

ORDINANCE NO. 2011-03-245

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF ORDINANCES TO CREATE ARTICLE X RELATING TO ALCOHOL SALE AND CONSUMPTION; REGULATING HOURS AND DAYS OF SALE AND CONSUMPTION; PROVIDING FOR VIOLATIONS AND COMPLIANCE; AMENDING SECTION 34-146 OF THE CITY'S LAND DEVELOPMENT REGULATIONS; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City currently regulates alcohol sale and consumption in Section 34-146 of the City's Land Development Regulations, and

WHEREAS, it is more appropriate to regulate alcohol sale and consumption in the City's Code of Ordinances, and

WHEREAS, in addition, this Ordinance establishes the days and times for alcohol sale and consumption within the City of Miami Gardens, and

WHEREAS, this Ordinance also provides an administrative variance process whereby the City Manager can grant an additional two (2) hour extension for those establishments where alcohol can be consumed on the premises, and establishes a process for an appeal of the City Manager's decision in the event of a denial,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

Section 2. AMENDMENT: Chapter 6 of the City of Miami Gardens' Code of Ordinances is hereby amended to add Article X as follows:

**Chapter 6 – Article X Alcohol Sale and Consumption.**

**Sec. 6-349 Hours and days of sale and consumption**

(A) Hours and days of sale. Hours of sale, consumption. It shall be unlawful for any person to purchase and for any licensee and any manager, agent or employee of any licensee to sell, serve or distribute in any form or by any method any alcoholic beverage, as defined in Section 34-732 of the City's Land Development Code, in any place of business except as outlined below:

1. Banquet halls/Hall for hire/caterers. Each day between the hours of 10:00 a.m. and 1:00 a.m. of the following day.

2. Food stores/grocery stores/retail drug stores. Between the hours of 6:00 a.m. and 12:00 a.m., of the following day, or during such hours as their establishments legally remain open for the sale of other goods; whichever hours are more restrictive.

3. Not-for-profit theatres with live performances. Sales of alcoholic beverages shall be permitted only for consumption on the premises and only to patrons during any regularly scheduled live theatre performance. No sit-down bar shall be permitted.

4. Package stores. Each day between the hours of 8:00 a.m. and 12:00 a.m. of the following day, every day.

5. Nightclubs, discotheques, clubs, and cabarets. Existing uses shall operate in accordance with any prior public hearing approvals previously granted. New uses shall be permitted to operate each day between the hours of 8:00 a.m. and 2:00 a.m. of the following day. However, such uses shall be entitled to request an extension in accordance with Section 6-349(B) of this Article.

6. Adult entertainment clubs. Between the hours of 8:00 a.m. to 4:50 a.m. of the following day during week days, and on Sundays between the hours of 10:00 a.m. to 4:50 a.m. of the following Monday; and to remain open and sell other alcoholic

beverages on Sunday for the consumption on the premises from 5:00 p.m. to 4:50 a.m. of the following Monday. It is specifically provided, however, that every adult entertainment club that may operate in accordance with this Section shall close its doors and have all its patrons off its premises no later than 5:00 a.m. of each day.

7. *Restaurants/bars/lounges.* Between the hours of 8 a.m. and 1:00 a.m. daily.

- (B) *Extension of hours.* The City Manager shall have the authority to grant an administrative variance to allow the extension of said hours of alcohol sales up to two additional hours for premises selling alcohol to be consumed on the premises, and for banquet halls. Any establishment wishing to extend its hours of sales or consumption beyond the two-hour extension set out herein, or which has been denied the administrative variance by the City Manager may file an application for a public hearing for non-use variance before the City Council for the extension of such hours. Any establishment having previously been authorized to extend its hours of operation by public hearing may continue to operate pursuant to the extension granted previously and no further public hearing is necessary, unless the City Council acts to further restrict or terminate such extended hours. Once an extension of hours is granted, no further extension can be granted unless approved by public hearing. *State law references: Authority of city to regulate time of sale of alcoholic beverages, F.S. §§ 562.14(1), 562.45(2).*

#### **Sec. 6-350 Violations and compliance**

- (A) *Penalty for violation.* It shall be a violation for any person or entity licensed to operate an alcoholic beverage establishment, or employed by, or acting as an agent of any such establishment, and who sells or causes to be sold any alcoholic beverage, to permit such beverage to be consumed on any property under the control, directly or indirectly, of the licensee, except within the area of the premises which is licensed for such sales and consumption. Any person found to be in violation of this chapter is subject to suspensions, revocations, and other penalties provided for by this Code.
- (B) *Violation of state law.* It is intended that the provisions of this Chapter shall apply solely to those beverages constituting alcoholic beverages under F.S. §561.01 et seq. Every violation of the laws of the state relating to the sale of alcoholic beverages is hereby specifically made a violation of this chapter, with the same force

and effect as if the provisions of such laws were fully set forth herein.

