

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL: March 22, 2018

CALENDAR NO. 32,213

NO. _____ **MAYOR COUNCIL SERIES**

BY:  **COUNCILMEMBER HEAD**

AN ORDINANCE to amend and reordain Sections 10-1, 10-4, 10-6, 10-47, 10-49, 10-52, 10-53, 10-76, 10-78, 10-79, 10-80, 10-106, 10-110, 10-113, 10-121, 10-128, 10-131, 10-132, 10-134, 10-136, 10-237, 10-428, and 10-566 of the Code of the City of New Orleans, to modify regulations pursuant to the City's police powers regarding the application and issuance of alcoholic beverage permits and enforcement and applicable penalties for alcoholic beverage outlets; to provide for permit issuance via the Department of Safety and Permits in lieu of the Department of Finance; to repeal Sections 10-107 through 10-109, 10-111, 10-112, 10-133, 10-311 through 10-318, 10-341, and 10-540 and reserve them accordingly; and to provide otherwise with respect thereto.

1 **SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**

2 **ORDAINS**, That Sections 10-1, 10-4, 10-6, 10-47, 10-49, 10-52, 10-53, 10-76, 10-78, 10-79,
3 10-80, 10-106, 10-110, 10-113, 10-121, 10-128, 10-131, 10-132, 10-134, 10-136, 10-237,
4 10-428, and 10-566 of the Code of the City of New Orleans are hereby amended and reordained
5 to read as follows; and that Sections 10-107 through 10-109, 10-111, 10-112, 10-133, 10-311
6 through 10-318, 10-341, and 10-540 are repealed and reserved as follows:

7 **"Sec. 10-1. - Definitions.**

8 * * *

9 *Director* means the director of the department of finance or the department of safety and permits,
10 as determined by the authorized duties in the relevant section.

11 * * *

12 **Sec. 10-4. - Enforcement.**

13 (a) This chapter shall not give the police power of the department of police to the
14 departments of finance or safety and permits, but on the contrary, the enforcement of this
15 chapter is hereby vested in the department of police and it shall be the duty and authority
16 of the department of police to enforce the provisions of this chapter.

17 (b) The Departments of Finance, Safety and Permits, and Law, as provided herein, shall have
18 administrative enforcement jurisdiction over provisions of this chapter and may bring
19 enforcement action under the provisions of this chapter before the Alcoholic Beverage
20 Control Board or may seek administrative relief through the provisions of Chapter 6 of
21 this Code.

22 **Sec. 10-6. - Enumeration of certain violations.**

23 * * *

24 (2) *Violation of rules, etc.* To violate any lawful rule or regulation made and published by the
25 department of finance or the department of safety and permits under this chapter.

26 * * *

27 (4) *Concealing violations.* To use any artful device or deceptive practice to conceal any
28 violation of this chapter or to mislead the department of finance or the department of safety and
29 permits or any agent of the departments in the enforcement of this chapter, or to do any other act
30 tending to defraud the city of its revenue.

31 * * *

32 **Sec. 10-47. - Permit prerequisite to engaging in business.**

33 It shall be unlawful for any person to sell, offer for sale, import, manufacture, distill, rectify or
34 have in possession, for sale, handling, storage or distribution, either at wholesale, retail or
35 otherwise, any alcoholic beverage or to engage in the business of dealer without first having
36 obtained from the department of safety and permits a permit to engage in such business.

37 **Sec. 10-49. - Wholesale and retail dealers permits required.**

38 Before engaging in the business of dealing in alcoholic beverages, all wholesale and retail
39 dealers shall obtain from the department of safety and permits a permit to conduct each separate
40 wholesale or retail business, and shall renew the permit annually.

41 **Sec. 10-52. - Special events permits.**

42 (a) The director of the department of safety and permits or the director's designee may, upon
43 receipt of written or electronic approval by the office of a member of the city council,
44 authorize the issuance of alcoholic beverage permits for special events when such functions
45 will not continue for a period in excess of three days. No more than 12 such permits may be
46 issued to any one organization within a single calendar year. The department of safety and
47 permits may issue an alcoholic beverage permit or permits to the applicant named in the
48 letter notwithstanding any ordinance or moratorium to the contrary upon payment, if
49 applicable, of the alcoholic beverage permit fee specified in this section.

