

ORDINANCE NO. 2020-_____

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VI, DIVISION I, SECTION 62-1102, "DEFINITIONS"; SPECIFICALLY ADDING DEFINITIONS FOR "EATING AND DRINKING ESTABLISHMENTS" AND "RESTAURANTS"; ARTICLE VI, DIVISION 5, SUBDIVISION III, SECTION 62-1906, "ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION"; SPECIFICALLY CREATING SUBSECTION (1) (C) TO ESTABLISH A BASELINE OF 51 PERCENT OF GROSS SALES TO BE ATTRIBUTED TO FOOD SALES IN ORDER FOR RESTAURANTS AND SNACK BARS TO SEEK REVIEW UNDER ADMINISTRATIVE APPROVAL OF THE ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION CONDITIONAL USE PERMIT; AMENDING SUBSECTION (4) TO CREATE THE ADMINISTRATIVE PROCESS BY WHICH RESTAURANTS AND SNACK BARS MUST FOLLOW IN ORDER TO OBTAIN ADMINISTRATIVE APPROVAL OF ON-PREMISES SALE OF OR SERVING OF ALCOHOLIC BEVERAGES; AND AMENDING SUBSECTION (6) TO ADDRESS WHICH PROCESS SHOULD BE FOLLOWED IN THE EVENT OF EXPANSION OF ALCOHOL USE AND WHETHER SUCH USE IS REVIEWED UNDER ADMINISTRATIVE APPROVAL OR THE FILING OF A NEW APPLICATION FOR A CONDITIONAL USE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, the Board of County Commissioners, on April 21, 2020, directed the preparation of an amendment to the Zoning Regulations as it relates to on-premises consumption of alcoholic beverages; and

WHEREAS, the Building Construction Advisory Committee, on August 12, 2020, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Local Planning Agency, on August 24, 2020, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and the Building Construction Advisory Committee and has considered the comments of interested citizens in public hearing; and

WHEREAS, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Brevard County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 62-1102. Definitions and rules of construction. Code of Ordinances of Brevard County, Florida, is hereby amended, as follows:

Eating and drinking establishments means a commercial establishment selling food and/or alcoholic beverages for immediate consumption, on the premises, whether or not the food is cooked on the premises and the serving of alcoholic beverages extends beyond the hours that food is prepared, served and sold for immediate consumption.

Restaurants/snack bars means a commercial establishment where food and alcoholic beverages are prepared or served for on-premises consumption. Take out or meal delivery may occur, but on-site consumption must also be offered and 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 operational hours of the business.

SECTION 1. Section 62-1906, Alcoholic Beverages for On-Premises Consumption, Code of Ordinances of Brevard County, Florida, is hereby amended, as follows:

Section 62-1906. Alcoholic Beverages for On-Premises Consumption.

The sale of or serving of alcoholic beverages on the premises shall only be permitted in accordance with the following conditions:

- (1) a. A bar or cocktail lounge, as defined in Section 62-1102, is a conditional use in a general retail (BU-1) zoning classification; a retail, warehousing, and wholesale commercial (BU-2) zoning classification; a general tourist commercial (TU-1) zoning classification; and a transient tourist commercial (TU-2) zoning classification. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in this division. A bar or cocktail lounge is prohibited within the Restricted Neighborhood Commercial (BU-1-A) zoning classification.
- b. The on-premises sale or serving of alcoholic beverages in an eating and drinking establishment as defined in Section 62-1102, is a conditional use in all of the zoning classifications that allow restaurants and snack bars. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in Section 62-1901 and in this Section.
- c. The on-premises sale or serving of alcoholic beverages in restaurants as defined in Section 62-1102, is an Administrative Approval. Such Administrative Approval shall be considered in the same manner and according to the same standards of review as specified in this Section.

- (2) The on-premises sale or serving of alcoholic beverages may be a conditional use as an accessory use to civic, philanthropic or fraternal organizations, lodges, fraternities and sororities, or marinas, golf courses, stadiums or other similar recreational uses, in those zoning classifications in which such uses are permitted. Such conditional use shall be considered in the same manner and according to the same standards of review as specified in Section 62-1151. The conditional use shall be granted only as an accessory use to the primary use requested. Bottle clubs shall be considered commercial uses subject to the requirements of this section.
- (3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.
- (4) Restaurants may request the on-premises sale of or serving of alcoholic beverages as an Administrative Approval (AA). The Administrative Approval shall be reviewed under the following criteria.
- a. Restaurant/snack bar Administrative Approval (AA) procedure requires the submittal of the following documents:
1. Application for Administrative Approval (AA) with payment of fee identified in the fee schedule.
 2. A notarized letter from restaurant owner attesting that 51 percent of total gross revenue is from the sales of food and non-alcoholic beverages and food will be continuously ready to be prepared, served, and sold during all operational hours of the restaurant.
 3. Submittal of a certified survey in compliance with subsection (3) above.
 4. A site plan signed by a registered engineer, land surveyor, or architect; or a scaled dimensional sketch plan showing the building location, any outdoor seating areas, required parking, ingress and egress, and buffering.

5. Submittal of state required paperwork for alcoholic beverage license together with interior layout, seating count, and any outside seating areas of the licensed premises. A separate fee is required.
- b. Upon approval of the AA, the applicant shall have 365 days to obtain the state issued alcohol permit. Failure to obtain said permit within 365 days will cause the AA to expire.
- c. AA shall terminate if any of the following conditions apply: termination of administrative approval by request of the current applicant, closure of the business, or license transfer requested under different management has been received by Planning and Development.
- d. Staff shall have the authority to process replacement AA applications where new ownership/management has occurred.
- e. The Board shall have the authority to revoke a previously granted AA should the use fail to comply with any of the conditions and restrictions imposed in the AA, or has created an unforeseen negative impact such as emissions, particulates, noise, or other negative impact, or has otherwise caused substantial and adverse effects on the general health, safety, or welfare of adjoining and nearby property owners and residents, and the owner has had adequate opportunity to correct the deficiency through code enforcement procedures or other avenues of due process. This provision shall apply retroactively.
- (5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for on-premises consumption of alcoholic beverages. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.
- (6) Expansion of on-premises consumption. The square footage area or the location of the premises designated for a conditional use permit or Administrative Approval for on-premises consumption of alcoholic beverages shall not be expanded beyond that approved by the conditional use permit or Administrative Approval without filing a new application for a

conditional use permit or Administrative Approval in accordance with the requirements contained in this section and section 62-1901 and having same approval by the board of county commissioners. "Expansion", as used herein, shall include the enlargement of space for such use and uses incidental thereto as well as the extension of a beer and/or wine use to include intoxicating liquor. The new application must cover both the existing approved designated area as well as the proposed expanded area. All areas approved shall be regulated under the same business license and shall be subject to uniform rules and regulations.

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 5. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

SECTION 6. Inclusion in code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in regular session, this ____ day of _____, 2020.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Bryan Andrew Lober, Chair
(as approved by the Board on _____, 2020)

(S E A L)

Reviewed for legal form and content by: _____