# CITY OF AVON PARK
## Highlands County, Florida

**CITY COUNCIL SPECIAL MEETING**
**CITY COUNCIL CHAMBERS**
**123 E. Pine St., Avon Park, FL**
**October 2th, 2015 8am**

**A. OPENING**

1. Invocation
2. Pledge of Allegiance
3. Roll Call
4. Motion to excuse the City attorney from meeting

**B. ALCOHOL ORDINANCE DISCUSSION**

5. Ordinance 25-14 Amending Code to consume alcohol on Public Property

**C. CITIZENS PARTICIPATION**

*Any person who might wish to appeal any decision made by the City Council of the City of Avon Park, Highlands County, Florida, in public hearing or meeting is hereby advised that he/she will need a record of the proceedings, and for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based. Any person with disabilities requiring accommodations in order to participate should contact the City Manager prior to the meeting.*

# ORDINANCE NO. 25-14

**AN EMERGENCY ORDINANCE TO AMEND THE CITY CODE SECTIONS 6-4 AND 6-41, ALLOWING THE CONSUMPTION OF ALCOHOLIC BEVERAGES ON PUBLIC PROPERTY AND CITY PROPERTY WHEN HELD A PART OF A CONTRACTUALLY APPROVED SPECIAL EVENT; PROVIDING FOR CONFLICTS AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND AN EFFECTIVE DATE.**

**WHEREAS,** the City Council has found that it is in the interest of the City to allow responsible consumption of alcoholic beverages on public property and City property when done as part of a special event, and in compliance with the City's special event code and agreements, and

**WHEREAS,** A special event has been approved by contract to consume alcohol on city property and public property and will commence on Friday afternoon, thereby creating a potential violation of the city code, and the city council finds that this potential violation requires correction as a city emergency; and

**WHEREAS,** this emergency Ordinance is intended to amend the City's code prohibiting or limiting such consumption of alcoholic beverage, currently contained in sections 6-4 and 6-41 of the City Code.

**NOW, THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF AVON PARK, FLORIDA, AS FOLLOWS**:

Form: Redline and underline shall mean language added to the code, and ~~language struck-through shall mean language deleted from the code.~~

**SECTION ONE:** **Amendment of Section 6-41 of the City Code.**

**Sec. 6-41. - Prohibited acts; exemption.**

It shall be unlawful for any person to consume any alcoholic beverage or possess any alcoholic beverage in an open container on any semipublic parking lot, public street or public right-of-way or thoroughfare within the city. Exemptions for qualified special events being held in compliance with a special event agreement approved by the city council, ~~on semipublic property~~ may be obtained through the city manager's office. This section does not apply to persons engaged in picking up empty beverage containers for the purpose of collecting the deposit or value of the can itself, nor to persons taking part in a litter control campaign.

**SECTION TWO:** **Amendment of Section 6-4 of the City Code.**

**Sec. 6-4. - Possession or consumption on city property.**

No person shall possess or consume any alcoholic beverage within any city park or recreation center, or any other city property. Exemptions for qualified special events being held in compliance with a special event agreement or civic center user agreement approved by the city council, may be obtained through the city manager's office.

**SECTION THREE: CONFLICTS**

Any ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION FOUR: INCLUSION IN THE CODE.**

It is the intention of the City Commission that the provisions of this ordinance shall become and be made a part of the City of Avon Park Code; and that Sections of this ordinance may be renumbered or relettered and the word *ordinance* may be changed to *section, article,* or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered and typographical errors which do not affect the intent may be authorized by the City Manager or his designee without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

**SECTION FIVE: SEVERABILITY:**

If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

**SECTION SIX: EFFECTIVE DATE.**
This ordinance shall become effective upon passage.

**INTRODUCED AND PASSED** and Duly Adopted on first reading on 2nd day of October , 2015.

**CITY OF AVON PARK, FLORIDA**

_____
Sharon Schuler, Mayor

**ATTEST:**

_____
Maria Sutherland, City Clerk

**APPROVED AS TO FORM AND CONTENT:**

_____
Gerald T. Buhr, City Attorney

Date Received by the City of Avon Park: _____

# SPECIAL EVENT APPLICATION & AGREEMENT

**This agreement** is made and entered into this 14 day of February, 2015, ("Agreement") by and between the **City of Avon Park, Florida**, a municipal corporation organized and existing under the laws of the State of Florida, 110 East Main Street, Avon Park, FL 33825, hereinafter referred to as "City," and **ABATE OF FLORIDA SAFETY & EDUCATION, INC**, 332 S. Woodland Blvd., Deland, FL 32720, hereinafter referred to as "User." That City, for and in consideration of the covenants to be performed by User, does hereby allow User to use that certain real property situated in the City of Avon Park, Highlands County, State of Florida, generally known as the **Main Street Mall ("Premises")**, and shown by the map, plan or drawing suitable to the City, attached hereto as Exhibit "A."

