

ORDINANCE NO. C-16-26

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING SUBSECTION 5-29(b) OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA, ENTITLED "PERMITS REQUIRED FOR PREMISES TO REMAIN OPEN PAST MIDNIGHT; SUSPENSION OF PERMITS" TO MODIFY THE PROCESS FOR REVIEW AND SUSPENSION OF PERMITS THAT AUTHORIZE THE EXTENSION OF THE HOURS FOR THE SALE, OFFERING FOR SALE, DELIVERING, SERVING OR PERMITTING CONSUMPTION OF ALCOHOLIC BEVERAGES WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF FORT LAUDERDALE, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE AND SEVERABILITY.

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WHEREAS, Section 5-29(b) of the Code of Ordinances of the City of Fort Lauderdale, Florida establishes permit requirements for vendors and businesses desiring to remain open for business between the hours of midnight and 2:00 a.m. on any weekday, and between midnight and 3:00 a.m. on a Saturday and Sunday for the sale, services or delivery or offer to sell, serve or deliver of any beer, wine or alcoholic beverages; and

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida desires to add provisions to Section 5-29(b) of the Code of Ordinances of the City of Fort Lauderdale for purposes of determining compliance with state law and county and city ordinances at the time of application for and/or renewal of a permit by a vendor licensed under Florida beverage laws, including inspection of premises by the City's code enforcement officers;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That Section 5-29(b) of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended as follows:

Sec. 5-29 Permitted Hours of Sale, Consumption and Service.

...

(b) *Permits required for premises to remain open past midnight; suspension of permits.*

CODING: Words, symbols, and letters ~~stricken~~ are deletions; words, symbols, and letters underlined are additions.

(1) *Permits required.*

- a. All vendors licensed under the state beverage laws desiring to remain open for business for the purposes of selling, offering for sale, delivering, serving or permitting consumption of alcoholic beverages between the hours of midnight and 2:00 a.m. on any weekday, and between midnight and 3:00 a.m. on Saturday and Sunday, shall make application with the ~~business tax division~~ city for an extended hours of operation permit. The ability to sell, offer for sale, deliver or permit to be consumed upon the premises any alcoholic beverage beyond the permitted hours of sale, consumption and service specified in subsection 5-29(a) of this code of ordinances, is hereby declared to be and is a privilege that can be denied to any vendor who, by their conduct and record, have demonstrated indifference for safety and welfare of others or disrespect for the ordinances of the city. ~~For the fiscal year 2000/2001, vendors shall submit an application within thirty (30) days from the effective date of this ordinance.~~
- (2) The application form shall be provided by the city. The vendor shall complete the application by providing the information requested about the vendor, including but not limited to the name and address where notices related to this section are to be mailed. Permit holders are required to amend the license application that is on file with the City of Fort Lauderdale within thirty (30) days of any change in the information set forth on the application form.
- (3) The city manager or designee shall review the application and applicable state, county and city records, if the application is complete, ~~and the vendor is found to be in compliance with the provisions of state law and with any county and city ordinance, a permit shall may be issued~~ The city manager may issue a permit to the vendor to remain open between the hours of 12:01 a.m. and 2:00 a.m. on weekdays, or between 12:01 a.m. and 3:00 a.m. on Saturday and Sunday, ~~if the vendor is found to be in compliance with the provisions of state law and with any county and city ordinance.~~ The City is authorized to make such investigation and inspection of the property on which the vendor will operate as the City may determine necessary in order to determine that the property and business operation are in compliance with the provisions of state law and with any county and city ordinances. A determination by the city manager resulting in the denial of an extended hours permit is reviewable by the city commission in the manner and within the time provided by Section

5-29(b)(9). At the conclusion of the city commission's review of the city manager's permit denial, the city commission may approve or reject the decision of the city manager.

- (4) Such permit must be renewed annually on or before the thirtieth day of September, unless the permit has been suspended by the City of Fort Lauderdale or the vendor's state beverage license has been revoked. In the event that there has been a change in ownership or a change in location of the establishment, the city must be notified immediately and a new application must be processed. Failure to renew the extended hours of operation permit shall be cause for the immediate suspension of extended hours privileges pursuant to subsection (7) below.
- (5) No vendor may sell alcoholic beverages after 12:00 midnight unless it has received an extended hours of operation permit from the city.
- (6) The provisions of this section shall not impair or impact an establishment's right to remain open prior to 12:00 midnight.
- (7) Permit suspension. The ability to sell, offer for sale, deliver or permit to be consumed upon the premises any alcoholic beverage beyond the hour of 12:00 midnight on any day of the week, is hereby declared to be and is a privilege subject to suspension by the city commission, and no person may reasonably rely on a continuation of that privilege. As a condition of the continuation of the privilege, vendors are required to take all necessary steps to minimize the negative impacts that their establishment may cause in nearby residential or commercial neighborhoods. The city commission shall consider the following in deciding whether to suspend or condition the privilege:
  - a. Whether there is adequate off-street parking in relation to the demands created during the extra hours of operation, with special regard to any adverse impact on adjacent residential areas of any illegal or hazardous parking that can be traced directly to a particular vendor. For the purposes of this section, sufficient evidence of an adverse impact on adjacent residential areas will exist upon verification by police or parking enforcement officials that more than ten (10) patrons of the vendor have parked illegally on public rights of way or property, or on private property upon receipt of a complaint by the property owner. This provision will only apply if the parking provided by the vendor is at maximum

capacity at the time the illegal parking takes place, or is otherwise determined to be inadequate given the size of the crowds that the vendor draws;

