AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, AMENDING CHAPTER 5, ORLANDO CITY CODE, BY AMENDING SECTION 5.06, POWERS OF THE CODE ENFORCEMENT BOARD; AMENDING CHAPTER 33, ORLANDO CITY CODE, ALCOHOLIC BEVERAGES, BY AMENDING SECTION 33.03, HOURS OF SERVICE, SALE, AND CONSUMPTION; PROVIDING FOR SEVERABILITY, CODIFICATION, CORRECTION OF SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

**WHEREAS**, pursuant to s. 562.14, Fla. Stat., no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the division of Alcoholic Beverages and Tobacco between the hours of midnight and 7:00 a.m. unless otherwise provided by municipal ordinance; and

**WHEREAS**, the City of Orlando has enacted s. 33.04, City Code, which, inter alia, extended the hours that alcoholic beverages were permitted to be sold, consumed, served, and permitted to be served or consumed in places holding such license, from midnight to 2:00 a.m.; and

WHEREAS, after midnight there has recently been an increase in criminal and violent activity within the City of Orlando Downtown Entertainment Area (DEA) as well as an increase in other issues related to public safety and crowd control; and

**WHEREAS**, the City of Orlando has found a disproportionate amount of resources are being allocated to this one area of the city to combat the increase in violent and criminal activity that has occurred after midnight within the DEA; and

**WHEREAS**, pursuant to s. 562.14, Fla. Stat., the City of Orlando has determined that additional parameters are required to be in place to preserve public safety and better balance resources city-wide, while allowing the sale of alcoholic beverages between the hours of midnight and 2:00 a.m.; and

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA:

**SECTION 1. CHAPTER 5 AMENDED.** Section 5.06, City Code of the City of Orlando, Florida, is hereby amended as follows:

#### Sec. 5.06. Powers of the Code Enforcement Board

The Code Enforcement Board Shall have the power to:

\*\*\*

(10) Hear appeals of any establishment relating to the issuance, suspension, or revocation of a permit pursuant to Chapter 33, City Code of Orlando.

**SECTION 2. CHAPTER 33 AMENDED.** Section 33.03, City Code of the City of Orlando, Florida, is hereby amended as follows:

Sec. 33.03. Hours of Service, Sale, and Consumption.

Except as otherwise provided in this section, no alcoholic beverages shall be sold, consumed, or served, or permitted to be served or consumed in any place, within the City of Orlando, not including the Downtown Entertainment Area, "DEA," as described in section 42.07(6), Orlando City Code, whose principal business is the sale, service, or consumption of alcoholic beverages; or sold at any other place (collectively hereinafter "establishment") in any manner between the hours of 2:00 a.m. and 7:00 a.m., Monday through Saturday, and between the hours of 2:00 a.m. and 9:00 a.m. on Sunday.

Within the DEA, no alcoholic beverages shall be sold, consumed, or served, or permitted to be served or consumed in any place licensed for on-premises consumption, whose principal business is the sale, service, or consumption of alcoholic beverages; or sold at any other place for on-premises consumption in any manner between the hours of 12:00 a.m. and 7:00 a.m., Monday through Saturday, and between the hours of 12:00 a.m. and 9:00 a.m. on Sunday.

Notwithstanding the above, within the DEA, alcoholic beverages may be sold, consumed, or served, or permitted to be served or consumed in any place licensed for on-premises consumption between the hours of 12:00 a.m. and 2:00 a.m. if permitted in accordance with this section or exempted from such requirement by this section. Any establishment located within the DEA that is exempted or otherwise not required to obtain a permit under this section shall be governed by the same hours of sale otherwise applicable within the City of Orlando.

(A) *Permit Required.* Any establishment within the DEA that is licensed under the state beverage laws and desires to remain open for the purpose of the sale, service, or consumption of alcoholic beverages between the hours of 12:00 a.m. and 2:00 a.m., may make application with the City of Orlando for an After Midnight Alcohol Sales Permit, "Permit." However, civic auditoriums and sports arenas, as defined by Chapter 159, Fla Stat., public lodging establishments regulated by Chapter 509, Fla. Stat., and motion picture theaters, as defined by Chapter 540, Fla. Stat., are exempted from the permit requirement so long as their principal business is not the sale, service, or consumption of alcoholic beverages. No permit may be issued to an establishment that has any outstanding obligations to the City, including but not limited to any code violations or liens.

(B) Application Form. The Application Form for the Permit shall be provided by the City and will require information about the establishment, including, though not exclusively, the name and address of the establishment, the name(s) and address(es) of the owner(s) of the establishment and the property on which the establishment is located, the name(s) of the Responsible Person(s), the maximum occupancy of the establishment, the amount of required parking, if any, the type of alcohol license possessed by the establishment, and the name and address where notices related to enforcement of this section are to be mailed or delivered. Permit holders are required to amend the Permit application that is on file with the City within ten (10) days of any change in the information set forth on the application form.

(C) **Permit Application Fee**. Prior to the issuance of a new or renewal Permit under this section, the applicant shall be required to pay a fee as set forth by resolution of the City Council for the City of Orlando. The application fee will be utilized to reimburse the City for its costs to administer the Permit program, as well as inspecting and regulating the use that has been authorized under the permit.

#### (D) Public Safety Measures

(i) Police Protection and Security. The Chief of Police shall determine whether and to what extent state-licensed private security or police protection is reasonably necessary inside and outside of permitted establishments for the purpose of traffic control and public safety. The Chief of Police shall base this decision on the occupancy, type of alcohol license, traffic control, history of violent incidents that have previously occurred at or were related to the establishment, and any other factor reasonably related to public safety. If such police protection or security is deemed necessary by the Chief of Police, the City will inform the permit applicant, specifying the number of state-licensed security that are necessary to be placed inside the establishment, the number of police officers that are necessary to be placed outside of the establishment and the number, and the particular time and days that such state-licensed security or police officers are required. Officers

placed outside the establishment may be deployed anywhere within the

Downtown Entertainment Area by the Chief of Police, or his or her designee,

to most effectively provided for traffic control and public safety. The

applicant shall secure the police protection or state-licensed private security

the City will inform the applicant of the minimum requirements and quantity

deemed necessary by the Chief of Police at the sole expense of the applicant.

(ii) Weapons Detection System. The Chief of Police shall determine whether and to what extent a weapons detection system, e.g., metal detectors, are reasonably necessary within the establishment. The Chief of Police shall base this decision on the occupancy, type of alcohol license, history of violent incidents that have previously occurred at or were related to the establishment, and any other factor reasonably related to public safety.

If a weapons detection system is deemed necessary by the Chief of Police,

132		of weapons detectors needed, the necessary detection abilities of the
133		system, and the particular days and times that the system is required to be
134		<u>used.</u>
135		Each patron who enters the establishment without being checked by the
136		weapons detection system as required by the permit shall be considered a
137		separate violation of the terms of the permit.
138	(iii)	<i>Identification Scanners</i> . The Chief of Police shall determine whether and to
139		what extent identification (ID) scanners are reasonably necessary within the
140		establishment. The Chief of Police shall base this decision on the occupancy,
141		type of alcohol license, history of underage drinking at the establishment,
142		history of violent incidents that have previously occurred at or were related
143		to the establishment, and any other factor reasonably related to public
144		safety.
145		If ID scanners are deemed necessary by the Chief of Police, the City will
146		inform the applicant of the minimum requirements and quantity of ID
147		scanners needed, and the particular days and times that ID scanners are
148		required to be used.
149		Each patron who enters the establishment whose ID is not scanned as required
150		by the permit shall be considered a separate violation of the terms of the
151		permit.
152	(iv)	Occupancy Load Monitoring. Each establishment shall employ a verifiable
153		occupancy load monitoring system within the establishment and keep a count
154		of all individuals within the establishment between 10:00 p.m. and the time of
155		closing. Such count must be readily provided to any officer of the City acting
156		in their official capacity by the establishment upon request.
157		
158	(E) <b>Per</b>	rmit Review. The City's Chief Administrative Officer, or his or her designee, will
159	review the Pe	rmit Application and, if the application is complete, a Permit shall be issued to
160	the establishn	nent authorizing it to sell alcohol between the hours of 12:00 a.m. (midnight)
161	and 2:00 a.m.,	, subject to the conditions of the Permit, as well as the provisions of this section
162	and applicable	e laws, rules, and regulations.
163		
164	(F) <i>Cor</i>	nditions of Permit. Each establishment must abide by all reasonable conditions
165	placed upon t	he After Midnight Alcohol Sales Permit, including, but not limited to the Public
166	Safety Measu	ures outlined in this section, and any requirements associated with such
167	establishment	t's Retail Beverage license and Chapter 562, Fla. Stat.
168		
169	(G) <b>Dis</b>	splay of Decal. Upon the issuance of a permit under this section, the City shall
170	also issue a d	ecal to the establishment indicating the establishment's hours of operation,
171		nd the expiration of the permit. Such decal shall be conspicuously displayed at
172	or about the p	orimary place of ingress of the establishment in a fashion that it is visible from
173	outside the es	
174		

