

ORDINANCE NO. 17-2007

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 6, ENTITLED "ALCOHOLIC BEVERAGES"; OF THE CODE OF ORDINANCES OF THE TOWN OF LAKE PARK, TO AMEND SECTION 6-1 ENTITLED "DEFINITIONS;" TO RETITLE SECTION 6-1 AS "LEGISLATIVE INTENT FOR OPEN CONTAINER ORDINANCE"; TO AMEND SECTION 6-2 ENTITLED "DRINKING IN PUBLIC PLACES"; TO RETITLE AS "DEFINITIONS"; TO AMEND SECTION 6-3 ENTITLED "SALE NEAR CHURCHES, SCHOOLS, ETC." TO RETITLE AS "CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES IN UNLICENSED ESTABLISHMENTS, PUBLIC PARKING LOTS, PUBLIC WAYS AND PLACES PROHIBITED" CREATING NEW SECTION 6-6 TO BE ENTITLED "SALE NEAR CERTAIN USES PROHIBITED"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida ("Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission of the Town of Lake Park is deeply concerned that the uncontrolled consumption of alcoholic beverages in unlicensed establishments, and around the outside of licensed commercial establishments, and parking lots, parks, public places and ways, contributes to lewd behavior, verbal harassment, intoxicated and disorderly conduct, destruction of property, excessive noise and litter, amongst other noxious behaviors and nuisance-like conditions; and

WHEREAS, the uncontrolled consumption of alcoholic beverages, in unlicensed establishments and outside of commercial establishments, and parking lots and public ways, has also led to an increase in the number of violent crimes committed on and near such places, and this type of misconduct affects the public's use and enjoyment of these areas; and

WHEREAS, the Town has not found a more effective means to deter this destructive and offensive conduct, other than to regulate and prohibit the possession and consumption of alcoholic beverages in these areas, including but not limited to, open containers containing alcoholic beverages in such public areas; and

WHEREAS, Town staff has recommended to the Town Commission that it amend Chapter 6, “Alcoholic Beverages” to supplement the existing restrictions on the sale and consumption of alcoholic beverages, and to provide more comprehensive “open container” regulations and restrictions, prohibiting the possession and consumption of alcoholic beverages in certain public places within the Town, and

WHEREAS, the Town has the authority, pursuant to Article VIII, Section 2(b) of the Florida Constitution, and Chapter 166, *Florida Statutes*, to adopt such provisions in order to protect the health, safety, and welfare of its residents; and,

WHEREAS, the Town Commission has reviewed the recommendations of Town staff, and has determined that renumbering Sections 6-1, 6-2, 6-3 and creating new Section 6-6 of Chapter 6 of the Town’s Code of Ordinances is necessary to further the public health, safety and welfare; and

WHEREAS, the Town Commission finds that the amending of Chapter 6, to create a more comprehensive “open container” law regulating the use and consumption of alcoholic beverages within the Town of Lake Park, is in the best interest of the health, safety, and welfare of the residents and citizens of the Town of Lake Park.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, THAT:

Section 1. The whereas clauses are incorporated herein as true and correct and as the findings of fact and conclusions of law of the Town Commission.

Section 2. Chapter 6 of the Town of Lake Park Code of Ordinances is hereby

amended by amending the titles and text of Sections 6-1, 6-2, 6-3 to read as follows:

Sec. 6-1. Definitions. Legislative intent for open container ordinance.

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

~~Alcoholic beverage means distilled spirits and beverages one-half of one percent or more alcohol by volume. The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though the remainder ingredients were distilled water.~~

~~Alcoholic beverage establishment means any establishment located in the town at which alcoholic beverages, beer or wine are, or are available to be, sold, dispensed, consumed, possessed or offered for sale for consumption on the premises.~~

~~Nudity means the showing or exposing to public view the human male or female genitals, pubic area, vulva, buttocks, anus, anal cleft or cleavage, or any portion of the foregoing specified anatomical areas, or any simulation thereof; the showing or exposing to public view any portion of the human female breasts any portion thereof encompassed within an area falling below the horizontal line one would have to draw to intersect a point above the top of the areola, or any portion of the areola, or any simulation thereof. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not exposed.~~

~~Partial nudity means the showing or exposing to public view of the human male or female genitals, pubic area, buttocks, or any portion thereof, with less than a full opaque covering; the showing or exposing to public view of the female breast or any portion thereof, with less than a full opaque covering; or the showing or exposing to public view, or depiction or, covered male genitals in a discernibly turgid state.~~

~~Permitting nudity or partial nudity or acts of prohibited sexual conduct means any person maintaining, owning, managing or operating an alcoholic beverage establishment or private club knowingly or with reason to know who suffers or permits nudity or partial nudity or acts of prohibited sexual conduct to occur on the premises of such establishment.~~

~~Prohibited sexual conduct means the engaging in of any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act which is prohibited by law, any touching, caressing or fondling of breasts, buttocks or any portion thereof, or anus or genitals, or the simulation thereof.~~

~~(b) Other words and phrases. Other words and phrases shall be as defined in F.S. § 561.01.~~

It is the finding of fact of the Town Commission, that the uncontrolled consumption of alcoholic beverages in unlicensed establishments and around the exterior of commercial establishments, in parking lots and in public places and public ways, contributes to various criminal mischief and other criminal and/or nuisance-like behaviors, including but not limited to, lewd and lascivious behavior, verbal harassment, intoxicated and disorderly conduct, destruction of property, assaults and batteries, vandalism, excessive noise and litter, and other noxious and offensive activities. The uncontrolled consumption of alcoholic beverages, in and around such places, has led to an increase in the number of violent crimes and complaints from the public, including residents and visitors alike. Individuals consuming alcoholic beverages in unlicensed or un-permitted public

places and areas, deter the public's use and enjoyment of public amenities and places. The most effective proven means to deter the violent, disorderly, destructive or offensive conduct associated with the open consumption of alcoholic beverages around the exterior of commercial establishments, in parking lots and in other public places and ways is to adopt "open container" regulations to prohibit the possession and consumption of alcohol in such areas.

Sec. 6-2. Drinking in public places. Definitions.

~~No person shall consume any alcoholic beverage in or upon any public street, avenue, alley, park, or other public way in the town unless authorized by a special event permit duly issued pursuant to the provisions of this Code. The town marina shall be excluded from the definition of "park" for purposes of this section.~~

Definitions. In this section, the following terms and phrases shall have the meanings set forth in this subsection, unless the context clearly indicates otherwise:

Alcoholic beverage means any beverage containing one-half of one percent or more of alcohol by volume, as determined in accordance with F.S. § 561.01(4) (b). There shall be a presumption of the presence of alcohol in a beverage if a town law enforcement or code enforcement officer, who by taste, smell or the drinking of such alcoholic beverage, has knowledge as to the presence of alcohol in the subject beverage.

Beverage law means F.S. chs. 561, 562, 563, 564, 565, 567, 568.

Commercial establishment parking lot means any private or public area appurtenant to commercial and multifamily apartment establishments used by the public for parking for, and pedestrian access to, commercial and multifamily apartment establishments, including drives, parking areas and sidewalks and walkways appurtenant thereto.

Container shall mean any can, glass, bottle, carton, cup or other thing which is capable of holding or containing liquids, and which is so configured that a person can drink there from and which contains any amounts of an alcoholic beverage; and shall mean any commercially marketed alcoholic beverage, including beer, wine or liquor, the container of which is open or has been opened; and shall mean any alcoholic beverage container that is marketed with a seal that must be broken to be opened and such seal is broken; or shall mean any opened but empty alcoholic beverage containers that are commercially marketed such as beer, wine, liquor, gin, vodka or other alcoholic beverages.

Nudity means the showing or exposing to public view the human male or female genitals, pubic area, vulva, buttocks, anus, anal cleft or cleavage, or any portion of the foregoing specified anatomical areas, or any simulation thereof; the showing or exposing to public view any portion of the human female breasts any portion thereof encompassed within an area falling below the horizontal line one would have to draw to intersect a point above the top of the areola, or any portion of the areola, or any simulation thereof. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not exposed.

Partial nudity means the showing or exposing to public view of the human male or female genitals, pubic area, buttocks, or any portion thereof, with less than a full opaque covering; the showing or exposing to public view of the female breast or any portion thereof, with less than a full opaque covering; or the showing or exposing to public view, or depiction or, covered male genitals in a discernibly turgid state.

Permitting nudity or partial nudity or acts of prohibited sexual conduct means any person maintaining, owning, managing or operating an alcoholic beverage establishment or private club knowingly or with reason to know who suffers or permits nudity or partial nudity or acts of prohibited sexual conduct to occur on the premises of such establishment.

Possession. An open container shall be considered to be in possession of a person if such a container is physically held by or readily accessible to the person by being within such person's grasp or if such person is observed drinking from such open container. An open container shall not be considered to be in the possession of a person if the open container is located in a locked glove compartment, or other locked compartment, trunk, or other non-passenger area of the vehicle as intended by the manufacturer. An open container shall not be considered in the possession of a person if the open container is contained in a properly sealed box or located in the refrigerator or other cabinet of a motor home or recreational vehicle-type unit which is defined as: "primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle."

Prohibited sexual conduct means the engaging in of any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act which is prohibited by law, any touching, caressing or fondling of breasts, buttocks or any portion thereof, or anus or genitals, or the simulation thereof.

Public or semi-public way or place shall mean any public park, public or private street, avenue, boulevard, roadway, highway, alley, right-of-way, parking lot or area (including public and private parking lots used for public parking and pedestrian access to commercial establishments), and any other public place of whatever nature, when any part thereof is open to the public located within the town. This term does not include private driveways serving a single family residence or duplex.

Sale means any transfer of an alcoholic beverage for a consideration or any gift of an alcoholic beverage in connection with or as a part of a transfer of any property or product not an alcoholic beverage for a consideration.

Vendor of alcoholic beverages (referred to herein as "vendor") means any person who owns or operates a business establishment, which sells or dispenses any alcoholic beverages for consumption on or off the premises.

Sec. 6-3. Sale near churches, schools, etc. Consumption and possession of alcoholic beverages in unlicensed establishments, public parking lots, public places and ways prohibited.

~~(a) No person or entity may sell alcoholic beverages for consumption either on or off the premises where the place of sale is within 500 feet of real property that comprises a church, public or private elementary school, middle, or secondary school, or park.~~

~~(b) The measurement provided in subsection (a) of this section shall be measured by drawing a straight line between the closest property lines of the place of sale and the real property that comprises a church, public or private elementary school, middle school, or secondary school, or park.~~

(a) Restrictions on the consumption of alcoholic beverages at commercial establishments. The consumption of alcohol on the premises of unlicensed commercial establishments is hereby prohibited. No person shall consume alcoholic beverages or cause alcoholic beverages to be added to any other beverage on the premises of any commercial establishment unless the owner of the establishment is licensed to sell alcoholic beverages to be consumed on the premises. For the purposes of this section, the term "premises" shall include the parking area of the commercial

establishment. No person licensed by the beverage department of the state, who is not licensed to sell alcoholic beverages to be consumed on the premises, shall knowingly furnish or provide any set-ups, glasses or other service to any person for the purpose of consuming alcoholic beverages on the premises. No owner of any commercial establishment who is not licensed by the beverage department of the state to sell alcoholic beverages to be consumed on the premises, or any operator or employee of any such establishment, shall knowingly sell, furnish or provide any set-ups, glasses or any other service to any person for the purpose of consuming alcoholic beverages on the premises.

(b) *Consumption and possession prohibited in parking lots; exceptions.* It is unlawful for any vendor or for any agent, servant or employee of any such vendor, to permit the consumption of any alcoholic beverages in or upon any parking or other area outside of the building or room stated in the vendor's license certificate as the address thereof, when any part of such parking or area is adjacent to the building or premises in which the business license is operated, and when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such licensed vendor or by any agent, servant or employee of such licensed vendor. The licensed vendor shall post and maintain a legible, painted or printed sign in at least two (2) separate prominent places on such parking or other areas, with sufficient light directed thereon to be visible during the hours of darkness while such place of business is open, in letters of not less than three (3) inches in height, stating:

"WARNING"

"Drinking alcoholic beverages on the exterior of this premises or in the parking lot or in the public right-of-way is strictly prohibited and subject to a \$500 fine or 60 days in jail, or both- Town of Lake Park Ordinance"

(1) It is unlawful for any person to consume an alcoholic beverage in or upon any parking area outside of and adjacent to a vendor's licensed premises when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such vendor.

(2) If any licensed vendor mentioned herein is a corporation, then the officers of such corporation shall be regarded as the owners thereof, for the purposes of enforcement of this section.

(c) *Possession of alcoholic beverages in and upon public places and public ways, including but not limited to, parks, streets, benches, sidewalks, parking lots, alleys, etc.* It shall be unlawful for any person to drink, consume and/or possess or carry an open container of alcoholic beverage on the premises outside of, or on any streets, alleys, sidewalks, benches, or parking areas, and on other lands open to the public and/or owned or controlled by the town which are open to the general public, provided however that the Town Commission may permit consumption and carrying of alcoholic beverages during special events pursuant to the special event permits issued in accordance with the special event provisions of this Code. For the purposes of this section, the Lake Park Harbor Marina and Kelsey Park shall be excluded from the definition of "park" provided that any consumption of alcohol in Kelsey Park must be pursuant to a special event permit which authorizes the sale and consumption of alcohol in Kelsey Park.

(d) *Possession of alcoholic beverages in parking lots prohibited; exception.* It shall be unlawful for any person to possess or consume any alcoholic beverage in or within 500 feet of a commercial establishment parking lot in the town except in those areas in which such possession is permitted pursuant to the Beverage Law, special or general act of the state legislature, the Florida Administrative Code, or town permit, ordinance, resolution or administrative approval unless such alcoholic beverage is in the original container with the seal unbroken.

(e) *Exemptions.* This section shall not apply to:

(1) Any person engaged in picking up empty beverage containers for the purpose of collecting the deposit or value of the bottle or can itself, nor to any person taking part in a litter control campaign; or

(2) The possession of any open container by any licensed distributor or licensed vendor of alcoholic beverages, provided that such alcoholic beverage is being transported solely for commercial purposes.

(3) Persons consuming alcoholic beverages at a special event, for which the town has issued a special event permit which includes the authorization for the sale and consumption of alcoholic beverages, and provided that the alcoholic beverages are not contained within a glass or metal container.

(f) Taking open container from licensed premises prohibited; vendor's responsibilities.

It is unlawful for any vendor or his agents or employees, licensed to sell beer, wine, liquor or other alcoholic beverages within the unincorporated areas of the county, to knowingly allow any person to take from the licensed premises any opened beer, wine, liquor or other alcoholic beverage container, or to knowingly allow any person to take from the licensed premises any glass or other open or unsealed container containing an alcoholic beverage or any mixture containing an alcoholic beverage.

(g) Enforcement of section. It shall be the duty and responsibility of all town law enforcement and code enforcement officers to enforce the provisions of this section.

Sec. 6-6. Sale of alcohol near certain uses prohibited.

(a) No person or entity may sell alcoholic beverages for consumption either on or off the premises where the place of sale is within 500 feet of real property that is being used as a church, public or private day care center, elementary school, middle school, high school, or secondary school, or park.

(b) The measurement provided in subsection (a) of this section shall be measured by drawing a straight line between the closest property lines of the place of sale and the real property being used as a church, public or private day care center, elementary school, middle school, high school or secondary school, or park.

(c) For purposes of this section, Kelsey Park and the Lake Park Harbor Marina shall be excluded from the definition of "park" provided that any consumption of alcohol in Kelsey Park must be pursuant to a special event permit which authorizes the sale and consumption of alcohol in Kelsey Park.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 5. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. **Codification.** The sections of the Ordinance may be made a part of the Town Code of Laws and Ordinances and may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 7. **Effective Date.** This Ordinance shall take effect immediately upon adoption.

Upon First Reading this ____ day of _____, 2007, the foregoing Ordinance was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
Mayor Paul W. Castro	_____	_____
Vice-Mayor Ed Daly	_____	_____
Commissioner G. Chuck Balias	_____	_____
Commissioner Jeff Carey	_____	_____
Commissioner Patricia Osterman	_____	_____

Upon Second Reading this ____ day of August, 2007, the foregoing Ordinance was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
Mayor Paul W. Castro	_____	_____
Vice-Mayor Ed Daly	_____	_____
Commissioner G. Chuck Balias	_____	_____
Commissioner Jeff Carey	_____	_____
Commissioner Patricia Osterman	_____	_____

The Mayor thereupon declared Ordinance _____ duly passed and adopted this ____ day of August, 2007.

ATTEST:

TOWN OF LAKE PARK

Vivian Mendez, Town Clerk

BY: _____
Paul W. Castro, Mayor

[TOWN SEAL]

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
Thomas J. Baird, Town Attorney

Upon First Reading this 18 day of July, 2007,
 the foregoing Ordinance 17-2007, was offered by Commissioner Balius
 who moved its approval. The motion was seconded by Vice-Mayor Daly,
 and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	<u>X</u>	_____
VICE MAYOR ED DALY	<u>X</u>	_____
COMMISSIONER CHUCK BALIUS	<u>X</u>	_____
COMMISSIONER JEFF CAREY	<u>X</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	_____

Upon Second Reading this 1 day of August, 2007, the foregoing
 Ordinance 17-2007, was offered by Vice-Mayor Daly who
 moved its adoption. The motion was seconded by Commissioner Balius,
 and being put to a vote, the result was as follows:

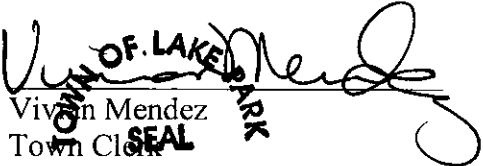
	AYE	NAY
MAYOR PAUL CASTRO	<u>X</u>	_____
VICE MAYOR ED DALY	<u>X</u>	_____
COMMISSIONER CHUCK BALIUS	<u>X</u>	_____
COMMISSIONER JEFF CAREY	<u>X</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	_____

The Mayor thereupon declared Ordinance No. 17-2007 duly passed and adopted this
1 day of August, 2007.

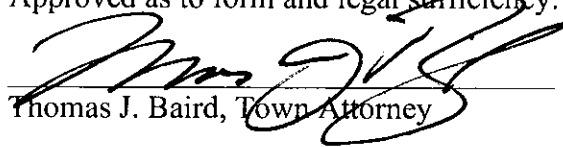
TOWN OF LAKE PARK, FLORIDA

BY: 
 Mayor Paul Castro

ATTEST:


 VIVIAN MENDEZ
 Town Clerk
 SEAL

Approved as to form and legal sufficiency:


 Thomas J. Baird, Town Attorney

FLORIDA