

ORDINANCE NO. 2012-05 OF THE CITY OF LAKE WORTH, FLORIDA, AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES BY PROVIDING A PURPOSE AS A NEW SECTION 5-1, BY PROVIDING FOR APPLICABILITY AS A NEW SECTION 5-2, PROVIDING FOR CLARIFICATION OF DEFINITION, PROVIDING FOR CLEAR, CONCISE AND OBJECTIVE DISTANCE REQUIREMENTS; RENUMBERING EXISTING SECTIONS TO INCORPORATE THE ADDITIONAL SECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of Lake Worth recognizes the importance of consistency of evaluation of factors considered regarding the granting of proximity waivers to business serving alcoholic beverages; and

WHEREAS, the City Commission of Lake Worth desires to preserve the unique character of the community; and

WHEREAS, in order to achieve consistency of evaluation the City Commission of Lake Worth desires to create a table that clearly, concisely and objectively describes the requirements that must be met for different licenses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH, FLORIDA that:

Section 1. The foregoing "WHEREAS" clauses are true and correct and are hereby ratified and confirmed by the City Commission.

Section 2. Chapter 5 of the Code of Ordinances is amended to read as follows:

Chapter 5  
ALCOHOLIC BEVERAGES

Sec. 5-1. Purpose.

The sale or service of alcoholic beverages has the potential to generate activity that may impact other uses in an adverse manner. Such impacts may be mitigated in different ways including but not limited to buffering or the provision of adequate separation distances. Sections 5-2 through 5-7 provide requirements for such mitigation.

Sec. 5-2. Applicability and Definitions.

- (a) Applicability. Restaurants, bars, and retail uses that sell or serve alcoholic beverages shall meet the requirements of Section 5-5 of this Chapter, entitled, "Zoning regulations and limitations; exceptions" in addition to the requirements that may apply in the zoning districts in which they are allowed. Section 5-5 shall not apply to restaurants in the Central Area Commercial (CAC) district east of the FEC Railway and such other uses as set forth in Section 5.5(c). These requirements do not apply to manufacturers, distributors, or importers of alcoholic beverages as governed by any State of Florida licensing and permitting requirements.

(b) Definitions. For the purposes of Chapter 5, the words and phrases below shall have the following meanings:

(1) 'restaurant' means an eating and drinking establishment serving alcoholic beverages that is governed by either (1) a State of Florida series SRX alcoholic beverage license or (2) by another State of Florida consumption on premises license, and which is required to maintain a greater than fifty-one (51) percent ratio of food and non-alcoholic beverage sales relative to total food and beverage sales as measured on an annual basis (including the 2COP license identified herein as a 2COP REST license) and maintains a current city Business Tax Receipt to operate as a restaurant.

(2) 'protected land use' means a school (public, pre-k through 12, governmental), house of worship or child care facility that is legally established prior to the establishment of the applicable alcoholic beverage use. The term does not include a post secondary school.

~~Sec. 5-4-5-3.~~ Persons to whom sales prohibited.  
Alcoholic beverages as defined by law may not be sold:

- (a) To any person under the legal drinking age as set by Florida Statute.
- (b) To any person who is intoxicated.
- (c) To any person who is mentally incompetent and known to be such by any licensee or his agents.
- (d) To any person who is an habitual drunkard and known to be so by any licensee or his agent.

~~Sec. 5-25-4.~~ Hours of sale.

