

ORDINANCE NO. 2019-46

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, RELATING TO ALCOHOLIC BEVERAGE SALES; AMENDING CHAPTERS 58, 65 AND 66, LAND DEVELOPMENT CODE, PROVIDING PERFORMANCE STANDARDS, UPDATING THE REVIEW PROCESS FOR DISTANCE SEPARATION REQUIREMENTS, AND REVISING DEFINITIONS; PROVIDING LEGISLATIVE FINDINGS, AND FOR SEVERABILITY, CODIFICATION, CORRECTION OF SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, section 163.3202(1), Florida Statutes, requires that the City of Orlando, Florida (the "city"), adopt or amend and enforce land development regulations that are consistent with and implement the city's adopted comprehensive plan; and

WHEREAS, section 163.3202(3), Florida Statutes, encourages the use of innovative land development regulations and requires that all land development regulations be combined into a single land development code for the city; and

WHEREAS, from time to time, amendments and revisions to the city's adopted comprehensive plan (the "Growth Management Plan"), progress in the field of planning and zoning, or changes to state law make it necessary or desirable to amend the land development regulations of the city; and

WHEREAS, at its regularly scheduled meeting of June 18, 2019, the Municipal Planning Board recommended to the City Council of the City of Orlando, Florida (the "Orlando City Council"), that the provisions of this ordinance are consistent with the applicable provisions of the city's adopted Growth Management Plan, are in the best interest of the public health, safety, and welfare, are in harmony with the purpose and intent of the Land Development Code of the City of Orlando, Florida (the "Land Development Code"), will not result in disorderly and illogical development patterns, and will not result in incompatible land uses; and

WHEREAS, the Orlando City Council hereby finds and determines that this ordinance is consistent with the applicable provisions of the city's adopted Growth Management Plan, is in the best interest of the public health, safety, and welfare, is in harmony with the purpose and intent of the city's Land Development Code, will not result in disorderly and illogical development patterns, and will not result in incompatible land uses; and

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WHEREAS, the Orlando City Council hereby finds and declares that this ordinance is in the best interest of the public health, safety, and welfare.

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, AS FOLLOWS:

SECTION 1. CHAPTER 58, PART 1B, AMENDED. Chapter 58, Part 1B, Land Development Code, is hereby amended as follows:

1B. - ZONING TABLES

FG-2B.LDC - (Table of allowable uses in zoning districts Inside [and Outside of] the Traditional City) – R-1S; R-2A; R-2B; R-3A; R-3B; R-3C; R-3D; MXD-1; MXD-2; O-1; O-2; O-3; MU-1; MU-2; AC-N; AC-1; AC-2; AC-3; AC-3A; IC; IG; IP; P; H; C

FIGURE 2: Use this table to determine what uses are permitted, conditionally permitted, or prohibited in each zoning district (includes districts inside and outside of the Traditional City). Numbers in parentheses refer to footnotes following the tables.

NON-RESIDENTIAL	

PBU (33)	

Recreation, Indoor (33)	

Retailing: (33)	

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FOOTNOTES:

33. Alcoholic beverage establishments located within 1,000 feet of an established school and/or established church and/or located within 300 ft. of a residential zoned district have special standards. See Chapter 58, Part 4B.

SECTION 2. CHAPTER 58, PART 4B, AMENDED. Chapter 58, Part 4B, Land Development Code, is hereby amended as follows:

4B. – ALCOHOLIC BEVERAGE ESTABLISHMENTS

Sec. 58.705. - General Requirements.

- A. Bottle Clubs, as defined in Chapter 66 of the Land Development Code, are not permitted as a principal use within any zoning district of the City of Orlando.
- B. Catering, the use of a catering license or hiring a caterer does not constitute proof as a full-service restaurant and may not be used to meet the separation or other requirements of this part.
- C. A Zoning Official determination is required for all new or expanding Alcoholic Beverage Establishments located within 300 ft. of a residential zoning district. Additional consideration will be taken to ensure that the site is arranged in such a way, that the building is constructed in such a way, and that the business operations are so conducted as to prevent the emission of sounds, vibrations and odors from the establishment into the aforementioned residentially zoned districts. These considerations may include those as detailed in Section 58.709.
- D. Expansions or alterations to a previously approved alcoholic beverage establishment which increases the size or patron capacity of the establishment must receive either a new Letter of Determination from the Zoning Official or a

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new Conditional Use Permit, as required. With the exception of those alcoholic beverage sales specifically limited as detailed in Sec. 58.707, the change in the type of alcoholic beverages sold or change in the type of State license the facility has will not automatically require any new approval through this part as long as all other aspects of the establishment and operations remain as previously approved.