175	(H) Permit Effective Term. The Permit is effective for a 12-month term, unless
176	revoked or suspended as provided herein, or in the event the establishment ceases to operate
177	at the Permit location. Each Permit issued under this section must be renewed annually. In
178	addition, within ten (10) days after a change in ownership or a change in location of the
179	establishment during the term, the establishment must submit a new application for Permit.
180	
181	(I) <b>Prohibition</b> . Except as otherwise provided in this section, no establishment may
182	sell, serve, or permit to be served or consumed, alcoholic beverages between the hours of
183	12:00 a.m. (midnight) and 7:00 a.m. Monday through Saturday or between the hours of 12:00
184	a.m. (midnight) and 9:00 a.m. on Sunday in the DEA, unless it is operating under a valid and
185	effective Permit.
186	
187	(J) <b>Prior to Midnight</b> . The provisions of this section shall not impair or impact an
188	establishment's right to remain open and sell, serve, or permit to be served or consumed,
189	alcohol between the hours of 7:00 a.m. and 12:00 a.m. (midnight) Monday through Saturday
190	and between the hours of 9:00 a.m. and 12:00 a.m. (midnight) on Sunday, if otherwise
191	authorized by law.
192	(IV) No Bishing Booking The ability to call offer formally and ideas in the construction
193	(K) No Right to Permit. The ability to sell, offer for sale, provide service, or permit to
194 195	be served or consumed upon the premises of any establishment, any alcoholic beverage
195	between the hours of 12:00 a.m. (midnight) and 2:00 a.m. within the DEA is hereby declared to be and is a privilege subject to suspension or revocation by the City, and no person may
197	reasonably rely on a continuation of that privilege.
198	reasonably rely on a continuation of that privilege.
199	(L) Suspension of Permit.
200	(i) An establishment's After Midnight Alcohol Sales Permit shall be suspended
201	if a hearing officer appointed by the City, finds that:
202	a. On any occasion the establishment's agents, officers, employees, or
203	contractors, including but not limited to promoters operating at an
204	establishment, while working at or on behalf of the establishment
205	have:
206	i. Knowingly, recklessly, or negligently permitted the
207	establishment to be the site of violation of any provision of
208	Chapter 790, Fla. Stat., relating to Weapons and Firearms;
209	ii. Knowingly, recklessly, or negligently permitted the
210	establishment to be the site of any violation of any provision
211	of Chapter 794, Fla. Stat., relating to Sexual Battery; or
212	iii. Knowingly, recklessly, or with gross negligence permitted
213	the establishment to be the site of the violation of any
214	provision of Chapter 893, Fla. Stat., relating to the sale or
215	delivery of a controlled substance.
216	b. On any occasion, the establishment has been the site of:
217	i. Any violation of any provision of Chapter 782, Fla. Stat.,
218	<u>relating to Homicide.</u>

