

ORDINANCE NO. 2015-16

AN ORDINANCE OF THE COMMISSION OF NORTH BAY VILLAGE, FLORIDA AMENDING SECTION 111.01 OF THE NORTH BAY VILLAGE CODE OF ORDINANCES PROVIDING FOR SIGNS IN BUSINESS ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES FOR CONSUMPTION ON OR OFF THE PREMISES; PROVIDING FOR CONTENT OF SIGN TO INCLUDE PROHIBITION ON THE SALE TO MINORS; PROVIDING FOR REPEAL, SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE. *(INTRODUCED BY VICE MAYOR JORGE GONZALEZ)*

WHEREAS, in order to serve the public health, safety and welfare, the declared purpose of this Ordinance is to educate the public by requiring that warning signs be placed at all locations where alcoholic beverages are sold to the public.

§ 111.99 - Definitions

Alcoholic beverages. All beverages containing more than one percent of alcohol by weight, to be determined as set forth in F.S. § 561.01(4)~~(b)~~ (a).

Business Establishment. Includes, but is not limited to, any place of business or any club, organization, person, firm, corporation or partnership such as a golf club, country club, veteran's fraternal or benevolent organization, grocery store, drug store, nightclub, bottle club, cocktail bar, hotel bar, tavern, restaurant, restaurant bar, grill, filling station, convenience store, package store, or any other building, structure, or location or portion thereof, where in one person directly or indirectly pays another for purchase or dispensing of an alcoholic beverage.

Cocktail lounge. A lounge or room, selling, serving or dispensing alcoholic beverages for consumption on the premises, which may have entertainment, but which does not sell food for consumption on the premises. In those instances where a lounge and restaurant, as defined in this section, are operated under a common ownership, in a single building, they shall have to pay only the one license fee for such operation.

Conspicuously Posted. Clearly visible, easily readable and immediately apparent upon viewing.

Dispense. Storing, handling, apportionment, preparation, gift, distribution or serving, directly or indirectly, of any amount of an alcoholic beverage to or for any person by any officer, owner, operator, lessee, or employee of a business establishment. For purpose of this definition, permitting or allowing any person to carry alcoholic beverages on the premises of any business establishment to be consumed thereon shall constitute the dispensing of such beverages.

Employee. Any person employed by any person, firm, corporation, or business entity holding a license issued by the Village, as set forth in the definition of "employers" below.

Employers. Any person, firm, corporation, or other business entity holding a license issued by the Village to sell, serve, or dispense any alcoholic beverages for consumption on the premises or resale off the premises from which it was sold, served, or dispensed.

Minor. Any individual under the legal drinking age as set forth in Florida Statutes Section 562.11 and 562.111 as the same may be amended from time to time.

Nightclub. A restaurant, dining room, or other establishment, licensed by the Village as a "nightclub" which, in addition to serving and selling food for consumption on the premises, serves, sells, or dispenses alcoholic beverages to customers in the premises for consumption on the premises and where floor shows or other forms of entertainment are provided for the guests in the premises, at any time from 10:00 a.m. to 5:00 a.m. seven days a week.

Restaurant. A room, building, or portion of a building licensed by the Village as a "restaurant," whose primary service to its customers is the preparation and serving of meals and other edibles for consumption on the premises. "Restaurant" does not include sandwich shops, snack bars, or other eating establishments whose principal function is serving snacks or sandwiches.

~~*Retail vendor.* A person, firm, corporation, or other business entity selling or offering for sale, alcoholic beverages for consumption off the premises.~~

Retail. Sale to the ultimate consumer.

Sale and Sell. Sale and sell shall mean "sale" and "sell" as set forth in Section 561.01(9), Florida Statutes, as same may be amended from time to time.

Wholesale vendor. Any person, firm, corporation, or other business entity who sells or offers to sell, consigns, or offers to consign any alcoholic beverage for resale, regardless of quantity sold or offered for sale by the "wholesale vendor."

Wine. All beverages' made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added in the manner required by the laws and regulations of the United States, and shall further include all sparkling wines, champagnes, combinations of the aforesaid beverages, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be allowed to imitate a beverage other than wine or to change the character of the wine.

§ 111.02 - Incorporation by reference into zoning code.

The zoning regulations of the Village shall incorporate by reference every provision and restriction contained in this chapter pertaining to alcoholic beverages, including but not exclusive of the provisions of §11.12.

(1964 Code, § 3-7.1; Ord. 237, passed 10-27-71; Am. Ord. 262, passed 7-17-74)

§ 111.03 - Variances.

Any variance request from the regulations and restrictions contained in this chapter shall require a majority vote of the Village Commission, following consideration by the Planning and Zoning Board. In making a determination regarding a variance request from the provisions of this chapter, the Village Commission may consider in the alternative the following:

(A)

The standards contained in §152.422 097.