50 * * *

51 **Sec. 10-53. - Class A permits.**

52 The director of the department of safety and permits shall issue the following types of Class A
53 retail alcoholic beverage permits:

54 * * *

55 (2) Class A-Restaurant permit:

56 * * *

57 c. For new restaurant establishments without prior business experience on which to
58 determine the gross revenue from the sale of the items in paragraph b.6. of this
59 subsection, the director of the department of safety and permits may issue a temporary
60 permit, which shall be valid for 60 days to allow the establishment to make such
61 determination.

62 * * *

63 **Sec. 10-76. - Authority of Alcoholic Beverage Control Board.**

64 (a) Pursuant to the authority contained in the Home Rule Charter of the City of New Orleans
65 and La. R.S. 33:4785, the alcoholic beverage control board shall have the power and
66 authority to conduct hearings, suspend or revoke city alcoholic beverage permits, impose
67 other remedial sanctions as set forth in section 10-160, and decide appeals from persons
68 who have been denied alcoholic beverage permits by an administrative official in the
69 enforcement of applicable state or municipal laws.

70 * * *

71 **Sec. 10-78. - Suspension, revocation procedure.**

72 (a) Upon petition fully filed by either the mayor or the superintendent of police, the director
73 of the department of finance, the director of the department of safety and permits, or the
74 city attorney, setting forth the causes for suspension, revocation, or other remedial
75 sanctions as set forth in section 10-160, a hearing shall be held by the alcoholic beverage
76 control board to determine whether the permit of the person charged shall be suspended
77 or revoked, or whether remedial sanctions shall be imposed. A notice shall be served

78 upon the holder of the permit stating the time and place of the hearing to be held by the
79 board, which shall be not less than ten calendar days from the date such notice is given.
80 The notice shall be sent by the clerk of the council and shall enumerate the cause or
81 causes for suspending or revoking the permit, or for imposing remedial sanctions. The
82 notice shall be mailed by regular and registered or certified mail to the holder of the
83 permit at the address of the place of business as given in the application for the permit, or
84 it may be served on the holder of the permit in person by a police officer or employee of
85 the department of finance or the department of safety and permits.

86 * * *

87 **Sec. 10-79. - Notice.**

88 Where the holder of, or applicant for, an alcoholic beverage permit and the owner of the real
89 property are different and a permit has been denied, suspended or revoked, or remedial sanctions
90 have been imposed under this article, in addition to the notification required to be given to the
91 holder thereof, or applicant therefor, the department of finance, the department of safety and
92 permits, or the alcoholic beverage control board, as appropriate, shall notify one or more of the
93 owners of the real property upon which the business, in the name of which the alcoholic
94 beverage permit was issued, is located.

95 **Sec. 10-80. - Standing before board.**

96 Any person desiring to appear before the alcoholic beverage control board relative to the appeal
97 of the denial of an alcoholic beverage permit by the department of safety and permits or the
98 suspension or revocation of an alcoholic beverage permit by the alcoholic beverage control board
99 or the imposition of remedial sanctions by the alcoholic beverage control board shall have
100 standing before the board.

101 **Sec. 10-106. - How application mailed.**

102 All applications for permits regulated by this chapter shall be mailed or delivered to the
103 department of safety and permits and, when an applicant must also apply for one or more local
104 permits, all applications shall be mailed and delivered to the respective authorities, including the
105 state, within 24 hours of each other. If the applicant fails in this respect the application may be
106 withheld and the permit denied.

