

## **ORDINANCE NO. 21-2197**

**AN ORDINANCE OF THE CITY OF LONGWOOD, FLORIDA, AMENDING THE LONGWOOD CITY CODE CHAPTER 6 "ALCOHOLIC BEVERAGES," PROVIDING FOR ADDITIONAL DEFINITIONS; CLARIFYING AND AMENDING REGULATIONS RELATING TO PROHIBITED HOURS OF SALES, OPERATIONS, AND CONSUMPTION OF ALCOHOLIC BEVERAGES IN CERTAIN CIRCUMSTANCES; PROVIDING OPEN CONTAINER RESTRICTIONS; MODIFYING THE SEPARATION REQUIREMENTS BETWEEN LOCATIONS FOR ON-PREMISES ALCOHOL CONSUMPTION AND OTHER CERTAIN USES INCLUDING SCHOOLS, CHURCHES, AND DAY CARE CENTERS; PROVIDING FOR ENFORCEMENT PENALTIES AND REMEDIES; PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, provisions within the Florida Beverage Law as set forth in chapters 561 through 568, Florida Statutes, recognize the authority of municipalities to enact ordinances regulating the locations and hours of business of any licensee under the Florida Beverage Law;

**WHEREAS**, the City of Longwood finds that it is in the best interest of and for the health, safety, and welfare of the citizens of the City that the City's various alcohol regulations be amended for consistency and clarification purposes;

**WHEREAS**, the City of Longwood desires to update the separation requirements for locations with on-premises alcohol consumption which are nearly 40 years old to reflect current development trends;

**WHEREAS**, the City of Longwood desires to establish a procedure to consider location-specific requests for locations with on-premises alcohol consumption that would otherwise be prohibited by separation requirements;

**WHEREAS**, the City desires to clarify the City's policies prohibiting venues that serve or sell alcoholic beverages for consumption on premises from opening, remaining open, or otherwise operating during times when the sale of alcoholic beverages is prohibited.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LONGWOOD, FLORIDA, AS FOLLOWS:**

**SECTION 1.** The Longwood City Code shall be Amended as follows (Words that are ~~stricken out~~ are deletions; words that are underlined are additions; Articles, Sections, Subsections and Provisions not referenced in this ordinance are not modified):

### **Chapter 6 - ALCOHOLIC BEVERAGES**

## **Sec. 6-1. - Definitions.**

For the purposes of this chapter, the following terms shall mean as defined below:

The term "alcohol" or "alcoholic beverage(s)" means distilled spirits and all beverages containing one-half of one percent or more alcohol by volume. "Alcohol" or "alcoholic beverages" includes, but is not limited to, beer, malt beverages, wine, fortified wine, liquors, distilled spirits, and spirituous liquors as such terms are defined pursuant to Florida's Beverage Law as set forth in the relevant portions of chapters 561, 563, 564, and 565, Florida Statutes.

The term "licensee" shall mean a legal or business entity, person, or persons that hold a license issued by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation and meet the qualifications set forth in section 561.15, Florida Statutes.

The term "premises" shall mean not only rooms where alcoholic beverages are stored or sold, but also all other rooms, facilities, or improvements in or about the building or structure which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion, custody, or control. The "premises" shall also include outside areas that are contiguous to the premises if such areas are included within the licensee's state alcoholic beverage license as the licensed premises.

The term "restaurant;" shall mean any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. "Restaurants" must derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages. The term "restaurant" shall not include those exceptions listed in section 509.013(5)(b)1-10, Florida Statutes, which are excluded from the definition of "public food service establishment." The labeling or classification of a particular business, entity, or location as a "restaurant" under other portions of this Code, including without limitation, concerning business tax receipt classification, shall not be determinative of whether a particular business, entity, or location is a "restaurant" for purposes of this chapter. ~~as used in this chapter, shall be consistent with the definition of "restaurant" as defined by Florida Statutes, including F.S. § 562.45 and F.S. ch. 509. The city shall require proof that restaurants derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages. The same standard of proof shall be used as is utilized by the state under its beverage laws.~~

The terms "sale," "sell," or "sold" shall mean any transfer of or the act of transferring an alcoholic beverage for 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 consideration, or the serving of an alcoholic beverage by a licensee or other entity or person within a licensee's premises.

