

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 15th day of May, 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for commercial establishments which allow for on-premises consumption of beer, ale, porter and/or wine is hereby repealed in its entirety and amended to read as follows: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 violate 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 also 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.

Family Member means spouse, sibling or parent, and spouses or domestic partners thereof; Grandparents and grandchildren, and spouses thereof; Domestic partner and parents thereof, and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

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.

Related person means any person with a personal or business relationship, including: family member; mortgagor/mortgagee; leaseholder/lessee; creditor/debtor; employer/employee; co-owner of the business by more than 20% of equity; or a person with a guaranteed share of proceeds or profits in the business.

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

Drinking establishments 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, without having a valid extended hours permit issued by the City of Columbia pursuant to this section.

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

1. A drinking establishment may seek exemption to subsection (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, 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.
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. As a condition of the permit, all applications shall include a security plan to be approved by the Columbia Police Department, a fire safety plan to be approved by the Columbia Fire Department and a certification by an inspector approved by the City that the location is in compliance with all applicable building and fire codes.
7. Extended operating hours permits which 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.
11. Applications will be denied to any applicant who is a related person to a previous permit or license holder whose city issued permit or license was suspended or revoked in the previous 60 months.

(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 year.
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.
5. The 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 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 training approved by the Columbia Police Department;
- (ii) Prohibits employees from serving alcohol to underage or apparently intoxicated customers; and,
- (iii) Requires the drinking establishment, its agents and employees to enforce a policy of refusing further alcohol service to underage or intoxicated customers.

7. Drinking establishments may utilize security agency personnel to exercise security functions, as defined by Section 40-18-20, et seq., of the Code of Laws of South Carolina 1976, as amended if such security agency is licensed by the State of South Carolina and by the City of Columbia.

8. No alcohol consumption will be permitted in the parking lots under the control of the 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 drinking establishment or encroachment areas authorized by Columbia City Council. The 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.

10. 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.

(e) Penalties; suspension or revocation.

1. In addition to any administrative remedy available under this section, or any other remedy available under law, 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 immediately suspended for a period of ninety (90) days. Two such suspensions within a twenty-four (24) month period will result in revocation/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 pertaining to intoxicating liquors, beer, wine, ale or porter, or the taxation of same during the previous permit year	\$3,000.00
Renewal of permit with two or more criminal citations of laws or regulations pertaining to 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.

(h) *Severability.*

The provisions of this Ordinance are severable, and, if any provision hereof shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision hereof.

This ordinance is effective as of May 15, 2018.

Requested by:

Public Safety Committee

Mayor

Approved by:

City Manager

Approved as to form:

ATTEST:

City Attorney

Introduced: 4/17/2018; 5/1/2018

Final Reading: 5/15/2018

City Clerk