

ORDINANCE NO. 24-40

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 6 “ALCOHOLIC BEVERAGES” OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES; AMENDING SECTION 6-1 OF THE CITY CODE DEFINING RESTAURANTS; AMENDING AND 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; REQUIRING RESTAURANTS TO DISCONTINUE SELLING AND SERVING ALCOHOLIC BEVERAGES WHEN FOOD SERVICE IS NOT AVAILABLE VIA ONSITE FOOD PREPARATION FACILITIES; AMENDING AND CLARIFYING SECTION 6-5 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; AND ADDING A NEW SECTION 6-9 TO THE CITY CODE TO OUTLINE POLICIES AND PROCEDURES RELATING TO A NEW EXTENSION OF HOURS PERMIT FOR ALCOHOL SALES; 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; and

WHEREAS, the City finds that the sale, serving, and/or consumption of alcoholic beverages 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 other areas of the City; 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 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, 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 food service from on site preparation remains available to customers; 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 6-7 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; and.

WHEREAS, the City wishes to encourage the ongoing economic vitality of local businesses, including the restaurant and food service industry, while not compromising the safety or quality of life of its citizens; and

WHEREAS, pursuant to Section 562.14, Florida Statutes, no alcoholic beverages may be sold, consumed, served or permitted to be served or consumed in any place holding a beverage license between the hours of midnight and 7 a.m. without authorization by a municipal ordinance; and

WHEREAS, the City has broad legislative home rule and zoning authority to regulate alcoholic beverage sales establishments to the extent not preempted by general law, including but not limited to, the location and hours of alcoholic beverage sales and authority to condition the sale and on-premises consumption of alcoholic beverages after midnight; and

WHEREAS, the City Commission finds that it is in the interests of the welfare, health, and safety of the public to establish a new Section 6-9 of the City Code to create and set the regulations for a new Extension of Hours Permit for after midnight alcohol sales.

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 consistent with a multi-course menu, glass beverageware, cloth napkins, 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 outdoor areas of 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.

The City Manager, or his or her designee, will convene a committee to review all applications to be designated a fine dining establishment. The committee shall consist of City staff including, at a minimum, the City Manager, Police Chief, Fire Chief, Planning Director, Public Services Director, and Economic Development Director. If a restaurant that has been previously approved as a fine dining establishment is sold or transferred to another entity or individual, an updated application shall be submitted for review and approval by the committee.

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Restaurant means an establishment wherein the sale and service of alcohol is incidental to the sale and service of food and nonalcoholic beverages. A restaurant must have a commercial

kitchen within the same location as where food is served, and ~~that~~ 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 within the restaurant must prepare and the establishment must sell and serve a complete menu of full course meals from the time opening until closing. Full course meals shall include at minimum: an entrée with a protein main dish, a vegetable or other side dish, and a 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.

Restaurants serving Beer and Wine: A restaurant that provides beer and wine for on-premises consumption shall derive more than fifty-one (51) percent of their annual revenue from the sale of food and nonalcoholic beverages served for consumption on the premises as established by Florida State Law and City Charter Section 5.

Restaurants serving Beer, Wine, and Liquor: A restaurant that provides beer, wine, and liquor for on-premises consumption shall, in addition to deriving more than fifty-one (51) percent of their annual revenue from the sale of food and nonalcoholic beverages served for consumption on the premises as established by City Charter Section 5, also 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 the minimum 120 seat requirement 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.

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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.

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(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.

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

i. City Wide:

All days: 7:00 AM until Midnight.

ii. Any beer, wine or alcoholic beverage, regardless of content, ordered by a patron may be consumed on licensed premises by a patron until no later than Midnight. Patrons may continue to occupy the premises until the establishment closes, but may not consume any previously-purchased alcoholic beverage after Midnight, except as allowed by an Extension of Hours Permit as defined in Section 6-9 below.

