

**CITY OF BALTIMORE
COUNCIL BILL 11-0004
(First Reader)**

Introduced by: Councilmembers Henry, Holton, Clarke
Introduced and read first time: December 8, 2011
Assigned to: Housing and Community Development Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Housing and Community Development, Board of Municipal and Zoning Appeals, Department of Finance, Planning Commission, Police Department, Health Department

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Late-Night Commercial Operations – Licensing**

3 FOR the purpose of requiring certain late-night commercial operations to be licensed; defining
4 certain terms; imposing certain penalties; providing for a special effective date; and generally
5 relating to the licensing and regulation of late-night commercial operations.

6 BY adding

7 Article 15 - Licensing and Regulation
8 Section(s) 9-1 to 9-21, to be under the subtitle designation,
9 “Subtitle 9. Late-Night Commercial Operations”
10 Baltimore City Code
11 (Edition 2000)

12 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
13 Laws of Baltimore City read as follows:

14 **Baltimore City Code**

15 **Article 15. Licensing and Regulation**

16 **SUBTITLE 9. LATE-NIGHT COMMERCIAL OPERATIONS**

17 ***PART 1. DEFINITIONS; GENERAL PROVISIONS***

18 **§ 9-1. DEFINITIONS.**

19 (A) *IN GENERAL.*

20 IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

21 (B) *BOARD.*

22 “BOARD” MEANS THE BOARD OF MUNICIPAL AND ZONING APPEALS.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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1 (C) *BUSINESS.*

2 "BUSINESS" MEANS ANY COMMERCIAL ACTIVITY CONDUCTED BY A PERSON, WHETHER
3 SALES, SERVICE, RENTAL, PROFESSIONAL, OR OTHERWISE.

4 (D) *FINANCE DEPARTMENT; DEPARTMENT.*

5 "FINANCE DEPARTMENT" OR "DEPARTMENT" MEANS THE BALTIMORE CITY DEPARTMENT
6 OF FINANCE.

7 (E) *INCLUDES; INCLUDING.*

8 "INCLUDES" OR "INCLUDING" MEANS BY WAY OF ILLUSTRATION AND NOT BY WAY OF
9 LIMITATION.

10 (F) *LATE-NIGHT OPERATIONS LICENSE; LICENSE.*

11 "LATE-NIGHT OPERATIONS LICENSE" OR "LICENSE" MEANS A LICENSE ISSUED UNDER THIS
12 SUBTITLE.

13 (G) *PERSON.*

14 (1) *IN GENERAL.*

15 "PERSON" MEANS:

- 16 (I) AN INDIVIDUAL;
17 (II) A PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY OF ANY
18 KIND; OR
19 (III) A RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY,
20 OR REPRESENTATIVE OF ANY KIND.

21 (2) *EXCLUSIONS.*

22 "PERSON" DOES NOT INCLUDE, UNLESS OTHERWISE EXPRESSLY PROVIDED, A
23 GOVERNMENTAL ENTITY OR AN INSTRUMENTALITY OR UNIT OF A GOVERNMENTAL
24 ENTITY.

25 **§ 9-2. MANDATORY, PROHIBITORY, AND PERMISSIVE TERMS.**

26 (A) *MANDATORY TERMS.*

27 "MUST" AND "SHALL" ARE EACH MANDATORY TERMS USED TO EXPRESS A REQUIREMENT
28 OR TO IMPOSE A DUTY.

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1 (B) *PROHIBITORY TERMS.*

2 "MUST NOT" AND "MAY NOT" ARE EACH MANDATORY NEGATIVE TERMS USED TO
3 ESTABLISH A PROHIBITION.

4 (C) *PERMISSIVE TERMS.*

5 "MAY" IS PERMISSIVE.

6 **§ 9-3. RULES, REGULATIONS, AND FORMS.**

7 (A) *DEPARTMENT TO ADOPT.*

8 THE FINANCE DEPARTMENT MUST ADOPT RULES, REGULATIONS, AND FORMS TO CARRY
9 OUT THIS SUBTITLE.

10 (B) *FILING.*

11 A COPY OF THE RULES, REGULATIONS, AND FORMS AND OF ANY AMENDMENTS TO THEM
12 MUST BE FILED WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE BEFORE THEY TAKE
13 EFFECT.

