



TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Development Services

Department Submitting Request


Dept Head's Signature 33

Commission Meeting Dates	Last date to turn in to Town Clerk's Office	Commission Meeting Dates	Last date to turn in to Town Clerk's Office	Commission Meeting Dates	Last date to turn in to Town Clerk's Office
<input type="checkbox"/> May 25, 2010	May 14 (5:00 p.m.)	<input checked="" type="checkbox"/> July 27, 2010 August 2010	July 16 (5:00 p.m.) Commission Recess	<input type="checkbox"/> Oct 26, 2010	Oct 15 (5:00 p.m.)
<input type="checkbox"/> June 8, 2010	May 28 (5:00 p.m.)	<input type="checkbox"/> Sept 14, 2010	Sept 3 (5:00 p.m.)	<input type="checkbox"/> Nov 9, 2010	Oct 29 (5:00p.m.)
<input type="checkbox"/> June 22, 2010	June 11 (5:00 p.m.)	<input type="checkbox"/> Sep 28, 2010*	Sept 17 (5:00 p.m.)	<input type="checkbox"/> Nov 23, 2010	Nov 12 (5:00p.m.)
<input type="checkbox"/> July 13, 2010	June 2 (5:00 p.m.)	<input type="checkbox"/> Oct 12, 2010	Oct 1 (5:00p.m.)	<input type="checkbox"/> Dec 14, 2010	Dec 3 (5:00p.m.)

* Subject to change – Sukkot

NATURE OF AGENDA ITEM

- | | | |
|---|---|--|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Resolution | <input type="checkbox"/> Manager's Report |
| <input type="checkbox"/> Public Safety Report | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Attorney's Report |
| <input type="checkbox"/> Consent Agenda | <input type="checkbox"/> Old Business | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> Ordinance | <input type="checkbox"/> New Business | |

SUBJECT TITLE: Ordinance 2010-01 - Hours of Business – First Reading

EXPLANATION: This item has been discussed previously by the Commission with direction and reviewed by the Planning & Zoning Board (P&Z). The following are the dates of events:

- October 20, 2009 – Commission approved drafting a revision to 12-10
- February 9, 2010 – Commission deferred the item till April 27, 2010,
- April 27, 2010 – Commission referred the item to P&Z with direction to provide recommendations back to them.
- June 16, 2010 – Planning and Zoning reviewed the proposed ordinance and provided their recommendation.

BOARD/COMMITTEE RECOMMENDATION: "Mr. Brandt made a motion, seconded by Mr. Yankwitt, that this Ordinance regarding Code Amendments to 12-10 to allow businesses throughout Town to extend business hours to provide a greater service and convenience to residents and visitors be sent to the Town Commission for approval. In a roll call vote, George Hunsaker and Ben Freeny voted no. The motion passes 3 – 2."

STAFF RECOMMENDATION: Approve with Board recommendations (Attachment "B")

FISCAL IMPACT AND APPROPRIATION OF FUNDS:

- | | |
|---|--|
| <input type="checkbox"/> Amount \$ _____ | <input type="checkbox"/> Acct # _____ |
| <input type="checkbox"/> Transfer of funds required | <input type="checkbox"/> From Acct # _____ |
| <input type="checkbox"/> Bid | <input type="checkbox"/> Grant <input type="checkbox"/> Amount represents matching funds |

Town Attorney review required
 Yes No

07-21-10P03:13 RCVD

Town Manager's Initials: CH

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ORDINANCE 2010-01

**AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-
THE-SEA, FLORIDA AMENDING CHAPTER 12
“LICENSES,” ARTICLE I “BUSINESS TAXES,” SECTION
12-10 “HOURS OF BUSINESSES WITHIN THE CITY
LIMITS RESTRICTED”; AND FURTHER AMENDING
CHAPTER 12 “LICENSES” BY ESTABLISHING A NEW
ARTICLE III “EXTENDED HOURS LICENSE” OF THE
CODE OF ORDINANCES; PROVIDING FOR APPLICATION
AND REVIEW PROCEDURES; PROVIDING FOR
APPLICABLE REVIEW CRITERIA; PROVIDING FOR
ISSUANCE, REVOCATION, RENEWAL, AND IMPOSITION
OF CONDITIONS; PROVIDING FOR APPEAL
PROCEDURES; PROVIDING FOR LICENSE TRANSFER;
PROVIDING FOR SEVERABILITY, CODIFICATION,
CONFLICTS, AND AN EFFECTIVE DATE.**

20 **WHEREAS**, the Town of Lauderdale-By-The-Sea’s (“Town’s”) business regulations
21 related to hours of operation provide that no commercial business may open earlier than 6:00 a.m.
22 and close later than 2:00 a.m.; and

23 **WHEREAS**, upon further review and inquiry, the Town Commission has determined that
24 such business regulations should be modified in order to allow businesses throughout the Town an
25 opportunity to provide greater service and convenience to residents and visitors; and

26 **WHEREAS**, the Town Commission desires to provide for a process and procedure for the
27 issuance of extended hours licenses, subject to review criteria and the imposition of conditions
28 necessary to mitigate or eliminate the potential adverse effects of such extended hours of operation;
29 and

30 **WHEREAS**, the extended hours licenses are a privilege granted by the Town Commission,
31 and are regulatory in nature; and

WHEREAS, no business may reasonably rely upon the continuation of that privilege; and

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32 **WHEREAS**, the extended hours licenses are subject to suspension, revocation, and the
33 imposition of conditions; and

34 **WHEREAS**, at the request of the Town Commission, the Town’s Planning and Zoning
35 Board has reviewed this Ordinance at its June 16, 2010 meeting, and recommended its approval;
36 and

37 **WHEREAS**, the Town Commission conducted a first and second reading of this Ordinance
38 at duly noticed public hearings, as required by law, and after having received input from and
39 participation by interested members of the public and staff, the Town Commission has determined
40 that this Ordinance is in the best interest of the Town, its residents, and its visitors.

41 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE**
42 **TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:**

43 **SECTION 1. Recitals.** The foregoing “WHEREAS” clauses are hereby ratified and
44 confirmed as being true, correct and reflective of the legislative intent underlying this Ordinance
45 and are hereby made a specific part of this Ordinance.

46 **SECTION 2. Section 12-10 Amended.** Chapter 12 “LICENSES,” Article I “Business
47 Taxes,” Section 12-10 “Hours of businesses within the city limits restricted,” is hereby amended as
48 follows:

49 **Sec. 12-10. Hours of businesses within the city limits restricted**

50 No ~~mercantile or commercial business or any other~~ place of business ~~not specifically~~
51 ~~delineated~~ shall open earlier than 6:00 a.m. ~~and shall not~~ or close later than 2:00 a.m. This
52 restriction shall not apply to hotels or fishing piers, shall not apply where provided by state law, and
53 shall not apply where an extended hours license has been granted by the Town Commission.
54

55 **SECTION 3. Article III Established.** Chapter 12 “LICENSES,” Article III “Extended
56 Hours License,” is hereby established as follows:

57 **ARTICLE III. EXTENDED HOURS LICENSE**

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Sec. 12-60. Extended hours license procedure.

(a) *Extended hours license procedure.* Any business holding a valid business tax receipt granted by the Town may apply for an extended hours license. Such application shall be processed using the procedures and criteria listed in this Article. The fee for the issuance of the extended hours license shall be set by resolution of the Town Commission, and shall be paid prior to issuance of the license and prior to annual renewal of an extended hours license thereafter. An extended hours license shall permit and extend the hours in which such a licensee may open earlier than 6:00 a.m. and/or to remain open later than 2:00 a.m. Extended hours licenses are a privilege granted by the Town Commission, and are declared to be and are regulatory in nature, and revocable pursuant to the procedure set forth in this Article.

(b) *Revocation of extended hours licenses and approvals, and establishment of extended hours licensing procedure.* The ability to operate a business beyond the time frames established in Section 12-10 is hereby declared to be and is a privilege subject to suspension, revocation, and the imposition of conditions as provided below, and no business may reasonably rely upon the continuation of that privilege. Any business requesting to open earlier than 6:00 a.m. and/or to remain open later than 2:00 a.m. shall be required to submit an application and receive approval for an extended hours license.

Sec. 12-61. Application and review procedures for extended hours licenses.

(a) *Application.* An application for an extended hours license shall be submitted, on a form furnished by the Town, to the Development Services Director or his/her designee, along with a nonrefundable application fee. The amount of the application fee shall be established by resolution of the Town Commission.

(b) *Notice.* Notice on any proposed extended hours license shall be made in accordance with the quasi judicial notice requirements provided for within Section 30-13(d)(2). Staff is authorized to charge the applicant reasonable fees associated with the Town's cost of preparing, mailing and publishing notices.

(c) *Determination.* The Town Commission shall approve, approve with conditions, or deny the request for an extended hours license in accordance with the procedures and criteria established within this Article.

(1) *Hearing.* The Town Commission, in accordance with the procedures of this Article, shall conduct a quasi-judicial public hearing on the application for an extended hours license, during which staff, the licensee and affected persons may address the Town Commission.

a. *Approval.* The Town Commission may approve an application for an extended hours license upon a determination that the subject application is consistent with the health, safety, and welfare of the Town.

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105 b. *Conditional approval.* The Town Commission may require, as a condition of
106 the privilege of extending hours of operation, compliance with any reasonable
107 condition deemed to be necessary to mitigate or eliminate the potential adverse
108 effects of such extended hours of operation, in addition to the criteria and
109 conditions provided in Section 12-62(a). These conditions may include, without
110 being limited to, provision by the owner or operator, at his/her expense, of
111 additional off-street parking, measures designed for security, crowd control, and
112 noise attenuation, and other assurances designed to mitigate the effects of the
113 extended hours of operation.

114
115 c. *Denial.* An application which is determined by the Town Commission to be
116 inconsistent with the public health, safety, and welfare shall be denied. Any
117 applicant who makes an application which is denied shall be precluded from
118 making another application for one hundred eighty (180) days from the date of
119 such denial.

120
121 **Sec. 12-62. Review criteria for extended hours licenses.**

122
123 (a) *Review criteria.* An application for an extended hours license shall be submitted for review
124 by the Development Services Department based on the criteria of this subsection and consistency
125 of the application with the public health, safety, and welfare of the Town. The Director of
126 Development Services shall review the application and prepare a report to the Town Commission
127 recommending approval, approval with conditions, or denial, based upon the following criteria:

128
129 (1) The amount and degree of law enforcement activities generated by the operation of
130 any establishment, and by previous establishments in the same location;

131
132 (2) The adverse effects of the extended hours of operation shall not place an undue
133 burden on the neighborhood in proximity to the establishment, especially with respect to
134 patron activities and effects of noise, parking, and vehicular use;

135
136 (3) The proposed extended hours of operation must be compatible with the existing uses
137 in the neighborhood in proximity to the establishment;

138
139 (4) During all hours of operation, the establishment shall comply with the following
140 conditions:

141
142 a. A security camera system capable of recording and retrieving video images to
143 assist in offender identification and apprehension shall be provided. The system
144 must capture entrances and exits, cash register and parking lot. Camera must be
145 activated and recording video during all hours of operation.

146
147 b. The establishment shall post exterior warning signage stating that loitering is
148 prohibited.

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150 c. The licensee shall not relinquish control of the operation or management of
151 the business to any other person or entity.
152

153
154 The applicant shall demonstrate compliance and assurance of continued compliance with
155 these and any other conditions of approval, as may be imposed by the Town Commission.
156

157 **Sec. 12-63. Issuance, revocation, and renewal of extended hours license.**
158

159 (a) *Approval and issuance.* Following consideration of the extended hours license by the
160 Director of Development Services, the Director or his/her designee, shall forward a
161 recommendation for approval, denial, or conditional approval of the license to the Town
162 Commission. Upon approval or conditional approval of an application for an extended hours
163 license by the Town Commission based upon the criteria of Section 12-62(a), the extended hours
164 license shall be issued upon payment of a license fee as established by resolution of the Town
165 Commission, the payment of which shall be further required upon each annual renewal of an
166 extended hours license.
167

168 (b) *Revocation, suspension, or imposition of additional conditions and/or restrictions.*
169

170 (1) If, at any time, the Director of Development Services or his/her designee determines
171 that any extended hours license holder has failed to comply with any applicable condition
172 of its license, or is operating in a manner harmful to the public health, safety or welfare
173 he/she may place on the Town Commission agenda an item to determine whether the
174 extended hours license should be revoked based upon the failure to meet the following
175 criteria. The Director of Development Services or his/her designee shall prepare a report
176 which provides an analysis of the following:
177

178 a. During the extended hours of operation, the extended hours license holder
179 shall comply with all conditions imposed at the time of license issuance;
180

181 b. During the extended hours of operation, the extended hours license holder
182 shall take all reasonable precautions to discourage unlawful activity, including
183 vandalism, crimes against property or persons, disturbances, loitering of patrons,
184 narcotics use or distribution, excessive noise, vehicular use by intoxicated
185 patrons, and illegal activity of any kind by employees, patrons or others
186 associated with the establishment; and
187

188 c. During the extended hours of operation, the extended hours license holder
189 shall take all reasonable efforts to prevent nuisances both inside and outside the
190 business.
191

192 (2) The Town Manager, on the advice of staff, shall have the power to enter an order
193 revoking immediately an extended hours license.
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195 (3) A quasi judicial hearing on revocation, suspension, or imposition of additional
196 conditions may be noticed upon application and conducted pursuant to the procedures
197 and criteria established within this Article. The Town Commission will consider the
198 matter de novo, and will determine whether the Town Manager was justified in revoking
199 the extended hours license and whether the license should remain revoked. The burden of
200 proof will be on the applicant seeking the reinstatement of a revoked license.
201

202 (4) After consideration of the matter, and after allowing staff and the license holder to
203 address the Town Commission, and allowing all other affected parties to speak, the Town
204 Commission may revoke the extended hours license or allow the licensee to continue
205 operating during extended hours, subject to any reasonable additional conditions deemed
206 necessary to mitigate or eliminate the adverse effects of such extended hours. These
207 conditions may include, without being limited to, provision by the licensee, at its
208 expense, of additional security personnel, sound-proofing or noise reduction, and/or
209 provision of additional parking.
210

211 (5) Should the extended hours license be revoked, no reapplication shall be considered
212 for that location within a twelve (12) month period following the date of revocation. No
213 revoked extended hours license shall be reinstated until all applicable conditions of the
214 license are met and the payment of a reinstatement fee in an amount established by
215 resolution of the Town Commission is made.
216

217 (c) *Renewal of extended hours license.*
218

219 (1) Each extended hours license shall be required to be renewed no later than one (1)
220 year following the date of initial granting of the license. The annual renewal of any
221 extended hours license shall be processed by the Director of Development Services or
222 his/her designee and reviewed based upon the criteria established in Section 12-62(a).
223

224 (2) If the Director of Development Services or his/her designee approves the renewal,
225 the license shall be issued upon payment of the aforementioned annual fee.
226

227 (3) If the Director of Development Services or his/her designee denies the renewal, the
228 licensee shall have ten (10) days from the date of the notice of denial to appeal the
229 decision to the Town Commission. The Town Commission shall use the criteria and
230 procedures specified within this Article in determining said appeal.
231

232 (4) At the time of the license renewal, the Director of Development Services or his/her
233 designee may, based upon the criteria of Section 12-62(a), recommend the imposition of
234 additional conditions upon the extended hours licensee. If additional conditions are
235 recommended by the Director of Development Services or his/her designee, the renewal
236 shall be placed on the Town Commission quasi judicial agenda for hearing on the
237 proposed imposition of additional conditions, in accordance with the notice and hearing
238 procedures established in this Article.
239

240 (d) *Appeal procedure.*

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241
242 (1) The owner of a business for which an extended hours license is requested may
243 appeal to the Town Commission, consistent with this Article, any decision rendered by
244 the Director of Development Services or his/her designee to deny the renewal of an
245 extended hours license. Within ten (10) days of the decision, an appeal may be made in
246 writing to the Town Clerk, which shall schedule a public hearing as soon as practicable.
247 Notice shall be given and a public hearing shall be held as prescribed in this Article. The
248 Town Commission shall consider the appeal and shall render a decision based on the
249 standards and criteria set forth in Section 12-62(a).

250
251 (e) *Transferability.* An extended hours license shall not be transferable. However, if a business
252 is sold and the operation of the business remains identical to that described on the approved
253 extended hours license, then the new owners will be required to apply for a new extended hours
254 license, within thirty (30) days of the purchase.

255
256 **SECTION 4.** Severability. If any section, sentence, clause or phrase of this Ordinance is
257 held to be invalid or unconditional by any court of competent jurisdiction, then said holding shall in
258 no way affect the validity of the remaining portions of this Ordinance.

259 **SECTION 5.** Conflicts. All ordinances or parts of Ordinances and all Resolutions or
260 parts of Resolutions in conflict with the provisions of this Ordinance are hereby repealed.

261 **SECTION 6.** Effective Date. This Ordinance shall become effective immediately upon
262 passage on second reading.

263 **SECTION 7.** Codification. This Ordinance shall be codified.

264 **SECTION 8.** Adoption. Passed on the first reading, this ___ day of _____, 2010.
265 Passed on the second reading, this ___ day of _____, 2010.

266
267
268 _____
269 Mayor Roseann Minnet

	First Reading	Second Reading
270		
271 Mayor Minnet	_____	_____
272 Vice-Mayor Dodd	_____	_____
273 Commissioner Clottey	_____	_____
274 Commissioner Sasser	_____	_____
275 Commissioner Vincent	_____	_____

RESOLUTION 2010-__

**A RESOLUTION OF THE TOWN COMMISSION OF THE
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA,
ADOPTING FEES RELATED TO LICENSES FOR
EXTENDED OPERATING HOURS FOR BUSINESSES**

WHEREAS, Article III “Extended Hours License” of Chapter 12 “Licenses” of the
Lauderdale-By-The-Sea Code of Ordinances establishes a process by which businesses can apply
for approval of a license allowing them to operate between 2:00 am and 6:00 am; and

WHEREAS, the Town Commission seeks to adopt the amount of the fees to be charged
in relation to the extended hours license process.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF
THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:**

SECTION 1. Pursuant to Article III “Extended Hours License” of Chapter 12
“Licenses” of the Lauderdale-By-The-Sea Code of Ordinances, the following fees are hereby
established:

Application: \$ _____
Issuance: \$ _____
Renewal: \$ _____

SECTION 2. This resolution shall become effective upon passage and adoption.

PASSED AND ADOPTED this ____ day of _____, 2010.

MAYOR ROSEANN MINNET

ATTEST:

June White, Town Clerk
(CORPORATE SEAL)

Approved as to form:

Susan L. Trevarthen, Town Attorney

'' B ''

Chairman Oldaker asked for Attorney Trevarthen to present Agenda Item #5.

Attorney Trevarthen said that Item #5 is an Ordinance amending Chapter 12 called "Licenses", Article I of "Business Taxes", Section 12-10 "Hours of businesses with the city limits restricted"; and further amending Chapter 12 "Licenses" by establishing a new Article II "Extended Hours License" of the Code of Ordinances; providing for application and review procedures; providing for applicable review criteria; providing for revocation, suspension, or imposition of conditions; providing for license renewal; providing for appeal procedures; providing for license transfer; providing for severability, codification, and an effective date.

Attorney Trevarthen said that this is a proposal that emerged some time ago when a property owner in the community came forth and was interested in a 24 hour operation during the winter season. That request resulted in an original Ordinance that was provided in the board's back-up material. This matter was considered on a number of occasions by the Town Commission and ultimately an ordinance was prepared that would not create an automatic right to the ability to operate over night but would rather create a process and a license so that people would have to apply for that right to be open between 2 and 6 A.M. The Ordinance that is before the board lays out the procedure and provides the criteria and conditions that would have to be met and if the conditions are not met, then the license could be revoked.

Mr. Bentley interjected that this Ordinance does not allow the extension for the sale of alcohol, which was covered in another section of the Town's code. Mr. Bentley said that alcohol sales would continue to stop at 2 A.M. Mr. Bentley wanted to make the point that a business that sells alcohol could apply for extended hours for food service or for whatever other type of business they would have, but they would not be able to apply for any extended hours for the sale of alcohol.

The Attorney Trevarthen said that there is a statute on point and the code already deals with the sale and service of alcohol and this issue is not a subject that the board would be considering at this meeting. The board is being asked to look at other kinds of operations between the hours of 2 and 6 A.M.

Mr. Bentley commented that many communities believe this is a self-regulating issue and have not regulated the hours for a typical retail establishment and that is reflected in the original draft of the Ordinance. The secondary draft states that a retail establishment would have to apply and obtain permission for extending their hours of operation.

Mr. Hunsaker said that he did not feel that the board needed to spend a lot of time on this and it was his opinion that there was no real need for this type of Ordinance. Mr. Hunsaker did not think that the community desires an Ordinance to permit businesses to operate before 6 A.M. or after 2 A.M. Mr. Hunsaker said that you should not start this because one business in Town desired to have a pharmacy open during the season and he did not feel that someone would walk to a pharmacy after 2 A.M. Mr. Hunsaker said it was his opinion that the board should move this on to the Town Commission with the recommendation to disapprove.

Mr. Freeny agreed with Mr. Hunsaker's comments and interjected that one argument to allow the Ordinance was to provide a benefit to residents and tourists in Town to allow access to a drug store after hours. Mr. Freeny said that he did know that a couple blocks south on A1A, there was a 24 hour drug store that people would have access to. Mr. Freeny said that he was not in favor of this Ordinance.

Mr. Yankwitt said that it was his understanding that the way this Ordinance was written was to have an application to have a license so that you could operate if you chose between 2 and 6 A.M., and that proposal would go before a governing body to either grant or deny the license request. So this Ordinance would be to establish a procedure in order to approve or disapprove and to give a mechanism to grant that license. So, what would it hurt to have a mechanism to grant for example 101 Ocean's or Aruba's to allow them to operate to 6 A.M in the morning which would attract more visitors into the area and would prosper the businesses that were open that early.

Mr. Hunsaker said that he understood it was a procedure but in his option the Town did not need this procedure. Mr. Hunsaker said that the drug store in Sea Ranch Lakes was originally open for 24 hours and they very quickly learned there was not sufficient demand even at the height of the season to stay open for a 24 hours, so they scaled back their hours. Mr. Hunsaker said that this example is reason enough for him to conclude that there is not enough demand for establishments to be open between 2 and 6 A.M.

Mr. Yankwitt agreed with Mr. Hunsaker's comment. However, when it's New Year's Eve or if you are celebrating other holidays, or a birthday, he tends to like to stay out all night and party. Mr. Yankwitt said that on those special occasions, the party just starts to get going around 11:00 or 12:00. Mr. Yankwitt said that this Ordinance was not to deny the possibility of staying open later but to grant these businesses the ability to apply for a license for which they could be granted or denied.

Mr. Brandt agreed that this is mostly procedural and referred to page 2 line 55 and suggested that in all cases there should be an application made for the Town and said that maybe the "or" should be an "and". Mr. Brandt was in favor of Ordinance to create a procedure that would state that anyone who applied for a license for extended business hours would have to go before the Town Commission.

Attorney Trevarthen said that she would certainly take that suggestion and said that he was correctly interpreting the Ordinance and said that no individual would have the right to the extended business hours with the passage of this Ordinance; they would only have access to a procedure.

Mr. Brandt made a motion, seconded by Mr. Yankwitz, that this Ordinance regarding Code Amendments to 12-10 to allow businesses throughout Town to extend business hours to provide a greater service and convenience to residents and visitors be sent to the Town Commission for approval. In a roll call vote, George Hunsaker and Ben Freeny voted no. The motion passes 3 – 2.

Commissioner Vincent made a motion to approve minutes. Vice Mayor Dodd seconded the motion. The motion carried 5 - 0.

10. ORDINANCES - PUBLIC COMMENTS

1. Ordinances 1st Reading

- a. Ordinance 2010-01: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA AMENDING CHAPTER 12 "LICENSES," ARTICLE 1 "BUSINESS TAXES," SECTION 12-10 "HOURS OF BUSINESSES WITHIN THE CITY LIMITS RESTRICTED" OF THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE – *Deferred at the February 9, 2010 Commission meeting by Commissioner Clotney*

Attorney Trevarthen read Ordinance 2010-01 by title.

Mayor Minnet opened the meeting for public comment. With no one wishing to speak, Mayor Minnet closed the public comment portion of the meeting.

Attorney Trevarthen stated that the proposed ordinance grew out of a request received by one of the local businesses to stay open during the season.

Commissioner Sasser believed the code itself was restrictive to businesses other than those specifically delineated. He asked whether the pier would be delineated. Attorney Trevarthen recalled that the matter was presented to them as something that predated the ordinance, such as the pier's activities.

Mayor Minnet explained that she did not want the proposed ordinance to preclude any of the pier's existing activities. Mayor Minnet said that the subject matter was brought forward because Walgreen's wanted to be open for 24-hour hours during season.

Commissioner Sasser suggested that the wording be clearer on what businesses were specifically delineated.

Attorney Trevarthen agreed the ordinance was not a model of clarity and requested Commission direction.

Commissioner Sasser stated that the proposed ordinance allowed any mercantile or commercial business to remain open 24 hours during the months of October through April. He said the Commission had to decide whether it was to the Town's benefit to permit all businesses to remain open 24 hours during the set period or could Walgreen's be specifically delineated to prevent this occurrence.

Attorney Trevarthen recalled prior discussions of the Commission wanting a case-by-case scenario and advised it would involve the preparation of language to legislatively create criteria that was clear and easy to apply.

Mayor Minnet recommended sending this item to the Planning and Zoning (P&Z) Board for review and return with its recommendation(s) to the Commission.

Commissioner Clotley stated she had a problem with specifying that Walgreen's would be permitted to operate as requested while other businesses would not.

Interim Town Manager Hoffmann said staff could research what other municipalities had done and the type of uses they allowed for extended hours and other adjacent uses contiguous to those businesses. She stated that staff would give their results to the Planning and Zoning Board so that they might render more educated recommendations.

Commissioner Vincent thought the Planning and Zoning Board should involve BSO to obtain their advice and any historical information in other cities.

Vice Mayor Dodd made a motion to refer the proposed ordinance to the Planning and Zoning Board for review and recommendations to the Commission. Commissioner Sasser seconded the motion. The motion carried 5-0.

- b. **Ordinance 2010-02: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE SEA, AMENDING CHAPTER 2, ADMINISTRATION, SECTION 2-18, SPECIAL MEETINGS, TO REVISE THE PROCEDURES APPLICABLE TO A SPECIAL MEETING OF THE TOWN COMMISSION; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE – *Approved 24hr written notice for 1st reading at the April 13, 2010 Commission meeting***

Attorney Trevarthen read Ordinance 2010-02 by title.

Mayor Minnet opened the meeting for public comment. With no one wishing to speak, Mayor Minnet closed the public comment portion of the meeting.

Commissioner Sasser proposed amended language that authorized the Mayor or any Commissioner to call a special meeting within the 24-hour notice.

Commissioner Clotley asked for clarification as to what constituted 24-hour notice, as it might be important to specify the time frame applied to business days.

Mayor Minnet understood there was an Attorney General opinion that prompted Attorney Trevarthen to take a look at the Town's version of the ordinance and to determine whether Town code was in compliance with the Attorney General's standards.

Attorney Trevarthen noted that the existing ordinance was out of compliance with various requirements. She explained that the Town code required 6 hour notice, the Sunshine Law required reasonable notice, and the Attorney General's opinion was that

10. ORDINANCES - PUBLIC COMMENTS

1. Ordinances 1st Reading

- a. Ordinance 2010-01: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY THE SEA, FLORIDA, AMENDING CHAPTER 12 "LICENSES," ARTICLE 1 "BUSINESS TAXES," SECTION 12-10 "HOURS OF BUSINESSES WITHIN THE CITY LIMITS RESTRICTED" OF THE CODE OF ORDINANCES; PROVIDING FOR SERVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Attorney Trevarthen read Ordinance 2010-01 by title. Mayor Minnet opened the meeting to public comments.

John Oughton cautioned the Commission to take the business community seriously.

Cristi Furth was not sure of the intent of the Ordinance. She asked whether it allowed drug stores and bars to stay open 24 hours during a certain time of the year and if so, she thought it was a bad idea.

Barbara Cole did not believe there was a problem with businesses being open 24 hours.

Marjorie Evans believed it would be a bad idea to allow people to drink after 2:00 a.m.

Rosa Michailiuk believed it was ok for drug stores to be open 24 hours but not bars.

Mark Brown believed that if surf fishing was allowed then why not allow businesses to be opened.

Joe Couriel believed the residents of the Town deserved more respect. He believed anything that was opened later than 2:00 a.m. would disturb the peace and tranquility.

There were no more speakers.

Commissioner Clotey wanted to reassure the people that the Ordinance did not apply to the businesses currently open.

Commissioner Silverstone said the Commission was not anti-business or anti-music. He pointed out that the Star Light was brought forth by him and Vice Mayor McIntee.

Vice Mayor McIntee clarified that every business already opened 24 hours would remain open 24 hours.

Commissioner Dodd said the current ordinance on the books said that no Commercial Business may be open before 6:00 a.m. or after 2:00 a.m. He asked whether other stores could be open 24 hours and referred to lines 34 to 36.

Attorney Trevarthen explained that Walgreens requested that they be allowed to stay open 24 hours during the winter season.

Manager Colon stated that the Ordinance was enacted in 1962 and the pier was the only business open 24 hours. She added that the issue was brought forth by the Mayor.

Mayor Minnet clarified that she did bring it up and that a letter was sent to the Commission by Walgreens. She thought it was a positive thing to have a 24 hour drug store during the tourist season.

Manager Colon wanted to clarify that the opening would apply to all business within that zoning district, and not just Walgreens.

Commissioner Dodd wanted to see the Ordinance change one by one; to have the businesses come before the Commission on an individual basis.

Vice Mayor McIntee thought it would be too political to do one business at a time.

Attorney Trevarthen stated that criteria would be required to consider businesses one by one. Manager Colon did not believe they could be selective and that criteria would have to be set by the Commission. Attorney Trevarthen agreed. Mayor Minnet believed there was an opportunity to create criteria.

Commissioner Clotey believed there should be a public meeting on this ordinance.

Commissioner Clotey made a motion to defer to April 27, 2010. Vice Mayor McIntee seconded the motion. The motion carried 5 - 0.

Town Commission Regular Meeting
October 20, 2009 continued from October 13, 2009

Commissioner Clotley stood behind freedom of speech. She suggested limiting the time to 2 minutes instead of 3 minutes and suggested the Mayor take control of the meetings. Commissioner Clotley suggested putting the vote off until the next meeting and see how things go with the hopes that the people heard the views of the Commission.

Vice Mayor McIntee agreed with Commissioner Clotley and withdrew his second.

Commissioner Dodd was absolutely against any limit on public comments. Mayor Minnet wanted to know what part of the "will of the people" did the Commission not understand.

Commissioner Silverstone believed in "all" of the people not the people in the room.

q. Discussion and/or action as to changing "Hours of Business with the Town Limits Restricted", in the Town Code of Ordinances, Chapter 12 (Mayor Roseann Minnet)

Mayor Minnet wanted the Town Attorney's opinion on being selective.

Attorney Trevarthen stated that the draft ordinance in the backup addressed the hours between 2:00 a.m. and 6:00 a.m. would not apply in the months May through September town wide. She added that the Ordinance would need to go through the normal process.

Vice Mayor McIntee believed a 24 hour drug store was beneficial to the community. He made a motion to move the ordinance forward within a specific location. Commissioner Silverstone seconded the motion for discussion. Although he was in favor of a 24 hour drug store, Commissioner Silverstone was concerned that a Pandora's box would be opened and wanted to be certain that would be covered in the draft ordinance.

Attorney Trevarthen questioned whether the consensus was only for pharmacy. Commissioner Silverstone expressed his concern again and Attorney Trevarthen indicated the ordinance would be a draft and will outline specific areas. Commissioner Clotley asked whether a bar could stay open if they did not serve alcohol. Attorney Trevarthen said she would look at that. The motion carried 5-0.

r. Finalize the Town Manager's evaluation (Commissioner Clotley)

Barbara Cole stated that the Town Manager's contract was not the same as the former Town Manager's contract.

Commissioner Clotley believed it was time to determine how the Commission was to do the Town Manager Review. Vice Mayor McIntee stated he would not support a public review of the Town Manager and would not submit an evaluation.



Pride in Service with Integrity

INTERNAL MEMO

Date: May 11, 2010

To: Director Jeff Bowman
Municipal Services
Lauderdale-by-the-Sea

From: Chief Oscar Llerena 
Lauderdale-by-the-Sea District

Subj: Changes to Business Hours

I have reviewed several issues pertaining to the proposed changes to business hours ordinances allowing businesses to operate on a 24-hour basis. There are several issues from a law enforcement perspective that should be considered when deciding on revisions to the current ordinances:

- Several businesses, including certain convenience stores, are regulated through state law for issues such as minimum staffing requirements after specific nighttime hours. These regulations serve to enhance the safety and security of the businesses.
- Prescription drug "pill mills" are prevalent throughout South Florida, especially Broward County. Any changes to the current ordinance should consider the possible effect of a 24-hour "pill mill" pharmacy establishing business in Lauderdale-by-the-Sea. While pharmacies such as Walgreen's have established a positive reputation in their field, the same cannot be said for other "pill mill" pharmacies springing up every day in Broward County.

Please do not hesitate to contact me if you require additional information.

cc: Connie Hoffman

INTEROFFICE MEMORANDUM

TO: CONNIE HOFFMAN, TOWN MANAGER
VIA: BUD BENILEY, ASSISTANT TOWN MANAGER
FROM: JEFF BOWMAN, DEVELOPMENT SERVICES DIRECTOR *J*
SUBJECT: HOURS OF BUSINESS OPERATION
DATE: 5/5/2010

In response to the Commissions request for additional information regarding item 10.1.A at the Commission meeting on April 27, 2010, I have solicited regulations from other Cities regarding the above subject. I received responses from the following:

- Fort Lauderdale = Alcohol establishments (Selling/Consumption).
- Oakland Park = Alcohol establishments (Selling/Consumption).
- Miramar = Alcohol establishments (Selling/Consumption).
- Dania Beach = Alcohol establishments (Selling/Consumption).
- Hollywood = Alcohol establishments (Selling/Consumption).
- Hallandale = Alcohol establishments (Selling/Consumption).
- Pompano Beach = Alcohol establishments (Selling/Consumption).

All that have responded indicated that their municipalities do not regulate business hours except for businesses serving alcoholic beverages. Town Ordinance Chapter 3-4 as outlined below addresses business hours related to alcohol. Town Ordinance Chapter 12-10, which is attached, addresses all businesses.

Sec. 3-4. Limitation as to hours of sale.

It shall be unlawful for any person licensed by the State or any employee of such licensee, during the period beginning with and including January 1 and ending with and including April 15, to sell, offer for sale, deliver, or serve any liquors, beer or wine, regardless of alcoholic content, on any weekday between the hours of 2:00 a.m. and 9:00 a.m., or on Sundays between the hours of 2:00 a.m. and 12:00 noon; and during the remaining months of the year, to sell, offer for sale, deliver, or serve any liquors, beer or wine, regardless of alcoholic content, on any weekday between the hours of 2:00 a.m. and 9:00 a.m., or on Sundays between the hours of 2:00 a.m. and 12:00 noon.

(Code 1962, § 3-15 Cross references: Licenses, Ch. 12.

Options:

A. Repeal Chapter 12 Section 10.

Prior to a decision on this option, we would request an opinion from the Town Attorney regarding vested rights if the Commission decided to regulate business hours in the future.

B. Amend Chapter 12 Section 10 to include language allowing extended hours by permit only for individual businesses and approved by the Town Commission. Criteria for a permit would need to be developed or a geographical area identified for inclusion into the Ordinance.



LAUDERDALE-BY-THE-SEA
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August 31, 2009

Mayor Roseann Minnet
Vice Mayor Jerome McIntee
Commissioner Birute Ann Clotney
Commissioner Stuart Dodd
Commissioner James Silverstone

Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308

RE: Walgreens Hours of Operation

Dear Mayor, Vice Mayor, and Commissioners:

In order to provide service and convenience to our seasonal residents and guests, we are requesting your permission to extend the store located at 4319 N Ocean Drive to 24 hours operation during the prime tourism months of October to April.

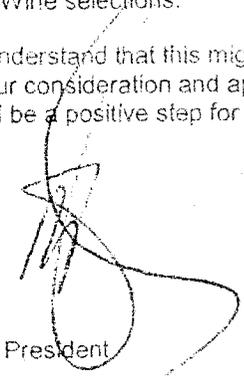
We believe this is a positive impact for the community:

- We currently employ four residents of the town, and this will be creating additional employment opportunities in these particularly difficult economic times.
- This will provide both residents and guests with convenience and easy access for necessities alleviating travel to unfamiliar locations.
- We will honor the "Quiet Seaside" atmosphere by providing enough lighting to gently illuminate the corner, yet provide safe passage and shopping to our customers.

At this time our request does not apply to our Pharmacy Department. In addition this request would include our Health and Beauty Aides and not include our Beer and Wine selections.

We understand that this might require a change in your ordinances, and we ask for your consideration and approval in this matter as we believe this request would be a positive step for our vacationers as well as our full-time residents.

Sincerely,


Roy Ripak
Regional Vice President