

ORDINANCE NO.: 2018-001

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina,  
Chapter 14, Offenses and Miscellaneous Provisions, Article IV, Offenses Against the Public  
Peace and Order, Sec. 14-106. Hours of sale restricted for commercial establishments which  
allow for on-premises consumption of beer, ale, porter and/or wine

BE IT ORDAINED by the Mayor and Council this \_\_\_\_ day of \_\_\_\_\_, 2018, that the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 14, Offenses and Miscellaneous Provisions, Article IV, Offenses Against the Public Peace and Order, Sec. 14-106 Hours of sale restricted for commercial establishments which allow for on-premises consumption of beer, ale, porter and/or wine is hereby repealed in its entirety and amended to read as follows:

(a) *Definitions.* The following definitions apply for the purposes of this section:

*Beer, ale, porter and wine* are defined as stated in Section 61-4-10 of the Code of Laws of South Carolina 1976, as amended from time to time.

*Citation* means credible evidence of any attempt to commit any crime, regulation, ordinance or code which is either documented or investigated by a law enforcement agency, fire marshal, license inspector or code enforcement officer and results in a formal document summoning the accused to any court or administrative panel; or a conviction for a violation of any crime, ordinance or code in this section.

*Commercial establishment* means any individual, firm, partnership, cooperative nonprofit membership, corporation, joint venture, professional association, estate, trust, business trust, receiver, syndicate holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a commercial establishment in the absence of the principal.

*Drinking establishment* means any commercial establishment which allows for on premises consumption of beer, ale, porter and/or wine. For purposes of this ordinance, a drinking establishment includes any eating establishment which allows for on premises consumption regardless of the nature of its zoning or the business type as determined by the business license administrator.

*Incident* means credible evidence of any attempted or of any of the listed crimes, ordinances or codes in this section which is either documented or investigated by a law enforcement agency, fire marshal, license inspector or code enforcement officer or a conviction for a violation of the crimes, ordinances or codes in this section.

*Permit holder* means the name of the individual who is the successful applicant for the extended hours operating Permit or the agent for the business on the extended hours operating permit if the applicant is a business entity.

*Permit period* means the period of time from 2:00 a.m. until sunrise or the time the commercial establishment is required by state law to close, whichever may be the latest time.

*Permit year* is the calendar year or any portion thereof for which an extended operating hours permit has been issued and which expires on June 30th.

(b) *Hours of operations for drinking establishments.*

~~(1) Commercial Drinking establishments that allow for the on-premises consumption of beer, ale, porter and/or wine shall be prohibited from operating, selling, being open to the public or allowing consumption of beer, ale, porter or wine after 2:00 a.m. on Mondays through Saturdays. It shall be unlawful to operate, sell or allow the consumption of beer, ale, porter or wine on Mondays through Saturdays after 2:00 a.m., without having a valid extended hours permit issued by the City of Columbia pursuant to this section.~~

~~(2) Under a program established by the city manager, commercial establishments that allow for the on-premises consumption of beer, ale, porter and/or wine~~

(c) *Extended hours operating permit; application, requirements.*

1. A drinking establishment may seek exemption to subsection (1) (b) to operate after 2:00 a.m. until sunrise or the time the commercial establishment is required by state law to close, whichever may be the latest time on Mondays through Saturdays, ~~upon application and proof of business policies or practices that comply with the~~

LEGAL DEPARTMENT DRAFT

following: by obtaining an extended hours operating permit issued by the Columbia Police Department upon a form approved for such use by the Chief of Police, or his designee.

a. ~~The commercial establishment shall not allow any drinking contests or games, or contests involving disrobing, or "wet t-shirt", "Girls Gone Wild"™ or similar contests will be held or advertised at the commercial establishment unless the commercial establishment is licensed to operate as a sexually oriented business. No agent, employee or independent contractor for the commercial establishment will encourage or permit this prohibited behavior by the patrons, unless the business is licensed to operate as a sexually oriented business.~~

2. All extended hours operating permits shall be issued for one calendar year, or any portion thereof, and shall expire on June 30.

3. All extended hours operating permits shall only be issued in the name of a person, or business entity, who is also the named holder of the City of Columbia business license for that business.

4. Applicants shall pay a nonrefundable application fee of \$100.00, along with any permit fees required under this section.

5. No drinking establishment may apply for an extended hours operating permit unless the drinking establishment has been in operation in that location for a period of twenty-four months prior to the date of the application.

6. Applications shall include a security plan to be approved by the Columbia Police Department as a condition of issuance of the permit.

7. Extended operating hours permits shall be conspicuously displayed at the entry way of the commercial establishment.

8. Extended hours operating permits are not transferable.

9. Applications shall include a current copy of the menu of food options offered by the drinking establishment during the permit period.

10. Applications shall include proof of the drinking establishment's liability insurance and workers' compensation insurance for the permit period.

*(d) Terms and conditions of extended hours operating permits.*

1. Any drinking establishment which holds an extended hours operating permit shall fully cooperate with any law enforcement or fire agency seeking to inspect, investigate or enforce the laws or regulations of the City of Columbia, State of South Carolina or the United States of America during the permit period.

2. If a violation of any laws, ordinances or regulations should occur during the permit year, or if any circumstance or situation of public health or safety should occur at the business during the permit year, the City of Columbia may require reasonable corrective measures be taken by the permit holder to include, but not be limited to: additional training for drinking establishment staff, periodic inspections, revision of fire safety or security plans, employment of additional staff, or such other and further corrective measures to ensure the safety of the drinking establishment patrons and employees. Any corrective measures required under this section are in addition to, and do not replace, or create a condition of, any other penalty, relief or remedy available under law.

3. Upon issuance of this permit, the permit holder agrees that during the permit period, all of its employees are an agent of the business for the limited purpose of being placed on notice of conditions, incidents or citations which occur.

4. During the permit period, the permit holder must offer for sale food items from the current menu approved with the extended hours operating permit application.

f. 5. ~~The commercial~~ drinking establishment must have in place and maintain current at all times liquor liability insurance and workers' compensation insurance. The commercial establishment shall provide the city proof of such insurance at the time of application for the permit ~~an exemption~~ and at any other time the city may request. A lapse or cancellation of the insurance coverage will result in a suspension of the extended hours operating permit until insurance is reinstated.

6. As part of the security plan, the permit holder shall establish a policy that:

(i) Requires all floor managers, bartenders and wait staff to maintain certification in Serve Safe Alcohol, TIPS or Lexington Richland Alcohol and Drug Abuse Council's PREP training on determining when a customer is underage or apparently intoxicated or ~~approved training as specified approved by the City of Columbia Police Department extended hours exemption permit program procedural guide;~~

(ii) Prohibits employees from serving alcohol to underage or apparently intoxicated customers; and,  
 (iii) Requires the commercial drinking establishment, its agents and employees to enforce a policy of refusing further alcohol service to underage or intoxicated customers at that point.

e. 7. ~~For those commercial Drinking establishments required to~~ may utilize security agency personnel to primarily exercise security functions, as defined by Section 40-18-20, et seq., of the Code of Laws of South Carolina 1976, as amended ~~from time to time, under subsection (3) if such security agency shall be~~ is licensed by the State of South Carolina. ~~The security agency shall also be licensed and by the City of Columbia.~~

d. 8. No alcohol consumption will be permitted in the parking lots under the control of the commercial drinking establishment as prohibited by law. No alcohol consumption will be permitted outside of any roofed, decked, café-style areas or encroachment areas authorized by Columbia City Council, nor shall any glass or metal containers of any kind be permitted to leave the roofed, decked, café-style areas of the commercial drinking establishment or encroachment areas authorized by Columbia City Council. The commercial drinking establishment will establish policies and security resources to assure compliance.