- E. None of the regulations of this part shall be construed as approving any use, location, hours of operation, or other standard that is in conflict with Chapter 33 of this code.

Sec. 58.706. - Distance from Churches and Schools.

The sale of alcoholic beverages for on-premise consumption or the package sale of alcoholic beverages shall not be permitted in a place of business within 1,000 feet, outside of the AC-3A/T zoning district, or 200 feet within the AC-3A/T zoning district, of an established K through 12 school or church except as provided in Section 58.708 of this Part. The distance shall be measured by the shortest, most direct bearing and distance from the property line of the church or school grounds in use as part of the church or school facilities to the nearest entrance of the establishment serving alcoholic beverages open to the public during normal business hours.

Sec. 58.707. - Subsequent Establishment of Church or School.

Whenever a vendor of alcoholic beverages has procured a license permitting the sale of alcoholic beverages and, thereafter, a church or school is established within the distance separation set forth in Sec. 58.706 of this part, the establishment of such church or school shall not be cause for the discontinuance or classification as a nonconforming use of the business as a vendor of alcoholic beverages.

Sec. 58.708. - Exceptions to Distance Requirements.

The sale of alcoholic beverages for on-premise consumption or the package sale of alcoholic beverages shall be exempt from the provisions of Section 58.7056 for the following, as described below:

- A. *Full-Service Restaurants.* The provisions of Section 58.706 shall not apply to the sale of alcoholic beverages for on-premise consumption at a full service restaurant. For this part, a full-service restaurant is defined as an establishment serving full-course meals and engaged primarily in the service of food and non-alcoholic beverages, with alcoholic beverages generally only consumed or sold in

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connection with the consumption or sale of food during all hours of operation. A full-service restaurant may have a bar area in which alcoholic beverages are served and consumed without the accompanying sales and consumption of food; however, the facility must have permanent kitchen facilities located within the premises in which meals are regularly prepared for service to patrons of the establishment and furthermore must meet the following criteria:

- (1) The establishment is licensed as a restaurant by the State of Florida, pursuant to Chapter 509, Florida Statutes; and
- (2) The establishment derives at least 51% of its gross revenues from the sale of food and non-alcoholic beverages; and
- (3) The establishment does not allow outdoor sale or outdoor consumption of alcoholic beverages between 7 a.m. and 5 p.m., Monday through Friday, within 1,000 feet of a school citywide, or within 200 feet of a school within the AC-3A/T district; and
- (4) Food must be continuously ready to be prepared, served, and sold during all business operational hours; and
- (5) The establishment promptly provides all records of food and alcoholic beverage sales to the City, as described in Section 58.713(D) upon request by the City.

B. *Certain Public Benefit Uses.* The provisions of Section 58.706 shall not apply to the sale of alcoholic beverages for on-premises consumption where the primary purpose and design of the site/facility is for a public benefit use as determined by the Zoning Official.

C. *Publicly-Owned Facilities.* The provisions of Section 58.7056 ~~(above)~~ shall not apply to the sale of alcoholic beverages for on-premise consumption at an establishment located within a facility owned by the public where the primary purpose and design of the facility is to accommodate the assembly of people for entertainment or recreation.

D. *Certain Bars in Hotels or Motels.* The provisions of Section 58.706 shall not apply to the sale of alcoholic beverages for on-premise consumption at an establishment located within a hotel or motel containing 100 or more guest rooms where such establishment in the hotel or motel has no direct entrance or exit on a public street.

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- E. *Package Sale of Beer and/or Wine.* The provisions of Section 58.706 shall not apply to a vendor who operates an establishment, the primary purpose of which is the package sale of beer and/or wine, and who permits on-premise consumption only for the purpose of beer and/or wine tasting, incidental to the package sale of such beer and/or wine, at no charge to the customer.
- E. *Cultural Arts Facilities.* The provisions of Section 58.706 shall not apply to the sale of alcoholic beverages for on-premises consumption at cultural arts facilities located within the AC-3A/T zoning district. The facility must be a not-for-profit organized for the purpose of operating a theater with live performances and must contain at least 100 seats.

Sec. 58.709. --Approval for Alcoholic Beverage Establishments that do not meet the Distance Separation Requirements.

All proposed establishments located within one or more of the distance separation areas must seek approval to operate within such area. The specific approval process is based on the proposed location, proximity to churches, schools or residentially-zoned districts, and type of establishment as detailed below:

- A. *Certain Full-Service Restaurants.* To apply for the distance separation exception for certain full-service restaurants set forth in Section 58.708, the owner or vendor shall submit to the Zoning Official the following:

 - (1) Detailed, proposed menu;
 - (2) Detailed, to-scale, including dimensions, floor plan clearly identifying the following:

 - (a) The kitchen area, dining area, bar area, outdoor seating area, indoor/outdoor, waiting area and any other area;
 - (b) The square feet of each identified area and the identified facility;
 - (c) The general seating arrangement and number of seats in the dining and bar areas;
 - (d) The location and type of equipment and facilities in the kitchen; and
 - (e) The estimated patron capacity of the facility.
 - (3) A notarized statement from the applicant who shall be a qualified restaurant owner or operator, or other qualified food service professional, stating the following:

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- (a) The qualifications of the owner/operator of the establishment;
 - (b) The anticipated percentage of monthly revenues to be derived from food and non-alcoholic beverages based upon the anticipated operation of the restaurant facility and the above information; and
 - (c) Any other materials that may provide insight into the total monthly percentage of gross revenues the establishment expects to earn from sales of food and non-alcoholic beverages.
- B. *Certain Public Benefit Uses.* To apply for the distance separation exception for certain public benefit uses set forth in Section 58.708, the owner or vendor shall submit to the Zoning Official the following:
 - (1) Detailed, narrative of the proposed use of the property, including:
 - (a) What the property and facility will be used for and how and by whom it will be operated;
 - (b) All planned improvements to the property including interior and exterior enhancements;
 - (c) How the proposed sale and consumption of alcoholic beverages fit into the overall plan for the operation. What will be served, where will it be served from, and how often will sales occur; and
 - (d) Any other materials that may provide insight into the total percentage of gross revenues the establishment expects to earn from sales of food and non-alcoholic beverages.
 - (2) Detailed, to-scale floor plan and site plan clearly identifying the following:
 - (a) A full site plan, including all proposed improvements as well as details on all outdoor assembly areas where alcoholic beverages may be sold or consumed;
 - (b) A full proposed floor plan including all indoor assembly areas where alcoholic beverages may be sold or consumed;
 - (c) The kitchen area, bar area, if any, and any other interior areas;
 - (d) The square feet of each identified area and the identified facility;
 - (e) The location and type of equipment and facilities in the kitchen; and
 - (f) The estimated patron capacity of the facility.
- C. *Zoning Official Determination.* The Zoning Official shall review the application and shall then issue one of the following determinations:
 - (1) The establishment qualifies as an exception to the distance requirements pursuant to Section 58.708(A) through (F)(A);

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- (2) The establishment does not qualify as an exception to the distance requirements pursuant to Section 58.708(A) through (F)(A) but may apply for a Conditional Use Permit pursuant to Section 58.709(D)(A); or
- (3) The establishment does not qualify as an exception to the distance requirements and the proposed use is not permitted by other sections of Code in the proposed location.

D. *Conditional Use Permit Procedures.* An establishment which will sell or serve alcohol and which is located within the distance separation requirements from an established school or church as set forth in Section 58.706 and is not eligible for any exceptions to the distance requirement, may apply for a Conditional Use Permit (CUP) to permit the sale/provision of alcoholic beverages. Such application shall be submitted and reviewed in accordance with the procedures set forth in Chapter 65, Part 2D.

In reviewing an application for an alcoholic beverage establishment, the following supplemental information may be required at time of application:

- (1) An operation/business plan which addresses hours of operation, number of employees, menu items, goals of business, and other operational characteristics pertinent to the application.
- (2) A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, self-park, shared parking, after-hour metered spaces, and the manner in which it is to be managed.
- (3) An indoor/outdoor crowd control plan which addresses how large groups of people waiting to gain entry into the establishment, or already on the premises, will be controlled.
- (4) A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.
- (5) A traffic circulation analysis and plan which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.
- (6) A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.
- (7) A lighting plan which addresses how the site, parking lot, and exterior spaces of the property will be lit adequately for security purposes and how off-site impacts of proposed lighting will be controlled.

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- (8) A noise attenuation plan which addresses how noise will be controlled to meet the requirements of the noise ordinance.

When the City approves any Conditional Use Permit pursuant to this Section, it may also prescribe additional conditions and safeguards, including any of the following conditions:

- (1) Require that no entry fees or "cover" charges be charged by the establishment.
- (2) Limit the hours when alcoholic beverages may be sold.
- (3) Limit the locations where alcoholic beverages may be sold or consumed.
- (4) Separately limit the location and hours of operation for any outdoor uses.
- (5) For those properties within 300 ft. of a residentially zoned property (R's, MXD's) additional consideration will be taken to prevent the emission of sounds, vibrations and odors from the establishment into the aforementioned residentially zoned districts.
- (6) Specify other conditions to permit development of the City in conformity with the intent and purpose of this Code and the adopted Growth Management Plan.

Violation of such conditions and safeguards, when made a part of the terms under which the Conditional Use Permit is approved, shall be deemed a violation of this Code subject to enforcement under the provisions of Chapter 5 of this Code.

- E. *Records of Revenues.* The owner or vendor of an establishment approved as an exception to the distance requirements pursuant to this Subpart shall maintain records of total gross revenues, and these records shall be made available within 14 days of a request made by the Zoning Official. The sales percentage required by this Subpart shall be computed by adding all gross sales of food, non-alcoholic beverages and alcoholic beverages and thereafter dividing that sum into the gross sales of food plus non-alcoholic beverages. The establishment and its representatives shall bear the burden of establishing compliance with the required percentage and the other requirements of this Subpart. In the event the City finds an establishment in violation of the requirements of this Subpart, the City may pursue any penalties provided for under state and local law, including revoking the City's zoning approval to operate in a specific location. The City shall

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promptly report any such revocation to the State Department of Business and Professional Regulation.

Secs. 58.7104—58.719. - Reserved.

SECTION 3. CHAPTER 65, PART 2D, AMENDED. Chapter 65, Part 2D, Land Development Code, is hereby amended as follows:

2D. - CONDITIONAL USE PERMIT

Sec. 65.281. - When Conditional Use Permit Review Procedures Apply.

The Conditional Use Permit procedures of this Part shall apply to the following types of uses and activities:

- (a) Uses specified as conditional uses in the Table of Allowable Uses (see Chapter 58, Part 1).
- (b) The expansion of any nonconforming use (see Chapter 58, Part 7D).
- (c) Amendment of an approved Precise Plan in an SP Specially Planned Area Overlay District.
- (d) Accessory parking lots in certain districts (see Chapter 61, Part 3).
- (e) Building heights specified as Conditional in the Table of Zoning District Regulations (see Chapter 58, Part 1).
- (f) Transfer of floor area for remote parking facilities.
- (g) The sale of alcoholic beverages for on-premise consumption or the package sale of alcoholic beverages in a place of business within 1,000 feet, outside of the AC-3A/T zoning district, or 200 feet within the AC-3A/T zoning district, of an established K through 12 school or church. (See Chapter 58, Part 4B).

Sec. 65.288. - General Requirements.

Along with the Conditional Use Permit application, the applicant shall submit multiple copies of the following:

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A Recent Boundary Survey.

A Preliminary Site Plan: Prepared in accordance with the requirements of Chapter 65, Part 2H, when required by the Planning Official.

Consent to Agents: If title to the property is not in the applicant's name and the property owner does not sign the application, one of the following must be submitted:

- (a) Document signifying the owner's approval or consent; or
- (b) Applicant's affidavit.

Alcoholic Beverage Sales: For any establishment requesting Conditional Use approval for Alcoholic Beverage Sales, as described in Chapter 58, Part 4B, the applicant shall submit the materials required by Section 58.709.

SECTION 4. CHAPTER 66, PART 2, AMENDED. Chapter 66, Part 2, Land Development Code, is hereby amended as follows:

PART 2. - DEFINITIONS

Sec. 66.200. - Definitions.

Alcoholic beverage establishment: Any establishment that has an alcoholic beverage license issued by the State of Florida.

Banquet Facility (or Catering Hall): An establishment that provides catering and entertainment to private parties on the premises and is not otherwise accessory to another principal use. Full kitchen facilities must be located on-site. If the kitchen facilities are not located on-site then the facility may be considered a rental hall.

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Bar/Cocktail Bar: A commercial establishment whose principal business is the sale of alcoholic beverages for consumption on premises. Entertainment and limited food options may be offered but are incidental to the sale of alcoholic beverages.

Bottle Club: A commercial establishment wherein patrons bring in and maintain custody of their own alcoholic beverages for consumption on the premises or surrender custody of the beverages to the establishment for dispensing on the premises, and which is located in a building or other enclosed permanent structure.

Caterer: Any public food service establishment where food or drink is typically prepared at an off-site location in response to an agreed upon contract, function, or event; typically at an alternate location. Caterers must be licensed through the State of Florida and must derive at least 51% of gross revenue from sales of food and non-alcoholic beverages.

Church (or Religious Institution) Property: The ground or land upon which a church or religious institution and its permitted accessory uses are located and which is in ownership or majority lease control of the church or religious institution on the property.

Eating and Drinking Establishment: Any establishment selling food and/or drink for consumption on the premises, whether or not the food is cooked on the premises, and including restaurants, taverns, bars, lunch counters and refreshment stands selling prepared foods for immediate consumption.

Motel: An establishment consisting of a group of attached or detached lodging units having bathrooms and designed primarily for transient automobile tourists. A motel generally provides automobile parking facilities convenient to the lodging rooms

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and may or may not furnish customary hotel services such as restaurants, dining rooms, meeting rooms, bars and similar uses.

This term includes timeshare facilities, condotels, and any group housing occupied by or intended for occupancy by over 52 people.

Recreation (Use), Indoor: Any of the following types of uses:

- Amusement center.
- Banquet facility.
- Billiard parlor.
- Bowling lanes.
- Clubs and lodges.
- Discotheques, ~~and~~ dance halls, and nightclubs.
- Game room.
- Rental halls.
- Skating rinks.
- Theaters.
- Any similar recreation use.

Rental Hall: A facility or hall available for lease by private parties as a principal use. The hall may or may not contain on-site kitchen facilities.

Restaurant: See also Eating and Drinking Establishment. A commercial establishment where food and drink is prepared for on-site consumption. Take out or meal delivery may occur but onsite consumption must be able to occur. Restaurants must be licensed through the State of Florida and must derive at least 51% of gross revenue from sales of food and non-alcoholic beverages. Food shall be continuously ready to be prepared, served, and sold during all business operational hours.

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School Property: The ground or land upon which a kindergarten through 12th grade school and its permitted accessory uses are located and which is in ownership or majority lease control of the school on the property.

SECTION 5. CODIFICATION. The city clerk and the city attorney shall cause the Code of the City of Orlando, Florida, to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 6. SCRIVENER'S ERROR. The city attorney may correct scrivener's errors found in this ordinance by filing a corrected copy of this ordinance with the city clerk.

SECTION 7. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 8. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE FIRST PUBLIC NOTICE, in a newspaper of general circulation in the City of Orlando, Florida, by the City Clerk of the City of Orlando, Florida, this _____ day of _____, 2019.

DONE, THE FIRST READING AND HEARING, by the City Council of the City of Orlando, Florida, at a regular meeting, this _____ day of _____, 2019.

DONE, THE SECOND PUBLIC NOTICE, in a newspaper of general circulation in the City of Orlando, Florida, by the City Clerk of the City of Orlando, Florida, this _____ day of _____, 2019.

DONE, THE SECOND READING AND HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of a majority of a quorum present of the City Council of the City of Orlando, Florida, at a regular meeting, this _____ day of _____, 2019.

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BY THE MAYOR OF THE CITY OF ORLANDO,
FLORIDA:

Mayor

ATTEST, BY THE CLERK OF THE
CITY COUNCIL OF THE CITY OF
ORLANDO, FLORIDA:

City Clerk

Print Name

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

Assistant City Attorney

Print Name