

AFTER-HOURS ESTABLISHMENTS

Sec. 16A-75. Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them in this section unless the context clearly requires otherwise:

After-hours activity means any of the following which are open to patrons during the hours of 2:30 a.m. to 6:00 a.m. and where dancing occurs:

- (1) dance hall; or
- (2) premises of a state on-sale retailer liquor licensee.

After-hours establishment means any place where an after-hours activity occurs or is provided. The term includes the building or pavilion or other place where the after-hours activity takes place, together with all surrounding premises used for parking or surrounding premises used for any other purpose relating to the after-hours activity.

Control means the power to direct or cause the direction of the management and policies of an applicant, licensee or controlling person, whether through the ownership of voting securities or a partnership interest, or by agreement or otherwise. Control is presumed to exist if a person has the direct or indirect ownership of or power to vote ten percent (10%) or more of the outstanding voting securities of the applicant, licensee or controlling person or to control in any manner the election of one or more of the directors of the applicant, licensee or controlling person. For the purposes of determining the percentage of voting securities owned, controlled or held by a person, the voting securities of any other person directly or indirectly controlling, controlled by or under common control with the other person, or by an officer, partner, employee or agent of the person or by a spouse, parent or child of the person. Control is also presumed to exist if a creditor of the applicant, licensee or controlling person holds a beneficial interest in fifty percent (50%) or more of the liabilities of the licensee or controlling person.

Controlling person means a person directly or indirectly possessing control of an applicant or licensee.

Dance hall means any establishment or location where social dancing occurs and a patron pays an admittance fee or minimum charge.

Licensing officer means the director of the finance and technology department of the city or his designee.

Owner means the owner of record, as shown by the records in the office of the county assessor, of the premises where an after-hours establishment is located. "Business owner" means any legal owner of an after-hours establishment or activity.

Person means any individual, firm, corporation, partnership, company, association, business trust, government entity, and any other form of multiple organization.

Premises of a state on-sale retailer liquor licensee means any area from which a person holding any state on-sale retailer liquor license or a special event liquor license is authorized to sell, dispense or serve spirituous liquor.

Sec. 16A-76. Applicability, provisions cumulative.

(a) The provisions of this article shall apply to all after-hours activities, establishments and persons as defined herein, whether such activities were commenced before, on or after the effective date of this article.

(b) The provisions of this article shall be in addition to any other regulations, privilege or license taxes or permit requirements required by the city, the state or other applicable agency and cumulative to any other applicable regulations, procedures or penalties.

Sec. 16A-77. License required.

(a) It is unlawful for any person to own, manage, operate or provide an after-hours activity or an after-hours establishment without first obtaining and maintaining in effect an after-hours establishment license as required by this article.

(b) It is unlawful for any person licensed as provided in this article to operate under any name or conduct business under any designation not specified in the license.

Sec. 16A-78. Application.

(a) Any person desiring to obtain an after-hours establishment license shall make application to the licensing officer who shall refer such application to the chief of police and community development director and any other interested department for appropriate investigation. The application shall be in such form as prescribed by the licensing officer and shall be fully completed before processing by the licensing officer. The application must be submitted at least forty-five (45) days prior to the proposed date of providing any after-hours activity.

(b) The application shall include a description of the proposed after-hours activity and shall include, but not be limited to, the following information set forth in this subsection. Paragraphs (1) through (9) below are required to be completed about the applicant, the business owner, the licensee if not the applicant or the business owner, the agent responsible for managing the premises on a day to day basis (hereinafter "managing agent") and any controlling person as defined herein:

(1) Full legal name and any name by which the person is or has been

known;

- (2) Current home address and telephone number and addresses over the past five (5) years;
- (3) Driver's license number;
- (4) Birth date, height, weight, hair and eye color;
- (5) Business occupation and employment history for five (5) years;
- (6) License history, including issuance, revocation, suspension or termination of any current or past state liquor licenses, the liquor license number and managing agent; permits; professional or business license;
- (7) The applicants and agents shall submit a full set of fingerprints to the Tempe police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee.
- (8) Listing of any prior felony or misdemeanor convictions except minor traffic violations;
- (9) Documentation of age over eighteen (18) years;
- (10) Designation of the managing agent who will be managing or operating the after-hours activity at the indicated location and proof of the managing agent's authorization to act on behalf of any corporation or organization;
- (11) Name, address and telephone number of any other local agent authorized to conduct daily business and proof of authority to act on behalf of the prospective licensee;
- (12) Name, address and telephone of statutory agent in Arizona if a corporation or an out-of-state applicant, licensee or owner;
- (13) Except for corporations listed on the major stock exchanges, the names and addresses of all persons financially interested in the business. If a person financially interested in the business of the prospective licensee is a corporation, the names and addresses of all persons financially interested in that corporation shall be provided;

