

## **NIGHTCLUBS AND NIGHTCLUB PROMOTER ORDINANCE**

### **ORDINANCE REGULATING NIGHTCLUBS AND NIGHTCLUB ENTERTAINMENT PROMOTERS AND PROVIDING PENALTIES FOR VIOLATIONS OF SAID ORDINANCE**

**WHEREAS**, the governing authorities of the County of Lowndes are empowered to adopt any orders, resolutions or ordinances with respect to the care, management and control of municipal affairs and its properties and finances for which no provision has been made by general law and which is not inconsistent with existing law pursuant to Section 21-17-5 of the Mississippi Code Annotated (1972); and

**WHEREAS**, the County of Lowndes also has the authority under Miss. Code Ann. §17-1-1 et seq. to adopt regulations designed to promote the public health, safety and general welfare of its citizenry; and

**WHEREAS**, it is the desire of the County of Lowndes to protect public life, health and welfare and to promote the health, safety, morals and general welfare of the community by the adoption of this ordinance; and

**WHEREAS**, safe nightclubs will enhance revitalization efforts; and

**WHEREAS**, the Board of Supervisors finds that some nightclubs within the County contribute to littering, public intoxication, noise, disorderly conduct, assaults and similar problems connected with routine congregation of persons around such nightclubs, especially those nightclubs which are managed without adequate attention to these problems; and

**WHEREAS**, on numerous occasions, the 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 criminal conduct occurring at the nightclub; and

**WHEREAS**, some nightclubs are located in older buildings which are not in compliance with current building and/or fire code requirements, causing a safety hazard for the occupants of said buildings.

**NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Lowndes County Mississippi 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 and other criteria that effect public safety and welfare.

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 nightclub regulations committee described in Article V. Upon receipt of said written appeal, the nightclub regulations committee 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:

**ABC:** The Alcoholic Beverage Commission of the State of Mississippi Department of Revenue.

**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 Mississippi or permit of the County of Lowndes.

**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. Consumers are restricted to the inside of the nightclub while consuming or consumption of alcoholic beverages.

**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 and provides entertainment activities through any of the following: amplified music, whether live 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.

**Nightclub Entertainment Promoter:** Any individual, partnership, corporation, or other entity or agent promoting any venue, performing artists, 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 privilege license on file with the Lowndes County. In cases where establishments are exempt from privilege license requirements, such as non-profit organizations, said establishments must file a statement with the Lowndes County Supervisors prior to obtaining a permit. This statement shall declare the names, physical addresses and phone numbers of the organizations officers or other responsible parties that will be regarded as the nightclub owners.

**Nightclub Regulations Committee:** committee designated by the Lowndes County to administer certain sections of this ordinance as provided in Article VI.

**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 202 of the 2006 Edition of the International Fire Code: “A condition that exists when either there are more people in a building, structure, or portion thereof than have been authorized or posted by the fire code official, or when the fire code official determines that a threat exists to the safety of the occupants due to persons sitting and/or standing in locations that may obstruct or impede the use of aisles, passages, corridors, stairways, exits, or other components of the means of egress.”

**Public Safety Concerns:** One (1) or more acts of violence resulting in physical injury or observed illegal drug activity occurring within a nightclub or outside the nightclub on property or parking areas owned, leased or operated by the nightclub.

**Regulating Authority:** The official, officer or entity charged with regulating the provisions of this ordinance, including but not limited to, the Sheriff or his/her designee, the Fire Coordinator or his/her designee, building official and the development services code administrator.

**Safe Operation:** A period of at least ninety (90) days during which Lowndes 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.

### **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 full-time 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 Development Services Department. Upon the submission of a completed application and an annual permit fee of fifty dollars (\$50.00), the application shall be forwarded to the Sheriff's Department. The Sheriff 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 recommendations to the Nightclub Regulations Committee.

The Nightclub Regulations Committee shall issue permits recommended by the Sheriff's Department, subject to the facility meeting all occupancy requirements of the County's adopted building and life safety codes.

**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 Sheriff or his designee should include, but not be limited to, 'safe operation', past nightclub permit revocations and suspensions, violations of ABC regulations by the applicant and any prior permittees 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.

(4) If the Development Services Department finds that the applicant has not submitted a complete application or has not submitted the appropriate fee or if the Sheriff or his designee finds that the applicant has not complied with this Article, Nightclub Regulations Committee shall decline to issue the permit. The annual permit fee shall be returned to the applicant along with a letter stating the reason(s) for the denial.

**E. Suspension or Revocation:** The Nightclub Regulations Committee 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 privilege license and certificate of occupancy shall be revoked. Such suspension or revocation does not otherwise affect the nightclub's sale, purchase, transportation, possession, consumption, or other use of alcoholic beverages or food service during suspension or revocation.
- (2) The Nightclub Regulations Committee 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.
- (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 Sheriff's Department:** The on-duty field supervisor for the Sheriff'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 Sheriff or his designee or his designee. The field supervisor shall promptly submit a document outlining the basis for his decision to suspend the permit(s) to the Sheriff or his designee. The Sheriff or his designee shall, within five (5) business days, submit a finding to the Nightclub Regulations Committee either recommending continuation of the nightclub's or nightclub entertainment promoter's permit, temporary suspension for a designated period, or revocation. The Nightclub Regulations Committee shall notify the nightclub or promoter as provided for herein.
- (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 Nightclub Regulations Committee.
- (4) The Nightclub Regulations Committee will conduct a hearing as promptly as possible (and within five (5) business days of receiving the written notice of appeal) to determine whether to:
  - (a) Reinstate or issue the permit,
  - (b) Temporarily suspend the permit or
  - (c) Permanently revoke the permit.
- (5) 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. A temporary suspension may not extend beyond the date on which the permit expires. Any such suspension or revocation does not otherwise affect the nightclub's sale, purchase, transportation, possession, consumption, or other use of alcoholic beverages or food service during any suspension or revocation. Nightclub Regulations Committee shall prepare written findings and conclusions concerning the appeal decision within five (5) business days of the hearing.

**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 Nightclub Regulations Committee. The Nightclub Regulations Committee will conduct a hearing as promptly as possible (and within five (5) business days of receiving the written notice of appeal) to determine whether to:

(a) Continue imposition of the security requirement,

(b) Continue imposition of the security requirement but shorten the requirement's 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 Nightclub Regulations Committee 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 "P" 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 that the promoter has a valid nightclub entertainment promoter permit and has complied with the security staffing requirements.

**C. Hours of Operation:** Nightclubs operating hours shall be from noon to 1:00 a.m. At 1:30 a.m. all customers shall be out of the building and off the property. The owner,



management, employees and band will only be allowed inside the building after 1:30 a.m to remove equipment.

**D. Age Restrictions:** Anyone entering a nightclub must be at least eighteen (18) years of age. All persons aged twenty one (21) and older shall be wearing a non-removable, easily identifiable armband. The nightclub owner or permitted nightclub entertainment promoter shall be responsible for verifying the age of all occupants.

**E. Restaurant/Bar Establishments** may apply for an exemption under the following conditions:

(1) In the case of a restaurant/bar, the owner may submit a dining seating plan for approval by the Nightclub Regulations Committee. The approved seating plan must be posted in the establishment along with the occupant load certificate and the tables and chairs must be in place according to the plan during all hours of restaurant operation.

(2) Patrons under the age of eighteen (18) shall be limited to the restaurant portion of the establishment, along with common spaces such as rest rooms, and must be dining at the time of occupancy.

**F. Alcoholic Beverages:** Nightclubs shall be operated in compliance with the requirements of the State of Mississippi 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 Mississippi 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 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.

**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 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 or other 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 police department.
- (3) The Sheriff's department shall issue citations to the nightclub owners or nightclub entertainment promoters citing this article as the violation. Both the nightclub owner or nightclub entertainment promoter and the complainant shall appear in municipal court to present testimony to the municipal court judge. The judge shall render a verdict after hearing testimony of both 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, and 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 security guard per 100 people for each event at the nightclub, plus a minimum of one (1) bonded security guard in each parking lot. At least two (2) bonded security guards (per 200 people) 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. At least three (3) bonded security guards (per 300 people) for each event at the nightclub.
- (2) Bonded security guards shall utilize a hand wand metal detector on all persons entering a Nightclub.
- (3) Restaurant/Bar establishments may apply for an exemption under the following conditions:
  - (a) In the case of a restaurant/bar, the owner may submit a dining seating plan for approval by the Nightclub Regulations Committee.
  - (b) If approved, the seating plan must be posted in the establishment along with the occupant load certificate and the tables and chairs must be in place according to the plan during all hours of restaurant operation.
  - (c) The establishment may be exempt from the security guard requirement, if approved by the nightclub regulations committee, during hours of operation primarily as a restaurant.
- (4) All security cameras are subject to inspection at any time by the County of Lowndes.

## **Article V. Nightclub Regulations Committee**

- A. There is hereby established a Nightclub Regulations Committee composed of the following members:
  - (1) Sheriff or his/her designee
  - (2) Fire Coordinator or his/her designee
  - (3) Citizen of Lowndes County appointed by the Board of Supervisors

(4) County Attorney

(5) County Administrator or his designee.

**B.** The committee shall meet on an “as needed” basis. A three-fifths (3/5ths) majority present at a meeting shall constitute a quorum. The committee shall elect a president, vice president and secretary. The president shall preside at meetings. In the absence of the president, the vice president shall preside. In the absence of the president and vice president, the secretary shall preside. The presiding officer shall conduct meetings in accordance with Robert’s Rules of Order. The committee shall have the following duties and authority:

(1) To render interpretations of this ordinance when an interpretation of a regulating authority is challenged as outlined in Article I.

(2) Authority to suspend or revoke the license, by the procedure described in the paragraph below, of any nightclub found guilty of any two (2) of the same or separate violations during a twelve (12) month period of any City, State or Federal regulations, including but not limited to, the regulations contained in this ordinance, or any three (3) violations total. This authority shall not affect the authority of any other officer or entity to exercise a legal right to close a nightclub.

(3) To make rules for conducting the business of the committee.

(4) Members of the committee shall report violations to the secretary. The secretary shall keep an accounting of reported violations and report to the other members of the committee when a nightclub accumulates three violations. For purposes of this article, a guilty verdict rendered by any local, state or federal court shall constitute a violation.

(5) Any member of the committee may ask for a meeting of the committee to determine what, if any, action should be taken relative to a nightclub that has been found guilty of any three (3) violations.

(6) The committee shall give written notice of a meeting to the subject nightclub owner(s) at least ten (10) calendar days in advance of the meeting by registered mail sent to the address of the nightclub. The nightclub owner(s) shall have the right to appear and give testimony at said meeting.

- (7) Action by the committee shall be decided by a majority vote of the members present at said meeting. The committee shall give written notice of said action to the nightclub owner(s) by registered mail sent to the address of the nightclub.
- (8) The nightclub owner(s) may appeal the decision of the committee by filing a written appeal with the Board of Supervisor's within ten calendar days following the postmark date on the notice from the committee.
- (9) Any decision at the Board of Supervisor's can be appealed pursuant to the provisions of section 11-51-75 of the Mississippi code.
- (10) Members of the committee shall not be held personally liable, either individually or as a group, for any action taken by the committee while acting in good faith on behalf of the County.

#### **Article VI. Violations and Penalties**

- A. A violation of any provision of this ordinance shall be a misdemeanor. Unless otherwise provided for in this ordinance, 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 ninety (90) days in jail or both.
- B. Each day that a violation exists shall constitute a separate misdemeanor and shall be subject to separate penalties for every day that the violation continues.
- 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, Board of Supervisor's Lowndes County, Mississippi, City Council members.