

ORDINANCE NO.: 18-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING ARTICLE 3 (ALCOHOLIC BEVERAGES), SECTION 3.1 (DEFINITIONS) TO PROVIDE A DEFINITION OF ESTABLISHMENT DEALING IN ALCOHOLIC BEVERAGES AND AMENDING SECTION 3.2 (HOURS OF SALE) AMENDING THE HOURS OF OPERATION FOR ESTABLISHMENTS DEALING IN ALCOHOLIC BEVERAGES TO 12:00 A.M.; PROVIDING FOR AN EXTENDED HOURS OF OPERATION PERMIT FOR ESTABLISHMENTS DEALING IN ALCOHOLIC BEVERAGES BETWEEN MIDNIGHT AND 2:00 A.M.; PROVIDING FOR CONDITIONS FOR ISSUANCE OF PERMIT, RENEWAL, SUSPENSION AND REVOCATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City currently allows establishments serving alcohol to operate until 2:00 a.m. However, the City has received increased noise complaints from bars operating after midnight.

WHEREAS, the City Council has determined to allow the service of alcohol at establishments for onsite consumption between 12:00 a.m. and 2:00 a.m. with the issuance of a permit issued by the City.

WHEREAS, the permitting process will allow the City to review the facility layout and operations to prevent noise disturbances between the hours of 12:00 a.m. and 2:00 a.m.

WHEREAS, words with strike through (~~strike through~~) the characters are deletions from the text and words which are underlined (underlined) are additions to the text.

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

Section 1. The City Council of the City of South Daytona hereby amends Article 3 (Alcoholic Beverages) to read as follows:

Establishment(s) dealing in alcoholic beverages means any business or commercial establishment, whether open to the public at large or where entrance is limited by cover charge or membership requirement, including those licensed by the state for sale and/or service of alcoholic beverages, and any bottle club; hotel; motel; restaurant; nightclub; country club; cabaret; meeting facility utilized by any religious, social, fraternal or similar organization; business or commercial establishment where a product or article is sold, dispensed, served or provided with the knowledge, actual or implied, that the product or article will be or is intended to be mixed, combined with or drunk in connection or combination with an alcoholic beverage on the premises of such business or commercial establishment; or business or commercial establishment where the consumption of alcoholic beverages is permitted. A private residence, whether permanent or temporary in nature, is not an establishment dealing in alcoholic beverages.

Sec. 3-2. - Hours of sale.

(a) Hours permitted. The hours of operations of establishments dealing in alcoholic beverages shall be restricted as follows: ~~The sale, service and distribution of alcoholic beverages shall be permitted between the hours of 7:00 a.m. and 2:00 a.m. every day and shall be prohibited at all other times.~~

(1) Sale of Packaged Alcoholic Beverages for Consumption Off Business Premises. Regarding establishments in the business of selling packaged alcoholic beverages to be consumed off the business premises, it shall be unlawful for any person in the City on business premises to sell, barter, exchange or in any way deal in alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m. each day.

(2) Sale of Alcoholic Beverages for Consumption on Premises. Except as provided in subsection (b) of this section, it shall be unlawful for any person or establishment dealing in alcoholic beverages, including its owner, operator, manager, agent, employee or contractor to sell, barter, exchange, or permit to be consumed, be open for business, or permit any person, except on-duty employees of the establishment, to enter or remain within the establishment dealing in alcoholic beverages between the hours of 12:00 a.m. until 7:00 a.m.

(b) Extended Hours of Operations Permit. An establishment dealing in alcoholic beverages desiring to remain open for business for the purposes of selling, offering for sale, delivering, serving or permitting consumption of alcoholic beverages after 12:00 a.m., shall make application with the City for an extended hours of operation permit. The requirements associated with this permit are as follows:

(1) Establishments dealing in alcoholic beverages must obtain an annual permit. Permits are issued/renewed at the beginning of the City's fiscal year. Permits issued on or after October 1 shall expire the following September 30. Notwithstanding the foregoing, the Special Magistrate shall be authorized to suspend or revoke the permit as described herein below.

(2) The application form shall be provided by the City. The establishment applying for the permit shall complete the application by providing the information requested about the alcoholic beverage establishment, including, but not limited to, the name and address where notices related to this section are to be mailed. The previous year's application will be used to reissue the Permit with the issuance of the business tax receipt. Permit holders are required to amend any extended hours of operation permit application that is on file with the City within 30 days of any change in the information set forth on the application form.

(3) The City manager or his designee shall review the application. If the application is complete, the application will be granted if the following is found:

a. The existence of security personnel employed by the business to provide adequate security during the extended hours of operation.

b. The existence of lighting that is sufficient for safety, but does not create a nuisance to residential property owners during the extended hours of operation.

c. The business is in compliance with all City Codes or any relevant state or federal law.

