

**ORDINANCE NO. 2454**

**AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA; AMENDING CERTAIN SECTIONS OF CHAPTER 6, "ALCOHOLIC BEVERAGES" OF THE CODE OF ORDINANCES OF THE CITY OF APOPKA,; PROVIDING FOR RESTRICTIONS ON POSSESSION OR CONSUMPTION IN PUBLIC PLACES AND/OR ON CITY PARKS OR ON CITY-OWNED PROPERTY; PROVIDING FOR RESTRICTIONS ON CONSUMPTION IN VEHICLES; PROVIDING FOR LOCATION OF SALES ON CITY-OWNED PROEPRTY; PROVIDING FOR POSSESSION IN PARKING AREAS AND LOTS; AND PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 6, City of Apopka Code of Ordinances, Florida, prohibits the sale of alcoholic beverages during certain hours; and

**WHEREAS**, the City Council of the City of Apopka, Florida, wishes to allow extended hours of sale of alcoholic beverages as determined by the Apopka City Council; and

**WHEREAS**, the City Council of the City of Apopka, Florida, hereby ascertains, finds, determines and declares that:

- (a) Pursuant to Florida Constitution, Article VII Section 2(b), Section 166.021 and 166.041, Florida Statutes, the City Charter, the City Council has all powers of local self-government to perform municipal functions and to render municipal services in a manner not inconsistent with law. Such powers may be exercised by the enactment of city ordinances.
- (b) The City Council may exercise all governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law. The City Council may legislate on any subject matter on which the Florida Legislature may act, except those subjects described in Section 166.021(3)(a), (b) and (c). The subject matter described in Section 166.021(3)(a), (b) and (c), is not relevant to the imposition of special assessments related to the provision of nuisance service by the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF APOPKA, FLORIDA**, as follows:

**SECTION 1.** That Chapter 6 of the Code of Ordinances of the City of Apopka, Florida, is hereby amended.

**Sec. 6-1. Jurisdiction and scope; rules of evidence; penalty.**

- (a) Pursuant to the City of Apopka Charter, Section 1. 03, this chapter shall apply and be effective within the corporate municipal limits of the City of Apopka, Florida.
- (b) Violations of any of the provisions of this chapter shall be punished as provided in the Apopka Municipal Code of Ordinances, Chapter 1, Section 1 - 14.
- (c) In accordance with Florida State Statute 562 47, "Rules of evidence; Beverage Law," as may be amended from time to time by the Florida Legislature:

- 1) Proof that the liquor in question was and is known as whiskey, moonshine whiskey, shine, rum, gin or brandy or by another similar name or names shall be prima facie evidence that such liquor is intoxicating and contains more than 4.007 percent of alcohol by volume and that same is intoxicating.
- 2) Proof that the beverage in question was contained in a container labeled as beer, "ale," "malt liquor," "malt beverage," "wine," or "distilled spirits" or with other similar name; and which bears the manufacturer's insignia, name or trademark is prima facie evidence that such beverage is an alcoholic beverage as defined in s. 561.01.
- 3) Any person or persons who by experience in the past in the handling or use of intoxicating liquors or who by taste, smell, or the drinking of such liquors has knowledge as to the intoxicating nature thereof, may testify as to his or her opinion whether such beverage or liquor is or is not intoxicating, and a verdict based upon such testimony shall be valid.

**Sec. 6-2 Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. As used in this chapter, the terms "beverages," "beer" and "wine" shall have the meanings assigned to them by the state alcoholic beverage law. If a classification or definition is not clearly contained within this chapter, then the classification and definitions as contained in F S chs. 561, 562, 563, 564, and 565 as may be amended from time to time are hereby adopted as classifications and definitions for this article.

*Alcoholic beverages* means distilled spirits and all beverages containing one-half of one percent or more alcohol by volume. The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though the remainder of the ingredients were distilled water.

*Bar and lounge* mean any place of business where wine, beer or alcoholic beverages are sold or offered for sale for consumption on the premises, and where the sale of food is incidental to the sale of such beverages, or where no food is sold, and includes any establishment in receipt of a valid alcoholic beverage license from the state which permits the sale for consumption on the premises of intoxicating liquors as a principal use. Establishments where beer or wine or both are permitted for consumption on the premises as an incidental or accessory use are not considered a bar.

*Bottle club* means any business establishment to which patrons bring with them alcoholic beverages to be consumed on the business premises, and where such business is not licensed to sell alcoholic beverages. Bottle clubs are prohibited in the city.

*Church* means an edifice designed or arranged for religious services, on land held in fee or on lease by an organized group, which group utilizes such edifice for regularly scheduled ongoing religious services, including but not limited to associated accessory uses.