(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 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., 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 shall not~~

~~be opened during the prohibited hours, except to admit the proprietor of such place of business and his employees and to permit the egress of the proprietor, employees and customers 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 not 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, but consumption of said beverages shall occur 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 until 3:00 am the next morning ~~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 offer a full course menu of food items that have been prepared on-site within the restaurant's commercial kitchen 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 new city occupational license Business Tax Receipt, the licensee applicant must submit a copy of their menu(s), 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, each year at time of Business Tax Receipt renewal, and occupational license, the licensee applicant must submit to the city a copy of their menu(s), annual Point of Sale (POS) receipts, as well as a summary that provides the percentage of revenue derived from food and nonalcoholic beverages and the percentage of revenue derived from alcoholic beverages within the preceding 12 month period. If a restaurant's menu changes significantly at any time during the year, new menus shall be provided to the City to be reviewed by Staff for conformance with this Chapter and kept on file with the applicant's Business Tax Receipt ~~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.~~

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. A hearing before the City's Code Enforcement Board or a hearing officer appointed by the City will be held whenever grounds for revocation of an establishment's restaurant classification exists pursuant to this section.

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

f) *Intoxicated Persons.* It shall be unlawful for any intoxicated person to loiter in and about the business premises used or occupied by any person licensed under the State beverage law. It shall be unlawful for the operator of such premises to allow any such person to remain thereon.

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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 City-owned venues.

(b) No person ~~or business~~ shall ~~consume~~ sell alcoholic beverages, offer alcoholic beverages as an added benefit or condition 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).

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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's sale and display area 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.

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SECTION 7. City Code Amendment, Add Sec. 6-9: Extended Hours of Sale. City Code is hereby amended to add a new Section 6-9, to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 6-9. – Extended Hours of Sale.

(a) Hours of sale may be extended by permit only so that alcoholic beverages may be sold, consumed or served or permitted to be served or consumed in any establishment holding a state alcoholic beverage license between the following hours:

i. City Wide:

All days: Midnight until 2:00 AM

ii. With an approved Extension of Hours Permit, any beer, wine or alcoholic beverage, regardless of content, may be consumed on licensed premises by a patron until no later than 2:00 a.m. As a condition of the Extension of Hours Permit, at 2:00 a.m. the establishment shall close to the public and patrons must

immediately vacate the premises and the establishment may not reopen to the public until 7 a.m.

- (b) ***Permit Required.*** Any establishment within the City that is licensed under the state beverage laws and desires to remain open for the purpose of the sale, service, or consumption of alcoholic beverages between the hours of Midnight and 2:00 a.m., may make an application with the City for an Extension of Hours Permit. However, motion picture theaters as defined by Chapter 540, Fla. Stat., are exempted from the permit requirement so long as their principal business is not the sale, service, or consumption of alcoholic beverages. No permit may be issued to an establishment that has any outstanding obligations to the City, including but not limited to any code violations or liens.
- (c) ***Application Form.*** The application form for the Extension of Hours Permit shall be provided by the City and will require information about the establishment, including, though not exclusively, the name and address of the establishment, the name(s), address(es), and telephone number(s) of the owner(s) of the establishment and the property on which the establishment is located, the name(s) and telephone number(s) of the Responsible Person(s), the maximum occupancy of the establishment, the type of alcohol license possessed by the establishment, and the name and address where notices related to enforcement of this section are to be mailed or delivered. By applying for an Extension of Hours Permit, an applicant and its establishment agrees to comply with and not challenge any requirement of this Chapter as a condition of receiving such permit. Permit holders are required to amend the Permit application that is on file with the City within ten (10) days of any change in the information set forth on the application form. All Extension of Hours Permits shall require the signed approval of the City Manager and the initialed approval of all members of the reviewing committee.
- (d) ***Permit Application Fee.*** Prior to the issuance of a renewal or new Extension of Hours Permit under this section, the applicant shall be required to pay a fee in the amount of \$250. The application fee will be utilized to reimburse the City for its costs to administer the Permit program, as well as inspecting and regulating the use that has been authorized under the permit.
- (e) ***Public Safety Measures.*** The Chief of Police shall determine whether and to what extent state-licensed private security or police protection is reasonably necessary inside and outside of permitted establishments for the purpose of traffic control and public safety. The Chief of Police shall base this decision on the occupancy, type of alcohol license, traffic control, history of incidents that have previously occurred at or were related to the establishment, and any other factor reasonably related to public safety. If such police protection or security is deemed necessary by the Chief of Police, the City will inform the permit applicant, specifying the number of state-licensed security that are necessary to be placed inside the establishment, the number of police officers that are necessary to be placed outside of the establishment and the number, and the particular time and days

that such state-licensed security or police officers are required. Officers placed outside the establishment may be deployed anywhere within the City by the Chief of Police, or his or her designee, to most effectively provide for traffic control and public safety. For state-licensed private security protection, the details and documentation shall be provided to the Chief of Police for review. The applicant shall secure the police protection or state-licensed private security deemed necessary by the Chief of Police at the sole expense of the applicant.

- (f) ***Permit Review.*** The City Manager, or his or her designee, will convene a committee to review all applications for Extension of Hours Permits. The committee shall consist of City staff including, at a minimum, the City Manager, Police Chief, Fire Chief, Planning Director, Public Services Director, and Economic Development Director. The committee will review the Permit Application and, if the application is complete, a Permit shall be issued to the establishment authorizing it to sell alcohol between the hours of Midnight and 2:00 a.m., subject to the conditions of the Permit, as well as the provisions of this section and applicable laws, rules, and regulations.
- (g) ***Conditions of Permit.*** Each establishment must abide by all reasonable conditions placed upon the Extension of Hours Permit, including, but not limited to the Public Safety Measures outlined in this section, the requirements of this Chapter, and any requirements associated with such establishment's Retail Beverage license and Chapter 562, Fla. Stat.
- (h) ***Permit Effective Term.*** The Permit is effective for an annual term of October 1st to September 30th to coincide with issuance or renewal of the establishment's Business Tax Receipt, unless revoked or suspended as provided herein, or in the event the establishment ceases to operate at the Permit location. Each Permit issued under this section must be renewed annually at time of Business Tax Receipt renewal. The permit application fee may be prorated if a new permit is issued before October 1st of that year. In addition, within ten (10) days after a change in ownership or a change in location of the establishment during the term, the establishment must submit a new application for Permit.
- (i) ***Display of Decal.*** Upon the issuance of a permit under this section, the City shall also issue a decal to the establishment indicating the establishment's hours of operation, occupancy, and the expiration of the permit. Such decal shall be conspicuously displayed at or about the primary place of ingress of the establishment in a fashion that it is visible from outside the establishment.
- (j) ***Prohibition.*** Except as otherwise provided in this section, no establishment may sell, serve, or permit to be served or consumed, alcoholic beverages between the hours of Midnight and 2:00 a.m. unless it is operating under a valid and effective Extension of Hours Permit.

- (k) **Prior to Midnight.** The provisions of this section shall not impair or impact an establishment's right to remain open and sell, serve, or permit to be served or consumed, alcohol between the hours of 7:00 a.m. and Midnight, if otherwise authorized by law.
- (l) **No Right to Permit.** The ability to sell, offer for sale, provide service, or permit to be served or consumed upon the premises of any establishment, any alcoholic beverage between the hours of Midnight and 2:00 a.m. within the City is hereby declared to be and is a privilege subject to suspension or revocation by the City, and no person may reasonably rely on a continuation of that privilege.
- (m) **Suspension of Permit.** An establishment's Extension of Hours Permit may be suspended if the City Code Enforcement Board or a hearing officer appointed by the City finds:
- a. On one occasion within a consecutive three month period, the establishment:
 - i. Is the site of violation of any provision of Chapter 790, Fla. Stat., relating to Weapons and Firearms;
 - ii. Is the site of any violation of any provision of Chapter 794, Fla. Stat., relating to Sexual Battery;
 - iii. Is the site of the violation of any provision of Chapter 893, Fla. Stat., relating to the sale or delivery of a controlled substance; or
 - iv. Is the site of any violation of any provision of Chapter 782, Fla. Stat., relating to Homicide.
 - b. On two occasions within a consecutive three-month period, the establishment:
 - i. Failed to comply with any condition of the Extension of Hours Permit;
 - ii. Is the site of the violation of any provision of Federal, State or City Code, relating to Disorderly Conduct;
 - iii. Is the site of any violation of any provision of sections 784.011 or 784.021, Fla. Stat., relating to Assault or Aggravated Assault.
 - iv. Is the site of any violation of any provision of sections 784.03, 784.041, or 784.045, Fla. Stat. relating to Battery, Felony Battery, Domestic Battery by Strangulation, or Aggravated Battery;
 - v. Is the site of the violation of any provision of Chapter 849, Fla. Stat., relating to Gambling;
 - vi. Is the site of any violation of any provision of Chapter 893, Fla. Stat., relating to the sale or delivery of controlled substances;
 - vii. Is the site of the violation of any provision of Chapter 893, Fla. Stat.,