9. During the permit period, the drinking establishment may not offer drinks at any discount or special price. All drinks are to be sold at the regularly established price of the drinking establishment.

e. ~~The commercial establishment must have in place and maintain current at all times all licenses and permits required by state or local law.~~

f. ~~The commercial establishment must have in place and maintain current at all times liquor liability insurance and workers' compensation insurance. The commercial establishment shall provide the city proof of such insurance at the time of application for an exemption or at any other time the city may request.~~

g. ~~Upon city request, the commercial establishment will consult with the City of Columbia Police Department and provide such security as is recommended by that Department that recognizes individual circumstances of the commercial establishment.~~

h. ~~All commercial establishments seeking an exemption under this subsection shall complete an application provided by the business license division. Extended operating hours permits shall be issued for one calendar year or any portion thereof and shall expire on June 30. Applicants shall pay a nonrefundable application fee of \$50.00 (to be equally divided between the business license division and the police department) for each exemption or any renewal or reinstatement thereof. Applicants applying for reinstatement of a revoked exemption shall have a fire safety plan approved by the fire department and shall attend and complete the fire department's Nightclub Safety Seminar prior to reinstatement of the exemption, if any of the incidents resulting in the revocation were related to a violation of the fire code. Exempted commercial establishments shall receive an extended operating hours permit which shall be conspicuously displayed at the entry way of the commercial establishment. Extended operating hours permits are not transferable. Extended operating hours permits shall be immediately removed upon revocation.~~

i. ~~Any application for an initial, renewal or reinstatement of an exemption shall be denied if the application is incomplete or contains a misrepresentation, false or misleading statement or a material fact. If it is discovered that any application for an initial, renewal or reinstatement of an exemption was incomplete or contained a misrepresentation, false or misleading statement or a material fact after an exemption has been granted then the granted exemption shall be immediately revoked. The commercial establishment shall comply with subsection (1) for a period of 12 months before applying for another exemption and must be incident free during the 12-month period in order to apply.~~

j. ~~The denial of an application or revocation of an exemption shall be subject to an appeal process developed by the city manager and such appeal process shall be available on-line. An appeal shall be filed within 30 days of notice. The notice shall include the appeal process and appeal period.~~

(3) ~~If the commercial establishment is not the victim of the incident, but shall have on the premises under its control, during the permit year attempted or accomplished robberies or larcenies, breaches of the peace, drug offenses, assaults, public nuisances, violations related to unlawful service of alcohol to minors or to already intoxicated persons or violations of the fire code related to occupancy loads and exits on the premises, hereinafter collectively "incidents," occurring during the permit period and at any time the commercial establishment is open for business; then:~~

a. ~~For a second incident of the first two incidents during the permit year the commercial establishment shall employ security agency personnel on a ratio of one to per 100 occupancy based on the permitted load occupancy~~



rounded up to the next 100 within 30 days of notice. Failure to provide the required security within 30 days of notice shall result in the immediate revocation of the exemption and permit, and the commercial establishment shall comply with subsection (1) for a period of 12 months before applying for another exemption and must be incident free during the 12-month period in order to apply.

b. For a third incident during the permit year, then the granted exemption shall be immediately revoked and the commercial establishment shall comply with subsection (1) for a period of three months before applying for another exemption. The commercial establishment must be incident free during the revocation period in order to reapply for reinstatement of its exemption. In the event of an incident during the revocation period, the commercial establishment shall comply with subsection (1) for a period of 12 months before applying for another exemption and must be incident free during the 12-month period in order to apply.

c. For a fourth incident during the permit year, then the granted exemption shall be immediately revoked and the commercial establishment shall comply with subsection (1) for a period of 12 months before applying for another exemption and must be incident free during the 12-month period in order to apply.

(4) For subsection (3), the issue of business accountability for incident occurrence shall be subject to an appeal process developed by the city manager and such appeal process shall be available on-line. An appeal shall be filed within 30 days of notice. The notice shall include the appeal process and appeal period.

(5) Police officers, fire marshals, license inspectors and/or code enforcement officers shall have the authority to administer the provisions of this section as to business accountability for incidence occurrence, proof of compliance, permit violations and revocation.

(e) *Penalties; suspension or revocation.*

1. In addition to any administrative remedy available under this section, any violation of any requirement of this section is criminally enforceable in the municipal court as provided in Section 1-5 of the Code of Ordinances of the City of Columbia.

2. Extended hours operating permits are the property of the City of Columbia and shall immediately be surrendered to the Columbia Police Department upon revocation, cancellation or suspension.

3. If any application submitted under this section is incomplete or does not contain the requirements outlined, the permit shall not be issued until the application is complete and all requirements are met. Failure by the applicant to submit the required information or to correct the deficiency in sixty (60) days will result in denial of the application.

4. If three (3) or more administrative, criminal, or fire citations, or a combination of same, are made against the permit holder or any of its employees in a 30-day period, the extended hours operating permit shall be suspended for a period of ninety (90) days. Two such suspensions in a permit year will result in denial of any renewal application for a period of two (2) complete permit years.

5. If any application submitted under this section contains a misrepresentation, or a false or misleading statement, as may be determined by the Chief of Police, his designee, the permit shall be immediately revoked.

6. Any permit issued by this section may be revoked under Article II of Chapter 8 of the Code of Ordinances of the City of Columbia. Once revoked, no permit application under this section will be considered for two (2) complete permit years.

7. The Chief of Police, in his discretion, may suspend any permit issued under this section for a reasonable period of time, not to exceed fourteen (14) days, to investigate the facts and circumstances of any condition which is an immediate threat to health or safety of the public, the business patrons or employees.

(f) *Fees.*

Permits shall be issued upon the payment of the following permit fees:

Permit Application Fee	\$100.00
Initial Permit	\$2,500.00
Renewal of Permit with no citations for the previous permit year	\$1000.00

Renewal of permit with two or more administrative citations of laws or regulations of intoxicating liquors, beer, wine, ale or porter, or the taxation of same during the previous permit year	\$3,000.00
Renewal of permit if the permit holder or any of its employee shall commit two or more criminal citations of laws or regulations of intoxicating liquors, beer, wine, ale or porter during the previous permit year	\$5,000.00
Renewal of permit if two or more citations of laws, ordinances or regulations regarding fire safety, including occupancy limits during the previous permit year	\$5,000.00
Renewal after having a 90 day suspension as provided in Section 14-106(e)4 during the permit year	\$10,000.00

(g) Appeals.

1. The permit holder may make a written demand to the city manager for a *de novo* review of any action taken under this ordinance. This review does not stay the action against permit, but a hearing will be scheduled with the city manager as soon as possible. The review must be received by the city manager before the time specified in the notice. The review may be faxed or emailed to the city manager. The written demand shall include an address and a contact number, either phone or facsimile, in order for the person to be informed of the hearing location, date and time. The city manager may amend or modify the action, or when appropriate under the facts presented, extend the time for compliance by the owner to such date as the city manager may determine. The decisions of the city manager are final, and shall be delivered in written form within ten days and mailed to the address provided.

2. Any appeal of the city manager's administrative decision is final and reviewable by the circuit court in the same procedure and manner as state licensing appeals under Section 1-23-380, et. seq. of the Code of Laws of South Carolina, as amended from time to time, incorporated herein by express reference.

This ordinance is effective as of \_\_\_\_\_.

Requested by:

Public Safety Committee \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved by:

\_\_\_\_\_  
City Manager

Approved as to form:

ATTEST:

\_\_\_\_\_  
Senior Assistant City Attorney

\_\_\_\_\_  
City Clerk

Public Hearing:

Introduced:

Final Reading: