

ORDINANCE 2010-XX

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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 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.

WHEREAS, the Town of Lauderdale-by-the-Sea's ("Town's") business regulations related to hours of operation provide that no commercial business may open earlier than 6:00 a.m. and close later than 2:00 a.m.; and

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

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

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

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

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

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

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

45           **SECTION 1.** The foregoing "WHEREAS" clauses are hereby ratified and  
46 confirmed as being true, correct and reflective of the legislative intent underlying this  
47 Ordinance and are hereby made a specific part of this Ordinance.

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

50

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

52

53           No mercantile or commercial business or any other place of business not specifically  
54 delineated shall open earlier than 6:00 a.m. and shall not or close later than 2:00 a.m. except  
55 where provided by state law or has been granted an extended hours license by the Town  
56 Commission.

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58

59           **SECTION 3.** Chapter 12 "LICENSES," Article III "EXTENDED HOURS LICENSE," is

60 hereby established as follows:

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62 ARTICLE III. EXTENDED HOURS LICENSE

63

64 Sec. 12-60. Extended hours license procedure.

65

66 (a) *Extended hours license procedure.* Any business holding a valid business tax receipt  
67 granted by the Town may apply for an extended hours license. Such application shall be  
68 processed using the procedures and criteria listed in this Article. The fee for the issuance  
69 of the extended hours license shall be set by resolution of the Town Commission, and  
70 shall be paid prior to issuance of the license and prior to annual renewal of an extended  
71 hours license thereafter. An extended hours license shall permit and extend the hours in  
72 which such a licensee may open earlier than 6:00 a.m. and/or to remain open later than  
73 2:00 a.m. Extended hours licenses are a privilege granted by the Town Commission,  
74 and are declared to be and are regulatory in nature, and revocable pursuant to the  
75 procedure set forth in this Article.

76

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

84

85

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

87

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

92

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

97

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

101

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

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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.

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

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

Sec. 12-62. Review criteria for extended hours licenses.

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

- (1) The amount and degree of law enforcement activities generated by the operation of any establishment, and by previous establishments in the same location;
- (2) The adverse effects of the extended hours of operation shall not place an undue burden on the neighborhood in proximity to the establishment, especially with respect to patron activities and effects of noise, parking, and vehicular use;
- (3) The proposed extended hours of operation must be compatible with the existing uses in the neighborhood in proximity to the establishment;
- (4) During all hours of operation the establishment shall comply with the following conditions:

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- 151 a. A security camera system capable of recording and retrieving video  
152 images to assist in offender identification and apprehension shall be  
153 provided. The system must capture entrances and exits, cash register and  
154 parking lot. Camera must be activated and recording video during all  
155 hours of operation.
- 156
- 157 b. The establishment shall post exterior warning signage stating that  
158 loitering is prohibited.
- 159
- 160 c. The licensee shall not relinquish control of the operation or  
161 management of the business to any other person or entity.
- 162
- 163

164 (5) The applicant shall demonstrate compliance and assurance of continued compliance  
165 with the conditions of approval, as may be imposed by the Town Commission.  
166

167  
168 Sec. 12-63. Issuance, revocation, and renewal of extended hours license.  
169

170 (a) *Approval and issuance.* Following consideration of the extended hours license by  
171 the Director of Development Services, the Director or his/her designee, shall forward a  
172 recommendation for approval, denial, or conditional approval of the license to the Town  
173 Commission. Upon approval or conditional approval of an application for an extended  
174 hours license by the Town Commission based upon the criteria of Section 12-62(a), the  
175 extended hours license shall be issued upon payment of a license fee as established by  
176 resolution of the Town Commission, the payment of which shall be further required upon  
177 each annual renewal of an extended hours license.  
178

179 (b) *Revocation, suspension, or imposition of additional conditions and/or restrictions.*  
180

181 (1) If, at any time, the Director of Development Services or his/her designee  
182 determines that any extended hours license holder has failed to comply with any  
183 applicable condition of its license, or is operating in a manner harmful to the  
184 public health, safety or welfare he/she may place on the Town Commission  
185 agenda an item to determine whether the extended hours license should be  
186 revoked based upon the failure to meet the following criteria. The Director of  
187 Development Services or his/her designee shall prepare a report which provides  
188 an analysis of the following:  
189

- 190 a. During the extended hours of operation, the extended hours license  
191 holder shall comply with all conditions imposed at the time of license  
192 issuance;
- 193 b. During the extended hours of operation, the extended hours license  
194 holder shall take all reasonable precautions to discourage unlawful  
195 activity, including vandalism, crimes against property or persons,  
196 disturbances, loitering of patrons, narcotics use or distribution, excessive

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197 noise, vehicular use by intoxicated patrons, and illegal activity of any kind  
198 by employees, patrons or others associated with the establishment; and

199  
200 c. During the extended hours of operation, the extended hours license  
201 holder shall take all reasonable efforts to prevent nuisances both inside  
202 and outside the business.

203  
204 (2) The Town Manager, on the advice of staff, shall have the power to enter an  
205 order revoking immediately an extended hours license.

206  
207 (3) A quasi judicial hearing on revocation, suspension, or imposition of  
208 additional conditions may be noticed upon application and conducted pursuant to  
209 the procedures and criteria established within this Article. The Town Commission  
210 will consider the matter de novo, and will determine whether the Town Manager  
211 was justified in revoking the extended hours license and whether the license  
212 should remain revoked. The burden of proof will be on the applicant seeking the  
213 reinstatement of a revoked license.

214  
215 (4) After consideration of the matter, and after allowing staff and the license  
216 holder to address the Town Commission, and allowing all other affected parties to  
217 speak, the Town Commission may revoke the extended hours license or allow the  
218 licensee to continue operating during extended hours, subject to any reasonable  
219 additional conditions deemed necessary to mitigate or eliminate the adverse  
220 effects of such extended hours. These conditions may include, without being  
221 limited to, provision by the licensee, at its expense, of additional security  
222 personnel, sound-proofing or noise reduction, and/or provision of additional  
223 parking.

224  
225 (5) Should the extended hours license be revoked, no reapplication shall be  
226 considered for that location within a twelve (12) month period following the date  
227 of revocation. No revoked extended hours license shall be reinstated until all  
228 applicable conditions of the license are met and the payment of a reinstatement  
229 fee in an amount established by resolution of the Town Commission is made.

230  
231 (c) *Renewal of extended hours license.*

232  
233 (1) Each extended hours license shall be required to be renewed no later than  
234 one (1) year following the date of initial granting of the license. The annual  
235 renewal of any extended hours license shall be processed by the Director of  
236 Development Services or his/her designee and reviewed based upon the criteria  
237 established in Section 12-62(a).

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

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

247  
248 (4) At the time of the license renewal, the Director of Development Services or  
249 his/her designee may, based upon the criteria of Section 12-62(a), recommend the  
250 imposition of additional conditions upon the extended hours licensee. If  
251 additional conditions are recommended by the Director of Development Services  
252 or his/her designee, the renewal shall be placed on the Town Commission quasi  
253 judicial agenda for hearing on the proposed imposition of additional conditions,  
254 in accordance with the notice and hearing procedures established in this Article.

255  
256 (e) Appeal procedure.

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

267  
268 (f) *Transferability.* An extended hours license shall not be transferable. However, if a  
269 business is sold and the operation of the business remains identical to that described on  
270 the approved extended hours license, then the new owners will be required to apply for a  
271 new extended hours license, within thirty (30) days of the purchase.

272  
273  
274 **SECTION 4.** Severability.

275 If any section, sentence, clause or phrase of this Ordinance is held to be invalid or  
276 unconditional by any court of competent jurisdiction, then said holding shall in no way  
277 affect the validity of the remaining portions of this Ordinance.

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281           **SECTION 5.**   Effective Date.

282           This Ordinance shall become effective immediately upon passage on second  
283 reading.

284           **SECTION 6.**   Codification.

285           This Ordinance shall be codified.

286           **SECTION 7.**   Adoption.

287           Passed on the first reading, this \_\_\_\_ day of \_\_\_\_\_, 2010.

288           Passed on the second reading, this \_\_\_\_ day of \_\_\_\_\_, 2010.

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\_\_\_\_\_  
Mayor Roseann Minnet

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First Reading

Second Reading

296

Mayor Minnet

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Vice-Mayor Dodd

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Commissioner Clotey

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Commissioner Sasser

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Commissioner Vincent

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Attest:

304

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\_\_\_\_\_  
Town Clerk, June White

306

(CORPORATE SEAL)

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307 Approved as to form:

308

309 Town Attorney, Susan L. Trevarthen

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10.1.a  
Original Draft

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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" OF THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Lauderdale-by-the-Sea's ("Town's") business regulations related to hours of operation provide that no commercial business may open earlier than 6:00 a.m. and close later than 2:00 a.m.; and

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

WHEREAS, the Town Commission conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Town Commission has determined that this Ordinance is consistent with the Town's Comprehensive Plan and in the best interest of the Town, its residents, and its visitors.

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

SECTION 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true, correct and reflective of the legislative intent underlying this Ordinance and are hereby made a specific part of this Ordinance.

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29            SECTION 2. Chapter 12 "LICENSESES," Article I "Business Taxes," Section 12-10  
30 "Hours of businesses within the city limits restricted," is hereby amended as follows:

31

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

33

34            No mercantile or commercial business or any other place of business not specifically  
35 delineated shall open earlier than 6:00 a.m. and shall not close later than 2:00 a.m. during  
36 the months of May through September.

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40            SECTION 3. Severability.

41            If any section, sentence, clause or phrase of this Ordinance is held to be invalid or  
42 unconditional by any court of competent jurisdiction, then said holding shall in no way  
43 affect the validity of the remaining portions of this Ordinance.

44            SECTION 4. Effective Date.

45            This Ordinance shall become effective immediately upon passage on second  
46 reading.

47            SECTION 5. Codification.

48            This Ordinance shall be codified.

49            SECTION 6.. Adoption.

50            Passed on the first reading, this \_\_\_\_ day of \_\_\_\_\_, 2010.

51            Passed on the second reading, this \_\_\_\_ day of \_\_\_\_\_, 2010.

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\_\_\_\_\_  
Mayor Roseann Minnet

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	First Reading	Second Reading
58		
59 Mayor Minnet	_____	_____
60 Vice-Mayor McIntee	_____	_____
61 Commissioner Clotey	_____	_____
62 Commissioner Silverstone	_____	_____
63 Commissioner Dodd	_____	_____
64 Attest:		
65 _____		
66 Town Clerk, June White		
67 (CORPORATE SEAL)		
68 Approved as to form:		
69 _____		
70 Town Attorney, Susan L. Trevarthen		

**Business Hours:**  
**Memo Regarding Research**  
**&**  
**Suggested Options**

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INTEROFFICE MEMORANDUM

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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

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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.



*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

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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