-405 lists violations, some apply to private club permits, some for other permits, and some for both private clubs permits and other permits. ACA §3-9-221 through §3-9-226 cover rules specific to private clubs.

From: Robert Bahn <rdbahn@yahoo.com>  
Sent: Monday, September 25, 2023 3:40 PM  
To: Scott Hardin Scott.Hardin@dfa.arkansas.gov  
Subject: Re: Question concerning serving members and guests

Scott,

The one question that has not been answered is:

There used to be a sign our front that said "Members and Guests Only" That sign is not in front of any of the places I have driven by recently. What changed and when? I asked this question again on August 21st but did not receive an answer. See highlighted area below.

Thanks,

Robert

On Friday, August 25, 2023 at 04:37:23 PM CDT, Scott Hardin <scott.hardin@dfa.arkansas.gov> wrote:

Mr. Bahn,

Hello. Thank you for following up regarding the membership requirements. Below please find responses provided by ABC to your questions. Please let us know if you need any additional info.

I appreciate it.

Was (the sign in front of the entrance that says "members and guests only" and about the log in book to be kept by the business so when a member came in they would be required to sign in before entering) a legislature change or a policy change by the Administrator of the department overseeing the private clubs in Arkansas?

The membership book requirement for private clubs is not found in an Arkansas statute so changes to a sign in requirement would require an ABC rule change. Under current ABC rules, private clubs must keep membership books (see ABC Section 5.30). ABC rules define a membership book as a "well bound book" or "a business machine" (See ABC Section 5.12). If a business machine is used to keep a record of members, a bound book is not required. ABC Section 5.12 was last amended in 2005.

It looks now like anyone can come in and order a drink without being a member or being with a member.

It depends on if the private club is in a wet or dry county and what type of drink is ordered. In a wet county, membership in the private club is required to consume spirits but not beer or wine (see ABC Section 5.61). In a dry county, controlled beverages may only be served to members or guests accompanying members (see ABC Section 5.38).

Is there a penalty for someone to go to a private club and get a drink without being a member? And a penalty for someone at the "private club" serving the drink?

Under ACA § 3-4-405(18) and (20), failure to properly maintain a membership book by a private club and dispensing to nonmembers or nonguests by a private club are both class C violations. The penalties for these violations would be assessed against the private club, not against the nonmember.

Question concerning serving members and guests

Scott Hardin

From:scott.hardin@dfa.arkansas.gov

To:Robert Bahn

Thu, Sep 21 at 4:17 PM

Mr. Bahn,

Please find additional responses below. Thank you.

Scott

Has anyone from ABC gone to their existing theater that now has a permit and asked those buying drinks if they are members?

Response in previous email

What is the cost of such violation?

Pursuant to ACA §3-4-405, serving nonmembers or nonguests is a class C violation. The fine ranges from \$100-\$200.

In fact has anyone from ABC gone to any of the private clubs in Craighead County to see if they are selling to non members?

Enforcement has conducted quite a few inspections in Craighead County in 2023. However, they were not specifically for this purpose.

In the most recent City Council meeting the manager of the Malco said they had software so they could scan the persons ID card to be sure they were of age etc. but he did not say if that software had the names of members so they could only sell to members. Would it be a problem if the Jonesboro City Council made that a requirement of getting the approval of the City Council and not violate any of the ABC laws.

Requiring the names of members be included in the software is not required nor prohibited by ABC's rules.

It was said at the meeting that the only reason the ABC approves the permits is because the City Council approved.

This is partially correct. ACA §3-9-222(a) requires the applicant for a private club permit to get approval by local ordinance in order to apply for a private club permit from ABC. ABC will not accept an application for a private club permit if one of the required items is missing from the application, including the local ordinance.

But I have heard that the City Council has only one question to ask and that is if the zoning complies by the applicant and they are not allowed to use any other criteria to approve a private club application. Is this accurate?

This is a question for the city council. The council decides what criteria to use in deciding whether or not to approve a local ordinance.

Based on the above information I would like for the city council to deny the application for a private club permit.

Robert Bahn

---

From: Robert Bahn <rdbahn@yahoo.com>  
Sent: Monday, October 2, 2023 11:01 AM  
Subject: Private Clubs

Good morning,

I have attached a list of private clubs. Well over 100. We really do not need any more.

Please stop approving private club applications. Or at least have public hearings to decide what restrictions need to be made on future applications. The city has this right and has a responsibility to revisit the private club situation for Jonesboro.

As you go through the list of private clubs, non profit organizations, please see if you come across a non profit that has done anything good for Jonesboro in any way. Normally a non profit will do things that benefit the community.

Robert Bahn  
2200 Twin Oaks

---