

ORDINANCE NO. (2023) 581

AN ORDINANCE TO REPEAL THE CITY OF RALEIGH AMPLIFIED ENTERTAINMENT ORDINANCE AND TO ENACT A NIGHTLIFE PERMIT ORDINANCE.

WHEREAS, N.C. Gen. Stat. § 160A-174 grants the City the authority to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances consistent with the Constitution and laws of North Carolina and of the United States; and

WHEREAS, N.C. Gen. Stat. § 160A-181 grants the City the authority to regulate, restrict or prohibit places of amusement or entertainment, including the operation of pool and billiard halls, dance halls, cocktail lounges, night clubs, beer halls, and similar establishments, consistent with any permits or licenses issued by the North Carolina Alcoholic Beverage Control Commission; and

WHEREAS, N.C. Gen. Stat. § 160A-184 grants the City the authority to regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens; and

WHEREAS, the City Council recognizes that the City of Raleigh’s nightlife and entertainment scene, which includes restaurants, bars, nightclubs, music venues, and other performance spaces, is an integral part of the City’s culture, and that it is authorized to enact an ordinance that will balance the City’s support of its nightlife and entertainment scene with the public’s safety and welfare by minimizing the secondary effects of such entertainment establishments to protect the comfortable enjoyment of the life and property of the City’s residents and businesses.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH, NORTH CAROLINA that:

Section 1. Section 12-2117 of the Raleigh City Code is repealed.

Section 2. Part 12, Chapter 2, Article D, Division 2 of the Raleigh City Code, consisting of sections 12-2118 through 12-2130, is repealed in its entirety and the following provisions enacted as Part 12, Chapter 2, Article D, Division 2 of the Raleigh City Code:

“DIVISION 2. NIGHTLIFE PERMIT

Sec. 12-2118. DEFINITIONS.

N.C. Fire Code shall mean the most recent edition of the North Carolina Fire Code, including all subsequent amendments.

Manager shall mean the individual responsible for the establishment's operations who is accessible to the public at all times when the establishment is open, occupied, or when employees are on site, and who possesses sufficient authority to address issues that arise at the establishment.

Nightlife establishment shall mean an establishment of assembly intended for food and/or drink consumption where all of the following are met:

1. The establishment falls within any one of the following:
 - a. Assembly Group A-2 under the N.C. Fire Code,
 - b. Amusement arcade, bowling alley, community hall, or pool and billiard parlors under Assembly Group A-3 of the N.C. Fire Code,
 - c. Bar, tavern, nightclub, or similar business that falls within section 203 of the most recent edition of the N.C. Fire Code;
2. Live or recorded entertainment is provided after 11:00 p.m.; and,
3. Alcoholic beverage consumption is allowed.

Nightlife permit shall mean a permit issued to a *Nightlife establishment* in accordance with this Division.

Permittee shall mean any person possessing a *Nightlife permit*.

Person. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, *agency*, political subdivision of *this State*, any other state or political subdivision or *agency* thereof or any legal successor, representative, agent or *agency* of the foregoing.

Shunt Trip Breaker. A device that eliminates the sound to all sound producing devices and any special lights associated with the sound by mechanically tripping the circuit breaker with an emergency stop button. Sound producing devices include, but are not limited to televisions, monitors with sound emitting devices, karaoke equipment, live bands, DJ booths, juke boxes, and microphones.

Sec. 12-2119. REQUIREMENTS FOR NIGHTLIFE PERMIT.

- (a) All *Nightlife establishments* shall require a *Nightlife permit*. *Nightlife permittees* shall provide to the *City* the name, telephone numbers, and e-mail addresses of the *persons* responsible for operation of the establishment, including the *manager*. The *City* shall publish the *manager's* name, numbers, and addresses in a manner in which they are available to the public. *Permittees* shall provide updated information

so that the *manager* is accessible to the public at all times when the establishment is open, occupied, or when employees are on site.

