

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
TOWN OF ATLANTIC BEACH)

AN ORDINANCE REGULATING NIGHTCLUBS AND NIGHT CLUB ENTERTAINMENT PROMOTERS AND PROVIDING PENALTIES FOR VIOLATIONS OF SAID ORDINANCE.
FORMS 44 - NIGHT CLUB AND PROMOTER PERMIT APPLICATIONS

WHEREAS, The Atlantic Beach Town Council has the power and duty to provide for the general welfare and safety of the citizenry of Atlantic Beach; and

WHEREAS, the Town Council finds and determines that some nightclubs within the Town contribute to littering, public intoxication, traffic congestion, noise, disorderly conduct, assaults, and other similar problems connected primarily with the routine congregation of persons around such nightclubs, especially those nightclubs which are managed without adequate attention to preventing these problems; and

WHEREAS, safe nightclubs will not only protect the patrons of those nightclubs but the overall citizenry of Atlantic Beach, and enhance revitalization efforts; and

WHEREAS, on numerous occasions, the negative impact of these nightclubs has been more significant when the establishment hosts a nightclub entertainment promoter for a special event, performance, or the like, or when the nightclub fails to alert law enforcement to the event in advance or fails to alert law enforcement to criminal conduct occurring at the nightclub; and

WHEREAS, some nightclubs are located in older buildings which may not be in compliance with current fire code requirements including posted occupancy, causing a safety hazard for the occupants of said buildings.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Atlantic Beach South Carolina as follows:

Article I. Applicability, Intent and Interpretation

This ordinance shall apply to all nightclubs as defined in Article II, including existing nightclubs as well as any that make application subsequent to the adoption of this ordinance. This ordinance shall not apply to functions hosted or sponsored by a governmental entity or its agents acting on behalf of said entity or any charitable organization that has exempt status as established by the Internal Revenue Service.

The intent of this ordinance is to promote public safety and welfare by regulating nightclub security, alcohol policies, loitering, littering, noise, overcrowding, parking, traffic congestion or hazard and other criteria that effect public safety and welfare. S.C. Code 1976, § 4-9-25, as

amended, grants The Town of Atlantic Beach the authority to enact ordinances for the security, general welfare and convenience of its people; S.C. Supreme Court case of City of Beaufort v. Baker, et al., 432 S.E. 2d 470 , upholds the constitutionality of such ordinances.

If any portion of this ordinance is claimed to be ambiguous, the appropriate regulating authority, as identified in Article III, shall render interpretations of the ordinance based on the intent. Any party in disagreement with the interpretation of a regulating authority may file a written appeal to the Town Council described in Article V. Upon receipt of said written appeal, the Town Council shall schedule a meeting with the appellant within thirty (30) calendar days to hear testimony from both sides and to render a decision as outlined in Article III. The interpretation of the regulating authority shall stand during the appeals process.

Article II. Definitions

For purposes of this ordinance, the following definitions shall apply:

DOR: The South Carolina Department of Revenue, which regulates Alcohol Beverage\ Licensing.

Approved: Approved by the appropriate regulating authority.

Bring Your Own Bottle /BYOB: Permitting alcoholic beverages to be brought into an establishment for consumption, other than those sold under valid license of the State of South Carolina.

Consume or Consumption: Ingestion of alcoholic beverages or the possession of any alcoholic beverages in any type of drinking container or in any bottle, can or other container upon which the seal, cork or cap has been opened.

For-Profit Event: Any event other than a non-profit event.

Nightclub: Any establishment, including but not limited to, lounges, taverns, bars, dance halls, pool halls, community centers, recreation centers, convention centers, multi-purpose centers, and any other establishment that serves alcohol and/or beer for consumption on premises or the sale of mixing ingredients if they allow patrons to bring their own alcohol (BYOB) and where the sale of prepared food, if any, is accessory to the primary use and provides entertainment activities through any of the following: amplified music, whether live performance or programmed, dancing, table games, and/or video games. The definition also includes restaurant/ bar establishments that provide entertainment as described above during any portion of its regular operation. Any other establishment that only occasionally hosts the above-described activities shall be subject to the provisions of this ordinance while hosting such activities. This definition includes nightclubs where gross receipts from sales of alcoholic beverages exceed gross receipts from sales of food. Included in this definition are nightclubs with outdoor and/or indoor operations and venues that provide a cover charge to enter for the purpose of a live performance.

Nightclub Entertainment Promoter: Any individual, partnership, corporation, or other entity or agent promoting any venue, performing artist (s), advertising services, or similar activities by contracting with a nightclub not owned and operated by the promoter.

Nightclub Owner: The person(s) whose name(s) appear as the applicant(s) on the permit on file with The Town of Atlantic Beach. In this ordinance owner can mean the person who owns the building/property where the nightclub is located or the person who may lease or be in control of the nightclub or other responsible parties that will be regarded as the nightclub owners.

Non-Profit Event: Any event designed and intended to produce profits for the benefit of and/or subsequent disbursement by organizations which are tax exempt under federal tax laws and Internal Revenue Service regulations.

Nuisance Concerns: Any violation of the standards in Article IV which are not public safety concerns.

Overcrowding: As provided in Section 23.11.107.6 of the International Fire Code and agreed upon by the Atlantic Beach Building Codes Department and the Fire Chief's Association:

“Overcrowding or admittance of any person beyond the approved capacity of a building or a portion thereof shall not be allowed. The fire code official, upon finding any overcrowding conditions or obstructions in aisles, passageways or other means of egress, or upon finding any condition which constitutes a life safety hazard, shall be authorized to direct actions be taken to reduce the overcrowding or to cause the event to be stopped until such condition or obstruction is corrected.”

Public Safety Concerns: One (1) or more acts of violence in a 30-day period resulting in physical injury, any observed illegal drug activity or allowing underage drinking to occur within a nightclub. Any violations of fire codes will also constitute a violation of this section such as “Overcrowding” or significant “Traffic Hazards”.

Regulating Authority: The official, officer or entity charged with regulating the provisions of this ordinance, including but not limited to, the Chief of Police or his/her designee.

Safe Operation: A period of at least ninety (90) days during which Horry County E911 office has recorded no calls for service reporting criminal activity or public safety concerns other than those self-reported by the nightclub management.

Live Performances: Any and all activities in the entertainment industry at which an artist/performer may appear or perform in person.

Article III. Nightclub and Nightclub Entertainment Promoter Permits

A. Permit Required: A building, part of a building, or outdoor location may be occupied and used as a night club, either on a regular basis or as a one (1) time event, only when a permit for such use has been issued and is in effect under the provisions of this Article.

(1) A building, part of a building, or outdoor location may be occupied and used as a night club by a person, entity or organization other than the building owner or fulltime lessee, only when a nightclub entertainment promoter permit has been issued and is in effect under the provisions of this Article.

(2) Compliance with physical requirements of the facilities shall be the responsibility of the owner. Compliance with operating requirements shall be the responsibility of the owner unless a valid nightclub entertainment promoter permit has been issued, in which case the promoter and owner shall jointly be responsible for compliance.

B. Permit Application and Issuance: Nightclub and nightclub entertainment promoter permit applications may be obtained from the Atlantic Beach Police Department and shall be returned to the Police's Department upon completion for review and consideration for approval. The permit shall be issued upon the submission and approval of a completed application to include written acknowledgement of a passing fire code inspection with the posted occupancy certificate, and payment of an annual permit fee of fifty dollars (\$50.00).

The Chief of Police or his designee shall review these materials, any incidents occurring at the nightclub within the preceding twelve (12) months, the nightclub's past compliance with Article IV of this ordinance, and the nightclub's historical record (if any) and submit his findings.

Nightclub and nightclub entertainment promoter permits shall be issued and will be valid for a period of one (1) year unless grounds for failure to comply with provisions of Article IV are found.

***Nightclub businesses cannot operate without an approved permit. This will be prima facie evidence of a violation of this ordinance. A ticket can be issued, and the business closed for noncompliance with this ordinance until a permit can be obtained.

***Any such permit shall be subject to summary revocation by the Chief of Police or his designee upon his judgment that the permitted person fails to comply with the conditions of the permit or with the representations of the application.

Permit applications shall contain, at a minimum, the following information for the Owner, Promoter and the Performer:

Name (First Middle and Last) (No street name, Nickname or Stage/Performance Name)

DOB

SSN

Phone Number (to the club, Personal Cell and Residence)

Address (Physical no PO Boxes)

The venues of the last three performances by the live act wishing to be scheduled and the promoter handling the act. The information gathered above will be used for a background check to include a criminal history check.

***Failure to provide this information will result in a permit not being issued.**

C. Permit Validity: Nightclub and nightclub entertainment promoter permits shall be valid for a period of one (1) year unless suspended or revoked for failure to comply with provisions of Article IV. If the permit is revoked, the permit holder forfeits the annual permit fee for that year.

D. Renewal:

(1) Nightclub and nightclub entertainment promoter permits may be renewed upon submission of an updated application, review of past compliance with this Article's provisions, and payment of the applicable fee.

(2) A permit renewal application by a nightclub may be awarded after a review of the past years performance. The consideration by the Chief of Police or his designee should include, but not be limited to, 'safe operation', past nightclub permit revocations and suspensions, violations of DOR alcohol regulations by the applicant and any prior permits affiliated or associated with the applicant, evidence of illegal drug activity on or about the permitted premises, and evidence of fighting, disorderly conduct and other dangerous activities on or about the permitted premises.

(3) Violations of this ordinance on the premises during events conducted by persons, entities or organizations other than the owner, whether permitted under this ordinance or not, may be grounds for non-renewal of nightclub permit.

E. Suspension or Revocation: The Police's Department may temporarily suspend a nightclub's or a nightclub entertainment promoter's permit for a violation of one (1) or more of the provisions of this Ordinance.

(1) If a nightclub or nightclub entertainment promoter's permit is suspended or revoked, no entertainment activities including amplified music, whether live or programmed, dancing, table games or video games may be conducted on the premises. If any such entertainment activities occur during a period of suspension or revocation, the certificate of occupancy shall be revoked as well.

(2) The Police's Department may permanently revoke a nightclub or nightclub entertainment promoter permit for two (2) or more violations of the provisions of this Ordinance in a twelve(12) month period, or for three (3) or more total violations of the provisions of this Ordinance. Such permanent revocation shall also result in revocation of privilege license and certificate of occupancy.

(3) Such suspension or revocation shall be held in abeyance for a period of three (3) business days to permit the nightclub's owner, agent, or manager, etc., to appeal the suspension or revocation to the Chief of Police or his designee.

(4) Notification of suspension or revocation shall be by certified mail, hand delivery, or by leaving notification at the nightclub.

(5) A nightclub's permit shall not be suspended or revoked for a violation of Article IV which is not a public safety concern unless the violation is found to have continued or recurred after the

nightclub has received notice of the violation and an opportunity to remedy or prevent the violation's recurrence.

F. Emergency Temporary Suspension by the Police's Department:

The on-duty field supervisor for the Police's Department may temporarily suspend a nightclub's and/or nightclub entertainment promoter's permit if the field commander determines that immediate suspension is necessary to restore order, for failure to comply with Article IV security requirements, or for any call of service at the nightclubs location as follows:

- (1) The facility shall be vacated and closed effective immediately upon verbal notification to the nightclub's owner, manager, agent, or representative and shall be effective for up to twenty-four (24) hours as needed to restore order or to ensure compliance with security requirements.
- (2) The nightclub may reopen thereafter, provided that the situation giving rise to the emergency temporary suspension of the permit has been addressed effectively as determined by the Chief of Police or his designee. The field supervisor shall promptly submit a report outlining the basis for his decision to suspend the permit(s) to the Chief of Police or his designee. The Chief of Police or his designee shall, within five (5) business days, submit a finding either recommending continuation of the nightclub's or nightclub entertainment promoter's permit, temporary suspension for a designated period, or revocation.
- (3) Within three (3) business days of receiving notice of denial, suspension or revocation of a nightclub or nightclub entertainment promoter permit, the permit applicant or holder may appeal the action by filing a written notice of appeal with the Town of Atlantic Beach Council.

G. Appeal Procedure Concerning Imposition of Supplemental Security Requirement (Article IV, Item N)

- (1) Within ten (10) business days of receiving notice that the nightclub has become subject to the security requirement, the permit holder may appeal the action by filing a written notice of appeal with The of Atlantic Beach Council. Within five (5) business days of receiving the written notice of appeal, The Town of Atlantic Beach Council shall convene a hearing to determine whether to:
 - (a) Continue imposition of the security requirement,
 - (b) Continue imposition of the security requirement but shorten the requirements duration, or
 - (c) Remove the security requirement.
- (2) The permit applicant or holder shall be entitled to appear, testify, and present evidence at the hearing. However, formal rules of evidence shall not apply, and reasonable limitations may be placed upon total hearing time. Upon request, the hearing shall be recorded. The Town of Atlantic Beach Council shall prepare written findings and conclusions concerning the appeal decision within five (5) business days of the hearing.

Article IV. Nightclub Operating Requirements:

A. Applicability: All policies set forth herein must be adhered to if the posted or actual occupancy of the establishment is one hundred (100) or more or if there has been more than one (1) call for service to the establishment within a given thirty (30) day period. Supplemental Security requirement shall not apply to establishments with a 'safe operation' record, or to establishments of less than one-hundred (100) occupancy, except when such establishments have had more than one (1) call for service within a thirty (30) day period.

B. Nightclub Entertainment Promoter Use: Nightclubs shall not allow any nightclub entertainment promoter to use, lease or rent the nightclub premises (including any outdoor and/or parking areas) without verifying with the Atlantic Beach Police Department that the promoter has a valid nightclub entertainment promoter permit and has plans to comply with the security staffing requirements.

C. Hours of Operation: Nightclubs operating hours shall be from noon to 2:00 a.m. At 2:30 a.m. all customers shall be out of the building and off the property, including the parking lot and any surrounding areas used for parking patrons of the nightclub. The owner, management, employees and performer/band members will only be allowed inside the building after 2:30 a.m. to remove equipment or complete normal business shut down and cleaning. This section pertains to nightclub operation hours; the sale of alcohol is governed by the South Carolina Department of Revenue.

D. Age Restrictions: Anyone entering a nightclub must be at least eighteen (18) years of age and show a valid picture ID at the door. All persons aged twenty-one (21) and older shall be wearing a non-removable, easily identifiable armband with the current date. The nightclub owner or permitted nightclub entertainment promoter shall be responsible for verifying the age of all occupants. Violations discovered by Law Enforcement that are not self-reported could result in a fine or the permanent revocation of the owner's and/or the promoter's permit.

E. Surveillance Systems: The business must have a working security video system with low light recording capabilities. The system must record all areas inside and outside of the business and property. At least one (1) on-site personnel must be able to access the system if requested by Law Enforcement. All security cameras are subject to inspection at any time by The Town of Atlantic Beach Police Department Personnel.

F. Alcoholic Beverages: Nightclubs shall be operated in compliance with the requirements of the State of South Carolina Department of Revenue if beer or light wine is served. Nightclubs serving alcoholic beverages other than beer or light wine shall comply with the requirements of the South Carolina Department of Revenue.

G. Weapons and Other Dangerous Items: Nightclub owner(s) shall be responsible to ensure that no guns, knives, brass knuckles, or other paraphernalia that may be used as weapons are brought into the nightclub except by security guards duly licensed and authorized to carry said weapons.

(1) Hand wand metal detectors shall be utilized by bonded security guards on all persons entering the club.

(2) Pyrotechnics shall be prohibited, and nightclub owners are responsible to ensure that no fire hazardous materials are used in nightclubs.

H. Overcrowding: Nightclubs shall be operated in compliance with the following provisions of the adopted International Fire Code:

(1) Overcrowding or admittance of any person beyond the approved capacity of a building or a portion thereof shall not be allowed.

(2) The fire code official, upon finding any overcrowding conditions or obstructions in aisles, passageways, or other means of egress, or upon finding any condition which constitutes a life safety hazard, shall be authorized to cause the event to be stopped until such condition or obstruction is corrected.

(3) Nightclub owners shall be responsible for maintaining all required exits and exit pathways.

(4) Exits and exit pathways shall not be blocked. Exit doors shall be equipped with appropriate exit hardware as required by the building code and shall not be locked from the interior.

(5) Nightclub owners or nightclub entertainment promoters shall be responsible for recording the number of persons admitted to the facility.

*Nightclub Staff is responsible for keeping count of the patrons inside the club by some mechanical or electronic counting device. Failure to provide an accurate count to any member of Atlantic Beach Police Department or County Fire personnel may result in the necessity for a manual head count. Should this be necessary the event will be stopped by nightclub management and will remain stopped while the manual count is being completed. If numbers are found over the posted occupancy this shall serve as the basis for a violation of the safe operations portion of this ordinance and a monetary fine.

I. Nuisance Activity: Nightclub owners or nightclub entertainment promoters shall be responsible for controlling the following nuisance activities:

(1) Nightclub owners or nightclub entertainment promoters shall be responsible for prohibiting loitering outside the nightclub and/or at nearby properties being utilized by the nightclub's patrons.

(2) Nightclub owners or nightclub entertainment promoters shall be responsible for ensuring that patrons do not create a nuisance to nearby property owners and/or residential areas by littering, loitering, vandalizing, making loud noise, parking illegally, causing traffic congestion or other hazardous activity. Nearby property owners aggrieved by the activities of a nightclub or its patrons may file a written complaint, fully describing the nature of the nuisance, with the Atlantic Beach Police Department.

(3) The Police's Department shall issue citations to the nightclub owner (s) or nightclub entertainment promoter(s) citing this article as the violation. Both the nightclub owner and/or nightclub entertainment promoter and the complainant shall appear in court to present testimony to the Municipal judge. The judge shall render a verdict after hearing testimony of all parties. If found guilty, the nightclub owner or nightclub entertainment promoter shall be subject to fines and/or imprisonment as required by law for misdemeanor offenses and shall be subject to suspension or revocation of license as provided for in Article III, Section E of this ordinance.

(4) Any continued violations of littering, loitering, vandalizing, loud noise, fighting, blocking streets, creating traffic congestion similar hazardous activity or any other nuisance violation will be grounds for suspension or revocation of permit.

J. Security

(1) Nightclubs and nightclub entertainment promoters shall provide a minimum of one

(1) Bonded and Sled Certified security guard per 100 people for each event at the nightclub, plus a minimum of one (1) bonded security guard in each parking lot or areas easily recognized at being used by club patrons. At least two (2) bonded security guards shall remain on site for at least one (1) hour after the establishment closes to ensure that no loitering, littering or other unlawful activities occur. As the numbers of patrons increases so will the number of security guards. At 300 patrons the ratio drops from 1 to 100 to 1 guard for every 50 patrons, as well as, 2 guards per parking lot. Example 275 patrons = 4 bonded security guards 300 patrons = 8 bonded security guards if only 1 parking lot.

***This section deals specifically with Bonded and Sled Certified security guard minimum requirements. Nightclub owners should have additional security as a regular part of their security plan.

(2) Bonded security guards shall utilize a hand wand metal detector on all persons entering a Nightclub.

(3) The business must have a working security video system with low light recording capabilities. The system must record all areas inside and outside of the business and property. At least 1 on site personnel must be able to access the system if requested by Law Enforcement.

*Nothing contained herein would prohibit a club owner or promoter from having more security than listed in the above ratios.

K. Live Performances

Additional security measures will be required for nightclubs hosting live performances and having occupancy numbers over 100 people.

(1) A separate (live performance) permit must be obtained, from the Police's Department, for live

performances at least 15 days in advance of the planned event and will be provided at no cost to a nightclub owner or promoter who already holds a valid Town of Atlantic Beach permit. If the person applying for the live performance permit is not already a valid permit holder then the application process set forth above must be followed.

(2) The business must have a working security video system with low light recording capabilities. The system must record all areas inside and outside of the business and property. At least 1 on site personnel must be able to access the system if requested by

Law Enforcement.

(3) Bonded Sled certified Security requirement will increase from 1 to 100 people to 1/50 and 2 per parking lot or parking lots or areas easily recognized at being used by club patrons.

(4) Hours for live performances shall be strictly adhered to. Failure to do so shall result in a violation of the ordinance and a fine for the Nightclub Owner and/or the Promoter and may result in revocation of the permit(s) altogether.

(5) No artist may be added to the live performance after the permit has been obtained. If this occurs it will serve as a violation of the ordinance and result in a fine for the Nightclub Owner and/or the Promoter and could result in revocation of the permit(s). If another artist/entertainer is to be added another permit must be obtained and the 15 days prior to the performance clause must be adhered to.

Article V. Violations and Penalties

A. A violation of any provision of this ordinance shall be a misdemeanor. Unless otherwise provided for in this ordinance, upon conviction each violation shall subject the defendant to a mandatory minimum fine of not less than five hundred dollars (\$500.00), and/or not more than thirty (30) days in jail or both.

B. The issuance of a warrant or imposition of a penalty for any violation of this article shall not excuse the continued violation or permit it to continue and each violation shall constitute a separate offense for purposes of the penalties and remedies specified herein.

C. If any court rules that any violation is considered a felony, said ruling shall supersede the penalties provided for in this ordinance.

Article VII. Ordinance Provisions

A. The omission of any specific requirement or provision from this ordinance shall not be interpreted as permitting any variation from the general meaning and intent of the ordinance as commonly inferred or interpreted and should occasion arise as to such intent or meaning, the interpretation of the governing authorities shall hold.

B. Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so held to be unconstitutional or invalid.

C. Whenever any requirements of this ordinance are in conflict with the provisions of any other legally adopted rules or regulations, the most restrictive law or requirement shall govern.

Article VIII. Repeal of Prior Ordinance


All ordinances and resolutions or parts of ordinances and resolutions in conflict herewith shall be and the same are hereby expressly repealed.

Article IX. Effective Date of Ordinance


This ordinance will become effective thirty (30) days from the date of its passage by the, Town Council of Atlantic Beach, South Carolina.

DONE IN COUNCIL ASSEMBLED THIS 9TH DAY OF NOVEMBER, 2020.

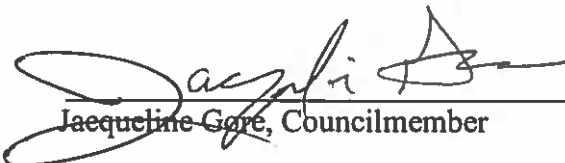
ATTEST:


Town Clerk


Jake Evans, Mayor


Josephine Isom, Councilmember


Town Manager


Jacqueline Gore, Councilmember

First Reading: October 5, 2020

Second Reading: November 9, 2020


Glenda Williams, Councilmember


Lenearl Evans, Councilmember