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ORDINANCE
NUMBER 2021 - 08

**AN ORDINANCE OF THE CITY OF LABELLE, FLORIDA;
AMENDING CHAPTER 3, ALCOHOLIC BEVERAGES, OF
THE LABELLE CODE PROVIDING FOR
CLARIFICATIONS AND RESTRICTIONS RELATING TO
OPEN CONTAINERS OF ALCOHOL IN PUBLIC SPACES;
PROVIDING FOR CODIFICATION, SEVERABILITY,
CONFLICTS AND AN EFFECTIVE DATE.**

RECITALS

WHEREAS, the City of LaBelle, Florida has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida; Chapter 166, Florida Statutes; and

WHEREAS, the City Commission of the City of LaBelle has given great consideration and study to the rules and regulations related to the sale, distribution, and consumption of alcoholic beverages in the City; and

WHEREAS, many outdoor restaurants, grocery stores, convenience stores and retail establishments in the City serve or sell alcoholic beverages; and

WHEREAS, members of the general public have been observed by the Hendry County Sherriff's Office carrying open containers of alcoholic beverages and drinking from such containers in public rights-of-way and in areas accessible to the public not designated for the consumption of alcoholic beverages; and

WHEREAS, pursuant to the Article VIII of the Florida Constitution, the City of LaBelle Charter and Section 166.021, Florida Statutes, the City Council is authorized to adopt ordinances necessary for the exercise of its powers in for health, safety, and general welfare; and

WHEREAS, the City Commission has determined that it is in the best interests and welfare of the City of LaBelle and its residents to enact this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of LaBelle, Florida:

Section 1. **Recitals.** The forgoing recitals are hereby ratified and confirmed as being true and correct and hereby made a part of this Ordinance and adopted as legislative findings.

Section 2. **Amendments to Code.** The LaBelle Code is hereby amended with deletions depicted with ~~strikethroughs~~ and underlined language as additions below:

46 Chapter 3 ALCOHOLIC BEVERAGES

47
48 **Sec. 3-1. Definitions.**

49
50 Terms, when used in this chapter, shall have the following meanings:

51
52 *Accessory alcoholic beverage sales* (package) means a commercial activity involving the
53 sale of alcoholic beverages for on- or off-premises consumption where alcoholic sales are
54 incidental to the other retail sales commodities.

55
56 *Alcoholic beverage establishment* shall mean any establishment devoted primarily to the
57 retail sale of alcoholic beverages for consumption on-and/or off-premises.

58
59 ~~*Alcoholic beverages* shall mean all drinks and beverages containing more than one (1)~~
60 ~~percent alcohol by weight.~~

61
62 *Alcoholic beverage* shall mean any beverage containing alcohol. The presence of alcohol
63 in a beverage may be determined by any person who by past experience in the handling or
64 use of alcoholic beverages, or who by tasting, smelling or drinking such beverage, has
65 knowledge as to the presence of alcohol therein.

66
67 *Bar* shall mean a commercial enterprise whose primary activity is the sale of alcoholic
68 beverages to be consumed on-premises and in which service of food is only incidental to
69 the consumption of such beverages. Bars include taverns, nightclubs, lounges, private
70 clubs, bottle clubs and similar facilities serving alcoholic liquor and that meet any of the
71 following criteria:

- 72 (a) The bar service area is in excess of fifteen (15) percent of the gross floor
73 area;
74 (b) The kitchen is less than fifteen (15) percent of the gross floor area;
75 (c) Age verification is requested at admittance;
76 (d) A cover charge is required for admittance, except for special events as
77 permitted through special exception;
78 (e) Less than forty (40) percent of gross revenues are derived from the sale of
79 prepared food;
80 (f) The business remains open and liquor sales continue but the full kitchen
81 closes before 9:00 p.m.

82
83 *Bar service area* includes the floor areas under indoor and outdoor bar counter tops and
84 the floor area behind the bar counter tops used for the storage, preparation and serving of
85 alcoholic beverages.

86
87 *Liquor store* shall mean any business selling general alcoholic beverages, also known as
88 sale of distilled spirits or hard liquor, for off-premises consumption. This shall not be
89 interpreted to include establishments primarily engaged in selling prepared foods or drinks

90 for consumption on the premises or retail sales establishments wherein the sale of alcoholic
91 beverages for consumption off-site is clearly incidental to other retail sales commodities.

92
93 Open container shall mean any can, glass, bottle, carton, cup or other receptacle capable
94 of containing liquid and which is opened or so configured that a person can drink therefrom
95 and which contains any amount of alcoholic beverage; any commercially marketed
96 alcoholic beverage, including beer, wine or liquor, the container of which is opened or has
97 been opened; any alcoholic beverage container that is marketed with a seal that must be
98 broken to be opened and such seal is broken; opened but empty alcoholic beverage
99 containers that are commercially marketed, such as beer, wine, liquor, gin, vodka or other
100 alcoholic beverages.

101
102 *Public place* shall mean any location frequented by the public or where the public is present
103 or likely to be present, or where a person may reasonably be expected to be observed by
104 members of the public. Public places include, but are not limited to: ~~streets; sidewalks;~~
105 ~~parking lots;~~ parks; forest; lakes; business and commercial establishments (whether for
106 profit or not-for-profit and whether open to the public at large or where entrance is limited
107 by a cover charge or membership requirement); bottle club; hotel; motel; restaurant; night
108 clubs; adult cabaret; meeting facilities utilized by any religious, social, fraternal or similar
109 organization; business, commercial or other establishment. Premises, or portions thereof
110 such as hotel rooms, used solely as a private residence, whether permanent or temporary
111 in nature, shall not be deemed to be a public place.

112
113 Public right-of-way shall mean any public street, alley, sidewalk, parking lot, highway, or
114 any similar place, paved and unpaved, open to the public for purposes of vehicular or
115 pedestrian traffic or access, including shoulders of any road in a publicly owned right-of-
116 way, whether or not the shoulder of the road is paved. Public rights-of-way shall include
117 public parks and facilities, except where alcohol is expressly permitted by this Chapter.

118
119 **Sec. 3-2. Possession of open containers and consumption of alcoholic beverages on public**
120 **rights-of-way and public places prohibited. ~~Alcoholic consumption on city property~~**
121 **prohibited.**

122
123 ~~No person shall consume alcoholic beverages on any property of the city, including public streets~~
124 ~~or sidewalks.~~

125
126 **Exceptions:**

127 (1) ~~Alcoholic beverages may be consumed within the LaBelle Civic Center in accordance~~
128 ~~with restrictions established by the city commission and approval of a special permit.~~

129 (2) ~~Special events on all other city property to serve, sell or consume alcoholic beverages~~
130 ~~may be permitted by the city commission.~~

131
132 (a) It shall be unlawful for any person to possess an open container or consume an alcoholic
133 beverage upon any public right-of-way or public place within the City limits. A person shall be

134 deemed in possession of an open container if said person handles the open container or the open
135 container is in the clothes or on the body of the person.

136
137 (b) In any prosecution for violation of this section, any person who by past experience in the
138 handling or use of alcoholic beverages, or who by tasting, smelling or drinking such alcoholic
139 beverage, has knowledge as to the presence of alcohol therein, may testify as to his or her opinion
140 of whether a beverage is or is not alcoholic, and a conviction based on such testimony shall be
141 valid.

142
143 (c) Regulation prohibiting the possession of open containers or the consumption of alcoholic
144 beverages shall not apply to the following activities:

145 (1) Circuses, carnivals, fairs, special events and other activities for which a temporary
146 use permit has been issued pursuant to the LaBelle Code, provided the temporary use
147 permit specifically permits the possession and consumption of alcoholic beverages on
148 public rights-of-way or public places.

149 (2) Activities of lessees, concessionaires or contractors of the City or Hendry County
150 operating on publicly owned property, where the lease, concession agreement or contract
151 specifically permits the possession and consumption of alcoholic beverages on public
152 rights-of-way or public places.

153 (3) Any activity or event authorized or permitted by the City Commission or its
154 designee, provided the authorization or permit specifically permits the possession and
155 consumption of alcoholic beverages on public rights-of-way.

156 (4) Any person engaged in collecting or removing discarded open containers of
157 alcoholic beverages for purposes of trash collection, litter control or recycling, provided no
158 alcohol is consumed by such person from said open containers.

159 (5) Establishments permitted pursuant to Sec. 3-4 of this Chapter.

160
161
162 **Sec. 3-3. Prohibited hours.**

163
164 It shall be unlawful for any person to sell to or to consume or to permit the consumption of any
165 alcoholic beverage on the premises of any business or club open to the public, which business or
166 club caters to or allows the consumption of alcoholic beverages, between the hours of 2:00 a.m.
167 and 5:30 a.m.

168 Within this section, the term "premises" shall mean the physical facilities, improvements, or
169 buildings where the business or club is located and conducted, and any parking lot or other real
170 property available to the business or club. As used herein, the terms "business" and "club" shall
171 mean any place operated for profit which is open to the public or to which the public is invited.
172 The provisions of this section shall apply whether or not such premises hold a valid beverage
173 license.

174 Pursuant to F.S. § 562.14(1), the board of city commissioners, in this chapter and section,
175 establishes and prescribes the only hours during which alcoholic beverages may be purchased,
176 sold, served, or consumed, or permitted to be served or consumed, at establishments located within
177 the incorporated areas of the city and holding a beverage license under the laws of Florida.

179 **Sec. 3-4. Alcoholic beverage establishments, on-premises consumption, location restricted.**
180

181 (a) Alcoholic beverage establishments (establishment) are prohibited within seven hundred
182 fifty (750) feet of a church or school, unless a special exception allowing such use is first obtained
183 from the city commission. The seven hundred fifty-foot requirement within which a special
184 exception is required hereunder shall be measured by a straight line from the main entrance of the
185 establishment desiring to have on-premises consumption of alcoholic beverages and the nearest
186 property line of a church or school.

187 (b) The city commission will consider each application for a special exception permit and shall
188 approve issuance of the permit upon making the following findings, in addition to findings required
189 by LDC appendix B, section 4-41(b)(5):

190 (1) The proposed establishment is located in a zoning district in which the
191 establishment is a permitted use;

192 (2) The proposed establishment will not contribute to an undue concentration of
193 alcohol establishments in the area;

194 (3) The proposed establishment will not detrimentally affect nearby neighborhoods
195 considering the distance of the establishment to residential buildings, churches, schools,
196 hospitals, playgrounds, parks and other existing establishments;

197 (4) The proposed establishment will otherwise be compatible with existing and
198 potential uses of the surrounding area; and

199 (5) The proposed establishment is not located in what has been determined to be a high-
200 crime area, or where a disproportionate number of law enforcement calls occur.

201 (c) When approving a special exception for an alcoholic beverage establishment, the city
202 commission may also issue the approval subject to additional conditions that the commission
203 determines to be necessary or desirable, to insure the particular use authorized by the permit will
204 be established, operated, and maintained in accordance with the findings established above,
205 including but not limited to design conditions that:

206 (1) Require the exterior area of the premises and adjoining parking lots to be
207 illuminated in a manner that provides adequate lighting for establishment patrons while not
208 disturbing surrounding residential and commercial areas;

209 (2) Require trash receptacles that are placed at convenient locations both within and
210 outside the establishment and that are emptied on a daily basis;

211 (3) Prohibit fixtures or furnishings that encourage loitering or nuisance behavior;

212 (4) Reduce opportunities for patrons to congregate and obstruct neighboring properties
213 and public rights-of-way; and

214 (5) Otherwise maximize opportunities for surveillance and control of the premises and
215 areas around the perimeter of the premises.

216
217 **Sec. 3-5. Enforcement and penalties.**
218

219 (a) The violation of the provisions of this chapter shall be punished by a fine as follows:

220 (1) First offense: \$250.00;

221 (2) Each additional offense: \$500.00.

222 (b) Each day a violation of any provision of this chapter shall continue shall constitute a
223 subsequent offense, and each act in violation of the provisions of this chapter shall be considered
224 a separate and distinct offense.

225 (c) Payment of fines levied hereunder does not obviate the duty to cure a violation of this
226 chapter.

227 (d) In addition to the penalties herein provided, any condition caused or permitted to exist in
228 violation of any of the provisions of this chapter shall be deemed a public nuisance and may be,
229 by the city, abated as provided by law, and each day that such condition continues shall be regarded
230 as a new and separate offense.

231

232 **Sec. 3-6. Injunctive relief.**

233

234 In addition to the procedures provided herein, entities that are not in conformity with these
235 requirements shall be subject to appropriate civil action in the court of appropriate jurisdiction for
236 injunctive relief.

237

238 **Sec. 3-7. Territory embraced.**

239

240 All territory within the legal boundaries of the City of LaBelle, as they may be changed
241 from time to time, shall be embraced by the provisions of this chapter.

242

243

244 **Section 3. Codification.** This Ordinance shall not be incorporated into the City of
245 LaBelle. However, either the provisions of this Ordinance or an editorial notation to the City
246 Charter may be added by the codification publisher of the city. To accomplish the foregoing the
247 sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to
248 accomplish such publication. Omissions, grammatical, and typographical errors, as well as
249 clarifications of ambiguous wording that do not affect the intent of this ordinance, may be
250 authorized by the Mayor without need for a public hearing.

251

252 **Section 4. Severability.** In the event that any portion of this Ordinance is for any
253 reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall
254 be deemed a separate, distinct and independent provision, and such holding shall not affect the
255 validity of the remaining portions of this Ordinance.

256

257 **Section 5. Conflicts.** The provisions of this article shall supersede any provisions
258 of existing ordinances in conflict herewith to the extent of said conflict.

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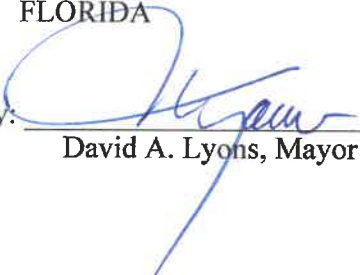
260 **Section 6. Effective Date.** This Ordinance shall take effect immediately upon its
261 adoption by the City Commission.

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PASSED AND DULY ADOPTED this 8th day of July, 2021.

CITY COMMISSION OF THE CITY OF LABELLE,
FLORIDA

By: 
David A. Lyons, Mayor

ATTEST:

By: 
Thomas A. Smith, Clerk-Commissioner

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: 
Derek Rooney, City Attorney

Vote:	AYE	NAY
Mayor Lyons	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Commissioner Smith	<input type="checkbox"/>	<input type="checkbox"/>
Commissioner Wilkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Commissioner Akin	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Commissioner Spratt	<input checked="" type="checkbox"/>	<input type="checkbox"/>