AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
ORLANDO, FLORIDA, AMENDING CHAPTER 5, ORLANDO
CITY CODE, BY AMENDING SECTION 5.06, POWERS OF
THE CODE ENFORCEMENT BOARD; AMENDING CHAPTER
33, ORLANDO CITY CODE, ALCOHOLIC BEVERAGES, BY
AMENDING SECTION 33.03, HOURS OF SERVICE, SALE,
AND CONSUMPTION; PROVIDING FOR SEVERABILITY,
CODIFICATION, CORRECTION OF SCRIVENER'S ERRORS,
AND AN EFFECTIVE DATE.

WHEREAS, pursuant to s. 562.14, Fla. Stat., no alcoholic beverages may be sold,
consumed, served, or permitted to be served or consumed in any place holding a license
under the division of Alcoholic Beverages and Tobacco between the hours of midnight and
7:00 a.m. unless otherwise provided by municipal ordinance; and

WHEREAS, the City of Orlando has enacted s. 33.04, City Code, which, inter alia,
extended the hours that alcoholic beverages were permitted to be sold, consumed, served,
and permitted to be served or consumed in places holding such license, from midnight to
2:00 a.m.; and

WHEREAS, after midnight there has recently been an increase in criminal and violent
activity within the City of Orlando Downtown Entertainment Area (DEA) as well as an
increase in other issues related to public safety and crowd control; and

WHEREAS, the City of Orlando has found a disproportionate amount of resources
are being allocated to this one area of the city to combat the increase in violent and criminal
activity that has occurred after midnight within the DEA; and

WHEREAS, pursuant to s. 562.14, Fla. Stat., the City of Orlando has determined that
additional parameters are required to be in place to preserve public safety and better
balance resources city-wide, while allowing the sale of alcoholic beverages between the
hours of midnight and 2:00 a.m.; and

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

SECTION 1. CHAPTER 5 AMENDED. Section 5.06, City Code of the City of Orlando,
Florida, is hereby amended as follows:

Sec. 5.06. Powers of the Code Enforcement Board

The Code Enforcement Board Shall have the power to:

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(10) Hear appeals of any establishment relating to the issuance, suspension, or revocation of a permit pursuant to Chapter 33, City Code of Orlando.

SECTION 2. CHAPTER 33 AMENDED. Section 33.03, City Code of the City of Orlando, Florida, is hereby amended as follows:

Sec. 33.03. Hours of Service, Sale, and Consumption.

Except as otherwise provided in this section, no alcoholic beverages shall be sold, consumed, or served, or permitted to be served or consumed in any place, within the City of Orlando, not including the Downtown Entertainment Area, “DEA,” as described in section 42.07(6), Orlando City Code, whose principal business is the sale, service, or consumption of alcoholic beverages; or sold at any other place (collectively hereinafter “establishment”) in any manner between the hours of 2:00 a.m. and 7:00 a.m., Monday through Saturday, and between the hours of 2:00 a.m. and 9:00 a.m. on Sunday.

Within the DEA, no alcoholic beverages shall be sold, consumed, or served, or permitted to be served or consumed in any place licensed for on-premises consumption, whose principal business is the sale, service, or consumption of alcoholic beverages; or sold at any other place for on-premises consumption in any manner between the hours of 12:00 a.m. and 7:00 a.m., Monday through Saturday, and between the hours of 12:00 a.m. and 9:00 a.m. on Sunday.

Notwithstanding the above, within the DEA, alcoholic beverages may be sold, consumed, or served, or permitted to be served or consumed in any place licensed for on-premises consumption between the hours of 12:00 a.m. and 2:00 a.m. if permitted in accordance with this section or exempted from such requirement by this section. Any establishment located within the DEA that is exempted or otherwise not required to obtain a permit under this section shall be governed by the same hours of sale otherwise applicable within the City of Orlando.

(A) Permit Required. Any establishment within the DEA that is licensed under the state beverage laws and desires to remain open for the purpose of the sale, service, or consumption of alcoholic beverages between the hours of 12:00 a.m. and 2:00 a.m., may make application with the City of Orlando for an After Midnight Alcohol Sales Permit, “Permit.” However, civic auditoriums and sports arenas, as defined by Chapter 159, Fla Stat., public lodging establishments regulated by Chapter 509, Fla. Stat., and motion picture theaters, as defined by Chapter 540, Fla. Stat., are exempted from the permit requirement so long as their principal business is not the sale, service, or consumption of alcoholic beverages. No permit may be issued to an establishment that has any outstanding obligations to the City, including but not limited to any code violations or liens.
(B) **Application Form.** The Application Form for the Permit shall be provided by the City and will require information about the establishment, including, though not exclusively, the name and address of the establishment, the name(s) and address(es) of the owner(s) of the establishment and the property on which the establishment is located, the name(s) of the Responsible Person(s), the maximum occupancy of the establishment, the amount of required parking, if any, the type of alcohol license possessed by the establishment, and the name and address where notices related to enforcement of this section are to be mailed or delivered. Permit holders are required to amend the Permit application that is on file with the City within ten (10) days of any change in the information set forth on the application form.

(C) **Permit Application Fee.** Prior to the issuance of a new or renewal Permit under this section, the applicant shall be required to pay a fee as set forth by resolution of the City Council for the City of Orlando. The application fee will be utilized to reimburse the City for its costs to administer the Permit program, as well as inspecting and regulating the use that has been authorized under the permit.

(D) **Public Safety Measures**

(i) **Police Protection and Security.** The Chief of Police shall determine whether and to what extent state-licensed private security or police protection is reasonably necessary inside and outside of permitted establishments for the purpose of traffic control and public safety. The Chief of Police shall base this decision on the occupancy, type of alcohol license, traffic control, history of violent incidents that have previously occurred at or were related to the establishment, and any other factor reasonably related to public safety. If such police protection or security is deemed necessary by the Chief of Police, the City will inform the permit applicant, specifying the number of state-licensed security that are necessary to be placed inside the establishment, the number of police officers that are necessary to be placed outside of the establishment and the number, and the particular time and days that such state-licensed security or police officers are required. Officers placed outside the establishment may be deployed anywhere within the Downtown Entertainment Area by the Chief of Police, or his or her designee, to most effectively provided for traffic control and public safety. The applicant shall secure the police protection or state-licensed private security deemed necessary by the Chief of Police at the sole expense of the applicant.

(ii) **Weapons Detection System.** The Chief of Police shall determine whether and to what extent a weapons detection system, e.g., metal detectors, are reasonably necessary within the establishment. The Chief of Police shall base this decision on the occupancy, type of alcohol license, history of violent incidents that have previously occurred at or were related to the establishment, and any other factor reasonably related to public safety. If a weapons detection system is deemed necessary by the Chief of Police, the City will inform the applicant of the minimum requirements and quantity
of weapons detectors needed, the necessary detection abilities of the
system, and the particular days and times that the system is required to be
used.

Each patron who enters the establishment without being checked by the
weapons detection system as required by the permit shall be considered a
separate violation of the terms of the permit.

(iii) **Identification Scanners.** The Chief of Police shall determine whether and to
what extent identification (ID) scanners are reasonably necessary within the
establishment. The Chief of Police shall base this decision on the occupancy,
type of alcohol license, history of underage drinking at the establishment,
history of violent incidents that have previously occurred at or were related
to the establishment, and any other factor reasonably related to public
safety.

If ID scanners are deemed necessary by the Chief of Police, the City will
inform the applicant of the minimum requirements and quantity of ID
scanners needed, and the particular days and times that ID scanners are
required to be used.

Each patron who enters the establishment whose ID is not scanned as required
by the permit shall be considered a separate violation of the terms of the
permit.

(iv) **Occupancy Load Monitoring.** Each establishment shall employ a verifiable
occupancy load monitoring system within the establishment and keep a count
of all individuals within the establishment between 10:00 p.m. and the time of
closing. Such count must be readily provided to any officer of the City acting
in their official capacity by the establishment upon request.

(E) **Permit Review.** The City’s Chief Administrative Officer, or his or her designee, will
review the Permit Application and, if the application is complete, a Permit shall be issued to
the establishment authorizing it to sell alcohol between the hours of 12:00 a.m. (midnight)
and 2:00 a.m., subject to the conditions of the Permit, as well as the provisions of this section
and applicable laws, rules, and regulations.

(F) **Conditions of Permit.** Each establishment must abide by all reasonable conditions
placed upon the After Midnight Alcohol Sales Permit, including, but not limited to the Public
Safety Measures outlined in this section, and any requirements associated with such
establishment’s Retail Beverage license and Chapter 562, Fla. Stat.

(G) **Display of Decal.** Upon the issuance of a permit under this section, the City shall
also issue a decal to the establishment indicating the establishment’s hours of operation,
occupancy, and the expiration of the permit. Such decal shall be conspicuously displayed at
or about the primary place of ingress of the establishment in a fashion that it is visible from
outside the establishment.
(H) **Permit Effective Term.** The Permit is effective for a 12-month term, unless revoked or suspended as provided herein, or in the event the establishment ceases to operate at the Permit location. Each Permit issued under this section must be renewed annually. In addition, within ten (10) days after a change in ownership or a change in location of the establishment during the term, the establishment must submit a new application for Permit.

(I) **Prohibition.** Except as otherwise provided in this section, no establishment may sell, serve, or permit to be served or consumed, alcoholic beverages between the hours of 12:00 a.m. (midnight) and 7:00 a.m. Monday through Saturday or between the hours of 12:00 a.m. (midnight) and 9:00 a.m. on Sunday in the DEA, unless it is operating under a valid and effective Permit.

(J) **Prior to Midnight.** The provisions of this section shall not impair or impact an establishment's right to remain open and sell, serve, or permit to be served or consumed, alcohol between the hours of 7:00 a.m. and 12:00 a.m. (midnight) Monday through Saturday and between the hours of 9:00 a.m. and 12:00 a.m. (midnight) on Sunday, if otherwise authorized by law.

(K) **No Right to Permit.** The ability to sell, offer for sale, provide service, or permit to be served or consumed upon the premises of any establishment, any alcoholic beverage between the hours of 12:00 a.m. (midnight) and 2:00 a.m. within the DEA is hereby declared to be and is a privilege subject to suspension or revocation by the City, and no person may reasonably rely on a continuation of that privilege.

(L) **Suspension of Permit.**

(i) An establishment’s After Midnight Alcohol Sales Permit shall be suspended if a hearing officer appointed by the City, finds that:

a. On any occasion the establishment’s agents, officers, employees, or contractors, including but not limited to promoters operating at an establishment, while working at or on behalf of the establishment have:

   i. Knowingly, recklessly, or negligently permitted the establishment to be the site of violation of any provision of Chapter 790, Fla. Stat., relating to Weapons and Firearms;

   ii. Knowingly, recklessly, or negligently permitted the establishment to be the site of any violation of any provision of Chapter 794, Fla. Stat., relating to Sexual Battery; or

   iii. Knowingly, recklessly, or with gross negligence permitted the establishment to be the site of the violation of any provision of Chapter 893, Fla. Stat., relating to the sale or delivery of a controlled substance.

b. On any occasion, the establishment has been the site of:

   i. Any violation of any provision of Chapter 782, Fla. Stat., relating to Homicide.
c. On two occasions within a consecutive three-month period, the establishment’s agents, officers, employees, or contractors, including but not limited to promoters operating at an establishment, while working at or on behalf of the establishment have:
   i. Knowingly, recklessly, or with gross negligence failed to comply with any condition of the After Midnight Alcohol Sales Permit;
   ii. Knowingly, recklessly, or with gross negligence permitted the establishment to be the site of the violation of any provision of Section 43.06, Orlando City Code, relating to Disorderly Conduct;
   iii. Knowingly, recklessly, or with gross negligence permitted the establishment to be the site of any violation of any provision of sections 784.011 or 784.021, Fla. Stat., relating to Assault or Aggravated Assault;
   iv. Knowingly, recklessly, or with gross negligence permitted the establishment to be the site of any violation of any provision of sections 784.03, 784.041, or 784.045, Fla. Stat. relating to Battery, Felony Battery, Domestic Battery by Strangulation, or Aggravated Battery;
   v. Knowingly, recklessly, or with gross negligence permitted the establishment to be the site of the violation of any provision of Chapter 849, Fla. Stat., relating to Gambling;
   vi. Negligently permitted the establishment to be the site of any violation of any provision of Chapter 893, Fla. Stat., relating to the sale or delivery of controlled substances;
   vii. Knowingly, recklessly, or with gross negligence permitted the establishment to be the site of the violation of any provision of Chapter 893, Fla. Stat., relating to possession of a controlled substance.

d. On two occasions within a consecutive three-month period, the establishment has been the site of:
   i. Any violation of any provision of Chapter 790, Fla. Stat., relating to Weapons and Firearms; or
   ii. Any violation of any provision of Chapter 794, Fla. Stat., relating to Sexual Battery.

e. On three occasions within a consecutive three-month period, the establishment’s agents, officers, employees, or contractors, including but not limited to promoters operating at an establishment, while working at or on behalf of the establishment have:
   i. Failed to comply with any condition of the After Midnight Alcohol Sales Permit; or

CODING: Words stricken are deletions; words underlined are additions; **** denote omitted text.
ii. Knowingly, recklessly, or negligently permitted the establishment to be the site of a violation of any provision of Chapter 42, Orlando City Code, relating to Noise;

f. On three occasions within a consecutive three-month period, the establishment has been the site of:
   i. Any violation of any provision of section 43.06, Orlando City Code, relating to Disorderly Conduct;
   ii. Any violation of any provision of sections 784.011 or 784.021, Fla. Stat., relating to Assault or Aggravated Assault;
   iii. Any violation of any provision of sections 784.03, 784.041, or 784.045, Fla. Stat. relating to Battery, Felony Battery, Domestic Battery by Strangulation, or Aggravated Battery;
   iv. Any violation of any provision of Chapter 849, Fla. Stat., relating to Gambling; or

(ii) Duration of Suspension:
   a. Suspensions shall be for a period of thirty (30) days, beginning on the date of the finding of suspension by the hearing officer appointed by the City.
   b. Should additional grounds for suspension occur while the establishment’s permit is suspended, any additional period of suspension proscribed by this section shall be served consecutively.

(iii) During a suspension for a specific violation, an establishment may submit to the City a mitigation plan that has cured or is reasonably designed to cure or otherwise prevent future occurrences of the violation(s) which constituted the grounds for suspension. In determining if the mitigation plan submitted by the establishment has cured or is reasonably designed to cure or otherwise prevent future occurrences of the violation, the City may consider any relevant information, including but not limited to, input from the Orlando Police Department, Code Enforcement, the Fire Marshall, and citizen complaints regarding the establishment.

(iv) If the City finds that the establishment has a mitigation plan that has cured, is reasonably designed to cure, or otherwise taken reasonable actions to prevent future occurrences of the violation, then, in lieu of the remainder of the suspension, the City may amend the establishment’s After Midnight Alcohol Sales Permit to include, as a condition thereof, the mitigation plan. No establishment has a right to alter the conditions of the Permit in lieu of suspension.

(v) If the same type of violation has occurred three or more times at an establishment, it shall be prima facie evidence that the establishment has negligently permitted the establishment to be the site of such violation.

(vi) Where multiple violations have occurred at an establishment, different violations may be combined to form the minimum required number of...
violations, however, such combination of violations must have occurred the minimum number of times of the least restrictive violation thereof.

(M) Revocation of Permit. The City shall revoke the Permit if:
  (i) Information provided in the application for the permit, including a renewal permit, is false, deceptive, willfully incorrect, or intentionally misleading; or
  (ii) The establishment’s After Midnight Alcohol Sales Permit has been suspended three (3) times within a consecutive 12-month period.

(N) Procedures.
  (i) Notice and Opportunity to be Heard
    a. A hearing before a hearing officer appointed by the City will be held whenever grounds for suspension or revocation exist pursuant to this section. The Permittee must be advised in writing of the date, time, and place of such hearing either by personal service upon a Responsible Person at the establishment or by notice mailed by certified mail to the address provided on the permit, no later than seven (7) days before the date of the hearing.
    b. The hearing will be conducted in accordance with the principles of due process and shall not be subject to the formal rules of evidence. The City bears the burden to prove the basis for suspension or revocation by a preponderance of the evidence. It is the responsibility of any party wishing to have a transcript of the proceedings to provide a stenographer at their own expense.
    c. The hearing officer shall base the order on the criteria listed in this section. For the purposes of suspension or revocation under this section, calculation of the time periods will be construed from the date each violation occurred. Guilty pleas, no contest pleas, default judgments, payment of citations, or any other finding of a violation by a court of competent jurisdiction or by the procedure provided within City Code shall constitute proof of a prior violation, regardless of whether adjudication was withheld or not. Nothing in this section shall be deemed to allow permittees to relitigate previously adjudicated violations. Code enforcement officers may bring proof of separate violations to the hearing officer which, if proven by a preponderance of the evidence to have occurred, shall be counted towards the total number of violations.

(O) Appeal. Within fourteen (14) days after the issuance of an order of suspension or revocation, the establishment may request a hearing before the Code Enforcement Board to appeal the suspension or revocation. The request for a hearing in front of the Code Enforcement Board must be in writing and shall not stay the effect of a Suspension or Revocation Order. The request must allege findings of fact and conclusions of law supporting the establishment’s challenge. The Code Enforcement Board will hear the
challenge at its next available regular meeting and shall conduct a de novo hearing in accordance with its regular rules of evidence and procedure.

(P) Decision on Appeal. Upon conclusion of the hearing, the Code Enforcement Board shall make findings of fact, conclusions of law, and issue an order either upholding the suspension or revocation of the Permit or quashing the suspension or revocation. The finding by the Code Enforcement Board shall be the final action by the City.

(Q) Suspension and Revocation Not Exclusive Enforcement Mechanisms. Nothing in this section shall be construed or interpreted to prohibit the City from enforcing its codes and ordinances by means other than those provided by this chapter, including without limitation, by summons, notice to appear in court, arrest, issuance of a citation, a civil action, stop work order, statutory code enforcement proceedings, or demolition.

(R) Exhaustion of Administrative Remedies. Judicial review of a Permit revocation is available only after all applicable administrative appeal remedies provided by this chapter have been exhausted. Filing a petition for judicial review or other such pleading shall not stay a suspension or revocation unless so ordered by the circuit court.

(S) Reapplication for Permit. After an establishment’s permit has been revoked for a period of not less than three hundred sixty-five (365) days, the establishment may reapply for a permit to sell alcoholic beverages between 12:00 a.m. (midnight) and 2:00 a.m. In addition to all other required information, an establishment whose permit has previously been revoked shall include information explaining the actions they have taken to prevent the violations that resulted in the past revocation(s).

Within the meaning of this Chapter, sale shall be regarded as being made if the alcoholic beverage is delivered to any person during prohibited hours regardless of whether payment therefore is made at some other time. If such commercial establishment is a corporation, then the officers of such corporation shall be regarded as the owners thereof for purposes of enforcement of this Chapter. If such commercial establishment is a private club, then the officers of such club shall be regarded as the owners thereof for purposes of enforcement of this Chapter.

1. Any person or corporation which dispenses, sells, or serves alcoholic beverages; or permits alcoholic beverages to be dispensed, sold, served or consumed in the City on the establishment’s licensed premises, and whose principal business is the sale, service, or consumption of alcoholic beverages, shall be closed during the period of time outside of normal business hours, except as provided in subparagraphs 33.03(2), (3), and (4).

Any such commercial establishment shall, at the time of cessation of alcoholic beverage sales—hour of 2:00 a.m., cause all outside lights on the premises occupied by it to be illuminated, except that the establishment shall extinguish any lighted signs indicating the establishment is open, extinguished and shall cause all entrances and exits to such establishment to be locked, and the
entrances and exits shall not be opened during the prohibited hours except to admit No person, except the proprietor, his or her employees, law enforcement or other emergency personnel, or code enforcement officers, may be permitted to enter the establishment after the cessation of alcoholic beverage sales and to permit the egress of the proprietor, employees and customers or members of such place from the premises.

In no instance shall open containers of alcoholic beverages be accessible to customers or members or be permitted to be in the open patronage area of the commercial establishment one-half hour after the time for cessation of alcoholic beverage sales has expired. Customers or members within the establishment shall be required by the proprietor or his or her employees to leave the establishment within one hour after the time for cessation of alcoholic beverage sales has expired. Nothing herein contained shall be construed so as to permit any place to sell, serve, or permit alcoholic beverages to be sold, consumed or served during prohibited hours.

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8. On January 1, of any year, the hours of operation to sell alcoholic beverages by any establishment licensed to sell alcoholic beverages, and the related requirements of subsection (1), are extended for one hour past the regular time of cessation of alcoholic beverage sales. from 2:00 a.m. to 3:00 a.m.

SECTION 3. SEVERABILITY. If any clause or provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other clauses, 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 4. 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 5. 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 6. EFFECTIVE DATE. This ordinance takes effect May 1, 2023.

DONE, THE FIRST READING, by the City Council of the City of Orlando, Florida, at a regular meeting, the _____ day of _______________, 2023.
DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Orlando, Florida, by the city clerk of the City of Orlando, Florida, the _____ day of ____________________, 2023.

DONE, THE SECOND READING AND PUBLIC 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, the _____ day of ____________________, 2023.

BY THE MAYOR OR MAYOR PRO TEMPORE OF THE CITY OF ORLANDO, FLORIDA:

________________________________
Mayor / Mayor Pro Tempore

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

________________________________
City Clerk

________________________________
Print Name

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

________________________________
Chief Assistant City Attorney

________________________________
Print Name

CODING: Words stricken are deletions; words underlined are additions; **** denote omitted text.