- b. Law enforcement activities on the vendor's property during the extra hours of operation, both outside and inside the permitted location, with particular emphasis on vandalism, and illegal activity of any kind by employees, or others associated with the establishment, including allowing underage drinking, violation of open container laws and loitering by intoxicated individuals. The city commission shall also consider whether the need for law enforcement involvement was the result of the establishment's failure or inability to maintain proper order and control during the extended business hours;
- c. Complaints verified by the police, arising from adverse effects extra hours of operation have upon neighboring properties, including the effects of noise, parking, vandalism, generation of trash or garbage, loitering by intoxicated persons or exterior lighting on neighboring residential properties. It shall be a defense to the applicability of this section that the vendor has adequate security personnel and has implemented a policy requiring that security personnel patrol the premises and the property adjacent to the vendor, as well as all known parking lots that patrons use, to assure the orderly conduct of patrons as they arrive at the establishment or as they depart. Upon a showing of such security precautions, the vendor shall only be held accountable if the conduct complained of constitutes a violation by the vendor of any provision of the Fort Lauderdale Code of Ordinances, state or federal law.
- d. Violations of the provisions of Article II, section 5-34 of the Fort Lauderdale Code of Ordinances (Hours music or disturbing noises prohibited).
- e. Violations of the provisions of Article II, section 5-31 of the Fort Lauderdale Code of Ordinances (Permitting intoxicated person to loiter about premises).
- f. Violations of the provisions of Article II, section 5-33 of the Fort Lauderdale Code of Ordinances (Use of licensed premises for immoral or criminal purposes).

- g. Failure to obtain an extended hours of operation permit, or failure to renew the permit as required by subsections (4) and (5) above.
- h. Violations of Chapter 17, Noise Control, of the Fort Lauderdale Code of Ordinances.
- i. Violations of laws relating to the maximum permissible occupancy of vendor.
- j. Violation of any provisions of the Fort Lauderdale Code of Ordinances, state or federal law.

In order to invoke the enforcement provisions of this section, the activities described hereinabove must be directly traceable to the particular vendor against whom action is being taken, and also must be verified by police officers on the scene. Although not required, police officers may, at their discretion, issue recorded warnings that shall not be considered a notice of violation, to put the vendor on notice that a particular problem or problems must be addressed and could result in a notice of violation if not corrected.

- (8) Notices of violation of this section shall be issued to any vendor that meets, or where applicable, fails to meet the criteria established in (7)a., b., c., d., e., f., g., h., i. or j. above. The notice of violation shall be left with the owner, proprietor, or highest ranking employee then on the premises. An additional copy of the notice will also be mailed via U.S. mail, certified, return receipt requested, to the vendor at the street address provided in the application. Proof of delivery by either of these two (2) methods (hand delivery or mail) shall be sufficient to establish receipt by the permit-holder. Notices sent by mail that are returned or not accepted for any reason shall be deemed proper notice of the violation, provided that the notice is sent to the person and address named on the application.
- (9) Should three (3) notices of violation within any three (3) consecutive month period be issued to any vendor or the vendor seeks the review of a refusal by the city manager to issue a permit pursuant to Section 5-29(b)3, the matter shall be placed on the city commission agenda to consider the vendor's extended hours permit.

- a. Such agenda item shall be publicly advertised in a newspaper of general circulation at least fourteen (14) days prior to any hearing of the agenda item, and written notice of the charges against the vendor shall be provided at least fourteen (14) days in advance of the hearing. The notice shall also contain the date, time and place of the hearing. Such notice shall also advise the vendor of the right to be heard, of the right to be represented by counsel, of the right to present sworn testimony on the vendor's behalf, and the right to appeal to circuit court.
  - b. After consideration of the matter and allowing the vendor to be heard, the city commission may take no action, suspend or condition the extended hours privilege, as they deem appropriate. Suspensions shall range from one (1) day in length to a maximum of ninety (90) days. The maximum penalty for a first appearance by a vendor before the city commission shall be thirty (30) days, sixty (60) days for a second appearance, and ninety (90) days for all appearances thereafter. The city commission shall base its decision on whether there is substantial, competent evidence presented that supports a finding of non-compliance with the criteria in (7)a., b., c., d., e., f., g., h., i. or j. on three (3) or more occasions during any consecutive three-month period.
  - c. The city commission may require, as a condition of the continuation of the privilege of extra hours of operation, compliance with any reasonable conditions determined to be necessary to mitigate or eliminate the adverse effects proven to the city commission of such extra hours. These conditions may include, without being limited to, provision by the owner or operator of the premises to provide, at the owner or operator's expense, additional off-street parking, security personnel, trash maintenance and screening and buffering from nearby properties.
  - d. The city commission may delegate the responsibility for conducting hearings pursuant to this section to a special magistrate. Any such delegation shall be by resolution.
- (10) Any vendor that has had an extended hours of operation permit suspended or otherwise conditioned cannot avoid the consequences of the city commission's action by changing its name or corporate status. Upon a showing to the city commission that

there has been a legitimate change in ownership at the location effected by the city commission's action(s), the city commission may consider allowing an extended hours of operation permit to issue at the site, subject to applicable conditions, if any, to prevent a recurrence of the harms that caused the earlier action.

SECTION 2. That if any clause, section, or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 3. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

SECTION 4. That this Ordinance shall be in full force and effect immediately upon its final passage.

PASSED FIRST READING this the 1<sup>st</sup> day of November 2016.

PASSED SECOND READING this the \_\_\_\_ day of \_\_\_\_\_, 2016.

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Mayor  
JOHN P. "JACK" SEILER

ATTEST:

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City Clerk  
JEFFREY A. MODARELLI

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