

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; AMENDING SECTION 6-1 OF THE CITY CODE DEFINING RESTAURANTS; CLARIFYING SECTION 6-2 OF THE CODE GOVERNING BUSINESS ESTABLISHMENT LOCATIONS NEAR A CHURCH OR SCHOOL; AMENDING AND CLARIFYING SECTION 6-4 OF THE CITY CODE GOVERNING HOURS OF SALE AND SERVICE OF ALCOHOLIC BEVERAGES AT ESTABLISHMENTS WITHIN THE CITY; MODIFYING THE TIME PERIODS THAT ALCOHOLIC BEVERAGES ARE AUTHORIZED TO BE SOLD, SERVED, AND CONSUMED AT PLACES OF BUSINESS IN THE HISTORIC DOWNTOWN DISTRICT AND SURROUNDING AREAS; REQUIRING RESTAURANTS TO DISCONTINUE SELLING AND SERVING ALCOHOLIC BEVERAGES WHEN FOOD SERVICE IS NOT AVAILABLE VIA ONSITE FOOD PREPARATION FACILITIES; AMENDING AND CLARIFYING SECTION 6-7 OF THE CITY CODE GOVERNING POSSESSION, CONSUMPTION OR DISPLAY OF ALCOHOLIC BEVERAGES ON PUBLIC PROPERTY OR ON PREMISES OF UNLICENSED COMMERCIAL ESTABLISHMENTS; AMENDING SECTION 6-7 OF THE CITY CODE GOVERNING PACKAGE STORE SEPARATION REQUIREMENTS TO CREATE AN EXCEPTION FOR INCIDENTAL PACKAGE SALES ASSOCIATED WITH A GROCERY STORE; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, provisions of the Florida Statutes governing alcoholic beverages, as set forth in Chapters 561 through 568, Florida Statutes (the “Florida Beverage Law”), including Sections 562.14 and 562.45(2)(a), Florida Statutes, recognize the authority of municipalities to enact ordinances regulating the hours and location of businesses licensed under the Florida Beverage Law; and

WHEREAS, Section 6-4 of the City Code governs and places restrictions upon the hours that alcoholic beverages may be sold, consumed, and served at establishments within the City; and

WHEREAS, the City has received persistent complaints from the public regarding deleterious effects upon surrounding areas arising from or related to the sale, serving, and/or consumption of alcoholic beverages at places of business after midnight in the Historic Downtown District and surrounding areas; and

WHEREAS, the City finds that the sale, serving, and/or consumption of alcoholic beverages within the Historic Downtown District and surrounding areas after midnight gives rise to a number of negative effects including: 1) loud and raucous behavior by patrons; 2) causing a shift in patronage from shopping, dining, and family entertainment to purchasing and consuming alcohol; 3) requiring the City to expend

increased resources upon police patrols and other law enforcement actions; and 4) creating an environment inconsistent with a healthy environment and family-oriented focus; and

WHEREAS, the City wishes to encourage and facilitate a family-oriented environment in its Historic Downtown District and surrounding areas; and

WHEREAS, having considered the matter, including input from the public, the City finds that it is in the best interests of the residents of Winter Garden and the public welfare that Section 6-4 of the City Code be amended to provide for earlier cut-off times for the sale, consumption, and serving of alcoholic beverages at places of business licensed under the Florida Beverage Law, as provided herein; and

WHEREAS, Section 6-7 of the City Code establishing distance separation requirements for package store vendors; and

WHEREAS, the City Commission finds that it is in the interests of the welfare, health, and safety of the public that Section 6-4 of the City Code to be amended to clarify and provide that alcoholic beverages may not be served at a restaurant unless its onsite kitchen or food preparation facilities are in operation and food service is available to customers; and

WHEREAS, the City Commission finds that it is in the interests of the welfare, health, and safety of the public that Section 6-7 of the City Code to be amended to provide an exception to the package store vendor separation requirements for incidental package sales associated with grocery stores.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN:

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. City Code Amendment, Sec. 6-1. Section 6-1 of the City Code is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 6-1. – Definitions.

The words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in F.S. ch. 561 et seq. and as follows, except where the context clearly indicates a different meaning:

Fine Dining Establishment means an upscale boutique restaurant that serves high-end cuisine in a location with an elegant, sophisticated atmosphere. In order to be considered a fine dining establishment, a restaurant must meet at least four (4) of the five (5) following criteria:

1. Offer a multi-course menu that is prepared on the premises from scratch with fresh, whole ingredients by trained chefs.
2. Offer a menu that changes periodically based on when ingredients are in season.