107 **Sec. 10-107. - Reserved.**

108 **Sec. 10-108. - Reserved.**

109 **Sec. 10-109. - Reserved.**

110 **Sec. 10-110. - Investigation by administrative agencies.**

111 (a) The department of safety and permits shall conduct whatever investigations may be
112 required to properly certify that the proposed business location complies with:

113 * * *

114 (3) Section 10-236, as amended, regarding the proximity of such business to
115 playgrounds, churches, public libraries or schools; providing that the department
116 of safety and permits may issue permits to business locations which do not
117 comply with section 10-236, but which are lawfully permitted to sell alcoholic
118 beverages for the year 1985 and providing that if the property is a legal
119 nonconforming use, that it has maintained its status as a nonconforming use in
120 accordance with the provisions of the comprehensive zoning ordinance, as
121 amended;

122 * * *

123 (6) Compliance with all applicable provisions of the Code of Ordinances of the City
124 of New Orleans.

125 The department of safety and permits shall not issue permits if the location does not comply with
126 such requirements.

127 (b) The department of safety and permits shall also forward a copy of the application to the
128 police department for the purposes of making proper investigations of the statements
129 contained therein, and the police department shall certify, in writing, to the department of
130 safety and permits with reference thereto; also, relative to any other matters which might
131 affect the qualifications of all persons required to qualify under this chapter. The
132 department of safety and permits shall not issue permits if the department of safety and
133 permits finds that all persons required to qualify under this chapter are not qualified to be
134 issued an alcoholic beverage permit.

135 **Sec. 10-111. - Reserved.**

136 **Sec. 10-112. - Reserved.**

137 **Sec. 10-113. - Continued investigation and revocation on subsequent findings.**

138 All applicable administrative agencies shall continue investigating the qualifications of all
139 applicants for permits under the provisions of this chapter. Subsequent to the issuance of
140 permits, should it be ascertained that the applicant was not qualified for the permit under the
141 provisions of this chapter, or that the applicant falsified the application, the department of safety
142 and permits shall take immediate steps, on its own volition or at the written request of any other
143 local authority, to begin the process to suspend or revoke the permit.

144 **Sec. 10-121. - Procedure for withholding or denying permits.**

145 * * *

- 146 (b) Upon receipt of an application for a permit or upon receipt of an affidavit for a renewal of
147 a permit, the department of safety and permits shall conduct an investigation to determine
148 whether the application meets all of the requirements of this chapter. After the
149 department of safety and permits has completed its investigation and received reports
150 regarding the application from the other departments of the city, as required in this
151 division, then the department shall determine whether the application for the permit or the
152 affidavit for a renewal of a permit shall be granted or denied.
- 153 (c) If the department of safety and permits finds that the application for the permit or the
154 affidavit for a renewal of a permit is not in compliance with this chapter or that the
155 applicant does not meet the qualifications required by this chapter, then the department
156 shall deny the application for a permit or affidavit for renewal of a permit. This denial
157 shall be communicated to the applicant by registered or certified mail, giving the specific
158 reason for such denial.
- 159 (d) In order to afford every person a full opportunity to be heard, it is hereby provided that
160 when an application for a permit or a renewal thereof is denied, the applicant, within ten
161 days from the date of notification of such denial, may petition in writing to the alcoholic
162 beverage control board for a review of the action taken by the department of safety and
163 permits in denying or withholding the issuance of a permit or a renewal thereof.
- 164 (e) At this hearing, the director of the department of safety and permits or the director's duly
165 designated representative and the city attorney or an assistant city attorney shall be
166 present to assist in presenting the facts in the particular case to the alcoholic beverage
167 control board or its designate. At such a hearing, the applicant shall appear in person and
168 may be represented by counsel.

169 (f) After reviewing the file in the case and considering the evidence, the alcoholic beverage
170 control board or its designate shall determine whether the action of the department of
171 safety and permits in denying the issuance of the permit or a renewal of a permit should
172 be upheld or reversed. Should the applicant fail to appear for the hearing, the alcoholic
173 beverage control board shall nevertheless decide the matter without further delay.

174 **Sec. 10-128. - Maintenance of responsible person on licensed premises.**

175 No alcoholic beverage outlet shall operate without someone in attendance with managing
176 authority over such establishment. Every place not directly supervised and managed by the
177 permittee shall designate a manager to exercise responsibility over the establishment. No
178 alcoholic beverage outlet shall remain open unless the owner or the manager is in attendance
179 therein. Owners and managers of such establishments shall notify the department of safety and
180 permits of any change in the managers employed by such establishment within five days of such
181 change. Managers must have all the personal qualifications prescribed by law for owners. Failure
182 of the owner to comply with this section shall constitute a penal violation of this Code.