14 **§ 9-4. SCOPE.**

15 (A) *IN GENERAL.*

16 EXCEPT AS SPECIFIED IN SUBSECTION (B) OF THIS SECTION, THIS SUBTITLE APPLIES TO ALL
17 BUSINESSES THAT ARE LOCATED IN ANY RESIDENCE ZONING DISTRICT, OFFICE-
18 RESIDENCE ZONING DISTRICT, OR B-1 OR B-2 BUSINESS ZONING DISTRICT.

19 (B) *EXCEPTIONS.*

20 THIS SUBTITLE DOES NOT APPLY TO:

- 21 (1) THE SALE OF PHARMACEUTICALS AND RELATED HEALTH NEEDS;
- 22 (2) A RESTAURANT OR TAVERN OPERATING DURING HOURS AUTHORIZED BY ITS
23 ALCOHOLIC BEVERAGE LICENSE;
- 24 (3) THE SALE OF MOTOR VEHICLE FUELS AND RELATED AUTOMOTIVE NEEDS; OR
- 25 (4) THE PROVISION OF EMERGENCY MEDICAL OR VETERINARY CARE.

26 **§ 9-5. {RESERVED}**

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PART 2. LICENSING

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§ 9-6. LICENSE REQUIRED FOR LATE-NIGHT OPERATIONS.

NO BUSINESS IN AN R, O-R, B-1, OR B-2 ZONING DISTRICT MAY BE OPEN TO THE PUBLIC BETWEEN THE HOURS OF MIDNIGHT AND 6 A.M. WITHOUT HAVING FIRST OBTAINED A LATE-NIGHT OPERATIONS LICENSE UNDER THIS SUBTITLE.

§ 9-7. APPLICATIONS.

THE APPLICATION FOR A LICENSE MUST BE IN THE FORM AND CONTAIN THE INFORMATION THAT THE FINANCE DEPARTMENT REQUIRES.

§ 9-8. POSTING AND NOTICE; OBJECTIONS.

(A) *POSTING AND NOTICE REQUIRED.*

ON FILING AN APPLICATION FOR AN INITIAL LICENSE, THE APPLICANT MUST, IN ACCORDANCE WITH THE FINANCE DEPARTMENT’S RULES AND REGULATIONS:

- (1) POST THE PREMISES FOR 15 DAYS; AND
- (2) WITHIN 5 DAYS OF THE FILING, SEND NOTICE OF THE APPLICATION TO THE CITY COUNCILMEMBER WHO REPRESENTS THE COUNCILMANIC DISTRICT IN WHICH THE BUSINESS IS LOCATED.

(B) *9 OR FEWER OBJECTIONS.*

IF, WITHIN THE 15-DAY POSTING PERIOD, THE DEPARTMENT RECEIVES NO OBJECTION FROM THE COUNCILMEMBER AND NO MORE THAN 9 WRITTEN OBJECTIONS FROM PROPERTY OWNERS OR RESIDENTS WITHIN THE SAME ELECTION PRECINCT AS THE BUSINESS, THE LICENSE MAY BE ISSUED.

(C) *10 OR MORE OBJECTIONS.*

- (1) IF, WITHIN THE 15-DAY POSTING PERIOD, THE DEPARTMENT RECEIVES AN OBJECTION FROM THE COUNCILMEMBER OR 10 OR MORE WRITTEN OBJECTIONS FROM PROPERTY OWNERS OR RESIDENTS WITHIN THE SAME ELECTION PRECINCT AS THE BUSINESS, THE DEPARTMENT MUST REJECT THE APPLICATION AND NOTIFY THE APPLICANT OF THE REJECTION AND OF THE APPLICANT’S RIGHT TO APPEAL.
- (2) WITHIN 30 DAYS OF RECEIVING THE NOTICE OF REJECTION, THE APPLICANT MAY APPEAL TO THE BOARD OF MUNICIPAL AND ZONING APPEALS FOR A PUBLIC HEARING ON THE APPLICATION.
- (3) AFTER THE PUBLIC HEARING, THE BOARD MAY DIRECT THE FINANCE DEPARTMENT TO ISSUE THE LICENSE.

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§ 9-9. DECISION ON HEARING.

(A) *BOARD TO DECIDE.*

THE BOARD MUST NOTIFY THE APPLICANT IN WRITING OF ITS DECISION TO GRANT OR DENY THE LICENSE AS FOLLOWS:

- (1) IF NO HEARING IS REQUIRED TO BE HELD UNDER § 9-8(C) OF THIS SUBTITLE OR UNDER SUBSECTION (C) OF THIS SECTION, WITHIN 15 DAYS AFTER THE LAST DAY OF THE 15-DAY POSTING PERIOD; AND
- (2) IF A HEARING IS REQUIRED, WITHIN 15 DAYS AFTER CONCLUSION OF THE HEARING.

(B) *CONSIDERATIONS.*

IN REVIEWING AN APPLICATION, THE BOARD MUST CONSIDER:

- (1) IF A HEARING WAS HELD UNDER THIS SUBTITLE, THE TESTIMONY GIVEN AT THE HEARING;
- (2) THE SPECIFIC DAYS AND HOURS PROPOSED FOR LATE-NIGHT OPERATIONS; AND
- (2) THE ESTABLISHMENT AND MAINTENANCE OF AN INDOOR AND OUTDOOR SECURITY PLAN.

(C) *CONDITIONS.*

ON NOTICE TO THE APPLICANT AND AN OPPORTUNITY TO BE HEARD, THE FINANCE DEPARTMENT AND THE BOARD MAY IMPOSE REASONABLE CONDITIONS ON A LICENSE TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE.

§ 9-10. TERM AND RENEWAL OF LICENSES.

(A) *TERM.*

EACH LATE-NIGHT OPERATIONS LICENSE EXPIRES ANNUALLY ON THE ANNIVERSARY OF ITS ISSUANCE AND IS RENEWABLE AS PROVIDED IN THIS SECTION.

(B) *APPLICATION FOR RENEWAL.*

- (1) TO RENEW A LICENSE, THE LICENSEE MUST APPLY NO LESS THAN 30 DAYS NOR MORE THAN 60 DAYS BEFORE THE LICENSE EXPIRES.
- (2) THE RENEWAL APPLICATION MUST BE IN THE FORM AND CONTAIN THE INFORMATION THAT THE FINANCE DEPARTMENT REQUIRES.

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1 (C) *APPROVAL.*

2 ON FILING THE RENEWAL APPLICATION AND PAYMENT OF THE RENEWAL FEE, THE FINANCE
3 DEPARTMENT MAY APPROVE THE APPLICATION, EXCEPT AS PROVIDED IN SUBSECTION (D)
4 OF THIS SECTION.

5 (D) *PROTEST AND HEARING.*

6 (1) IF, BEFORE THE END OF THE RENEWAL PERIOD, 10 OR MORE WRITTEN OBJECTIONS
7 FROM PROPERTY OWNERS OR RESIDENTS WITHIN THE SAME ELECTION PRECINCT AS THE
8 LICENSED PREMISES ARE FILED WITH THE DEPARTMENT, THE DEPARTMENT MUST
9 REJECT THE APPLICATION AND NOTIFY THE APPLICANT OF THE REJECTION AND OF THE
10 APPLICANT'S RIGHT TO APPEAL.

11 (2) WITHIN 45 DAYS OF RECEIVING THE NOTICE OF REJECTION, THE APPLICANT MAY
12 APPEAL TO THE BOARD OF MUNICIPAL AND ZONING APPEALS FOR A PUBLIC HEARING
13 ON THE APPLICATION.

14 (3) AFTER THE PUBLIC HEARING, THE BOARD MAY DIRECT THE FINANCE DEPARTMENT TO
15 ISSUE THE LICENSE.

16 **§ 9-11. FEE FOR LICENSE.**

17 THE ANNUAL LICENSE FEE IS \$1,000.

18 **§ 9-12. WAITING PERIOD AFTER DENIAL.**

19 IF THE BOARD DENIES A LICENSE OR RENEWAL LICENSE, THE APPLICANT MAY NOT REAPPLY
20 FOR AT LEAST 9 MONTHS FROM THE DATE OF THE BOARD'S FINAL DECISION OR, IF THAT
21 DECISION WAS APPEALED, FROM THE DATE OF THE FINAL COURT DECISION.

