ORDINANCE NO. 2014-11

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 18 ENTITLED "BUSINESSES" OF THE CODE OF ORDINANCES AND IN PARTICULAR, AMENDING ARTICLE V. ENTITLED "ESTABLISHMENTS OFFERING ALCOHOLIC BEVERAGES AND/OR ENTERTAINMENT", AMENDING SECTION 18-206 "DEFINITIONS" AMENDING THE DEFINITIONS GENERALLY FOR CLARIFICATION BETWEEN BUSINESS USES ALLOWED; AMENDING SECTION 18-207 "ZONING REQUIREMENTS" ELIMINATING THE REQUIREMENT OF AN SUP FOR A RESTAURANT AND LOUNGE OFFERING ALCOHOLIC BEVERAGES AND ENTERTAINMENT; ADDING A NEW SECTION 18-210 ENTITLED "EXTENDED HOURS LOUNGE PERMIT" PROVIDING FOR REGULATION AND EXTENDED HOURS OF OPERATION FOR BARS AND CERTAIN RESTAURANTS IN THE OPERATION OF A LOUNGE FOR THE SPECIFIC PROVISION OF LIVE ENTERTAINMENT; AND PROVIDING FOR MISCELLANEOUS CHANGES TO BE CONSISTENT WITH NEW REGULATIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the purpose and intent of this ordinance is to create venues for entertainment promoting local talent and artistic performances of interest to the community;

WHEREAS, these regulations advance the City's interest in providing greater choice for entertainment to the community while allowing greater flexibility to local businesses to meet that demand; and

WHEREAS, the regulations strike a balance between the interests of promoting greater business opportunity and adverse impacts from establishments offering alcoholic beverages promoting the safety, health, family values and general welfare of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 18 entitled "Businesses", of the Code of Ordinances of the City of Hialeah, Florida, is hereby amended to read as follows:

Chapter 18

BUSINESSES

* * *

ARTICLE V. ESTABLISHMENTS OFFERING ALCOHOLIC BEVERAGES AND/OR ENTERTAINMENT

Sec. 18-206. – Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bar means an establishment for the consumption of alcoholic beverages on the premises where the preparation or service of food for consumption is optional. ~~where no live entertainment or dancing is permitted~~.

* * *

Entertainment means artistic performance ~~by live actors, singers, musicians or any other performer; a mechanical or electronic audio or visual presentation provided for the enhancement of the ambience or for the enjoyment of customers or patrons in a restaurant or lounge; an attraction in a nightclub or cabaret or music for dancing at nightclubs or discotheques.~~ which is live, broadcast or recorded and is provided for the enhancement of the ambiance or for the enjoyment of customers or patrons, including, but not limited to, live performances by actors, singers, musicians, comedians or any other performer, a mechanical or electronic audio or visual presentation, or music for dancing as permitted for nightclubs or discotheques only. Entertainment does not include any performance where any portion of it is considered harmful to minors, depicts or simulates sexual conduct, utilizes sexually-oriented material or is otherwise deemed obscene under state law.

Lounge means:

(1) ~~An area or portion of~~ A designated seating area or portion within the interior of a business, such as a hotel, bar or restaurant, where alcoholic beverages are consumed on the premises as allowed by the state beverage license issued to the business; and where

(2) ~~Background music or live entertainment may be provided by no more than three performers or musicians performing simultaneously~~ Entertainment may be provided; and where

(3) The hours of operation coincide with those of the main place of business.

* * *

Restaurant means an establishment with the primary purpose of serving food prepared ~~food to be~~ and consumed on the premises or to be carried out regardless of the type of food or style of service. Restaurants may sell alcoholic beverages with the food, when properly licensed by the state and the city.~~, and may provide background music or entertainment by no more than three performers or musicians performing simultaneously. Dancing shall be permitted by patrons or customers only on a designated dance floor, which shall be limited to an area of no more than five percent of the square footage of the dining area. Additionally, restaurants may offer either bona fide fashion shows or other family entertainment which shall not be limited by this definition as to the number of entertainers.~~

Sec. 18-207. – Zoning Requirements

All establishments serving alcoholic beverages and/or providing entertainment shall conform with the city's zoning requirements and shall be located in the appropriate zoning district as follows and as further provided section 6-66(a):

(1) C-3 or special use permit (SUP) for nightclubs, cabarets or discotheques.

(2) C-2, C-3, ~~SUP~~ special use permits (SUP) for dancehalls or banquethalls~~, lounges and restaurants with alcoholic beverages and/or entertainment~~.

* * *

Sec. 18-210. – Extended hours lounge permit

Any bar or any restaurant with a service area of at least 4,000 square feet and a seating capacity of 200 guests or more only, as described by section 6-66(b)(2)g, may obtain a lounge permit for extended hours of operation after 1:00 a.m. and up to 3:00 a.m. on Fridays and Saturdays to provide for live artistic performances only, upon application and payment of an annual fee to the local business tax division.

(a) *Permissible extended hours.* The lounge area shall be allowed to operate every Friday and Saturday between the hours of 1:00 a.m. and 3:00 a.m. only. Restaurants operating a lounge during extended hours must also continue to operate their kitchen facilities to prepare, serve and make available food for consumption on the premises to their patrons for the entire length of time the lounge is in operation. No bar or restaurant with an extended hours lounge permit shall be allowed to remain open for business beyond 3:00 a.m.

(b) *Permissible entertainment.* During the period of extended hours of operation, entertainment must be provided indoors for the enjoyment of the patrons. Entertainment must include an artistic performance by an actor, singer, musician, comedian or other performer or group of performers, live and in person on the premises. No explosions, flashes, smoke, flames, fireworks or other pyrotechnic driven effects shall be used as part of the entertainment.

(c) *Additional security measures required.* Any bar or restaurant operating a lounge during extended hours shall not exceed its occupancy load or be in violation of any other fire safety regulation at any time during its operation. In addition, any bar or restaurant operating a lounge during extended hours shall provide the following additional security measures:

(1) Provide security personnel trained in crowd management techniques responsible for monitoring and managing crowds and to effect orderly exiting in case of emergency. The number of interior security personnel required shall be the greater of the number of security personnel determined to be required by the police chief or the fire marshal upon review of the permit application. When determining the number of security personnel required, the police chief or fire marshal shall consider the nature of the event and any history of reported criminal incidents or disturbances associated with events of a similar nature. The

security personnel shall be on site at all times when entertainment is provided;

(2) Maintain a security camera system capable of recording and retrieving video images. Cameras must be activated during all hours of operation and shall continuously record interior and exterior images of all the entrance and exit doors. Recorded video shall be stored for a minimum of 30 days. Signage notifying patrons of the existence and use of security cameras shall be prominently displayed on the premises;

(3) Provide an extra-duty police officer during the extended hours of operation to patrol the parking area of the establishment;

(4) Provide sufficient on-site parking or sufficient number of parking attendants such that there is no traffic congestion on site and no impact to the free flow of traffic on the adjacent rights-of-way.

(d) *Application and fee.* An application for the operation of a lounge during the permissible extended hours shall be made on or before October 1st of every year on a form provided by the city. A sketch of the interior layout of the business location, including the proposed lounge area, and a fee of $2,500.00 shall accompany the application. The application and location shall be reviewed, inspected and approved for compliance with the regulations provided herein. The lounge area shall not diminish the required seating or service area. The business location shall implement any additional reasonable security or safety measure as required by the fire marshal or police chief upon review of the application or inspection of the location.

(e) *Denial and Revocation.*

(1) Any denial of an application for a permit for any grounds as indicated in section 86-53 shall be appealed to the city council within 30 days of the decision to deny.

