

## ORDINANCE 2009-25

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING CHAPTER 5, ALCOHOLIC BEVERAGES, IN ITS ENTIRETY TO READ AS HEREIN SET OUT; REPEALING ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ENACTED** by the City Commission of the City of Lake Wales, Polk County, Florida:

**SECTION 1.** Chapter 5, Alcoholic Beverages, Lake Wales Code of Ordinances, is hereby amended in its entirety to read as follows:

### **Chapter 5 ALCOHOLIC BEVERAGES**

#### **Sec. 5-1. Legislative findings and intent.**

~~The consumption of alcoholic beverages contributes to impairment of critical driving tasks, and blood alcohol content as a measure of impairment increases over the hours of consumption of alcoholic beverages. Establishments which permit the consumption of alcohol after 2:00 a.m. increase the incidence and incidents of elevated blood alcohol levels and resultant driver impairment. A disproportionate number of complaints to law enforcement from establishments which permit the consumption of alcoholic beverages are received after 2:00 a.m., and a disproportionate amount of law enforcement time is required to police establishments which permit the consumption of alcoholic beverages after 2:00 a.m.~~

Alcohol abuse is a factor in violent crimes such as assault and battery and increases the frequency and severity of vehicle crashes. A disproportionate number of calls for service received by the Police Department originate from establishments that permit the consumption of alcoholic beverages on the premises. An unreasonable amount of law enforcement resources are allocated to these establishments to preserve the public peace. Accordingly, the regulation of alcoholic beverages may reduce crime and disorder.

~~In accordance with authority granted by F.S. § 562.14, this chapter is intended to regulate the hours of operation during which alcoholic beverages may be sold, or consumed, served or permitted to be served within the city limits at any establishment holding a license under the state division of alcoholic beverages and tobacco from the Division of Alcoholic Beverages and Tobacco of the Florida Department of Business and Professional Regulation .~~

~~In accordance with authority granted by F.S. § 562.45, this chapter is intended to regulate the location within the city limits of any establishment holding a license under the state division of alcoholic beverages and tobacco from the Division of Alcoholic Beverages and Tobacco of the Florida Department of Business and Professional Regulation.~~

This chapter is further intended to establish prohibited acts relating to the sale, service, possession or consumption of alcoholic beverages within the city limits.

~~The exercise of all police powers granted by F.S. ch. 562, for the protection of the public welfare, safety, and morals of the citizens of Lake Wales shall be further authorized by this chapter.~~

All police powers granted by chapter 562, Florida Statutes, shall be exercised by the city to protect the health, safety and welfare of the public.

#### **Sec. 5-2. Applicability.**

In addition to all provisions of F.S. ch. ~~chapters~~ 561 and ~~ch.~~ 562, Florida Statutes, hereinafter referred to as the "beverage law of the state," Florida Beverage Law, the provisions of this chapter shall apply to the sale, service, possession and consumption of alcoholic beverages within the corporate limits of the city.

### Sec. 5-3. Definitions.

The definitions contained in the beverage law of the state (F.S. § 561.01) shall apply to the terms used in this chapter. The meaning and intent of the words and terms used in the beverage law of the state, as the same have been interpreted by the courts of this state, the attorney general, and the state director of alcoholic beverages and tobacco of the department of business regulation, shall be the same for the city.

In addition to the definitions contained in the beverage law of the state, the following words, terms or phrases shall have the meanings ascribed to them in this section when such words, terms or phrases are used in this chapter:

As used in this section, the following terms shall have the meanings ascribed as follows:

Alcoholic beverages means distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

Beer means all brewed beverages containing malt.

Bottle club means a business establishment not licensed to sell alcoholic beverages which provides facilities for the consumption of alcoholic beverages by its patrons on the premises without regard as to whether the patrons are required to be members of the bottle club. A bottle club does not include a social, fraternal or civic association or organization not licensed to sell alcoholic beverages which only incidentally, as opposed to primarily, provides facilities for on-premises consumption of alcoholic beverages by its members and their guests. A bottle club can be a private club or a public business establishment in which the principal revenue would be derived from the sale of setups, mixers, ice, water and charges for any entertainment provided. Any operator of a bottle club must be licensed by the state division of alcoholic beverages and tobacco pursuant to F.S. § 561.14 to permit to consumption of alcoholic beverages 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.

