



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

3/9/2021

Subject:

Ordinance Repealing Section 6-2, Brevard County Code of Ordinances (Open Containers)

Fiscal Impact:

None

Dept/Office:

County Attorney as requested by District 3 and approved by the Board on 2/9/2021

Requested Action:

Approval of Proposed Ordinance

Summary Explanation and Background:

Section 6-2, Brevard County Code of Ordinances, restricts the possession of open containers of alcoholic beverage in certain areas of unincorporated Brevard County. Section 6-2 only addresses possession or access to an open container; it does not regulate behavior associated with public intoxication.

Section 856.011, Florida Statutes, does regulate behavior associated with public intoxication. Section 6-2 is no longer needed in the Brevard County Code because a prohibition on open containers does not necessarily protect the public from potentially dangerous behavior from public intoxication and the public is protected from such behavior through the aforementioned state statute.

The proposed ordinance will take effect only in the unincorporated area of Brevard County, Florida.

Clerk to the Board Instructions:



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

March 10, 2021

M E M O R A N D U M

TO: Eden Bentley, County Attorney

RE: Item H.2., Ordinance Repealing Section 6-2 Brevard County Code of Ordinances (Open Containers)

The Board of County Commissioners, in regular session on March 9, 2021, discussed the ordinance repealing Section 6-2, Brevard County Code of Ordinances (open containers), but took no action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell, Clerk to the Board

/ns

cc: Each Commissioner

ORDINANCE NO. 21-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, REPEALING SECTION 6-2, BREVARD COUNTY CODE OF ORDINANCES, "RESTRICTION ON CONSUMPTION, POSSESSION OF OPEN CONTAINERS"; PROVIDING FOR SEVERABILITY, CONFLICTS, AREA ENCOMPASSED, PROVIDING FOR AN EFFECTIVE DATE AND INCLUSION IN CODE.

WHEREAS, Section 6-2, Brevard County Code of Ordinances, promulgated in 1979, makes it unlawful for any person to drink, consume or possess an open container of alcoholic beverage in certain areas of unincorporated Brevard County but does not address public disorderly intoxication; and

WHEREAS, Section 856.011, Florida Statutes (2020), which defines and prohibits public disorderly intoxication and provides criminal penalties for violations thereof, makes Section 6-2, Brevard County Code of Ordinances superfluous; and

WHEREAS, the Board of County Commissioners now desires to repeal Section 6-2, Brevard County Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. Recitals. The foregoing recitals are incorporated by reference into this Ordinance.

SECTION 2. Repeal. Section 6-2, Code of Ordinances of Brevard County is hereby repealed.

SECTION 3. Severability. If any section, subsection, sentence, clause or provision of this Ordinance shall be declared invalid, the remainder of this Ordinance shall be construed as not having contained said section, subsection, sentence, clause or provision and shall not be affected by such holding.

SECTION 4. Conflict. All resolutions, ordinances, and agreements or parts thereof that may be determined to be in conflict with this ordinance are repealed.

SECTION 5. Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

Chapter 6 - ALCOHOLIC BEVERAGES

Footnotes:

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Cross reference— *Businesses, ch. 26; adult entertainment code, § 62-4901 et seq.***State Law reference**— *Alcoholic beverages, F.S. chs. 561—567.*

Sec. 6-1. - Definitions.

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

(1) The term *alcoholic beverage(s)* includes:

- a. *Beer* which includes all brewed beverages containing malt.
- b. *Liquor* which includes any spirituous beverages created by distillation and by mixture of distilled beverages by what is commonly termed as blending.
- c. *Wine* which includes all beverages made from fresh fruits, berries or grapes, either by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths and like products.

(Code 1979, § 2-1; Ord. No. 13-36, § 1, 10-22-13)

Cross reference— Definitions generally, § 1-2.

Sec. 6-2. - Restriction on consumption, possession of open containers.

It shall be unlawful for any person to drink, consume or possess an open container of alcoholic beverage on the premises outside of, or on any streets, alleys, sidewalks or parking areas open to the general public and located within 100 yards of, any building containing an establishment open to the general public, not including any building customarily used for residential purposes, in the unincorporated areas of the county.

(Code 1979, § 2-2)

Sec. 6-3. - Hours of sale.

- (a) In all unincorporated areas of the county, no commercial establishment, bottle club, person holding any type of license from the division of beverage, state department of business regulation or membership association in which a fee, cover charge or admission fee is collected, shall be allowed to sell, dispense or serve alcoholic beverages for consumption in or on their licensed premises before or after the following hours, which are the only hours of operation at such licensed premises that are permitted under this chapter:

- (1) *Every day*: beginning at 7:00 a.m. and ending at 2:00 a.m. on the following day.
- (2) *Extended hours for New Year's Eve*: beginning at 7:00 a.m. and ending at 4:00 a.m. on January 1.
- (b) The hours of operation set forth in subsection (a) also apply to package stores engaged in the sale of alcoholic beverages for off premises consumption.
- (c) It will be a rebuttable presumption that subsection (a) has been violated if any alcoholic beverage is in possession or control of a patron or customer present inside the licensed premises either before or after the authorized hours of operation set forth in subsection (a).
- (d) Premises closed during prohibited hours. A licensed premises may only remain open for business during the hours authorized in subsection (a).
- (e) Each incident of a sale or service of alcoholic beverages which occurs outside of the above established legal hours shall constitute a separate violation of this section and the person making such sale shall be deemed guilty of an offense and shall be punished as provided in section 1-7.

(Code 1979, §§ 2-11—2-13; Ord. No. 13-36, § 1, 10-22-13)

State Law reference— Local regulation of hours of sale, F.S. §§ 562.14, 562.45(2).

Sec. 6-4. - Open containers in motor vehicles.

- (a) *Policy and intent; exemption.* The board of county commissioners finds that the consumption of alcoholic beverages while driving or riding in or on a motor vehicle poses a grave imminent hazard to the health and welfare of the residents of the county. Therefore, it is declared to be the policy of the county that the consumption of alcoholic beverages and/or the possession of any open containers containing alcoholic beverages while driving or riding in or on a motor vehicle is prohibited while on a highway in the unincorporated areas of the county as defined in subsection (b) of this section. This section does not apply to conduct punished under F.S. § 316.1936.
- (b) *Definitions.* The following words and phrases when used in this section shall, for the purposes of this section, have the following meanings:

Alcoholic beverage means:

- (1) Any beverage containing more than one percent of alcohol by weight.
- (2) Proof that a beverage in question was contained in an opened bottle or can labeled as beer, ale, malt liquor, malt beverage, wine, wine cooler or other similar name or names and which bears the manufacturer's insignia, name or trademark shall be prima facie evidence that such beverage is an alcoholic beverage.

Highway means any public street, avenue, boulevard, roadway, alley, sidewalk, parking lot or other right-of-way or any area upon which the public has the right to travel, whether public or private, located within the unincorporated areas of the county.

Motor vehicle means any vehicle, as defined in Florida Statutes, which is self-propelled and every vehicle which is propelled by electric power, but not including any bicycle, moped, golf carts or lawnmowers.

Open container means any bottle, can or other receptacle or container containing any alcoholic beverage or any mixture containing an alcoholic beverage, which has been opened or a seal broken, or the contents of which have been partially removed.

Possession means that an open container shall be considered to be in the 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 nonpassenger 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.

Readily accessible means the open container that contains any alcoholic beverage is in the vehicle and although not in the actual, physical manual possession of the driver or passenger, is located in a place and manner that it can be easily reached.

- (c) *Prohibition.* It shall be unlawful for any person or persons in any motor vehicle to possess, to have readily accessible or to transport, or to allow others to possess, to have readily accessible or to transport any open container containing any alcoholic beverage, or any mixture containing an alcoholic beverage, while the motor vehicle is upon a highway within the county.
- (d) *Exceptions.* The provisions of this section shall not apply to the following:
- (1) To paying passengers and their guests on a bus, limousine, taxicab or other motor vehicle that is operated by duly licensed drivers in the course of conducting an ongoing, duly licensed and authorized business or providing paid passenger transportation or service; provided that no open container containing any alcoholic beverage is in the possession of or readily accessible to the driver.
 - (2) To any open container in a refrigerator in the living area of house trailers, travel trailers, camping trailers, motor homes, campers and other similar types of facilities that are primarily designed and constructed to provide temporary living quarters and utilized for traveling and recreational purposes and that are equipped with refrigeration facilities.
 - (3) The possession of any open container containing any alcoholic beverage by a state-licensed beverage sales person, caterer, vendor or agent, but only for purposes specifically related to their employment as salespersons, caterers, vendors or agents.
 - (4) The possession of any open container containing any alcoholic beverage by any duly ordained or authorized minister, pastor, priest, rabbi, or any other similarly designated person, of any

- religious order, monastery, church or religious body, but only for purposes specifically related to their fulfillment of their religious duties.
- (5) The possession of any open container containing any alcoholic beverage by any law enforcement officers and employees of law enforcement agencies, but only while in the performance of their lawful duties.
- (6) The possession of any open container containing any alcoholic beverage by any person or persons engaged in picking up empty beverage containers solely for the purpose of collecting the deposit or value of such containers.
- (7) The possession of any open containers containing any alcoholic beverage by any person participating in a litter control or pickup program.

The exceptions stated herein shall apply to only possession and transportation of alcoholic beverages and open containers, and not to drinking or consuming alcoholic beverages, except for the exception that applies to passengers as stated in subsection (1).

- (e) *Penalty.* Any person found guilty of violating the provisions of this section shall be punished as provided in section 1-7.
- (f) *Signage.* County personnel shall post and maintain appropriate signage at all appropriate entrances to the county warning of the enforcement of this section. Failure of a person accused of violating this section to observe such warning or failure of the county to have such signage properly posted at the time of the alleged offense shall not constitute a defense to the enforcement of this section.

(Code 1979, § 2-4)

Cross reference— Offenses and miscellaneous provisions, ch. 74; park rules, § 78-76 et seq.; roads and bridges, ch. 86; traffic and vehicles, ch. 106.

State Law reference— Possession of open containers of alcoholic beverages in vehicles prohibited, F.S. § 316.1936; preemptive nature of state traffic laws, F.S. §§ 316.002, 316.003.