(B)

That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of adjoining buildings and those in the vicinity, the Village Commission in determining its findings may take into account the effect of the granting of the variance upon the number of persons residing or working in the building or on the land, and traffic conditions in the vicinity of the location of the requested variance.

(C)

The Village Commission shall also consider whether a requested variance is consistent with the purposes and goals contained in and projected in the Master Plan adopted by the Village pursuant to Resolution No. 2239 adopted November 9, 1970.

LICENSING AND SALES

§ 111.10 - State and municipal licenses and fees; fees for remaining open until certain hour.

(A)

Each vendor of alcoholic beverages, as defined in §111.01, operating within the Village, shall obtain a state license as required by F.S. §§ 563.02, 564.02, and 565.02, and shall pay to the state the required fees, a portion of which shall be remitted to the Village in accordance with F.S. § 561.342. Any person, firm, or corporation operating a nightclub, as defined in §111.01, shall in addition to the required state fee, as it now and hereafter exists pay the additional sum of \$2,500.00 for the privilege of remaining open until 5:00 a.m. seven days a week, or such hours as are provided for in this chapter.

(B)

It shall be unlawful for any person, firm, corporation, or other business entity, to engage in the business of selling, dispensing, or serving alcoholic beverages, wines, and beer in the Village without having first obtained a license from the Village to engage in that business. Any person, firm or corporation, before engaging in the business of selling, serving, or dispensing alcoholic beverages, shall file with the Village Clerk a sworn application stating the character of the business to be engaged in, the address of the existing building wherein the premises sought to be licensed is located, and stating that the applicant has the right of immediate possession to the premises. The application shall further state the name of the manager or person to be in charge of the business and the type of license as defined in this chapter, which the applicant desires. The application shall also give the names and addresses of any persons having ownership in the business for which the license is being sought.

§ 111.11 - Hours of sale.

(A)

The hours of sale of alcoholic beverages shall be as follows:

(1)

Nightclub license owners shall be allowed to sell, serve, and dispense alcoholic beverages for consumption on the premises from 10:00 a.m. to 5:00 a.m. seven days a week.

(2)

Restaurant license holders shall be allowed to sell, serve, and dispense alcoholic beverages for consumption on the premises from 10:00 a.m. to 2:00 a.m., seven days a week, if their restaurant license does not prohibit the holder from staying open for such periods of time.

(3)

Lounges where alcoholic beverages are sold, served, and dispensed for consumption on the premises shall be allowed to sell, serve, and dispense alcoholic beverages from 10:00 a.m. until 2:00 a.m.

(4)

Retail vendors of alcoholic beverages for consumption off the premises shall be allowed to remain open from 10:00 a.m. until 2:00 a.m.

(B)

The hours of sale listed in division (A) above, shall be the only hours when alcoholic beverages may be sold, dispensed, or served. However, these limits shall not prohibit establishments from serving food and nonalcoholic beverages beyond the expiration of the hours for serving alcoholic beverages if the occupational license held permits this.

State Law reference— Authority to regulate hours of sale, F.S. §§562.14 and 562.45.

§ 111.12 - Distance limitations from schools and churches; between licensees.

(A)

Distance limitations from schools and churches for alcoholic beverage licenses shall be as follows:

(1)

No license for the sale of liquor, beer, and wine, or alcoholic beverages shall be granted or issued to any person where the place of business designated in the application therefor is within 500 feet of a public school. This distance shall be the airline distance from the main entrance of the place of business to the nearest point of the school grounds in use as part of the school facilities.

(2)

No license for the sale of liquor, beer, and wine, or alcoholic beverages shall be granted or issued to any person where the place of business designated in the application therefor is within 500 feet of a church. This distance shall be the airline distance from the main entrance of the place of business to the main entrance of the church.

(3)

The provisions of this division (A) shall not apply to vendors of beverages containing alcohol of more than one percent by weight and not more than 3.2 percent by weight for consumption off the premises only.

(B)

Distance limitations between licenses for the sale of alcoholic beverages shall be as follows:

(1)

No license for a restaurant, lounge, or retail vendor of alcoholic beverages for consumption on the premises shall be granted to any person, firm, or corporation to sell or serve intoxicating liquor where the proposed or existing establishment of the person, firm, or corporation shall be situated less than 300 feet from an existing restaurant, lounge, or nightclub licensee holding a 4COP or an SRX 4COP License.

(2)

No nightclub license shall be granted to any person, firm, or corporation to sell or serve intoxicating liquor, wine, or beer where the proposed or existing establishment of the person, firm, or corporation shall be situated less than 1,000 feet from an existing licensee.

(3)

No license for a retail vendor of alcoholic beverages, except for beer and wine, for consumption off the premises shall be granted to any person, firm, or corporation, to sell intoxicating beverages where the proposed or existing establishment of the person, firm, or corporation shall be situated less than 1,000 feet from an existing off-premises licensee.