**The User does hereby agree and covenant to the following:**

**Section One – Term of Agreement:**

The Term of this Agreement, including days for set-up and days from break down and clean-up shall be from Thursday, October 1, 2015 to Monday, October 5, 2015. The actual Event shall be held only from Friday, October 2, 2015 to Sunday, October 4, 2015, or 3 days. Such periods shall not be extended without a written amendment to this Agreement. Time is of the essence.

**Section Two – Name and Purpose of Event and Direct Donee Organization, if any:**

**Name:** ABATE of Florida Safety and Education, Inc. Avon Park Autumn Bike Fest (hereinafter "Event")
**Purpose:** to promote motorcycle safety and education, the city of Avon Park and Highlands County

**Section Three – General Covenants of User:**

1. The User shall set up **at least** one Pre-Event Meeting, in person, with the City **not less than thirty (30) days prior to the work commencing to set up the Event**. Failure to hold such meeting shall be a basis for termination of this Agreement.
2. No entry fee shall be charged on Premises; nor parking fee shall be charged unless parking is contracted for on private property.
3. During and upon completion of the event, all rubbish and debris shall be immediately removed from the Premises and surrounding properties and rights-of-way ("ROW"), and the Premises and ROW shall be restored and left in a neat and presentable condition satisfactory to the City.
    a. All clean-up must be performed within the Agreement term. There shall be a **deposit of $500** to be applied towards User's failure to clean-up after the Event. The actual charge and invoice shall be based on actual City expenses, whether more or less than the deposit.
4. Shall not use or occupy the Premises for any unlawful purpose, and conform to and obey all present and future laws, ordinances, rules, and regulations of all governmental authorities or agencies respecting the use of and occupation of the neighboring properties.
5. Shall not assign this Agreement.

6. Shall not use or occupy the premises, or permit the same to be used or occupied, for any purpose deemed extra-hazardous on account of fire or otherwise. Pyrotechnics, fireworks, and other displays of flame, fire or smoke are strictly prohibited.
7. Shall make no alterations, additions, structures of any kind, or any form of capital improvements in or to the Premises, including tents requiring excavation, stakes, etc., without the express written approval of the City, as attached in (composite) Exhibit "B" attached hereto. Any City-approved structures, additions or alterations shall be constructed according to law, and removed solely at the User's expense.
8. Shall allow the vendors of the immediately preceding City-sponsored Oktoberfest celebration to vend at the Event.
9. All food venders must have appropriate licenses to vend food.
10. Shall indemnify and save the City, its officers, agents, and employees harmless from any and all loss, damage, and liability occasioned by, growing out of, or in any way arising or resulting from any tortious or negligent act on the part of User or User's agents or employees, and for such purpose User shall procure and maintain in full force and effect, during the term of this agreement, insurance issued by a reliable company or companies with for personal injury and property damage, in an amount not less than $2.0 million per occurrence and $2.0 million per event from an insurance company rated at least "A" by AM Best, naming City as a co-insured with User, with a rider specifically waiving any right of subrogation against the City; and User shall provide an officially executed copy of such policy to City prior to any work on or disturbance to, the Premises. Said insurance shall be in a form suitable to City.
11. If not otherwise provided in the attached exhibits, or in the body of this Agreement, the following essential information and documents shall be attached to this Agreement as composite Exhibit "C" within the timeframes provided:
    a. Proof of Non-profit, 501(c)3 status. *At execution of Agreement.*
    b. Site plan/drawing showing location of equipment - tents, fencing, bike racks etc. (may be included on Exhibit "B". *At least three (3) weeks prior to setup of Event.*
    c. Copy of proposed route if leaving the Premises as part of the event. *At least three (3) weeks prior to setup of Event.*
    d. Agenda of Activities /Flyers or other advertisement copy prior to distribution. *At least three (3) weeks prior to setup of Event.*
    e. Map and number of portable toilet and hand washing locations. *At least three (3) weeks prior to setup of Event.*
    f. Electrical site plan (separate from Exhibit "B"). *At least three (3) weeks prior to setup of Event.*
    g. Musical entertainment program. *At least three (3) weeks prior to setup of Event.*
    h. Entertainment program (other than music). *At least three (3) weeks prior to setup of Event.*
    i. Site plan for placement of trash receptacles, dumpsters and load packers. *At least three (3) weeks prior to setup of Event.*

j. Site plan for event parking. If reserved parking is requested, a map of such parking and a copy of the pass allowing parking at that location. No existing public parking may be reserved. *At least three (3) weeks prior to setup of Event.*
k. Copies of any additional security agreements, if applicable. *At least three (3) weeks prior to setup of Event.*
l. Maps of locations of fire extinguishers or other fire control devices. *At least three (3) weeks prior to setup of Event.*
m. If additional lighting is to be provided, a map of locations, direction and extent of lighting. *At least three (3) weeks prior to setup of Event.*
n. The City agrees to pay for electricity for this Event.