- (14) The names and addresses of any controlling persons as defined herein. If the controlling person is a corporation, the names and addresses of all persons having control of the controlling corporation shall be provided;
- (15) A plan of operation to ensure compliance with § 16A-87 and applicable provisions of this article;
- (16) Evidence of current, valid privilege license issued by the city;
- (17) Evidence of current, valid use permit or any other applicable zoning approval for the proposed activity issued by the city;
- (18) Legal description and location of the premises and lot where the proposed activity will take place, submitted on a map drawn to scale, at least eight and one-half by eleven inches, showing the dimensions of the property and the name and width of all internal and abutting streets, roads or alleys, any existing buildings, fences and easements, with distances to property lines;
- (19) Floor plan containing an accurate drawing to scale depicting the interior plan and layout of the premises;
- (20) A vicinity ownership map showing and labelling all lots within three hundred (300) feet of the exterior boundaries of the lot on which the establishment is located. The three hundred (300) foot measurement shall exclude any public property or public rights-of-way;
- (21) A vicinity ownership list, and mailing labels properly addressed, containing names and mailing addresses, with correct zip codes, of owners of all parcels required to be shown on the vicinity ownership map. The owners shall be as shown on the last assessment of the property by the county;
- (22) A complex/center tenant list, and mailing labels properly addressed, containing names and mailing addresses, with correct zip codes, of tenants which share the site with the proposed licensee as to use of common points of ingress and egress or common parking areas or facilities; and
- (23) Such other information as may be requested by the licensing officer to determine the truth of the information required to be set forth above.

(c) Any change in ownership of the business or in the information required to be provided in paragraphs (1), (10), (11), (12), (13) or (19) above shall be reported to the licensing officer within ten (10) calendar days after the change. Such changes shall be subject to investigation and approval by the city as provided in subsection (d) hereof and,

if disapproved, the disapproval shall be grounds for termination of the license as provided in § 16A-85 of this code. The requirement for reporting changes as required herein is effective at all times during the city's consideration of the application and at all times when a license issued hereunder is in effect. All other information set out above must be updated at the time of the renewal of the license.

(d) Any change in the plan of operation in paragraph 15 above must be approved by the city prior to the change becoming effective. Failure to comply with an approved plan of operation shall constitute grounds for termination of the license as provided in § 16A-85.

(e) The police department shall conduct an investigation of the application and background of the applicant and proposed licensee. Based on such investigation, the police department shall recommend to the licensing officer the approval or denial of the license. In addition, the community development department and fire department, and any other affected department, may inspect any premises proposed as the site of the establishment and may make separate recommendations to the licensing officer concerning compliance with the provisions of this article and applicable codes. The licensing officer shall make a recommendation as to issuance or denial of the license, including any conditions recommended or applicable to the license or licensee, and transmit the recommendation to the city council.

Sec. 16A-79. Application fee and license fee.

(a) The application shall be accompanied by a nonrefundable application fee established by the city council (see Appendix A).

(b) The license fee shall be established by the city council (see Appendix A).

(c) The annual license fee for an initial license may be pro-rated to one-half the amount required herein if the proposed licensee will be open for business only during the last half of the calendar year, that is, after July 1.

Sec. 16A-80. Grounds for denial.

The following include, but are not limited to, grounds for denial of an application for after-hours establishment license:

- (1) The applicant, or proposed conduct of the after-hours activity, fails to meet the requirements of this article or any applicable provision of this code or law;
- (2) The applicant or conduct of the proposed after-hours activity will not conform or comply with laws and regulations;
- (3) The applicant does not have an acceptable plan for compliance with § 16A-87 of this article on requirements for operation;

- (4) The applicant is a corporation which is not qualified to transact business in this state;
- (5) Misrepresentations or material misstatements are made in the application;
- (6) Harm to the public health, safety or welfare of the community, or clear or present danger of serious damage or danger to the public, would result from granting the license; or
- (7) A business owner, or a managing agent, an applicant, other managing employee or a controlling person in the business to be licensed has been convicted of:
 - a. a felony; or
 - b. a misdemeanor which relates to the activity to be licensed,or has, within two (2) years preceding the date of the issuance of a license, violated any of the provisions of this article or the city code while conducting an after-hours activity or establishment.

Sec. 16A-81. Public hearing on license, notice.

- (a) The city council shall hold a public hearing on the application.
- (b) Notice of the hearing shall be given at least thirty (30) days prior to the hearing in the following manner:
 - (1) Notice shall be published at least once in a newspaper of general circulation in the city;
 - (2) Notice shall be posted on the affected property in such a manner as to be legible from the public right-of-way;
 - (3) Notice shall be mailed by first class mail to each owner and tenant as provided in paragraphs (21) and (22) of § 16A-78; and
 - (4) Notice shall be mailed by first class mail to the chairperson of the registered neighborhood associations and homeowners associations within the vicinity.
- (c) At the public hearing, the council may adopt the recommendation of the licensing officer or may render any other decision, including but not limited to conditions applicable to the licensee.