~~No person licensed under the provisions of Florida Law shall sell, deliver, consume or permit the sale, delivery, service or consumption of alcoholic beverages on the premises where such licensed business is conducted except as follows~~ for the following hours where a business holds a legal alcohol license:

- (a) The hours of sale of alcoholic beverages of more than one (1) percent of alcohol by weight shall be:
  - (1) 12:00 a.m. (Midnight) to 2:00 a.m., and 7:00 a.m. to 11:59 p.m. Monday through Saturday.
  - (2) 12:00 a.m. (Midnight) to 2:00 a.m., and 12:00 p.m. (Noon) to 11:59 p.m., Sunday.
- ~~(b) Reserved.~~
- ~~(c) Alcoholic beverages of more than one (1) percent of alcohol by weight for consumption on the premises may be sold in nightclubs only in conformity with the hours fixed in this section, except sale may be made until 5:00 a.m. daily.~~

- (d) ~~A nightclub is hereby defined to be a place where alcoholic beverages of more than one (1) percent of alcohol by weight for consumption on the premises are sold, and where food, lunches and dinners are sold, and where daily entertainment by persons recognized as public entertainers, including orchestras, is provided, and having a seating capacity of fifty (50) seats, pursuant to National Board of Fire Underwriter's rules and regulations, and at least two thousand six hundred (2,600) square feet of service area, including having four hundred fifty (450) square feet of enclosed floor space for dancing purposes.~~

Sec. 5-4 ~~5-5~~. Zoning regulations and limitations; exceptions.

- (a) ~~Definition.~~ For the purpose of this section only, a "restaurant" shall be defined as follows:

~~Restaurant~~ A place of business qualifying to sell liquor pursuant to F.S. § 561.20(2)(a)(3) and which also meets the requirements of Florida Administrative Code Rule 7A-3.015; as such statute and rule may be amended from time to time. A restaurant is a place which at minimum meets all of the following criteria:

- ~~(1) Such place of business shall have nine hundred (900) square feet of service area and be equipped to serve thirty (30) persons full course meals at tables at one (1) time;~~
- ~~(2) Such place of business must derive at least fifty one (51) percent of its gross revenue from the sale of food and nonalcoholic beverages;~~
- ~~(3) No such place of business shall operate as a package store nor shall intoxicating beverages be sold after the hours of serving food have elapsed; and~~
- ~~(4) No such place of business shall serve alcoholic beverages at other than tables where food may be served.~~

- (b) ~~(a) Regulations and limitations; exceptions.~~ Prohibitions. No alcoholic beverage shall be sold:

1. where the place of business is adjacent to or the entrance thereof or advertising sign used in connection therewith is within thirty (30) feet of the nearest building line of the lots on the south side of Lake Avenue or the north side of Lucerne Avenue; or
2. where such place of business is within ~~five hundred (500)~~ four hundred (400) feet of a church, public or private school, park, library or other place of business of a person holding a beverage license; ~~provided, however, the city commission after review and recommendation of the waiver request by the planning and zoning board, may in the case of a restaurant permit a lesser distance taking into consideration the nature of the business and neighborhood. In the case of business selling beer or wine for consumption on the premises, the place of business shall not be within nine hundred (900) feet of a church, public or a private school, park, library or place of business of another person licensed for the sale of alcoholic beverages; provided, however, the city commission may permit a lesser distance after review and~~

~~recommendation of the waiver request by the planning and zoning board, taking into consideration the nature of the business and neighborhood. Please refer to Section 5-6 for a table of Distance Requirements.~~

~~The distance herein referred to shall be measured by the shortest route of ordinary pedestrian travel along the public thoroughfare from the nearest point of such place of business to the nearest point of the church grounds, school grounds, parks, library grounds or other licensed place of business.~~

(b) Waivers. ~~The provisions~~ city commission, after review and recommendation of the waiver request by the planning and zoning board, may grant a waiver from the prohibitions set forth in 5-5(a) after taking into account the nature of the business and the neighborhood.

