

ORDINANCE NO. 2761-09

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA RELATING TO ALCOHOLIC BEVERAGES; AMENDING SECTION 10-33 OF CHAPTER 10 OF THE CODE OF ORDINANCES TO SPECIFY HOURS DURING WHICH SALES, CONSUMPTION AND SERVICE ARE PROHIBITED SPECIFYING REQUIRED PERMITS FOR VENDORS TO SELL ALCOHOL PAST 11:00 P.M.; PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED by the people of the City of Winter Park, Florida as follows:

Section 1. Section 10-33, "Hours during which sales, consumption and service are prohibited", of Chapter 10 of the Code of Ordinances of the City of Winter Park is hereby amended to read as follows:

Sec. 10-33. Hours during which sales, consumption and service are prohibited.

(a) *Prohibited hours of sale, consumption and service.* No vendor, convenience store, club, nightclub, cocktail bar, hotel bar, package store, bottle club, restaurant bar, or other person or entity (referred to hereinafter collectively as "vendors"), 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 midnight. Sale, service or consumption after the applicable hour is prohibited.

(b) *Permits required for premises to remain open past 11:00 p.m.; suspension of permits.*

(1) *Permits required.* All 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 business tax department for an Extended Hours of Operation Permit. For the city's fiscal year 2008/2009, vendors shall submit an application within 30 days from the effective date of this ordinance.

(2) The application form shall be provided by the city. The vendor shall complete the application by providing the information requested about the vendor, including but not limited to the name and address where notices related to this section are to be mailed. Permit holders are required to amend the license application that is on file with the City of Winter Park within 30 days of any change in the information set forth on the application form.

(3) The city manager or designee shall review the application and, if the 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.

(4) Such permit must be renewed annually on or before the 30th day of September of each year, unless the permit has been suspended by the City of Winter Park or the vendor's state beverage license has been revoked. The City will provide an appropriate form and allow the extended hours of operation permit to be applied for at the same time as the alcoholic beverages sales permit required by the City. In the event that there has been a change in ownership or a change in location of the establishment, the city must be notified immediately and a new application must be processed. Failure to renew the extended hours of operation permit shall be cause for the immediate suspension of extended hours privileges pursuant to subsection (7) below.

(5) No vendor may sell alcoholic beverages after 11:00 p.m. unless it has received an Extended Hours of Operation Permit from the city.

(6) The provisions of this section shall not impair or impact an establishment's right to remain open prior to midnight.

(7) *Permit suspension.* The ability to sell, offer for sale, deliver or permit to be consumed upon the premises any alcoholic beverage beyond the hour of 11:00 p.m. on any day of the week is hereby declared to be and is a privilege subject to suspension by the city commission, and no person 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 impacts that their establishment may cause in nearby residential or commercial neighborhoods. The city commission shall consider the following in deciding whether to suspend or condition the privilege:

a. 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;

b. 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 commission 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;

c. Complaints verified by the police, arising from adverse effects extended hours of operation have upon neighboring properties, including 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 or exterior lighting on 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 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 City of Winter Park Code of Ordinances;

d. Violations of any provisions of the City of Winter Park Code of Ordinances;

e. Failure to obtain an Extended Hours of Operation Permit, or failure to renew the permit as required by subsections (4) and (5) above;

f. Violations of laws relating to the maximum permissible occupancy of vendor;

g. Violation of any provisions of the City of Winter Park Code of Ordinances, state or federal law.

In order to invoke the enforcement provisions of this section, the activities described hereinabove must be traceable to the particular vendor against whom action is being taken, and also must be verified by police officers on the scene. 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.

(8) Notice of violation of this section shall be issued to any vendor that meets, or where applicable, fails to meet the criteria established in (7)a., b., c., d., e., f., and

g. above. 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 vendor at the street address provided in the application. Proof of delivery by either of these 2 methods (hand delivery or mail) shall be sufficient to establish receipt by the permit holder. Notices sent by mail that are returned or not accepted for any reason shall be deemed proper notice of the violation, provided that the notice is sent to the person and address named on the application.

(9) Should 3 notices of violation within any 3 consecutive month period be issued to any vendor, the matter shall be placed on the city commission agenda to consider the vendor's extended hours permit.

a. Such agenda item shall be publicly advertised in a newspaper of general circulation at least 14 days prior to any hearing of the agenda item, and written notice of the charges against the vendor shall be provided at least 14 days 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 circuit court.

b. After consideration of the matter and allowing the vendor to be heard, the city commission may take no action, suspend or condition the extended hours privilege, as they deem appropriate. Suspensions shall range from 1 day in length to a maximum of 90 days. The maximum penalty for a first appearance by a vendor before the city commission shall be 30 days, 60 days for a second appearance and 90 days for all appearances thereafter. The city commission shall base its decision on whether there is substantial, competent evidence presented that supports a finding of non-compliance with the criteria in (7)a., b., c., d., e., f., or g. on 3 or more occasions during any consecutive 3 month period.

c. The city commission may require, as a condition of the continuation of the privilege of extra hours of operation, compliance with any reasonable conditions

d. The city commission may delegate the responsibility for conducting hearings pursuant to this section to a special magistrate. Any such delegation shall be by resolution.

(10) Any vendor that has had an Extended Hours of Operation Permit suspended or otherwise conditioned cannot avoid the consequences of the city commission's action by changing its name or corporate status. Upon a showing to the city commission that there has been a legitimate change in ownership at the location affected by the city commission's action(s), the city commission 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.

(11) *Vendors who were allowed to serve alcohol under previous ordinance.* Those vendors in the city 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, 2009, subject to the same conditions and possibility of suspension as set forth above. As of October 1, 2009, such pre-existing late night vendors shall be required to apply for an Extended Hours of Operation Permit in order to continue to serve alcoholic beverages at hours later than those provided in subsection (a) above, and otherwise are subject to the terms of this section.

(c) *Liquors, beers and wines hours of sale.* No vendors licensed under the state beverage law to sell liquor, beer or wine by the package, bottle or original container, for consumption off premises, shall 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 (a) above. Businesses covered by this section are also required to obtain an Extended Hours of Operation Permit, and are subject to all of the requirements of section (b).

(d) *Taking container off premises after hours.* It is the intention of this section to prohibit those vendors subject to subsection (c) above from permitting anyone purchasing packing goods in the original container to leave the vendor's premises during the prohibited hours, taking with him 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.

(e) *Sales by employees during prohibited hours.* Any employee of a vendor licensed under the state beverage law shall not sell, or offer for sale, any beers, wines, liquors, or alcoholic beverages of any kind during the prohibited hours.

(f) *Gifts.* It shall be deemed a violation of this section for any person, or any agent, servant or employee of any person licensed under the state beverage law, during the hours prohibited under (c) above, 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.

Section 2. Subsection (b) of Section 10-33 is hereby renumbered as (g), subsection (c) is hereby renumbered (h), subsection (d) is hereby renumbered (i), and subsection (e), which contains special hours regulations related to the Westside neighborhood is hereby renumbered (j) and shall remain in effect.

Section 3. It is the intention of the city commission of the city that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the city; and that sections of this ordinance may be numbered or renumbered or lettered or relettered and the word "ordinance" may be changed to "chapter", "section", "article", or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be numbered or renumbered or lettered or relettered and typographical errors which do not affect the intent may be authorized by the city manager, without need of public hearing, by filing a corrected or recodified copy of same with the city clerk.


Section 4. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 5. If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof

shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses or phrases under application shall not be affected thereby.

Section 6. This ordinance shall take effect immediately upon its passage and adoption.

Adopted at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida on the 26th day of January, 2009.



Mayor David C. Strong

Attest:



City Clerk Cynthia Bonham

AWARD\CITY\ORD.RES\alcohol-ordinance
(January 21, 2009)