

ORDINANCE NO. 2011-04

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO THE REGULATION OF THE POSSESSION, CONSUMPTION, AND SALE OF ALCOHOLIC BEVERAGES; MAKING FINDINGS; AMENDING SECTION 60-2 AND CREATING NEW SECTION 60-2.1, MELBOURNE BEACH CODE OF ORDINANCES; REVISING REGULATIONS RELATING TO CLOSING TIME AND HOURS OF SALE AND INCLUDING ALL ESTABLISHMENTS LICENSED BY THE FLORIDA DIVISION OF ALCOHOLIC BEVERAGES; PROHIBITING THE CONSUMPTION OF ALCOHOLIC BEVERAGES OR POSSESSION OF AN OPEN CONTAINER THEREOF OUTSIDE OF CERTAIN PREMISES IN THE 6-B, 7-C, OR 8-B ZONING DISTRICTS; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR REPEAL OF PARTS OF ORDINANCES AND RESOLUTIONS IN CONFLICT HERewith; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

WHEREAS, it is the intent of the Town Commission by this Ordinance to regulate the possession open containers and consumption of alcoholic beverages outside of the premises in the Town's central business area, including the 6-B, 7-C, and 8-B zoning districts; and

WHEREAS, this Ordinance is adopted to protect and promote the public peace and order and in promotion of the public health, safety, and community morals,

BE IT ENACTED by the Town of Melbourne Beach, Florida:

Section 1. That Section 60-2, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

**§60-2. HOURS OF SALE; CLOSING TIMES.**

(a) No alcoholic ~~or intoxicating~~ beverages may be sold, consumed, ~~or~~ served, or permitted to be served or consumed within any place ~~the premises~~ licensed by the Florida division of alcoholic beverages to serve, sell, or permit for service or consumption alcoholic ~~or intoxicating~~ beverages between the hours of 2:00 a.m. and 7:00 a.m., Monday through Saturday.

(b) No alcoholic beverages may be sold, consumed, ~~or~~ served, or permitted to be served or consumed within any place licensed by the Florida division of alcoholic beverages to serve, sell, or permit for service or consumption ~~the premises of any business licensed to serve~~ alcoholic beverages between the hours of 2:00 a.m. and 1:00 p.m. on Sundays, Christmas Day and New Year's Day of each year; provided, however, that restaurants so properly licensed to sell alcoholic beverages and serving full lunches or brunches on Sundays, Christmas Day, and on New Year's Day of each year may sell and serve on their premises at tableside alcoholic beverages to be consumed along with the service of food from 11:00 a.m. on the days so mentioned above.

(c) Hours of sale, service and on-premises consumption may be temporarily extended or reduced for ~~or~~ special occasions or special events within all areas or specially defined areas

of the town by resolution of the Town Commission. The regulations restricting the hours during which alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed within any place licensed by the Florida division of alcoholic beverages may be further restricted from those set forth in sub-sections (a) and (b) above by a condition attached to any special exception or zoning permit permitting an establishment to sell, serve, or permit on premises consumption of alcoholic beverage.

(d) Sale of alcoholic beverages for off-premises consumption will be permitted in any place having a license issued by the state of Florida for sale of those beverages between the hours of 7:00 a.m. and 2:00 a.m.

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Section 2. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 60-2.1, which said section reads as follows:

**§60-2.1 RESTRICTION ON CONSUMPTION; POSSESSION OF OPEN CONTAINERS.**

(a) It shall be unlawful for any person to drink, consume, or possess an open container of, an alcoholic beverage on the premises outside of any building, including but not limited to parking areas, which premises contains an establishment that is located within the 6-B, 7-C, or 8-B

zoning districts of the town, but not including any building customarily used for: governmental purposes with a special permit allowing consumption or possession of an open container of an alcoholic beverage, as a house of worship, residential purposes such as a multi-family residence, single-family residence, duplex, or which premise is used as a bed and breakfast inn, motel, or hotel. As used in this sub-section, the term "building" includes: (i) the interior of any structure certified by the Town's building official for occupancy; and (ii) in any place licensed by the Florida division of alcoholic beverages for consumption of alcohol during the hours that alcohol may be lawfully served as provided in section 60-2, seating areas located outside of the structure where alcohol is regularly served by the alcoholic beverage licensee and consumed.

(b) Signage required. Any establishment engaged in the sale of alcoholic beverages shall, at all times when such establishment is open to the public or is selling alcoholic beverages, have a sign located where it can be readily seen and read by all customers of the establishment which is at least six by eight and one-half inches (6" x 8 ½") in size and with a minimum seven-sixteenth high inch lettering containing the following information:

IT IS UNLAWFUL TO CONSUME OR POSSESS OPEN  
CONTAINERS OF ALCOHOLIC BEVERAGES OUTSIDE  
OF AND ON THIS OR ANY ADJACENT BUSINESS  
PROPERTY. MELBOURNE BEACH TOWN CODE SEC.  
60-2.1.

Section 3. Severability/Interpretation.

(a) In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting the provisions of this Ordinance, the following rules and symbols shall apply:

(1) Words underlined are additions to existing text.

(2) Words ~~stricken through~~ are deletions from existing text.

(3) Asterisks (\* \* \*) indicates a deletion from the Ordinance of text existing in the Code of Ordinances. It

is intended that the text in the Code of Ordinance denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

Section 4. Ordinances and Resolutions in Conflict. All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith, except portions of the Comprehensive Plan, are hereby repealed.

Section 5. Effective Date. The provisions within this Ordinance shall take effect immediately upon the enactment of this Ordinance.

Section 6. Adoption Schedule. PASSED by the Town Commission of the Town of Melbourne Beach on first reading on the 17th day of August, 2011, and ADOPTED by the Town Commission of the Town of Melbourne Beach, Florida, on final reading on the \_\_\_\_ day of \_\_\_\_\_, 2011.

TOWN OF MELBOURNE BEACH, FLORIDA,  
A Florida Municipal Corporation

By: \_\_\_\_\_  
Mayor Jean Marshall

ATTEST:

\_\_\_\_\_  
Rhonda Danielle, Town Clerk

(TOWN SEAL)