

ORDINANCE NO. 05

AN ORDINANCE OF THE CITY OF PAHOKEE, FLORIDA, CREATING § 4.8 OF THE CODE OF ORDINANCES OF THE CITY OF PAHOKEE PROVIDING FOR THE PAHOKEE NIGHTCLUB SECURITY ORDINANCE, DEFINITIONS, SECURITY / LAW ENFORCEMENT PRESENCE, ADDITIONAL SECURITY MEASURE, PATRON AGE RESTRICTION, ENFORCEMENT AND PENALTIES, POLICE SUPERVISION, RIGHT OF ENTRY FOR PURPOSE OF INSPECTION, LIMITATION OF LIABILITY, APPLICABILITY, PROVIDING FOR INCLUSION IN THE CODE, SEVERABILITY, EFFECTIVE DATE, AND CONFLICT.

WHEREAS, the City Commission of the City of Pahokee wants to amend its Code of Ordinances pertaining to the hours for the sale of alcoholic beverages.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA, AS FOLLOWS:

Section 1. Section 4-8. Pahokee Nightclub Security Ordinance, is hereby created to read as follows:

Sec. 4-8. Short title.

This article shall be entitled the "Pahokee Nightclub Security Ordinance".

A. Definitions.

The following words and phrases when used in this Section shall have the meanings as set out herein:

Nightclub means any commercial establishment at which alcohol is sold and consumed, and which, at any one time, is determined to be a nightclub by application of the factors set forth in this definition. If a commercial establishment could reasonably be classified as either a restaurant, a nightclub, or some different use, it shall be deemed a nightclub for purposes of this section. In determining whether an establishment is a nightclub, the following factors shall be considered:

- (1) If one (1) of the following two (2) factors is satisfied, then the establishment is a nightclub:
 - a. The establishment charges a cover charge, door charge, required contribution, or one time membership fee which is paid at the door; or
 - b. The establishment has a minimum drink purchase requirement.
- (2) If neither of the factors listed in subsection (a) above are present, then if three (3) of the following five (5) factors are satisfied, the establishment is a nightclub:
 - a. There is a dance floor or other open area used by patrons for dancing or for viewing of live entertainment (such dance floor or open space may be established by the temporary removal or rearrangement of furniture or tables);
 - b. The establishment is open to the public any time between 11:00 p.m. and 8:00 a.m. on any day of the week;
 - c. The maximum capacity of the establishment, as set by the fire officials through fire, building, structure, and other relevant laws and ordinances, is over one hundred fifty (150) persons. The facility may restrict its capacity to a lesser number.
 - d. Advertisements for the establishment routinely describe specific entertainment events or engagements (e.g. "House Party Saturday Night", "DJ Thursday night"; "Rock Band tonight"); or
 - e. The establishment features a platform or musical staging area used in connection with performances or entertainment.

Owner, except when specific reference is made to the owner of the physical location or premises, shall include the owner, operator, manager, promoter or other person having supervision over a nightclub as defined herein.

Parking lot means an area given, leased, rented or otherwise used by patrons and staff to park vehicles.

Promoter means a person or the legal entity who assumes the financial responsibilities of a nightclub, including, but not limited to, contracting with the principals, renting the site and collecting the gate revenues.

Security Officer means any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property and maintains a class D license pursuant to state law.

Sheriff means the Palm Beach County Sheriff.

B. Security / law enforcement presence.

Nightclubs shall be required to comply with the security/law enforcement presence as follows:

- (1) All nightclubs located in the City shall provide interior and exterior security personnel of a number equaling one (1) security officer per each occupancy level of one hundred fifty (150) occupants or any portion thereof or as determined by the sheriff's office, with cause. For example, if the occupancy level of an establishment is five hundred (500), a total of four (4) interior and exterior security personnel are required. If the occupancy level is one hundred fifty (150), a total of one (1) interior and exterior security personnel is required. Security officers employed or contracted by owners shall complete the requirements for a class D license established pursuant to Florida Statutes § 493.6303, and be so licensed. Security officers must provide proof of the class D license upon request of law enforcement.
- (2) Additionally, the owner shall, at its expense, provide the required minimum number of off-duty sheriff deputies, as approved by the sheriff or his designee. The sheriff or his designee may periodically review and adjust its recommendation as to the required staffing of off-duty sheriff deputies, based on the availability of off-duty sheriff deputies and current security conditions at the nightclub and within its vicinity. Such deputies shall commence service at 10:00 p.m. or as designed by the sheriff's office each evening the nightclub is open to the public later than 10:00 p.m. and ending one (1) hour after closing of said nightclub or as designated by the sheriff's office. Nightclubs shall be required to employ a minimum of two (2) sheriff's deputies and one (1) additional sheriff's deputy thereafter for each one hundred fifty (150) persons or any portion thereof of the maximum capacity of the premises or as designated by the sheriff's office. Notwithstanding anything herein to the contrary, the sheriff may, within his sole discretion, authorize a nightclub to use security officers in lieu of off-duty deputies in order to comply with this subsection.
- (3) This section shall not apply to nightclubs that have had less than four (4) incidents which required a law enforcement response within the preceding calendar year, and which are attributable to events held at the nightclub.

C. Additional security measure.

Nightclubs shall provide exterior security lighting of a minimum illumination of an average of one and one-half (1.5) horizontal and vertical footcandles measured at six (6) feet above grade level throughout the parking area. Said illumination likewise measured at the property line of an adjoining nonresidential parcel, shall not exceed three (3.0) horizontal and vertical footcandles measured at six (6) feet above grade level.

