

ORDINANCE NO. 2018-05

AN ORDINANCE AFFECTING THE USE OF LAND IN ORANGE COUNTY, FLORIDA, REGARDING THE SALE OF ALCOHOLIC BEVERAGES; AMENDING SECTION 38-1414 OF THE ORANGE COUNTY CODE RELATING TO PROHIBITED AREAS FOR THE SALE OF ALCOHOLIC BEVERAGES; AMENDING SECTION 38-1415 OF THE ORANGE COUNTY CODE RELATING TO DISTANCES BETWEEN PLACES SELLING ALCOHOLIC BEVERAGES AND RELIGIOUS INSTITUTIONS, SCHOOLS AND ADULT ENTERTAINMENT ESTABLISHMENTS; AND PROVIDING AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Amendments to Section 38-1414 ("Prohibited areas for sale of alcoholic beverages—Generally"). Section 38-1414 is amended to read as follows, with additions being shown by underlines and deletions being indicated with strike-throughs:

Sec. 38-1414. Prohibited areas for package sale of alcoholic beverages—Generally.

(a) *Definition.* In this ~~section~~ chapter, unless the context requires otherwise, "package sale vendor" means a person licensed pursuant to ~~the~~ Beverage Law [F.S. chs. 561-568] with a 3PS quota class alcoholic beverage license or a 4COP quota class alcoholic beverage license to sell alcoholic beverages regardless of alcoholic content; however, a package sale vendor does not include: (i) a business operation, in regards to beer and malt beverages (as defined by F.S. § 563.01) and wine (as defined by F.S. § 564.01) for consumption off premises; or (ii) any bona fide hotel, motel or motor court in possession of a special license issued in accordance with F.S. § 561.20(2)(a)1.

(b) *County—~~Package sale vendor; distance separation requirements, established.~~* For all of those ~~certain~~ Within the unincorporated areas of land in the county, not part of any municipality a package sale vendor may be permitted to operate its business of package sales which lie within at a location

no closer than five thousand (5,000) feet of any preexisting package sale vendor's place of business as established, located and licensed, within the unincorporated area, regardless of whether such established place of business is located within or outside of any municipality, no other new or relocated package sale vendor shall be permitted to open and/or start the business of package sales within that distance, and no closer than seven hundred and fifty (750) feet of any preexisting package sale vendor's place of business within a municipality.

~~(c) — Package sales within distance requirements restricted. The purpose of creating the distance requirements mentioned in subsection (b) of this section is to provide and require that no package sale vendor which is located or proposes to locate in the unincorporated portion of the county outside of any municipality shall be permitted to operate at a new location within a distance of five thousand (5,000) feet of the location of any package sale vendor which is both preexisting at the time of the package sale vendor's application to operate at the new location and is located in any area of the county either unincorporated or within a municipality in the county.~~

(dc) *Criteria.* The following criteria shall be met in order for a package sale vendor to obtain county zoning approval ~~or~~ and commence package sales at a new location:

The County shall be satisfied that the new package sale vendor's location meets the applicable distance separation requirements set forth in subsection (b). ~~is not within five thousand (5,000) feet of any establishment located and/or licensed package sale vendor's place of business. However, if all established located and/or licensed preexisting package sale vendors within the applicable distance five thousand (5,000) feet of the new location~~ relinquish or commit to relinquish, in writing with a notarized statement, the right to carry out package sales at their respective location(s), the County may issue zoning approval contingent upon such other location(s) ceasing package sales prior to the commencement of package sales at the new location, provided ~~The~~ the land use and zoning of the ~~proposed location shall allow otherwise permits~~ package sales. Once County zoning approval to allow package sales at the new location is issued, failure to commence the package sales business shall not be a basis for the County to terminate or revoke zoning approval for package sales, provided the applicant undertakes and continues to make good-faith efforts necessary to construct and/or open the applicant's new location for package sales.

(ed) *Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses.* The distance requirements set forth above in subsections (b) and (e) shall not be applied to the location of an existing package sale vendor when there is:

- (1) A renewal of an existing license;
- (2) A transfer in ownership of an existing license;
- (3) A change in business name; or

(4) A change in a state issued 4COP license for an existing package and lounge business, which did not choose to forego package sales, 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 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 sections 38-1414 and 38-1415.

(fe) *Measurement of distances.* The distances referenced ~~provided in this subsection (b)~~ 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 ~~his~~ 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 a business.

(gi) *Exemption for on-premises consumption only.*

(1) In those situations in which the ~~holder of an alcoholic beverage license pursuant to the Beverage Law [F.S., Chapters 561-568] has the ability to use such package sale vendor~~ has a 4COP quota class license (for both on-premises and off-premises consumption sales), such licensee may choose to expressly forego off-premises consumption sales for the location of business requested; In such a case, the licensee would will not be deemed a package sale vendor under this section for such a location and would will not be subject to the distance requirements ~~set forth in subsections (b) and (e) above.~~ To ensure that the public, safety and welfare are preserved, any licensee choosing to forego package sales for off-premises consumption, and thereupon

not be deemed a package sale vendor at such location, shall so agree in writing with a notarized statement, as a condition of obtaining zoning approval, ~~to~~ and prominently display at all times within the establishment in the vicinity of the main cash register a sign with letters no smaller than three (3) inches and printed in a legible style, stating "No Package Sales."

