

ORDINANCE NO. 1491

AN ORDINANCE OF THE CITY OF OVIEDO, FLORIDA PROVIDING FOR REGULATIONS RELATING TO ALCOHOLIC BEVERAGES TO SPECIFY HOURS DURING WHICH SALES, CONSUMPTION AND SERVICE ARE PROHIBITED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 562.14, *FLORIDA STATUTES*; PROVIDING FOR REQUIRED PERMITS FOR PREMISES TO REMAIN OPEN PAST 11:00 P.M.; AMENDING AND SUBSTANTIALLY SUPPLEMENTING CHAPTER 6 OF THE *CODE OF ORDINANCES OF THE CITY OF OVIEDO*; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR PROHIBITIONS, RESTRICTIONS, PROCESSES, PROCEDURES, REQUIREMENTS AND VIOLATIONS; PROVIDING FOR HOURS OF OPERATION FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS; REPEALING SUBSECTION 5.6(F) OF THE *LAND DEVELOPMENT CODE*; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 562.14, *Florida Statutes*, relates to the regulation of the times permitted for the sale of alcoholic and intoxicating beverages and prohibiting the use of licensed premises for certain purposes by providing that:

(1) Except as otherwise provided by county or municipal ordinance, no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the division¹ between the hours of midnight and 7 a.m. of the following day. This section shall not apply to railroads selling only to passengers for consumption on railroad cars.

(2) Except as otherwise provided by county or municipal ordinance, no vendor issued an alcoholic beverage license to sell alcoholic beverages for consumption on the vendor's licensed premises and whose principal business is the sale of alcoholic beverages, shall allow the licensed premises, as defined in s. 561.01(11), to be rented, leased, or otherwise used during the hours in which the sale of alcoholic beverages is prohibited. However, this prohibition shall not apply to the rental, lease, or other use of the licensed premises on Sundays after 8 a.m. Further, neither this subsection, nor any local ordinance adopted pursuant to

¹ Section 561.01(1), *Florida Statutes*, defines the term "division" to mean the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

this subsection, shall be construed to apply to a theme park complex as defined in s. 565.02(6) or an entertainment/resort complex as defined in s. 561.01(18).

(3) The division² shall not be responsible for the enforcement of the hours of sale established by county or municipal ordinance.

(4) Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

; and

WHEREAS, the City Council of the City of Oviedo desires to ensure that the public health, safety, morals and welfare is protected to the maximum extent feasible in accordance with the controlling provisions of law; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Oviedo as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 162, *Florida Statutes*; Chapter 166, *Florida Statutes*; and other applicable controlling law; and

WHEREAS, the City of Oviedo has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, the provision of Subsection 5.6(F) of the *Land Development Code of the City of Oviedo, Florida* are police power regulations relating to the public health, safety, morals and welfare and do not constitute a land development regulation and are not subject to the provisions of State law relating to land development regulations; and

WHEREAS, this Ordinance, although neither creating or amending land development regulations, is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Oviedo*; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text and ~~striketrough~~ shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF OVIEDO, FLORIDA, AS FOLLOWS:

SECTION 1. LEGISLATIVE FINDINGS AND INTENT.

(a) The City Council of the City of Oviedo hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) to this Ordinance, the City staff report and City Council agenda memorandum relating to this matter as if fully set forth herein.

² See footnote 1.

(b) The City Council of the City of Oviedo hereby recognizes the general primacy of State law relative to the regulation of alcoholic beverages within the State of Florida, but desires to regulate alcoholic beverages to the extent permitted by controlling State law within the jurisdictional limits of the City of Oviedo.

SECTION 2. OPEN CONTAINERS AND SALE OF ALCOHOLIC BEVERAGES; PROHIBITED HOURS OF SALE. Chapter 6 of the *Code of Ordinances of the City of Oviedo* is amended and substantially supplemented to read as follows:

Sec. 6-1. Open containers on City property.

It is prohibited and unlawful for any person to purchase, use, offer for sale, display, possess, consume or carry in any cup, glass, can or other open or unsealed container, any alcoholic beverage on the City streets, sidewalks, alleys, sidewalk, park, playground, recreational area, City-owned building, or other public property owned or controlled by the City without special permission of the City Council issuing a permit authorizing such activity and placing such conditions on the activity as may be deemed appropriate for protection of the public health, safety and welfare. The denial of such permit shall be final action by the City which is appealable in accordance with controlling State law.

Sec. 6-2. Hours during which sales, consumption and service are prohibited.

(a) For the purposes of this Section the term *State beverage laws* means Chapters 561 through 568, *Florida Statutes*.

(b) No vendor, convenience store, club, nightclub, cocktail bar, hotel bar, package store, bottle club, restaurant bar, or any other person or entity (referred to hereinafter collectively as "vendors" in this Section), licensed under the State beverage laws to sell beers, wines or alcoholic beverages, shall sell or offer for sale, or serve or offer to serve, any beers, wines, or alcoholic beverages of any kind, regardless of alcoholic content, on any week day or Saturday between the hours of 11:00 p.m. and 7:00 a.m. the following day (provided, however, that sales may not begin before 11:00 a.m. on Sundays). Any such beverage ordered by a patron from a vendor and served prior to 11:00 p.m. may be consumed on licensed premises by a patron until no later than 11:30 p.m. Sale, service or consumption after the applicable hour, as set forth herein for the pertinent activity, is prohibited and unlawful. No business holding a license to sell alcoholic beverages shall sell, consume, serve or permit the service or consumption of any alcoholic beverage at any time not permitted by this Ordinance. It is prohibited and unlawful to violate the provisions of this Ordinance.

(c) Vendors licensed under the State beverage laws desiring to remain open for business for the purposes of selling, offering for sale, delivering, serving or permitting 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 City for an extended hours of operation permit. For the City's fiscal year 2010/2011, vendors shall submit an application and must have been awarded an extended hours of operation permit to be effective on October 1, 2010. The City Council shall, by resolution, adopt a permit

application and such other fees as it may determine to be necessary to implement the provisions of this Ordinance.

(d) The vendor seeking a permit under this Section shall complete a permit application by providing the information required on a form approved by the City Manager including, but not limited to, the name and address where notices related to this Section are to be mailed, the name of the business owner and the name and address of the person or entity owning the liquor license.

(e) Vendors to whom permits have been issued shall amend their license application that is on file with the City within 10 days of any change in the information set forth on the application form.

(f) The City Manager, or designee, shall review applications and, if an application is complete, a permit shall be issued to the vendor to remain open between the hours of 11:00 p.m. and 2:00 a.m. on weekdays and Saturday, or between 11:00 p.m. and midnight on Sunday, unless the applicant or property is at that time subject to a suspension of extended hours of operation permit under this Section, in which case the applicant will not be eligible for an extended hours of operation permit until the applicant and property are no longer subject to such a suspension.

(g) Permits are issued for a 12 month period and must be renewed annually on or before the 30th day of September of each year, unless the permit has been suspended by the City or the vendor's State beverage license has been revoked.

(h) In the event that there has been a change in ownership or a change in location of an establishment after a permit has been issued, the permittee must notify the City immediately and a new application must be processed.

(i) Failure to renew the extended hours of operation permit shall be cause for the immediate suspension of extended hours privileges pursuant to this Section.

(j) It is prohibited and unlawful for a vendor to sell alcoholic beverages after 11:00 p.m. unless it has received an extended hours of operation permit from the City.

(k) The provisions of this section shall not impair or impact an establishment's right to remain open between the hours of 7:00 a.m. and 11:00 p.m.

(l) The permit established by this Section is hereby declared to be and is a privilege subject to suspension by the City Council, and no vendor 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 or adverse impacts that their establishment may cause in nearby residential or commercial neighborhoods.

(m) The City Council shall consider the following in deciding whether to approve any application for an extended hours of operation permit, suspend the privilege upon issuance of a permit, or condition the privilege upon permitting (and it shall be the obligation of the applicant

to establish, by clear and convincing evidence, that the permit should be granted, and to maintain compliance with any conditions imposed):

(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 areas of any illegal or hazardous parking. For the purposes of this section, sufficient evidence of an adverse impact on adjacent residential areas will exist upon verification by police or parking enforcement officials that more than 10 vehicles of patrons of the vendor have parked illegally on public rights-of-way or property, or on private properties, upon receipt of a complaint made by the property owner(s). This provision will only apply if the parking provided by the vendor is determined to be inadequate given the size of the crowds that the vendor draws;

(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 vandalism, and illegal activity of any kind by employees, or others associated with the establishment, including 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 extended hours of operation have upon neighboring properties including, but not limited to, complaints concerning the effects of noise, illegal parking, violations of the zoning code or noise ordinance with respect to amplified musical entertainment, vandalism, generation of trash or garbage, loitering by intoxicated persons, illegal sales of alcohol or tobacco products, or the adverse affect of exterior lighting upon 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 permitted premises and the property adjacent to the vendor, 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. 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 this Code or the Land Development Code;

(4) Violations of any provisions of the City Code, the Land Development Code, any site plan or other development approval condition such as, by way of example only, maintaining ingress and egress for motor vehicles and pedestrian mobility;

(5) Whether adequate noise abatement and control are present on the property;

(6) Whether additional off-duty law enforcement officers are necessary to protect the public health, safety, morals or welfare; provided, however, that the City shall not be under any obligation to provide, or authorize, such law enforcement officers;

(7) Whether security conditions on the property are adequate to protect the public health, safety, morals or welfare;

(8) Failure to obtain an extended hours of operation permit prior to operating with extended hours, or failure to renew the permit as required by this Section;

(9) Violations of laws relating to the maximum permissible occupancy of the vendor on the property to include, but not be limited to, laws, codes, ordinances, rules and regulations relating to the public health such as, but not limited to, those pertaining to the serving of food and sanitary matters relating thereto;

(10) Violation of any provision of State or Federal law. In order to invoke the enforcement provisions of this Subsection, the activities described hereinabove must be traceable to the particular vendor against whom action is being taken, and also must be verified by law enforcement or code enforcement officers on the scene.

(n) A general condition for every extended hours of operation permit shall be that each permitted shall conduct a "last call" 30 minutes prior to the closing time of the establishment. The "last call" shall notify all customers within the property that the vendor will close at the time required.

(o) Although not required, police officers may, at their discretion, issue recorded 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. Likewise, code enforcement officers may issue notices of violations as appropriate under controlling law.

(p) A notice of violation of this Section may be left with the owner, proprietor, or any employee then on the premises. An additional copy of the notice will also be mailed by means of U.S. mail 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 permittee. Notices sent by mail that are returned or not accepted for any reason shall be deemed proper notice of the violation if the notice is sent to the person and address named on the application.

(q) Should 3 notices of violation within any 6 consecutive month period be issued to any vendor, the matter shall be placed on the City Council agenda to consider potential actions with regard to the vendor's extended hours permit. Such agenda item shall be publicly advertised in a newspaper of general circulation a reasonable time prior to any hearing of the agenda item, and written notice of the charges against the vendor shall be provided a reasonable time 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 the Circuit Court in accordance with controlling law. 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 shall range from one day in length to a maximum of 90 days. The maximum penalty for a first appearance by a vendor before the City Council shall be 30 days, shall be 60 days for a second appearance, and shall be 90 days for all appearances thereafter. The City Council shall base its decision on whether there is

substantial, competent evidence presented that supports a finding of noncompliance on 3 or more occasions during any consecutive 6-month period. The City Council may require, as a condition of the continuation of the privilege of extra hours of operation, compliance with any reasonable conditions. The City Council may delegate the responsibility for conducting hearings pursuant to this section to a special magistrate, hearing officer or the City Manager in which case the decision by such person may be appealed to the City Council. Any such delegation shall be by resolution.

(r) Any vendor that has had an extended hours of operation permit suspended or otherwise conditioned is prohibited from purporting to avoid the consequences of the City Council's action by changing its name or corporate status. Upon a showing to the City Council, by clear and convincing evidence, 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.

(s) Those vendors located in the City and engaging in lawful and permitted activities who are as of the effective date of this Section allowed to sell or serve alcoholic beverages later than the hours provided in this section ("pre-existing late night vendors") shall be treated as having an extended hours of operation permit through and including September 30, 2010, subject to the same conditions and possibility of suspension as set forth in this Section. Effective October 1, 2010 all pre-existing late night vendors shall be required to have applied for and been granted an extended hours of operation permit in order to continue to serve alcoholic beverages at hours later than those provided in Subsection (b), and otherwise are subject to the terms of this Section.

(t) It is prohibited and unlawful for a vendor licensed under the State beverage laws to sell liquor, beer or wine by the package, bottle or original container, for consumption off premises, to sell or offer for sale or deliver any liquor, beer or wine in the original package bottle or container for consumption off the premises during any hour prohibited by Subsection (b). Businesses covered by this Section must obtain an extended hours of operation permit and are subject to all of the requirements of this Section.

(u) It is the intention of this Section to prohibit all vendors from permitting anyone purchasing packing goods in the original container to leave the vendor's premises during the prohibited hours, taking with him or her in any container any beers, wines, liquors, or alcoholic beverages originally purchased by package, bottle or container, so that the same may be consumed off the premises. It is not the intention of this Subsection to conflict with any State laws regarding re-corking of wine bottles by restaurants or bars.

(v) It is prohibited and unlawful for any employee of a vendor licensed under the State beverage laws to sell, or offer for sale, any beers, wines, liquors, or alcoholic beverages of any kind during prohibited hours as set forth in this Section.

(w) It shall be deemed a violation of this Section and is prohibited and unlawful for any person, or any agent, servant or employee of any person licensed under the State beverage

laws, during the hours prohibited under this Section, to gratuitously give any kind of alcoholic beverage, whether conditioned upon the purchase of any kind of alcoholic beverage or product of any nature, at any inflated price or otherwise, or in the form of a so-called bonus predicated upon another purchase, or as a gift.

(x) The sale, serving or consumption of alcoholic beverages in any establishment licensed to sell alcoholic beverages in accordance with controlling law during hours other than those specified in this Section is strictly prohibited and is unlawful. Within the meaning of this Section, a sale shall be regarded as being made if the alcoholic beverage is delivered to any person during prohibited hours, regardless of whether payment for the alcoholic beverage is made at some other time.

Sec. 6-3. Sales to intoxicated persons.

It is prohibited and unlawful for a person or entity to sell or cause to be sold or furnished or permit any person in his, her or its employ to sell or furnish any intoxicating liquor, wine or beer in any quantity to any person who is at the time intoxicated or drunk.

Sec. 6-4. Corporate violations.

If any such licensed vendor is a corporation or other legal entity, the officers, partners, or other pertinent officials, of such corporation or entity shall be regarded as the owners thereof for purposes of enforcement of this Chapter.

SECTION 3. REPEAL OF SUBSECTION 5.6(F) OF LAND DEVELOPMENT CODE. Subsection 5.6(F) of the *Land Development Code of the City of Oviedo, Florida* is hereby repealed.³

SECTION 4. ENFORCEMENT AND PENALTIES. The City may enforce the provisions of this Ordinance by any means available to the City under the *Code of Ordinances of the City of Oviedo* or as may be available under the controlling provisions of State law.

SECTION 5. IMPLEMENTING ADMINISTRATIVE ACTIONS. The City Manager is hereby authorized and directed to implement the provisions of this Ordinance by means of such administrative actions as may be deemed appropriate and necessary to include, but not be limited to, the adoption of administrative rules.

SECTION 6. SAVINGS. The prior actions of the City of Oviedo relating to the regulation of alcoholic beverages and the hours of operations of commercial enterprises which sell alcoholic beverages are hereby ratified and affirmed.

SECTION 7. CONFLICTS. All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

³ The provision reads as follows: "(F) Hours of Sale. No business holding a certificate under this article shall sell, consume, serve or permit the service or consumption of any alcoholic beverage between the hours of 2:00 a.m. and 6:00 a.m."

SECTION 8. SEVERABILITY. If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

SECTION 9. CODIFICATION. The provisions of this Ordinance shall become and be made a part of the *Code of Ordinances of the City of Oviedo, Florida* or the *Land Development Code*, as deemed appropriate, and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections, 6, 7, 8, 9 and 10 shall not be codified.

SECTION 10. EFFECTIVE DATE. This Ordinance shall become effective immediately upon enactment.

FIRST READING:

May 17, 2010

SECOND READING:

June 7, 2010

PASSED AND ADOPTED THIS

7th

day of

June

A.D., 2010.

Mary Lou Andrews
MARY LOU ANDREWS
MAYOR of the City of Oviedo, Florida

ATTEST:

Barbara J. Barbour
Barbara J. Barbour
City Clerk