D. Patron age restriction.

It shall be unlawful for persons under the age of twenty-one (21) to patronize, visit, loiter, be admitted or allowed access, in any nightclub, except as hereinafter provided. This restriction shall not apply to:

- (1) Persons employed by or at the nightclub;
- (2) A nightclub, during any time period in which it is not serving or selling alcoholic beverages to the public or allowing alcoholic beverages to be consumed on its premises, provided that, before anyone under the age of twenty-one (21) is admitted into the nightclub, all alcoholic beverages previously served to customers or being consumed by customers, are removed from customer access and otherwise discarded and the nightclub's entire inventory of alcoholic beverages is properly secured from public access. The sale, service or consumption of alcoholic beverages may not resume until all persons under the age of twenty-one (21) have vacated the premises; or
- (3) Members of the military or armed services with proper military identification which reflects that they are currently on active duty with a branch of the United States military.
- (4) It may be a defense to alleged violations of this section that the persons under the age of twenty-one (21) obtained access despite the owner's reasonable efforts to prevent such access, or through fraudulent identification, and the business used reasonable efforts to prevent the use of fraudulent identifications. "Reasonable efforts" shall include, but not be limited to, employees properly checking identification cards at the entrance to the subject establishment. For purposes of this section, "identification cards" are defined as official federal, state or local government issued identification cards. Under these circumstances, only the persons who gained access to the alcoholic beverage establishment by presenting fraudulent identification shall be considered in violation of this section.

E. Enforcement and penalties.

It shall be unlawful for any person to violate any of the provisions of this article.

Code enforcement notices of violation shall be issued to any nightclub that fails to meet any of the illumination requirements established in section 4-8. C. of this article. 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 nightclub at the street address of the nightclub. Proof of delivery of either of these two (2) methods (hand delivery or certified mail) shall be sufficient to establish receipt by the owner.

Violations of all other sections of this article shall be punishable, upon conviction, pursuant to F.S. § 125.69(1), by a fine not to exceed five hundred (\$500.00) per violation or imprisonment not exceeding sixty (60) days, or both such fine or imprisonment. Each day of violation of the provisions of this section shall constitute a separate offense.

In addition to the sanctions contained herein, the City shall take any other appropriate legal action, including but not limited to, cease and desist orders, other administrative action and requests for temporary and permanent injunctions to enforce the provisions of this article. It is the purpose of this article to provide additional cumulative remedies.

F. Police supervision.

The presence of any sheriff's deputy at any nightclub shall not relieve the owner thereof, or any of his employees, from the responsibility of adhering to the provisions of this section 4-8 or for violations of any law or ordinance or from the responsibility of maintaining decency and order in said nightclub.

G. Right of entry for purpose of inspection.

All sheriff's deputies shall have free access to nightclubs when open for business for the purposes of inspection and to enforce compliance with the provisions of this section.

H. Limitation of liability.

Neither the sheriff's office or the City shall be under any obligation or duty to any person hereunder by reason of this Section 4-8. The sheriff and the City specifically disclaim liability for any damages which may be caused by failure to provide security.

I. Applicability.

This section shall apply to all existing establishments and all new establishments meeting the definition of "nightclub" located in the City of Pahokee.

Section 2. **Inclusion in the Code of Ordinances.** It is the intention of the City Commission, and it is hereby ordained, that the provisions of this Ordinance shall become and are made a part of the Code of Ordinances of the City of Pahokee, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

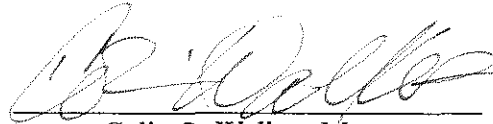
Section 3. **Severability.** If any section, subsection, clause or provision of this Ordinance is declared unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

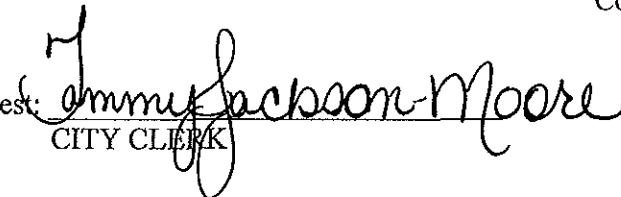
Section 4. **Effective Date.** This Ordinance shall be effective immediately upon passage by the City Commission on second reading.

Section 5. Conflict. All sections or parts of sections of the revised Ordinance in conflict herewith are intended to be repealed to the extent of such conflict.

PASSED AND ADOPTED on first reading this 25 day of Aug., 2015.

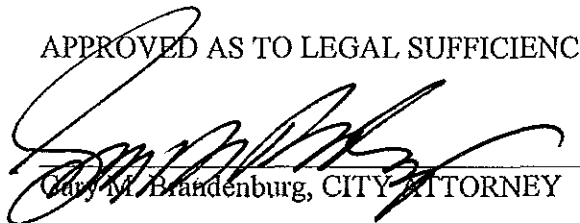
PASSED AND ADOPTED on second reading this 8th day of Sept., 2015.


Colin O. Walkes, Mayor

Attest: 
CITY CLERK

	First Reading	Second and Final Reading
MAYOR WALKES	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
VICE MAYOR WALKER	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
COMMISSIONER BIGGS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
COMMISSIONER HILL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
COMMISSIONER HOLMES	<input checked="" type="checkbox"/>	<input type="checkbox"/> no

APPROVED AS TO LEGAL SUFFICIENCY


Gary M. Brandenburg, CITY ATTORNEY