(2) ~~Upon any relocation of such licensee's business in which the distance requirements of subsection (b) above are met,~~ Such a 4COP quota class licensee may resume package sales for off-premises consumption at such location if:

A. it relocates its business to a site that satisfies the distance requirements in subsection (b) and would not be required to display the aforementioned sign; or

B. it rescinds in writing its earlier decision to forego package sales for off-premises consumption and satisfies the distance separation requirements in subsection (b).

Section 2. Amendments to Section 38-1415 ("Same; Distances from religious institutions, schools and/or adult entertainment establishments."). Section 38-1415 is amended to read as follows, with additions being shown by underlines and deletions being indicated with strike-throughs:

Sec. 38-1415. ~~Same~~ — Distances from between places of business for sale of alcoholic beverages and religious institutions, schools and/or adult entertainment establishments.

(a) Places of business for the sale of alcoholic beverages containing more than three and two-tenths (3.2) percent of alcohol by weight for consumption on or off the premises may be located in the unincorporated areas of the county in accordance with and subject to this chapter and specifically those zoning regulations regulating the location of places of business selling alcoholic beverages containing fourteen (14) percent or more alcohol by weight. No such place of business shall be established within one thousand (1,000) feet of an established religious institution or school; except as follows:

(1) Such a place of business that is licensed as a restaurant and derives at least fifty-one (51) percent of its gross revenues from the sale of food and nonalcoholic beverages,

pursuant to F.S., ch. 509, and the sale of alcoholic beverages is for on-premises consumption only, may be established no closer than five hundred (500) feet of the school, except that such a place of business that is located on property designated as activity center mixed use in the county's comprehensive plan may be established no closer than three hundred (300) feet of the school; or

(2) Such a place of business that is located on property designated as activity center mixed use, does *not* derive at least fifty-one (51) percent of its gross revenues from the sale of food and nonalcoholic beverages, and is licensed for the sale of alcoholic beverages for on-premises consumption only, may be established no closer than five hundred (500) feet from the school, except that such a place of business may be established no closer than three hundred (300) feet from the school, provided that the county, pursuant to F.S. § 562.45(2)(a), approves the location as promoting the public health, safety, and general welfare of the community under proceedings as provided in F.S. § 125.66(4).

These distance separations shall not apply to vendors of beer and wine containing alcohol of more than one (1) percent by weight for consumption off the premises only.

(b) No place of business that in any manner sells or dispenses alcohol for on-premises consumption shall be established within two hundred (200) feet of an adult entertainment establishment, as defined in section 38-1.

(c) Distance from such a place of business to a religious institution, school, or adult entertainment establishment shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business to the main entrance door of the religious institution, the main entrance door of the school (except as may be otherwise provided by applicable state law), or the main entrance door of the adult entertainment establishment. Notwithstanding the foregoing, the distance from a package sale vendor's location to a school shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business to a public right-of-way entrance to the property that is used by students, with "property" being defined as the property owned or leased by the school.

(d) The location of all existing places of business subject to this section shall not in any manner be impaired by this

section, and the distance limitation provided in this section shall not impair any existing licensed location heretofore issued to and held by any such vendor nor shall such vendor's right of renewal be impaired by this section; provided, however, that the location of any such existing license shall not be transferred to a new location in violation of this section.

(e) *Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses.* The distance requirements set forth above in subsections (a) and (b) shall not be applied to the location of an existing vendor when there is:

- (1) A renewal of an existing license;
- (2) A transfer in ownership of an existing license;
- (3) A change in business name; or
- (4) A change in a state issued 4COP license for an existing package and lounge business that did not choose to forego package sales, to a 3PS license, and any decrease in the numerical designation of a state issued license which is of the same series (type); provided that the physical location of the vendor establishment does not change. No increase in the series (type) of state issued license shall be permitted at or for a location (new or existing) except in compliance with the provisions of sections 38-1414 and 38-1415.

(f) *Subsequent establishment of religious institution or school.* Whenever a vendor of alcoholic beverages has procured a license permitting the sale of alcoholic beverages and, thereafter, a religious institution or school is established within the applicable distance separation requirement set forth in subsection (a), the establishment of such religious institution or school shall not be cause for the discontinuance or classification as a nonconforming use of the business as a vendor of alcoholic beverages. In such a situation, an existing vendor licensed for on-site consumption may only increase a 1COP license (on-site beer consumption) to a 2 COP (on-site beer and wine consumption). Also, in the event a vendor for on-site consumption only ceases to operate at the location after the religious institution or school is established within the applicable distance separation requirement set forth in subsection (a), a new vendor with an equal or lesser series license for on-site consumption only may be established at the same location within five (5) years of the date when the previous vendor

ceased to operate at the location. The burden of proving that the requirements for opening a new establishment have been met rests with the new vendor for on-site consumption.

(g) *Proposed location prior to building permit/construction.* When a location for an alcoholic beverage license is submitted to the zoning division for review and there is no building permit for the use at the location, the applicant shall stake the location of the main entrance and submit a certified survey demonstrating the distances to all established religious institutions, schools and adult entertainment establishments. A construction sign as defined in chapter 31.5 which includes reference to the sale and consumption of alcoholic beverages shall be erected on the site within thirty (30) days of zoning approval and shall not be removed until permanent on site signage is erected.

Section 3. Effective date. This ordinance shall become effective on February 19, 2018.

ADOPTED THIS 6th DAY OF FEBRUARY, 2018.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs,
Orange County Mayor
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ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

