

Record and Return to:
City of Stuart
121 SW Flagler Avenue
Stuart, FL 34994

**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA
ORDINANCE No. 2252-2012**

AN ORDINANCE OF THE CITY OF STUART, FLORIDA AMENDING CHAPTER 4 OF THE CITY'S CODE OF ORDINANCES REGULATING THE SALE OF ALCOHOLIC BEVERAGES; PROVIDING FOR AN EXCEPTION TO THE OLD DOWNTOWN SECTION'S 30 PERCENT CAP ON THE TOTAL AMOUNT OF FLOOR SPACE THAT MAY BE USED FOR THE SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES, THEREBY CONDITIONALLY ALLOWING CERTAIN FOOD SERVICE ESTABLISHMENTS TO SELL BEER AND WINE WITHOUT REGARD TO THE 30 PERCENT CAP; PROVIDING THAT PROPERTY OWNERS VESTED UNDER THE 30 PERCENT CAP INTENDING TO CLOSE THEIR BUSINESSES FOR RENOVATION MUST DO SO AND BE OPEN FOR BUSINESS BY A CERTAIN DEADLINE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, in 2009, in an effort to maintain a diversity of businesses, the Stuart City Commission adopted regulations limiting to 30 percent the amount of floor space in the Old Downtown Section that can be licensed for alcoholic beverage sales involving consumption on premises, and

WHEREAS, a number of food services establishment owners in the Old Downtown Section, who are unable to obtain a license to sell alcoholic beverages for consumption on premises due to the 30 percent cap, have requested that the City Commission allow beer and wine sales without regard to the 30 percent cap, and

WHEREAS, with certain restrictions, allowing bona fide food services establishments within the Old Downtown Section to sell beer and wine for consumption on premises, without regard to the 30 percent cap, is determined by the Stuart City Commission to be in the Public's best interest, and

WHEREAS, having adopted the 30 percent cap, it is the Stuart City Commission's determination that property owners vested under the 30 percent cap seeking to renovate their premises must do so and be open for business within a specific time period.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: Chapter 4 of the City of Stuart Code of Ordinances is amended to read as follows:

(c) Old downtown section regulations. The following regulations shall apply everywhere in the old downtown section:

- (1) There shall not be permitted any retail sale of package goods, except as an accessory use. This regulation shall not apply to the sale of package beer and wine only.
- (2) All establishments shall comply with the provisions of subsection 38-120(c)(1) [section 20-150], Stuart City Code, (65dBA, C or flat weighted, maximum noise level) at all times.
- (3) No establishment shall be operated as a nightclub.

(d) Designated area regulations. The following regulations shall apply everywhere within the designated area and shall not be variable by major urban code exception or special exception:

- (1) On or after July 1, 2010, there shall be permitted a total of not more than 30 percent of the gross floor area in the designated area, licensed to sell alcoholic beverages by the state for consumption on premises only, and holding a valid 1-COP, 2-COP, 4-COP or 4-COP SRX state liquor license. This restriction shall not affect the holders of other types of state liquor licenses, except as provided elsewhere in this section. This provision shall supersede and replace the 300-foot separation requirement above.

a. Notwithstanding the 30 percent limitation referenced above, businesses in the Old Downtown Section that do not hold a 1-COP, 2-COP, 4-COP or 4-COP SRX state liquor license as of December 1, 2012 may be granted conditional zoning approval by the City Development Director to obtain a 1-COP or 2-COP state liquor license provided the business is and remains a full service restaurant licensed by the state of Florida and meets the following conditions.

(1) The business shall:

- a. have not less than 25 seats and not more than 75 seats, including bar and outside seating.
- b. maintain a full service menu and offer food for sale during all hours of operation
- c. generate at least 51 percent of the business' gross receipts from the sale of food
- d. cease the sale of alcoholic beverages by 10:30 PM

(2) Where conditional zoning approval is being sought by a tenant, both the tenant and the property owner shall be party to the application and must jointly agree to abide by the conditions called for in this section.

(3) Conditional zoning approval, required by the state of Florida for the issuance of an alcoholic beverage license, may be revoked by the City Manager for good cause shown, including violations of this section, excessive calls for police service, underage drinking or noise violations. A decision by the City Manager to revoke conditional zoning approval is appealable to the City Commission.

(4) An application fee for conditional zoning approval may be established by resolution of the City Commission.

- (2) Once the saturation level has been reached by establishments in the designated area, no further establishments, or expansion of existing establishments, shall be permitted, except:
 - a. Upon the sale or transfer of an establishment, and proper application to pay the local business tax, made to the city development director, who shall review the proposed location for compliance with the city codes, or
 - b. Upon the expiration of an alcoholic beverage license on July 1 of any given year.
 - c. Upon issuance of a building permit for the construction of additional first floor area within the designated area.
- (3) In the event that an establishment in the designated area is deemed to have been sold, transferred, or expired, or if a building permit is issued for the construction of additional floor space, the owner of the affected property shall have 90 days thereafter to do the following:
 - a. Have a new occupant for the establishment, with a valid alcoholic beverage license, and provide the city with a recorded memorandum of lease, and a complete application for the alcoholic beverage license (upon issuance by the state, the licensee shall furnish a copy of the alcoholic beverage license); and
 - b. If an existing building is being renovated, or a new building built, or a building addition constructed, have a complete building permit application filed with the city development department, including the payment of all fees, for the renovation of the establishment. Thereafter, the applicant must actively pursue completion of the work and obtain a certificate of occupancy and be open for business within 12 months of the filing of the date the building permit is ready for issuance by the city, unless earlier terminated or later extended by the city manager, for good cause shown. In the event the owner of a building in which there was a valid establishment fails to comply with the provisions in paragraph (3), above, the process to permit a new establishment shall be as follows:
 - a. The city development director shall notify the previous holder of such license to inform them of the forfeiture of the establishment's use for the sale of alcoholic beverages; and
 - b. The city clerk shall advertise the amount of gross floor area which is available for use as an establishment within the designated area, including a response time of at least 15 days for interested parties to make application with the city development director; and
 - c. In the event there is more than one response to the advertisement, the city development director shall have the applicants draw lots to determine which of the applicants shall be permitted to open an establishment. Thereafter, the city development director shall issue

an order granting permission for an applicant to pay the local business tax to open an establishment, if all other code requirements are met.

SECTION 2: All ordinances or parts of ordinances herewith are hereby repealed to the extent of such conflict.

SECTION 3: If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

SECTION 4: The provisions of Section 1 of this ordinance shall be codified.

SECTION 5: This ordinance shall take effect upon adoption.

PASSED on First Reading this 26th day of November, 2012.

Commissioner MCDONALD offered the foregoing ordinance and moved its adoption. The motion was seconded by Commissioner GLASS LEIGHTON and upon being put to a roll call vote, the vote was as follows:

	YES	NO	ABSENT	ABSTAIN
EULA R. CLARKE, MAYOR				
TROY A. Mc DONALD, VICE-MAYOR				
KELLI GLASS LEIGHTON, COMMISSIONER				
JEFFREY A. KRAUSKOPF, COMMISSIONER				
JAMES A. CHRISTIE, JR., COMMISSIONER				

ADOPTED on Second Reading this 10TH day of December, 2012.

ATTEST:

CHERYL WHITE
CITY CLERK

EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL D. DURHAM
CITY ATTORNEY