

FIRST READING 7-12-11
SECOND READING 7-19-11
INDEX NO. _____

ORDINANCE NO. 12529

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SECTION 38-2 DEFINITIONS, SECTION 38-185 USES PERMITTED AS SPECIAL EXCEPTIONS BY THE CITY COUNCIL, AND SECTION 38-527, SPECIAL EXCEPTIONS PERMIT FOR LATE NIGHT ENTERTAINMENT/EVENT FACILITY AND/OR NIGHTCLUBS OR SIMILAR USES.

WHEREAS, it has been determined that the current name Special Exceptions Permit for a Nightclub or similar uses does not provide an accurate representation of the proposed business establishment; and

WHEREAS, negative images or nuisance issues are often associated with the name Special Exceptions Permit for a Nightclub or similar uses; and

WHEREAS, the Special Exceptions Permit for a Nightclub should include the reference of a Late Night Entertainment/Event Facility; and

WHEREAS, the amendment will require the application for the Special Exceptions Permit be placed on the City Council agenda no less than 30-days after the initial application with the Regional Planning Agency; and

WHEREAS, the requirements of the Special Exceptions Permit will incorporate the application and appeals procedures.

SECTION 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 38, Zoning Ordinance, Article II, Section 38-2, Definitions, be amended by adding the following Definition in alphabetical order, Late Night Entertainment/Event Facility, see nightclub definition.

SECTION 2. BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 38, Zoning Ordinance, Article V, Section 38-185, C-2 Convenience Commercial Zone, Uses Permitted as Special Exceptions by the City Council, by deleting subsection (3) in its entirety and substituting in lieu thereof the following:

- (3) Late Night Entertainment/Event Facility and/or Nightclub or similar uses under the terms specified in Article VI, Section 38-527. (See Article II, Section 38-2 for definition of a Late Night Entertainment/Event Facility and/or Nightclub)

SECTION 3. BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 38, Zoning Ordinance, Article VI, Section 38-527, Height and Area Exceptions and Other Special Exceptions, Special Exceptions for Nightclubs or similar uses by deleting it in its entirety and substituting in lieu thereof the following:

Section 38-527 Special Exceptions Permit for Late Night Entertainment/Event Facility and/or Nightclub or Similar Uses. (See Article II, Section 38-2 for definitions)

If a commercial establishment, which may or may not be held out to the public as a Bar or other social gathering place, with an occupancy capacity of more than one hundred (100) people, and which serves alcohol or allows alcohol on the premises and is operated as a place of entertainment at night for eating, drinking, dancing and provides live or recorded entertainment and engages in certain activities referenced under the nightclub definition at Chattanooga City Code 38-2, such commercial establishment shall require a special permit under Chattanooga City Code 38-527 before any certificate of occupancy can be issued by the Building Official and provided that the following conditions are met:

Application Procedure:

- (a) The business owner shall apply for a Special Exceptions Permit which shall be issued by the City Council. The applicant shall apply to the City Council through the Chattanooga-Hamilton County Regional Planning Agency.
- (b) The applicant for this permit shall submit a site plan to the Chattanooga-Hamilton County Regional Planning Agency, which shows the general plan for utilization of any building (including the location and size of outside gathering places such as decks, balconies, covered areas and patios), distances from nearby residential zones, locations of any amplified speakers in the building, parking plans, and any proposed landscaping or noise reduction efforts which will be taken to protect nearby properties from excessive noise or traffic concerns due to this use by the applicant.
- (c) Additionally, the applicant should provide a copy of its Tennessee Alcoholic Beverage Commission Liquor by the Drink (LBD) Application and supporting paperwork. The City Council may refer any site plan to the Regional Planning Agency and Land Development Office for review and suggestions on necessary conditions for parking, landscaping, or noise reduction resulting from the proposed or actual use of the property.
- (d) The application will be placed on the City Council agenda no less than thirty (30) days from the initial application for the permit with the Regional Planning Agency.
- (e) Regional Planning Agency will contact the City Attorney's office for the date of the City Council meeting that the Special Exceptions Permit will be placed on the agenda.
- (f) The applicant will be given notification sign(s) for placement on the property advertising date and time of the scheduled public hearing.
- (g) Regional Planning Agency will send a notice of the public hearing held by the City Council by regular mail to each property owner(s) within a minimum of 200' radius from the property line of the proposed Late Night Entertainment/Event Facility and/or Nightclub or Similar Uses. Notification letters will be mailed at least seven (7) days prior to the public hearing by the City Council.

General Provisions:

- (a) Late Night Entertainment/Event Facilities and/or Nightclub are permitted only within the C-2 Convenience Commercial Zone by Special Exception Permit issued by the City Council.
- (b) The Special Exception Permit may be revoked by the City Council after notice and hearing as set forth in subsection (i).
- (c) Restaurants, Sports Bars and Bars as defined within Article II, Section 38-2 are exempt from these requirements.
- (d) If a business owner disagrees with the determination of the City Zoning Official that an establishment meets the definition of a Late Night Entertainment/Event Facility and/or Nightclub rather than a Restaurant, Sports Bar or Bar, upon request by the owner, the decision of the Zoning Official will be reviewed by the Chattanooga City Council.
 - i. A business owner seeking an appeal from the determination by the City Zoning Official shall submit a letter to the office of the Zoning Official requesting an appeal.
 - ii. The Zoning Official will contact the City Attorney's Office for placement of the appeals request on the next available agenda of the City Council.
- (e) Any doorway entrance regularly used for ingress and egress or outdoor place of gathering such as a deck/patio of any such use (if permitted by approval of a Special Exception Permit) shall be located more than seven hundred and fifty feet (750') away from the nearest boundary of any residential zone when constructed for the business. The seven hundred fifty feet (750') buffer distance may be decreased in part or entirety and the City Council may impose additional conditions for the protection of residential properties from excessive noise or other nuisance issues depending on the proximity and location of water, rail, and road rights-of-way, topography, adjoining land uses, or other natural or man-made barriers to sound and noise.

- (f) Outdoor gathering places such as decks, balconies, covered areas and patios shall have no amplified noise, no entertainment or theatrical lighting, and no outside sale of food or beverages.
- (g) For the purposes of this section, the R-4 Special Zone shall be considered a residential zone if undeveloped or developed residentially; it shall be considered a non-residential zone if developed with non-residential uses.
- (h) If a Special Exceptions Permit for a Late Night Entertainment/Event Facility and/or Nightclub is approved:
 - i. Said permit shall not be transferred to any persons other than the Officers and Owners of the Corporation as identified in the Liquor by the Drink permit or Beer license application in place upon initial receipt of the Special Exceptions Permit without approval of the Chattanooga City Council.
 - ii. The Ordinance granting the approval and any conditions attached to the Special Exceptions Permit shall be posted in the interior of the business next to the building's Occupancy Rating and shall be available for inspection upon request.
 - iii. A Revocation Hearing before City Council may be triggered for any of the factors set forth in subsection (i).
- (i) A Special Exceptions Permit for a Late Night Entertainment/Event Facility and/or Nightclub may be revoked by the City Council at any time upon notice to the owner and after a public hearing which establishes violations by a preponderance of evidence before the Chattanooga City Council and which shall consider the following triggers and factors:
 - a. Triggers for a Revocation Hearing will occur:
 - b. At the time of the third suspension of a license by the Beer Board or other state alcohol licensing board; or

- c. Upon recommendation by the City Zoning Official, City Chief Building Official, Chattanooga Police Department or the Chattanooga Beer Board.
- d. The Chattanooga City Council shall consider proof by a preponderance of the evidence of any of the following factors as a basis for revocation of the Special Exceptions permit:
 - i. Number and occurrences of Beer Board or state Alcoholic Beverage Commission suspensions after granting a Special Exceptions Permit
 - ii. Number and occurrences of Police Department calls after granting a Special Exceptions Permit
 - iii. Impact of noise and activity on surrounding property owners after notice to permit holder
 - iv. Distance of property owners from the business
 - v. Changes to site plan by the business or activity occurring at the business since Special Exceptions Permit approval
 - vi. Parking problems on nearby properties occurring due to the business use after notice to permit holder
 - vii. Any additional ordinance violations related to use of property as provided by City staff
 - viii. Revisions or revocation of the State of Tennessee Liquor by the Drink Permit

SECTION 4. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two

(2) weeks from and after its passage.

PASSED on Second and Final Reading

July 19, 2011



CHAIRPERSON

APPROVED: DISAPPROVED:

DATE: 7/20, 2011.



MAYOR

/mms