relating to possession of a controlled substance;

- viii. Is the site of any violation of any provision of Chapter 790, Fla. Stat., relating to Weapons and Firearms; or
 - ix. Is the site of any violation of any provision of Chapter 794, Fla. Stat., relating to Sexual Battery.
- c. On three occasions within a consecutive three-month period, the establishment:
- i. Failed to comply with any condition of the Extension of Hours Permit;
 - ii. Is the site of a violation of any provision of Chapter 38, Winter Garden City Code, relating to Noise;
 - iii. Is the site of any violation of any provision of Federal, State or Local Code, relating to Disorderly Conduct;
 - iv. Is the site of any violation of any provision of sections 784.011 or 784.021, Fla. Stat., relating to Assault or Aggravated Assault;
 - v. Is the site of any violation of any provision of sections 784.03, 784.041, or 784.045, Fla. Stat. relating to Battery, Felony Battery, Domestic Battery by Strangulation, or Aggravated Battery;
 - vi. Is the site of any violation of any provision of Chapter 849, Fla. Stat., relating to Gambling; or
 - vii. Is the site of any violation of any provision of Chapter 893, Fla. Stat., relating to Drug Abuse Prevention and Control.

(n) **Duration of Suspension.**

- a. Suspensions shall be for a period of thirty (30) days, beginning on the date of the finding of suspension by the Code Enforcement Board or hearing officer appointed by the City.
- b. Should additional grounds for suspension occur while the establishment's permit is suspended, any additional period of suspension proscribed by this section shall be served consecutively.
- c. Prior to suspension, an establishment may receive a written Notice of Violation from the City's Code Enforcement Department. Upon receipt of the Notice of Violation, the establishment shall submit a mitigation plan that outlines how the establishment has cured or is reasonably designed to cure or otherwise prevent future occurrences of the violation(s). In determining if the mitigation plan submitted by the establishment has cured or is reasonably designed to cure or otherwise prevent future occurrences of the violation, the City may consider any relevant information, including but not limited to, input from the Winter Garden

Police Department, Code Enforcement, the Fire Chief, and citizen complaints regarding the establishment.

- d. If the City finds that the establishment has a mitigation plan that has cured, is reasonably designed to cure, or otherwise taken reasonable actions to prevent future occurrences of the violation, then, in lieu of proceeding to a hearing in front of the Code Enforcement Board or a hearing officer appointed by the City, the City may amend the establishment's Extension of Hours Permit to include, as a condition thereof, the mitigation plan. No establishment has a right to alter the conditions of the Permit in lieu of a hearing or suspension.
 - e. If the same type of violation has occurred three or more times at an establishment, it shall be prima facie evidence that the establishment has negligently permitted the establishment to be the site of such violation. Where multiple violations have occurred at an establishment, different violations may be combined to form the minimum required number of violations, however, such combination of violations must have occurred the minimum number of times of the least restrictive violation thereof.
- (o) ***Revocation of Permit.*** The City shall revoke the Extension of Hours Permit for the amount of time remaining on the current permit or six (6) months, whichever is greater, if:
- a. Information provided in the application for the permit, including a renewal permit, is false, deceptive, willfully incorrect, or intentionally misleading; or
 - b. The establishment's Extension of Hours Permit has been suspended as provided for herein three (3) times within a consecutive 12-month period.
- (p) ***Procedures.*** Notice and Opportunity to be Heard:
- a. A hearing before the City Code Enforcement Board or a hearing officer appointed by the City will be held whenever grounds for suspension or revocation exist pursuant to this section. The Permittee must be advised in writing of the date, time, and place of such hearing either by personal service upon a Responsible Person at the establishment or by notice mailed by certified mail to the address provided on the permit, no later than seven (7) days before the date of the hearing.
 - b. The hearing will be conducted in accordance with the principles of due process and shall not be subject to the formal rules of evidence. The City bears the burden to prove the basis for suspension or revocation by a preponderance of the evidence. It is the responsibility of any party wishing to have a transcript of the proceedings to provide a stenographer at their own expense.

- c. In determining whether to suspend or revoke the permit, the Code Enforcement Board or hearing officer appointed by the City will consider any evidence presented by the establishment that it could not have taken reasonable steps to prevent the applicable violation from occurring, and it may be determined that suspension or revocation is or is not warranted based upon the culpability of the establishment.
- d. The Code Enforcement Board or hearing officer shall base the order on the criteria listed in this section. For the purposes of suspension or revocation under this section, calculation of the time periods will be construed from the date each violation occurred. Guilty pleas, no contest pleas, default judgments, payment of citations, or any other finding of a violation by a court of competent jurisdiction or by the procedure provided within City Code shall constitute proof of a prior violation, regardless of whether adjudication was withheld or not. Nothing in this section shall be deemed to allow permittees to relitigate previously adjudicated violations. Code enforcement officers, Police officers, or other City officials may bring proof of separate violations to the hearing officer which, if proven by a preponderance of the evidence to have occurred, shall be counted towards the total number of violations.
- (q) **Appeal.** Within fourteen (14) days after the issuance of an order of suspension or revocation, the establishment may request a hearing before the City Commission to appeal the suspension or revocation. The request for a hearing in front of the City Commission must be in writing and shall not stay the effect of a Suspension or Revocation Order. The request must allege findings of fact and conclusions of law supporting the establishment's challenge. The City Commission will hear the challenge at its next available regular meeting subject to agenda deadline perimeters and shall conduct a de novo hearing in accordance with its regular rules of evidence and procedure for quasi-judicial hearings.
- (r) **Decision on Appeal.** Upon conclusion of the hearing, the City Commission shall make findings of fact, conclusions of law, and issue an order either upholding the suspension or revocation of the Permit or quashing the suspension or revocation. The finding by the City Commission shall be the final action by the City.
- (s) **Suspension and Revocation Not Exclusive Enforcement Mechanisms.** Nothing in this section shall be construed or interpreted to prohibit the City from enforcing its codes and ordinances by means other than those provided by this chapter, including without limitation, by summons, notice to appear in court, arrest, issuance of a citation, a civil action, stop work order, statutory code enforcement proceedings, or demolition.
- (t) **Exhaustion of Administrative Remedies.** Judicial review of a Permit suspension or revocation is available only after all applicable administrative appeal remedies provided

by this chapter have been exhausted. Filing a petition for judicial review or other such pleading shall not stay a suspension or revocation unless so ordered by the circuit court.

- (u) **Reapplication for Permit.** After an establishment's Permit has been revoked for a period of time as provided for in Section 6-9 (o) above, the establishment may reapply for a permit to sell alcoholic beverages between Midnight and 2:00 a.m. In addition to all other required information, an establishment whose permit has previously been revoked shall include information explaining the actions they have taken to prevent the violations that resulted in the past revocation(s).

SECTION 8. Codification. Sections 2, 3, 4, 5, 6, and 7 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.

SECTION 9. 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 10. 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 11. 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