#### ORDINANCE 21 - 18

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES CHAPTER 3, ALCOHOLIC BEVERAGES, SECTION 3-2, HOURS OF OPERATION, TO EXTEND HOURS OF OPERATION FOR REGULATED ESTABLISHMENTS FOR CONSUMPTION ON PREMISES ONLY IN THE SOUTH CAPE ZONING DISTRICT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Cape Coral City Council is interested in enhancing the South Cape Downtown District (SC) zoning district's reputation as a hospitality and entertainment destination in southwest Florida; and

WHEREAS, the City Council is interested in identifying new economic stimuli in the SC zoning district that would enhance economic opportunities for business establishments located in that zoning district; and

WHEREAS, numerous establishments in the SC zoning district are licensed by the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, Bureau of Licensing, to serve alcoholic beverages on-premises; and

WHEREAS, certain establishments located in the SC zoning district and licensed to serve alcoholic beverages for consumption on the premises have requested that they be allowed to serve alcoholic beverages only for consumption on the premises until 3 a.m. on Saturday and Sunday mornings and on certain other holiday-related days instead of ceasing those sales at 2:00 a.m. on those days; and

WHEREAS, the City Council desires to allow Regulated Establishments within the SC zoning district to expand the hours of service of alcohol from 2 a.m. to 3 a.m. on Saturday and Sunday mornings and on certain other holiday-related days.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 3, Alcoholic Beverages, is hereby amended as follows:

### § 3-1 Definitions.

For the purposes of this chapter, the words and phrases used in this chapter shall have the meanings ascribed to them by the state Alcoholic Beverage Code, F.S. Chapters 561 - 567. In addition to the definitions contained in the state Alcoholic Beverage Code, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning.

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**CONSUMPTION OFF THE PREMISES.** Consumption of beer, wine or alcoholic beverages of any kind at a place different from the place where purchased.

**CONSUMPTION ON THE PREMISES.** Consumption of beer, wine or alcoholic beverages of any kind upon premises where purchased.

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**REGULATED ESTABLISHMENTS.** All places or establishments, within the city, offering for sale beer, ale, wine or alcoholic liquors or beverages of any kind or places or establishments permitting patrons or customers to consume or serve others beer, ale, wine or alcoholic liquors or beverages of any kind. **REGULATED ESTABLISHMENTS** shall not include private residences or rooms or apartments in motels, hotels or other rentals of similar nature.

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### § 3-2 Hours of operation.

- (a) Generally. REGULATED ESTABLISHMENTS may sell, serve, or permit consumption of alcoholic beverages on any day between the hours of 7:00 a.m. and 2:00 a.m. of the following morning. No REGULATED ESTABLISHMENT may sell, serve, or permit consumption of alcoholic beverages for CONSUMPTION OFF THE PREMISES between 2:00 a.m. and 7:00 a.m. of any day in any zoning district. Until April 3, 2016, for CONSUMPTION ON THE PREMISES only, Provided they comply with the provisions of Section 3-2(b) of this chapter and hold valid extended hours permits issued by the City, REGULATED ESTABLISHMENTS in the SC zoning district may, for CONSUMPTION ON THE PREMISES only, sell, serve, or permit consumption of alcoholic beverages until 4:00 3:00 a.m. on Saturday and Sunday mornings, provided they comply with the provisions of Section 3-2(b) of this chapter and hold valid extended hour permits issued by the City, as well as until 3:00 a.m. on the following holiday-related days:
  - (1) Labor Day;
  - (2) Memorial Day;
  - (3) November 1<sup>st</sup> (the day after Halloween);
  - (4) Thanksgiving Day; and
  - (5) New Year's Day.
- (b) Extended hours requirements

In order for establishments in the SC zoning district to sell, serve, or permit consumption of alcoholic beverages only for CONSUMPTION ON THE PREMISES until 4:003:00 a.m. on Saturday and Sunday mornings, as well as on the holiday-related days identified in Section 3-2(a) above, the establishments must comply with the following requirements:

- During all hours of operation, the REGULATED ESTABLISHMENT shall have in (1) use a security camera system capable of recording and retrieving video images to assist in offender identification and apprehension. The cameras shall capture all ingress and egress points of and the whole interior premises of the REGULATED ESTABLISHMENT as well as the entire exterior premises of the property on which the REGULATED ESTABLISHMENT is located and all exterior walkways and alleyways that are immediately adjacent to the REGULATED ESTABLISHMENT. Cameras must be activated and recording video during all hours of operation. The REGULATED ESTABLISHMENT must ensure that the security camera system is in good working condition during all hours of operation and that the video images are capable of retrieval for a period of not less than fourteen (14) days after the images are recorded. The security camera system must be of a type and quality, as well as maintained in a working condition, such that the video images, when retrieved, provide a reasonably clear and detailed depiction of the areas and activities captured by the system. Security systems that capture cloudy, fuzzy, or blurred video images are not sufficient to constitute the security camera system required by this sub-section. The owners, operators, representatives, agents, and employees of the REGULATED ESTABLISHMENT shall allow access to the recordings by authorized city code enforcement and law enforcement officers without court subpoena and without prior notice during all hours that the REGULATED ESTABLISHMENT is open for business.
- (2) During all hours of operation, the REGULATED ESTABLISHMENT shall comply with Florida's Responsible Vendor Act as set forth in Sections 561.701 through 561.706, Florida Statutes, as same may be amended, and must submit proof that each of its employees has completed the required course of instruction that includes subjects listed in the statute dealing with alcoholic beverages. The REGULATED ESTABLISHMENT must continue to be a member in the responsible vendor program as a condition of maintaining an extended hours permit.
  - (3) In order to sell, serve, or permit the consumption of alcohol that is only for CONSUMPTION ON THE PREMISES past 2:00 a.m. on Saturday or Sunday mornings, respectively, the REGULATED ESTABLISHMENT shall, at its expense, provide one (1) off-duty Cape Coral police officer continually from 12:00 a.m. on Saturday (for extended hours on Saturday) and from 12:00 a.m. on Sunday (for extended hours on Sunday) until one (1) hour after closing time on Saturday or Sunday

morning, respectively, but with a minimum of four (4) hours. The purpose of the off-duty Cape Coral Police Officer is to provide security, maintain order, deter and detect criminal activity, and protect the public health, welfare and safety. To this end, and in recognition of the fact that the City's extended hours program is an experimental pilot program that should not negatively affect the public health, safety and welfare, the off-duty police officer shall monitor not only the interior and exterior of the premises of the REGULATED ESTABLISHMENT, but also shall engage in community policing activities throughout the SC zoning district as directed by the Police Chief or the Police Chief's designee. The off-duty Cape Coral police officer required by this sub-section shall be in addition to, and not in lieu of, any other security personnel provided by the establishment.

- In order to sell, serve, or permit the consumption of alcohol that is only for CONSUMPTION ON THE PREMISES past 2:00 a.m. on Saturday or Sunday mornings, respectively, or past 2:00 a.m. on the other days identified in Section 3-2(a) above, the REGULATED ESTABLISHMENT shall, at its expense, provide interior security personnel continually from 8:00 11:00 p.m. on Friday (for extended hours on Saturday) and from 8:00 11:00 p.m. on Saturday (for extended hours on Sunday) until closing time on Saturday or Sunday morning, respectively, as well as from 11:00 p.m. on October 31st (for extended hours on November 1st), December 31st (for extended hours on New Year's Day), and the days immediately preceding Labor Day, Memorial Day, and Thanksgiving Day (for extended hours on any of those days) until closing time on November 1st and January 1st (New Year's Day), Labor Day, Memorial Day, or Thanksgiving Day, respectively, at a ratio of one (1) security officer for every 150, or fraction thereof, allowed occupancy of the establishment, but in no event less than one (1). The interior security personnel shall be in addition to, and not in lieu of, the mandatory one (1) off-duty Cape Coral police officer. Bartenders, barbacks, and other employees of the establishment with duties unrelated to security shall not be counted as security officers. The purpose of the interior security personnel is to provide security, maintain order, deter and detect criminal activity, and protect the public health, welfare and safety, primarily in the interior of the premises of the REGULATED ESTABLISHMENT and at its entrance and exit points.
- (5)(4) The establishment shall provide adequate buffering of noise impacts from open-air areas, if any, and assure compliance with approved site plan conditions, if any, regarding ingress and egress of vehicle and pedestrian traffic. The establishment shall have no negative effect on neighboring properties with respect to excessive noise. All efforts shall be made to prevent nuisances both inside and outside the establishment.
- (6)(5) The establishment shall conduct a "last call" for service of alcoholic beverages, requiring the establishment to cease the sale and service of alcoholic beverages 15 minutes prior to closing on Saturday and Sunday mornings as well as on the mornings of any of the holiday-related days identified in Section 3-2(a) above.
- (7)(6) The owner, agent, or authorized representative of a REGULATED ESTABLISHMENT must meet with the Police Chief, or the Police Chief's designee, at least once a month concerning issues related to the extended hours of operation and how those issues may be mitigated.
- (8)(7) The REGULATED ESTABLISHMENT must meet all of the requirements of local, state, and federal law and obtain and maintain all associated licenses in order to serve, sell or permit the consumption of alcohol on the premises. Furthermore, the establishment must have both a valid business tax receipt and a valid extended hours permit issued by the City of Cape Coral.

## (c) Extended hours permits

(1) Extended hours permit a privilege subject to revocation. The ability to sell, serve, or permit the consumption of alcohol that is only for CONSUMPTION ON THE PREMISES beyond the hour of 2:00 a.m. on Saturday and Sunday mornings any day permitted as identified in this section within the SC zoning district is hereby declared to be and is a privilege subject to suspension, revocation, and the imposition of criteria and conditions, and no person or entity may reasonably rely upon the continuation of that privilege. Any person or entity wishing to remain open beyond 2:00 a.m. to sell, serve,

or permit the consumption of alcohol that is only for CONSUMPTION ON THE PREMISES shall be required to make an application and receive approval for an extended hours permit.

- Application and review procedures. An application for an extended hours permit shall be submitted, on a form furnished by the city, to the Director of Community Development, or the Director's designee, along with a nonrefundable application fee of \$50.00. The application fee is in addition to the permit fee for the extended hours permit. In the application, the applicant shall provide information to show compliance with the requirements of Section 3-2(b). The Director of Community Development, or the Director's designee, may require the applicant to supplement the information initially provided, if such additional information is deemed necessary to determine whether the requirements of Section 3-2(b) are met. City Council shall have the authority to adopt by resolution fees, if any, for a permit application.
- (3) Extended hours permit. Any establishment located in the SC zoning district holding a license duly granted by the State of Florida to sell, serve, or permit the consumption of alcohol that is only for CONSUMPTION ON THE PREMISES may apply for an extended hours permit. Such application shall be processed using the procedures and criteria listed in this chapter. The permit fee for the issuance of the extended hours permit shall be \$100.00, and shall be paid prior to issuance of the permit. For establishments located within the SC zoning district, an extended hours permit shall allow and extend the hours in which the licensee may remain open for sale, service of, and CONSUMPTION ON THE PREMISES only of alcoholic beverages until 4:00 3:00 a.m. on Saturday and Sunday mornings any day permitted as identified in this section. An extended hours permit shall expire one year from the date of issuance or April 3, 2016, whichever occurs first. City Council shall have the authority to adopt by resolution fees, if any, for an extended hours permit.
- (4) Approval. The Director of Community Development, or the Director's designee, may approve an application for an extended hours permit upon a determination that the subject application complies with the criteria identified in Section 3-2(b) above.
- (5) Denial. An application which fails to comply with the criteria identified in Section 3-2(b) shall be denied. If the Director of Community Development, or the Director's designee, denies the application, the applicant shall have thirty (30) days from the date of the notice of denial to appeal the decision to the City Council pursuant to the appeal procedure contained in section 3-2(c)(8).
- (6) Renewal of extended hours permit. Each extended hours permit shall be required to be renewed no later than one (1) year following the date of initial granting of the permit. An application for renewal of an extended hours permit shall be submitted, on a form furnished by the city, to the Director of Community Development, or the Director's designee. The renewal of any extended hours permit shall be subject to a permit renewal fee. The fee for renewing an extended hours permit shall be \$75.00, and shall be paid prior to renewal of an extended hours permit. Terms for approval or denial of the application shall be as stated above in subsections (4) and (5). City Council shall have the authority to adopt by resolution fees, if any, for the renewal of an extended hours permit.
- (7) Revocation or suspension.
  - A. If the Director of Community Development, or the Director's designee, the Chief of Police, or the designee of the Police Chief, believes that any extended hours permit holder has failed to comply with the criteria of its permit, or is operating in a manner harmful to the public health, safety or welfare, the Director of Community Development, or the Director's designee, the Chief of Police, or the designee of the Police Chief, shall prepare a report which provides facts, reasons, and an analysis for believing violations exist. The Director or Police Chief shall submit the report to City Council and a public hearing shall be held to determine whether the extended hours permit should be revoked based upon the failure to meet the criteria established in Section 3-2(b) above. The report shall be provided to the permit holder at least ten (10) days prior to the public hearing. A notice containing the date of the public

hearing shall be personally served upon the permit holder or posted in a conspicuous place at the establishment of the permit holder at least ten (10) days prior to the public hearing. The City Council may reschedule or continue the date of the public hearing for good cause shown upon the request of either the permit holder, or the Director of Community Development, or the Police Chief. At the public hearing, the permit holder shall be afforded a reasonable opportunity to speak and present evidence on his/her behalf. Evidence that the REGULATED ESTABLISHMENT has been operating in a manner detrimental to the public health, safety, and welfare includes, but is not limited to, the following:

- The occurrence of six (6) three (3) felony convictions, regardless of 1. whether adjudication has been withheld, that are the result of criminal activity on the premises of the REGULATED ESTABLISHMENT. The convictions must be the result of incidents of criminal activity that occurred during the period from the earlier of the time the REGULATED ESTABLISHMENT opened for business on the day before through the close of business on the morning of the extended hours Friday or Saturday (if the establishment is not open on Friday) through the close of business on Sunday or 12:00 a.m. on Monday morning, whichever occurs first, and within a consecutive twelve (12) month period, regardless of when the convictions actually occurred. The convictions must be of individuals who were employees or patrons of the REGULATED ESTABLISHMENT at the time the criminal activity occurred and the conviction of multiple individuals for the same incident of criminal activity shall be deemed one conviction and not separate convictions; or
- The occurrence of six (6) three (3) criminal convictions, regardless of whether adjudication has been withheld, involving possession or sale of a controlled substance on the premises of the REGULATED ESTABLISHMENT. The convictions must be the result of incidents of criminal activity that occurred during the period from the earlier of the time the REGULATED ESTABLISHMENT opened for business on the day before through the close of business on the morning of the extended hours Friday or Saturday (if the establishment is not open on Friday) through the close of business on Sunday or 12:00 a.m. on Monday morning, whichever occurs first, within a consecutive twelve (12) month period, regardless of when the convictions actually occurred. The convictions must be of individuals were employees or patrons of the REGULATED ESTABLISHMENT at the time the criminal activity occurred and the conviction of multiple individuals for the same incident of criminal activity shall be deemed one conviction and not separate convictions;
- 3. Three (3) convictions, regardless of whether adjudication has been withheld, of any owner, operator, agent or employee of the REGULATED ESTABLISHMENT for criminal activity related to the sale or possession of alcoholic beverages at the REGULATED ESTABLISHMENT, such as sales of alcoholic beverages outside of the permitted hours of sale, sale to an underage person, etc.; or
- 4. Repeated instances or a demonstrated pattern by a REGULATED ESTABLISHMENT of allowing, condoning, participating in, or failing to correct conduct or activity that created a nuisance or resulted in a negative impact on the health, safety and welfare of the public generally, or of the patrons of the REGULATED ESTABLISHMENT. Examples of such conduct or activity would include, but not be limited to, whether the REGULATED ESTABLISHMENT has taken all reasonable precautions to discourage unlawful activity including vandalism, persons and property crimes, disturbances, littering by patrons, unlawful drug use, noise, vehicular use by intoxicated patrons, and illegal activity of any kind by

- employees, patrons or others associated with the REGULATED ESTABLISHMENT and whether the REGULATED ESTABLISHMENT has taken all reasonable efforts to prevent nuisances both inside and outside the establishment, particularly with respect to whether the REGULATED ESTABLISHMENT has complied with any recommendations by the Police Chief or the Chief's designee concerning possible corrective action or mitigation efforts.
- 4. <u>5.</u> Failure or refusal, without good cause shown, to meet with the Police Chief or the Chief's designee as required in subsection 3-2(b)(G) of this Chapter.
- В. Emergency public hearing on suspension or imposition of conditions. If the Police Chief, or Police Chief's designee, believes that an immediate serious danger to the public health, safety or welfare requires emergency suspension of the extended hours permit, or that a permit holder no longer has a valid alcohol license, the Police Chief's designee, may summarily order said suspension. The Police Chief, or the Police Chief's designee, shall take only that action necessary to protect the public interest. The Police Chief, or Police Chief's designee, shall provide the permit holder with the specific facts and reasons for finding an immediate danger to the public health, safety or welfare exists and the reasons for concluding that the action taken is necessary to protect the public interest. The notice of immediate action shall be personally served upon the permit holder or posted in a conspicuous place at the establishment of the permit holder. The notice shall also advise the permit holder that he/she may request a public hearing before the City Council challenging the need for summary action, (an "emergency public hearing") by making a written request to the City Manager within thirty (30) days of being served with the notice. If the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Failure to timely request an emergency public hearing shall result in the automatic revocation of the license without further action by the City. If the permit holder requests an emergency public hearing, the public hearing shall be conducted by the city council within twenty-one (21) calendar days of the City's receipt of the request, unless extended by agreement of the permit holder. At the emergency public hearing, the permit holder shall be afforded a reasonable opportunity to speak and present evidence on his/her behalf.
- C. The public hearings pursuant to 3-2(c)(7)A, and 3-2(c)(7)B. above shall be quasi-judicial hearings. After consideration of the matter, and after allowing City staff and the permit holder to address the City Council, and allowing all others wishing to speak to do so, the City Council may make any of the following determinations:
  - 1. If a suspension has been imposed pursuant to subsection 3-2(c)(7)B above, suspension of the permit may be lifted and the permit upheld with no further action required by the permit holder, or suspension of the permit may be continued pending correction of the violation.
  - 2. Allow the permit holder to continue operating during extended hours, subject to any reasonable additional conditions deemed necessary to mitigate or eliminate the adverse effects of such extended hours. Conditions may include, but are not limited to, provision by the permit holder, at its expense, of additional security personnel, sound-proofing or noise reduction, and outside lighting.
  - 3. The permit may be suspended for any time period less than one year.
  - 4. The permit may be revoked and subject to renewal pursuant to the terms of Section 3-2(c)(6) of this Chapter.
- D. Should the extended hours permit be revoked, no reapplication shall be considered for that location within a twelve-month period following the date

- of revocation. No revoked extended hours permit shall be reinstated until all applicable conditions of the permit are met.
- E. Emergency Suspension of Extended Hours Operations. In the event that the Police Chief, or the Police Chief's designee, finds that conditions exist in the SC zoning district anytime during the period from Friday evening at 7:00 p.m. through 12:00 3:00 a.m. on Monday morning that are so deleterious to the public health, safety, and welfare as to constitute an emergency condition that would be aggravated if REGULATED ESTABLISHMENTS were to sell, serve, or permit the consumption of alcohol for CONSUMPTION ON THE PREMISES after 2:00 a.m. on Saturday or Sunday of that weekend, as well as on the mornings of any of the holiday-related days identified in Section 3-2(a) above then the Police Chief, or the Police Chief's designee, may order the immediate emergency suspension of all extended hours permits without notice and without any right to a hearing. The emergency conditions required by this sub-section shall not necessarily be the result of the operation or activities of any single REGULATED ESTABLISHMENT or even directly related to the sale or consumption of alcoholic beverages. REGULATED ESTABLISHMENTS with valid extended hours permits shall be allowed to resume business operations, as allowed by their extended hours permits, the following weekend, unless they are provided with notice of suspension or revocation as otherwise identified in this chapter.

# (8) Appeal procedure.

- An applicant for an extended hours permit may appeal to the City Council, consistent with these provisions, any decision rendered by the Director of Community Development, or the Director's designee, to deny an extended hours permit, or the renewal of an extended hours permit. Within ten (10) days of the decision, the applicant may request an appeal in writing to the City Manager who shall schedule a public hearing by the City Council as soon as practicable. Notice shall be given and a public hearing shall be held as prescribed by subsection (7)A of this section. The City Council shall consider the appeal and make a decision based on the criteria set forth in subsection (b).
- B. Appeal of any City Council decision regarding an extended hours permit or an application for an extended hours permit shall be to the circuit court in and for Lee County, in the manner provided by state law. In accordance with state law, failure to appeal within thirty (30) days of the rendition of the decision shall result in the applicant waiving his right to appeal.
- (9) Transferability. An extended hours permit shall not be transferable to a different location or to different business owners. However, if an establishment is sold and the operation of the business remains identical to that described on the approved extended hours permit, then the new owners will be required to apply for a new extended hours permit, within thirty (30) days of the purchase, but the city shall limit its review to:
  - A. The amount and degree of law enforcement activities generated by the operation of the establishment. Any calls for service between the date of application and the date of approval may be grounds for denial; and
  - B. A review of any other REGULATED ESTABLISHMENTS offering CONSUMPTION ON THE PREMISES that are owned or operated by the owners or managers, or any other party with a proprietary interest in the new owner's establishment to determine the amount and degree of law enforcement activities at such establishments; and
  - C. Verification that the establishment remains in compliance with the requirements of Section 3-2(b).
- (10) Voluntary Relinquishment. Except as otherwise provided herein, the holder of a valid extended hours permit in good standing may voluntarily relinquish the permit by notifying the city in writing of the permit holder's intention to relinquish the permit and the date upon which the relinquishment will take effect. Once relinquished, the

extended hours permit is of no further force and effect and the REGULATED ESTABLISHMENT shall be deemed to have forfeited the privilege of selling, serving, or permitting consumption of alcoholic beverages only for CONSUMPTION ON THE PREMISES until 4:00 3:00 a.m. on Saturday or Sunday mornings as well as on the mornings of any of the holiday-related days identified in Section 3-2(a) above. If the permit holder or REGULATED ESTABLISHMENT desires to resume selling, serving, or permitting the consumption of alcohol that is only for CONSUMPTION ON THE PREMISES past 2:00 a.m. on Saturday and Sunday mornings, respectively, any day permitted as identified in this section, then the permit holder or REGULATED ESTABLISHMENT must submit a new application for an extended hours permit in accordance with the requirements of this chapter. If suspension or revocation proceedings are pending concerning an extended hours permit, or if a permit is in revoked or suspended status, or if a permit holder has been notified that any suspension or revocation proceedings are being initiated by the city pursuant to the provisions of this chapter, then the permit holder shall not be able to voluntary relinquish the extended hours permit until the suspension or revocations issues have been resolved and the extended hours permit is once again in good standing.

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SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective April 1, 2018.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 19th DAY OF March, 2018.

COMELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO **GUNTER** CARIOSCIA

STOUT

NELSON STOKES

WILLIAMS COSDEN

attested to and filed in my office this 26%DAY OF 2018.

REBECCA VAN DEUTEKOM

CITY CLERK

APPROVED AS TO FORM:

DOLORES D. MENENDEZ

**CITY ATTORNEY** 

ord/Alcohol Extended Hours in SC

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