



Ratification
Number 2013-55

AN ORDINANCE

TO AMEND THE CODE OF THE CITY OF CHARLESTON BY ADDING TO CHAPTER 17 THEREOF A NEW ARTICLE VIII PERTAINING TO LATE NIGHT ENTERTAINMENT ESTABLISHMENTS (AS AMENDED).

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Code of the City of Charleston is hereby amended by adding to Chapter 17 thereof a new Article VIII to read as follows:

ARTICLE VIII – LATE NIGHT ENTERTAINMENT ESTABLISHMENTS

Sec. 17-124.-Findings.

Successful communities are those that provide desirable atmospheres for living, working and recreating. To foster strong neighborhoods and a healthy economy, it is vital that a balance between these sometimes competing interests be achieved and maintained. Viable, well-managed nightlife activities are crucial elements to the success of the City, as they provide needed recreational opportunities to visitors and residents alike. The hospitality industry is of particular importance to the City's tourist economy, and it is imperative that this industry be conducted in a manner that fosters safe, inviting entertainment so that the City remains attractive to first-time, and returning, visitors. In recent years, the number of establishments that offer on-premise consumption of beer, wine and alcoholic beverages in the early morning hours has increased. These establishments, often in close proximity to one another, provide natural places for gathering and frivolity. Due to their hours of operation, the entertainment they provide and their numbers of patrons coming and going, these establishments often generate noise, litter, traffic and other deleterious effects which disturb the peace, quietude and good order of the community and impose unnecessary burdens on public safety officers. City Council finds it in the interests of public safety and good order in the community that reasonable measures be enacted to require that establishments open after midnight and which

allow for the on-premise consumption of beer, wine or alcohol, outside the confines of a structure that offers accommodations, demonstrate a willingness and ability to responsibly conduct their business and monitor the activities of their patrons.

Sec. 17-125.-Definitions.

Door person means a person who is present at all times at the entrance door of a Late Night Entertainment Establishment to monitor the number of persons entering the business for compliance with its maximum occupancy load and to check the identifications of persons, if authorized by the business.

Late Night Entertainment Establishment means a business in existence as of July 1, 2013 that: (a) is not located in a structure that provides accommodations uses as that term is defined in Sec. 54-120 of the Zoning Ordinance, as the same may from time to time be amended; (b) is open to the general public; (c) is open after midnight; (d) is licensed to allow on-premises consumption of beer, wine or alcohol; and (e) is required to have a Class 7(a) business license.

A business that comes into existence on or after July 1, 2013 which meets the requirements of subsections (a), (b), (c) and (d) shall not be subject to the provisions of Sec. 17-126.B. during its first business license year; provided that every 120 days beginning on the date the Establishment opens for business, the Establishment shall submit a report to the City that separately reports the percentage of gross revenue derived from the sale of food and other items, from the percentage of gross revenue derived from the sale of beer, wine and/or alcoholic beverages. If for any reporting period, the percentage of gross sales from the sale of beer, wine and/or alcoholic beverages is 35% percent or more of the gross sales of the Establishment, the Establishment shall be subject to Sec. 17-126.B. This reporting requirement ends when the Establishment renews its business license.

Nothing in this definition shall be inconsistent with the provisions of the City's Business License Ordinance, including but not limited to the Schedule of License Fees.

Maximum occupant load means the maximum number of people allowed in a Late Night Entertainment Establishments pursuant to the International Fire Code or other fire code in effect in the city, all as the same may, from time to time, be amended.

Off-site areas used for parking means: (1) parking spaces or areas not located on the lot of record of the Late Night Entertainment Establishment; and (2) shared parking areas on the lots of record of the Late Night Entertainment Establishment, either of which are made available by the Late Night Entertainment Establishment to its personnel and patrons for parking.

Security person means a person who monitors the entrance and other areas of the Late Night Entertainment Establishment for purposes of, among others, monitoring compliance with the business's maximum occupancy load, identifying underage and intoxicated persons, enforcing the rules and regulations of the business, and otherwise providing security for the business and its patrons.

Security supervisor means a security person who is responsible for supervising and overseeing security persons.

Sec. 17-126.-Late Night Entertainment Establishment Operational Regulations.

A. Noise.

Late Night Entertainment Establishments where music is played after 11:00 p.m. shall close all doors and windows of the establishment at 11:00 p.m. Notwithstanding the foregoing, noise generated from an establishment after 11:00 p.m. that is capable of being heard within 50 feet of an entrance to the establishment is declared to be a nuisance. It shall be the responsibility of management of the establishment to take all measures as are required to manage noise from the establishment such that it does not constitute a nuisance as set forth herein.

B. Security.

1. Late Night Entertainment Establishment personnel shall be responsible for operating the establishment in a safe and orderly manner. After midnight and until closing, the number and type of security personnel on duty at all times shall be determined by the business's maximum occupant load ("MOL") of the specific area or areas occupied after midnight regardless of whether the number of people constituting the maximum occupant load is then present:
 - a. 100 MOL or less: one door person and one security person. The security person may also serve as the Establishment's manager.
 - b. 101MOL-200MOL: one door person and two security persons, one of which may be a manager.
 - c. 201MOL – 300 MOL: one door person and three security persons, one of which may be a manager.
 - d. 301 MOL – 400 MOL: one door person and four security persons including a security supervisor who may be one of the four security persons, one of which may be a manager.

- e. 401MOL – 500 MOL: one door person and five security persons, including a security supervisor who may be one of the five security persons. One of the security persons may be a manager.
- f. 501 MOL – 600 MOL: one door person and six security persons, including a security supervisor who may be one of the six security persons. One of the security persons may be a manager.
- g. 601 MOL – 700 MOL: one door person and seven security persons, including a security supervisor who may be one of the seven security persons. One of the security persons may be a manager.
- h. 701 MOL – 800 MOL: one door person and eight security persons, including two security supervisors who may be two of the eight security persons. One of the security persons may be a manager.
- i. 801 MOL and above: one door person and one security person for every one hundred persons as allowed by the business's maximum occupant load and one security supervisor for every four security persons. Security supervisors may also be security persons required under this subsection. One of the security persons may be a manager.

For purposes of subsection B.1., the Late Night Entertainment Establishment may designate as a door person or a security person or persons someone employed in another capacity by the Establishment whose job responsibilities for the business in such capacity ends before midnight.

- 2. It shall be the responsibility of Late Night Entertainment Establishment personnel to employ crowd management techniques to assure that patrons are adequately disbursed throughout the establishment in compliance with the maximum occupant load of the specific area or areas of the establishment occupied after midnight.
- 3. It shall be the responsibility of Late Night Entertainment Establishment personnel to see that the maximum occupant load is not exceeded.
- 4. It shall be the responsibility of Late Night Entertainment Establishment personnel to maintain a line of persons adjacent to the outside of the Late Night Entertainment Establishment so they are not blocking the sidewalk, street or public ways or entrances to other establishments.
- 5. It shall be the responsibility of Late Night Entertainment Establishment personnel to routinely monitor all on-site and *off-site areas used for parking* by the Late Night Entertainment Establishment or its patrons to prevent such areas from becoming outdoor gathering places. It shall be the responsibility of Late Night Entertainment

Establishment personnel to clear all on and *off-site areas used for parking* of patrons within thirty minutes of closing.

6. All security personnel shall be readily identifiable by such means as a badge or other form of identification to assist patrons and public safety officers.
7. It shall be the responsibility of Late Night Entertainment personnel to assist persons in entering and leaving the Late Night Entertainment Establishment in an orderly manner. In the event any person is disorderly or otherwise is engaged in illegal conduct, the Late Night Entertainment personnel shall contact law enforcement.
8. The provisions of this subsection shall only be applicable on Thursdays, Fridays and Saturdays, the holidays of New Year's Eve, St. Patrick's Day, Memorial Day, Fourth of July, Labor Day, and Halloween, and during special concerts or promotions that take place at the Late Night Entertainment Establishment.

C. Waste Management.

1. It shall be the responsibility of Late Night Entertainment Establishment personnel to maintain the exterior grounds of the establishment, the sidewalks abutting the establishment and all parking areas of the establishment, on and off site, in a clean condition, free of trash, rubbish or other debris.
2. Late Night Entertainment Establishments that utilize City sanitation services shall adhere to all ordinances, regulations and policies of the City pertaining to containing, collecting and disposing of sanitary waste. Sanitary waste containers shall be stored at such locations as may be approved by the Late Night Entertainment Establishment Committee.

D. It shall be the responsibility of Late Night Entertainment Establishment personnel to, at all times, operate and maintain the Late Night Entertainment Establishment premises in accordance with all requirements of this article and all other applicable city ordinances, including but not limited to zoning, building and fire codes.

E. In addition to the general penalty provisions of this Code, the failure to abide by the provisions of this Section 17-126 may result in the suspension or revocation of the establishment's business license or certificate of occupancy.

Sec. 17-127. - Late Night Entertainment Establishment Review Committee.

There is hereby created a Late Night Establishment Review Committee. The committee shall be appointed by the mayor and consist of seven members, one of whom shall be an employee of the police department, one of whom shall be an employee of the department of planning, preservation and sustainability, one of whom shall be an employee of the department of public services building inspections division, one of whom shall be an employee of the department of public services environmental services division, one of whom shall be an employee of the department of traffic and transportation, one of whom shall be an employee of the fire department fire marshal division, and one of whom shall be an at-large employee, or any of their respective designees. The Office of Corporation Counsel shall assist the committee, as necessary.

Sec. 17-128. Late Night Entertainment Establishment Committee Duties and Responsibilities.

The Late Night Establishment Review Committee shall act as an administrative board and shall review and approve or disapprove applications for Late Night Entertainment Establishments in the City. In its review and action on applications, the committee shall apply the criteria for the establishment of Late Night Entertainment Establishments as set out in Sec. 17-130 hereof. The committee shall render its decision on an application within fourteen (14) days of its submission to the City. Failure to render a decision within this timeframe shall constitute approval of the application. In the event an application is disapproved, the committee shall set forth in writing its reasons for denial and include suggested means for the applicant to come into compliance with the provisions of Sec. 17-130. This article establishes the minimum requirements to commence the application process for a Late Night Entertainment Establishment, and is supplemental to other city ordinances rules, regulations and applicable standard codes. Approval of a Late Night Entertainment Establishment application by the committee shall not be deemed to relieve the applicant from complying with any other applicable federal, state or local regulations applicable to its business, including building and fire codes.

Sec. 17-129.-Late Night Entertainment Establishment Requirements.

No city permit to operate a Late Night Entertainment Establishment shall be processed or issued until an application to operate the establishment has been approved by the Late Night Entertainment Establishment committee.

Sec. 17-130.-Late Night Entertainment Establishment Application.

The application to operate a Late Night Entertainment Establishment must include the following:

- (a) Floor plans, drawn to scale, showing the interior of the structure to be occupied by the establishment, to include the designation and square footage of patron use areas (customer circulation, standing, dancing, seating and wait areas), stage areas for entertainment and non-patron use areas (restrooms, kitchen, office, storage etc.). All exits shall be noted, as well as areas to be sprinkled when required by Code. When an establishment will not occupy the entire structure, the plans must identify other uses in the structure at the time of application.
- (b) A site plan, drawn to scale, showing the entire exterior of the premises to include the locations of all buildings on the premises, parking areas, refuse collection areas, the main entrance to the establishment, emergency exits from the establishment, all means of ingress and egress to the premises, lighting locations and the location and dimensions of existing and proposed trees, plantings and landscaping.
- (c) If required parking is not to be provided on-site, a plan describing how parking will be addressed, to include the location of off-site areas used for parking and their distances from the premises where the establishment will be located.
- (d) A security and management plan describing with particularity the days and hours of operation, crowd management measures to be taken, both in and outside the premises and any parking areas under the control of the establishment, and means of controlling access, and underage drinking and serving.
- (e) A waste management plan describing with particularity how waste from the establishment will be collected, stored and discarded.
- (f) An emergency action plan describing with particularity how and under what circumstances the establishment would curb fire hazards, manage an emergency, to include evacuation techniques and the respective responsibilities of on-duty personnel.
- (g) Any fee that may, from time to time, be established by City Council.

The provisions set out in an approved Late Night Entertainment Establishment application shall constitute conditions of the establishment's certificate of occupancy and business license, in addition to those that may be imposed by applicable ordinances and standard codes in effect. In addition to the general penalty provisions of this Code, the failure of the establishment to adhere to representations in the approved application may result in the suspension or revocation of the establishment's certificate of occupancy or business license.

Sec. 17-131.- Appeal – Application decisions.

An applicant aggrieved by a decision of the Late Night Entertainment Establishment committee pertaining to its application for a Late Night Entertainment Establishment permit shall have the right of appeal to the Business License Committee. The appeal must be filed with the Clerk of

Council within thirty days of the mailing date of the decision of the committee. The appeal must be in writing and specifically delineate the grounds of appeal.

Sec. 17-132. - Appeal – Operational Regulation violations.

1. **Building Official:** A person aggrieved by a decision of the Building Official (or his designee) pertaining to the certificate of occupancy of a Late Night Entertainment Establishment shall have the right to appeal to the Building Code Board of Appeals. The appeal must be filed in the office of the Building Official within thirty days of the mailing or hand-delivery date of the decision of the Building Official. The appeal must be in writing and specifically delineate the grounds of appeal.
2. **Business License Official:** A person aggrieved by a decision of the Business License Official (or his designee) pertaining to the business license of a Late Night Entertainment Establishment shall have the right to appeal to the Business License Committee, in accordance with the provisions of the Business License Ordinance. The appeal must be in writing and specifically delineate the grounds of appeal.
3. **Fire Marshal:** A person aggrieved by a decision of the Fire Marshal (or his designee) pertaining to the certificate of occupancy of its Late Night Entertainment Establishment shall have the right to appeal first to Fire Marshal in accordance with the terms of any order, and then to the Building Board of Adjustment and Appeals if the matter is not resolved in accordance with the provisions of the Fire Code. The appeal must be in writing and specifically delineate the grounds of appeal.

Sec. 17-133.-Appeal – Circuit Court.

A Late Night Entertainment Establishment aggrieved by a decision of the Building Code of Appeals or Business License Committee may appeal to the circuit court of Charleston or Berkeley County, as applicable. An appeal from the Building Code of Appeals must be filed and served in accordance with the provisions of the Building Code. An appeal from the Business License Committee must be filed and served in accordance with the provisions of the Business License Ordinance.

Sec. 17-134.- The provisions of this article shall become effective on July 1, 2013. Late Night Entertainment Establishments in existence as of the effective date of this article shall come into compliance with the provisions of Sec. 17-130 (c), (d), (e) and (f) prior to the renewal of its business license for the calendar year immediately following the date of ratification or upon any expansion of the floor area of the establishment, whichever shall first occur.

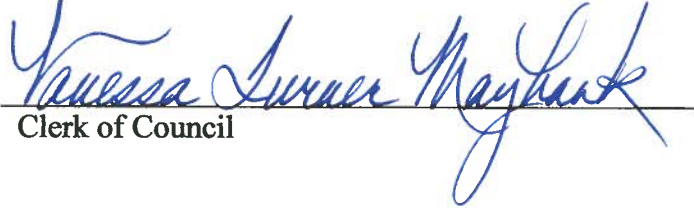
Section 2. This Ordinance shall become effective on July 1, 2013.

Ratified in City Council this 28th day of May
In the Year of Our Lord 2013, in the 237th Year of the
Independence of the United States of America.

A large, stylized handwritten signature in black ink, appearing to be "John", written over a horizontal line.

Mayor

ATTEST:

A handwritten signature in blue ink, appearing to be "Vanessa Turner Maybank", written over a horizontal line.

Clerk of Council