

TOWN COUNCIL



STAFF REPORT Police Department

MEETING DATE:	March 10, 2015
PROJECT:	Ordinance Repealing Section 18-60 Drinking Intoxicating Beverages in Public of the Town Code and Adopting New Chapter 18 General Offenses, Article IX Alcohol Possession, Consumption, and Sales – First Reading
PROJECT MANAGER:	Joey Reynolds, Chief of Police

RECOMMENDATION: Town Staff recommends that Town Council approve First Reading of an amended Ordinance repealing Section 18-60 Drinking Intoxicating Beverages in Public of the Town Code and adopting new Chapter 18 General Offenses, Article IX Alcohol Possession, Consumption, and Sales.

UPDATE SINCE FIRST READING: On February 10, 2015, Town Council approved First Reading of this Ordinance with the following amendments:

1. Amend Section 18-198(b)(5) to remove "actually and permanently attached" from the fifth line of the Section and to insert the words "an appurtenance."
2. Amend the time period in Section 18-201(a) for it to be unlawful to sell, give away, or in any manner dispense for the purposes of consumption any Alcoholic Beverage from between the hours of 1:00 a.m. and 6:00 a.m., Monday through Sunday to 2:00 a.m. and 6:00 a.m., Monday through Sunday.
3. Amend the time period in Section 18-201(b) for it to be unlawful to possess or consume or permit the possession or consumption of any Alcoholic Beverage from between the hours of 2:00 a.m. and 6:00 a.m., Monday through Sunday to 3:00 a.m. and 6:00 a.m., Monday through Sunday.

Town Staff offers the following clarification to the current State Law regulating the sale and consumption of liquor at restaurants, bars, and hotels. The South Carolina Alcoholic Beverage Control Act prohibits both the sale and consumption of liquor at restaurants, bars, and hotels after 2:00 a.m. and before 10:00 a.m. It does not prohibit beer and wine sales and/or consumption at restaurants, bars, and hotels except for a general prohibition on sales starting Sunday at midnight until sunrise Monday morning. A caveat with this is that with an approved Liquor Permit issued by the State, beer and wine sales can occur until 2:00 a.m. Sundays.

Given the above, it is the opinion of Town Staff and the Town Attorney that the extension of the consumption period until 3:00 a.m. for beer and wine as approved at First Reading does not align with State Law and will cause confusion for business owners, patrons, and enforcement officers. As a result, Town Staff and the Town

Attorney have further amended the Ordinance to make it unlawful for both the sale and consumption of alcoholic beverages between the hours of 2:00 a.m. and 6:00 a.m., Monday through Sunday. This provides clear and consistent Ordinance that is aligned with applicable State Law.

Additionally, since the First Reading approval, Town Staff has polled a large number of existing restaurants and bars and has not identified an establishment that is open past 2:00 a.m.

As a result of this change the Ordinance is being presented for First Reading.

BACKGROUND: As a result of recent Town Council direction and Town Staff's on-going review of the regulations and requirements governing the community, Town Staff presented several Ordinances for Town Council consideration at the January 20, 2015 Town Council workshop. Among other items, this included an amendment to the current Ordinance regulating open containers and the sale, possession and consumption of alcoholic beverages within the jurisdictional limits of the Town. In general, this draft Ordinance amendment included the following:

1. Provided definitions and an expressed purpose of the Ordinance for the guidance of the Town Police Department in enforcing the Ordinance.
2. Prohibited the sale, possession, and consumption of alcoholic beverages between certain hours at Commercial Licensed Establishments allowing on-premise consumption.
3. Prohibited the possession of an open container in any vehicle operating within the jurisdictional limits of the Town or parked on any Town-owned property or public place.
4. Prohibited the possession of an open container on any Town-owned property or in any public place, unless a permit allowing the possession of an open container has been issued by the Town.
5. Aligned Town Code with State Law.