12. User shall provide advertisement/Flyer of event to the City and all local businesses affected by the road closure at least 3 months prior to the Event.
13. User shall pay for any water used over 1,000 gallons.
14. User shall arrange for, and pay for all waste dumpsters, as well as the removal of all wastes from the Event. User shall not use any refuse containers already onsite. User may contract with outside waste haulers for larger roll-off(s).
15. User may use City name and logo in advertisements for no charge, however, any such use must be preapproved by the City in writing.

**Section Four – Road Closure:**

1. A map of proposed road closure(s) and direction of traffic shall be provided as Exhibit "D". In the event of a road closure, User shall contract for the use of two (2) off-duty City Public Safety supervise set up of road closures, and be present at the Event to supervise safety and security of road closures. The same two (2) off-duty officers shall assist with general security.
2. The traffic plan provided by the City and included in Exhibit "D" shall be adhered to at all times by the User, and all signs, barricades, and other traffic control devices shall be maintained in places prior to initiation of any work and until the work on breakdown is completed. Exhibit "D" shall be sent in at least three (3) months prior to the start date of the Event.

**Section Five – Permits.** The following is a list of permits that may be required, depending on the purpose, location, concessions, events and size of the Event. The list is provided for convenience, and the User agrees that the City is not responsible for ensuring that any permits other than City permits are issued prior to full execution of this Agreement, but failure to obtain other required government permits shall be a basis for the termination of the Event:

1. Alcohol permit(s) 3 months prior to Event
2. Building permit(s) 3 months prior to Event
3. Florida Department of Transportation road closure permit 3 months prior to the Event.
4. Temporary food sales permit(s) for all vendors and Health Department Permit; 3 months prior to event.

**Section Six – Contacts:**

1. For all notices associated with this Agreement, each party will receive notice by national courier, overnight mail, or hand delivery at the address listed in the introductory paragraph above. Additional contact for organization and convenience are as follows:
2. For the City, all contacts use the address in the introductory paragraph above:
    a. On all matters related to this contract: **Maria Sutherland**, 863-452-4411; cell phone: 863-381-2311.
    b. On all matters related to road closure and security: **Director Jason Lister**, (863) 453-6622; cell phone: 863-443-0355.
3. For User,
    a. User does hereby designate the following person as **Event Manager**:
        i. Name: James "Doc" Reichenbach.
        ii. Contact phone numbers and Address: Home: 352-625-6353; Mobile: 352-362-2150; Email :abatefl@att.net; Mailing address: PO Box 2520, Deland, FL 32721

**Section Seven – Covenant of City's Rights for User's Breach of Agreement:**

It is mutually agreed by and between City and User that:

If User is in default of any of the covenants or provisions of this agreement at any time, and if User fails to remedy such default upon notice thereof from City, City shall be entitled to terminate this agreement, and thereupon, this agreement and any license of temporary use of the Premises for the Event or any other purpose shall terminate, and everything herein contained on the part of City to be done and performed shall cease and terminate.

**Section Eight - General Covenants of Parties:**

1. DOCUMENT IS THE RESULT OF MUTUAL DRAFTSMANSHIP. The terms and conditions in this Agreement are the product of mutual draftsmanship by both parties, each being represented by counsel, and any ambiguities in this Agreement or any documentation prepared pursuant to it shall not be construed against any of the parties because of authorship. The parties acknowledge that all the terms of this Agreement were negotiated at arms' length, and that each party, being represented by counsel, is acting to protect its, his, her, or their own interest.

2. WAIVER OF BREACH: The lack of enforcement by either party of any breach of the terms, covenants, or conditions herein contained shall not be deemed a waiver of any subsequent breach.

3. ATTORNEYS' FEES AND COSTS: If either party takes legal action to enforce the terms or conditions of this Lease Agreement, the prevailing party will be entitled to an award of all costs

of the action, including reasonable attorneys' and paralegal's fees, including all such costs through appeals.

4. RADON GAS. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

5. EFFECTIVE DATE. This Agreement shall be effective on the date executed by both parties, and all terms and conditions stated herein shall apply as of that day.

**The parties hereto have executed this agreement the day and year first above written.**

**ABATE OF FLORIDA SAFETY AND EDUCATION, INC.**

**By:** James D. Reichenbach

**James D. Reichenbach, President**

Shelly Johnston

**Shelly Johnston, Secretary**

**ATTESTED:**

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**Maria Sutherland, City Clerk**

**CITY OF AVON PARK, FLORIDA**

**By:**_____

**Sharon Schuler, Mayor**

**APPROVED AS TO FORM AND CONTENT:**

_____

**Gerald T. Buhr, City Attorney**