

CITY OF MARCO ISLAND
ORDINANCE NO. 01-32

AN ORDINANCE TO ESTABLISH CITY OF MARCO ISLAND ALCOHOLIC BEVERAGE REGULATIONS TO SUPERSEDE, REPLACE AND/OR SUPPLEMENT STANDARDS AND REGULATIONS FOUND IN THE COLLIER COUNTY CODE; ESTABLISHING PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING HOURS DURING WHICH SALES, CONSUMPTION AND SERVICE ARE PROHIBITED; PROHIBITING CONSUMPTION OFF-PREMISES; REGULATIONS FOR DISPENSING, SELLING OR SERVING INTOXICATING BEVERAGES; PROHIBITING SALE TO CERTAIN PERSONS; PROHIBITING INTOXICATED PERSONS TO LOITER; PROHIBITING LOITERING DURING PROHIBITED HOURS OF OPERATION; PROHIBITING PUBLIC CONSUMPTION OR POSSESSION; PROHIBITING EXPOSURE OF PRIVATE PARTS AT ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES; PROVIDING PENALTIES; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Section 1.01 of the Marco Island City Charter empowers the city to adopt, amend, or repeal ordinances, resolutions, and codes as may be required for the good governing of the City; and

WHEREAS, Chapter 562.45(2), F.S. provides that municipalities shall have the power to enact ordinances regulating the hours of business of any licensee under the Beverage Law within the corporate limits of such municipality.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marco Island, Florida that:

Section 1. Purpose and Intent.

The purpose and intent of this chapter is to provide uniform operational regulations pursuant to the authority reserved to the City by Chapter 562, F.S., for all establishments in the city dealing directly or indirectly with the sale or consumption of alcoholic beverages.

Section 2: 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:

Alcoholic beverage means any beverage containing more than one percent of alcohol by weight.

A *Bottle Club* is any business premises in which no intoxicating liquors are sold but where food, soft drinks and mixes are sold and suitable places and premises are provided for consumption of such liquors as individual club members or their guests bring upon premises for their own use. This ordinance shall apply to bottle clubs and all of their duly authorized agents. The consumption of alcoholic beverages in bottle clubs is not allowed during prohibited hours as set forth below.

Establishment dealing in alcoholic beverages means any business, club, or establishment licensed by the state for the sale of alcoholic beverages; any area or part of any building or structure in which alcoholic beverages are kept for sale, offered for sale, sold, served or dispensed under license by the state; any other building or structure or part thereof having an entrance, door or other passageway that could in any manner be used or utilized as a means of access, ingress or egress into the area in which alcoholic beverages are kept, offered for sale, sold or dispensed; or which is in any other manner capable of access, ingress or egress at any time to the area in which alcoholic beverages are kept, offered for sale, sold, served or dispensed. However, the term "establishment dealing in alcoholic beverages," when applied to a hotel or club means that area or part of such hotel or club in which alcoholic beverages are kept, sold, served or dispensed when such area is capable of being closed or in some other manner set apart and forbidden to access.

Sale or sell includes any transfer of liquor, wine or beer or other alcoholic beverages for a consideration, and any gift of liquor, beer or wine in connection with or as a part of a transfer of property other than liquor, beer or wine or other alcoholic beverages for a consideration.

Vendor means any person who keeps for sale, sells or dispenses any alcoholic beverages in any quantity in any place or business licensed by the state for the sale of alcoholic beverages, or any person who holds a license from the state for the sale of alcoholic beverages, including the owner, manufacturer, operator, proprietor or licensee or the servant, agent or employee of any one of such. Vendor also means any duly authorized agent of a bottle club.

Section 3. Hours During Which Sales, Consumption, and Service are Prohibited.

- A. *Prohibited hours of sale, consumption and service.* No establishment dealing in alcoholic beverages shall sell or offer for sale, or serve or offer to serve, any beers, wines or alcoholic beverages of any kind, regardless of alcoholic content between 2:00 a.m. and 7:00 a.m.; provided, however, the hours of prohibition for January 1 of each year shall be 5:00 a.m. to 7:00 a.m.

Section 4. Consumption Off Premises

No person shall consume any alcoholic beverage on or within any property which is licensed to sell alcoholic beverages in sealed containers only for off-premises consumption.

Section 5. Dispensing, Selling or Serving Intoxicating Beverages.

- A. It shall be unlawful for any vendor to suffer, permit or allow any establishment dispensing, selling or serving intoxicating beverages to be and or remain open for the transaction of business during prohibited hours.
- B. It shall be unlawful for any vendor to suffer, permit or allow any person to enter or to be and remain in any establishment dispensing, selling or serving intoxicating beverages at any time during prohibited hours.
- C. It shall be unlawful for any person to enter or to be or remain in any establishment dispensing, selling, or serving intoxicating beverages at any time during prohibited hours.
- D. Nothing in this section shall be construed to prevent vendors that are permitted to engage in other permitted business activity and are also licensed to sell intoxicating beverages from remaining open for the permitted business activity so long as intoxicating beverages are not sold or consumed during prohibited hours.
- E. Nothing in this section shall be construed to prevent any person from entering or remaining in any establishment that is engaged in other permitted business activity and is also licensed to sell intoxicating beverages so long as intoxicating beverages are not being served or consumed on the premises during prohibited hours.
- F. Nothing contained in this section shall be construed to prevent a vendor of any establishment dispensing, selling or serving intoxicating beverages from entering, being or remaining in the establishment during prohibited hours when the vendor is actually engaged in duties other than the sale of or serving of intoxicating beverages in the establishment, nor shall this section be construed to prevent any firefighter or law enforcement officer or agent of the city from entering, being or remaining in the establishment in the performance of his duties.

Section 6. Sale to Certain Persons Prohibited.

No person who is a vendor of alcoholic beverages shall sell, furnish or deliver or permit any person in his employ to sell, furnish or deliver any alcoholic beverages in any quantity to any person who is overcome by the consumption of alcoholic beverages to the point of losing control of one's faculties.

Section 7. Permitting Intoxicated Person to Loiter About Premises.

It shall be unlawful for any intoxicated person to loiter in and about the business premises used or occupied by any person licensed under the state beverage law. ~~It shall be unlawful for the operator of such premises to allow any such person to remain thereon.~~ For the purposes of this section intoxicated person means a person overcome by the consumption of alcoholic beverages to the point of losing control of one's faculties.

Section 8. Loitering During Prohibited Hours of Operation.

It shall be unlawful for any person to loiter in and about the business premises licensed under the state beverage law during prohibited hours of operation. It shall be unlawful for the operator of such premises to permit and knowingly allow any person to loiter thereon during prohibited hours of operation. In and about the business premises includes, but is not limited to, the interior of the establishment, the exterior grounds and parking areas. When applied to a vendor that is permitted to engage in other business activity it is the intent of this section to apply only to that area or part of such vendor's business in which alcoholic beverages are kept, sold, served or dispensed when such area is capable of being closed or in some other manner set apart and forbidden to access.

Section 9. Public Consumption or Possession.

- A. Definitions. The following words, terms and phrases, when used in this section shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- 1) Container means any cup, glass, can, bottle, carton or other vessel or receptacle of alcoholic beverage.
 - 2) Open container means any container which is open, which has been opened, which has its original seal broken, punctured or altered so as to allow the consumption of its contents.
 - 3) Parking lot means any private or public area appurtenant to nonresidential and commercial establishments used by the public for parking and pedestrian access to such establishments, including, but not limited to, drives, parking areas, sidewalks and walkways appurtenant thereto, and any area wherein motor vehicles are parked by the public in conjunction with any nonresidential or commercial business, enterprise or office building.
- B. It shall be a violation for any person to sell or consume any alcoholic beverage, or to possess any opened or unsealed container containing an alcoholic beverage, on or in any publicly owned building, ~~public street, alley, sidewalk, parking lot, or park, right-of-way, or public open space.~~
- C. This provision shall not be applicable to the consumption of an alcoholic beverage, or possession of an alcoholic beverage in an open container, in the following locations:
1. As specifically authorized and approved by a special event permit issued by the City manager or designee;
 2. Locations specifically authorized by the vendor's state license;
 3. The public beach;
 4. On the waterways within the city limits.

5. 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.

Section 10. Unlawful Acts in Establishments.

- A. It shall be unlawful for any person maintaining, owning or operating a commercial establishment located in the city at which alcoholic beverages are offered for sale for consumption on the premises to suffer or permit the following:
 - 1) Any female person, while on the premises of the commercial establishment, to expose to the public view that area of the human female breast at or below the areola thereof.
 - 2) Any female person, while on the premises of the commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate such portions of the human female breast as described in subsection (a)(1) of this section.
 - 3) Any person, while on the premises of the commercial establishment, to expose to public view his or her genitals, pubic area, anus or anal cleft or anal cleavage.
 - 4) Any person, while on the premises of the commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, anus, anal cleft or anal cleavage.
- B. It shall be unlawful for any female person, while on the premises of a commercial establishment located in the city at which alcoholic beverages are offered for sale for consumption on the premises, to expose to public view that area of the human female breast at or below the areola thereof or to employ any device or covering which is intended to give the appearance or simulate such areas of the female breast as described in this subsection.
- C. It shall be unlawful for any person, while on the premises of a commercial establishment located in the city at which alcoholic beverages are offered for sale for consumption on the premises, to expose to public view his or her genitals, pubic area, anus or anal cleft or anal cleavage or to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, anus or anal cleft or anal cleavage.
- D. For the purpose of enforcement this section shall not apply to the breast or anal cleft and cleavage of a customer exhibited by a bathing suit or other wearing apparel provided the areola and lower portion of the female breast are not exposed.

Section 11. Penalties.

- A. Any person or persons, firm or corporation, or any agent thereof, who violates any of the provisions of any sub-section of this ordinance shall be punished by a fine not exceeding \$500.00 or imprisonment not exceeding (60) days or by both such fine and imprisonment.
- B. In addition to the penalties provided in subsection (A) of this section, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be abated by the city as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.

Section 12. Incorporation, Conflict, and Severability.

- A. It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article," or other appropriate word.
- B. Florida, all Collier County Ordinances or parts of ordinances and all Collier County Resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.
- C. If any word, phrase, clause, subsection, or section of this ordinance is for any reason held unconstitutional or invalid by a court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of the ordinance.

Section 13. Effective Date.

This ordinance shall take effect when passed.

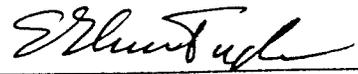
Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 3rd day of December, 2001.

Attest:



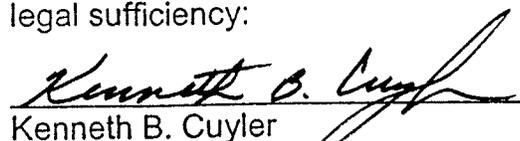
 A. William Moss
 City Manager/City Clerk

CITY OF MARCO ISLAND, FLORIDA

BY: 

 E. Glenn Tucker, Chairman

Approved as to form and legal sufficiency:



 Kenneth B. Cuyler
 City Attorney