

1ST READING

2ND READING

INDEX NO.

1-25-11

ORDINANCE NO. 12468

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE,
PART II, CHAPTER 38, ZONING ORDINANCE, BY
AMENDING SECTIONS 38-2 AND 38-527 RELATIVE TO THE
REGULATION OF NIGHTCLUBS.

WHEREAS, it had been determined that the Chattanooga Zoning Ordinance should be amended to include more specific definition and regulation requirements for nightclub uses in the City of Chattanooga; and

WHEREAS, a definition and regulations for nightclubs was created and included as part of the requirements of the Chattanooga Zoning Ordinance; and

WHEREAS, the definition for nightclubs, as currently provided in the Chattanooga Zoning Ordinance could include restaurants and make restaurants subject to the distance, site plan, and landscaping requirements intended for nightclubs; and

WHEREAS, it has been determined that there is a need to further define nightclubs and to provide limitations on special permits which allow such use by the City Council and to include a definition for restaurants within the Chattanooga Zoning Ordinance.

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, be amended by deleting the definition of Nightclub in its entirety and substituting in lieu thereof the following:

Nightclub: A commercial establishment, which may or may not be held out to the public as a Bar or social gathering place, with an occupancy capacity of 100 or more people which serves alcohol or allows alcohol on the premises and which is operated as a place of entertainment at night for eating, drinking, dancing and provides live or recorded entertainment, characterized by any or all of the following activities as a principal use:

- 1) Festival Seating: A form of audience/spectator accommodation for entertainment events in which limited or no seating, other than floor or ground surface, is provided for the audience/spectators gathered to observe entertainment events, dance, or watch a performance. It is not the intent of this section to apply the term festival seating to exhibitions, sports events, conventions, and bona fide political, religious, and educational events.
- 2) Musical or video or live entertainment-live or recorded (DJ) that is amplified or very loud. This category does not include karaoke unless such activity continues after midnight.
- 3) Dance floor available for use during certain hours.
- 4) Later operating hours - defined as after midnight.
- 5) Low lighting levels or darkness during any musical, video or live entertainment event. It is not the intent of this section to apply to movie theaters.
- 6) Stage/platform for floor shows or other live or recorded performances.
- 7) Operates with a city or state license to serve alcohol or allows consumption of alcohol on the premises during musical, video, or live entertainment events between the hours of 11:00 p.m. until 3:00 a.m.

The above factors need not be present during all hours of operations nor include the entirety of the establishment to result in the necessity for a special permit as required under Chattanooga City Code 38-527.

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 II, Section 38-2, be amended by adding the definitions as follows:

Restaurant, sit down: A commercial establishment where the principle use is the preparation and sale of food and beverages and whose operation is characterized by customers being provided with an individual menu and being served their food and beverages by a restaurant employee at the same table or counter where the items

are consumed before the hours of midnight on weekday and weekends.

Restaurant, carry-out: A commercial establishment which is maintained, operated, or advertised or held out to the public as a place where food, beverage, or desserts are served in disposable containers or wrappers from a serving counter for consumption exclusively off the premises.

Restaurant, drive-in: A commercial establishment and adjoining parking area used for the purpose of furnishing food, soft drinks, ice cream, and similar confections to the patrons. Food services are provided principally while patrons remain in their vehicles.

Restaurant, fast food: A commercial establishment engaged primarily in the business of preparing food and purveying it on a self-serve or semi self-serve basis. Customer orders and/or service may be by means of a walk-up counter or window designed to accommodate automobile traffic. Consumption may be either on or off the premises.

Sports Bar: A Sit Down Restaurant that may include any of the following amenities: a microbrewery, multiple television sets, billiard tables/pool tables, darts, video games and other recreational activities regardless of the occupancy capacity.

Bar: A commercial establishment where alcoholic beverages or light meals are served to customers for on-premise consumption provided that the occupancy capacity is less than one hundred (100) persons.

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 II, Section 38-527, Special Exceptions for nightclubs or similar uses be amended by deleting in its entirety and substituting in lieu thereof the following:

If a commercial establishment, which may or may not be held out to the public as a Nightclub, 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 definitions 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:

- (a) The owner shall apply for a Special Exceptions Permit which shall be issued by the City Council. The process for application for this permit shall be to 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. The Regional Planning Agency shall provide a recommendation on this Special Exceptions Permit directly to the City Council and any Special Exceptions Permit shall only be issued by the City Council. 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.
- (b) Nightclubs are permitted only within this zone by Special Exception Permit issued by the City Council and such 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 property owner or business owner disagrees with the determination of the City Zoning Official that an establishment is a 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.
- (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 a Nightclub. The 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 Nightclub is approved:
 - a. Said permit shall be 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.
 - b. The Ordinance granting the approval and any conditions attached to the Special Exceptions Permit shall be posted in the interior of the Nightclub next to the building's Occupancy Rating and shall be available for inspection upon request.
 - c. 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 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:
 - i. At the time of the third suspension of a license by the Beer Board or other state alcohol licensing board; or
 - ii. Upon recommendation by the City Zoning Official, City Chief Building Official, Chattanooga Police Department or the Chattanooga Beer Board.
 - b. 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 a Special Exceptions permit for a Nightclub:
 - 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 Nightclub
- v. Changes to site plan by Nightclub or activity occurring at Nightclub since Special Exceptions Permit approval
- vi. Parking problems on nearby properties occurring due to Nightclub 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 immediately upon its passage.

PASSED on Second and Final Reading

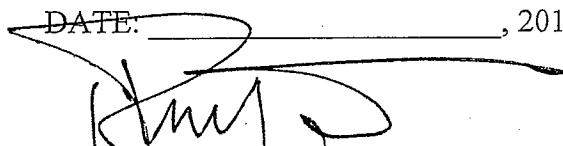
January 25, 2011



 CHAIRPERSON

APPROVED: ___ DISAPPROVED: ___

DATE: _____, 2010.



 MAYOR

/mms/add