

ORDINANCE NO. C-22-49

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING CHAPTER 8, ARTICLE III, OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA, TITLED "PUBLIC BEACHES," BY REPEALING IN ITS ENTIRETY SECTION 8-55.4, TITLED "FOOD AND NON-ALCOHOLIC BEVERAGE SERVICE" AND CREATING A NEW CODE SECTION 8-55.4, TITLED "SALE, SERVICE, AND CONSUMPTION OF FOOD AND ALCOHOLIC BEVERAGES," TO ALLOW HOTEL OWNERS AND OPERATORS TO SELL, SERVE AND DELIVER FOOD AND ALCOHOLIC BEVERAGES ON THE PUBLIC BEACH FOR CONSUMPTION BY HOTEL GUESTS OR ANY PERSON RENTING A BEACH CHAIR FROM A CITY-APPROVED BEACH CONCESSIONAIRE; AND AMENDING SECTION 8-85, TITLED "ALCOHOLIC BEVERAGES PROHIBITED," TO ALLOW AN EXCEPTION; PROVIDING FOR DEFINITIONS, PROVIDING FOR REGULATIONS AND PENALTIES; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS AND REPEAL, PROVIDING FOR CORRECTION OF SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 8, 2015, the City Commission enacted ordinance C-15-18 to create a pilot program designed to improve tourists' and visitors' experience on Fort Lauderdale beach by allowing the sale, service and consumption of food and non-alcoholic beverages to tourists and visitors on the sandy area of the beach; and

WHEREAS, although the intent of the pilot program was to build and enhance the overall resort image of Fort Lauderdale, the pilot program fell into disuse; and

WHEREAS, owners and operators of hotels located along the right-of-way of State Road A-1-A and within the City's boundaries have expressed a desire to sell, serve, and deliver food and alcoholic beverages to hotel guests and any person who rents a beach chair from a City-approved beach concessionaire; and

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WHEREAS, the Florida Beverage Law at Chapters 561-568, Florida Statutes, regulates the manufacturing, distribution, sale and consumption of alcoholic beverages in public places or private establishments and prescribes certain licensing requirements, subject to the limitations imposed by county and municipal ordinances; and

WHEREAS, the City Commission has determined that licensing hotel owners and operators to sell, serve and deliver food, and alcoholic beverages on the beach for consumption by hotel guests or any person occupying a beach chair rented from a City-approved beach concessionaire, would contribute to promoting the City of Fort Lauderdale as a world-renowned tourist destination, and thereby serve a legitimate municipal purpose; and

WHEREAS, the City Commission desires to repeal Section 8-55.4 of the Code of Ordinances of the City of Fort Lauderdale, Florida, ("City Code"), in its entirety and replace it with a new section 8-55.4, to license the sale, service, and delivery of food, and alcoholic beverages on City beaches for consumption by hotel guests or any person who rents a beach chair from a City-approved concessionaire, and amend Section 8-85 of the City Code to allow this activity on the City's public beach;

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

SECTION 1. Section 8-55.4. titled "Food and non-alcoholic beverage service." of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby repealed in its entirety and replaced by a new Section 8-55.4. titled "Sale, service, and consumption of food and alcoholic beverages." to read as follows:

~~Sec. 8-55.4. – Food and non-alcoholic beverage service.~~

~~Notwithstanding anything in the Code of Ordinances or the parks and recreation rules and regulations to the contrary, a program is hereby created to provide for food and non-alcoholic beverage service on portions of the beach more specifically described as:~~

~~All that portion of land lying south of the north line of Section 6, Township 50 South, Range 43 East, and north of the south line of Tract 39 "Bahia Mar";~~

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~~according to the plat thereof recorded in Plat Book 35, page 39, of the public records of Broward County, Florida, lying east of State Road A-1-A and lying west of the Atlantic Ocean.~~

~~Less and except:~~

~~The south nine hundred seventy nine (979.0) feet, as measured at right angles, of the north one thousand five hundred fifty one and one-half (1,551.5) feet of said Section 6, lying east of State Road A-1-A and lying west of the Atlantic Ocean.~~

~~Said lands situate, lying and being in the City of Fort Lauderdale, Broward County, Florida.~~

~~(a) *Permit.*~~

~~(1) It shall be unlawful to provide food and non-alcoholic beverage service on portions of the beach described above without a permit.~~

~~(2) A permit to provide food and non-alcoholic beverage service will be issued to service providers in accordance with the requirements set forth in this section.~~

~~(3) In order to limit the impact of vehicular traffic and parking on the beach, no motorized vehicles shall be used in the delivery of food and beverages. Therefore, in order to participate in the program, applicants must be located within one-eighth ($\frac{1}{8}$) of a mile (six hundred sixty (660) feet) of a lifeguard stand in the area of the beach described above.~~

~~(4) All applicants must be properly licensed by the State of Florida Department of Business and Professional Regulation Division of Hotel and Restaurants or such applicable successor agency, for food service and delivery.~~

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~~(b) *Administration.* The department of sustainable development shall be responsible for the administration and issuance of permits pursuant to the program.~~

~~(c) *Requirements.*~~

~~(1) Each permit holder shall be required to pay a one thousand dollar (\$1,000.00) annual fee.~~

~~(2) All service providers shall wear uniforms and name tags that identify the permit holder they are representing as more specifically set forth in the city's permit application.~~

~~(3) All permit holders shall use standard recycled food and beverage containers, cutlery and condiments that identifies where the order originated as more specifically set forth in the city's permit application.~~

~~(4) All permit holders shall have consistent service hours daily as detailed in the permit application.~~

~~(5) All permit holders shall be responsible for continuous cleanup of trash generated as a result of their service.~~

~~(6) Each permit holder shall furnish the city with insurance naming the city as an additional insured in an amount more specifically set forth in the permit application and as approved by the city's risk manager.~~

~~(7) Each permit holder will provide the city with an indemnification and hold harmless release of the city and its authorized agents and employees from and against any and all claims and costs arising out of or related to the permit holder's activities, as more specifically set forth in the permit application.~~

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~~(8) Each permit holder will be required to comply with all applicable federal, state and local laws.~~

~~(d) *Temporary suspension.* In the event the portion of the beach described herein will be used for an approved special event, maintenance or repairs, the city may temporarily suspend permit holder's services during such time period upon prior written notice to permit holder. Upon the issuance of a severe storm, tropical storm or hurricane warning by the National Weather Service, the city may suspend permit holder's services without any prior written notice.~~

~~(e) *Penalties; permit revocation.* The city shall have the right to deny, suspend or revoke the permit for noncompliance with any of the requirements of this section. Permit holders shall be required to correct any failure to comply with any provisions of the permit after notice by the city and the city shall have the option to suspend or revoke the permit for failure to comply after written notice. Permit holders whose permit is revoked for any reason shall not be eligible to reapply for a new permit. If a permit holder or applicant continues to provide services pursuant to this section after notice of denial, suspension or revocation of the permit, they may be subject to the penalties in section 1-6 of this Code. Each day the violation exists shall constitute a separate violation under this article and shall be punishable as such.~~

Sec. 8-55.4. - Sale, service, and consumption of food and alcoholic beverages.

A. Definitions.

The following words, terms and phrases, when used in this Section, shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

Hotel means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests containing sleeping

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room accommodations for twenty-five (25) or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the hotel industry.

Upland Hotel means any hotel located on a parcel of property that shares a property line with the western right-of-way line of a segment of State Road A-1-A, between Holiday Drive to the south and Sunrise Boulevard to the north, excluding that portion of A-1-A designated as Seabreeze Boulevard from Seville Street to the north and SE 5th Street to the south.

Sale, Service or Delivery includes the act or action of supplying or offering for sale any food or beverage item to any person.

Alcoholic Beverages includes beers, wines, liquors, and any type of beverage with any volume of alcohol content.

Public Beach is defined in Sections 8-51 and 8-71 of the City Code.

B. License required.

Except as otherwise provided in the City Code, it shall be unlawful to provide any food or alcoholic beverage service on any portion of the city's Public Beach without a license.

C. License application process.

An application for a license to sell, serve, and deliver food, and alcoholic beverages on the Public Beach for consumption by an upland hotel guest or any person who rents a beach chair from a city-approved beach concessionaire shall be submitted to the city's parks and recreation department on forms provided by the department and shall be subject to the minimum requirements set forth in this section. The parks and recreation department is responsible for the processing and administration of license applications under this section. The application form shall include, at minimum, the following information:

1. Name and address of an upland hotel owner or operator that fronts the right-of-way of State Road A-1-A;

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2. Evidence that applicant upland hotel has been issued all required food service and liquor license(s) from the State of Florida;
3. A license fee with a completed license application signed by the applicant upland hotel owner or operator. The license fee shall be calculated at an amount equal to Twenty-Five Dollars (\$25) times the total number of guest rooms at the applicant upland hotel and, thereafter, a license application and applicable fee shall be due annually on January first of each year. No upland hotel may engage in the sale, service, or delivery of any food or beverage, including alcoholic beverages, until the city's receipt of a license application with the applicable license fee, and city commission's approval of the license application and license agreement; and
4. An operational plan that shall include the following:
 - a. A site plan, depicting a layout of the upland hotel's property boundary lines and lines representing the extension of side boundary lines east into the Public Beach representing the proposed location for food and any beverage service on the Public Beach, a detailed description and design of a temporary beachfront structure, if any, including the material to be used for the structure. Any temporary beachfront structure plans shall satisfy all applicable permitting requirements of the City Code and shall be reviewed and processed by the city's development services department;
 - b. Types of food and/or beverages to be served, sold or delivered;
 - c. A traffic control plan with safety guidelines for service providers and hotel guests expected to cross State Road A-1-A or any other right-of-way in order to access the Public Beach to ensure no undue interference with the passage of the public on State Road A-1-A. The traffic control plan and personnel necessary to implement said plan shall be furnished at the sole cost and expense of each licensee;
 - d. A policy to ensure hotel guests consuming alcoholic beverages and all employees serving or otherwise handling alcoholic beverages are 21 years of age or older;
 - e. A policy to ensure service providers wear uniforms and name tags that identify the upland hotel as the employer, as more specifically set forth in the license application;

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- f. Use of a mobile point-of-sale (POS) system that is compatible with other credit card processing software and necessary electronic equipment to facilitate and manage the food and beverage sale transactions to hotel guests on the beach and any person who rents a beach chair from a city-approved beach concessionaire;
- g. Statement of commitment to the exclusive use of recyclable or reusable food and beverage containers, cutlery, and condiment packaging, that all clearly identify the upland hotel as the service provider;
- h. Statement indicating that the applicant's hours of operation on the Public Beach shall be limited to seven (7) days per week, between the hours of 10:00 a.m. through 6:00 p.m. for the months of October, November, December, January, February, March, April and May, and between the hours of 10:00 a.m. through 7:00 p.m. for the months of June, July, August, and September. Any change or deviation to these operating hours requires prior city commission approval to the city's approved operating hours for the Public Beach;
- i. A plan for the continuous cleanup and deposit of all trash and debris in proper receptacles in compliance with sanitary facilities and any safety inspection requirements, as deemed necessary by the fire-rescue, parks and recreation department, and development services department; and
- j. Statement of compliance with all applicable federal, state and local laws.

D. Review process.

1. The parks and recreation department shall review the application and forward a recommendation for consideration of the city commission.
2. The city commission shall review the application and a proposed license agreement for approval or denial. The city reserves the right to reject or disapprove any license application if the city determines the issuance of such a license would have an adverse effect upon the public's health, safety, or welfare.

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3. The license agreement, shall outline the terms and conditions for the license with a provision to defend, indemnify, and hold the city, and its officers and employees harmless from and against any and all claims related to the permitted services under the license agreement, and requiring each upland hotel to obtain commercial general liability insurance with coverage and policy limits acceptable to the city's risk manager. The license will not be issued until the license agreement is fully executed.

E. License regulations and prohibitions.

1. The sale, service, delivery and consumption of all food or alcoholic beverages on the Public Beach pursuant to this section shall be limited to the area within each hotel's upland property boundary lines that extend to the Public Beach, and subject to the terms and conditions outlined in the license agreement approved by the city commission.
2. No licensee's service operation or temporary beachfront structure as defined in the City Code, if any, shall interfere with or obstruct the view of any lifeguard tower or any lifeguard on duty and, upon request by a lifeguard on duty or city official, the licensee shall immediately remove said obstruction.
3. Beachfront storage of any equipment is prohibited.
4. No motorized vehicles shall be used in the service or delivery of food or beverages.
5. Any other provision, term, plan or condition deemed necessary by the city, as outlined in the license agreement.

F. Penalties; license suspension or revocation.

1. Temporary or Emergency suspension.
 - a. The city may temporarily suspend licensee's services on any portion of the Public Beach that is approved for use in conjunction with a city approved special event, or for city to perform maintenance or repairs, or during periods of prohibitive measures imposed for high impact events pursuant to section 8-55.5 of the City Code. The city manager or the city manager's designee shall provide prior written notice to the

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licensee and licensee shall immediately discontinue all food and beverage services on the Public Beach.

- b. The city may suspend licensee's services without any prior written notice upon the issuance of a severe storm, tropical storm or hurricane watch or warning by the National Weather Service or any other local, state or federal authority, including the National Hurricane Center. Licensee shall immediately discontinue all food and beverage services on the Public Beach.

2. Suspension or revocation for non-compliance.

- a. The city manager or his designee shall have the right to suspend any beach service license for non-compliance with any of the requirements of this section and licensee shall immediately discontinue all food and beverage services on the Public Beach upon receipt of a suspension notice from the city manager. Licensee is required to correct any deficiencies or failure to comply with any provisions of the license within forty-eight (48) hours after a written notice is issued by the city manager or his designee.

- b. In the event licensee fails to correct the deficiencies or fails to comply with the terms and conditions of a license issued under this section within the forty-eight (48) hour curing period, and the licensee did not secure a written extension to cure from the city manager or his designee prior to the expiration of the 48-hour curing period, the city manager or his designee shall have the option to immediately revoke the license and licensee shall immediately discontinue all food and beverage services on the Public Beach.

3. Appeal. Should the city manager or his designee suspend or revoke a license under this section, the licensee shall have thirty (30) calendar days from the date of the city's written notice to appeal the decision of the city manager or the city manager's designee to the city commission. The decision of the city commission shall be final.

4. Enforcement.

- a. If a licensee continues to provide services pursuant to this section after the city manager or his designee issues a decision to suspend or revoke a license issued

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under this section, and licensee fails to file a timely appeal to the city commission, the decision of the city manager or his designee becomes final and the city may initiate code enforcement proceedings pursuant to Chapter 11 of the City Code.

b. If a licensee continues to provide services pursuant to this section after the city commission issues a final decision to suspend or revoke a license issued under this section, the city may initiate code enforcement proceedings pursuant to Chapter 11 of the City Code.

c. If any upland hotel owner or operator, or anyone, engages in the sale, service, or delivery of food or beverage, including alcoholic beverages, on the Public Beach without a license agreement approved by the city commission as provided in this section, the city may initiate code enforcement proceedings pursuant to Chapter 11 of the City Code.

G. Repeal.

This entire code section shall automatically be repealed, null and void and of no further force and effect, unless re-enacted by the city commission on or before three hundred sixty-five (365) days from the date of its passage. In the event this code section is automatically repealed, any license or license agreement approved by the city commission is automatically terminated and all rights and privileges granted thereunder shall be null and void and of no further force and effect.

SECTION 2. Section 8-85. titled "Alcoholic beverages prohibited." of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to read as follows:

Sec. 8-85. - Alcoholic beverages prohibited.

It shall be unlawful for any person to drink, sell, dispense or manually possess any alcoholic beverage ~~upon or within fifteen (15) feet of the westernmost boundary of~~ on the city's public beach and recreation area, as defined in sections 8-51 and 8-71, or upon any parking area or parking space adjacent to or abutting such beach and recreation area except as outlined in section 5-3(d) and section 8-55.4.

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SECTION 3. At the direction of the City Attorney, the publisher of the Code of Ordinances of the City of Fort Lauderdale, Florida, is authorized to conform chapter, article, section, subsection, and clause numbers and letters, and capitalization, set forth in the Code of Ordinances of the City of Fort Lauderdale, Florida, and to correct any non-substantive scrivener’s errors in the codification of this Ordinance without the need for a public hearing.

SECTION 4. 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 5. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

SECTION 6. This Ordinance shall automatically be repealed, null and void and of no further force and effect, unless re-enacted by the City Commission on or before 365 days from date of its passage.

SECTION 7. In the event this Ordinance is automatically repealed, any license or license agreement approved by the city commission is automatically terminated and all rights and privileges granted thereunder shall be null and void and of no further force and effect.

SECTION 8. That this Ordinance shall be in full force and effect upon its passage on second reading.

PASSED FIRST READING this 18th day of October, 2022.

PASSED SECOND READING this _____ day of _____, 2022.

Mayor
DEAN J. TRANTALIS

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ATTEST:

City Clerk
DAVID R. SOLOMAN

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