(c) Exceptions. ~~The prohibitions set forth in Section 5-5(a) – Zoning regulations and limitations; exceptions,~~ shall not apply to the following:

- (1) To sale of beer or wine for consumption off the premises only.
- (2) To hotels with fifty (50) or more guest rooms and have been granted a 2COP license and to hotels which have a dining room and have been granted a 4COP SRX license in connection therewith serving meals to guests; provided, however, no hotel shall exhibit any outside sign denoting that alcoholic beverages are obtainable therein or shall have exterior bar service.
- (3) To any place of business of any licensee which alcohol license was in effect prior to the establishment of the distance aforesaid; provided further, that should any such alcohol license be revoked or not be renewed, or which Business Tax Receipt and use and Occupancy Certificate not be renewed annually, such place of business or location shall thereafter be restricted according to the distances aforesaid.
- (4) ~~Eating and drinking establishments~~ Restaurants within the central area commercial (CAC) district and fronting either Lake Avenue or
- (5) Lucerne Avenue and which are located east of the FEC Railway serving beer, wine, ale or liquor alcoholic beverages for consumption on premises. ~~Such establishments shall be exempt from the restaurant criteria outlined above, however, such establishments shall be subject to city commission distance requirement waiver review and approval, after review and recommendation of the waiver request by the planning and zoning board.~~

#### Sec. 5-6. Minimum Distances and Other Required Mitigation.

- (a) The following table lists use separation, buffer wall, and other mitigation requirements for various types of alcoholic beverage uses:

<u>License Type</u>	<u>General Types Of Uses Applicable For The License</u>	<u>400 Foot Distance Requirement To Protected Land Uses Applicable?</u>	<u>Buffer Wall Required?</u>	<u>Zoning Of Block Face To Be Entirely Commercial?</u>	<u>Zoning Of Block Face Across Street From The Front Of The Establishment To Be Entirely Commercial?</u>
<u>1 COP</u>	<u>Establishment serving primarily beer and wine but not liquor and may serve food</u>	<u>Yes</u>	<u>Yes, unless in a multi-tenant center and the location of the space does not have exterior walls with openings facing a residential zone</u>	<u>Yes</u>	<u>Yes</u>
<u>2 COP</u>					
<u>4 COP</u>	<u>Establishment serving primarily beer, wine, and liquor and may serve food</u>	<u>Yes</u>	<u>Yes, unless in a multi-tenant center and the location of the space does not have exterior walls with openings facing a residential zone</u>	<u>No</u>	<u>No</u>
<u>4 COP SRX</u>	<u>Restaurant</u>	<u>No</u>			
<u>4 COP X</u>					
<u>4 COP SR</u>					
<u>4 COP S</u>					
<u>2 COP REST</u>					
<u>1 APS</u>	<u>Establishment serving primarily beer, wine and liquor and may serve food</u>			<u>Yes, unless sales are incidental to a principal retail use</u>	<u>Yes, unless sales are incidental to a principal retail use</u>
<u>2 APS</u>					
<u>3 APS</u>					
<u>3 PS</u>					

<u>License Type</u>	<u>General Types Of Uses Applicable For The License</u>	<u>400 Foot Distance Requirement To Protected Land Uses Applicable?</u>	<u>Buffer Wall Required?</u>	<u>Zoning Of Block Face To Be Entirely Commercial?</u>	<u>Zoning Of Block Face Across Street From The Front Of The Establishment To Be Entirely Commercial?</u>
All other licenses, and the above licenses, when used as an accessory use to a principal permitted or special exception use	Bowling alleys, fraternal and benevolent clubs, colleges and universities, congregate living facilities with common dining facilities, hotels, bed and breakfasts, tennis and/or racquetball clubs, golf courses, live performance theaters (excluding adult uses), airports, civic centers, race tracks, symphony orchestras, cruise ships and marine excursion charters where alcoholic beverage sales are incidental	No	No	No	No
14 C	Bottle Clubs	Yes	Yes	Yes	Yes