Sec. 16A-82. Display of license.

A licensee shall display such license in a conspicuous place in the after-hours establishment.

Sec. 16A-83. Transferability, automatic termination of license.

(a) Licenses issued hereunder are not transferable.

(b) The following shall result in automatic termination of an after-hours establishment license:

- (1) Any change in location of a licensed after-hours establishment;
- (2) Upon the sale or transfer of any interest in the after-hours establishment;
or
- (3) Upon the revocation or termination of any use permit or other zoning approval issued by the city relating to the after-hours activity.

(c) A new application may be made by the person whose license is terminated as provided in this section, or by another person desiring to own or operate an after-hours establishment. As used in this section, a transfer of more than fifty percent (50%) of the stock or ownership of the business of a licensee is a prohibited transfer of a license as prescribed in this section.

Sec. 16A-84. Renewal, appeals from denial.

(a) Annually, at least thirty (30) days prior to the first day of January of each year, a licensed after-hours establishment shall apply to the licensing officer for renewal of the after-hours establishment license. Application shall be made and reviewed as an original application except that:

- (1) No application fee is payable on a renewal application; and
- (2) Public hearing and notice as required in § 16A-81 shall be conducted only if required by the licensing officer.

(b) Appeals from the denial of a renewal license application may be taken to the city council by filing a written notice of appeal with the city clerk within seven (7) calendar days after the date of the decision of the licensing officer denying the renewal license. The city council may affirm, deny, modify or otherwise amend the decision of the licensing officer. The city council's decision is final.

Sec. 16A-85. Grounds for termination, hearing.

(a) In addition to the automatic termination of a license as provided in this article, the license may be revoked, suspended or denied renewal for any one or more of the following grounds:

- (1) The licensee is guilty of fraud in conducting the business or deceit in obtaining a license to conduct the business;
- (2) The licensee has been convicted in a court of competent jurisdiction of a felony or of any misdemeanor which relates to the licensed activity;
- (3) The licensee is guilty of untrue, fraudulent, misleading or deceptive advertising;
- (4) The licensee is grossly ignorant of or guilty of wilful negligence in the business of the after-hours establishment;
- (5) The licensee has violated any of the provisions of §§ 16A-78, 16A-87 or 16A-88 or any other provision of this article or the city code;
- (6) The licensee fails to comply with the terms of the plan of operation as approved by the city;
- (7) There occurs on the premises repeated acts of violence or disorderly conduct;
- (8) The licensee or any employee or managing agent thereof fails or refuses to make the premises or records available for inspections and examination as provided in this article;
- (9) The licensee knowingly files an application or other document with material information which is false or misleading or knowingly gives testimony in an investigation or other proceeding which is false or misleading;
- (10) The licensee is delinquent for more than ninety (90) days in the payment of any applicable taxes to the city;
- (11) The licensee fails to take reasonable steps to protect the safety of a customer of the licensee entering, leaving or remaining on the licensed premises when the licensee knew or should have known of the danger to such person, or the licensee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise to prevent or break up an act of violence or an altercation occurring on the licensed premises or

immediately adjacent to the premises when the licensee knew or reasonably should have known of such acts of violation or altercations;

- (12) The licensee, his managing agent, a controlling person or other managing employee knowingly associates with a person who has engaged in racketeering, as defined in A.R.S. § 13-2301, or has been convicted of a felony and the association is of such a nature to create a reasonable risk that the licensee will fail to conform to the requirements of this article or any criminal statute of this state; or
- (13) Any enlargement or expansion of the premises or of the after-hours activity without appropriate approvals from the city.

(b) To suspend or revoke a license, the licensing officer shall deliver or mail by certified mail to the business address as shown by the license application, or to the last reported business address shown in a renewal or other report, a written notice that such license is suspended or revoked. The reason for the suspension or revocation shall be set forth in the notice and the provisions of subsection (c) hereof on hearing and appeal rights. A suspended or revoked license shall be surrendered to the licensing officer on demand.

(c) The licensing officer shall grant on demand to any licensee whose license has been revoked or suspended a full hearing on the merits of such suspension or revocation. Appeal of the licensing officer's decision to the city council shall be made within seven (7) calendar days after the receipt of the licensing officer's notice of suspension or revocation, and failure to demand a hearing within such time will constitute full waiver. The decision of the council is final.

Sec. 16A-86. Application after denial or termination.

No person may apply for an after-hours establishment license within one year from:

- (1) The denial of any such license to the applicant; or
- (2) The suspension, revocation, termination or non-renewal of such license unless the cause of the denial, suspension, termination, revocation or nonrenewal has been, to the satisfaction of the licensing officer, removed in such time.

Sec. 16A-87. Requirements for operation of establishment, plan of operation required.

(a) An after-hours establishment shall comply with this article and all applicable city and state laws and ordinances, including but not limited to fire and building and zoning codes. In addition, the following requirements apply:

- (1) The hours during which the after-hours establishment may be open for

conduct of after-hours activity shall be as specified in the after-hours establishment license issued by the city;

- (2) Persons under eighteen (18) years of age are prohibited in an after-hours establishment;
- (3) Written proof of identification shall be required for admission to an after-hours establishment to ensure compliance with paragraph (2) of this section. The following written instruments are the only acceptable types of identification:
 - a. An unexpired driver's license issued by any state, provided such license includes a picture of the licensee;
 - b. An identification license issued pursuant to state law;
 - c. An armed forces identification card;
 - d. A valid unexpired passport issued by a government which contains a photograph of the person and the date of birth;
- (4) No person shall be admitted to, nor shall any person be allowed to remain on, the licensed premises who is or appears to be under the influence of spirituous liquor or drugs or who is disturbing the peace;
- (5) No spirituous liquor may be furnished, sold, served or consumed at an after-hours establishment between 2:30 a.m. and 6:00 a.m. If the after-hours licensee holds a liquor license from the state, spirituous liquor service and consumption must terminate upon the hours as required by state law;
- (6) Admittance and any admittance lines for entry to the establishment shall be closed at 3:00 a.m. or at such other time prescribed in the license issued by the city;
- (7) Any parking used by patrons of the licensee, and any parking area of the licensee or within three hundred (300) feet of the licensed premises shall be supervised by the licensee to ensure that the parking areas are used by persons entering and exiting from their vehicles and are not used as a gathering place; and
- (8) Applicant must have a current security plan pursuant to § 26-70 of this code.

(b) A plan which demonstrates how the licensee will ensure compliance with these regulations shall accompany the application and is subject to approval by the city. Any change in the plan of operation once approved must be submitted to the city for

approval prior to the change becoming effective as provided in § 16A-78. A copy of the plan of operation shall be available at the after-hours establishment for inspection by the city during business hours and at other reasonable times. The plan shall include such information as required by the licensing officer, including identification of employees, agents or private contractors who are responsible for security and ensuring compliance with the terms of this article.

Sec. 16A-88. Unlawful activities.

It is unlawful for any person or licensee at an after-hours establishment to:

- (1) Operate without any required city or state permit or in violation of any applicable city or state law or ordinance;
- (2) Admit persons under eighteen (18) years of age;
- (3) Serve spirituous liquor or permit the consumption thereof at an after-hours establishment when prohibited in this article or state law;
- (4) Employ any person who is under eighteen (18) years of age to work during the hours between 2:30 a.m. and 6:00 a.m.;
- (5) Allow an intoxicated or disorderly person to come into or remain on the licensed premises, except that an intoxicated person may remain on the premises for no longer than thirty (30) minutes to arrange for transportation;
- (6) Solicit or encourage, or allow an employee to solicit or encourage, to buy a patron anything of value, directly or indirectly, or for a patron to solicit or encourage to buy an employee anything of value, directly or indirectly;
- (7) Knowingly permit unlawful possession, use, or sale of narcotics, dangerous drugs or marijuana;
- (8) Knowingly permit prostitution or solicitation of prostitution;
- (9) Knowingly permit unlawful gambling on the premises;
- (10) Knowingly permit trafficking in stolen property;
- (11) Fail or refuse to make the premises or records, or the plan required in § 16A-86 available for inspection as provided in this article; or
- (12) Employ or permit a person to be employed on a salary, contract or commission basis for the purpose of dancing with patrons, except that this shall not apply to bona fide instructors of dancing regularly employed for the exclusive purpose of giving bona fide instructions for dancing.

Sec. 16A-89. Investigation to determine violation, requests for investigation.

The police chief or the licensing officer or any of their agents may enter in a lawful manner the premises of an after-hours establishment or where an after-hours activity takes place and may attend, witness, visit and investigate any and all of the after-hours activities and any other activities therein and thereon. In addition, the police chief or the licensing officer or their agents may inspect in a lawful manner the after-hours establishment or the buildings and premises in which after-hours activities are carried on to determine whether or not there exist any violations of this article or the city code. The police chief or licensing officer may request any other department of the city to make an investigation to determine whether or not the after-hours activity is being operated in compliance with this article and ordinances of the city.

Sec. 16A-90. Penalty.

(a) A violation of this article is an offense, punishable as provided in § 1-7 of this code. Each day on which a violation continues shall be a separate offense.

(b) In addition to the punishments provided in this section, a violation of this article is grounds for revocation of the license as provided in § 16A-85.

Secs. 16A-91—16A-99. Reserved.