

## AN ORDINANCE

AUTHORIZING THE MAYOR TO REPEAL AND REPLACE CHAPTER 17-LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS; ARTICLE VIII-LATE NIGHT ENTERTAINMENT ESTABLISHMENTS; SECTIONS 17-124 THROUGH 17-135.

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

**Section 1.** Sections 17-124 through 17-135 are hereby repealed and replaced with the following:

### **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.

To strike that balance, Council adopts a repeal and replacement of the prior Late Night Establishment (“LNE”) ordinance, which will require a permit to be obtained for any establishment that desires to remain open beyond the hours of 12:00 am in certain circumstances. (Ord. No. 2013-55, § 1, 5-28-13)

The ability of a Late Night Establishment to sell, offer for sale, deliver, or permit to be consumed upon the premises any alcoholic beverage between the hours of 12:00 midnight and 2:00 a.m. on any day of the week is hereby declared to be and is a privilege subject to suspension, and no person may reasonably rely upon a continuation of that privilege. As a condition of the continuation of the privilege, LNEs are provided the framework to establish minimum actions and steps necessary to promote a safe community. City staff remain committed to implementing a successful program and partnering with the LNE community. Generally, violations are discussed and reviewed with the Late Night Establishment and notices are issued to educate and clarify expectations; however, failure to comply will subject the Late Night Establishment to a tiered penalty process.

### **Sec. 17-125. Definitions.**

***Late night establishment*** means:

Any bar, restaurant, venue, or commercial establishment, approved to operate as such, that currently allows on-premises consumption of beer, wine, or alcohol, and remains open after midnight, regardless of zoning designation located within the City.

***Maximum occupant load*** means:

The maximum number of people allowed in accordance with the approved Certificate of Occupancy issued for the facility and/or 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 by the City.

**Designated security staff** means:

An individual selected by the LNE who has appropriate training in safety management to facilitate safe practices in accordance with the LNE's safety plan. This can be employees of the company or third-party contracted security personnel.

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

**a. Security and Safety Measures.**

1. All LNEs must provide adequate staffing to ensure public safety. The LNE businesses should consider their occupancy, day of the week, events, and holidays during planning. It is the responsibility of each LNE location to review, schedule and provide personnel, if needed, to include presence at each public entrance, to be present on and around the exterior premises of the business, providing security and ensuring the safety of the employees and patrons of the business. Minimum ratio of staff assigned to security will be considered at the following ratios:

LNE Actual Occupancy Load Ratio to Designated Security Staff	
Actual Occupant Load At any Time	Security
50 people	1
51 - 150 people	2
151 - 250 people	3
251 - 350 people	4
Each additional 100 people	(+)1 per 100

2. LNEs must install and/or maintain exterior lighting and video surveillance equipment, on property owned or legally controlled by it, if required, by the City during the LNE application review.
3. It shall be the responsibility of the LNE owner or his/her designee to create and maintain on-site an emergency action plan (as outlined in Sec. 17-127) for the establishment and train its staff and security personnel as to its details.
4. It shall be the responsibility of the LNE owner or his/her designee to implement an approved security plan (as outlined in Sec. 17-127) by 10:00 PM to provide for the safety of patrons and employees. That security plan should detail the following:
  - a. Security person(s) or Designated security staff shall:
    - i. Be readily identifiable through standardized clothing and/or clear identification to assist patrons and public safety officers.

- ii. Maintain a presence at each public entrance, if required, to be present on or around exterior premises of the business from 10PM to closing, assist with ID checks, and assist with crowd management.
  - iii. Employ crowd management techniques to manage crowds and assure that patrons are adequately disbursed throughout the establishment and in compliance with the maximum occupant load of the specific area or areas of the establishment.
  - iv. Ensure that the maximum occupant load is not exceeded and must heed any instruction or warning of a city code enforcement official, police officer, or Fire Marshal.
  - v. Maintain a line of persons adjacent to the outside of the LNE so they are not blocking the sidewalk, street or public ways or entrances to other establishments to allow for free and safe flow of pedestrian activity.
  - vi. Routinely monitor all on-site areas used for parking by the LNE or its patrons to prevent such areas from becoming outdoor gathering places.
  - vii. Assist persons in entering and leaving the LNE in an orderly manner. In the event any person is disorderly or otherwise is engaged in illegal conduct that the staff cannot contain, then the LNE owner or his/her designee shall contact law enforcement.
5. It shall be the responsibility of the LNE to not knowingly or recklessly allow possession, use, or sale of controlled substances on the premises of the establishment;
  6. It shall be the responsibility of the LNE to not knowingly, or recklessly allow any specified criminal activity to occur in or on the premises of the establishment;

***b. Preventing Underaged Drinking.***

1. Any LNE open past midnight shall provide adequate staffing and implement a plan by 10:00 PM to ensure appropriate ID checks are conducted to verify patrons are twenty-one (21) years of age or older, with the addition of all LNE's serving food past 10 PM who allow patrons under 21 years of age into the facility shall establish a method to identify the underaged patrons.
2. The facility will ensure staff members have received appropriate training to check ID's.
3. At a minimum, the responsibility for ID verification shall be assigned and conducted by security person(s) or staff as outlined above in Section 17-126(b)(1).
4. ID scanners are encouraged but not required. Facilities who fail to adhere to their written plan may be required to implement additional measures, including ID scanners.

***c. Other Conditions.***

1. All LNEs must cease all sales in accordance with City Code of Ordinances Section 3-16.
2. All LNEs shall be held to the requirements dictated by the City's Noise Ordinance, Code Section 21-16.
3. It shall be the responsibility of LNE personnel to comply with City Code regarding waste management, littering, and property maintenance.
4. It shall be the responsibility of LNE personnel to, at all times, operate and maintain the 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.
5. Additional provisions may be required, based on the facility, size, type, location, and occupancy type, by the Police Department and/or Fire Marshal based upon a site visit, security and management plan, and past violations of this ordinance and/or citations.

6. In addition to the general penalty provisions of this Code, the failure to abide by the provisions of this section may result in reporting to the Department of Revenue Collection for possible Business License suspension or revocation or the Chief Fire Marshal or Chief Building Official for possible suspension or revocation of the LNE's certificate of occupancy.

(Ord. No. 2013-55, § 1, 5-28-13; Ord. No. 2014-38, §§ 3, 4, 3-25-14)

#### **Sec. 17-127. Application for Permit.**

Any business intending to operate as a LNE must apply for and obtain, in addition to its Certificate of Occupancy and Business License, a LNE permit, and provide proof of compliance when renewing. Once approved, permits shall be valid for up to two years unless revoked or suspended. To obtain a permit to operate as a LNE, the applicant must supply the following information with its application and submit all the documents identified on the LNE Permit Application or additional documents as requested by City staff:

1. 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 marked or required exits shall be noted and identify existing safety systems such as fire sprinkler or fire alarms systems. When an establishment will not occupy the entire structure, the plans must identify other uses in the structure at the time of application.
2. 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, if necessary.
3. A copy of the current Business License and a copy of the current Certificate of Occupancy, if issued. If not issued at the time of application, then the LNE permit cannot be approved until the Business License and Certificate of Occupancy have been approved and reviewed.
4. A written plan identifying the methods that will be implemented to prevent underage drinking.
5. A security and management plan describing with particularity the days and hours of operation, crowd management measures to be taken, ratio of security personnel to occupants, 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.
6. An emergency action plan describing with particularity how and under what circumstances the establishment would manage crowds, curb fire hazards, manage an emergency, to include evacuation techniques and the respective responsibilities of on-duty personnel in a manner prescribed by the Fire Marshal Division, and proof that a copy of this plan is on site and reviewed by personnel.
7. The applicant has a duty to provide honest and accurate information in the LNE permit application and has a duty to supplement information in the LNE application, even after permit has been approved, if circumstances related to information provided in the application change. Failure to do so could result in the suspension or revocation of the permit.

(Ord. No. 2013-55, § 1, 5-28-13)

### **Sec. 17-128. Conditions for Approval and Renewal of Permit.**

1. Any fee that may, from time to time, be established by City Council.
2. The provisions set out in an approved LNE application shall constitute conditions of the establishment's ability to operate as an LNE, in addition to conditions of the certificate of occupancy and business license, in addition to those that may be imposed by applicable ordinances and standard codes in effect. Failure to follow code, conditions of this permit, warning or direction of a city code enforcement official, police officer, or Fire Marshal may result in immediate closure. Continued failure to comply may also result in multiple-day closures, and up to suspension and/or revocation of the LNE privileges, business license, and/or certificate of occupancy.
3. The approved, current permit, and application packet must be readily available on site.
4. **Renewals:** The LNE is eligible to complete a renewal request as long as the facility ownership, occupancy, configuration, or tenant has not changed, and the LNE is in good standing with the City, otherwise a full application will be required. Permits will be issued for a duration not to exceed two years. Renewal applications may be submitted up to 90 days but not less than 30 days before the permit expiration date so staff may review and evaluate the request to renew the permit.
5. LNE Permit is not transferable to new ownership or new locations.

(Ord. No. 2013-55, § 1, 5-28-13)

### **Sec. 17-129. Emergency Temporary Suspension of LNE Activities**

An emergency suspension may be invoked if a situation arises that is determined by a Fire Marshal, a Police Officer, or Code Enforcement Officer to require immediate action to eliminate a situation that poses imminent threat to persons or property, to preserve the public health, safety, and welfare of the public, or to restore public peace and order. This suspension will last for the duration of that day's LNE operations and will be reported promptly to the Department of Revenue Collections for review of further action.

### **Sec. 17-130. Violations.**

1. All violations of this Article may result in the issuance of a municipal ordinance summons. Violation of any section of this Article shall be punishable by a fine not exceeding five hundred dollars (\$500) and/or imprisonment not to exceed thirty (30) days as provided by Section 1-16.
2. In addition to the issuance of a municipal ordinance summons for any violation of this Article, the following administrative remedies shall be taken:
  - a. *1st Issuance of Municipal Ordinance Summons:* Upon issuance of the 1<sup>st</sup> summons within the 2-year permit period there will be a mandatory remediation meeting between the LNE and City Staff to review the LNE permit, the violation, and discuss strategies to prevent future violations.
  - b. *2nd Issuance of Municipal Ordinance Summons:* Upon issuance of the 2<sup>nd</sup> summons within the 2-year permit period, there will be a mandatory remediation meeting between the LNE and City Staff to review the LNE permit, the violation, and discuss strategies to prevent future violations. The Director of Revenue Collections may, in his or her

discretion after considering the facts of both violations, issue a written notice of intent to suspend a late-night establishment permit for a period of time up to 390 days.

- c. *3rd Issuance of Municipal Ordinance Summons*: Upon issuance of the 3<sup>rd</sup> summons within the 2-year permit period, the Director of Revenue Collections will use his or her discretion after considering the facts of the violations to issue a written notice of intent to suspend a late-night establishment permit for a period of time up to 90 days one year.
  - d. ~~*4th Issuance of Municipal Ordinance Summons*. Upon issuance of the 4<sup>th</sup> summons within the 2-year permit period, the Director of Revenue Collections will use his or her discretion after considering the facts of the violations will issue a written notice of intent to suspend for a period of time up to 1 year or revoke a late night establishment permit.~~
3. The fact that any relevant conviction is being appealed shall have no effect on the suspension or revocation of the LNE permit, provided that, if any conviction which serves as a basis of an LNE permit suspension revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for suspension or revocation purposes.
  4. When a notice of intent to revoke an LNE permit has been issued, the recipient shall not apply for or be issued any new license or permit under City of Charleston Code Chapter 17, article VIII until such notice has been withdrawn or, if revocation has become effective, until three (3) years after the effective date of revocation.
  5. When any person listed on an LNE permit application is arrested for conduct alleged to have occurred at the late-night establishment, no person listed on the establishment's permit application may apply for or be issued any new license or permit for that location under City of Charleston Code Chapter 17, article VIII, until the arrestee is cleared or until ninety (90) days following the arrest have passed, whichever occurs sooner.
  6. Prior to suspension or revocation, the City has elected to use progressive remediation. Provided, however, the Director of Revenue Collections or designee, in his or her discretion, reserves the right to immediately seek to suspend or revoke such LNE permit in accordance with this Ordinance in cases where the action that is the basis for the revocation:
    - i. Resulted in great bodily harm or the loss of life to any person; or
    - ii. Resulted the damage or loss of property in an aggregate amount of one-hundred thousand dollars (\$100,000) or more.

#### **Sec. 17-131. Hearing; Permit Denial; Revocation; Appeal**

1. When the Director of Revenue Collections or his or her designee issues a written notice of intent to deny, suspend, or revoke an LNE permit, the Director of Revenue Collections or his or her designee shall send such notice, which shall include the specific grounds under this article for such action, to the applicant or recipient (appellant) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Director of Revenue Collections for the appellant(s). The notice shall also set forth the following: The appellant shall have ten (10) days after the delivery of the written notice to submit, at the office of the Director (or such office as the director may designate), a written request for a hearing, accompanied by any processing fees as required by the Business License Committee. If the appellant does not request a hearing within the said ten (10) days, accompanied by the required processing fee, the Director (or designee's) written notice shall become a final denial or revocation, as the case may be, on the eleventh day after it is issued.

2. If the appellant does make a written request for a hearing within the said ten (10) days, then then a hearing will be held in accordance with the policies, procedures, and processes of the business license committee, as outlined in Sec. 17-31.
3. Any person aggrieved by a final decision of the business license committee regarding a suspension or revocation of a late night establishment permit, or a decision by the business license committee on a matter appealed to it in accordance with the procedures outlined in Sec. 17-31 may appeal the decision of the business license committee to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty (30) days after the affected party receives actual notice of the decision of the business license committee. Timely appeal of a decision of the business license committee does not effectuate a stay of that decision. The decision of the business license committee shall be binding and enforceable unless overturned by an applicable appellate court after a due and timely appeal.

**Sec. 17-132. Late Night Establishment Reporting.**

The Director of Business and Neighborhood Services shall make an annual report to the business license committee any findings or recommendations on the activities of Late Night Establishment's within the City.

(Ord. No. 2013-55, § 1, 5-28-13)

**Sec. 17-133. Effective Date.**

The provisions of this article shall become effective three (3) months following ratification. LNEs in existence as of the effective date of this article shall come into compliance within five (5) months of the date of ratification or upon any expansion of the floor area of the establishment, whichever shall first occur. All LNE will be required to affirm compliance with these regulations annually with its business license renewal.

(Ord. No. 2013-55, § 1, 5-28-13)

**Section 2.** That this Ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_ day of \_\_\_\_\_  
in the year of Our Lord, 2022, in the 246th Year of the  
Independence of the United States of America.

By: \_\_\_\_\_

John J. Tecklenburg, Mayor

ATTEST: By: \_\_\_\_\_

Jennifer Cook  
Clerk of Council

DRAFT