

ORDINANCE NO. 01-2017

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 6, ARTICLE III OF THE CAPE CANAVERAL CITY CODE TO CLARIFY THAT DRINKING, CONSUMPTION OR POSSESSION OF OPEN CONTAINERS OF ALCOHOLIC BEVERAGES UPON PUBLIC DUNE CROSSOVERS IS UNLAWFUL; PROVIDING FOR PENALTIES FOR VIOLATIONS OF CHAPTER 6, ARTICLE III OF THE CAPE CANAVERAL CITY CODE, INCLUDING A CLASS I CIVIL CITATION PENALTY; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS; INCORPORATION INTO THE CITY 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, the City Council desires to specifically clarify that the drinking, consumption, and possession of open containers of alcoholic beverages upon public dune crossovers is unlawful in the City; and

WHEREAS, the City Council, in accordance with Chapter 162, Florida Statutes, desires to establish penalties for violations of Chapter 6, Article III of the Cape Canaveral City Code, including a Class I civil infraction; 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.

NOW, THEREFORE, BE IT ENACTED 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.** Chapters 2 and 6 of the Code of Ordinances, City of Cape Canaveral, Florida, are 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 2 or 6. It is intended that the text in Chapter 2 or 6 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance):

Chapter 2 Administration

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ARTICLE VI. – CODE ENFORCEMENT

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DIVISION 2. – CODE ENFORCEMENT CITATIONS

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Sec 2-283. - Applicable codes and ordinances; class violation.

(a) The following city codes and ordinances may be enforced by civil citation to the Brevard County Court, and are assigned the violation classification enumerated below:

- (1) Chapter 38, article IV, Fireworks Class II.
- (2) Chapter 34, article II, Litter Class I.
- (3) Chapter 34, article III, Property Maintenance Standards Class I.
- (4) Chapter 34, article V, Noise Class I.
- (5) Chapter 34, article VII, Lights Class I.
- (6) Section 14-3, Bees and beehives prohibited Class I.
- (7) Chapter 14, article III, Sea Turtles Class I.
- (8) Section 110-467, Garage sales Class I.
- (9) Section 110-582, Swimming pool barriers Class II.
- (10) Chapter 62, Solid waste Class I.
- (11) Section 110-487, Rental restrictions on dwelling units Class IV.
- (12) Chapter 82, article XIV, Numbering of Buildings and Property Class I.
- (13) Chapter 82, article V, Registration and Maintenance of Properties in Foreclosure Class IV.
- (14) Section 94-6, Prohibited signs and features Class I.
- (15) Chapter 90, article V, construction site stormwater runoff control Class II.
- (16) Chapter 92, Fertilizer Land Application Class I.
- (17) Chapter 6, article III, Possession and Consumption Class I.

(b) In the event of a conflict between the civil penalties enumerated in this section and a civil penalty specifically enumerated elsewhere in this Code or other ordinances, the more stringent penalty shall apply.

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Chapter 6 Alcoholic Beverages

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ARTICLE I. – IN GENERAL

Sec. 6-1. – Penalty.

Any person violating this chapter shall be punished as provided in section 1-15, or as otherwise specifically provided herein.

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ARTICLE III. – POSSESSION AND CONSUMPTION

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DIVISION 1. - GENERALLY

Sec. 6-51. - Streets, alleys, sidewalks and parking areas.

- (a) It shall be unlawful for any person to drink, consume or possess an open container of *alcoholic* beverage, as defined in F.S. § 561.01, including but not limited to beer and wine, on or upon any street, alley, walkway, sidewalk, public dune crossover, or any city public parking area open to the public ~~in the ordinary course of business within the city.~~

* * *

Sec. 6-54. – Penalties.

Any person who violates or fails to comply with any provision of this Article III, Division I, “Possession and Consumption – Generally” shall be subject to the following:

- (a) The issuance of a Class I citation in accordance with the provisions of section 2-280, et seq., “Code Enforcement Citations,”; or
- (b) Enforcement by other means including, but not limited to: a summons; a notice to appear in the county or circuit court; an arrest; an action before the special magistrate/code enforcement board; or a civil action for injunctive relief; or
- (c) Punished in accordance with the general penalty set forth in section 1-15 of this Code.

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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

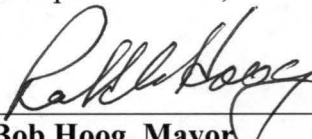
and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

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 17th day of January, 2017.

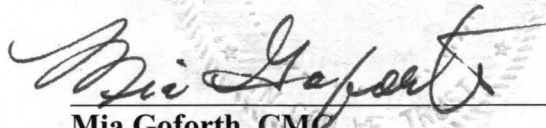


Bob Hoog, Mayor

ATTEST:

For

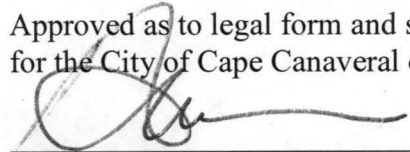
Against



Mia Goforth, CMC
City Clerk

Mike Brown	<u>X</u>	_____
Robert Hoog	<u>X</u>	_____
Brendan McMillin	<u>Second</u>	_____
Rocky Randels	<u>Motion</u>	_____
Betty Walsh	<u>X</u>	_____

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



Anthony A. Garganese, City Attorney