- (C) *Prohibiting sales during emergency.* Whenever, in the opinion and judgment of the City Manager, a public emergency shall be created or exist in the City, causing or tending to cause public disorder, lawbreaking and confusion, the City Manager is hereby authorized and empowered to prohibit, by and through the issuance of his official decree, the sale, serving or consumption of beer, wine, spirituous and other intoxicating liquors and beverages for and during a period of 24 hours or such longer period of time as may be described in such decree, at all commercial establishments and at all other places in the city where such beer, wine and all other alcoholic beverages are licensed to be sold, served or otherwise dispensed. In the issuance of such decree, the City Manager shall have the fact of the issuance and the contents of such decree broadcast by police and by commercial radio stations and otherwise given publicity as quickly and as widely as shall be feasible. It is hereby declared to be illegal for any person operating, employed at or otherwise controlling any of the commercial establishments or other places described in this section to sell, serve or permit the consumption on the premises of beer, wine, and all other alcoholic beverages during the period described in the decree of the City Manager provided for in this section. Each violation of, or noncompliance with, any of the provisions of this Section shall constitute a separate offense, and shall subject every person guilty thereof to the penalty prescribed in this Chapter. *State law references: Declaration of emergency, F.S. § 870.043 et seq.*
- (D) *Employees not to mingle with customers.* It shall be unlawful for employees, waitresses, entertainers or hostesses in any place serving alcoholic beverages for consumption on the premises to mingle or fraternize with the customers or patrons of such establishment for the purpose of enticing, encouraging or luring customers to purchase multiple drinks by sitting at the table or other seating area with customers for conversation, touching, sexual innuendo or the promise of sexual favors or attention. *Case law references: Prohibitions against employees mingling with customers held valid. City of Miami v. Kayfetz, 92 So. 2d 798. Purchase of a female employee's time by a customer or dancing with a female employee in an alcoholic beverage establishment constitutes a violation of prohibition of this section. City of Miami v. Penley, 21 Fla. Supp. 42; aff'd 21 Fla.*
- (E) *Possession of liquor not authorized by license.* The possession by a licensee under this Chapter in his place of business of any alcoholic beverage not authorized to be sold under his City license shall be prima facie evidence that such alcoholic beverage is being

sold by such licensee. The finding of this violation by a police officer or City inspector may result in the revocation of the Certificate of Use issued in accordance with Section 6-36 of the Code of Ordinances. *Presumption of noncompliance.* Two or more of the following activities shall constitute a rebuttable presumption that the provisions of this section hereof have been violated:

1. Persons being served beer, wine or alcoholic beverages without full-course meals on three separate occasions during different days within a 30-day time period.

2. Two or more consecutive inspections by the division of hotels and restaurants of the state department of business and professional regulation, the state department of agriculture and consumer services, or the city citing the same or substantially similar critical violations in a one-year period. The term critical shall be interpreted as defined in section 1-201.10(B)(19), Food Code, 2001 Recommendations of the U.S. Public Health Service/Food and Drug Administration, as amended and utilized by state agencies.

3. Four or more non-consecutive inspections by the division of hotels and restaurants of the state department of business and professional regulation, the state department of agriculture and consumer services, or the city citing the same or substantially similar critical violations in a two-year period, that when combined establish a pattern of violations that would lead a reasonable person to believe that the restaurant is operated in disregard to the standards and requirements for the proper and sanitary storage, preparation, processing and/or service of food to the public.

Failure to produce, upon demand of the City code officer or police officer, the records required to be maintained to ascertain whether the operator complies with the required gross sales percentage of food and non-alcoholic beverages.

(F) *Inspection of licensed premises.* Any place of business selling alcoholic beverages may be inspected by City police officers and code inspectors. Police officers and code inspectors shall ensure compliance with the hours of operation for establishments selling alcoholic beverages.

(G) *Drinking on public property.* The consumption, holding or carrying of any alcoholic beverage in an open bottle, glass or other drinking container shall be unlawful if conducted outside of an enclosed or

walled structure or patio portion of premises licensed under this chapter. It shall be unlawful to carry on such activities while upon any public street, thoroughfare, park, sidewalk or other public place or area regularly devoted to public vehicular or pedestrian use. The service of alcoholic beverages shall be restricted to on-premises consumption by customers within a licensed outdoor cafe.

(H) Caterers. Notwithstanding any other provision of law to the contrary, a licensee by the Division of Hotels and Restaurants under Chapter 509 shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under F.S. 563.02(1), F.S. 564.02(1), or licensed under F.S. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement.

(I) Posting of Property. The licensee of any package store or food store selling alcoholic beverages shall prominently post in English, Spanish and Haitian Creole on the outside of each entrance and on the inside of the main customer exit of each food store selling alcoholic beverage or package store, a sign with contrasting letters at least two (2) inches tall, stating the following:

1. IT IS UNLAWFUL FOR ANY PERSON TO CONSUME, OR POSSESS, IN AN OPEN CONTAINER, ANY ALCOHOLIC BEVERAGE IN THIS STORE OR WITHIN 100 FEET OF ANY PART OF THIS STORE. VIOLATORS ARE SUBJECT TO ARREST AND PROSECUTION.

2. The licensee of any package store or food store selling alcoholic beverages shall prominently post, on the outside of the display case and coolers containing alcoholic beverages, a sign which is at least eleven (11) inches by seventeen (17) inches in size, which is plainly visible and legible, stating the following: IT IS UNLAWFUL TO POSSESS AN OPEN CONTAINER OF ALCOHOL WHILE DRIVING OR RIDING IN A MOTOR VEHICLE. DRIVING

UNDER THE INFLUENCE OF ALCOHOL IS UNLAWFUL. VIOLATORS ARE SUBJECT TO IMMEDIATE ARREST AND IMPOUNDMENT OF THEIR VEHICLE.

3. *Area of applicability and exceptions.* For the purpose of this section, the area within one hundred (100) feet of any property described in this section shall be the area within a one hundred-foot radius of any part of such property, but shall not include any property lawfully used for a private residence or any area where possession or consumption of alcoholic beverages is specifically prohibited or permitted by State law or by any license or permit issued pursuant thereto. Nor shall this provision apply to any alcoholic beverage served by a religious organization, community center, senior citizens' center, day care center, funeral home, or school and consumed on its premises as part of a religious service, community meal, or event sponsored by that organization.

Section 3: AMENDMENT: Sec. 34-146 of the City's Land

Development Regulations is amended as follows:

Hours and days of sale and consumption of alcohol shall be administered ~~as set forth in this chapter.~~ in accordance with Chapter 6, Article X of the Code of Ordinances. ~~An administrative variance may be granted to allow the extension of said hours of operation up to two additional hours in accordance with section 34-50.~~

Section 4: AMENDMENT: Sec. 34-50 (17) of the City's Land

Development Regulations is amended as follows:

- (17) Variances to extend hours of operation up to two additional hours for alcoholic beverage establishments, as set forth in section ~~34-146~~ 6-349(D) of the Code of Ordinances, or for other establishments of which the City may have regulations governing hours of operations.

Section 5. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 6. 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 of this Ordinance.

Section 7. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the section of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed.

Section 8. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

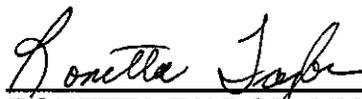
PASSED ON FIRST READING ON THE 9<sup>TH</sup> DAY OF MARCH, 2011.

PASSED ON SECOND READING ON THE 23<sup>RD</sup> DAY OF MARCH, 2011.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 23<sup>RD</sup> DAY OF MARCH, 2011.

  
SHIRLEY GIBSON, MAYOR

**ATTEST:**

  
RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

Moved by: Councilman Williams

Second by: Councilwoman Davis

**VOTE: 5-1**

Mayor Shirley Gibson	<u>      </u> (Yes)	<u>      </u> (No)(not present)
Vice Mayor Aaron Campbell, Jr.	<u>      </u> (Yes)	<u>  X  </u> (No)
Councilwoman Lisa Davis	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilman Oliver Gilbert, III	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilman David Williams Jr.	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilwoman Felicia Robinson	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilman Andre' Williams	<u>  X  </u> (Yes)	<u>      </u> (No)