- (b) Except as provided in this paragraph, certain alcoholic beverage uses (those having a 1-COP, 2-COP or 4-COP license, or an APS license) shall not be located within four hundred (400) feet of a previously legally established protected land use. Protected land uses shall not locate within four hundred (400) feet of alcoholic beverage uses (those having a 1-COP, 2-COP or 4-COP license, or an APS license) which have been previously legally established.
- (c) This distance shall be measured in a straight line from the nearest portion of the licensed premises of the alcoholic beverage use to the nearest property line of the protected land use. For the purposes of such measurement, the nearest exterior wall of the licensed premises, or the nearest wall of the unit containing the alcoholic beverage use in a multi-tenant structure, or the nearest point on an outside area which is a part of the licensed premises (if any), shall be used. This minimum distance requirement shall not apply when the alcoholic beverage use and the protected land use are located in the same multi-tenant center.
- (d) Required buffer walls or buffer landscaping shall be erected between the alcoholic beverage use and any adjoining residential district or protected land use in such a manner as to screen the adjoining property or properties from the alcoholic beverage use, but shall not prohibit access from an alley. A buffer wall shall consist of an opaque fence or an opaque finished or painted masonry wall. Buffer landscaping requirements are described in Chapter 23, Article XXI of the Code of Ordinances of Lake Worth as amended by Ordinance No. 2010-25. A buffer wall or buffer landscaping shall not be less than five (5) feet in height.
- (e) The entrance for customers into any establishment serving alcoholic beverages for consumption on premises shall be visible from a public street.
- (f) Nothing contained in this section shall be construed to allow any establishment, including any establishments holding a license prior to adoption of this chapter to change the type of license to include the sale of liquor or to change from a restaurant license to a non-restaurant license without meeting all ordinance requirements in effect at the time of the application for the change of license. However, changing the license to remove liquor sales or service shall be allowed at any time.

Sec. 5-7. Special Exception.

- (a) Uses which are within the four hundred (400) foot distance requirement may request a special exception (Distance Waiver) to locate with the district requirement.
- (b) Procedures. For procedures, see Applications and Procedures Section. See Chapter 23 – Zoning, Article XXII, Administration.
- (c) Standards for Review. A decision on a request for a special exception shall be guided by the standards for special exceptions including following factors:

1. Whether approval of the variance will result in two or more alcoholic beverage establishments having a 2COP or 4COP license within four hundred (400) feet of a protected land use or within four hundred (400) feet of a property zoned for residential uses;
2. Whether the license is being added to or is a license upgrade of an existing use or to an establishment which is relocating to the subject location;
3. Whether the proposed use is a restaurant; and,
4. If the property contains a structure which is on the National Register of Historic Places or otherwise has been designated by the City as having historic architectural significance, whether the structure will be preserved or redeveloped so as to retain its architectural and historic character.

Sec. 5-38. Forfeiture of vehicles, apparatus, contraband.

Any vehicle, vessel, aircraft or any animal used in the transportation or removal of, or for the deposit or concealment of any illicit liquor still or stilling apparatus or any mash, wort, wash or other fermented liquids capable of being distilled or manufactured into an alcoholic beverage containing more than one (1) percent of alcohol by weight, or any alcoholic beverage, commonly known and referred to as "moonshine whiskey," where seized by a law enforcement officer within the corporate limits of the city shall be forfeited, as provided for by the general state law, and all sums received therefrom shall distributed as regulated by Florida Statute.

Sec. 5-59. No possession of open containers of alcoholic beverage in public places or vehicles.

No person shall have in his/her possession any open container containing an alcoholic beverage while such person is a pedestrian in a public street, avenue, alley, municipally owned or operated parking lot, or other public way in the city or while such person is inside a vehicle which is parked stopped, stored, or otherwise not being operated in a public place, as defined above, located within the city. The possession of open containers of alcoholic beverages within sidewalk cafes which are permitted by the city pursuant to chapter 19, article IV, sections 19-50 through 19-59 and which are being operated according to the provisions and requirements thereof is hereby exempted from the provisions of this section.

For purposes of this section, alcoholic beverage means all beverages containing more than one percent of alcohol by weight.

In all prosecutions for violations of this section, the manufacturer's label on the beverage container shall be prima facie evidence that the substance in such container was and is an alcoholic beverage as defined in this section.

Any person or persons who by experience in the past in the handling or use of alcoholic beverages, or who by taste, smell, or the drinking of such beverages has knowledge as to the



alcoholic nature thereof, may testify as to his or her opinion whether such beverage is or is not alcoholic, and a verdict based upon such testimony shall be valid.

Sec. 5-~~6~~10. View of premises to be unobstructed.

It shall be unlawful for any vendor of alcoholic beverages with the city to use or to permit the use of any screens, blinds, shades or other material whatsoever on the premises where such beers, wines or liquors are sold, so as to prevent passersby from seeing into the premises. Visibility into the premises shall at all times be clear and unobstructed.

Sec. 5-~~7~~11. Nudity on premises where alcoholic beverages are offered for sale.

- (a) It shall be unlawful for any person maintaining, owning or operating a commercial establishment located within the city, at which alcoholic beverages are offered for sale for consumption on the premises:
  - (1) To suffer or permit any female person, while on the premises of said commercial establishment, to expose to the public view that area of the human breast at or below the areola thereof.
  - (2) To suffer or permit any female person, while on the premises of said commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate such portions of the human female breast as described in subsection (a)(1).
  - (3) To suffer or permit any person, while on the premises of said commercial establishment to expose to public view his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage.
  - (4) To suffer or permit any person, while on the premises of said commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus cleft or cleavage.
- (b) It shall be unlawful for any female person while on the premises of a commercial establishment located within the city, at which alcoholic beverages are offered for sale of consumption on the premises, to expose to public view that area of the human female breast at or below the areola thereof, or to employ any device or covering which is intended to simulate such areas of the female breast as described herein.
- (c) It shall be unlawful for any person, while on the premises of a commercial establishment located within the city, at which alcoholic beverages are offered for sale for consumption on the premises, to expose to public view, his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage, or to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus or anal cleft or cleavage.
- (d) Any person who shall violate any provision of this section shall be guilty of an offense against the city punishable as provided in section 1-6 of this Code.

Sec. 5-~~8~~12. Revocation of occupational license.

If the owner, operator, licensee, lessor, lessee, manager, employee or any other person participating in the operation of a commercial establishment located within the city, at which alcoholic beverages are offered for sale for consumption on the premises shall be convicted of any of the offenses designated in section 5-711 of this Code, the city commission may revoke the occupational license for said establishment after giving a reasonable notice thereof to the holder of said license and affording the holder an opportunity to be heard as to why said license should not be revoked.

Sec. 5-913. Sign required at off-premises establishments.

Every commercial establishment at which alcoholic beverages are sold only for consumption off the premises shall have at least one sign prominently placed that states that the drinking of alcoholic beverages on the premises is prohibited.

Section 4. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. Section 2 of this Ordinance shall be codified.

Section 7. This Ordinance shall take effect 10 days after passage.

The passage of this Ordinance on first reading was moved by Commissioner Amoroso, seconded by Vice Mayor Maxwell, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	ABSENT
Commissioner Andy Amoroso	AYE
Commissioner Suzanne Mulvehill	AYE

The Mayor thereupon declared this Ordinance duly passed on first reading on the 20<sup>th</sup> day of December, 2011.

The passage of this Ordinance on second reading was moved by Commissioner Amoroso, seconded by Vice Mayor Maxwell, and upon being put to a vote, the vote was as follows:

Mayor Pam Triolo	AYE
Vice Mayor Scott Maxwell	AYE
Commissioner Christopher McVoy	ABSENT
Commissioner Andy Amoroso	AYE
Commissioner Suzanne Mulvehill	AYE

The Mayor thereupon declared this Ordinance duly passed and enacted on the 3<sup>rd</sup> day of January, 2012.

LAKE WORTH CITY COMMISSION

By: \_\_\_\_\_  
Pam Triolo, Mayor

ATTEST:

\_\_\_\_\_  
Pamela J. Lopez, City Clerk