After review of the draft Ordinance, Town Council directed Town Staff to establish the following time restrictions for the sale, possession, and consumption of alcoholic beverages at Commercial Licensed Establishments allowing on-premise consumption:

1. The sale of alcoholic beverages be prohibited from 1:00a.m. – 6:00a.m.; and
2. The possession and consumption of alcoholic beverages be prohibited from 2:00a.m. – 6:00a.m.

The changes were incorporated into the February 10, 2015 First Reading Ordinance and have since been changed by further amendments.

TOWN COUNCIL ACTIONS: Town Council has the authority to take the following actions with respect to this request:

1. Approve the Ordinance as submitted;
2. Approve the Ordinance with conditions; or
3. Deny the Ordinance as submitted.

ANALYSIS: The Town Attorney recently determined that the current Ordinance only regulated the consumption of alcoholic beverages and failed to provide any prohibitions on the sale or possession of alcoholic beverages on public property. These findings were shared with the Town Police Department, which expressed its concerns over the enforceability of the current Ordinance and its consistency with South Carolina state law. Additionally, unlike neighboring jurisdictions including Hilton Head Island (3:00 a.m.), Jasper County (2:00 a.m.), and Hardeeville (2:00 a.m.), there is no time limitation restricting the sale of beer and wine within the Town of Bluffton or unincorporated Beaufort County. As a result, when restaurants and bars close in neighboring communities, customers often relocate to Bluffton to those restaurants and bars that are still open.

Together with the Town Attorney and based research of other Ordinances, Town Staff drafted the proposed Ordinance. These changes, as proposed by Town Staff and recommended by Town Council at the recent Town Council Workshop, are necessary to ensure a clear, predictable, and enforceable Ordinance that is aligned with State Law is in effect in the Town of Bluffton.

ADOPTION PROCESS: These amendments are being processed according to the following schedule:

1. Town Council Workshop – January 20, 2015;
2. Town Council First Reading – February 10, 2015;
3. Town Council First Reading (with Amendments) – March 10, 2015; and,
4. Town Council Second Reading – April 14, 2015.

ATTACHMENTS:

1. Ordinance No. 2015-_____
 - a. Exhibit A – New Chapter 18 General Offenses, Article IX Alcohol Possession, Consumption, and Sales

ORDINANCE NO. 2015 - _____

TOWN OF BLUFFTON, SOUTH CAROLINA

AN ORDINANCE REPEALING SECTION 18-60 DRINKING INTOXICATING BEVERAGES IN PUBLIC OF THE TOWN CODE AND ADOPTING NEW CHAPTER 18 GENERAL OFFENSES, ARTICLE IX ALCOHOL POSSESSION, CONSUMPTION, AND SALES

WHEREAS, the Town of Bluffton desires to improve the general safety, welfare, health and properties of the citizens of the Town of Bluffton; and,

WHEREAS, to establish the necessary provisions to accomplish the above, the Town of Bluffton has authority to enact resolutions, ordinances, regulations, and procedures pursuant to South Carolina Code of Laws 1976, Section 5-7-30; and,

WHEREAS, the Town of Bluffton Town Council shall from time to time examine ordinances to ensure that they are properly regarded, enforced, sufficient and satisfactory to the needs of the community and can further suggest changes as deemed appropriate; and,

WHEREAS, the Code of Ordinances for the Town of Bluffton Chapter 18, Offenses and Miscellaneous Provisions, Section 18-60, Drinking Intoxicating Beverages in Public provides the current regulations pertaining to alcohol; and,

WHEREAS, the Town of Bluffton Town Council desires to repeal Section 18-60 and establish Article IX, Alcohol Possession, Consumption and Sales to enable the Town of Bluffton to better facilitate, regulate, supervise, and provide consistent treatment throughout the Town.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA, in accordance with the foregoing, the Town hereby amends the Code of Ordinances for the Town of Bluffton as follows:

SECTION 1. AMENDMENT. The Town of Bluffton hereby amends the Code of Ordinances for the Town Of Bluffton, South Carolina as follows:

- A. Repeal Section 18-60, Drinking Intoxicating Beverages in Public from Chapter 18, Offenses and Miscellaneous Provisions as shown in Exhibit A, which is attached and incorporated hereto; and,
- B. Adopt and incorporate a new Article IX, Alcohol Possession, Consumption, and Sales to Chapter 18, Offenses and Miscellaneous Provisions as shown in Exhibit A, which is attached and incorporated hereto.

SECTION 2. REPEAL OF CONFLICTING ORDINANCES. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. ORDINANCE IN FULL FORCE AND EFFECT. This entire Ordinance shall take full force and effect upon adoption.

DONE, RATIFIED AND ENACTED this _____ day of _____, 2015.

This Ordinance was read and passed at first reading on _____, 2015.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

This Ordinance was passed at second reading held on _____, 2015.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

ARTICLE III – OFFENSES AGAINST MORALITY, DECENCY, AND PUBLIC WELFARE

~~Sec. 18-60. Drinking intoxicating beverages in public.~~

~~It shall be unlawful for any person to drink any kind of intoxicating alcoholic beverages on the streets, alleyways, highways, or other such public places, except for permitted activities.~~

Secs. 18-~~61~~60 – 18-80. Reserved.

ARTICLE VIII – GAMBLING DEVICES ON VESSELS

Secs. 18-189 – 18-~~214~~198. Reserved.

ARTICLE IX – ALCOHOL POSSESSION, CONSUMPTION, AND SALES

Sec. 18-199 General Provisions and Definitions.

- (a) Purpose. This Article is enacted for the purposes, among others, of promoting the health, safety, and general welfare of the Town; establishing reasonable and ascertainable standards for the regulation and control of the possession and consumption of Alcoholic Beverages within the Town; and with the general intent of promoting desirable living conditions and preserving the essential characteristics of the Town.
- (b) Definitions. These words and terms shall have the following meanings when used in this Chapter:
- (1) Alcoholic Beverage. Any beverage which contains alcohol in any quantity or percentage, including but not limited to distilled spirits, liquor, beer, porter, wine, fortified wine, spirituous malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors or a compound or mixture thereof by whatever named called or known, and any other form of alcoholic beverage as defined as “alcoholic liquors” or “alcoholic beverages” by South Carolina law.
 - (2) Commercial Licensed Establishment. A commercial enterprise, establishment, private club, nonprofit club or association, business, store, office, or structure that (1) has been lawfully licensed to sell Alcoholic Beverages under South Carolina law or (2) has received from the State Alcoholic Beverages Control Commission a license to allow on-Premises consumption of Alcoholic Beverages. For the purposes of this Article, Commercial Licensed Establishments are not intended to include any persons or commercial establishments that hold a valid license or permit to sell any or all Alcoholic Beverages for the primary purpose of off-Premises consumption as a retail dealer, wholesaler, producer or manufacturer under South Carolina law.
 - (3) Lodging Establishment. A hotel, motel, villa, condominium, inn, tourist court, tourist camp, campground, bed and breakfast, residence, or any place in which rooms, lodging or sleeping accommodations are furnished to transients for consideration; or, in any other place identified as a “lodging establishment” under South Carolina law.
 - (4) Open Container. Any container which is immediately capable of being consumed from, or the seal of which has been broken.

- (5) Premises. One physically identifiable place of business consisting of one room or two or more contiguous rooms operating under the same trade name and ownership, such premises to be within the confines of the building structure; provided, however, that any delineated outside deck, patio or similar area on private property or on privately leased public property that is an appurtenance to the main building may be considered Premises for the purpose of serving Alcoholic Beverages from a Commercial Licensed Establishment. A Lodging Establishment shall be considered one Premises if the Commercial Licensed Establishment and the Lodging Establishment are located within the same building and operate as a part of one business under one ownership and management.
- (6) Public Place: Any commercial enterprise, establishment, business, store, office, or structure to which the public is invited to conduct business or to visit, including any storage areas, parking lots, outdoor patios, open spaces or decks appurtenant thereto, unless such commercial enterprise, establishment, business, store, office, or structure is a Commercial Licensed Establishment. Also, any public or private parking lots, roads, alleys, easements, rights-of-way or sidewalks located within the corporate limits of the Town.
- (7) Seal. An object or thing placed on a container by the producer of an Alcoholic Beverage or the manufacturer of the container that hermetically or completely secures the container ensuring that the contents of the container have not been tampered with or altered.
- (8) Town. The Town of Bluffton, South Carolina.
- (9) Vehicle. Any vehicle as defined by the South Carolina Uniform Act Regulating Traffic on Highways, S.C. Code Ann. § 56-5-120.
- (c) It shall be unlawful for anyone to obstruct, hinder, or interfere with law enforcement from enforcing any provision of this Article.
- (d) For the purposes of this Article, possession of an Open Container shall constitute prima facie evidence of consumption.

Sec. 18-200. Acts Prohibited on the Premises of a Commercial Licensed Establishment.

- (a) It shall be unlawful for any Commercial Licensed Establishment, or any owner, agent, employee or servant thereof, upon the Premises of the Commercial Licensed Establishment to permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of the State of South Carolina or violation of the ordinances of the Town.
- (b) It shall be unlawful for any person to sell Alcoholic Beverages on the streets or sidewalks, or elsewhere, outside of the Premises of a Commercial Licensed Establishment, except for temporary events specifically licensed for outside sales by the Town. Commercial Licensed Establishments may only serve Alcoholic Beverages on the Premises of the Commercial Licensed Establishment.

Sec. 18-201. Regulation Restricting the Hours of Sale and Consumption of Alcoholic Beverages at Commercial Licensed Establishments.

- (a) It shall be unlawful to sell, give away, or in any manner dispense for the purposes of consumption any Alcoholic Beverage between the hours of 2:00 a.m. and 6:00 a.m., Monday through Sunday, on the Premises of any Commercial Licensed Establishment.
- (b) It shall be unlawful to possess or consume or permit the possession or consumption of any Alcoholic Beverage between the hours of 2:00 a.m. and 6:00 a.m., Monday through Sunday, on the Premises of any Commercial Licensed Establishment.

Sec. 18-202. Regulation Restricting Open Containers in Vehicles.

- (a) It is unlawful for a person to have in his or her possession, except in the trunk or luggage compartment, any Alcoholic Beverage in an Open Container in a vehicle of any kind while (1) operating a vehicle within the Town or while a passenger in or on a vehicle being operated within the Town, or (2) inside the confines of a vehicle when the vehicle is parked on any Town-owned property, in any Public Place, or on the Premises of any Commercial Licensed Establishment.
- (b) This Section does not apply to vehicles parked in legal parking places during functions such as sporting events where law enforcement officers are on duty to perform traffic control duties.
- (c) A passenger of a vehicle shall not be in violation of this Section in the following instances:
 - (1) A passenger of a vehicle in which the driver is operating the vehicle pursuant to a contract to provide transportation for passengers and such driver holds a valid chauffeur's license pursuant to South Carolina law or any other state;
 - (2) A passenger of a bus in which the driver holds a valid chauffeur's license pursuant to South Carolina law or any other state; or
 - (3) A passenger of a self-contained motor home which is in excess of 21 feet in length.

Sec. 18-203. Regulation Restricting Open Containers on Town-owned Property and in Public Places.

- (a) Except as provided in subsection (c) herein, it shall be unlawful for any person to drink or to have in such person's possession in an Open Container any Alcoholic Beverage on any Town-owned property, including but not limited to parks, playgrounds, parking areas, public streets, sidewalks, alleyways, or in any Public Places within the corporate limits of the Town.
- (b) Except as provided in subsection (c) herein, it shall be unlawful for any Commercial Licensed Establishment to dispense any Alcoholic Beverage in an Open Container for removal from the Premises, and it shall be unlawful for any person to remove from a Commercial Licensed Establishment any Open Container of an Alcoholic Beverage.
- (c) The provisions of subsections (a) and (b) of this Section shall not apply at a group assemblage for which a permit has been issued or approved by the Town as provided for in Chapter 22 Section 4 Special Events Ordinance of the Town Code.

Secs. 18-204 – 18-214. Reserved.