3. Employ a full, formally-dressed front-of-house staff that includes a host/hostess, servers that provide table service to patrons, and/or a sommelier who is knowledgeable about wine selections.
4. Provide upscale table settings that consist of non-disposable items such as ceramic plates, silverware, glass beverageware, and tablecloths.
5. Provide a high-end atmosphere that features soft lighting, comfortable seating, and an overall luxurious ambiance.

In addition to the above criteria, the fine dining establishment shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development. The fine dining establishment shall not act as a detrimental intrusion into a surrounding area.

Designating a restaurant as a fine dining establishment shall require City Commission approval. If a restaurant that has been previously approved as a fine dining establishment is sold or transferred to another entity or individual, an updated City Commission approval will be required.

...

Restaurant means an establishment wherein the primary business is to serve full course meals, has a commercial kitchen within the same location as where food is served, and derives more than 51 percent of its annual revenue from the sale of food and nonalcoholic beverages served for consumption on or off the premises. The commercial kitchen within a restaurant must have all necessary equipment to prepare full course meals as defined below. The commercial kitchen must be open, staffed with a chef(s), cook(s) or other food preparation workers(s), and serve a complete menu of full course meals at all times when the restaurant is open to patrons. Full course meals shall include at least an appetizer or salad, entrée with a protein main dish and a vegetable or other side dish, and non-alcoholic beverage. Any establishment that is designated as a "Stand-alone bar" pursuant to F.S. ch. 561 with the State of Florida, Department of Business and Professional Regulation, is automatically ineligible to be considered a restaurant within this chapter.

A restaurant that provides beer, wine, and liquor for on-premises consumption shall provide a minimum of 120 physical seats available for use by restaurant patrons during all hours that alcoholic beverages are served, pursuant to Florida State laws that may be periodically amended.

Outdoor seating may only count towards meeting this requirement if the seats are completely covered by a roof, awning, or other solid, permanent structure that allows the seating to be used during inclement weather. Umbrellas, shade sails, or any other types of portable, temporary coverings will not satisfy the requirements of this section. The only exception to this provision is if the restaurant meets the minimum criteria to be considered a fine dining establishment as defined in this chapter, in which case any seating provided within the restaurant's leasable area and/or any right-of-way areas approved to be used via a Sidewalk Café Permit may count towards the minimum seating requirements.

For the purpose of this chapter, micro-breweries, craft distilleries, and brewpubs that have a state beverage license allowing manufacturing operations for the production of alcoholic beverages for

on-site consumption and off-site sales, and related uses will be classified as either a restaurant or a bar based on whether such establishment derives more than 51 percent of its annual revenue from the sale of food and nonalcoholic beverages served for consumption on or off the premises and can otherwise meet the requirements of a restaurant under this chapter.

...

SECTION 3. City Code Amendment, Sec. 6-2. Section 6-2 of the City Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions):

Sec. 6-2. – Business establishment doors, windows, location near church or school.

...

(b) Any place of business in which intoxicating liquors, wines or beers are sold or furnished at retail by the glass or drink within the city shall open directly and immediately upon the street, and the front and windows of the place of business shall be made of clear and transparent glass. Except for restaurants, package sale vendors, and those vendors licensed in accordance with F.S. § 563.02(1)(a) or F.S. § 564.02(1)(a), such place of business shall not be less than 1,200 feet from a school or within 1,200 feet of an established church within the corporate limits. A new church may not locate within 1,200 feet of an existing alcoholic beverage establishment for the purposes of noncompliance/nonconformity with the 1,200 foot separation requirement. These distances shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of such place of business to the main entrance of the church or school.

SECTION 4. City Code Amendment, Sec. 6-4. Section 6-4 of the City Code is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 6-4. - Hours of sale.

(a) ~~No~~ Alcoholic beverages shall may be sold, consumed or served or permitted to be served or consumed in any ~~place~~ establishment holding a state alcoholic beverage license only between the following hours:

i. Within the Historic Downtown District and surrounding areas; the boundaries of which are outlined on the attached Exhibit 1:

Sunday – Thursday: 11:00 AM until 11:00 PM

Friday and Saturday: 11:00 AM until 12:00 AM the next morning

ii. All other areas:

All days: 11:00 AM until 2:00 AM the next morning

~~of 2:00 a.m. and 7:00 a.m. of the same morning, except as provided in this section.~~

(b) Within the meaning of this section, a sale shall be regarded as being made if the alcoholic beverage is delivered to any person during prohibited hours, regardless of whether payment

therefor is made at some other time. If any such licensed vendor is a corporation, the officers of such corporation shall be regarded as the owner thereof for purposes of enforcement of this section. All vendors holding state licenses to operate places of business shall not keep such places of business open for business during prohibited hours. If any door of such place of business is opened during prohibited hours except to allow departure from such place of business or to admit the owner or one of his regular employees or if any person other than the owner or one of his regular employees enters into such place of business during prohibited hours, it shall be prima facie evidence that such place is open for business. Any place of business holding a state license shall, ~~at the hour of 2:00 a.m., prior to the latest times listed in section (a) above,~~ cause all outside lights on the premises occupied by it to be extinguished and shall cause all entrances and exits to such establishment to be locked, ~~and the~~ entrances and exits of the business premises, including outdoor areas, shall not be opened during the prohibited hours, except to admit the business proprietor of such place of business and his/her employees to enter and to permit the egress of the proprietor, employees and customers of such place of business from the premises. No later than one half hour prior to the latest times listed in section (a) above, the proprietor or his/her designee shall announce a last call for consuming alcoholic beverages, whereby customers ~~Customers within the place of business at the hour of 2:00 a.m. who have prior thereto purchased any single drink of alcoholic beverage and have not completed the consumption thereof shall~~ may be permitted to complete the consumption of such a previously-ordered alcoholic beverage, and Customers shall be required by the proprietor or his employees to leave the place of business as soon as may be reasonably possible to vacate the premises after completing consumption of such alcoholic beverages no later than the latest times listed in section (a) above. Nothing contained in this chapter shall be construed so as to permit any place of business to sell or serve or permit alcoholic beverages to be sold or served during prohibited hours.

(c) However, licensees for the sale of alcoholic beverages in the city shall, on that date known as New Year's Eve (December 31), be permitted to remain open for such sales for one hour after the regular closing time established by this section.

~~(d) Restaurants shall be permitted to serve alcoholic beverages between the hours of 11:00 a.m. and 2:00 a.m.~~

(d) At all times that a restaurant serves, sells or allows consumption of alcoholic beverages it shall operate its onsite kitchen or food preparation facilities and provide full food service to its customers. A restaurant shall discontinue service, sale and allowed consumption of alcoholic beverages during those hours when the requirement of this subsection cannot be met. This subsection cannot be satisfied by allowing customers or the restaurant on behalf of its customers to order and have delivered food from offsite establishments or facilities. This subsection cannot be satisfied by the restaurant providing ice, beverages with or without garnishment, popcorn, or prepackaged food items sold without additions or preparation.

(e) Upon application for a city ~~occupational license~~ Business Tax Receipt, the licensee applicant must submit a copy of their Seating Establishment License from DBPR's Division of Hotels and Restaurants and sign an affidavit attesting that the sale of food and nonalcoholic

beverages consumed on the licensed premises will exceed 51 percent of the gross revenue of the business. To keep or renew this designation and ~~occupational license~~ Business Tax Receipt, the ~~licensee~~ applicant must file an affidavit verifying that the sale of food and nonalcoholic beverages consumed on the premises for the preceding 12 months exceeded 51 percent of the gross revenue of the business.

Each year at time of Business Tax Receipt renewal, the applicant must submit to the city a copy of their annual Point of Sale (POS) receipts, as well as a summary that provides the percentage of revenue derived from food / nonalcoholic beverages and the percentage of revenue derived from alcoholic beverages within the preceding 12 month period.

The city shall have access and the right to examine all records and source documents used to determine compliance with this rule. Licensees must give the city the means, facilities, and opportunity to verify the accuracy of these records. If a business holding a license to sell alcohol with the State of Florida sells less than 51 percent food for consumption of food on the premises compared with sales of alcohol in any year ~~or in any two months preceding any audit~~, the business is ineligible to be deemed a restaurant pursuant to this section and may not be deemed a restaurant pursuant to this section until the business meets the definition of a restaurant in this section for 12 consecutive months after examination of the records by the city.

All audits provided by the licensee must conform to the requirements of the State of Florida, Department of Business and Professional Regulation.

SECTION 5. City Code Amendment, Sec. 6-5. Section 6-5 of the City Code is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 6-5. - Possession, consumption or display of alcoholic beverages on public property or on premises of unlicensed commercial establishments.

(a) Except as may otherwise be approved by the city commission through a Special Event Permit, it is unlawful for anyone to possess, consume or display an open container of alcoholic beverages on public sidewalks, streets or other public property. City commission approval is not required if alcohol is served as part of a special event that has been administratively approved by City Staff at the following City-owned venues:

- i. Tanner Hall
- ii. Little Hall
- iii. City Hall

(b) No person or business shall consume sell alcoholic beverages, offer alcoholic beverages as an added benefit of another sale or paid service, or cause alcoholic beverages to be added to any other beverage for sale on the premises of any commercial establishment unless the owner of the establishment is licensed to sell alcoholic beverages to be consumed on the premises or the alcohol is sold as part of an approved Special Event by a third party vendor who holds a valid catering license. For the purpose of this section, the term "alcoholic

beverages" shall include all beverages containing more than one percent alcohol by weight; and the term "premises" shall include the parking area of the commercial establishment.

(c) Winter Garden Theatre. The Winter Garden Theatre existing upon city owned property located at 160 West Plant Street, having Orange County Tax Parcel Identification #23-22-27-2888-03-034 is permitted to sell and serve alcoholic beverages for on-premises consumption in accordance with its state alcoholic beverage license during hours in which the Winter Garden Theatre is open to patrons to attend screenings, shows, productions, and performances, provided that such hours are not inconsistent with Section 6-4(a).

SECTION 6. City Code Amendment, Sec. 6-7. Section 6-7 of the City Code is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 6-7. - Package sale vendors.

- (a) *Package sale vendor distance requirements established.* For all those certain areas of land in the city that lie within 5,000 feet of a package sale vendor's place of business as established, located and licensed, regardless of whether such established place of business is located within or outside of the city, no other new relocated package sale vendor shall be permitted to open and/or start the business of package sales within that distance except as provided in subsection (e).
- (b) *Package sales within distance requirements restricted.* The purpose of creating the distance requirements mentioned in subsection (a) of this section is to provide and require that no package sale vendor which is located or proposes to locate in the city shall be permitted to operate at a new location within a distance of 5,000 feet of the location of any package sale vendor which is both pre-existing at the time of the package sale vendor's application to operate at the new location and is located in any area of the city.
- (c) *Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses.* The distance requirements set forth in subsections (a) and (b) shall not be applied to the location of an existing package sale vendor when there is:
 - (i) A renewal of an existing license;
 - (ii) A transfer in ownership;
 - (iii) A change in business name; or
 - (iv) A change in a state issued 4COP license for an existing package and lounge business to a 3PS license, and any decrease in the numerical designation of a state issued license which is of the same series (type); provided the physical location of the package sale vendor establishment does not change. No increase in the numerical designation of a series (type) of a state issued license which is of the same series (type) shall be permitted at or for a location (new or existing) except in compliance with the provisions of section 6-8.
- (d) *Measurement of distances.* The distances provided in this section shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the proposed main entrance of a package sale vendor who proposes to operate the place of business and is licensed under the Beverage Law [F.S. chs. 561—568] to the main entrance of any other package sale vendor who is operating such business.
- (e) *Incidental package sales with grocery stores.* A package sale vendor place of business that meets the following requirements is not required to comply with the 5,000-foot distance separation requirement of subsection (a) and (b) above:

(i) The package sale vendor place of business is under the same ownership and operating under the same business name as a grocery store having at least 30,000 square feet of retail space and that is operating within 500 feet of such package sale vendor place of business;

(ii) The grocery store must have as its primary business the retail sales of food and household items, and the sale of alcoholic beverages must be an incidental portion of the business. Alcoholic beverage sales must not exceed ten (10) percent of overall revenue for the combined grocery store and package sale vendor place of business;

(iii) The package sale vendor place of business must not be open for business when the grocery store is closed for business. If the grocery store ever ceases operations, then the package sale vendor place of business must close;

(iv) The package sale vendor place of business must not be larger than ten (10) percent of the retail space square footage of the grocery store; and

(v) The package sale vendor place of business must comply with any other applicable requirements of state and local laws, regulations, codes, and ordinances, including any other applicable distance separation requirements.

SECTION 6. Codification. Sections 2, 3, 4 and 5 of this Ordinance shall be incorporated into the Winter Garden City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made. The map describing the Historic Downtown District and surrounding areas attached as Exhibit 1 is to be codified into the code as a table and the words “on the attached Exhibit 1” may be replaced in order to reference the table codified into the code.

SECTION 7. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 8. Conflicts. In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 9. Effective date. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Garden, Florida, and shall apply to all existing and future establishments and businesses.

FIRST READING: _____, 2024

SECOND READING AND PUBLIC HEARING: _____, 2024

ADOPTED this ____ day of _____, 2024, by the City Commission of the City of Winter Garden, Florida.

CITY COMMISSION
CITY OF WINTER GARDEN

John Rees, Mayor/Commissioner

ATTEST:

Angela Grimmage, City Clerk