(2) Any bar or restaurant operating a lounge during extended hours may be ordered to close for business during the extended hours, the permit to operate the lounge suspended or revoked and the extended hours of operation terminated when any part of its business operations or conduct, including the conduct of any agent, employee or person in the establishment, constitutes a threat to the health, safety or welfare of its patrons or the public pursuant to the emergency procedures set forth in section 86-56 hereof. Failure to

comply with the regulations provided for herein shall be considered a threat to the health, safety and welfare of the business patrons and general public. The city shall immediately notify the permit holder of its decision to close the premises for business during the extended hours, suspend or revoke the permit to operate the lounge and to terminate the extended hours of operation and afford a prompt post-revocation hearing at the next regularly scheduled hearing before city council. The hearing shall be conducted according to the procedures set forth in section 86-57(c). There shall be no right to a prior informal administrative hearing. No bar or restaurant whose permit has been denied or revoked shall apply for a new extended hours lounge permit within one year from the date of denial or revocation. The city's decision to close the premises for business during the extended hours shall be enforced by action of the police department. The city council's findings shall constitute final administrative action of the city, subject to appeal to the circuit court, appellate division.

Section 2: Chapter 6 entitled "Alcoholic Beverages", of the Code of Ordinances of the City of Hialeah, Florida, is hereby amended to read as follows:

Chapter 6

ALCOHOLIC BEVERAGES

* * *

ARTICLE II. LICENSE

* * *

Sec. 6-34. – Authority to sign for property zoning.

Under this article, the ~~licensing administrator~~ planning and zoning official will be the only person authorized to sign for the city as to the proper zoning as requested in the application to be filled with the state division of alcoholic beverages and tobacco for the corresponding state license.

* * *

ARTICLE III. REGULATIONS

Sec. 6-66. – Distance separation requirements; restrictions

* * *

(b) Restaurants holding a 722110A series ~~occupational license~~ business tax receipt, shall not sell, offer for sale, deliver or serve alcoholic beverages, wine, and beer for consumption or use on the premises, except as follows:

(1) For the sale and /or non-premises consumption of wine and/or beer, the holder of a 722110A ~~occupational license~~ business tax receipt to operate the restaurant (referred to as the "licensee") must obtain a state 1-COP or 2-COP license and comply with the following:

* * *

h. The restaurant must have more than 850 square feet of service area, which shall not include any space at counters, bars or lounges, or a combination of a full-service operating kitchen area larger than 500 square feet with a service area of no less than 700 square feet.

* * *

(e) Bars that do not serve food will only be permitted where a C-3 extended liberal commercial zoning exists. ~~These establishments will not be permitted to have entertainment or to allow dancing.~~ These establishments are not permitted to allow dance floors or dancing as entertainment for patrons. When serving food in addition to beverages, a licensee must obtain a 722110A business tax receipt in addition to the 722410 business tax receipt. To be issued a 722410 business tax receipt, the holder of the business tax receipt must have a valid state license.

* * *

Sec. 6-69. – Hours of operation.

(a) No vendor or licensee under this chapter, except a nightclub and foodstore, shall sell or offer for sale, deliver, serve or permit to be consumed upon the premises of such

vendor or licensee any alcoholic beverage between the hours of 1:00 a.m. and 8:00 a.m. on any day of the week, except as allowed for bars and restaurants operating a lounge during permitted extended hours pursuant to section 18-210. ~~These~~ The business hours provided for by this subsection also apply to ~~occupational licenses 5812 and 5813~~ bars and restaurants.

(b) ~~A bona fide restaurant with more than 150 seats at tables, not including barstools, will be permitted to serve the alcoholic beverages it is authorized to sell by its state license at all hours that the restaurant is open, provided that the restaurant does not have entertainment or permit patrons to dance and beverages are served exclusively with full meals.~~

* * *

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 6: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 7: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 25 day of February, 2014.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 27 day of February, 2014.

Marbelys Fatjo, Acting City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

~~Strikethrough~~ indicates deletion. Underline indicates addition.

S:\LEB\LEGISLATION\2013-ORDS\CODE AMENDMENTS\Extended-Hours-Lounge-Permit.docx

Ordinance was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".