22 **§§ 9-13 TO 9-15. {RESERVED}**

23 ***PART 3. ADMINISTRATIVE SANCTIONS***

24 **§ 9-16. DENIAL, SUSPENSION, OR REVOCATION.**

25 THE BOARD MAY DENY, SUSPEND, OR REVOKE A LATE-NIGHT OPERATIONS LICENSE OR
26 RENEWAL LICENSE FOR ANY OF THE FOLLOWING CAUSES:

27 (1) FAILING TO PAY THE APPLICABLE LICENSE FEE ON OR BEFORE THE DUE DATE;

28 (2) MAKING ANY MATERIAL FALSE STATEMENT IN ANY APPLICATION FOR AN INITIAL OR
29 RENEWAL LICENSE;

30 (3) FAILING TO COMPLY WITH ANY PROVISION OF THE BUILDING, FIRE, AND RELATED
31 CODES OF BALTIMORE CITY, THE HEALTH CODE OF BALTIMORE CITY, OR THE ZONING
32 CODE OF BALTIMORE CITY; OR

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(4) FAILING TO COMPLY WITH ANY PROVISION OF THIS SUBTITLE OR OF ANY RULE OR REGULATION ADOPTED UNDER THIS SUBTITLE.

§ 9-17. FINES.

FOR ANY VIOLATION THAT IS CAUSE FOR SUSPENDING OR REVOKING A LICENSE, THE BOARD MAY, INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING THE LICENSE, IMPOSE A CIVIL FINE OF:

- (1) FOR A 1ST OFFENSE, NOT MORE THAN \$500; AND
- (2) FOR ANY SUBSEQUENT OFFENSE, NOT MORE THAN \$1,000.

§ 9-18. NOTICE AND HEARING.

(A) *IN GENERAL.*

NO LICENSE OR RENEWAL LICENSE MAY BE DENIED, SUSPENDED, OR REVOKED AND NO FINE MAY BE IMPOSED UNLESS THE BOARD GIVES THE APPLICANT OR LICENSEE:

- (1) AT LEAST 10 DAYS' WRITTEN NOTICE OF THE INTENT TO IMPOSE SANCTIONS; AND
- (2) AN OPPORTUNITY TO BE HEARD AS TO WHY SANCTIONS SHOULD NOT BE IMPOSED.

(B) *DENIAL OF INITIAL LICENSE.*

FOR THE PROPOSED DENIAL OF AN INITIAL LICENSE, A HEARING MUST BE HELD WITHIN 90 DAYS OF A TIMELY REQUEST, UNLESS THE APPLICANT AGREES TO A LATER DATE.

§ 9-19. JUDICIAL AND APPELLATE REVIEW.

(A) *JUDICIAL REVIEW.*

A PERSON AGGRIEVED BY A DECISION OF THE BOARD MAY SEEK JUDICIAL REVIEW OF THAT DECISION BY PETITION TO THE CIRCUIT COURT FOR BALTIMORE CITY IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

(B) *STAYS.*

- (1) THE FILING OF A PETITION FOR JUDICIAL REVIEW DOES NOT STAY THE DECISION OF THE BOARD.
- (2) HOWEVER, ON MOTION AND AFTER HEARING, THE COURT MAY GRANT A STAY AS PROVIDED IN THE MARYLAND RULES OF PROCEDURE.

(C) *APPELLATE REVIEW.*

A PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT'S FINAL JUDGMENT TO THE COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.

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1 § 9-20. *{RESERVED}*

2 *PART 4. PENALTIES*

3 § 9-21. PENALTIES.

4 (A) *IN GENERAL.*

5 ANY PERSON WHO VIOLATES OR WHO NEGLECTS OR REFUSES TO COMPLY WITH ANY
6 PROVISION OF THIS SUBTITLE OR OF ANY RULE OR REGULATION ADOPTED UNDER THIS
7 SUBTITLE IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE OF
8 NOT MORE THAN \$500.

9 (B) *EACH DAY A SEPARATE OFFENSE.*

10 EACH DAY THAT A VIOLATION CONTINUES AFTER NOTIFICATION CONSTITUTES A SEPARATE
11 OFFENSE.

12 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
13 are not law and may not be considered to have been enacted as a part of this or any prior
14 Ordinance.

15 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 90th day
16 after the date it is enacted.