(4) So long as the permit is in effect and has not been suspended or revoked as provided in paragraph (b)(6) of this section, the permit holder shall be authorized to remain open until 2:00 a.m., provided, however, that the permittee shall comply with the following requirements:

a. The permittee shall post and maintain the permit within the establishment, in a place where it may be seen at all times; and

b. Between the hours of 2:00 a.m. and 7:00 a.m., no alcoholic beverages shall be sold, served, or consumed at the establishment. Between the hours of 2:00 a.m. and 7:00 a.m., no customers shall be permitted to enter the premises and no persons other than the owner, employees or agents of the establishment shall remain on the premises.

c. After 2:00 a.m., all lighted signage on the exterior of the premises shall be turned off. However, any exterior lighting used to illuminate common areas such as walkways, parking lots, sidewalks, or areas of customer ingress and egress may remain illuminated.

(5) The extended hours of operation permit must be renewed annually unless the permit has been suspended or revoked by the Special Magistrate or the alcoholic beverage establishment's state beverage license has been suspended or revoked. If there has been a change in ownership or a change in location of the establishment, the permits and

licensing division 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 paragraph (b)(6) of this section. The permit is not transferable or assignable.

(6) Permit suspension or revocation. The ability to remain open and sell or permit the consumption of alcoholic beverages beyond the hour of 12:00 midnight is hereby declared to be and is a privilege subject to suspension or revocation by the Special Magistrate, and no person may reasonably rely on a continuation of that privilege. As a condition of the continuation of the privilege, alcoholic beverage establishments are required to take all necessary steps to minimize the negative impacts that their establishment may cause in nearby residential or commercial neighborhoods, or on City resources. The Special Magistrate shall consider the following in deciding whether to suspend, revoke, or condition the privilege:

a. Increased demand on law enforcement activities on the alcoholic beverage establishment'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, patrons, or others associated with the establishment, including but not limited to, allowing underage drinking, violation of open container laws and loitering by intoxicated individuals. The Special Magistrate shall consider the number and nature (gravity) of the calls for service;

b. Verified complaints arising from adverse effects extra hours of operation have upon neighboring properties, including but not limited to, the effects of noise, illegal parking, vandalism, generation of trash or garbage, loitering by intoxicated persons or exterior lighting on neighboring residential properties;

c. Violations of the City's code provisions regulating noise, as referenced in the Code of Ordinances Chapter 10, Article III;

d. Failure to obtain an extended hours of operation permit, or failure to comply with the restrictions set forth in paragraphs (b)(1), (2), (3), (4) and (5) of this section or any conditions imposed on a permit pursuant to section (8);

e. Violations of laws relating to the maximum permissible occupancy of the establishment;

f. Violation of any other provision of the City's Code of Ordinances, City's Land Development Regulations, or any state or federal law.

In order to invoke the enforcement provisions of this section, the activities described herein above must result from the operation of the particular establishment against whom action is being taken, and also must be verified by either a police or a code enforcement officer.

(7) A violation notice shall be issued to any alcoholic beverage establishment that fails to meet any of the criteria established in paragraph (b)(6) of this section. 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 alcoholic beverage establishment at the street address provided in the application. Proof of delivery by either of these two methods (hand delivery or mail) shall be sufficient to establish receipt of 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.

(8) If the Special Magistrate finds a violation of one or more of the criteria outlined in (b)(6) above, in addition to any order, fine or penalty that is within the Special Magistrate discretion, the Special Magistrate may also consider the suspension or revocation of the permit. The suspension or revocation shall be for a period of time as determined at the discretion of the Special Magistrate after considering all evidence and mitigating factors, such as negative impacts to neighbors and prior efforts by the establishment to reduce or prevent the violations.

a. The Special Magistrate 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 council 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.

(9) Any alcoholic beverage establishment that has had an extended hours of operation permit suspended, revoked, or otherwise conditioned cannot avoid the consequences of the Special Magistrate's action by changing its name or corporate status. Upon a showing to the City that there has been a legitimate change in ownership at the location effected by the Special Magistrate's action(s), the City 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.

(10) The fee for the permit required by this subsection, and for permit renewal, shall be \$50.00.

Section 2. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

Section 3. That all ordinances made in conflict with this Ordinance are hereby repealed.

Section 4. That this Ordinance shall become effective immediately upon its adoption.

PASSED upon first reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the 12 day of June, 2018.

PASSED AND ADOPTED upon second and final reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the 10 day of July, 2018.

William C. Hall, Mayor

ATTEST:

Joseph W. Yarbrough
City Manager