183 **Sec. 10-131. - Change of manager(s).**

184 The holder of a permit issued under this chapter shall notify the department of safety and permits
185 of any change in manager(s), and such manager(s) must qualify in accordance with the
186 provisions of this chapter.

187 **Sec. 10-132. - Applications for permit renewals.**

188 (a) Every alcoholic beverage outlet permit issued under the authority of this chapter shall
189 expire on May 31st of each year, and must be recertified annually by the department of
190 safety and permits. Applications for renewal shall be submitted by April 1 of each year.
191 The original permit shall be renewed by the permittee to whom it was issued.

192 (b) If a person holding permits under this chapter fails to file an application for renewal in
193 accordance with this chapter by April 1, the department of safety and permits may
194 temporarily suspend the alcoholic beverage outlet permit pending proceedings before the
195 alcoholic beverage control board.

196 (c) Renewals are subject to all the rules and provisions of this chapter and may be withheld
197 or denied accordingly.

198 **Sec. 10-133. - Reserved.**

199 **Sec. 10-134. - Fingerprints, etc., may be required again for renewals.**

200 The department of safety and permits may require applicants for permits under this division who
201 have already furnished the department with fingerprints, photographs, and the other requirements
202 of this chapter to furnish such information so required again for the renewal of permits.

203 **Sec. 10-136. - Neighborhood compatibility requirements.**

204 Under the provisions of this chapter, no permit shall be issued or renewed for any applicant who
205 has not submitted evidence of complying with the following requirements:

206 (1) All alcoholic beverage outlets shall establish a litter abatement program, certified by the
207 department of safety and permits. Such program shall include the following items:

208 * * *

209 **Sec. 10-237. - Restrictions on package liquor stores near churches, schools, etc.**

210 * * *

211 (b) The provisions of this section shall not apply to a package liquor store where the
212 wholesale cost of package liquor stocked and displayed does not exceed 15 percent of the
213 wholesale cost of other merchandise stocked and displayed and where package liquor
214 display does not constitute more than ten percent of all display area and where package

215 liquor is not advertised outside or off the premises. Any permit obtained under this
216 subsection shall be limited to the type or types of establishments represented in the
217 original application. A sworn statement of continued use shall be required before each
218 periodic renewal of such license and the operation of any additional type or variation of
219 type shall be a violation of this section and cause for the immediate revocation of such
220 license by the department of safety and permits.

221 * * *

222 **Secs. 10-311. – 10-318. - Reserved.**

223 **Sec. 10-341. - Reserved.**

224 **Sec. 10-428. - Enlargement of premises without consent prohibited.**

225 Enlargement or modification of the licensed premises is prohibited without prior approval having
226 been inscribed on the permit by the department of safety and permits.

227 **Sec. 10-540. – Reserved.**

228 **Sec. 10-566. Authority to search for violations.**

229 The department of safety and permits may search and examine any warehouse, boat, store,
230 storeroom, automobile, truck, conveyance, vehicle or other place of storage, except a private
231 residence which may be searched only in the manner provided for by law, and any means of
232 transportation, whenever there is probable cause to believe that the terms of this chapter have
233 been or are being violated.”

1 **SECTION 2.** The provisions of this ordinance shall not be construed to supersede and
2 waive any other requirements of other applicable city, state, or federal laws.

1 **SECTION 3.** Should any section, paragraph, sentence, clause, phrase or word of this
2 ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, such

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

1 **SECTION 4.** The effective date of this ordinance shall be 120 days from the date of
2 adoption.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS _____

PRESIDENT OF THE COUNCIL

DELIVERED TO THE MAYOR ON _____

APPROVED:
DISAPPROVED: _____

MAYOR

RETURNED BY THE MAYOR ON _____ **AT** _____

CLERK OF COUNCIL

ROLL CALL VOTE:

YEAS:

NAYS:

ABSENT:

RECUSED: