

**ORDINANCE NO. 02-2012**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 110, ZONING, OF THE CAPE CANAVERAL CODE OF ORDINANCES RELATED TO SPECIAL EXCEPTIONS FOR ALCOHOLIC BEVERAGES; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS; INCORPORATION INTO THE CODE; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, section 110-171 of the City Code sets forth the operating terms and conditions under which establishments may dispense, sell, serve, or store alcoholic beverages, or permit consumption of alcoholic beverages on the premises within the City of Cape Canaveral; and

**WHEREAS**, the City Council desires to amend certain provisions of the City Code to exempt restaurants and hotels from the provisions of section 110-171; and

**WHEREAS**, the City Council finds that the sale and consumption of alcoholic beverages on the premises of an establishment that constitutes a nuisance due to chronic violations of law is adverse to the public health, safety and welfare; and

**WHEREAS**, the City's Planning & Zoning Board has analyzed and discussed the City's ordinances regarding special exceptions for establishments serving alcoholic beverages and recommends approval of this Ordinance to the City Council; and

**WHEREAS**, the City Council of the City of Cape Canaveral, Florida, hereby finds this Ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Cape Canaveral.

**BE IT ORDAINED by the City Council of the City of Cape Canaveral, Brevard County, Florida, as follows:**

**Section 1. Recitals.** The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Council of the City of Cape Canaveral.

**Section 2. Code Amendment.** Chapter 110, Zoning, of the Code of Ordinances, City of Cape Canaveral, Florida, is hereby amended as follows (underlined type indicates additions and

~~strikeout~~ type indicates deletions, while asterisks (\* \* \*) indicate a deletion from this Ordinance of text existing in Chapter 110. It is intended that the text in Chapter 110 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance):

## CHAPTER 110. ZONING

### ARTICLE I. IN GENERAL

#### Sec. 110-1. 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:

\* \* \*

*Restaurant* means any building or structure or portion thereof in which food is prepared and served for pay to any person not residing on the premises and which, at all times, derives not less than 51 percent of its gross income from the sale of nonalcoholic beverages and food prepared, sold and consumed on the premises (such percentage shall be determined by calculating the average monthly gross revenue from the sale of food and nonalcoholic beverages for the immediately previous 12-month period).

\* \* \*

### ARTICLE IV. SPECIAL EXCEPTIONS

\* \* \*

#### DIVISION 2. ALCOHOLIC BEVERAGES

#### Sec. 110-171. Establishments serving alcoholic beverages.

(a) Establishments which shall require a special exception under this chapter by the board of adjustment are those, whether or not licensed by the state Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, which ~~dispense, sell, serve, store or~~ permit consumption on the premises of alcoholic beverages, with the exception of restaurants and hotels. In consideration of a special exception application, the board of adjustment shall not approve the application unless it is totally consistent with all the conditions as set forth in this section and also the following:

(1) The establishment shall not be permitted to locate:

(A) Within 300 feet of any existing church, school grounds or

playgrounds nor shall a church, school or playground be permitted to locate within 300 feet of any existing establishment which ~~dispenses, sells, serves, stores or~~ permits the on-premises consumption of alcoholic beverages, with the exception of restaurants, hotels, and chapters or incorporated clubs or veteran's fraternal organizations conforming section 565.02(4), Florida Statutes. The distance shall be measured as the shortest linear distance between the property line of the establishment which provides or proposes to provide for the sale and consumption of alcoholic beverages and the property line of the church, school grounds or playground.

(B) Within 300 feet inland of the mean high-water line of the Atlantic Ocean or of the Banana River. The distance shall be measured as the shortest linear distance between the property line of the establishment which provides or proposes to provide for the sale and consumption of alcoholic beverages and the mean high-water line of the Atlantic Ocean or of the Banana River. Restaurants shall not be subject to the limitations set forth in this subsection (B).

(2) The establishment, if licensed by the state division of alcoholic beverages and tobacco to permit on-premises consumption of beverages, shall not be located within 2,000 feet of another licensed establishment. The distance shall be measured as the shortest linear distance between the property line of the establishment which proposes to provide for the sale and consumption of alcoholic beverages and the property line of any establishment which currently provides for the sale and consumption of alcoholic beverages. Further, the establishment shall be in compliance with the Florida beverage laws (F.S. chs. 561 through 568). Restaurants; hotels and motels approved in accordance with the City Code; and chapters or incorporated clubs or veterans's fraternal organizations conforming to section 565.02(4), Florida Statutes, shall not be subject to the distance requirements of this subsection (2). Provided, however, exceptions to this subsection are:

a. ~~Restaurants seating 150 or more persons.~~

b. ~~Hotels and motels which are approved in accordance with City Code.~~

c. ~~Restaurants licensed by the state division of alcoholic beverages and tobacco for malt beverages only or malt beverages and wine only, provided the following are complied with:~~

1. ~~The establishment shall have the capacity for and have in existence at least 25 seats for the serving of meals. No area within the establishment may be specifically designed for a bar or lounge operation.~~

2. — Consumption of food and malt beverages shall be on premises only; however, food carryout without the malt beverages may be permitted. Further, in accordance with Florida law, one unsealed bottle of wine may be removed for consumption off premises if purchased and partially consumed with a full course meal consisting of a salad or vegetable, entree, a beverage, and bread. A partially consumed bottle of wine to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises and shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with. A dated receipt for the bottle of wine and full course meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

3. — A restaurant licensed under this exception shall not derive less than 51 percent of its gross income from the sale of nonalcoholic beverages and food prepared, sold and consumed on the premises. The obligation to sell 51 percent food and nonalcoholic beverages is a continuing obligation. It is a violation of this zoning code to sell wine and malt beverages granted under this exception unless the restaurant has derived at least 51 percent of its gross income from the sale of food and nonalcoholic beverages. Such percentage shall be determined by calculating the average monthly gross revenue from the sale of food and nonalcoholic beverages for the immediately previous 12-month period. In acknowledgment of this continuing obligation and as a condition precedent to the issuance of a special exception, the owner of the restaurant shall execute and deliver to the city an affidavit and agreement, upon forms approved and provided by the city, which will attest and covenant to the owner's compliance with the provisions of this subsection. The owner shall also retain cash register receipts, guest checks and ledgers which may be reviewed at the request of the city to determine compliance. Failure to provide records requested shall be grounds for revocation of the special exception granted under this section. Any subsequent purchaser, assignee or transferee will be required to execute and deliver to the city an affidavit and agreement, as provided above, in order to maintain the special exception upon the property provided by this section. The restaurant, if advertised, shall be advertised and held out to the public to be a place where meals are prepared and served.

4. — Sale or consumption of malt beverages and wine shall be

limited to the time period set by chapter 6.

~~d. Chapters or incorporated clubs or veteran's fraternal organizations conforming to F.S. § 565.02(4).~~

(3) Package retail sales of alcoholic beverages for carryout, except for beer and wine sales, shall comply with subsections (a)(1); and (a)(4); ~~(a)(5)a.3. and (a)(5)a.5.~~ of this section only.

(4) One parking space shall be provided for each three seats or seating places. All seats or seating places, whether located within a restaurant area or a bar/lounge area, will be included in the calculation of the required number of parking spaces. Package retail sales establishments shall provide parking as determined by the building official, who shall use the ratios established in article IX of this chapter.

(5) Each application for a special exception shall be accompanied by ~~a vicinity map,~~ a site plan map and a building floor plan.

~~a. The vicinity map shall be drawn at a scale of one inch equals 400 feet and shall indicate the following information:~~

~~1. The outer boundary of the vicinity map, which shall be at least 2,500 feet from the centroid of the proposed establishment's property.~~

~~2. Location of all existing public streets between the proposed establishment and other establishments and land uses as described in subsections (a)(1) and (a)(2) of this section.~~

~~3. Location of all existing churches, school grounds or playgrounds which are within the vicinity map area with specific distances to the proposed establishment affixed per subsection (a)(1) of this section.~~

~~4. Location of all establishments licensed by the state division of alcoholic beverages and tobacco, including package retail sales, which are within the required vicinity map area with specific distances to the proposed establishment affixed per subsection (a)(2) of this section.~~

~~5. Existing zoning for all properties within 300 feet to the property of the proposed establishment shall be indicated.~~

a. b. The site plan map shall be drawn at a scale not less than one inch equals 100 feet and shall indicate the following information:

1. Location and dimension of the proposed establishment's property lines, all existing and proposed structures, driveways, parking spaces and ingress/egress points.

2. The following information shall be presented in tabulated form:

I. Number of parking spaces.

ii. Number of restaurant seats.

iii. Number of bar/lounge seats.

iv. Building area.

v. Lot area.

b. c. The building floor plan shall be of a scale appropriate for the establishment, but in no case shall the scale be less than one-eighth inch equals one foot and shall detail room layouts and exits to include a depiction of all seats inside or outside of the building for restaurant and bar/lounge.

(b) Any special exception granted under this section may be temporarily suspended or absolutely revoked by majority vote of the board of adjustment at a public hearing, when the board of adjustment has determined by competent substantial evidence that either:

(1) The establishment has obtained the special exception upon false statements, fraud, deceit, misleading statements, or suppression of material facts;

(2) The establishment has committed substantial violations of the terms and conditions on which the special exception was granted;

(3) The establishment no longer meets the requirements of this section or the Florida Beverage Code; ~~or~~

(4) The management of the establishment knowingly allowed illegal activities to be conducted on the premises including, but not limited to, possession or sale of illegal substances, racketeering, prostitution, lewd and lascivious behavior, and unlawful gambling; or

(5) The management knowingly allowed the establishment to become a nuisance because of chronic, habitual or ongoing violations of law, including the city code.

Prior to any special exception being revoked, the establishment shall be provided

with minimum due process including notice of the grounds for revocation and hearing date, an opportunity to be heard, the right to present evidence, and the right to cross-examine adverse witnesses.

~~(c) For on-premises consumption of liquors, restaurants or cocktail lounges shall have a minimum building area of 2,000 square feet and a seating capacity of 100 patrons.~~

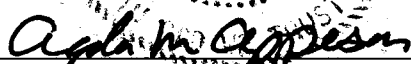
**Section 3. Repeal of Prior Inconsistent Ordinances and Resolutions.** All prior inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

**Section 4. Incorporation Into Code.** This Ordinance shall be incorporated into the Cape Canaveral City Code and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this ordinance and the City Code may be freely made.

**Section 5. Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 6. Effective Date.** This Ordinance shall become effective immediately upon adoption by the City Council of the City of Cape Canaveral, Florida.

ADOPTED by the City Council of the City of Cape Canaveral, Florida, this 20th day of March, 2012.

SEAL  
ATTEST:  
  
ANGELA APPERSON, City Clerk

  
Rocky Randels, Mayor

	For Motion	Against
John Bond		
Bob Hoog	X	
Buzz Petsos	X	
Rocky Randels	X	
Betty Walsh	Second	

First Reading: February 21, 2012  
Legal Ad published: February 24, 2012  
Second Reading: March 20, 2012

Approved as to legal form and sufficiency  
for the City of Cape Canaveral only by:

  
\_\_\_\_\_  
ANTHONY A. GARGANESE, City Attorney