(4)

No license for retail vendors of beer and wine for consumption off the premises in connection with an ancillary to the retail operation of a food and grocery store (retail) or supermarket licensed pursuant to the occupational license tax schedule as provided in § 110.10, shall be granted to any person, firm, or corporation where the proposed or existing establishment of the person, firm, or corporation shall be situated less than 300 feet from a similar existing licensee.

(5)

Distances under this division (B) shall be measured from the building line of an existing licensee and shall be the airline distance between the buildings.

(6)

This division (B) shall not apply to transfers of existing licenses if the licenses are current and in good standing at the time of the transfers, provided that the transferred licenses shall be used at the existing locations.

(1964 Code, §§ 3-5, 3-6; Ord. 237, passed 10-27-71; Am. Ord. 262, passed 7-17-74; Ord. 206, passed 10-23-68)

Cross reference—Penalty, §111.99; incorporation into zoning code by reference, §111.02. **State Law reference**—Authority to regulate location of licensees, F.S. § 562.45.

§ 111.13 - Solicitation of alcoholic beverages prohibited.

(A)

It shall be unlawful for any employer or employee, whether full or part time, in a place dispensing alcoholic beverages for consumption on the premises, to solicit any customer of the establishment to purchase beverages for consumption by the employer or employee for which the customer pays.

(1964 Code, § 3-8)

(B)

It shall be unlawful for any employee, whether full or part time, in an establishment dispensing alcoholic beverages for consumption on the premises, to mingle or fraternize with customers or patrons of the establishment incident to the purchasing of alcoholic beverages for consumption by the employee and for which the customer of the establishment pays.

(1964 Code, § 3-9)

(C)

It shall be unlawful for any owner, operator, manager, or other employee of a place dispensing alcoholic beverages for consumption on the premises, to employ or permit on the premises any person to solicit drinks for himself or any other person for which a customer or patron of the establishment pays.

(1964 Code, § 3-10; Ord. 206, passed 10-28-68)

§ 111.14 - Parking facilities for restaurants, nightclubs.

No restaurant, cocktail lounge, or nightclub serving alcoholic beverages to be consumed upon the premises shall be permitted in the Village and no license shall be issued therefor, unless such proposed place of business shall have parking facilities adjacent thereto equivalent to one automobile to each two and one-half seats. This section shall not apply to already existing and licensed places of business.

(1964 Code, § 3-7; Ord. 206, passed 10-23-68)

§ 111.15 - Sale of alcoholic beverages by grocery stores or markets.

Any grocery store or market licensed to sell beer and wine as a part of its business shall not be required to have more parking spaces than those required by the zoning code regulations of the Village applicable to them, but sale of such alcoholic beverages shall be restricted to those hours prescribed by their particular licenses pursuant to §111.11(A)(4).

(1964 Code, § 3-14; Ord. 206, passed 10-23-68; Am. Ord. 233, passed 4-21-71)

Cross reference— Penalty, §111.99

§ 111.16 - Sale of alcoholic beverages on election days.

All places of business within the Village where alcoholic beverages are sold at wholesale or retail, shall not make any such sales during any state, county, general, or primary election or any municipal election, during the hours in which the polls are open.

(1964 Code, § 3-16; Ord. 206, passed 10-23-68)

Cross reference— Penalty, §111.99

§ 111.17 - Signage.

(A)

Signage required for all business establishments selling alcoholic beverages. All persons who own or operate a business establishment which sells or dispenses retail alcoholic beverages for consumption on or off the premises shall conspicuously post a notice within said business establishment in such a place where alcoholic beverages are either displayed, purchased or consumed. The required notice shall consist of one or more signs or notices, each of which is not less than ninety-three square inches (8-1/2 x 11), with at least 30-point type, which contains the following information, clearly discernable by persons to whom alcoholic beverages may be sold or dispensed.

(1) It is unlawful to purchase alcohol if you are under 21 years of age.

(2) It is unlawful to sell or dispense alcohol under 21 years of age unless exempt pursuant to section 562.11 or 562.13, Florida Statutes

(3) The penalties associated with the sale or dispensing of alcoholic beverages to persons under 21 years of age include imprisonment in a County jail and a fine.

(4) A telephone number to report those who are in violation of the law. Such telephone numbers may include but are not limited to:

a. 305-470-6787 – Division of Alcoholic Beverages and Tobacco

b. 1-877-MEANS 21 (877-632-6721)

(B)

(1) Signage required for business establishments selling alcoholic beverage for consumption off the premises. No person shall sell at retail any alcoholic beverage for consumption off the premises of the business establishment unless said person has posted in a conspicuous place where the sale is to occur, a sign which is at least eleven (11) inches by seventeen (17) inches in size, which is plainly visible and legible to all persons entering the premises and which shall read as follows:

HEALTH WARNING

ALCOHOL IN BEER, WINE AND LIQUOR CAN CAUSE:

* INTOXICATION

* ADDICTION

* BIRTH DEFECTS

REDUCE YOUR RISKS:

• DO NOT DRINK BEFORE DRIVING OR OPERATING MACHINERY.

