

PROPOSED
ORDINANCE NO. 09-23

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING SECTIONS 7-4-1, 7-4-2, 7-4-3, 7-4-4, 7-4-6, AND 7-4-11 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; REMOVING AUTHORITY TO OPERATE BOTTLE CLUBS; ADDING DEFINITION OF RESTAURANT; LIMITING RESTRICTION ON NUMBER AND LOCATION OF ESTABLISHMENTS WHERE ALCOHOLIC BEVERAGES CAN BE SOLD; EXPANDING THE EXEMPTION FOR RESTAURANT TO SELL ALCOHOLIC BEVERAGES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Chapter 7-4 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 7-4-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Bottle club* shall have the meaning set forth in section F.S. § 561.01, Fla. Stat.~~

Consideration means:

- (1) The payment of or obligation to pay any cover charge, entrance fee, dues, or commission for the right or privilege to enter or remain upon the premises;
- (2) The payment of or obligation to pay for ice, nonalcoholic mixes or other nonalcoholic liquids used in connection with alcoholic beverage drinks;
- (3) The payment of or obligation to pay for use of glassware or other containers for the consumption of alcoholic beverage drinks;
- (4) The payment of or obligation to pay for food;

- (5) The payment of or obligation to pay for entertainment of any kind, whether live, recorded, taped, or on film; or
- (6) The payment of or obligation to pay for any combination of the foregoing.

Dense business area means all of that portion of the corporate limits of the city as defined in chapter 12-13.

Private club means any place or establishment licensed or required to be licensed pursuant to F.S. § 565.02(4).

Restaurant means a public food service establishment preparing and serving food during all operating hours and serving alcoholic beverages that is governed by either:

- (1) A State series special food service (SFS) alcoholic beverage license pursuant to section 561.20(2)(a), Fla. Stat.; or
- (2) another State consumption on premises license and which holds a State restaurant seating license and provides seating for at least 25 persons at one time and derives at least 30 percent of its gross revenues from the sale of food and nonalcoholic beverages. The restaurant shall be continuously ready to prepare, serve and sell food and nonalcoholic beverages during all business operational hours. Compliance with this section shall be reported on an annual basis at the time of application for the Business Tax Receipt by the submission of a sworn affidavit verifying compliance.

School means an institution primarily for academic instruction, public, parochial or private (whether for-profit or nonprofit) and having a curriculum the same as ordinarily given in a public school, but not including colleges, universities or other institutions of post-secondary education.

Sec. 7-4-2. Hours of operation.

- (a) Alcoholic beverages may be sold only on Monday through Sunday, between the hours of 7:00 a.m. and 3:00 a.m. of the following day.
- (b) No saloon, barroom, cocktail lounge, club or other place where alcoholic beverages are ordinarily sold, shall remain open during such prohibited hours of sale; provided, however, the provisions of this section shall not be construed as prohibiting grocery stores, restaurants or eating places, which ordinarily sell such beverages, from remaining open during the prohibited hours, so long as such beverages are not sold or permitted to be consumed upon the premises of such places during such hours.
- ~~(c) Bottle clubs may be permitted to operate on Monday through Sunday only between the hours of 10:00 p.m. and 3:00 a.m. of the following day. Subsections (a) and (b) of this section shall not be applicable to bottle clubs.~~

Sec. 7-4-3. Certificates of Compliance.

- (a) It shall be unlawful to sell, or offer to keep for sale, alcoholic beverages containing more than one percent of alcohol by weight in any place or establishment, including a private club or ~~bottle club~~, for which a certificate of compliance with the provisions of this chapter has not been issued. ~~It shall also be unlawful for a bottle club to operate at any location for which a certificate of compliance has not been issued.~~ It shall also be unlawful for a private club to serve or receive or keep for consumption on the premises, whether by members, nonresident guests or other persons, alcoholic beverages containing more than one percent of alcohol by weight at any location for which a certificate of compliance has not been issued. Provided, however, no certificate of compliance shall be required for any place or establishment lawfully operating on June 26, 1986. Any place or establishment lawfully operating on June 26, 1986, which would not be permitted under the terms of this chapter by reason of restrictions stated herein, shall be declared a nonconforming use and may be continued subject to the following provisions:
- (1) *Extension of nonconforming use.* No such nonconforming use may be extended to occupy any greater area of land or extended to occupy any land outside any buildings on the same parcel.
 - (2) *Abandonment of nonconforming use.* If such nonconforming use is abandoned for a period of more than 180 days, any future use of such land and structure shall be in conformity with the provisions of this title.
 - (3) *Change in nonconforming use.* There may be a change in tenant, ownership or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use.