219	C.	On tw	o occasions within a consecutive three-month period, the
220		establi	shment's agents, officers, employees, or contractors,
221		includi	ng but not limited to promoters operating at an
222		establi	shment, while working at or on behalf of the establishment
223		have:	
224		i.	Knowingly, recklessly, or with gross negligence failed to
225			comply with any condition of the After Midnight Alcohol
226			Sales Permit;
227		ii.	Knowingly, recklessly, or with gross negligence permitted the
228			establishment to be the site of the violation of any provision
229			of Section 43.06, Orlando City Code, relating to Disorderly
230			Conduct;
231		iii.	Knowingly, recklessly, or with gross negligence permitted
232			the establishment to be the site of any violation of any
233			provision of sections 784.011 or 784.021, Fla. Stat., relating
234			to Assault or Aggravated Assault;
235		iv.	Knowingly, recklessly, or with gross negligence permitted
236			the establishment to be the site of any violation of any
237			provision of sections 784.03, 784.041, or 784.045, Fla. Stat.
238			relating to Battery, Felony Battery, Domestic Battery by
239			Strangulation, or Aggravated Battery;
240		٧.	Knowingly, recklessly, or with gross negligence permitted
241			the establishment to be the site of the violation of any
242			provision of Chapter 849, Fla. Stat., relating to Gambling;
243		vi.	Negligently permitted the establishment to be the site of
244			any violation of any provision of Chapter 893, Fla. Stat.,
245			relating to the sale or delivery of controlled substances
246		vii.	Knowingly, recklessly, or with gross negligence permitted
247			the establishment to be the site of the violation of any
248			provision of Chapter 893, Fla. Stat., relating to possession of
249			a controlled substance.
250	d.	On two	o occasions within a consecutive three-month period, the
251		<u>establi</u>	shment has been the site of:
252		i.	Any violation of any provision of Chapter 790, Fla. Stat.,
253			relating to Weapons and Firearms; or
254		ii.	Any violation of any provision of Chapter 794, Fla. Stat.,
255			relating to Sexual Battery.
256	e.	On thr	ee occasions within a consecutive three-month period, the
257			shment's agents, officers, employees, or contractors,
258		includi	ng but not limited to promoters operating at an
259			shment, while working at or on behalf of the establishment
260		have:	
261		i.	Failed to comply with any condition of the After Midnight
262			Alcohol Sales Permit; or

263		ii. Knowingly, recklessly, or negligently permitted the
264		<ul> <li>ii. Knowingly, recklessly, or negligently permitted the establishment to be the site of a violation of any provision of</li> </ul>
265		Chapter 42, Orlando City Code, relating to Noise;
266		f. On three occasions within a consecutive three-month period, the
267		establishment has been the site of:
268		i. Any violation of any provision of section 43.06, Orlando City
269		Code, relating to Disorderly Conduct;
270		ii. Any violation of any provision of sections 784.011 or
271		784.021, Fla. Stat., relating to Assault or Aggravated Assault;
272		iii. Any violation of any provision of sections 784.03, 784.041,
273		or 784.045, Fla. Stat. relating to Battery, Felony Battery,
274		Domestic Battery by Strangulation, or Aggravated Battery;
275		iv. Any violation of any provision of Chapter 849, Fla. Stat.,
276		relating to Gambling; or
277		v. Any violation of any provision of Chapter 893, Fla. Stat.,
278		relating to Drug Abuse Prevention and Control.
279	(ii)	Duration of Suspension:
280	(11)	a. Suspensions shall be for a period of thirty (30) days, beginning on the
281		date of the finding of suspension by the hearing officer appointed by
282		the City.
283		b. Should additional grounds for suspension occur while the
284		establishment's permit is suspended, any additional period of
285		suspension proscribed by this section shall be served consecutively.
286	(iii)	During a suspension for a specific violation, an establishment may submit to
287	(111)	the City a mitigation plan that has cured or is reasonably designed to cure
288		or otherwise prevent future occurrences of the violation(s) which
289		constituted the grounds for suspension. In determining if the mitigation
290		plan submitted by the establishment has cured or is reasonably designed to
291		cure or otherwise prevent future occurrences of the violation, the City may
292		consider any relevant information, including but not limited to, input from
293		the Orlando Police Department, Code Enforcement, the Fire Marshall, and
294		citizen complaints regarding the establishment.
295	(iv)	If the City finds that the establishment has a mitigation plan that has cured,
296	(10)	is reasonably designed to cure, or otherwise taken reasonable actions to
297		prevent future occurrences of the violation, then, in lieu of the remainder
298		of the suspension, the City may amend the establishment's After Midnight
299		Alcohol Sales Permit to include, as a condition thereof, the mitigation plan.
300		No establishment has a right to alter the conditions of the Permit in lieu of
301		suspension.
302	(v)	If the same type of violation has occurred three or more times at an
303	(*/	establishment, it shall be prima facie evidence that the establishment has
304		negligently permitted the establishment to be the site of such violation.
305	(vi)	Where multiple violations have occurred at an establishment, different
306	(**/	violations may be combined to form the minimum required number of
500		Holadone may be combined to form the minimum required number of

307	violations, however, such combination of violations must have occurred the
308	minimum number of times of the least restrictive violation thereof.
309	
310	(M) Revocation of Permit. The City shall revoke the Permit if:
311	(i) Information provided in the application for the permit, including a renewal
312	permit, is false, deceptive, willfully incorrect, or intentionally misleading; or
313	(ii) The establishment's After Midnight Alcohol Sales Permit has been
314	suspended three (3) times within a consecutive 12-month period.
315	
316	(N) Procedures.
317	(i) Notice and Opportunity to be Heard
318	a. A hearing before a hearing officer appointed by the City will be held
319	whenever grounds for suspension or revocation exist pursuant to this
320	section. The Permittee must be advised in writing of the date, time, and
321	place of such hearing either by personal service upon a Responsible
322	Person at the establishment or by notice mailed by certified mail to the
323	address provided on the permit, no later than seven (7) days before the
324	date of the hearing.
325	b. The hearing will be conducted in accordance with the principles of due
326	process and shall not be subject to the formal rules of evidence. The
327	City bears the burden to prove the basis for suspension or revocation
328	by a preponderance of the evidence. It is the responsibility of any party
329	wishing to have a transcript of the proceedings to provide a
330	stenographer at their own expense.
331	c. The hearing officer shall base the order on the criteria listed in this
332	section. For the purposes of suspension or revocation under this
333	section, calculation of the time periods will be construed from the date
334	each violation occurred. Guilty pleas, no contest pleas, default
335	judgments, payment of citations, or any other finding of a violation by
336	a court of competent jurisdiction or by the procedure provided within
337	City Code shall constitute proof of a prior violation, regardless of
338	whether adjudication was withheld or not. Nothing in this section shall
339	be deemed to allow permittees to relitigate previously adjudicated
340	violations. Code enforcement officers may bring proof of separate
341	violations to the hearing officer which, if proven by a preponderance of
342	the evidence to have occurred, shall be counted towards the total
343	number of violations.
344	
345	(O) Appeal. Within fourteen (14) days after the issuance of an order of suspension
346	or revocation, the establishment may request a hearing before the Code Enforcement
347	Board to appeal the suspension or revocation. The request for a hearing in front of the
348	Code Enforcement Board must be in writing and shall not stay the effect of a Suspension
349	or Revocation Order. The request must allege findings of fact and conclusions of law
350	supporting the establishment's challenge. The Code Enforcement Board will hear the

challenge at its next available regular meeting and shall conduct a de novo hearing in accordance with its regular rules of evidence and procedure.

(P) **Decision on Appeal**. Upon conclusion of the hearing, the Code Enforcement Board shall make findings of fact, conclusions of law, and issue an order either upholding the suspension or revocation of the Permit or quashing the suspension or revocation. The finding by the Code Enforcement Board shall be the final action by the City.

(Q) Suspension and Revocation Not Exclusive Enforcement Mechanisms. Nothing in this section shall be construed or interpreted to prohibit the City from enforcing its codes and ordinances by means other than those provided by this chapter, including without limitation, by summons, notice to appear in court, arrest, issuance of a citation, a civil action, stop work order, statutory code enforcement proceedings, or demolition.

(R) Exhaustion of Administrative Remedies. Judicial review of a Permit revocation is available only after all applicable administrative appeal remedies provided by this chapter have been exhausted. Filing a petition for judicial review or other such pleading shall not stay a suspension or revocation unless so ordered by the circuit court.

(S) Reapplication for Permit. After an establishment's permit has been revoked for a period of not less than three hundred sixty-five (365) days, the establishment may reapply for a permit to sell alcoholic beverages between 12:00 a.m. (midnight) and 2:00 a.m. In addition to all other required information, an establishment whose permit has previously been revoked shall include information explaining the actions they have taken to prevent the violations that resulted in the past revocation(s).