The term "school" shall mean a public or private elementary school, middle school, or secondary school pursuant to section 562.45(2)(a), Florida Statutes.

**Sec. 6-2. - State beverage laws adopted.**

The provisions of Florida's Beverage Law as codified in Chapters F.S. chs. 561, 562, 563, 564 and 565, Florida Statutes as may be amended from time to time, relating to alcoholic beverages, except those sections thereof which are by their nature inapplicable to municipalities, are hereby adopted as a part of this Code as if fully set forth herein, except any more restrictive provisions as provided for by the charter or ordinances of the city. The city police shall be charged with the duty of enforcing the provisions hereof and shall be vested with the powers and authorities of state and county officials as set forth in the beverage laws of the state in carrying out their duties hereunder.

**Sec. 6-3. - Regulations and Permitted Hours of Sale of Alcoholic Beverages; Hours of business and Operation; Open Containers.**

- ~~(a) It shall be lawful for any intoxicating or alcoholic beverages as may be defined from time to time by the laws of the state, including liquor, wine and beer, to be sold or consumed upon the premises; or served or permitted to be served or consumed on or at the place of service; or having been sold, served or allowed to be consumed, be allowed to remain open in readiness for consumption on or at the premises where the sale or service occurred, within the territorial limits of the city between the hours of 7:00 a.m. and 2:00 a.m. eastern time, seven days a week.~~
- ~~(b) Other than as an incident to the sale of food or as an incident to the retail sale of other items not being classified as intoxicating or alcoholic beverages as same may be defined from time to time by the laws of the state, i.e., restaurants, convenience stores, and grocery stores, it shall be unlawful for any person in the business of vending, sale or service of intoxicating or alcoholic beverages as same may be defined from time to time by the laws of the state, to keep their place of business open during the hours as set forth and enumerated in subsection (a) of this section.~~

(a) It shall be unlawful between the times of 2:00 a.m. and 7:00 a.m. each day for any person to consume any alcoholic beverages in or upon any premises or place within the territorial limits of the city that is owned or operated by a licensee or that otherwise holds or owns an alcoholic beverage license from the state.

(b) It shall be unlawful between the times of 2:00 a.m. and 7:00 a.m. each day for any licensee or any other person or entity to sell; serve; or permit the consumption, sale or service of any alcoholic beverages in any premises or place within the territorial limits of the city that is owned or operated by a licensee or that otherwise holds or owns an alcoholic beverage license from the state.

(c) It shall be unlawful for any alcoholic beverage to be sold between the times of 2:00 a.m. and 7:00 a.m. each day within the territorial limits of the city.

(d) Except as provided in subsection (e), it shall be unlawful for any premises or place within the territorial limits of the city owned or operated by a licensee to remain open or occupied between the times of 2:00 a.m. and 7:00 a.m. each day. By way of example, but not limitation, this subsection applies to bars, bottle clubs, restaurants and any other premises or licensee operated business that sells alcoholic beverages for on premises consumption or allows consumption of alcohol on the premises. Notwithstanding the preceding, the provisions of this subsection shall not be interpreted or enforced to prevent occupation of the licensed premises by licensees and/or their officers, managers and employees for the performance of cleaning, inventory, storage, preparation, bookkeeping or other similar tasks not involving the service, sale or consumption of alcoholic beverages.

(e) Only those licensees that sell alcoholic beverages for off premises consumption only as an incident to the retail sale of other items not classified as alcoholic beverages may have their premises remain open between the times of 2:00 a.m. and 7:00 a.m. subject to compliance with other applicable laws, ordinances, rules and regulations. The provisions of subsections (a)-(c) of this section shall apply to all businesses, vendors, and licensees within the territorial limits of the city, including those permitted to remain open to the public during the aforesaid times.

(f) It shall be unlawful within the territorial limits of the city for any licensee, person or entity to purchase, use, offer for sale, possess, consume or carry in any cup, glass, can or other open or unsealed container, any alcoholic beverage in a manner prohibited by the Seminole County Open or Unsealed Alcoholic Beverage Ordinance. This subsection does not prohibit outdoor seating areas for the service and consumption of alcoholic beverages within such areas approved by the city or described as part of licensed premises. Further, this subsection does not prohibit special event waivers in accordance with section 6-6.

(g) A police officer or officers may enter upon and into any establishment holding an alcoholic beverage license from the state division of beverage for inspection purposes, or other such purpose as permitted by general law, during or immediately after business hours, or at such time as the license holder, his agent or employee, or such other persons who may be within the premises, to determine compliance with this section and the adopted provisions of the Florida Beverage Law. If it reasonably appears to the officer that alcohol is being consumed, served, or sold, past the time permitted in this section, the police are authorized to immediately order the establishment to stop the unlawful activity and to take such further action as authorized by law. This failure to comply with this section may also subject the license holder, the owner of the business, or a tenant leasing from a license holder to any additional penalties or other adverse consequences as may be imposed pursuant to Florida law by F.S. ch. 162.

(h) Licensees shall be responsible for keeping adequate and accurate records evidencing compliance with this chapter for inspection by the city. Upon request, the city shall be granted access to and shall have the right to examine all records and source documents used to determine compliance with the provisions of this chapter within a reasonable period of time not to exceed ten (10) days from the date of the request. Businesses shall afford the city the means, facilities, and opportunity to verify the accuracy of the records produced or otherwise inspected. Any audits provided by the business, vendor, or licensee must be completed by a Florida licensed certified public accountant.

**Sec. 6-4. - Distance from ~~church, place of worship~~ or school, ~~or day care center~~.**

(a) ~~Except for locations that are licensed as restaurants, which derive at least 51 percent of their revenues from the sale of food and nonalcoholic beverages, a~~ No place of business for the on-premises consumption of alcoholic beverages on lands designated as commercial, industrial or downtown on the future land use map of the city shall be located within 500 feet of property owned or utilized by any established church place of worship, or school, or day care center except in the following instances:

- (1) The place of business is licensed as a restaurant, which derives at least 51 percent of its revenue from the sale of food and nonalcoholic beverages;
- (2) The location of the place of business is approved by the City Commission through a special exception or Development Agreement pursuant to section 6-4(b);
- (3) If the place of worship within 500 feet of a place of business having on-premises consumption of alcoholic beverages is not freestanding as a single principal use on a parcel. A place of worship would not be freestanding if it is located within a multi-unit retail or office center or development containing three or more separate commercial businesses suites or units; or
- (4) The establishment with on-premises consumption of alcoholic beverages is located within the principal structure, courtyard, or pool area of an approved hotel.
- (5) The licensee's place of business: (i) is located within the Downtown Historic land use district, (ii) provides a personal service(s) as its primary business, (iii) sells wine or beer for on-premises consumption as an accessory to a customer's purchase of the licensee's personal services, (iv) does not derive more than 35% of licensee's gross revenue at such place of business from the sale of wine and beer, (v) contains a primary area for alcohol consumption that does not exceed 35% of the total building floor area, and (vi) does not sell fortified wine, liquors, distilled spirits or spirituous liquors.

(b) The city commission may approve a location for the on-premises consumption of alcoholic beverages that is within the required separation area provided that it approves the location as promoting the public health, safety, and general welfare of the community

under proceedings as provided in F.S. § ~~166.04(3)(c)~~ 166.041(3)(c) through a special exception, or as part of a Development Agreement approved by the City Commission.

- (c) The distances in subsection (a) of this section shall be measured along the ordinary pedestrian walkway, sidewalk or public thoroughfare from the front door of said establishment to the front door of said ~~church, place of worship or school or day care center~~. The front door of said buildings shall be the normal front door in the front of the building. If there is no front door, the distance shall be measured from the middle of the front of the building directly to the street or sidewalk.
- (d) The distance requirements shall not apply to any establishment operating under a valid state license on July 1, 1999, and located closer than the restricted distances to any ~~church, place of worship or school or day care center~~.
- (e) Any such establishment selling alcoholic beverages, and operating under a valid state license, which is located closer to a ~~church, place of worship or school or day care center~~ than as provided in this section, shall not be permitted to expand or enlarge the existing square footage of the building.
- (f) Any establishment selling alcohol which is located closer to a ~~church, place of worship or school or day care center~~ than as provided may continue such use so long as the owner or occupant holds a valid alcoholic beverage license from the state. However, if another use is made of the location, such location shall not thereafter be reestablished for the sale of alcoholic beverages, unless in compliance with this section.
- (g) Retail establishments with package sales of alcoholic beverages shall have no separation requirements from places of worship or schools.

#### **Sec. 6-5. - Sale of prohibited beverages.**

It shall be unlawful for any licensee, entity, person, ~~No alcoholic beverage~~ distributor, vendor, or club ~~shall~~ to sell any alcoholic beverage unless same is authorized for sale by the laws of the United States and the state.

#### **Sec. 6-6. - Waiver of requirements.**

To the extent not otherwise prohibited by law, ~~the~~ the city commission may waive any requirement of this chapter as it relates to hours of business or distance for the purpose of special events held on city owned or controlled rights-of-way, sidewalks, property, or city owned buildings.

#### **Sec. 6-7. Remedies and penalties.**

In the event that a violation of this article occurs, the city shall have the right to one or more of the following remedies or actions:

(a) Institute code enforcement proceedings and prosecute code violations against the violator and the property owner of the real property where the violation occurs;

(b) Arrest and/or prosecute the violator for a criminal misdemeanor punishable by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment in the discretion of the court;

(c) Institute any appropriate action to bring about compliance or remedy, including but not limited to, instituting an action in court to enjoin violating actions, in which case the violating person shall be liable to the city for reimbursement of the city's attorneys' fees and costs concerning such action; and

(d) Take any other action or remedy authorized by law or in equity, in which case the violating person shall be liable to the city for reimbursement of the city's attorneys' fees and costs concerning such action.

**SECTION 2.** CONFLICTS. If any ordinance or part thereof is in conflict herewith, this Ordinance shall control to the extent of the conflict.

**SECTION 3:** CODIFICATION. Section 1 of this Ordinance shall be codified; and any sections, subsection, paragraph, or subparagraph may be renumbered or re-lettered as appropriate and to accomplish the intent of this Ordinance.

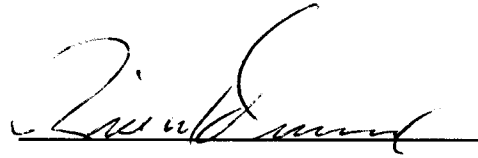
**SECTION 4:** SEVERABILITY. The provisions of this Ordinance are declared to be separable and if any section, paragraph, sentence or word of this Ordinance or the application thereto any person or circumstance is held invalid, that invalidity shall not affect other sections or words or applications of this Ordinance. If any part of this Ordinance is found to be preempted or otherwise superseded, the remainder shall nevertheless be given full force and effect to the extent permitted by the severance of such preempted or superseded part.

**SECTION 5:** EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption.

**FIRST READING: February 15, 2021**

**SECOND READING AND ADOPTION: March 1, 2021**

**PASSED AND ADOPTED THIS 1<sup>st</sup> DAY OF March, 2021**



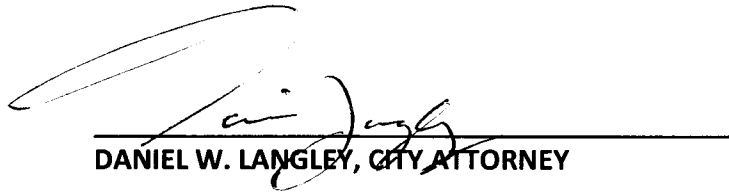
**RICHARD DRUMMOND, MAYOR**

**ATTEST:**



**MICHELLE LONGO, CMC, FCRM, CITY CLERK**

Approved as to form and legality for the use and reliance of the City of Longwood, Florida, only.



**DANIEL W. LANGLEY, CITY ATTORNEY**