F.S. means Florida Statutes, 1993, and all subsequent amendments.

Open container means any bottle, can, glass, cup or other vessel which contains an alcoholic beverage not in its original unbroken sealed container an unsealed alcoholic beverage contained in a bottle, can, cup, glass or other container.

Operator means the person, corporation, partnership, joint venture or other group enterprise legally responsible for the day-to-day operation of the establishment, having as part of his/her responsibilities the making of policy decisions and the implementation of those policy decisions corporation, firm or person legally responsible for the daily operation of an establishment where alcoholic beverages are sold.

Owner means the person, corporation, partnership, joint venture or other group enterprise having lawful possession of the premises upon which the establishment is to be or is being operated, which lawful possession is by right of purchase, gift, lease or otherwise any corporation, firm or person having lawful possession of an establishment where alcoholic beverages are sold.

Restaurant means a public eating place engaging primarily in the preparation and sale of food for consumption on the premises and holding a restaurant local business tax receipt issued by the city and the state department of business regulation, division of hotels and restaurants. "Engaging primarily in the preparation and sale of food" means fifty-one (51) percent or more of the revenues of the restaurant are derived from the sale of food holding a valid local business tax receipt issued by the city and a valid license from the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation where meals are prepared, served or sold for immediate consumption on the premises or called

for or taken out by customers that derives at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages.

Retail sales establishment means a business that is engaged primarily in the retail sale of consumer goods or services. Convenience stores and retail service stations are included in the definition of a retail sales establishment.

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 Florida Beverage Law.

Wine and beer bar means any establishment devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or any combination thereof, for consumption on the licensed premises. The serving of food, if any, is merely incidental to the consumption of any such beverage.

Wine means all beverages made from fresh fruits, berries or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths and like products. Sugar, flavors and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.

#### **Sec. 5-4. Hours of sale and consumption.**

~~(a) No alcoholic beverages may be sold or consumed or served or permitted to be served or consumed at any establishment holding a license under the state division of alcoholic beverages and tobacco within the limits of the City of Lake Wales between the hours of 2:00 a.m. and 7:00 a.m. of any day of the week.~~

~~(b) No alcoholic beverage may be sold or consumed or served or permitted to be served or consumed at any establishment holding a license under the state division of alcoholic beverages and tobacco within the limits of the city on Sunday except between the hours of 12:00 noon and 12:00 midnight Sunday.~~

~~(c) Reserved.~~

~~(d) No alcoholic beverage may be sold or consumed or served or permitted to be served or consumed at any arcade amusement center as defined in F.S. § 849.161(2), within the limits of the City of Lake Wales unless the said center holds a license under the state division of alcoholic beverages and tobacco.~~

(1) Alcoholic beverages may be consumed, permitted to be served, served or sold with a meal at a restaurant holding a valid license from the Division of Alcoholic Beverages and Tobacco of the Florida Department of Business and Professional Regulation and local business tax receipt issued by the city between the hours of 8 a.m. and 2 a.m. of the following day.

(2) Alcoholic beverages may be sold at a retail sales establishment holding a valid license from the Division of Alcoholic Beverages and Tobacco of the Florida Department of Business and Professional Regulation and local business tax receipt issued by the city between the hours of 6 a.m. and 2 a.m. of the following day.

(3) Alcoholic beverages may be consumed, permitted to be served, served or sold at a wine and beer bar holding a valid license from the Division of Alcoholic Beverages and Tobacco of the Florida Department of Business and Professional Regulation and local business tax receipt issued by the city between the hours of 8 a.m. and 2 a.m. of the following day.

(4) It shall be unlawful for a person to consume, permit to be served, serve or sell an alcoholic beverage at any restaurant, retail sales establishment, stand-alone bar or wine and beer bar outside the regulations

established above.

**Sec. 5-5. Consuming and drinking alcoholic beverages and possessing an open container restricted prohibited.**

(a) It shall be unlawful for any person to drink or consume an alcoholic beverage or possess an open container of alcoholic beverage on upon any public alley, highway, right-of-way, roadway, street, public or private parking lot(s) used by the public, public park or any other public open space except as provided below:

1. ~~It shall be lawful for a A person to may drink or consume an alcoholic beverage or possess an open container served by a restaurant holding a license under the state division of alcoholic beverages and tobacco upon public open space adjacent to the restaurant and approved with the approval and issuance of a permit by the city commission, upon application of the restaurant which holds the license under the state division of alcoholic beverages and tobacco. The An application for permit must clearly define or delineate the area public open space adjacent to the restaurant in which alcoholic beverages may be consumed or possessed. In conjunction with the application, the alcoholic beverage license holder owner or operator of the restaurant must provide to the city indemnification in a form acceptable to the city and must also secure a policy providing commercial general liability insurance in an amount not less than one million dollars (\$1,000,000.00) naming the City of Lake Wales as an additional insured. The restaurant shall be responsible for providing notice to its patrons customers that the alcoholic beverages may only be consumed or possessed within the area public open space approved by the city commission for consumption of such beverages.~~

2. ~~It shall be lawful for a A person to may drink or consume an alcoholic beverage or possess an open container of alcoholic beverage on a public alley, highway, right-of-way, roadway, street, public or private parking lot used by the public, public park or any other public open space if approved by the city for a special event with the approval and issuance of a special event permit by the City Commission. A special event shall be those events sponsored by a legally recognized organization which shall secure for the event. In conjunction with the application, the applicant must secure a policy providing commercial general liability insurance in an amount not less than one million dollars (\$1,000,000.00) naming the City of Lake Wales as an additional insured. Upon submission of an appropriate application, including proof of the required insurance coverage, the event may be administratively approved by the city manager. The applicant shall be responsible for providing notice to participants that alcoholic beverages may only be consumed in a clear plastic container not in excess of sixteen ounces (16 oz.) of capacity and within the area approved by the City Commission~~

(b) ~~It shall be unlawful to operate a teen center and a bottle club from the same premises unless the premises are closed for a minimum of four (4) hours after operating as a teen center and before doing business as a bottle club.~~

**Sec. 5-6. Sale or consumption of alcoholic beverages within specified distance of church or school prohibited; exemption; determination of distance. Consumption, sale and service of alcoholic beverages within 500 feet of a church or school prohibited.**

(a) ~~No liquors, wines or beers alcoholic beverages shall be sold or consumed or permitted to be served or consumed within the corporate limits of the city, at any place of business, location or establishment holding a valid license under the state division of alcoholic beverages and tobacco from the Division of Alcoholic Beverages and Tobacco of the Florida Department of Business and Professional Regulation within five hundred (500) feet of any real property that comprises an established school or church or private or public elementary, middle or secondary school; provided, however, that the above and foregoing shall not apply to a restaurant, as restaurant is defined in state law and section 5-3 herein, where liquor, wine or beer is alcoholic beverages are sold as a part of a meal served on the restaurant premises, nor to any duly licensed grocery store selling wines or beers in packages for consumption off the premises and the requirement for a 500-foot distance from a church shall not apply to wine and beer bars.~~

(b) The distance of five hundred (500) feet shall be measured as follows:

1. Pertaining to established schools. Five hundred (500) feet from the nearest point of the building of the place of business, location or establishment to the nearest point of the ~~school grounds in use as part of the~~ real property containing school facilities.
2. Pertaining to established church. Five hundred (500) feet from the nearest point of the building of the place of business, location or establishment to the nearest point of the church building or buildings.
3. Measurement. The distance of five hundred (500) feet shall be measured in a straight line.

**Sec. 5-7. Bottle club prohibited.**

A bottle club may not be located or operated within the corporate limits of the City of Lake Wales.

**Secs. 5-8 -- 50. Reserved.**

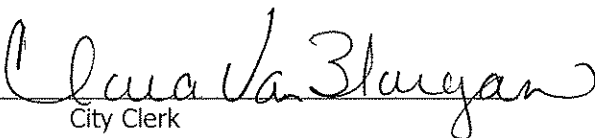
**Section 2.** All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**Section 3.** This ordinance shall take effect immediately upon its adoption by the City Commission of the City of Lake Wales, Florida.

CERTIFIED AS TO PASSAGE this 20<sup>th</sup> day of October 2009.

  
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Mayor/Commissioner

ATTEST:

  
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City Clerk