

ORDINANCE NO. 2022-05

AN ORDINANCE PERTAINING TO THE REGULATION, SALE, CONSUMING, OR SERVING OF BEER, WINE, OR OTHER ALCOHOLIC OR INTOXICATING BEVERAGES IN HOLMES COUNTY, FLORIDA; REGULATING THE HOURS THAT ALCOHOLIC BEVERAGES MAY BE SOLD, CONSUMED, SERVED, OR PERMITTED TO BE SERVED OR CONSUMED; REGULATING THE MINIMUM DISTANCE FROM A CHURCH AND RESIDENCE THAT ALCOHOLIC BEVERAGES MAY BE SOLD FOR CONSUMPTION ON THE PREMISES; REPEALING ALL PRIOR ORDINANCES IN CONFLICT HERewith, PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapters 562, 563, 564, 565, 567, and 568, Florida Statutes are referred to as the "Florida Beverage Law"; and

WHEREAS, Florida Statute 125.01(1)(o) empowers a County governing body to "[e]stablish and enforce regulations for the sale of alcoholic beverages in the unincorporated areas of the County pursuant to general law"; and

WHEREAS, Florida Statute 562.45(2)(a) allows a County of the State to enact ordinances regulating the hours of business for persons and entities holding a State beverage license within the unincorporated areas of the County; and

WHEREAS, Florida Statute 562.14 states in relevant part, "[e]xcept as otherwise provided by county or municipal ordinance, no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license...between the hours of midnight and 7 a.m. of the following day"; and

WHEREAS, Florida Statute 562.45(2)(a) provides certain restrictions with respect to allowing a location for on-premises consumption of alcoholic beverages within 500 feet of real property that comprises a public or private school; and

WHEREAS, the Board of County Commissioners for Holmes County recognizes that the ongoing recession and the condition of the economy challenges local businesses to seek new and better ways to serve the needs of their patrons; and

WHEREAS, the Board of County Commissioners for Holmes County understands that the continued success of businesses focused on food services and sales is an important component for the success in the County's goal to continue to provide venues for socializing and entertainment; and

WHEREAS, the Board of County Commissioners for Holmes County is attempting to balance the goals of growth and job creation with the historical deference provided to churches, private residences, and other individual and community-based needs, by implementing the following rules and regulations; and

WHEREAS, under state laws regulating the sale of beer, wine, or other alcoholic or intoxicating beverages, the Board of County Commissioners for Holmes County is authorized to establish the location and hours of operation for alcohol sales in the unincorporated areas of the County; and

WHEREAS, the Board of County Commissioners of Holmes County wishes to provide less restrictive locational and time criteria for businesses operating primarily as food sales/service establishments as fully set forth herein.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Holmes County, Florida, as follows:

ARTICLE I. IN GENERAL

Sec. 1. Penalty.

Any person violating any of the provisions of this chapter shall, upon conviction, be punished by fine not to exceed \$500.00 or by imprisonment in the county jail not to exceed 60 days or by both fine and imprisonment.

Sec. 2. Hours of sale, or consumption; generally.

- (a) No beer, wine, or other alcoholic or intoxicating beverages may be sold, consumed, or served, or permitted to be served or consumed in any place licensed under the Division of Alcoholic Beverages and Tobacco, or any other public place in the unincorporated area of Holmes County, Florida, daily between the hours of 12:00 midnight and 4:00 a.m.
- (b) No beer, wine, or other alcoholic or intoxicating beverages may be sold for on-site consumption in any place licensed under the Division of Alcoholic Beverages and Tobacco, or any other public place in the unincorporated area of Holmes County, Florida, daily between the hours of 12:00 midnight and 7:00 a.m.

State law reference(s)—Regulation of hours authorized, F.S. § 562.45(2)(a).

Sec. 3. Distance of licensed premises from residences.

General requirement: The sale of beer, wine, or other alcoholic or intoxicating beverages, for consumption on the premises, is permitted to be sold by a vendor licensed by the Division of Alcoholic Beverages and Tobacco in an area designated for commercial land use and as specified in the Holmes County Land Development Code except as provided herein:

No beer, wine, or other alcoholic or intoxicating beverages may be sold for consumption on the premises within 250 feet of any residence, which distance shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the front door of the place of business to the front door of the residence.

The aforementioned distance requirement regarding the distance from residences shall not apply to restaurants. "Restaurant" shall be defined, for the purpose of this section, as an establishment that meets the requirements of F.S. § 509.013 and, to the extent where more restrictive than F.S. § 509.013, where meals or prepared food, including beverages and confections, are served to customers for consumption on or off the premises; an establishment

engaged primarily in the service of food and nonalcoholic beverages whose revenues derived from the sale of prepared food exceed 50 percent of its revenues. A restaurant must have full kitchen facilities and food preparation staff capable of preparing and serving full course meals during all hours of operation. A restaurant must have the appropriate license issued by the state as well as all county permits required by law, and must meet all local zoning requirements for a restaurant. The term may include cafes, coffee shops, donut shops, delicatessens, cafeterias, and other establishments of a similar nature.

State law reference(s)—Regulation of located authorized, F.S. § 562.45(2)(a).

Sec. 4. Distance of licensed premises from churches.

General requirement. The sale of beer, wine, or other alcoholic or intoxicating beverages, for consumption on the premises, is permitted to be sold by a vendor licensed by the Division of Alcoholic Beverages and Tobacco in an area designated for commercial land use and as specified in the Holmes County Land Development Code except as provided herein:

No beer, wine, or other alcoholic or intoxicating beverages may be sold for consumption on the premises within 1000 feet of any church, which distance shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the front door of the place of business to the front door of the church.

The aforementioned distance requirement regarding the distance from churches shall not apply to restaurants. "Restaurant" shall be defined, for the purpose of this section, as an establishment that meets the requirements of F.S. § 509.013 and, to the extent where more restrictive than F.S. § 509.013, where meals or prepared food, including beverages and confections, are served to customers for consumption on or off the premises; an establishment engaged primarily in the service of food and nonalcoholic beverages whose revenues derived from the sale of prepared food exceed 50 percent of its revenues. A restaurant must have full kitchen facilities and food preparation staff capable of preparing and serving full course meals during all hours of operation. A restaurant must have the appropriate license issued by the state as well as all county permits required by law, and must meet all local zoning requirements for a restaurant. The term may include cafes, coffee shops, donut shops, delicatessens, cafeterias, and other establishments of a similar nature.

State law reference(s)—Authority to regulate location, F.S. § 562.45(2)(b).

Sec. 5. Prohibiting public consumption of alcoholic beverages within certain proximity to stores.

- (a) It shall be unlawful for any person to publicly consume any alcoholic beverage within a radius of 100 feet of any package store, convenience store, food store, or any other place of business which sells alcoholic beverages. This section shall not prohibit the consumption of a lawfully purchased alcoholic beverage being consumed by persons within the privacy of any home which is located within the above stated distance.
- (b) This section is being enacted pursuant to the police powers of Holmes County to reasonably regulate the possession and consumption of alcoholic beverages and by the provisions of F.S. § 125.66.
- (c) Any person or persons charged with a violation of this section, shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided by law.

Sec. 6. Established businesses; exemptions to proximity limitations.

The restrictions contained in sections 3 and 4 herein, with respect to distances, shall not be construed or held to affect, in a restrictive manner, the rights of any existing established business, or its successors or assigns, with respect to the location of the business, provided, however, that no established business may expand its premises so as to decrease the distance to such church or residence below 1000 feet or 250 feet, respectively, or; the distance to such church or residence as of the effective date, whichever is lesser, unless such business qualifies as a "restaurant" as set forth above.

Whenever a business has been lawfully established and thereafter a church or residence is established within a distance otherwise prohibited by sections 3 and 4, the establishment of the church or residence shall not be cause for the revocation of the certificate of use or otherwise prevent the continuation of business.

Sec. 7. Application requirements.

Applicants for certificate of use and licenses from the State of Florida who are required to show that the location of the proposed business is in conformity with the Holmes County Land Development Code and other applicable regulations of the county shall furnish a survey, made by a registered surveyor, showing that the location of the premises of the applicant conforms to sections 3 through 5.

No certificate of use or occupancy, building, plumbing, electrical, or other permits including, but not limited to, health permits, shall be issued to any person, firm, association, or corporation conducting and/or operating a business for the sale of alcoholic beverages at a location prohibited pursuant to sections X-3 through X-5 of this article.

Sec. 8. Exclusions to proximity regulations.

- (a) *Bottle clubs.* Nothing herein shall affect "bottle clubs" as set forth in article II, or any other ordinance or resolution setting forth parameters for "bottle clubs".
- (b) *Schools.* Nothing herein shall amend, alter, affect, or reduce F.S. § 562.45(2)(a) as it pertains to the sale of alcoholic or intoxicating beverages in relational distance to public or private schools.
- (c) *Other businesses.* Section 5, which makes it unlawful for any person to "publicly consume any alcoholic beverage within a radius of 100 feet of any package store, convenience store, food store, or any other place of business which sells alcoholic beverages", unless being consumed within the privacy of any home, is hereby affirmed and shall remain in full force and effect inasmuch as it applies to businesses which sell alcohol for non-on-site-premises consumption.

Secs. 9—35. Reserved.

ARTICLE II. BOTTLE CLUBS

Sec. 36. Definitions.

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

Bottle club means a commercial establishment, operated for a profit, whether or not a profit is actually made, wherein patrons consume alcoholic beverages that 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 is located in a building or other enclosed permanent structure. This definition does not apply to sporting facilities where events sanctioned by nationally recognized regulatory athletic or sports associations are held, bona fide restaurants licensed by the division of hotels and restaurants of the state department of business regulation whose primary business is the service of full-course meals, or hotels and motels licensed by the division of hotels and restaurants of the department of business regulation.

Open for business means either opening a new business for the first or initial time, or the reopening of an existing business that has been closed for a period of 30 consecutive days, and then attempts to reopen for business.

State law reference(s)—Definition of bottle club, F.S. § 561.01(15).

Sec. 37. Authority.

This article is enacted pursuant to the authority of F.S. ch. 125.

Sec. 38. Permit.

- (a) *Required; fee.* No person shall open for business a bottle club within the unincorporated areas of the county, without first obtaining a permit from the board of county commissioners. In order to obtain a permit, a permit fee of \$500.00 shall be paid to the county, such fee being charged to help defray the costs of a background check on the applicant, and to defray the costs of enforcing this article.
- (b) *Not to be issued to certain persons.* No permit for the operation of a bottle club shall be issued to any person who has been convicted of a felony and has not had his civil rights restored, or to any person who has been convicted of a misdemeanor involving the violation of any law regulating the sale or use of intoxicating beverages, or to any corporation or other business entity, an officer or director or shareholder of which has any such conviction.

Sec. 39. Distance limitations.

No bottle club shall open for business within 1,000 feet of any residence, school or church. For the purposes of this article, a residence is defined as any mobile home, manufactured home, trailer or house used for residential purposes and owned by someone other than the applicant.

Sec. 40. Bottle clubs open for business prior to effective date of article.

Any bottle club located in the unincorporated areas of the county and which opened for business prior to the effective date of this article, shall, within 60 days from the effective date of this article, secure a permit from the board of county commissioners and pay the permit fee provided for in section X-38. Distance from a residence, church or school, or conviction of crimes, entered prior to the effective date of this article, shall not prohibit a person, corporation or other business entity from continuing to operate a bottle club which was open for business on the effective date of this article. However, any conviction of a crime as provided for in section X-38, which conviction occurs after the effective date of

this article, shall entitle the board of county commissioners to cancel the permit, after which it shall be unlawful for such business to continue to operate.

Sec. 41. Legal hours of operation.

Bottle clubs operating in the unincorporated areas of the county pursuant to this article shall not open for business except during the following legal hours of operation: 7:00 a.m. until 12:00 midnight on Monday through Saturday.

{Signatures on following page}

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board that the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without application of the invalid provision, and those provisions of the Ordinance are declared severable.

This Ordinance shall become effective upon its adoption on October 4, 2022.

APPROVED and **ADOPTED** by a majority of the Board of County Commissioners of Holmes County, Florida this 4th day of October, 2022.

ATTEST:

Clerk of Court

BOARD OF COUNTY COMMISSIONERS OF
HOLMES COUNTY, FLORIDA

Earl Stafford, Chairman