*Commercial amusement* means an establishment within an enclosed building or structure whose primary function is to provide profit-oriented entertainment and amusement by being engaged in the commercial operation of sports and recreational services. This definition includes but is not limited to

bona fide bowling alleys, skating rinks, indoor theaters and that portion of golf club facilities wherein patrons are served food and beverages.

*Consumption off the premises* means the selling of beer, wine or alcoholic beverages in the original unbroken containers, to be taken by the purchaser off the premises where sold before being consumed.

*Consumption on the premises* means consumption of all beers, wines or alcoholic beverages of any kind, or the right to sell by the drink, bottle or can such beverages for consumption, only on the licensed premises where purchased.

*Full-course meal.* A bona fide full-course meal must consist of a salad or vegetable, entree, beverage and bread, all prepared on the premises. Fast food, sandwiches, frozen foods or any other services are not considered full- course meals.

*Government property* means a site for the housing of any department, commission, independent agency or instrumentality of the federal, state, county or city government or any other governmental unit.

*Liquor, distilled spirits, spirituous liquors, spirituous beverages and distilled spirituous liquors* mean that substance known as ethyl alcohol, ethanol or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

*Nonprofit private club* means a fraternal benefit society, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with state law.

*Package store* means vendors licensed to sell all alcoholic beverages, but in sealed containers only, and for consumption off the premises. The sealed package must not be broken and the contents must not be consumed in or on the premises under a package store license.

*Public parks* means facilities maintained for the use of the public, including but not limited to playgrounds, athletic fields or other facilities for outdoor recreation use.

*Restaurant* means a business advertised and held out to the public to be a place where full-course meals are prepared, in a full service kitchen with a commercial stove, refrigerator and oven, and served on a regular basis from a prepared menu, which facility provides seating for at least twenty-five (25) patrons with standard height dining room tables or booths of adequate size to accommodate the service of full-course meals in accordance with the number of chairs found at the table, with such seating exclusive of seating at bars, counters or cocktail tables. The primary operation of the restaurant shall be for the serving of full-course meals. As required in the state alcoholic beverage and cigarette laws, a restaurant must derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Records provided to the state shall be provided to the city, upon written request, for determination of percentage requirements. No person shall attempt to circumvent the intent of this subsection by an artifice or scheme, such as the serving of stock meals. The term "stock meals" as used in this subsection, includes but is not limited to the serving of cold plates, snacks, hors d'oeuvres, microwave oven heated foods or previously prepared sandwiches.

*Sale and sell* mean any transfer of an alcoholic beverage for a consideration, any gift of an alcoholic beverage in connection with or as a part of a transfer of property other than an alcoholic beverage for a consideration, or the serving of an alcoholic beverage by a club licensed under the beverage law.

*School* means a facility used for education or instruction in any branch of knowledge, public or private, including the following: preschool, elementary, middle and high schools, colleges, community colleges and universities. The term "school" shall also include properly licensed day nurseries and other child care centers.

*Vendor* includes all persons selling, keeping with the intention of selling or dealing in the beverages defined in this section.

**Sec. 6-3. Possession or consumption in public place.**

**(a) Prohibition ~~on streets, sidewalks, alleys, etc.;~~ and exceptions.**

- (1) It is unlawful for any person to ~~purchase, use, offer for sale,~~ possess, consume, or carry in any cup, glass, can, or other open or unsealed container, any alcoholic beverage or any mixture containing an alcoholic beverage in any public park or governmental property or on the public right-of-way, inclusive of streets, sidewalks or alleys, within the Municipal Corporate Limits of the City of Apopka Florida except as otherwise permitted under section 6-3(a)(4) or 6-3(a)(5).
- (2) It is unlawful for any person to consume alcoholic beverages or carry in any cup, glass, can or other open or unsealed container any alcoholic beverage or any mixture containing an alcoholic beverage in or upon any parking area open to public use or in or upon any private property without the consent of the owner, tenant or other person lawfully in possession of said property except as otherwise permitted under section 6-3(a)(4) or 6-3(a)(5).
- (3) It is unlawful for any person to consume alcoholic beverages or carry in any cup, glass, can, or other open or unsealed container any alcoholic beverage or any mixture containing an alcoholic beverage while such person is in or on any vehicle which is located in or upon any parking area open to public use, or in or upon any private property without consent of the owner or in any public park or governmental property or on the public right-of-way, inclusive of streets, sidewalks or alleys.

(a) This section 6-3(a)(3) shall not apply to:

1. A passenger of a vehicle in which the driver is operating the vehicle pursuant to a contract to provide transportation for passengers and such driver holds a valid commercial driver's license with a passenger endorsement issued in accordance with the requirements of Florida State Statutes Chapter 322 as long as such consumption is not visible from the exterior of the vehicle;
2. A passenger of a bus in which the driver holds a valid commercial driver's license with a passenger endorsement issued in accordance with the requirements of Florida State Statutes Chapter 322 as long as such consumption is not visible from the exterior of the vehicle; or
3. A passenger of a self-contained motor home which is in excess of 21 feet in length as long as such consumption is not visible from the exterior of the vehicle.

(4) The City Council may permit consumption and carrying of alcoholic beverages on streets, sidewalks alleys and right-of-way within the Municipal Corporate Limits of the City of Apopka, Florida and/or on city-owned property ~~during and at events or programs held by any individual, corporation, association, or organization~~ subject to such terms and conditions as the City Council may impose for the protection of the public health, safety and welfare through approval of a special event permit, use agreement, or other official action.

(5) Any individual, corporation, association or organization which has received permission from the City Council to engage in a public or private event is further authorized to provide alcoholic beverages for consumption at the particular event or program, given such authorization is expressly approved by City Council and subject to all other requirements of law through the approval of special event permit, use agreement, or other official action.

**(b) Consumption in parking areas, lots, etc., outside licensed premises prohibited; vendor' s responsibilities.**

(1)a) It is unlawful for any vendor or for any agent, servant or employee of such vendor, to permit the consumption of any alcoholic beverages in or upon other area outside of the building or, room mentioned in the vendor's license certificate as the address thereof, when any part of such parking or area is adjacent to the building or premises in which the business is operated and when such parking or other area is owned rented leased regulated, controlled or provided, directly or indirectly, by such licensed vendor or by any agent, servant or employee of such licensed vendor.

(2) b) A licensed vendor shall post and maintain a legible painted or printed sign in at least two (2) separate prominent places on such parking or other area with sufficient light directed thereon to be visible during the hours of darkness while such place of business is open, in letters not less than three (3) inches in height, stating " WARNING: Drinking Alcoholic Beverages on this Lot Prohibited — \$500.00 Fine and/or 60 days in Jail — City Ordinance." Posting of such signs shall constitute prima facie evidence that such vendor is not operating in violation of subsection (a) of this section.

(3) e) If any licensed vendor mentioned in this section is a corporation then the officers of such corporation shall be regarded as the owners thereof for the purposes of enforcement of this section.

**Sec. 6.4. ~~Consumption in vehicle.~~ Reserved.**

~~It is unlawful for any person to consume any alcoholic beverage, or any mixture containing an alcoholic beverage, on the streets, sidewalks or alleys within the city, while such person is an operator or passenger in or on any vehicle, whether moving or stopped, and such consumption is open to public view.~~

**Sec. 6-5. Possession or consumption on golf course or in golf cart.**

Section 6-3 shall not be applicable to any person while on a golf course, or in a golf cart while going to and from a clubhouse or villa or from hole to hole on the golf course, unless the golf cart is being operated on a public right-of-way.

**Sec. 6-6. Permitting consumption in areas adjacent to vendor's premises; permitting open containers to be taken from premises.**

- (a) It is unlawful for any vendor, or for any agent, servant or employee of such vendor, to permit the consumption of any alcoholic beverages in or upon any parking or other area outside of the vendor's building or room if such parking or other area is adjacent to the building or premises in which the business licensed is operated, when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such licensed vendor or any agent, servant or employee of such licensed vendor.
- (b) A licensed vendor may post and maintain a legible painted or printed sign in at least two separate prominent places on such parking or other area, with sufficient light directed thereon to be visible during the hours of darkness while such place of business is open, in letters not less than three inches in height, stating the following: "WARNING: Drinking Alcoholic Beverages on this Lot Prohibited \$500.00 Fine and /or 60 days in Jail — City Ordinance." Posting of such signs shall constitute prima facie evidence that such vendor is not operating in violation of subsection (a) of this section.
- (c) If any licensed vendor mentioned in this section is a corporation, then the officers of such corporation shall be regarded as the owners thereof for the purposes of enforcement of this section.
- (d) It is unlawful for any vendor, or his agents or employees, licensed to sell beer, wine, liquor or other alcoholic beverages within the city, to knowingly allow any person to take from the licensed premises any opened beer, wine, liquor or other alcoholic beverage container, or to knowingly allow any person to take from the licensed premises any glass or other opened or unsealed container containing an alcoholic beverage or any mixture containing an alcoholic beverage.
- (e) Violation of this section shall be prosecuted and punished in the manner provided by general law.

**Sec. 6-7. Location of sales.**

- (a) Location restrictions for sale of alcoholic beverages are as follows:
  - (1) The provisions of this subsection (a) shall not apply to supermarkets, convenience stores, drugstores or similar establishments which sell alcoholic beverages in -house or as an accessory use, in sealed containers, for consumption off the premises.
  - (2) No person shall sell any intoxicating beverage within 750 feet of any established church, school, government property or building, or public park.
    - a) This subsection 6-7(a)(2) shall not apply to:
      - 1. City-owned property for which a lease or rental agreement has been authorized by City Council, and alcoholic beverage sales take place subject to such terms and conditions as the City Council may impose for the protection of the public health, safety and subject to all other requirements of law.

2. A special event permit or other similar official action approved by City Council for an event or program on streets, sidewalks, alleys and right-of-way within the Municipal Corporate Limits of the City of Apopka, Florida and/or on city-owned property subject to such terms and conditions as the City Council may impose for the protection of the public health, safety and welfare.
- (3) Bars and lounges and any establishment for consumption on the premises or package stores licensed by the city, county or state must be at least 750 feet apart. This subsection does not govern restaurants serving the public with a full service kitchen providing full-course meals. This subsection shall not apply if one or both of the two establishments is:
- a. An establishment incidental to and within a portion of a building used for a bona fide restaurant.
  - b. An establishment incidental to and within a building used as a hotel or motel with at least 50 rental sleeping rooms. Such incidental use must follow the restaurant requirements as defined in section 6-1.
  - c. An establishment incidental to and within a bona fide nonprofit private club where only members and their guests are served or sold alcoholic beverages.
- (4) If the proposed establishment is to be located within a shopping center or group of commercial stores within a single structure, the required distances shall be measured from the primary entrance of that proposed establishment rather than the nearest wall of the building or structure in which alcoholic beverages are to be sold or consumed.
- (5) The distance between establishments for the sale or consumption of alcoholic beverages and churches, schools, government property or buildings and public parks, regardless of jurisdictional boundaries, shall be determined with a certified survey from a land surveyor registered in the state. The survey shall be provided by the applicant when distance clarification is required, at the discretion of the community development department. The survey shall indicate the distance between any such uses or properties. The survey shall indicate the shortest distance, as measured by following a straight line from the nearest property line in which the alcoholic beverages are sold or consumed to the nearest point of the other property line or other use. In cases where there are no churches, schools, public property or public parks or existing alcoholic beverage establishments within 750 feet, the survey shall so certify.
- (b) In order to qualify for the exemptions and modifications provided for separation of alcoholic beverage establishments in subsection (a) of this section, the establishments in hotels or motels, restaurants, nonprofit private clubs and commercial amusements shall not display any bar, cocktail, beer, wine, liquor or similar alcoholic beverage sign visible from any exterior areas or interior areas within five feet of any windows or doors which are visible from the exterior of the building.
- (c) Where an establishment for the sale or consumption of alcoholic beverages is located in conformity with the provisions of this section, the subsequent location of a church, school, government property or public park in the proximity of such existing establishment shall not

be construed to cause such establishment to be in violation of this chapter, provided the establishment maintains a current occupational license.

**Sec. 6-8. Existing establishments.**

- (a) The provisions of this chapter shall not be construed to be retroactive, and any existing establishment for the sale of alcoholic beverages which conforms to the regulations in effect when such establishment was established shall not be rendered illegal or in violation through the adoption of these regulations. If any nonconforming or grandfathered use ceases operation, for any reason, for a period of more than 180 days, the nonconforming or grandfathered use shall be deemed abandoned and shall not thereafter be permitted to continue.
- (b) As of the adoption of the ordinance from which this chapter is derived, existing establishments for off premises sales or on-premises consumption for restaurants that are conforming uses which sell alcoholic beverages, and subsequently close, may reopen within a 24-month period, regardless if another new establishment opens within 750 feet, according to this chapter. An extension beyond the initial 24 months may only be applied for, in writing, to the city council, prior to the expiration of the 24 -month period.

**Sec. 6-9. Hours of sale; closing hours.**

- (a) On-premises; hours of operation.

- (1) Alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed, in any place holding a license under the Division of Alcoholic Beverages and Tobacco, State Department of Business and Professional Regulations, which license permits the consumption of beverages on the premises of the licensee, only between the hours of 9:00 a.m. and 12:00 a.m. (midnight) each day of the week except Sunday whereas the hours shall be 12:00 p. m. (noon) through 12:00 a.m. (midnight) alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the Division of Alcoholic Beverages and Tobacco State Department of Business and Professional Regulation which license permits the consumption of alcoholic beverages on the premises of the licensee, between the hours of 9:00 a.m. on December 31 and such hours of operation to sell alcoholic beverages by any establishment licensed to sell alcoholic beverages, are extended from 12:00 a.m. (midnight) to 3:00 a.m. of the following day.
- (2) Any established and open business annexed into the city after the effective date of this ordinance may continue to operate under the rules and ordinances in place under the jurisdiction annexed from until such time the business use is changed, sold, or transferred.

- b) Package sale, off premises.

- 1) Alcoholic beverages may be sold in any place holding a license under the Division of Beverage and Tobacco State Department of Business Regulation, which license permits package sale of alcoholic beverages by the licensee for consumption off the premises of the licensee only between the hours of 9:00 a.m. and 12:00 a.m. (midnight) of the following day, each day of the week, except Sunday whereas the hours shall be 12:00 p. m. (noon) through 12:00 a.m. (midnight). Alcoholic beverages may be sold in any place

holding a license under the Division of Beverage, State Department of Business Regulation, which license permits package sale of alcoholic beverages by the licensee for consumption off the premises of the licensee between the hours of 9:00 a.m. on December 31, and such hours of operation to sell alcoholic beverages by any establishment licensed to sell alcoholic beverages, are extended from 12:00 a.m. (midnight) to 3:00 a.m. of the following day.

- 2) Any established and open business annexed into the city after the effective date of this ordinance may continue to operate under the rules and ordinances in place under the jurisdiction annexed from until such time the business use is changed, sold, or transferred.

**Sec. 6-10. Bottle clubs.**

- a) It shall be unlawful for a person to operate a business within the corporate limits of the city for the purpose of operating a bottle club.
- b) It shall be unlawful for any person to violate the provisions of this section, and upon conviction such person shall be guilty of an offense. In addition, the city council may, when it deems it to be in the public interest, and following a public hearing, rescind any occupational license issued by the city to any person convicted of a violation of this section, or of any business entity whose agent is convicted of violating this section while acting within the scope of his employment.

**Sec. 6-11. Forfeiture of vehicles used for illegal transportation.**

Any vehicle, vessel, aircraft or 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 percent of alcohol by weight, or any alcoholic beverage commonly known and referred to as moonshine whiskey, where seized by a municipal police officer within the corporate limits of the city, shall be forfeited as provided for by state law.

**SECTION 2.** It is the intention of the City Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Apopka; and the City Clerk is directed to take the necessary steps to effect codification into the Code, and Sections of this ordinance may be numbered or renumbered or lettered or re-lettered and the word "ordinance" may be changed to "chapter", "section", "article", or such other appropriate word or phrase in order to accomplish such codification. Typographical errors which do not affect the intent may be authorized by the Mayor, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

**SECTION 3.** That nothing in this ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

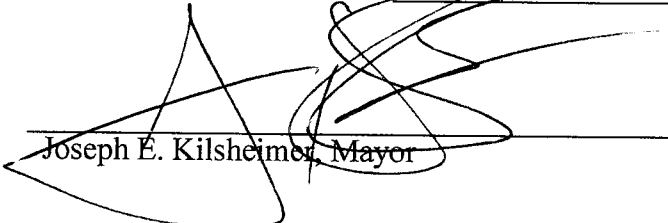
**SECTION 4. CONFLICTS.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 5. SEVERABILITY.** If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

**SECTION 6. EFFECTIVE DATE.** That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect immediately upon its passage and adoption.

READ FIRST TIME: October 7, 2015

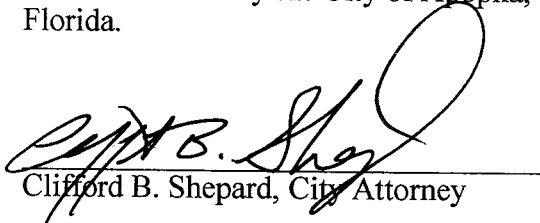
READ SECOND TIME  
AND ADOPTED: October 21, 2015

  
\_\_\_\_\_  
Joseph E. Kilsheimer, Mayor

ATTEST:

  
\_\_\_\_\_  
Linda E. Goff, City Clerk

APPROVED as to form and legality for  
use and reliance by the City of Apopka,  
Florida.

  
\_\_\_\_\_  
Clifford B. Shepard, City Attorney

DULY ADVERTISED FOR PUBLIC HEARING: October 9, 2015