

ORDINANCE NO. 2017-01

AN ORDINANCE OF THE CITY OF INDIAN HARBOUR BEACH, FLORIDA, AMENDING THE HOURS DURING WHICH SALE, CONSUMPTION AND SERVICE OF ALCOHOLIC BEVERAGES ARE PROHIBITED; AMENDING SECTION 3-2 OF THE CODE BY SPECIFYING THE HOURS DURING WHICH SALE, CONSUMPTION AND SERVICE OF ALCOHOLIC BEVERAGES ARE PROHIBITED; AUTHORIZING VENDORS TO APPLY FOR AND OBTAIN AN EXTENDED HOURS OF OPERATION PERMIT; PROVIDING FOR THE PROCESS AND PROCEDURE FOR ISSUANCE OF SAID EXTENDED HOURS OF OPERATION PERMIT; PROVIDING FOR ANNUAL RENEWALS; PROVIDING FOR THE PROCESS AND PROCEDURE FOR SUSPENSION OR REVOCATION OF SAID EXTENDED HOURS OF OPERATION PERMIT; PROVIDING FOR NOTICE OF VIOLATION AND HEARING AND PROVIDING OTHER REGULATIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 562.14 Florida Statutes authorizes a municipality to regulate the hours that a vendor may sell alcoholic beverages; and

WHEREAS, the City Council of the City of Indian Harbour Beach desires to regulate the time for sale, consumption and service of alcoholic beverages; and

WHEREAS, the City Council desires to regulate the hours of sale, consumption and service of alcoholic beverages and provide for a process and procedure for issuance of extended hours of operation permits subject to suspension and/or revocation in the event of violation of said regulations and ordinances of the City, in order to protect the public health and safety of the

residents of the City of Indian Harbour Beach; and

WHEREAS, the City recognizes that an Extended Hours of Operation Permit is the exercise of quasi-legislative function and represents a privilege rather than a right.

NOW, THEREFORE, BE IT ENACTED by the City of Indian Harbour Beach, Florida as follows:

Section 1. That Section 3-2 of the Code of Ordinances of the City of Indian Harbour Beach, Florida is hereby amended in full to read as follows:

“Sec. 3-2 -Hours of operation for establishments licensed by the state for consumption of alcoholic beverages on the premises or in commercial establishments not licensed by the state.

(a) No alcoholic beverage shall be sold, consumed or served, or be permitted to be sold, consumed or served, on any weekday and Sunday between the hours of 11:00 p.m. and 8:00 a.m. the following day, and between 11:00 p.m. Saturday and 12:00 noon on Sunday, the following day, in any place licensed by the Division under the Beverage Control Law for consumption of such beverage.

(b) Permits required for premises to remain open past 11:00 p.m.

All vendors licensed under the state beverage laws desiring to sell, offer for sale, deliver, serve or permit consumption of alcoholic beverages between the hours of 11:00 p.m. and 2:00 a.m. on any weekday or Saturday, and between 11:00 p.m. and midnight on Sunday, shall make application with the business tax department for an Extended Hours of Operation Permit. On December 31st the hours shall be extended until 4:00 a.m.

For the remainder of the City's fiscal year 2016/2017, vendors shall not be required to obtain an Extended Hours of Operation Permit. Commencing with October 1, 2017 and the following fiscal years, vendors shall be required to obtain and possess an Extended Hours of Operation Permit.

(c) 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.

- (d) The City Manager or designee shall review the application and, if the application is complete and the vendor is in compliance with the code, a permit shall be issued to the vendor to sell, offer for sale, deliver, serve or permit consumption of alcoholic beverages between the hours of 11:00 p.m. and 2:00 a.m. on weekdays and Saturday or between 11:00 p.m. and 2:00 a.m. on Sunday.
- (e) Such permit must be renewed annually on or before the 30th day of September of each year, unless the permit has been suspended by the City of Indian Harbour Beach or the vendor's state beverage license has been revoked or suspended. 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 (h) below.
- (f) No vendor may sell, offer for sale, deliver, serve or permit consumption of alcoholic beverages after 11:00 p.m. unless it has received an Extended Hours of Operation Permit from the City.
- (g) The provisions of this section shall not impair or impact an establishment's right to sell, offer for sale, deliver, serve or permit consumption of alcoholic beverages prior to 11:00 p.m.
- (h) Permit suspension. The ability to sell, offer for sale, serve, deliver or permit to be consumed upon the premises any alcoholic beverage beyond the hour of 11:00 p.m. on any day of the week is hereby declared to be and is a privilege subject to suspension by the City Council, 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 Council shall consider the following in deciding whether to suspend, revoke or condition the privilege:
 - (1) 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 code enforcement officials that more than 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 which has been communicated to the vendor. 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; illegal parking by an individual patron shall not constitute a violation of this subsection;

(2) 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 illegal activity of the owner, employees, or others associated with the establishment, including use, sale or delivery of controlled substances, allowing underage drinking, violation of open container laws and loitering by intoxicated individuals. The City Council 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;

(3) 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 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. Complaints involving neighboring properties must be traceable to the actions of the owner and/or his employees. Noise complaints shall be traceable to the actions of the vendor or his employees by entertainment provided by the vendor or noise generated from the seating areas or entertainment areas of the vendor and not individual discussions, conversations by patrons within parking areas. 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 City of Indian Harbour Beach Code of Ordinances;

(4) Violations of any provisions of the City of Indian Harbour Beach Code of Ordinances; specially, including but not limited to, Section 11-10 relating to noise and sound limitations;

(5) Failure to obtain an Extended Hours of Operation Permit, or failure to renew the permit as required by subsections (b) and (e) above;

- (6) Violations of laws relating to the maximum permissible occupancy of vendor;
- (7) Violation of any provisions of the City of Indian Harbour Beach Code of Ordinances, State or federal law.

(i) Permit Suspension Process

- (1) In order to invoke the enforcement provisions of this section, the activities described hereinabove must be traceable to the particular vendor against whom action is being taken, and also must be verified by a police report, police officers or code enforcement officer on the scene. Although not required, police officers and code enforcement officers may, at their discretion, issue 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.
- (2) In addition, the first violation by a vendor of a City code violation (not State law violation), shall be a written warning and not a Notice of Violation. Any subsequent violation of any section of the City code may result in a Notice of Violation.
- (3) A vendor is encouraged to initiate calls for service to the police department if law violations are occurring on vendor's property. A Notice of Violation shall not be initiated for vendor initiated calls.
- (4) It is recognized that an incident that may occur during an extended hour period, i.e. between 11:00 p.m. and 2:00 a.m. could involve more than one section of the code or violation of law. Any notice of violation that is issued that may involve multiple code or law violations on one incident shall constitute one notice of violation.
- (5) Notice of violation may be issued by a police officer or the Official of a violation of this section and shall be issued to any vendor that meets, or where applicable, fails to meet the criteria established 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 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.

- (6) Should three (3) notices of violation be issued to any vendor, within any three (3) consecutive month period the matter shall be placed on the City Council agenda to consider the suspension of the vendor's extended hours permit.
- (7) Written notice of the charges against the vendor shall be provided at least 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.
- (8) After consideration of the matter and allowing the vendor to be heard, the City Council may take no action, suspend or condition the extended hours privilege, as they deem appropriate. Suspensions and hearing fees shall be as follows:
- i. First appearance: Permit suspension up to 30 days and permit re-instatement fee up to \$250
 - ii. Second appearance: Permit suspension up to 60 days and permit re-instatement fee up to \$500
 - iii. Third appearance: Permit suspension up to 90 days and permit reinstatement fee up to \$750
 - iv. Fourth appearance: Hearing Assessment Filing Fee \$1,000 and permanent permit revocation

The City Council shall base its decision on whether there is substantial, competent evidence presented that supports a finding of non-compliance with the criteria as stated herein above.

- (9) The City Council may require, as a condition of the continuation of the privilege of extra hours of operation, compliance with any reasonable conditions.
- (10) The City Council may delegate the responsibility for conducting hearings pursuant to this section to a special magistrate. Any such delegation shall be by resolution.
- (11) Any vendor that has had an Extended Hours of Operation Permit suspended or otherwise conditioned cannot avoid the consequences of the City Council's action by changing its name or corporate status. Upon a showing to the City Council that there has been a legitimate change in ownership at the location affected by the City Council's action(s), the City Council 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. In the event that any term, provision, clause or section of this ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, or illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this ordinance, and this ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

Section 3. All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith are hereby repealed.

Section 4. The City Clerk of the City is hereby directed to incorporate Section 1 into the Code of Ordinances of the City.

Section 5. This ordinance shall become effective upon adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF INDIAN HARBOUR BEACH, BREVARD COUNTY, FLORIDA, ON THIS 24th DAY OF JANUARY, 2017.

CITY OF INDIAN HAROUR BEACH
BREVARD COUNTY,
FLORIDA



DAVID A. PANICOLA, MAYOR

ATTEST:



DEBORAH MALISKA
CITY CLERK

First Reading: January 10, 2017
Second Reading: January 24, 2017