Within the meaning of this Chapter, sale shall be regarded as being made if the alcoholic beverage is delivered to any person during prohibited hours regardless of whether payment therefore is made at some other time. If such commercial establishment is a corporation, then the officers of such corporation shall be regarded as the owners thereof for purposes of enforcement of this Chapter. If such commercial establishment is a private club, then the officers of such club shall be regarded as the owners thereof for purposes of enforcement of this Chapter.

1. Any person or corporation which dispenses, sells, or serves alcoholic beverages; or permits alcoholic beverages to be dispensed, sold, served or consumed in the City on the establishment's licensed premises, and whose principal business is the sale, service, or consumption of alcoholic beverages, shall be closed during the period of time outside of normal business hours, except as provided in subparagraphs 33.03(2), (3), and (4).

Any such commercial establishment shall, at the time of cessation of alcoholic beverage sales hour of 2:00 a.m., cause all outside lights on the premises occupied by it to be illuminated, except that the establishment shall extinguish any lighted signs indicating the establishment is open. extinguished and shall cause all entrances and exits to such establishment to be locked, and the

395 entrances and exits shall not be opened during the prohibited hours except to 396 admit No person, except the proprietor, his or her employees, law enforcement 397 or other emergency personnel, or code enforcement officers, may be permitted 398 to enter the establishment after the cessation of alcoholic beverage sales. and to 399 permit the egress of the proprietor, employees and customers or members of 400 such place from the premises. 401 402 In no instance shall open containers of alcoholic beverages be accessible to 403 customers or members or be permitted to be in the open patronage area of the 404 commercial establishment one-half hour after the time for cessation of alcoholic 405 beverage sales has expired. Customers or members within the establishment 406 shall be required by the proprietor or his or her employees to leave the 407 establishment within one hour after the time for cessation of alcoholic beverage 408 sales has expired. Nothing herein contained shall be construed so as to permit 409 any place to sell, serve, or permit alcoholic beverages to be sold, consumed or 410 served during prohibited hours. 411 412 \*\*\*\* 413 414 8. On January 1, of any year, the hours of operation to sell alcoholic beverages 415 by any establishment licensed to sell alcoholic beverages, and the related 416 requirements of subsection (1), are extended for one hour past the regular time 417 of cessation of alcoholic beverage sales. from 2:00 a.m. to 3:00 a.m. 418 419 SECTION 3. SEVERABILITY. If any clause or provision of this ordinance or its 420 application to any person or circumstance is held invalid, the invalidity does not affect other 421 clauses, provisions or applications of this ordinance which can be given effect without the 422 invalid provision or application, and to this end the provisions of this ordinance are 423 severable. 424 425 **SECTION 4. CODIFICATION.** The City Clerk and the City Attorney shall cause the Code 426 of the City of Orlando, Florida, to be amended as provided by this ordinance and may 427 renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to 428 facilitate the finding of the law. 429 430 **SECTION 5. SCRIVENER'S ERROR.** The City Attorney may correct scrivener's errors 431 found in this ordinance by filing a corrected copy of this ordinance with the City Clerk. 432 433 **SECTION 6. EFFECTIVE DATE.** This ordinance takes effect May 1, 2023. 434 435 DONE, THE FIRST READING, by the City Council of the City of Orlando, Florida, at a 436 regular meeting, the \_\_\_\_\_ day of \_\_\_\_\_\_, 2023. 437

2023.	
	BY THE MAYOR OR MAYOR PRO TEMP OF THE CITY OF ORLANDO, FLORIDA:
	Mayor / Mayor Pro Tempore
ATTEST, BY THE CLERK OF THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA:	, , , , , , , , , , , , , , , , , , , ,
City Clerk	
Print Name	
THIS ORDINANCE DRAFTED BY AND APPROVED AS TO FORM AND LEGALIT FOR THE USE AND RELIANCE OF THE CITY OF ORLANDO, FLORIDA:	Υ
Chief Assistant City Attorney	
Print Name	
Time Name	