

Introduced By: Council Member Christine Hoffman
1st Reading: October 7, 2019
2nd Reading: October 21, 2019
3rd Reading: November 4, 2019

ORDINANCE NO. 2019-8116

AN ORDINANCE AMENDING CHAPTER 4, "ALCOHOLIC BEVERAGES", OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, BY AMENDING SECTION 4-2, "PROHIBITED HOURS OF SALE, CONSUMPTION, AND SERVICE", PROVIDING FOR REQUIRED SECURITY MEASURES; PROVIDING FOR ENHANCED PENALTIES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, the City of Jacksonville Beach has the authority to adopt Ordinances pursuant to Article VIII of the Constitution of the State of Florida and Florida Statutes Chapter 166.41; and

WHEREAS, the City has received a number of complaints concerning certain alcoholic beverage establishments licensed under the state beverage laws as special restaurant or special food service establishments which operate as de-facto bars or lounges by operating in violation of applicable laws, including but not limited to, violation of the fifty-one percent (51%) food sales requirement as set forth in F. S. § 561.20; removal of chairs and tables to below state mandated thresholds of 150 seats; failing to provide full service kitchens up to the required hour; among other violations of law; and

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

WHEREAS, Chapter 562.14 of the Florida Statutes authorizes a municipality to regulate conduct related to the sale of alcoholic beverages at an alcoholic beverage establishment; and

WHEREAS, the City has experienced an increase in law enforcement costs as a result of the sale and consumption of alcoholic beverages to individuals who consume alcoholic beverages to the point of intoxication, and particularly after midnight, and the City's law enforcement personnel must respond to a greater number of calls for service directly resulting from the need to keep the peace with individuals who have over-consumed alcohol, particularly after midnight; and

WHEREAS, the City Council, in order to protect the public health and safety of the residents of the City of Jacksonville Beach, desires to regulate the hours of sale, consumption and service of alcoholic beverages, provide for a process and procedures for issuance of extended

hours of operation permits, and encourage responsible alcohol beverage establishments by providing for enhanced penalties, suspension, and revocation of the extended hours of operation permit in the event of violation of the regulations and ordinances of the City; and

WHEREAS, the City finds it is in the best interest of the public health, safety, and welfare to encourage responsible alcohol beverage establishments by providing for requirements for security plans approved by the Jacksonville Beach Police Department and the Jacksonville Beach Fire Marshal as may be needed in furtherance of punishing or preventing criminal activity; and

WHEREAS, the City finds that an Extended Hours of Operation Permit is the exercise of its quasi-legislative function, and further finds that such extended hours of operation represent a privilege rather than a right.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA:

SECTION 1. That Section 4-2, "Hours of sale permitted", of Chapter 4 of the Code of Ordinances of the City of Jacksonville Beach, Florida, be amended, and the same shall read as follows¹:

Sec. 4-2. Prohibited hours of sale, consumption, and service.

(a) *Applicability.* The provisions of this section shall apply to the following state alcoholic beverage license types: **1-COP** (beer only consumption on premises), **2-COP** (beer and wine consumption on premises), **4-COP Quota License** (beer, wine, and liquor package sales and consumption on premises), **4-COP-S** (beer, wine, and liquor consumption on premises in connection with the operation of a hotel, motel, motor court, or condominium), **4-COP-SRX/SFS** (beer, wine, and liquor consumption on premises in connection with a restaurant), **4-COP-SBX** (beer, wine, and liquor consumption on premises in connection with a bowling alley), **11-GC** (beer, wine, and liquor consumption on premises in connection with a golf club), **11-C** (beer, wine, and liquor in connection with a bona fide club, including fraternal or benevolent association lodges or clubs, social clubs; and tennis, racquetball, cabana, or beach clubs, for consumption on premises by members and their guests only), and **ODP** (beer, wine, and liquor consumption on premises for a bona fide non-profit civic organization for a period not to exceed three days and no more than three times per year).

¹ (~~strike through~~ text indicates deletions, underline text indicates additions).

(b) *Definitions.*

- (1) *Sale and Sell* shall mean and include not only selling but also consuming, serving, and/or permitting to be served or consumed, any alcoholic beverages.
- (2) *Alcoholic beverage* shall mean (as provided in F.S. § 561.01) distilled spirits and all beverages containing one-half of one percent or more alcohol by volume.
- (3) *Alcoholic beverage establishment* shall mean any commercial establishment located in the City which allows for alcoholic beverages (beer, wine, or liquor) to be sold for consumption on the premises.
- (4) *Beer, wine and liquor* shall have the same meanings as provided in F.S. §§ 563.01, 564.01, 565.01, as those Sections may be amended or renumbered from time to time.
- (5) *Establishment* shall have the same meaning as alcoholic beverage establishment.
- (6) *Extended Hours of Operation Permit* shall mean a permit issued by the City of Jacksonville Beach that allows an alcoholic beverage establishment to operate and sell alcoholic beverages for purposes of consumption on the premises between the hours of 12:00 midnight and 2:00 a.m.
- (7) *Restaurant* shall mean the same as public food service establishment as defined in F. S. § 509.013 (5)(a), and shall mean and include any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared before being delivered to another location for consumption. For the purposes of this Chapter, the definition of a restaurant shall include any business with a special license issued by the Division of Alcohol and Tobacco of the Florida Department of Business and Professional Regulation.
- (8) *Transfer of ownership* shall mean a transfer of a license, change of officers or directors, or transfer of interest as defined and regulated under the provisions of F. S. § 561.32.

(c) *Restricted hours of sale and operation.* Except as provided in Section 4-2(d), no alcoholic beverage establishment licensed under the state alcoholic beverage laws to sell alcoholic beverages (beer, wine, or liquor), shall sell or offer for sale, or serve or offer to serve, any beer, wine, liquor, or alcoholic beverages of any kind, regardless of alcoholic content, on any day of the week between the hours of 12:00 midnight and 7:00 a.m. Alcoholic beverage establishments shall not be open for operation between the hours of 2:00 a.m. to 6:00 a.m. on any day of the week.

(d) *Permit required for certain alcoholic beverage establishments to sell alcoholic beverages between the hours of 12:00 midnight and 2:00 a.m.*

(1) *Permit required.* A qualifying alcoholic beverage establishment licensed under the state alcoholic beverage laws to sell, offer for sale, or deliver alcoholic beverages, for purposes of consumption on the premises, between the hours of 12:00 midnight and 2:00 a.m., but in any case no later than 2:00 a.m., on any day of the week, shall make application with the City Clerk for an Extended Hours of Operation Permit.

(2) The alcoholic beverage establishment shall complete an application form provided by the City, including, but not limited to, the name and street address where notices related to this section are to be mailed. An annual fee, in an amount set by resolution of the City Council and payable upon issuance, shall be charged for the permit. The application form shall include, but not be limited to, the following information:

- a) Name and street address of the owner of the alcoholic beverage establishment,
- b) Name, street address, and signature of the property owner of record if different from the owner of the alcoholic beverage establishment acknowledging an understanding of Section 4-2 of the Code of the City of Jacksonville Beach.
- c) Valid business tax receipt for the alcoholic beverage establishment,
- d) Verification of compliance by the alcoholic beverage establishment with City zoning regulations,
- e) Specific type of state alcoholic beverage license held by the alcoholic beverage establishment.
- f) If the establishment holds a state alcoholic beverage license other than a 4-COP Quota License, the establishment will submit a copy of the proposed seating diagram, to include any proposed dining area.
- g) Signed approval of the alcohol beverage establishments' security emergency action plan by the Jacksonville Beach Police Department and the Jacksonville Beach Fire Marshal.

(3) The City Manager or designee shall review the application and, if the application is complete, and the alcoholic beverage establishment is in compliance with the Code of Ordinances and state alcoholic beverage laws, a permit shall be issued allowing the alcoholic beverage establishment to sell alcoholic beverages, as restricted by the alcoholic beverage establishment's state beverage license, for purposes of consumption on the premises, between the hours of 12:00 midnight and 2:00 a.m. on every day of the week.

(4) Such permit may be renewed by the City annually on or before the 30th day of September, so long as the alcoholic beverage establishment is compliant with the requirements of this ordinance, unless any of the following occur:

- a) The permit is under suspension at the time of renewal.
- b) The alcoholic beverage establishment's state beverage license has been revoked or suspended,
- c) A transfer of ownership, as defined in Section 4-2. (b)(8) *Definitions.*, or a change in location of the establishment has occurred, and this information was not provided to the City.

(5) The City shall be notified immediately, and the alcoholic beverage establishment shall apply for a new permit if a transfer of ownership, as defined in Section 4-2(b)(8), or a change in location of the establishment has occurred. Until such time as the alcoholic beverage establishment makes application, is approved, and receives a new permit, the privilege of extended hours for the sale of alcoholic beverages shall be suspended. Failure to renew the Extended Hours of Operation Permit on or before the 30th day of September of each year, or to pay the annual fee as set by resolution of the City Council, shall be cause for the immediate suspension of extended hours privileges pursuant to Section 4-2. (e) *Notice of violations, hearings, and penalties.*

(6) No alcoholic beverage establishment is authorized to sell or serve alcoholic beverages for purposes of consumption on the premises after 12:00 midnight unless it possesses a valid Extended Hours of Operation Permit from the City. No alcoholic beverage establishment is authorized to sell or serve alcoholic beverages, after 2:00 a.m. and before 7:00 a.m. on any day of the week. Alcoholic beverage establishments shall not be open for operation between the hours of 2:00 a.m. to 6:00 a.m. on any day of the week.

(7) The provisions of this section shall not impair or affect the right of an alcoholic beverage establishment with a state alcoholic beverage license to remain open and sell alcoholic beverages between the hours of 7:00 a.m. and 12:00 midnight.

(e) *Notice of violations, hearings, and penalties.* The ability of an alcoholic beverage establishment to sell, offer for sale, deliver or permit to be consumed upon the premises any alcoholic beverage between the hours of 12:00 midnight and 2:00 a.m. on any day of the week is hereby declared to be and is a privilege subject to suspension, and no person may reasonably rely upon a continuation of that privilege. As a condition of the continuation of the privilege, alcoholic beverage establishments are required to take all necessary steps to minimize illegal activities.

(1) *Illegal activities included.* The following are representative, but not all-inclusive, of activities that may result in suspension of the privilege of extended hours of operation for authorized alcoholic beverage establishments to sell alcoholic beverages for purposes of consumption on the premises:

- a) Illegal activities requiring a police response that occur on or adjacent to the premises of an alcoholic beverage establishment. Particular emphasis will be given to illegal activities of the owner, employees, patrons of the establishment, or others associated with the establishment; including, but not limited to, the use, sale, or delivery of controlled substances, allowing underage drinking, continuing to sell alcoholic beverages after closing time, violation of open container laws, serving alcoholic beverages to intoxicated persons, disturbances, batteries, driving under the influence (DUI), disorderly intoxication, violations of the Florida Fire Prevention Code, and other violations of law during all hours of operation. The City shall consider whether the need for police services is the result of the establishment's failure or inability to maintain proper order and control during all hours of operation;
- b) Failure of any restaurant, as defined in Section 4-2(b)(7), which possesses a 4-COP-SRX/SFS (Special Restaurant/Special Food Service Establishment) state alcoholic beverage license as addressed under the provisions of F. S. § 561.20(2)(a)4;
 - 1. To maintain at least 2,500 square feet of service area,
 - 2. To be equipped to serve 150 persons full course meals from a menu at tables at all times during all hours of operation,
 - 3. To keep the kitchen open and capable of preparing food and filling customers' orders up to 30 minutes before time of closing,
 - 4. To keep all tables and chairs upright and in place during all hours of operation as per diagram submitted to the city during the permitting process,
 - 5. To derive at least fifty-one (51%) percent of its gross revenue from the sale of food and nonalcoholic beverages. Failure to derive at least fifty-one (51%) percent of its gross revenue from the sale of food and nonalcoholic beverages shall be based on the findings of an audit of the 4-COP-SRX/SFS licensee by the Division of Alcoholic Beverages and Tobacco of the Florida Department of Business and Professional Regulation, irrespective of any sanctions or penalties imposed by said Division pursuant to that audit.
- c) Complaints verified and documented by police arising from adverse effects of extended hours of operation upon neighboring properties, including, but not limited to, excessive noise, illegal parking, vandalism, generation of trash or garbage on or adjacent to the establishment, loitering by intoxicated persons, or exterior lighting on neighboring residential properties;
- d) Violations of any provisions of the City of Jacksonville Beach Code of Ordinances; including, but not limited to, Chapter 18, relating to noise and sound limitations;
- e) Failure to obtain an Extended Hours of Operation Permit, or failure to renew the permit as required;
- f) Violations of state statutes and/or fire codes related to the maximum permissible occupancy at the alcoholic beverage establishment loca-

tion;

- g) *Sales by employees during prohibited hours.* No person, or any agent, servant, or employee of any person licensed under the state alcoholic beverage laws shall sell, or offer for sale, any beer, wine, liquor, or alcoholic beverage of any kind during prohibited hours.
- h) *Gifts.* It is a violation of this section for any person, or any agent, servant or employee of any person licensed under the state alcoholic beverage laws, during prohibited hours as set forth in 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.
- i) Failure to adhere to and follow the security emergency action plan as approved by the City of Jacksonville Beach Police Department and the City of Jacksonville Beach Fire Marshal.

(2) *Successive violations.* In order to invoke the enforcement provisions of this section, a violation must be traceable to the particular alcoholic beverage establishment against which action is taken, and must be verified and documented by a police officer, code enforcement officer, or fire department official.

- a) *1st Notice of Violation.* A first violation by an alcoholic beverage establishment of this section, any section of the Code of Ordinances or state statutes shall result in a written notice of violation. The 1st notice of violation shall be issued by a police officer. The 1st notice of violation shall be sent certified mail to the property owner at the address listed in the tax collector's office or property appraiser's database and left with the owner, proprietor, manager, or highest-ranking employee then on the premises of the alcoholic beverage establishment. Issuance of a 1st notice of violation for a violation of this ordinance shall not prevent the filing of charges against the alcoholic beverage establishment or any person with any other violation of the Code of Ordinances or state statutes.
- b) *2nd Notice of violation.* A subsequent violation of this section, any section of the Code of Ordinances or state statutes by an alcoholic beverage establishment within one hundred, eighty (180) days of issuance of a written 1st notice of violation shall result in a written 2nd notice of violation. The 2nd notice of violation shall be issued by a police officer. The 2nd notice of violation shall be sent certified mail to the property owner at the address listed in the tax collector's office or property appraiser's database and left with the owner, proprietor, manager, or highest-ranking employee then on the premises of the alcoholic beverage establishment. Issuance of a 2nd notice of violation for a violation of this ordinance shall not prevent the filing of charges against the alcoholic beverage establishment or any person with any other violation of the Code of Ordinances or state statutes.
- c) *Special magistrate.* All notices of violation shall be taken before the City's Special Magistrate for consideration of suspension of the alco-

holic beverage establishment's Extended Hours of Operation Permit. The Special Magistrate shall exercise jurisdiction over such matters as set forth in Article VI, Sec. 2-170 of the Code of Ordinances of the City of Jacksonville Beach.

d) *Action by the Special Magistrate.* Upon completion of the hearing, the Special Magistrate shall deliver a ruling either that no action shall be taken against the alcoholic beverage establishment's Extended Hours of Operation Permit, the Extended Hours of Operation Permit shall be suspended, or that the Extended Hours of Operation Permit be revoked.

1. A suspension of the Extended Hours of Operation Permit for a first finding by the special magistrate of a violation shall be for up to sixty (60) days at the discretion of the Special Magistrate depending upon the severity of the violation(s).
2. A second finding by the special magistrate of a violation of the Extended Hours of Operation Permit within one hundred eighty (180) days of issuance of the first notice of violation regardless of the Special Magistrate's finding in said violation shall be suspended for no less than thirty (30) days nor more than ninety (90) days.
3. A third and any subsequent findings of violations occurring within one year (365 days) of the date of completion of the most recent suspension period shall result in a revocation of the Extended Hours of Operation Permit which suspension shall travel with the property for a period of one year (365) days from the date of the finding of violation by the Special Magistrate.
4. In addition to any suspension of the Extended Hours of Operation Permit, as listed above, the Special Magistrate may issue a fine of not more than five hundred dollars (\$500.00) per violation of this ordinance.

The Special Magistrate shall base his/her ruling upon substantial, competent evidence presented that supports a finding of non-compliance with this section. The special magistrate's written order of suspension of the extended hours of operation permit shall state the effective date of suspension and shall give the alcoholic beverage establishment at least ten calendar days notice of the suspension.

e) *Failure of alleged violator to appear.* If an alcoholic beverage establishment served with a Notice of Violation fails to appear at the hearing after having received proper notice, the Special Magistrate shall take testimony from city staff, and other relevant testimony, as available, and shall deliver a ruling either that no action shall be taken against the alcoholic beverage establishment's Extended Hours of Operation Permit, the Extended Hours of Operation Permit shall be suspended for a period of time as set forth in Section 4-2. (e)(2)(d), or that the Extended Hours of Operation Permit be revoked as set forth in Section 4-2. (e)(2)(d) of this section. A ruling that the Extended Hours of Operation be suspended shall take effect on the eleventh calendar

day after the order is issued and provided to the alcoholic beverage establishment. The enforcement of such order shall be stayed if the alcoholic beverage establishment files a request for a rehearing with the City Clerk's office before the date the order is scheduled to take effect. In such case, the alcoholic beverage establishment shall be rescheduled for a hearing before the Special Magistrate. At that hearing, the Special Magistrate shall take testimony from the alcoholic beverage establishment, and other relevant testimony, as available, and shall deliver a ruling upholding the previous order suspending the Extended Hours of Operation Permit, amending the order suspending the Extended Hours of Operation Permit, or rescinding the order suspending the Extended Hours of Operation Permit. If the Special Magistrate upholds a suspension of the Extended Hours of Operation Permit, such suspension shall take effect the next calendar day after the ruling is issued.

- f) Any alcoholic beverage establishment that has had an Extended Hours of Operation Permit suspended cannot avoid the consequences of the Special Magistrate's action by changing its business name or corporate status, as set forth in F. S. § 561.32.
- g) The enforcement procedures contained herein are alternative procedures, and the City reserves the right to arrest, prosecute, or take action utilizing alternative procedures authorized by law.

(f) Existing holders of valid Extended Hours of Operation Permits on the date of passage of this ordinance shall be granted six (6) months or the next annual renewal of the permit, whichever is less, in order to comply with the requirements of Sec. 4-2. (d)(2)(g).

SECTION 2. If any provision of this Ordinance or the particular application of this Ordinance shall be held invalid by any Court, administrative agency or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases shall remain in effect.

SECTION 3. That all other ordinances or parts of ordinances in conflict with this ordinance are, to the extent the same may be in conflict, repealed.

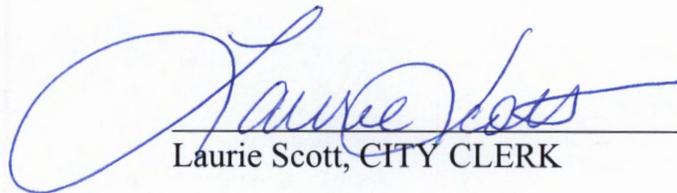
SECTION 4. Codification of this ordinance in the Code of Ordinances of the City of Jacksonville Beach is hereby authorized and directed.

SECTION 5. This ordinance shall take effect upon the date of its adoption.

DONE IN OPEN MEETING THIS 4th DAY OF November, A.D. 2019.



William C. Latham, MAYOR



Laurie Scott, CITY CLERK