

CITY OF HOMESTEAD, FLORIDA

ORDINANCE NO. 2022-03-06

AN ORDINANCE OF THE CITY OF HOMESTEAD, FLORIDA, AMENDING THE CITY CODE OF ORDINANCES BY AMENDING CHAPTER 3 “ALCOHOLIC BEVERAGES,” TO REVISE DEFINITIONS, ELIMINATE CERTIFICATE OF USE REQUIREMENTS FOR ALCOHOLIC BEVERAGE VENDORS AND DEFAULT TO STATE REGULATIONS, EXCEPT FOR (1) LOCATION REQUIREMENTS; AND (2) HOURS OF SALE REGULATIONS, ALLOWING VENDORS TO SELL ALCOHOLIC BEVERAGES UNTIL 1:00 A.M. WITHIN THE CITY AND 3:00 A.M. FOR VENDORS LOCATED WITHIN THE ARTS, ENTERTAINMENT, AND ANTIQUES DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Homestead, Florida (the “City Council”) finds it periodically necessary to amend its Code of Ordinances (the “City Code”) in order to update regulations and procedures to implement municipal goals and objectives; and

WHEREAS, Chapters 561 through 565, 567, and 568, Florida Statutes (“state alcohol beverage laws”) regulates the manufacturing, distribution, and sale of alcohol beverages within the state; and

WHEREAS, the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (DABT) is the agency charged with issuing alcohol beverage licenses and regulating the state alcohol beverage laws; and

WHEREAS, the City Council desires to amend the City's Alcoholic beverages regulations, codified in Chapter 3, "Alcoholic Beverages" of the City Code of Ordinances to revise definitions, eliminate certificate of use requirements for alcoholic beverages vendors and default to state regulations, except for location and hours of sale requirements for vendors; and

WHEREAS, the City Council has reviewed this Ordinance at a duly noticed public hearing in accordance with law; and

WHEREAS, the City Council finds that this proposed Ordinance serves to further enhance the protection of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOMESTEAD, FLORIDA:

Section 1. Recitals Adopted. The preceding "Whereas" clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2. City Code Amended. Chapter 3 "Alcoholic Beverages," of the City Code of Ordinances is hereby amended as follows:

CHAPTER 3 - ALCOHOLIC BEVERAGES

Sec. 3-1. 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.~~

Alcoholic beverages means distilled spirits and all beverages containing one-half (½) of one (1) 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.

Arts, entertainment, and antiques district means the land area encompassed within the arts, entertainment, and antiques district boundary map located in the development services department.

Bar and lounge mean any place of business where beer, wine 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 alcoholic beverages as a principal use. Establishments where alcoholic beverages are permitted for consumption on the premises as an incidental or accessory use are not considered a bar.

Banquet hall or bottle club means a commercial establishment, operated for a profit, whether or not a profit is actually made, wherein patrons consume alcoholic beverages which are brought onto the premises and not sold or supplied to the patrons by the establishment, whether the patrons bring in and maintain custody of their own alcoholic beverages or surrender custody to the establishment for dispensing on the premises, and which is located in a building or other enclosed permanent structure. This definition does not apply to sporting facilities where events sanctioned by nationally recognized regulatory athletic or sports associations are held, bona fide restaurants licensed by the division of hotels and restaurants of the department of business and professional regulation whose primary business is the service of full course meals, or hotels and motels licensed by the division of hotels and restaurants of the department of business and professional regulation.

Church means a building or structure, or a portion of a building or structure, designed or arranged for religious services, on land held in fee or on lease by an organized group, which group utilizes such building or structure for regularly scheduled ongoing religious services. This definition includes, but is 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 sealed 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.

Department shall mean the department of development services or such department which has the responsibility for the administration of this chapter as designated by the city manager.

Director shall mean the director of the development services department or designee.

~~*Full-course meal* means a meal consisting of soup or salad or vegetable, entree, beverage and bread, all prepared on the premises. Sandwiches, hamburgers, hot dogs, frozen foods, stock meals or any other food 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. This definition does not include vacant land owned by 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. 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, kindergarten, elementary, middle and high schools, colleges, community colleges and universities. This definition shall not include day care centers; nurseries and other child care centers. As used in this chapter, the terms "preschool" and "kindergarten" shall have the meanings assigned to them by state statute, whether operated publicly or privately, for profit or non-profit.

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

~~*Weekdays* consist of Monday through Saturday, unless otherwise provided.
(Ord. No. 2005-12-41, § 5, 12-5-05; Ord. No. 2017-04-05, § 2, 4-26-17)~~

~~Sec. 3-2. Possession or consumption in public places.~~

(a) ~~*Generally.* Except as provided in subsection (b) of this section, 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 in any public park or governmental property or on the public right-of-way, inclusive of streets, sidewalks or alleys, within the city.~~

(b) ~~*Permit for special events.*~~

(1) ~~The city manager or his designee may issue a permit for the carrying, consumption or sale of alcoholic beverages on governmental property, in any public park or on the public right-of-way, inclusive of streets, sidewalks or alleys, within the city, during and at gatherings held by the city, fraternal, benevolent, charitable, eleemosynary, philanthropic, altruistic, civic, community, veteran or religious organizations or other organizations of like or similar nature, subject to such terms and conditions as the city council or manager may impose for the protection of health, safety and welfare of the public.~~

(2) ~~The city manager or his designee may issue a permit for the carrying, consumption or sale of alcoholic beverages in Phichol Williams Community Center, the William F. "Bill" Dickinson Community Center, the multi-purpose pavilion of Tom J. Harris Field or other governmental property, subject to such terms and conditions as the city council or manager may impose for the protection of the health, safety and welfare of the public.~~

(3) ~~The city manager shall issue a permit only upon finding that the public health, safety and welfare will not be endangered thereby.~~

~~(Ord. No. 2007-09-36, § 2, 10-15-07; Ord. No. 2010-05-13, § 2, 5-17-10)~~

Sec. 3-3. Consumption in vehicle.

~~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. 3-4. Possession or consumption on golf course or in golf cart.

~~Sections 3-2 and 3-3 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. 3-5. 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, unless specifically authorized or permitted by the city.~~
- ~~(b) A licensed vendor may 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 the following: "WARNING: Drinking Alcoholic Beverages on this Lot Prohibited—\$500.00 Fine and/or 60 days in Jail—City Ordinance."~~
- ~~(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. 3-62. Location restrictions for sale of alcoholic beverages.

- ~~(a) Location restrictions for sale of alcoholic beverages are as follows:~~

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- (1) The provisions of this subsection (a) shall not apply to supermarkets, convenience stores, drugstores or similar establishments that sell alcoholic beverages in-house or as an accessory use, in sealed containers, for consumption off the premises.
 - (2) No restaurant, banquet hall or bottle club shall sell any alcoholic beverage within four hundred (400) feet of any church, government property, public park, or school. This subparagraph (2) shall not apply if the restaurant is located within the downtown historic area. For the purpose of this subsection, the term "downtown historic area" consists of the area bounded on the north by NW 5th Street; the west by NW 3rd Avenue; the south by W. Mowry Drive; the east by Krome Avenue; and includes the area designated by the city council as the "Pioneer Quarter."
 - (3) No bar or lounge shall sell any alcoholic beverage within one thousand (1,000) feet of a school or within four hundred (400) feet of another bar or lounge, church, government property, package store or public park. This subparagraph (3) does not govern restaurants serving the public with a full service kitchen providing full-course meals. This subparagraph (3) shall not apply if one (1) or both of the two (2) establishments is:
 - a. An establishment incidental to and within a portion of a building used for a restaurant.
 - b. An establishment incidental to and within a building used as a hotel or motel with at least ten (10) rental sleeping rooms. Such incidental use must follow the restaurant requirements as defined in section 3-1.
 - c. An establishment incidental to and within a nonprofit private club where only members and their guests are served or sold alcoholic beverages.
 - d. An establishment located within the downtown historic area. For the purpose of this subsection, the term "downtown historic area" consists of the area bounded on the north by NW 5th Street; the west by NW 3rd Avenue; the south by W. Mowry Drive; the east by Krome Avenue; and includes the area designated by the city council as the "Pioneer Quarter."
 - (4) No package store shall sell any alcoholic beverage within one thousand (1,000) feet of a school or four hundred (400) feet of another package store, bar or lounge, church, government property or public park.

Sec. 3-73. Method of measurement.

The distance between establishments for the sale or consumption of alcoholic beverages and churches, government property, public parks, or schools regardless of jurisdictional boundaries, shall be determined with a certified survey from a land surveyor registered in the state. 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 of the proposed establishment to the nearest

property line of the existing establishment, church, government property, public park, or school.

If the proposed establishment for the sale or consumption of alcoholic beverages 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 the proposed establishment rather than the nearest wall of the building or structure in which alcoholic beverages are to be sold or consumed.

Sec. 3-84. Existing establishments.

- (a) The provisions of this chapter shall not be construed to be retroactive, and any lawfully existing establishment that sells 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 lawfully nonconforming or grandfathered use ceases operation, for any reason, for a period of more than ninety (90) days, the lawfully nonconforming or grandfathered use shall be deemed discontinued 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 twenty-four-month period, regardless if another new establishment, church, government property, public park or school locates or opens within the distance separation requirements according to this chapter. An extension beyond the initial twenty-four (24) months may only be applied for, in writing, to the city council, prior to the expiration of the twenty-four-month period.
- (c) Where an establishment for the sale or consumption of alcoholic beverages is located in conformity with the provisions of this section (whether or not with a waiver), the subsequent location of another establishment, church, government property, public park, or school 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 local business tax receipt, as applicable.

(Ord. No. 2007-08-26, § 4, 8-6-07)

Sec. 3-95. Hours of sale.

- ~~(a) Vendors holding a license from the state for the sale of alcoholic beverages for consumption off the premises only (package stores), shall not sell alcoholic beverages, except between the hours of 8:00 a.m. of one day and 1:00 a.m. of the next day Monday through Saturday, and on Sundays between the hours of 12:00 noon to 8:00 p.m. Vendors operating stores primarily for the sale of products other than alcoholic beverages may make sales of beer and wine in sealed containers for consumption off the premises during such hours as their stores legally remain open for the sale of other goods. Nothing in the foregoing shall be deemed to modify any of the provisions of the city zoning regulations.~~

- (b) ~~Vendors holding a license from the state for the sale of alcoholic beverages for consumption on the premises in non-profit private clubs shall not sell alcoholic beverages, except between the hours of 8:00 a.m. of one day and 1:00 a.m. of the following day Monday through Saturday. They shall not sell beer or wine on Sundays, except between the hours of 10:00 a.m. on Sunday and 1:00 a.m. of the following Monday; and shall not sell any other alcoholic beverages on Sundays, except between the hours of 5:00 p.m. on Sunday and 1:00 a.m. on the following Monday. Notwithstanding the foregoing, non-profit private clubs located in the arts, entertainment, and antiques district that hold any license from the Florida Division of Alcoholic Beverages and Tobacco for the sale of alcoholic beverages for on premises consumption, may sell alcoholic beverages on the premises until 3:00 a.m.~~
- (c) ~~Vendors holding a license from the state for the sale of alcoholic beverages for consumption on the premises in hotels and motels shall not sell alcoholic beverages, except between the hours of 8:00 a.m. of one day and 1:00 a.m. of the following day Monday through Saturday. They shall not sell beer or wine on Sundays, except between the hours of 10:00 a.m. on Sunday and 1:00 a.m. of the following Monday; and shall not sell any other alcoholic beverages on Sundays, except between the hours of 5:00 p.m. on Sunday and 1:00 a.m. of the following Monday. Notwithstanding the foregoing, hotels and motels located in the arts, entertainment, and antiques district that hold any license from the Florida Division of Alcoholic Beverages and Tobacco for the sale of alcoholic beverages for on premises consumption, may sell alcoholic beverages on the premises until 3:00 a.m.~~
- (d) ~~Vendors holding a license from the state for the sale of alcoholic beverages for consumption on the premises in restaurants shall not sell such alcoholic beverages, except between the hours of 8:00 a.m. of one day and 1:00 a.m. of the following day Monday through Saturday. They shall not sell beer or wine on Sundays, except between the hours of 10:00 a.m. on Sunday and 1:00 a.m. of the following Monday; and shall not sell other alcoholic beverages on Sundays, except between the hours of 1:00 p.m. on Sunday and 1:00 a.m. of the following Monday. Notwithstanding the foregoing, restaurants located in the arts, entertainment, and antiques district that hold any license from the Florida Division of Alcoholic Beverages and Tobacco for the sale of alcoholic beverages for on premises consumption, may sell alcoholic beverages on the premises until 3:00 a.m.~~
- (e) ~~Vendors having a license from the state for the sale of alcoholic beverages for consumption on the premises (bars and lounges) shall not sell alcoholic beverages, except between the hours of 8:00 a.m. of one day and 1:00 a.m. of the following day Monday through Saturday. They shall not sell beer or wine on Sundays, except between the hours of 10:00 a.m. on Sunday and 1:00 a.m. of the following Monday; and shall not sell any other alcoholic beverages on Sundays, except between the hours of 5:00 p.m. on Sunday and 1:00 a.m. of the following Monday. Notwithstanding the foregoing, bars and lounges located in the arts, entertainment, and antiques district that hold any license from the Florida Division of Alcoholic Beverages and Tobacco for the sale of alcoholic beverages for on premises consumption, may sell alcoholic beverages on the premises until 3:00 a.m.~~

- (f) ~~Wherever in this section it is provided that weekday sales of alcoholic beverages are permitted between any certain hour and a stated time on the following day, the term "following day" shall be deemed to include Saturday.~~

~~(Ord. No. 2005-12-41, § 5, 12-5-05; Ord. No. 2010-06-16, § 2, 6-21-10)~~

Vendors holding a license from the state shall not sell alcoholic beverages, except between the hours of 8:00 a.m. of one day and 1:00 a.m. of the next day. Notwithstanding the foregoing, Vendors located in the arts, entertainment, and antiques district that hold any license from the Florida Division of Alcoholic Beverages and Tobacco for the sale of alcoholic beverages for on premises consumption, may sell alcoholic beverages on the premises until 3:00 a.m.

Sec. 3-10. Banquet halls and 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 banquet hall or bottle club unless properly licensed by the state.~~
- (b) ~~For the purposes of serving alcoholic beverages, the hours of operation for a banquet hall or bottle club shall be the same as that for restaurant as set forth in section 3-9(e).~~
- (c) ~~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 local business tax receipt 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.~~

~~(Ord. No. 2007-08-26, § 4, 8-6-07)~~

Sec. 3-116. Public hearing Waiver of location and hours of sale.

- (a) ~~Before the city shall issue any initial (not renewals) local business tax receipt to any business premises which is also a vendor of alcoholic beverages, a public hearing shall be required before the city planning and zoning board and the city council with notice to adjoining owners and the public in general, when a certificate of use is required by this chapter.~~
- (b) *Review process.*
- (1) ~~An application for a certificate of use shall be submitted to the department for review to consider if the application meets the criteria for the certificate of use. The application shall include a statement by the applicant of the facts that show how the criteria for the certificate of use have been met and the survey specified in section 3-7. The application shall include such additional material in support of the application as determined by the department to be appropriate to the certificate of use for the property in question.~~

- ~~(2) The department shall forward its recommendation to the planning and zoning board and the city council for consideration.~~
- ~~(3) The planning and zoning board shall hold a public hearing to consider the application and the record and recommendation forwarded by the department, and shall hear public comment on the application.~~
- ~~(4) The burden shall be upon the applicant to demonstrate by a preponderance of the evidence that the application meets the criteria specified in this section. If the planning and zoning board determines that the application for a certificate of use meets the criteria in this section, the planning and zoning board shall make a recommendation to the city council for the approval of the application and imposing such conditions and safeguards as are appropriate.~~
- ~~(5) If the planning and zoning board determines that the applicant fails to meet the burden of demonstrating by a preponderance of the evidence that the application meets the criteria specified in this section, the planning and zoning board shall make a recommendation to the city council for the denial of the application.~~
- ~~(6) The planning and zoning board shall forward its record and recommendation to the city council for consideration. The city council shall hold a public hearing to consider the application and the record and recommendations forwarded by the department and the planning and zoning board, and shall hear public comment on the application.~~
- ~~(7) If the city council determines that the application for a certificate of use meets the criteria provided in this section, the city council shall approve the application by entering a final order granting such certificate of use and imposing such conditions and safeguards as are appropriate. The final order granting the certificate of use shall include a time period, not to exceed one hundred eighty (180) days, within which a building permit shall be secured if one is required to implement the use for which the certificate of use is granted. The certificate of use shall expire if the building permit to implement the improvements authorized by the certificate of use is not secured within the time frame specified in the final order. In granting a certificate of use under this section, the city council may prescribe appropriate conditions and safeguards as are in their opinion necessary to protect the public interest and ensure harmony with the purpose and intent of this chapter. Violation of any condition of a final order granting the certificate of use required by this section shall be a violation of the code, and the final order may be revoked by the city council at any time upon a determination that the applicant is in non-compliance with final order or the code.~~
- ~~(8) If the city council determines that the applicant failed to meet the burden of demonstrating by a preponderance of the evidence that the application meets~~

~~the criteria specified in this section, the city council shall enter a final order denying the application.~~

- (9) ~~The city council shall not be required to make findings of fact in the entry of any final order.~~

(c) ~~*Criteria for certificate of use.* A certificate of use required by this section shall be granted only upon the applicant demonstrating by a preponderance of the evidence all of the following criteria:~~

- ~~(1) The proposed use will not generate excessive noise or traffic; and~~
- ~~(2) The proposed use will not tend to create a fire or other equally greater or dangerous hazard; and~~
- ~~(3) The proposed use will not provoke excessive overcrowding or concentration of people or population; and~~
- ~~(4) The proposed use will not endanger the health, safety or welfare of the residents of Homestead, when considering the necessity for, and reasonableness of, such applied for use in relation to the present and future development of the area concerned; and~~
- ~~(5) The proposed use will be compatible with adjoining properties or surrounding neighborhoods.~~
- ~~(6) The proposed use, and the structure, in which it is to be located, complies with all of the zoning regulations and building codes of the city.~~

(da) ~~*Waiver of location requirements.* An applicant for a certificate of use under this section may apply for a waiver of the location requirements set forth in section 3-62. An application for a waiver of the location requirements shall be processed in the same manner as a certificate of use application as set forth in this section administratively by the director.~~ A waiver of the location requirements shall be granted only upon the applicant demonstrating by a preponderance of the evidence all of the following criteria:

- (1) The proposed use is compatible with the surrounding land uses and will not be detrimental to the community as a whole; and
- (2) That the waiver maintains the stability and appearance of the community; and
- (3) That the waiver is the minimum waiver necessary to make possible the use of the property as an establishment that sells alcoholic beverages.

If the ~~city council~~ director determines that the application for a waiver meets the criteria provided in this subsection, the ~~city council~~ director shall provide written notice of approval of the application ~~by entering a final order granting the waiver~~ and imposing such conditions and safeguards as are appropriate. The ~~final order~~ written notice granting the waiver shall include a time period, not to exceed one hundred eighty (180) days, within which a building permit shall be secured if one is required to implement the use for which the waiver is granted. The waiver shall expire if the building permit to implement the improvements authorized by the

waiver is not secured within the time frame specified in the ~~final order written notice~~. In granting a waiver under this subsection, the ~~city council director~~ may prescribe appropriate conditions and safeguards as are in their opinion necessary to protect the public interest and ensure harmony with the purpose and intent of this chapter. Violation of any condition of a ~~final order the written notice~~ granting a waiver under this subsection shall be a violation of the code, and the ~~final order written notice~~ may be revoked by the ~~city council director~~ at any time upon a determination that the applicant is in non-compliance with ~~final order the written notice~~ or the code.

(e**b**) *Waiver of hours of sale.* An applicant ~~for a certificate of use under this section~~ may apply for a waiver of the hours of sale requirements set forth in section 3-95. The waiver shall not extend the hours of sale beyond 3 a.m. An application for a waiver of the hours of sale requirements shall be processed ~~in the same manner as a certificate of use application as set forth in this section~~ administratively by the director. A waiver of the hours of sale requirements shall be granted only upon the applicant demonstrating by a preponderance of the evidence all of the following criteria:

- (1) The proposed extended hours of sale is compatible with the surrounding land uses and will not be detrimental to the community as a whole; and
- (2) That the waiver maintains the stability and appearance of the community.

If the ~~city council director~~ determines that the application for a waiver meets the criteria provided in this subsection, the ~~city council director~~ shall approve the application by entering a ~~final order written notice~~ granting the waiver, specifying the extended hours of sale and imposing such conditions and safeguards as are appropriate. The ~~final order written notice~~ granting the waiver shall include a time period, not to exceed one hundred eighty (180) days, within which a building permit shall be secured if one is required to implement the use for which the waiver is granted. The waiver shall expire if the building permit to implement the improvements authorized by the waiver is not secured within the time frame specified in the ~~final order written notice~~. In granting a waiver under this subsection, the ~~city council director~~ may prescribe appropriate conditions and safeguards as are in their opinion necessary to protect the public interest and ensure harmony with the purpose and intent of this chapter. Violation of any condition of a ~~final order written notice~~ granting a waiver under this subsection shall be a violation of the code, and the ~~final order written notice~~ may be revoked by the ~~city council director~~ at any time upon a determination that the applicant is in non-compliance with ~~final order the written notice~~ or the code.

(f) *Notice of public hearing.*

- (1) ~~Every required notice shall include the date, time and place of the hearing, the address where known, a description of the site of the proposed development to identify it for others to locate, a summary of the proposal to be considered, and identification of the body conducting the hearing.~~

- ~~(2) Notice of public hearings shall be given at least ten (10) days in advance of the hearing date by publication in the nonlegal section of a local newspaper of general circulation in the city.~~
- ~~(3) At least ten (10) days prior to any public hearing, all applicants, excluding governmental agencies, shall post the property that is the subject of the hearing with a waterproof sign at least four (4) square feet in front surface area, which is so lettered that the date, time and location of the hearing shall be visible from all public streets and public ways abutting the property. Failure to provide proper notice or other reason resulting in a delayed hearing shall result in the renoticing of the original proposal and shall be at the expense of the applicant. The applicant shall remove the posted notice within ten (10) days after completion of the hearing.~~
- ~~(4) Notice of public hearings shall be given in accordance with the requirements of state law. In such cases where state law does not specify the manner in which notice must be provided, notice of a public hearing shall be mailed by the department, at the applicant's expense to all owners of real property located within three hundred seventy-five (375) feet of the property, at least ten (10) days prior to a public hearing. A certified list of such owners, as shown by the latest available records in the county property appraiser's office, shall be provided by the applicant.~~
- ~~(5) An affidavit and photographic evidence shall be provided by the applicant at the public hearing that the applicant has complied with the notice required by this section.~~

~~(Ord. No. 2007-08-26, § 4, 8-6-07; Ord. No. 2010-06-16, § 3, 6-21-10)~~

Sec. 3-7. - Appeal to City Council.

Within twenty (20) days of issuance of a written notice by the director made pursuant to this chapter, an applicant may appeal the decision by filing a written notice of appeal with the city clerk. The notice of appeal shall state the decision that is being appealed, the grounds for the appeal, and a brief summary of the relief that is being sought. Within sixty (60) days of the filing of the appeal, the city council shall convene a public hearing at which time they may affirm, modify, or reverse the decision of the director based on the criteria set forth in section 3-6. The decision of the city council shall be in writing and a copy of the decision shall be forwarded to the applicant.

Sec. 3-428. Emergency prohibition of sale and consumption, provisions for decree, compliance.

- (a) Whenever, in the opinion and judgement of the city council, a public emergency shall be created or exist in the city, causing or tending to cause public disorder, law breaking and confusion, the city council is hereby authorized and empowered to prohibit, by and through the issuance of an official decree, the sale, serving and consumption, or either thereof, of ~~beers, wines, spirituous and other intoxicating liquors and beverages~~ alcoholic beverages for and during a period of twenty-four (24) hours or such longer period of time as may be described in such decree, at all commercial establishments and at all other places in the city where ~~such beers, wines, spirituous and all other intoxicating liquors and beverages~~ alcoholic beverages are licensed to be sold, served or otherwise dispensed. In the issuance of such decree, the city council shall have the fact of the issuance and the contents of such decree broadcast by police or by commercial radio stations and otherwise given publicity as quickly and as widely as shall be feasible.
- (b) It is hereby declared to be unlawful for any person operating, employed at or otherwise controlling any of the commercial establishments or other places described in the preceding section to sell, serve or permit the consumption on the premises of alcoholic beverages during the period described in the decree of the city council provided for in (a) above.

~~Sec. 3-13. Seizure and forfeiture of vehicle, vessel, etc., used in transportation, etc., of illicit liquor, etc.~~

~~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 as moonshine whisky, where seized by a municipal police officer within the city, shall be forfeited, as provided for by the general state law, and all sums received therefrom shall go into the general operating fund of the city.~~

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the City of Homestead; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflicts. All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. Effective date. This Ordinance shall become effective immediately upon adoption on second reading.

PASSED on first reading this 16th day of February, 2022.

PASSED AND ADOPTED on second reading this 16th day of March, 2022.

STEVEN D. LOSNER,
Mayor

ATTEST:

ELIZABETH SEWELL, MPA, MMC
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND BENEFIT OF THE CITY ONLY:

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
City Attorney

Motion to adopt by Councilwoman Ávila, seconded by Councilwoman Bailey.

FINAL VOTE AT ADOPTION

| | |
|--|------------|
| <i>Mayor Steven D. Losner</i> | <u>YES</u> |
| <i>Vice-Mayor Julio Guzman</i> | <u>YES</u> |
| <i>Councilwoman Erica G. Ávila</i> | <u>YES</u> |
| <i>Councilwoman Jenifer N. Bailey</i> | <u>YES</u> |
| <i>Councilwoman Patricia D. Fairclough- Staggers</i> | <u>YES</u> |
| <i>Councilman Sean L. Fletcher</i> | <u>YES</u> |
| <i>Councilman Larry Roth</i> | <u>YES</u> |