- (b) If requested within ninety (90) days after the effective date of this ordinance, a *Nightlife establishment* that held an amplified entertainment permit or a hospitality district entertainment permit on the effective date of this ordinance shall be issued a *Nightlife permit* valid through June 30, 2024:
- i. without cost after providing proof that the *Nightlife establishment* has installed a shunt breaker and confirming the name, telephone numbers, and e-mail addresses of the *persons* responsible for operation of the establishment, including the *manager*, in a manner determined by the City;
 - ii. at the fee established for annual renewals, after confirming the name, telephone numbers, and e-mail addresses of the *persons* responsible for operation of the establishment, including the *manager*, in a manner determined by the City.
- (c) All *Nightlife establishment* off-street parking areas and all *Nightlife establishment property* and the public right-of-way abutting the establishment property shall be cleaned of all litter by 7:30 a.m. each morning. All off-street parking areas shall be lighted. Such illumination shall be a minimum average of two (2) maintained foot-candles.
- (d) The holder of a *Nightlife permit* shall provide at least one (1) uniformed sworn law enforcement officer or at least one (1) uniformed security guard furnished by a company licensed to provide security by the State of North Carolina continuously present in the parking area between 10:00 p.m. and until one (1) hour after closing to provide security and supervision of the parking area. Any establishment that has maintained a nine (9) month history of safe and effective operation shall be exempt from the security requirement. Safe and effective operation means that the *Nightlife establishment*, either inside, in its parking area or lot, or on the *Nightlife establishment* property abutting a public-right-of way has had:
- (1) less than two (2) custodial arrests for felony drug offenses;
 - (2) less than seven (7) custodial arrests or criminal citations for misdemeanor drug offenses;
 - (3) less than two (2) custodial arrests or criminal citations for acts of violence; or,
 - (4) no custodial arrests for acts of violence involving a deadly weapon.

The persons arrested must be patrons of the establishment or on their way into or out of the establishment before the arrest limits will apply. For purposes of this ordinance a custodial arrest means a physical arrest that results in a finding of probable cause by a magistrate or judge. Any establishment that becomes subject to the security requirement can become exempt again if it operates in a safe and efficient manner for nine (9) months from the time that the security requirement becomes effective. No security will be required on days when the establishment is not providing live or recorded entertainment. Any establishment receiving a

Nightlife permit that is not subject to a security requirement immediately before the effective date of this ordinance will be presumed to be a safe and efficient operator and will not be required to implement the security requirement until it fails to meet the safety requirements of this section. A security requirement in place immediately before the effective date of this ordinance shall continue without interruption.

- (e) The security requirement will be waived if the establishment presents satisfactory evidence to the *City* showing that the parking area is leased from a third party who maintains personnel at the lot or deck or garage at all times during the establishment's hours of operation and that the personnel on duty have a wireless phone, radio, land line phone or other communications device capable of calling the 911 emergency number.
- (f) If required by the City's Fire Marshall or the Fire Marshall's designee, any business required to hold a *Nightlife permit* shall have an operational shunt trip breaker installed to eliminate the power to all sound producing devices and any special lights associated with the sound. Sound producing devices include, but are not limited to televisions, monitors with sound emitting devices, karaoke equipment, live bands, DJ booths, juke boxes, and microphones.

Sec. 12-2120. RESERVED.

Sec. 12-2122. ISSUANCE OF NIGHTLIFE PERMIT.

- (a) The *Nightlife permit* shall be issued by the Office of Special Events or their designee upon verification by the Planning and Development Department and the Fire Department that all relevant code and safety to life requirements have been met. The permit shall be applied for on a form supplied by the Office of Special Events. The application shall contain the name of the owner, their authorized agent, *Manager*, the name of the registered agent for service of process and such other information as the Office of Special Events may deem relevant and appropriate. Upon receipt of the application, the Office of Special Events shall forward a copy of the same to the Planning and Development Department and Fire Department for verification of the fire, zoning, and building code requirements necessary for the issuance of a permit. The Office of Special Events shall forward a copy of the same to the Police Department for verification of a history of compliance with State law and City ordinances for the issuance of a permit.

The name of the business owner shall be included on the application and on the *Nightlife permit*. Any change in the ownership of a business after the issuance of the permit shall immediately invalidate the permit and require the new owner to reapply for a permit. A change in ownership shall mean acquisition of more than ten percent of the stock in a publicly traded corporation, any change in the ownership of shares in a privately held corporation, sale of all or part of a sole proprietorship, or any change in the membership of any form of limited liability organization.

- (b) The *Nightlife permit* shall be renewed annually. The fees for the initial *Nightlife permit* and any subsequent renewal shall be as set forth in the *City of Raleigh Fee Schedule*.

- (c) The Office of Special Events may deny a permit or the renewal of a permit for the following reasons:
- (1) incomplete or incorrect information provided on the application, or the failure to establish compliance with this section;
 - (2) A fine paid or violation upheld by a City official in the prior twelve months related to health and safety in the permit holder's operation of any *Nightlife establishment* in violation of City ordinances, the Building and Fire Prevention Codes, or North Carolina General Statutes;
 - (3) The Permittee has a pattern of noise ordinance violations. A pattern is established when four (4) or more violations of the City's noise ordinances as set out in Code §§ 12-5001 through 12-5011 occur at the *Nightlife establishment* within the prior twelve months and one or more of the following occur:
 - a) civil penalties issued for the violation are paid;
 - b) civil penalties are assessed and not appealed within the time permitted;
 - c) a City official upholds a decision on appeal; or,
 - d) a person charged with a criminal offense is found guilty or responsible by a Court official.
 - (4) Revocation of a previously issued permit within one (1) year of application for a permit by the same owner or entity.
- (d) Anyone denied a permit pursuant to subparagraphs (a), (b), or (c) *may* appeal, within thirty (30) days of denial, to the City Manager's Office. In reviewing an appeal of a denial, the *City Manager or designee shall* determine whether the permit was properly denied under the standards listed in subsection (c). If, after a review of the foregoing factors, any adverse conditions exist on any one (1) of the factors, the denial will be affirmed.

Sec. 12-2123. ADDITIONAL PROHIBITIONS.

The following are prohibited on the premises or in parking areas provided by the *permittee* for patrons of the *Nightlife establishment*;

- (a) use or possession of illegal controlled substances;
- (b) Violation of ABC laws or any other alcohol-related offenses; and,
- (c) acts of violence.

Violation of any of these conditions is punishable according to the schedule of fines, penalties and suspensions set out in §12-2124.

Sec. 12-2124. PENALTIES FOR VIOLATION OF THE NIGHTLIFE PERMIT REQUIREMENTS.

- (a) Violations of any of the provisions of this Division as applied to the *Nightlife permit* requirements will result in the *following*:
- (1) First offense in any twelve-month period: \$500.00.
 - (2) Second offense in any twelve-month period: \$2,500.00.
 - (3) Third offense in any twelve-month period: \$5,000.00 and suspension of the Permit until the City determines that the Permittee has come into compliance.
 - (4) Fourth or subsequent offense in any twelve-month period: Revocation of the Permit for one (1) year.

Any Police Officer *may* issue a notice of violation assessing civil penalties under this section for a violation of any of the provisions of this division. The citation shall be issued to the *Nightlife establishment's* owner, authorized agent, manager, or registered agent in person, by U.S. Mail, or via email.

- (b) A violation that occurs or continues three (3) or more hours after an earlier violation *shall* constitute a new violation punishable as a separate offense.
- (c) The Permittee may, within thirty (30) days after a civil penalty or revocation is issued, submit a written appeal and any supporting documentation to the City Manager's Office. The City Manager or the Manager's designee will obtain materials from the City officials involved in issuing the citation/revocation, consider Permittee's materials, and issue a final decision.
- (d) If a *person* fails to pay any civil penalty within thirty (30) days after the decision becomes final, the City *may* recover the penalty, together with all costs allowed by law, by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt.
- (e) In addition to civil penalties and permit suspension or revocation, a violation of this division *may* also be enforced through injunctive or other equitable relief, or a combination of remedies as allowed by N.C. Gen. Stat. § 160A-175."

Section 3. The Fee Schedule for the Office of Special Events, Hospitality Section, is hereby amended by repealing the following fees:

Amplified Entertainment Permit (initial permit),

Amplified Entertainment Permit Annual Renewal,

Hospitality District Entertainment Permit (initial permit), and

Hospitality District Entertainment Permit Annual Renewal.

Section 4. The Fee Schedule for the Office of Special Events, Hospitality Section, is hereby amended by enacting the following fees:

Nightlife Permit – Initial Permit \$500.00 per application

Nightlife Permit – Annual Renewal \$100.00 per permit

Section 5. All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

Section 6. If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

Section 7. The provisions of this ordinance shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued prior to the effective date of this ordinance.

Section 8. This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code.

Section 9. This ordinance shall become effective sixty days from the date of its adoption.

Adopted: December 5, 2023

Effective: February 3, 2024

Distribution: Management Team
Fire Marshall
Special Events
City Attorney – Jeanne Hargove Bailey
Jackie Taylor