• DO NOT MIX ALCOHOL WITH OTHER DRUGS (IT CAN BE FATAL).

• DO NOT DRINK DURING PREGNANCY.

Hotels, restaurants, lounges and other establishments which are permitted to sell alcoholic beverages for consumption on the premises are expressly exempt from the provisions of this [subsection (c)].

(d) Language of signs. The owner or operator of a business establishment subject to this section shall conspicuously post translations of the required notice in Spanish and Creole.

(e) Exemptions. The restrictions of subsections (b) and (c) shall not apply to a bona fide restaurant without a restaurant bar. However, such place of business shall conspicuously post a notice with the contents set forth in subsection (b) above within said business establishment where it will be visible to all employees of the business.<<

(f) Penalties.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

§ 111.99 - Penalty.

Any person, firm, or corporation doing business or providing services in the Village as contemplated by this chapter without having first obtained a current, valid license as required by this chapter shall be subject to a fine of not more than \$1,000.00 or imprisonment for not more than six months, or both, as provided by Charter §3.08 (D). Each day any person, firm, or corporation continues to operate without a required license shall be considered an additional violation, and they may be separately charged, tried, and convicted by a court of competent jurisdiction under the terms of this chapter.

Cross reference— Penalty, §111.99.

(1964 Code, § 3-11; Ord. 206, passed 10-23-68; Am. Ord. 307, passed 10-15-80)

Section 5. **Repeal.** All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are repealed to the extent of such conflict.

Section 6. **Severability.** The provisions of this Ordinance are declared to be non-severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall render this Ordinance void in its entirety.

Section 7. **Inclusion in the Code.** It is the intention of the Village Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of North Bay Village; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 8. **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

NOW, THEREFORE, BE IT ENACTED BY THE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The foregoing whereas clauses are hereby ratified and confirmed as being true; and the same are hereby made a specific part of this Ordinance.

Section 2. **Repeal.** That all ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are repealed to the extent of such conflict.

Section 3. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, and they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Vice Mayor Jorge Gonzalez, who moved for its approval on first reading. This motion was seconded by Commissioner Richard Chervony, and upon being put to a vote, the vote was as follows:

THE VOTES WERE AS FOLLOW:

Mayor Connie Leon-Kreps	<u>Yes</u>
Vice Mayor Jorge Gonzalez	<u>Yes</u>
Commissioner Richard Chervony	<u>Yes</u>
Commissioner Wendy Duvall	<u>Absent</u>
Commissioner Eddie Lim	<u>Yes</u>

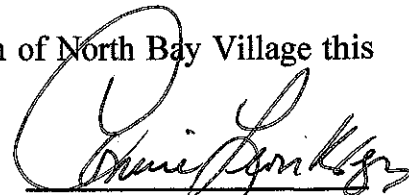
APPROVED ON FIRST READING during a regular session of the North Bay Village Commission Meeting this 10th day of November 2015.

The foregoing Ordinance was offered by Vice Mayor Jorge Gonzalez, who moved for its enactment. This motion was seconded by Mayor Connie Leon-Kreps and upon being put to a vote, the vote was as follows:

FINAL VOTE ON ADOPTION:

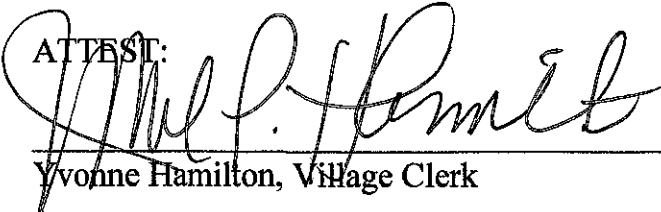
Mayor Connie Leon-Kreps	<u>Yes</u>
Vice Mayor Jorge Gonzalez	<u>Yes</u>
Commissioner Richard Chervony	<u>Yes</u>
Commissioner Eddie Lim	<u>Yes</u>

PASSED AND ENACTED by the Commission of North Bay Village this 8th day of December 2015.

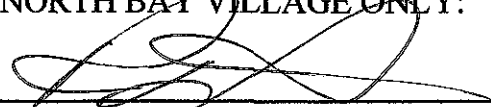


Connie Leon-Kreps
Mayor

ATTEST:


Yvonne Hamilton, Village Clerk

APPROVED AS TO FORM FOR THE USE OF
NORTH BAY VILLAGE ONLY:


Village Attorney
Robert L. Switkes & Associates, P.A.

North Bay Village Ordinance-Alcoholic Beverage Signs.