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RECOMMENDED BY:

THE PUBLIC SAFETY COMMITTEE

SUBMITTED BY:

THE ACTING CITY ATTORNEY

ORDINANCE NO.13-118

AN ORDINANCE TO AMEND TITLE 12, “LICENSING AND REGULATION”, CHAPTER 10, “INTOXICATING LIQUORS”, OF THE GENERAL CODE OF THE CITY OF BIRMINGHAM, 1980, TO ADD A NEW ARTICLE FOR THE CREATION OF ENTERTAINMENT DISTRICTS PURSUANT TO ALABAMA ACT NO. 2012-438.

SECTION 1.

THEREFORE, BE IT ORDAINED by the Council of the City of Birmingham, Alabama that Title 12, “Licensing and Regulation”, Chapter 10, “Intoxicating Liquors”, is hereby amended to add a new article as follows:

1. Definitions

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic Beverage Control Board or ABC Board or ABC means the Alabama Alcoholic Beverage Control Board.

District means an entertainment district established by the city council pursuant to this ordinance. District boundaries may not exceed one half mile by one half mile in area, but may be irregularly shaped.

Licensee means any person holding an ABC retail license authorizing the sale of alcoholic beverages for on-premises consumption within a district.

Licensed premise means any business within a district that holds a valid ABC retail license authorizing the sale of alcoholic beverages for on-premises consumption, issued pursuant Ala. Code, 1975, Sec. 28-1-6(a), and a valid City of Birmingham business license.

Liquor license means any retail license authorized by Code of Ala Title 28, Chapter 3A, which allows the licensee to sell alcoholic beverages for consumption on the licensed premises.

2. Entertainment District Regulations

- a. Any licensee who receives an entertainment district designation for its on-premise retail license from the ABC Board or who otherwise holds a valid license from the ABC Board to sell alcoholic beverages for consumption on the licensed premises shall comply with all laws, rules, and regulations which govern its license type, except that the patrons, guests or members of that licensee may exit that licensed premises with open containers of alcoholic beverages and consume alcoholic beverages anywhere within the confines of the entertainment district, but may not enter another licensed premises with open containers or closed containers of alcoholic beverages acquired elsewhere.
- b. Beverages sold for removal from the licensed premises shall be dispensed only in a paper cup bearing the commercially printed name and/or logo of the designated licensee. No beverages shall be removed from the licensed premises in glass bottles or containers.

- c. The days and hours of operation of an entertainment district shall be established by the council in the ordinance designating each specific district. No licensee shall allow the removal of alcoholic beverages from the licensed premises other than during the hours established for the operation of the specific entertainment district. No one shall possess alcoholic beverages for consumption within the district outside of the licensed premises other than during the hours of operation as an entertainment district. No alcoholic beverages shall be possessed or consumed in any entertainment district between the hours of 2:00 a.m. and 12:00 p.m. on Sundays, except within the licensed premises of establishments validly licensed as private clubs by the ABC Board. Possession or consumption of alcoholic beverages within or upon any parking lot or parking facility within the district shall be prohibited.
- d. Nothing in this ordinance shall be construed to allow the sale of alcohol to minors. The council may establish strict curfews for minors within the entertainment district as needed to control the availability of alcoholic beverages to minors.
- e. No licensee within the district shall be required to allow removal of beverages to be consumed outside the licensed premises. Any licensee that does not desire to allow removal of beverages from its licensed premises shall clearly post notice that no open containers of alcoholic beverages may be removed from the premises. Such notice shall be posted at least at the exits and where beverages are dispensed within the premises.
- f. This ordinance shall not be construed to prohibit the sale of alcoholic beverages in their original, unopened containers for off-premise consumption by any establishment authorized by the ABC Board to make such sales. However,

consumption of alcoholic beverages sold in original, unopened containers for off-premise consumption shall not be allowed in any public area of the entertainment district.

- g. All licensees within an entertainment district shall comply with all laws, ordinances, and regulations relating to having adequate security measures in place for the policing and enforcement of alcoholic beverage control laws, which measures shall include but are not necessarily be limited to:

- (1) Adequately lighted areas where alcoholic beverages are sold, served or consumed;
- (2) Tamper proof measures that identify persons of legal drinking age; and
- (3) Provision of a sufficient number of security personnel as provided in Ordinance No. 13-74.

- h. The provisions of the city's noise ordinance, Sections 11-8-21 through 11-8-27 of the General Code of the City of Birmingham, 1980, as amended (Ordinance No. 04-98), shall apply in all entertainment districts, including but not limited to requirements for amplified sound and for noise permits as provided in Ordinance No. 04-99.

- i. Special events within the district must be coordinated through the appropriate responsible merchants' association or organization responsible for the operation of the district. Events that involve such activities as the sale of alcoholic beverages outside of licensed premises, street closures, entertainment using amplified sound, or other regulated activities must comply with all laws, ordinances or regulations governing such activities.

- j. The city's prohibition against drinking in public, Sec. 12-10-9 of the General Code of the City of Birmingham, 1980, as now or hereafter amended, shall not apply within the boundaries of a designated entertainment district during the approved hours of operation for the district.

3. Offenses

a. It shall be unlawful:

- (1) For any retail licensee to sell alcoholic beverages in other than open containers for consumption on premises where sold, or to permit a patron to leave the premises with an alcoholic beverage which was dispensed and sold on the premises.
- (2) For patrons to enter licensed premises with alcoholic beverages acquired at another licensed premise or outside the district.
- (3) For patrons to exit licensed premises with open glass containers of any type alcoholic beverages.
- (4) For any person to enter into a designated entertainment district with alcoholic beverages purchased outside of the district, except as otherwise permitted by Alabama Alcoholic Beverage Control Board and in compliance with all applicable laws, ordinances, rules and regulations governing the sale, possession or consumption of alcoholic beverages.
- (5) For any person purchasing alcoholic beverages for on-premises consumption to remove such beverages from the premises from which they were sold for consumption or to remove the container in which the

alcoholic beverage was sold for on-premises consumption, except from the premises of those licensees who receive an entertainment district designation in an entertainment district.

(6) For any person to refill a cup from a licensed premise with alcoholic beverages not purchased at a licensed premise within the district.

(7) For any person to exit a designated entertainment district with alcoholic beverages purchased in an open container for consumption within the district.

(8) For any person to consume alcoholic beverages in a motor vehicle parked or in motion within the district, with the exception of a common carrier vehicle licensed by the ABC Board to serve alcoholic beverages.

b. Any violation of the offenses set forth in subsection (a) of this section shall be punishable by a fine of not less than \$100.00 nor in excess of \$500.00 per violation.

c. The city council may consider suspension or revocation of the business license of any licensee who violates any provision of this ordinance.

4. Signage Designating Entertainment District

a. No signs are permitted at any time on public property such as a city street right-of-way or a utility pole, except for signs, specifically permitted, in designated entertainment districts. Entertainment district signs mean any on-premise sign which is not affixed to real property in such a manner that its removal would cause serious injury or material damage to the property.

(1) Businesses that wish to participate in the entertainment district privileges must display participation banners, flags or other type of signage near the

entrance to the establishment. The signage shall be unified in the district with regard to content, size, color, material and method of attachment to the building. The signage shall be fixed to the building during district hours of operation and no less than five (5) feet from the door. Signage shall be located at each principal public entrance. Such sign(s) shall be located on or adjacent to the subject public entrance.

- (2) Businesses within an entertainment district that do not wish to participate in the privileges must display signage noting the exception in accordance with section 2 (e) of this ordinance. These signs shall be unified within the entertainment district with regard to size and content. Sign content shall include: the entertainment district name; hours of operation; establishment name; and that alcoholic beverages may not leave the premise. Business not participating shall be prohibited from serving beverages in containers similar to those used by participating licensees and described in section 2 (b) of this ordinance.
- (3) Parking areas within entertainment district with more than 20 parking spaces or in excess of 5,000 square feet shall have fixed signage located at each pedestrian and vehicular entrance and exit denoting the rules and regulations for the district. Signage shall be unified within the District in regards to size, color, content and placement.
- (4) The boundary to the entertainment district shall be clearly marked with fixed signage at all entrance/exits. Signs for pedestrians entering the site shall display the entertainment district name and the hours of operation.

Signs for pedestrians leaving the area shall indicate the prohibition on removing beverages from the area.

- b. Entertainment district signs shall be approved by the design review committee of the city and permitted by the department of planning, engineering and permits. Approval must also be obtained from the respective district merchants' association, when applicable. A copy of the permit guidelines and restrictions shall be available from the office of the city clerk or on the website for the department of planning, engineering and permits' urban design division.

5. Entertainment District Designation

- a. The council may create a district whenever it finds that the proposed district meets the minimum qualifications of the Act and this article, and that creation of a district is in the best interest of the public and the specific geographic area to be served. In making its determination, the council shall take into account all relevant information, including the following:
 - (1) A description of the proposed district;
 - (2) Plan for security, parking and other operational criteria within the district;
 - (3) How the proposed district will complement the city's economic development goals, comprehensive plan, the planning neighborhood district in which it is located, and the surrounding area.

- b. The council may establish up to five districts as provided by Alabama Act 2012-438, as now or hereafter amended, or up to the maximum number allowed by any other applicable state law in effect at the time.
- c. District boundaries must conform to the requirements of state law, currently no larger than one-half mile by one-half mile in area, but may be irregularly shaped.
- d. To be established as a district, the area making the request must have an established and active merchants' association or other organization or association of businesses with authority to speak for the businesses in the affected area.
- e. The merchants' association or other authorized organization representing the businesses in an area that meets the requirements of Alabama Act 2012-438, as now or hereafter amended, may request to be designated as an entertainment district by submitting an application and a receipt from the finance director or his designee for the payment of a non-refundable application fee in the amount of to the city clerk. Upon receipt of application and proof of payment of the fee, the city clerk shall forward a copy to the director of the department of community development, the economic development director, the director of the department of planning, engineering and permits, the traffic engineer, the finance director, the chief of police, and the fire chief, or their respective designees, by electronic or other means. The application shall include, but not be limited to, all of the following:

- (1) The identity of the applying organization and the businesses it is authorized to represent.

- (2) A map delineating the boundaries of the district;
- (3) Evidence that the area meets the requirements for the number of ABC Board licensees to qualify for an entertainment district designation.
- (4) The proposed days and hours that the area will operate as an entertainment district;
- (5) Plans to provide for adequate security and/or police protection for the area while operating as an entertainment district;
- (6) Plans for adequate parking for persons visiting the district. To the extent possible, parking shall be located at the perimeter or outside the boundaries of the district. Parking lots within the district must provide for compliance with prohibitions on alcohol brought into the district and provide for the safety and security of patrons of the district;
- (7) Plans for maintaining the appearance and sanitation of the district;
- (8) Plans for the designation of the district, including signs, entry points and the means to define the boundaries of the district so that patrons are clearly informed of the limits of the districts;
- (9) Such other additional information that the director of community Development may deem necessary to allow city staff and the council to

evaluate the suitability of the area for an entertainment district designation.

- f. Upon receipt of the notification or completed application, the director of the department of community development, the economic development director, the director of the department of planning, engineering and permits, the traffic engineer, the finance director, the chief of police and the fire chief, or their respective designees, shall review the application for completeness and for compliance with this and other applicable city ordinances. The applicant may consult with these reviewing departments in developing the plan prior to submitting the application or during the review as needed due to address traffic, safety and other concerns for the benefit of the public and to ensure consistency with design review standards where applicable.
- g. Within 10 days of receipt of the application, the director of the department of community development shall set a meeting with the other reviewing departments' designees to consider whether the application is complete and ready for final review or whether additional information is necessary. The director of the department of community development or his/her designee shall notify the applicant within 5 days of that meeting as to whether the review shall proceed on the application as submitted or whether additional information and consultation is needed to proceed with the review. The reviewing departments shall report to the director of community development on their findings within 45 days of receiving a final, complete application. The reports and findings shall be submitted to the city clerk

by each department or the director of the department of community development may receive reports from the other departments and forward them collectively to the city clerk within 45 days of having received the final complete application.

- h. The city clerk shall forward the application and the reports of the reviewing departments to the public safety committee of the city council no later than 5 days after receipt of the departmental reports. The public safety committee shall consider the application at its next regularly scheduled meeting and shall request the city council to set a public hearing not less than 21 days but not more than 35 days from the committee's consideration of the application. The application shall be available in the clerks' office for at least 21 days prior to the hearing for public review.
- i. At the public hearing, the city council shall hear any person who desires to be heard on any issue relevant to the designation of the area as an entertainment district.
- j. After such hearing, the council shall consider the application, the reports from the reviewing city departments, any relevant evidence offered by any party at the public hearing and such other information it may have bearing upon such application and the ability of the applicant and affected businesses to operate the district in the best interest of the public health, safety and welfare.
- k. If the city council finds that the designation of the district complies with all applicable ordinances and state law and that the creation of the district is in the best interest of the public, it shall adopt an ordinance setting out:

- (1) The findings upon which the designation is based;
- (2) A map delineating the boundaries of the district;
- (3) Effective dates for the district;
- (4) The days and hours that the area shall be allowed to operate as an entertainment district; and,
- (5) Such additional operational rules and criteria the council deems appropriate to meet the goals and objectives of that particular district.

1. The council may amend, modify or revoke the designation of any area as an entertainment district upon finding that the operation of the district has become a nuisance or is otherwise not being operated in the best public interest, including a lack of adequate security. The council shall conduct the proceedings for the amendment, modification or revocation of the designation in the same manner as provided for the revocation of a business license pursuant to the ordinances of the city. The council may require the district to provide additional security at the district's expense.

- (1) No church, school or religious institution shall be considered part of a designated district. Boundaries shall specifically exclude the property and premises of any such institution.
- (2) The council reserves the right to modify or repeal this article, and any district designation created there under at any time. Nothing in this

article shall be construed to create any right or entitlement to an entertainment district designation.

6. Management of Entertainment District

The director of community development is authorized to implement regulations, and controls, with the assistance of the economic development director and director of finance, for the purpose of managing the entertainment district which will be specific for each entertainment district. Such regulations and controls may include but are not limited to the following:

- a. Entrance Requirement: Entertainment district wristbands may be required to indentify all persons who have attained the age of twenty-one (21) and who are legally authorized to purchase and consume alcoholic beverages. Displaying of the wristband does not relieve any establishment from verifying the age of any person who is seeking to purchase alcoholic beverages.
- b. Restrictions: No licensee shall issue a district wristband to any person entering the establishment with weapons, alcoholic beverages, and other items which may be dangerous, disruptive, or inconvenient in crowded conditions.
- c. Sale of Wristbands: Only authorized licensees, merchants associations or designated entities may sell or distribute wristbands. Wristbands shall be obtained from the City of Birmingham's finance department according to regulations established by the finance director and the director of community development.

d. Financial Requirement and Auditing Responsibilities: Any organization designated and authorized to collect fees and generate revenues from the public in connection with the entertainment district, on an annual basis, shall provide to the finance director, a comprehensive report that provides a full accounting of all revenues and expenditures associated with the sale of the wristbands. The designated organization shall make all pertinent books, accounts, or other records accessible to the finance director and the organization shall maintain accounting procedures adequate to fully document the use of all funds received and/or paid by the organization in connection with the sale of the wristbands.

SECTION 2. EFFECTIVE DATE. This Ordinance shall become effective upon passage, approval and publication or as otherwise provided by law.

SECTION 3. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by declaration of any court of competent jurisdiction, such declaration shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. PRESERVATION. Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following: Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.

Adopted by the Council September 24, 2013 and Approved by the Mayor October 1, 2013



A CERTIFIED COPY
Lee Frazier, City Clerk
Birmingham, AL
Lee Frazier