Provided further, however, no certificate of compliance shall be required for any place or establishment to sell or offer or keep for sale in sealed containers for consumption off of-the-premises beer, as defined by section F.S. § 563.01, Fla. Stat., or wine, as defined by section F.S. § 564.01(1), Fla. Stat.

- (b) Each petition for a certificate of compliance shall be considered by the mayor and, if the mayor finds that the petition is in compliance with the provisions of this chapter, then the mayor shall issue a certificate of compliance with the provisions of this chapter, subject to appeal to the city council.
- (c) Notice of each decision of the mayor to grant or deny a certificate of compliance with this chapter shall be filed immediately in the office of the city clerk where it shall be available for public inspection. The city clerk shall send notice of any decision to deny a certificate of compliance to the petitioner,

which notice shall inform the petitioner of the right of any person aggrieved by the decision of the mayor to appeal to the city council within ten calendar days after the date of such notice.

- (d) Any person aggrieved by a decision of the mayor pursuant to this chapter may appeal to the city council by filing in the office of the city clerk a written notice of appeal within ten calendar days after the date of the mayor's granting of a certificate of compliance or within ten calendar days after the date of the city clerk's notice to the petitioner of the mayor's decision to deny a certificate of compliance. The notice of appeal shall set forth a short and plain statement alleging the reasons why the decision of the mayor was not in compliance with the provisions of this chapter.
- (e) The city council shall consider any appeal pursuant to this chapter at a city council meeting within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant, the petitioner (if not the appellant) and the mayor may present evidence concerning whether the decision of the mayor was in compliance with the provisions of this chapter. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this chapter and render its decision which shall be final.
- (f) The mayor shall issue to the petitioner a certificate of compliance with the provisions of this chapter if an appeal has been timely filed, and the city council has approved the granting of a certificate of compliance.

Sec. 7-4-4. Establishments prohibited in proximity of residential district.

- (a) A certificate of compliance shall not be issued for any place or establishment, including a private club ~~or a bottle club~~, within 500 feet of any vacant or residentially developed parcel of property zoned R-1AAAA, R-1AAAA, R-1AAA, R-1AA, R-1A, R-ZL, R-2A, or PR-1AAA. This restriction shall not apply in the Historic District, the Waterfront Redevelopment District, the South Palafox Business District or the dense business area.
- (b) The city shall determine said distance by measuring a radius from the property line of the place or establishment. If any portion of a parcel of property is within said distance, whether or not the property is located within the corporate limits of the city, then the entire parcel shall be deemed to be within said distance.
- (c) The provisions of subsection (a) of this section shall not be applicable to any large multi-use retail store with a floor area of 200,000 square feet or greater which has obtained a license pursuant to section F.S. § 565.02(1)(a), Fla. Stat., or to any motel, hotel or restaurant which has obtained a special alcoholic beverage license pursuant to section F.S. § 561.20(2)(a), Fla. Stat.,

or a restaurant licensed by the division of hotels and restaurants of the state department of business regulation with a seating license and which provides seating for at least 25 persons at one time and derives at least 30 percent of its gross revenues from the sale of food and nonalcoholic beverages. The restaurant shall be continuously ready to prepare, serve and sell food and nonalcoholic beverages during all business operational hours. Compliance with this section shall be reported on an annual basis at the time of application for the Business Tax Receipt by the submission of a sworn affidavit verifying compliance.

Sec. 7-4-5. Restriction of distance from schools and churches.

- (a) A certificate of compliance shall not be issued for any place or establishment within the city limits, but outside the dense business area, which lies within 500 feet of any church or school, nor for any place or establishment within the dense business area which lies within 300 feet of any church or school, unless, in the case of a church, the governing body of such church consents in writing to the issuance of a certificate of compliance.
- (b) The city shall determine distances by measuring a radius from the property line of the place or establishment. If any portion of a parcel of land in use as church or school facilities lies within said radius, whether or not the property is located within the corporate limits of the city, then the church or school shall be deemed to be within said distance.

Sec. 7-4-6. Restriction of number of certain alcoholic beverage establishments.

- (a) There shall be no more than one place or establishment where beer, as defined by section F.S. § 563.01, Fla. Stat., or wine, as defined by F.S. § 564.01(1), Fla. Stat., or liquor, as defined by section F.S. § 565.01, Fla. Stat., are sold, offered or kept for sale, or received, kept or brought for consumption on or off the premises, opening or having entrance upon any one side or sidewalk of any block within the city, except as provided in subsection (b) of this section. Provided that, if any such place or establishment occupies a corner location in any particular block of the city, then such place or establishment shall not be considered to be within the provisions of subsection (a) of this section.
- (b) The provisions of subsection (a) of this section shall not be applicable to any motel, hotel or restaurant which has obtained a special alcoholic beverage license pursuant to section F.S. § 561.20(2)(a), Fla. Stat., or a restaurant licensed by the division of hotels and restaurants of the state department of business regulation with a seating license and which provides seating for at least 25 persons at one time and derives at least 30 percent of its gross revenues from the sale of food and nonalcoholic beverages. The restaurant

shall be continuously ready to prepare, serve and sell food and nonalcoholic beverages during all business operational hours. Compliance with this section shall be reported on an annual basis at the time of application for the Business Tax Receipt by the submission of a sworn affidavit verifying compliance.

Sec. 7-4-7. Additional criteria for certificate of compliance.

- (a) A certificate of compliance shall not be issued for any place or establishment in any area in which the comprehensive plan or zoning ordinances of the city do not permit the sale of alcoholic beverages or where the place or establishment is not in compliance with the building, plumbing, electrical and gas codes of the city.
- (b) Additionally, prior to granting a certificate of compliance, the mayor shall first determine that the place or establishment complies with the other requirements of this chapter and that the granting of a certificate shall not interfere with safe traffic circulation.

Sec. 7-4-8. Conditional certificate of compliance for places or establishments not constructed or completed.

Conditional certificates of compliance may be issued for places or establishments which have not been constructed for which certificates of occupancy have not been issued by the inspection services department of the city. No conditional certificate shall be issued unless the construction plans show that the place or establishment when occupied will be in compliance with the requirements of this chapter. Prior to issuing a certificate of occupancy for a place or establishment for which a conditional certificate has been issued, the mayor shall determine whether the place or establishment complies with the zoning and building codes of the city and whether the main public entrance of the place or establishment has changed from that set forth in the construction plans so as to render the place or establishment in violation of the restrictions set forth in this chapter. If the place or establishment does not comply or if the main public entrance thereto has changed in the manner described above, the conditional permit shall be revoked by the mayor (notice of which shall be furnished to the petitioner) subject to the right of the petitioner to recommence the petition process. If the place or establishment does comply and the main public entrance thereto has not changed in the manner described above, the mayor shall issue a certificate of compliance in accordance with section 7-4-3(b), the issuance of which shall be subject to review by the manner prescribed in section 7-4-3.

Sec. 7-4-9. Sunday deliveries.

It shall be unlawful for any wholesaler or distributor of alcoholic beverages to make any deliveries of alcoholic beverages to any retail establishment or other place retailing such beverages, by motor truck or other vehicle before 1:00 p.m. on Sundays, within the corporate limits of the city.

Sec. 7-4-10. Certain exemptions for distributors.

It is the intent of this chapter that the provisions of sections 7-4-4 and 7-4-5 do not apply to distributors of alcoholic beverages, as the same are defined by the Beverage Law of the State of Florida.

Sec. 7-4-11. Additional exemption for certain licensed restaurants.

Notwithstanding any provisions of this chapter to the contrary, a restaurant licensed by the division of hotels and restaurants of the state department of business regulation with a seating license and which provides seating for at least 25 persons at one time and derives at least 30 percent of its gross revenues from the sale of food and nonalcoholic beverages. The restaurant shall be continuously ready to prepare, serve and sell food and nonalcoholic beverages during all business operational hours. Compliance with this section shall be reported on an annual basis at the time of application for the Business Tax Receipt by the submission of a sworn affidavit verifying compliance, may sell beer, and wine, and liquor for consumption on the premises only during the hours of sale permitted by section 7-4-2. Additionally, ~~any restaurant meeting the requirements stated above, and obtaining a license pursuant to F.S. § 561.20(2)(a)4, shall be permitted to sell beer, wine, and liquor for consumption on the premises only during the hours of sale permitted by section 7-4-2.~~

Sec. 7-4-12. Additional exemption for certain licensed restaurants.

Vendors licensed pursuant to section F.S. § 563.02(1), Fla. Stat., and nonprofit civic organizations permitted pursuant to section F.S. § 561.422, Fla. Stat., shall be exempt from the provisions of this chapter to the extent required by said law.

Sec. 7-4-13. Consumption in public places.

- (a) Except as provided below, it shall be unlawful for any person to consume, possess, or control any type of alcoholic beverages or any other intoxicating liquors other than a beverage in an unopen container at or upon any park, playground or other recreational facility owned by the city, or in or upon any street right-of-way within the city, including, but not limited to, sidewalks, alleyways, and paved or unpaved portions of the right-of-way.
- (b) This prohibition shall not apply to those activities, either public or private, for which prior approval by the mayor has been granted or obtained pursuant to the provisions of the special events permitting, sections 11-4-171 through 11-4-180.
- (c) Public or private activities where alcoholic beverages or other intoxicating liquors may be consumed will be allowed under a special event permit in the following parks and recreational facilities:

- (1) Bayview Park (excluding Bayview Resource Center) and Bayview Senior Citizens Center.
- (2) Plaza de Luna.
- (3) Seville Square.
- (4) William Bartram Memorial Park.
- (5) East Pensacola Heights Clubhouse.
- (6) Sanders Beach Corinne Jones Resource Center (limited to the inside and the veranda).

Sale of alcoholic beverages by any activity sponsor, vendor, or other person at such a public or private activity shall be prohibited except for those events specifically permitting such sales under the activity's special event permit.

- (d) Alcoholic beverages sales and consumption will be allowed on the Osceola Municipal Golf Course, in the Saenger Theatre, on the premises of the Roger Scott Tennis Center exclusive of the parking lot area outside of the perimeter fencing, and the Bayview Senior Citizens Center (limited to the inside and outdoor patio areas on the south side of the building), all subject to the terms and conditions of their respective vendor management agreements and city ordinance.
- (e) At the time of application for a special event permit, the applicant as provided in section 11-4-177 shall furnish to the mayor for the activity a copy of its proof of liquor liability insurance and other required insurance coverages naming the city as an additional insured to protect the city from any potential liabilities or losses related to the proposed activity.
- (f) The applicant also shall arrange with the city to provide security services for the activity at the time of application for a special event permit. The cost of such security services shall be paid for by the applicant. The city shall detail the number of officers as deemed appropriate to maintain public safety at the function but in no case less than the following for any proposed activity:
 - (1) Outdoor events of 150 people or less shall require a minimum of one police officer. Outdoor events of more than 150 people shall require a minimum of two officers.
 - (2) Indoor events of any size shall require a minimum of two officers with one stationed inside the facility and one in the parking lot.

- (g) This prohibition against open containers shall not apply to events taking place within the Specialty Center District as defined in section 11-4-171 where the event organizer has obtained a special events permit that invokes the Specialty Center District.

Sec. 7-4-14. Enforcement.

- (a) In addition to the penalties for violations of this Code provided for in section 1-1-8, this chapter also may be enforced by the city in an action to enjoin any violation of this chapter or to close any place or establishment where such violation occurs. This includes the city's ability to request verification of compliance to any and all portions of the code, at the city's discretion.
- (b) For violations of section 7-4-13, in lieu of making an arrest or issuing a notice to appear pursuant to section 1-1-8, a law enforcement officer may issue a civil citation as described below:
 - (1) A law enforcement officer may issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a violation of section 7-4-13.
 - (2) A citation issued by a law enforcement officer shall be in a form prescribed by the mayor and shall contain:
 - a. The date and time of issuance.
 - b. The name and address of the person to whom the citation is issued.
 - c. The date and time the violation of section 7-4-13 was committed.
 - d. The facts constituting reasonable cause.
 - e. The name of the law enforcement officer.
 - f. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
 - g. The applicable civil penalty if the person elects to contest the citation.
 - h. The applicable civil penalty if the person elects not to contest the citation.

- i. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, such person shall be deemed to have waived the right to contest the citation and that, in such case, judgment may be entered for an amount up to the maximum civil penalty.
- (3) For violations of section 7-4-13, the following civil penalty citation schedules will apply if the person cited elects not to contest a citation and the civil penalties which will apply if such person elects to contest a citation:
 - a. For those persons not contesting a citation:
 - 1. First citation: \$50.00.
 - 2. Second citation: \$100.00.
 - 3. Third citation: \$200.00.
 - 4. Fourth and all additional citations: \$400.00.
 - b. For those persons contesting a citation, the county court may impose a fine within the court's discretion up to a maximum of \$500.00.
- (4) After issuing a citation to an alleged violator, a law enforcement officer shall deposit the original citation and one copy of the citation with the county court.

Sec. 7-4-15. Sales and consumption restricted to licensed buildings.

- (a) It shall be unlawful for any owner of a licensed establishment, or for any agent, servant or employee of any such owner to permit the consumption of any alcoholic beverages in or upon any parking or other area outside of the building or room mentioned in his or her license certificate as the address thereof, when any part of such parking or other area is adjacent to the building or premises in which the building licensed under such section is operated, and when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such owner or by any agent, servant or employee of such owner.
- (b) It shall be unlawful for any person to consume any alcoholic beverage in or upon any parking or other area outside of and adjacent to licensed premises when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such establishment.

- (c) If any licensed owner mentioned herein be a corporation, then the officers of such corporation shall be regarded as the owners thereof, for the purposes of enforcement of this section.
- (d) Any person violating any of the provisions of this section shall, upon conviction, be punished as provided in section 1-1-8.
- (e) The mayor is hereby authorized to grant exemptions from the operation of this section. Any person seeking an exemption from the operation of this section must make a request in writing to the mayor's office, and this application must describe in detail the reasons and circumstances pertaining to the intended consumption of alcoholic beverages in an outside area. Exemptions may be granted by the mayor only in situations where it would appear that the exemption, if granted, would not create a public nuisance or a public disturbance. In determining whether to grant a requested exemption, the mayor shall take into account the following factors:
 - (1) The degree to which the consumption of alcoholic beverages in an outside area would be exposed to public view.
 - (2) The level of noise likely to be created by the granting of an exemption.
 - (3) The extent to which litter control is exercised by the person or entity providing for the availability of alcoholic beverages.
 - (4) The degree to which law enforcement services have been or may be required to be provided by the city.

No exemption granted by the mayor shall be effective for a period of more than one year from the date of issue. Such exemption may be renewed by the mayor on an annual basis upon written request, and the mayor may grant annual renewal by application of the four factors set forth above.

- (f) Any person aggrieved by the denial of an exemption by the mayor shall have a right to appeal the mayor's decision to the city council. Such an appeal must be filed in writing in the office of the city clerk within ten calendar days after the date of the mayor's decision to deny an exemption. The notice of appeal shall set forth a short and plain statement of the reasons why the decision of the mayor was not in compliance with the provisions of this section.
- (g) The city council shall consider any appeal pursuant to this section within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant and the mayor may present evidence concerning

whether the decision of the mayor was in compliance with the provisions of this section. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this section and render its decision which shall be final.

- (h) The mayor is authorized to revoke any exemption which may have been granted pursuant to this section in the event that it is determined by the mayor that the conduct of patrons of a licensed establishment which has been granted an exemption constitutes a public nuisance or a public disturbance. In determining whether a public nuisance or disturbance exists, the mayor may consider and investigate the level of noise created by outdoor consumption of alcoholic beverages, the degree of litter produced, and the degree to which law enforcement services have been necessitated. In the event that the mayor determines that an exemption previously granted should be revoked, the mayor shall provide written notice to the owner of the licensed establishment no less than five days in advance of the effective date of the revocation, informing the owner of the licensed establishment of the intention to revoke the exemption and the reasons therefor.
- (i) Any person aggrieved by the revocation of an exemption by the mayor shall have a right to appeal the mayor's decision to the city council. Such an appeal must be filed in writing in the office of the city clerk within ten calendar days after the date of the mayor's decision to deny an exemption. The notice of appeal shall set forth a short and plain statement of the reasons why the decision of the mayor was not in compliance with the provisions of this section, or why the exemption should not be revoked.
- (j) The city council shall consider any appeal of a revocation of exemption pursuant to this section within a reasonable time following the date of filing of a notice of appeal. At the meeting, the appellant and the mayor may present evidence concerning whether the decision of the mayor was in compliance with the provisions of this section. The burden of proof shall be upon the appellant. The city council shall consider the evidence presented concerning the criteria set forth in this section and render its decision which shall be final.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk