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ORDINANCE NO. O-2009-001

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AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF OAKLAND PARK, FLORIDA, AMENDING THE CODE OF ORDINANCES BY SPECIFICALLY AMENDING CHAPTER 3 "ALCOHOLIC BEVERAGES", ARTICLE I. "IN GENERAL", SECTION 3-1, ENTITLED "DEFINITIONS" TO PROVIDE FOR NEW "DEFINITIONS"; BY SPECIFICALLY AMENDING SECTION 3-23 ENTITLED "PERMITS REQUIRED FOR PREMISES TO REMAIN OPEN PAST MIDNIGHT; REVOCATION, SUSPENSION OF STATE BEVERAGE LICENSE" TO PROVIDE FOR A NEW CERTIFICATION REQUIREMENT AND BY SPECIFICALLY CREATING SECTION 3-32 TO BE ENTITLED "PERSONAL ALCOHOLIC BEVERAGE SELLER/SERVER'S EDUCATION, TRAINING AND CERTIFICATION" UNDER CHAPTER 3 "ALCOHOLIC BEVERAGES", ARTICLE II "REGULATING SALES"; PROVIDING FOR DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, the City Commission deems it appropriate and in the best interests of the residents of Oakland Park to amend provisions of Chapter 3 entitled "Alcoholic Beverages" of the Code of Ordinances relative to the existing "permits required for premises to remain open past midnight; revocation, suspension of state beverage license" section and the new "personal alcoholic beverage seller/server's education, training and certification" section for the sale of alcoholic beverages; and

WHEREAS, in the cases of recent state and Local Law Enforcement activities related to the illegal alcoholic beverage sales to underage persons at bars, nightclubs, restaurants, restaurant bars, convenience stores, gasoline service stations, liquor stores, food and grocery stores, supermarkets and like retail establishments that have a state approved alcoholic beverage license in Broward County and Oakland Park an analysis of data was compiled by the Division of Alcoholic Beverages and Tobacco (AB&T) from compliance checks for the years 2005 through 2006 (with 17 arrests), 2006 through 2007 (with 24 arrests) and 2007 through 2008 (with 52 arrests). The data from the AB&T compliance checks related to illegal alcoholic beverage sales to underage persons have revealed an approximate 70% compliance rate for Broward County which also is a 30% noncompliance rate. Compliance checks conducted within the City of Oakland Park have revealed a 72% compliance rate and a 28% non-compliance rate. These compliance rates are approximately 20% below the state average of 90-92%. State and Local Law Enforcement agencies seek to improve the compliance rates related to illegal alcoholic beverage sales to underage persons by requiring a state-accepted personal alcoholic

1 beverage seller/server's education, training and certification class/course and/or program
2 in order to diminish this illegal activity.

3
4 **WHEREAS**, the City Commission of Oakland Park finds and determines that the
5 noncompliance rate of 28% referenced herein is detrimental and injurious to the health,
6 safety and welfare of the residents of the city of Oakland Park.

7
8 **WHEREAS**, the City Commission hereby finds by requiring that individuals who
9 sell alcoholic beverages be certified as having completed a state-accepted personal
10 alcoholic beverage seller/server's education, training and certification class/course and/or
11 program with this the City gains additional authority to regulate the "permits required for
12 premises to remain open past midnight; revocation, suspension of state beverage license".
13 This requirement pertains to any person that works as a manager, alcoholic beverage
14 seller/server, store clerk and/or in any other capacity and to penalize those individuals
15 who do not possess a state-accepted certification to sell alcoholic beverages in open past
16 midnight alcoholic beverage establishments;

17
18 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION**
19 **OF THE CITY OF OAKLAND PARK, FLORIDA THAT:**

20
21 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and
22 confirmed as being true and correct and are hereby made a part of this Ordinance.

23
24 **Section 2.** Section 3-1 entitled "Definitions" of Chapter 3 entitled "Alcoholic
25 Beverages", Article I "In General" of the Code of Ordinances is hereby amended to
26 provide new definitions as follows:

27
28 **Sec. 3-1. Definitions.**

29
30 [As used in this chapter, the following terms shall have the meanings ascribed to them
31 herein:]

32
33 (s) Certification Enforcement Authority. Shall mean the city of Oakland Park in
34 conjunction with state and local law enforcement agencies.

35
36 (t) Personal alcoholic beverage seller/server's training, education and certification
37 A state-accepted education, training and certification class/course and/or program with a
38 curriculum that fully adheres to the following education/training objectives:

- 39 1. An understanding of the importance of responsible alcohol sales/service.
40 2. Knowledge of the laws that control the sale/service of alcohol.
41 3. Knowledge of how to check IDs, refuse service to underage and
42 intoxicated customers, prevent alcohol sales to underage persons.

1 4. The awareness that there is a positive relationship between responsible
2 alcohol sales/service and profitability.

3
4 The intent is have sellers/servers trained on the procedures related to the sale of alcoholic
5 beverages from bars, nightclubs, restaurants, restaurant bars, convenience stores, gasoline
6 service stations, liquor stores, package, food and grocery stores, supermarkets and like
7 retail establishments that have a state approved alcoholic beverage license within the City
8 of Oakland Park.

9
10 (u) *Other Alcoholic Beverages.* Means a fermented or distilled beverage including
11 alcohol, spirits, liquor, wine, beer, energy drinks and any other liquid or solid containing
12 alcohol, spirits, wine or beer that contains one-half of one percent or more of alcohol by
13 volume and that is fit for beverage purposes either alone or when diluted, mixed, or
14 combined with other substances and not limited to any other concoctions containing
15 alcohol, spirits, liquor, wine, beer, energy drinks and any other liquid or solid.

16
17 (v) *Personal Alcoholic Beverage Seller/Server's Education/Training Certification.* A
18 certification of completion of a state-accepted personal alcoholic beverage seller/server's
19 education, training and certification class/course and/or program.

20
21 **Section 3.** Section 3-1 entitled "Permits required for premises to remain open
22 past midnight; revocation, suspension of state beverage license" of Chapter 3 entitled
23 "Alcoholic Beverages", Article I "In General" of the Code of Ordinances is hereby
24 amended to provide a new incentive related to the "Personal alcoholic beverage
25 seller/server's training, education and certification" as follows:

26
27 **Sec. 3-23. Permits required for premises to remain open past midnight; revocation,**
28 **suspension of state beverage license.**

29
30 (a) *Permits required.*

31
32 (1) All vendors who are licensed by the state division of beverage desiring to
33 remain open for business for the purposes of selling, offering for sale, delivery,
34 serving or permitting liquors, beers or wines of any alcoholic content between the
35 hours of midnight and 2:00 a.m. on weekdays and midnight and 3:00 a.m. on
36 Sundays shall make application with the city manager for an open past midnight
37 permit, at such time as the vendor applies for an occupational license pursuant to
38 Chapter 7, Article II, of the Code of Ordinances.

39
40 (2) The open past midnight permit application shall be on forms provided by the
41 city and shall contain the following:

42 a. The name of applicant;

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- b. The location where the business is to be conducted;
- c. The names of the individuals operating the business under their own names or under a trade name;
- d. The names and addresses of the officers and all persons having a financial interest of five (5) percent or more in the vendor;
- e. Photocopies of the state application for the state beverage license and said license;
- f. The applicant's current City of Oakland Park occupational license number;
- g. An application fee in accordance with the following schedule:

Nonprofit fraternal, civil organization . . .	\$150.00	<u>\$1,500.00</u>
Vendors licensed for off-premises consumption only . . .	200.00	<u>\$2,000.00</u>
Restaurants, restaurant bars, hotel and motel bars . . .	200.00	<u>\$2,000.00</u>
Bars . . .	200.00	<u>\$2,000.00</u>

(3) The city manager or his designee shall review the open past midnight permit application and, if the application is complete, a permit shall be issued to the vendor to remain open between the hours of 12:01 a.m. and 2:00 a.m. on weekdays and 12:01 a.m. and 3:00 a.m. on Sundays.

(4) Such open past midnight permit shall be renewed annually on or before the thirtieth day of September, unless it is suspended or revoked or unless there is a change in ownership, change in ownership of shares or change in location.

(5) The open past midnight permit application fee for such permit issued on or after the first day of April shall be one-half (1/2) the rate in accordance with the appropriate fee schedules.

(6) In order for an alcoholic beverage establishment to be eligible for an open past midnight permit, the privilege to sell, offer for sale, deliver, serve or permit liquors, beers or wines of any alcoholic content between the hours of midnight and 2:00 a.m. on weekdays and midnight and 3:00 a.m. on Sundays shall be granted by the city manager if an establishment and their employees participate in a state-accepted personal alcoholic beverage seller/server's education, training and certification program as described in Section 3-32.

(7) No person shall work as a manager, alcoholic beverage seller/server, store clerk, and/or in any other capacity in any alcoholic beverage establishment open past midnight until certification by all applicants of a state-accepted personal alcoholic beverage seller/server's education, training and certification class/course and/or program is obtained, provided to the city and a open past midnight permit is granted by the city manager.

1 (b) *Permit revocation, suspension.* The ability to sell, offer for sale, deliver or permit to
2 be consumed upon the premises any alcoholic beverage beyond the hour of 12:00
3 midnight on any day of the week including Sunday, is hereby declared to be and is a
4 privilege subject to termination by the city commission, and no person may reasonably
5 rely on a continuation of that privilege.
6

7 (1) If at any time the city manager determines that any person, vendor,
8 distributor, or any place of business is operating in any manner harmful to the
9 public health, safety or welfare, or has been convicted of a violation of the laws of
10 the United States, state of Florida, and Code of Ordinances of the City of Oakland
11 Park, by the permittee or his or its agents, servants, or employees on the license
12 premises or elsewhere while in the scope of employment or has had his state
13 beverage license revoked or suspended by the division of alcoholic beverages of
14 the department of business regulation or has violated a rule or regulation
15 promulgated by the Florida division of beverage, he shall place on the city
16 commission agenda the matter of revoking the above privilege.
17

18 (2) Such agenda item shall be publicly advertised in a newspaper of general
19 circulation and written notice of the charges against the person, permittee, vendor,
20 distributor or place of business shall be sent to him at least fourteen (14) days in
21 advance and shall also contain the date, time and place of such agenda item. Said
22 notice shall also advise the person of his right to be heard, of his right to be
23 represented by counsel, of his right to present sworn testimony and evidence on
24 his behalf, and his right of appeal to circuit court if necessary.
25

26 (3) After consideration of the matter and allowing the person to be heard, the
27 city commission may revoke or condition the privilege. The criteria to be used by
28 the city manager and city commission shall be the criteria specified in
29 subparagraphs (3) (a), (b), (c), (d) and (e) below:
30

31 (a) The amount of off-street parking in relation to the demands created by
32 the extra hours of operation, especially with regard to the adverse impact
33 on adjacent residential areas of any illegal or hazardous parking.
34

35 (b) The amount and degree of law enforcement activities generated by
36 the extra hours of operation, both outside and inside the particular
37 location, with particular emphasis on the vandalism, noise, vehicular use
38 by patrons and illegal activity of any kind by employees, patrons or others
39 associated with the establishment during or immediately after the extra
40 hours of operation.

41 (c) The adverse effects, if any, that the extra hours of operation will have
42 on neighboring properties, especially with respect to the effects of noise,

1 parking and glare from headlights or exterior lighting on nearby residential
2 properties.

3
4 (d) Such licenses shall only be granted to those establishments which are
5 wholly enclosed, soundproofed, and air-conditioned, and any windows,
6 doors or other opening kept closed, except for normal and emergency
7 ingress and egress, in order that noise and music emanating there from
8 will not disturb the peace and quiet of the neighborhood; provided,
9 however, that the city commission may, in its discretion, grant an extra
10 hours license to an establishment that is not wholly enclosed,
11 soundproofed and air-conditioned, upon a showing that said establishment
12 does not disturb the peace and quiet of the surrounding neighborhood.

13
14 (e) The city commission may require, as a condition of the privilege of
15 extra hours of operation, compliance with any reasonable conditions
16 deemed by the commission to be necessary to mitigate or eliminate the
17 adverse effects of such extra hours. These conditions may include, without
18 being limited to, provision by the owner or operator of the premises to
19 provide, at his expense, additional off-street parking, security personnel
20 and screening and buffering from nearby properties.

21
22 (f) Should the permit be revoked or conditioned, the person, permittee,
23 vendor, distributor or place of business may seek review of such action
24 before the city commission after three (3) months. The commission may
25 then modify or refuse to modify its action. Only one (1) such review shall
26 be given within a twelve-month period.

27
28 **Section 4.** Section 3-32 entitled "Local Merchant Education, Training and
29 Certification Program" of Chapter 3 entitled "Alcoholic Beverages", Article II
30 "Regulating Sales" of the Code of Ordinances is hereby created to read as follows:

31
32 **Sec. 3-32. Personal Alcoholic Beverage Seller/Server's Education, Training and**
33 **Certification.**

34
35 (A) Declaration of intent. It is the legislative intent of the city commission to require
36 that all persons employed as managers, beverage sellers/servers, store clerks and all other
37 persons who sell alcoholic beverages in any existing and new open past midnight permit
38 type alcoholic establishments as provided for in Section 3-23 and that are licensed by the
39 city or in any other capacity as bars, nightclubs, restaurants, restaurant bars, convenience
40 stores, gasoline service stations, liquor stores, package, food and grocery stores,
41 supermarkets and like retail establishments that have a state approved alcoholic beverage
42 license possess a personal alcoholic beverage seller/server's education/training

1 certification that is accepted by the city manager if the course/class and/or program with a
2 curriculum that fully adheres to the following education/training objectives:

- 3 1. An understanding of the importance of responsible alcohol sales/service.
- 4 2. Knowledge of the laws that control the sale/service of alcohol.
- 5 3. Knowledge of how to check IDs, refuse service to underage and
6 intoxicated customers, prevent alcohol sales to underage persons.
- 7 4. The awareness that there is a positive relationship between responsible
8 alcohol sales/service and profitability.

9 This places responsibility directly on the owner, manager and/or employee to comply
10 with city and state laws and codes regarding alcoholic beverage sales and also be subject
11 to the penalties as identified in Sec. 3-23 (b) and Sec. 3-26. This education/training
12 certification is granted to the owner, manager and/or employee and is not attached to a
13 specific employment situation or city occupational business license other than the open
14 past midnight permit.

15
16 (1) Requirements. No person shall work as a manager, beverage seller/server, store
17 clerk, and/or in any other capacity in such open past midnight permit type establishments
18 granted by the city including any bars, nightclubs, restaurants, restaurant bars,
19 convenience stores, gasoline service stations, liquor stores, package, food and grocery
20 stores, supermarkets and like retail establishments that have a state approved alcoholic
21 beverage license where such person may sell or deliver alcoholic beverages in or from
22 premises licensed under Chapter 7 of the City of Oakland Park Code of Ordinances, and
23 no licensee shall permit any such person to be so employed, unless such person, within
24 seven (7) days after being first employed, shall provide a personal alcoholic beverage
25 seller/server's education/training certification to the city to engage in such business. No
26 person may be so employed to sell alcoholic beverages for any length of time the
27 applicant's certification is not obtained.

28
29 (2) Possession of Certification. The holder of a personal alcoholic beverage
30 seller/server's certification must provide a copy to the city, posses and provide proof of
31 certification at all times while on duty or in the employment at any past midnight type
32 bar, nightclub, restaurant, restaurant bar, convenience store, gasoline service station,
33 liquor store, food and grocery store, supermarket and like retail establishments that have
34 a state approved alcoholic beverage license within the City of Oakland Park. Failure to
35 posses or provide proof of the seller/server's education/training certification will subject
36 the alcoholic beverage establishment owner/manager to the penalties as identified in Sec.
37 3-23 (b) and Sec. 3-26. In addition, the owner/manager of any such existing and/or new
38 open past midnight type establishment licensed by the city that does not notify their
39 employee of the needed possession of the education/training certification requirement
40 will be subject to the penalties identified in Sec. 3-23 (b) and Sec. 3-26.

41
42 (3) Posting of Sign. Every owner of an existing or new open past midnight permit type
43 establishment licensed by the city or in any other capacity such as bars, nightclubs,

1 restaurants, restaurant bars, convenience stores, gasoline service stations, liquor stores,
2 food and grocery stores, supermarkets and like retail establishments that have a state
3 approved alcoholic beverage license and that sell alcoholic beverages pursuant to the
4 provisions of this article shall post a copy of all operational standards, training
5 requirements and any special conditions of the permit and participation in a state-
6 accepted personal alcoholic beverage seller/server's education/training certification
7 class/course and/or program in at least one prominent place within the interior of the
8 establishment where it will be readily visible and legible to the employees and patrons of
9 the establishment. Failure to provide an approved alcoholic beverage sales sign and
10 proof of certification will subject the alcoholic beverage establishment owner/manager to
11 the penalties as identified in Sec. 3-23 (b) and Sec. 3-26.

12
13 **Section 5** If any section, subsection, sentence, clause or provision of this
14 Ordinance is held invalid, the remainder of this Ordinance shall not be affected by such
15 invalidity.

16
17 **Section 6** That all ordinances or parts of ordinances and all resolutions or
18 parts of resolutions in conflict with this Ordinance are repealed to the extent of such
19 conflict.

20
21 **Section 7** It is the intention of the City Commission of the City of Oakland Park,
22 that the provisions of this Ordinance shall become and be made a part of the Code of
23 Ordinances of the City of Oakland Park, Florida, and the Sections of this ordinance may
24 be renumbered, re-lettered and the word "Ordinance" may be changed to "Section,"
25 "Article," or such other word or phrase in order to accomplish such intention.

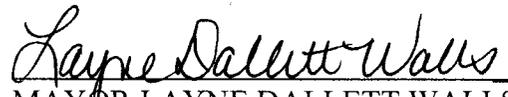
26
27 **Section 8** This Ordinance shall be effective ninety (90) days following its
28 passage and adoption by the City Commission of the City of Oakland Park.

29
30 **PASSED BY THE CITY COMMISSION OF THE CITY OF OAKLAND PARK,**
31 **FLORIDA, ON FIRST READING, THIS 21st DAY OF JANUARY, 2009.**

32
33 S. ARNST YES
34 A. MURPHY YES
35 S. BOISVENUE YES
36 L. GIERER YES
37 L. WALLS YES
38
39
40

1 PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF
2 OAKLAND PARK, FLORIDA, ON SECOND READING, 4th DAY OF
3 FEBRUARY, 2009.
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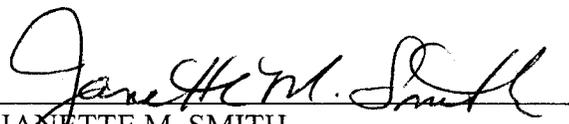
6 CITY OF OAKLAND PARK,
7 FLORIDA
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9 
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11 MAYOR LAYNE DALLETT WALLS
12

13 S. ARNST	<u>YES</u>
14 A. MURPHY	<u>ABSENT</u>
15 S. BOISVENUE	<u>YES</u>
16 L. GIERER	<u>YES</u>
17 L. WALLS	<u>YES</u>

18

19 ATTEST:
20

21 
22
23
24 JANETTE M. SMITH
25 CITY CLERK
26

27 LEGAL NOTE

28 I hereby certify that I have
29 approved the form of this Ordinance. (0-2009-001)
30

31 
32
33
34 DONALD J. DOODY
35 CITY ATTORNEY