

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 11-0004

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

Committee Report: Favorable with amendments
Council action: Adopted
Read second time: April 23, 2012

AN ORDINANCE CONCERNING

Late-Night Commercial Operations – Licensing

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

BY adding

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

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

Baltimore City Code

Article 15. Licensing and Regulation

SUBTITLE 9. LATE-NIGHT COMMERCIAL OPERATIONS

PART 1. DEFINITIONS; GENERAL PROVISIONS

§ 9-1. DEFINITIONS.

(A) *IN GENERAL.*

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

(B) *BOARD.*

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

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

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1 (C) *BUSINESS.*

2 “BUSINESS” MEANS ANY PLACE OF BUSINESS OR COMMERCIAL ACTIVITY CONDUCTED BY A
3 PERSON, WHETHER 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) *IMPACT AREA.*

8 “IMPACT AREA” MEANS THE AREA:

9 (1) WITHIN THE SAME ELECTION PRECINCT AS THAT IN WHICH A BUSINESS IS LOCATED;
10 AND

11 (2) EVEN IF A DIFFERENT PRECINCT, WITHIN THE BLOCK FACE OPPOSING THE BLOCK
12 FACE IN WHICH A BUSINESS IS LOCATED.

13 (F) ~~(E)~~ *INCLUDES; INCLUDING.*

14 “INCLUDES” OR “INCLUDING” MEANS BY WAY OF ILLUSTRATION AND NOT BY WAY OF
15 LIMITATION.

16 (G) ~~(F)~~ *LATE-NIGHT OPERATIONS LICENSE; LICENSE.*

17 “LATE-NIGHT OPERATIONS LICENSE” OR “LICENSE” MEANS A LICENSE ISSUED UNDER THIS
18 SUBTITLE.

19 (H) ~~(G)~~ *PERSON.*

20 (1) *IN GENERAL.*

21 “PERSON” MEANS:

22 (I) AN INDIVIDUAL;

23 (II) A PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY OF ANY
24 KIND; OR

25 (III) A RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY,
26 OR REPRESENTATIVE OF ANY KIND.

27 (2) *EXCLUSIONS.*

28 “PERSON” DOES NOT INCLUDE, UNLESS OTHERWISE EXPRESSLY PROVIDED, A
29 GOVERNMENTAL ENTITY OR AN INSTRUMENTALITY OR UNIT OF A GOVERNMENTAL
30 ENTITY.

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

(A) *MANDATORY TERMS.*

“MUST” AND “SHALL” ARE EACH MANDATORY TERMS USED TO EXPRESS A REQUIREMENT OR TO IMPOSE A DUTY.

(B) *PROHIBITORY TERMS.*

“MUST NOT” AND “MAY NOT” ARE EACH MANDATORY NEGATIVE TERMS USED TO ESTABLISH A PROHIBITION.

(C) *PERMISSIVE TERMS.*

“MAY” IS PERMISSIVE.

§ 9-3. RULES, REGULATIONS, AND FORMS.

(A) *DEPARTMENT TO ADOPT.*

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

(B) *FILING.*

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

§ 9-4. SCOPE.

(A) *IN GENERAL.*

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

(B) *EXCEPTIONS.*

THIS SUBTITLE DOES NOT APPLY TO:

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

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§ 9-8. POSTING AND NOTICE; OBJECTIONS.

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO MULTIPLE BUSINESSES THAT HAVE APPLIED JOINTLY UNDER § 9-7(B)(1) OF THIS SUBTITLE AND HAVE ENTERED INTO THE AGREEMENT DESCRIBED IN § 9-7(B)(3) OF THIS SUBTITLE.

(B) ~~(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.

(C) ~~(B)~~ 9 OR FEWER OBJECTIONS.

(1) 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 IMPACT AREA OF THE BUSINESS, THE LICENSE MAY BE ISSUED. THE DEPARTMENT MUST GRANT OR DENY THE LICENSE WITHIN 15 DAYS AFTER THE LAST DAY OF THE 15-DAY POSTING PERIOD.

(2) A DENIAL MUST BE BASED SOLELY ON ONE OR MORE OF THE FOLLOWING FACTORS:

(I) ANY CAUSE FOR DENIAL THAT IS SPECIFIED IN § 9-16 {“DENIAL, SUSPENSION, OR REVOCATION”} OF THIS SUBTITLE;

(II) THE SPECIFIC DAYS AND HOURS PROPOSED FOR LATE-NIGHT OPERATIONS;

(III) THE LACK OR INADEQUACY OF AN INDOOR AND OUTDOOR SECURITY PLAN; AND

(IV) THE INABILITY OR UNWILLINGNESS OF THE APPLICANT TO ACCEPT REASONABLE CONDITIONS ON THE LICENSE TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE

(3) THE NOTICE OF A DENIAL MUST:

(I) STATE THE REASONS FOR THE DENIAL; AND

(II) NOTIFY THE APPLICANT OF THE APPLICANT’S RIGHT TO APPEAL TO THE BOARD OF MUNICIPAL AND ZONING APPEALS.

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1 (4) WITHIN 30 DAYS OF RECEIVING THE NOTICE OF DENIAL, THE APPLICANT MAY APPEAL
2 TO THE BOARD OF MUNICIPAL AND ZONING APPEALS FOR A PUBLIC HEARING ON THE
3 APPLICATION.

4 (D) (E) 10 OR MORE OBJECTIONS.

5 (1) IF, WITHIN THE 15-DAY POSTING PERIOD, THE DEPARTMENT RECEIVES ~~AN OBJECTION~~
6 ~~FROM THE COUNCILMEMBER OR 10~~ OR MORE WRITTEN OBJECTIONS FROM PROPERTY
7 OWNERS OR RESIDENTS WITHIN THE ~~SAME ELECTION PRECINCT AS~~ IMPACT AREA OF THE
8 BUSINESS, THE DEPARTMENT MUST:

9 (I) REJECT DENY THE APPLICATION; AND

10 (II) WITHIN 7 DAYS AFTER THE LAST DAY OF THE 15-DAY POSTING PERIOD, NOTIFY
11 THE APPLICANT OF THE ~~REJECTION DENIAL~~ AND OF THE APPLICANT'S RIGHT TO
12 APPEAL TO THE BOARD OF MUNICIPAL AND ZONING APPEALS.

13 (2) WITHIN 30 DAYS OF RECEIVING THE NOTICE OF ~~REJECTION DENIAL~~, THE APPLICANT
14 MAY APPEAL TO THE BOARD OF MUNICIPAL AND ZONING APPEALS FOR A PUBLIC
15 HEARING ON THE APPLICATION.

16 ~~(3) AFTER THE PUBLIC HEARING, THE BOARD MAY DIRECT THE FINANCE DEPARTMENT~~
17 ~~TO ISSUE THE LICENSE.~~

18 **§ 9-9. DECISION ON HEARING.**

19 (A) *BOARD TO DECIDE.*

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

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

25 ~~(2) IF A HEARING IS REQUIRED, WITHIN 15 DAYS AFTER CONCLUSION OF THE HEARING.~~

26 WITHIN 15 DAYS AFTER CONCLUSION OF THE HEARING, THE BOARD MUST NOTIFY THE
27 APPLICANT IN WRITING OF ITS DECISION:

28 (1) TO AFFIRM THE DENIAL OF THE LICENSE; OR

29 (2) TO DIRECT THE DEPARTMENT TO GRANT THE LICENSE.

30 (B) *CONSIDERATIONS.*

31 IN REVIEWING AN APPLICATION, THE BOARD MUST CONSIDER:

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1 (1) ~~IF A HEARING WAS HELD UNDER THIS SUBTITLE, THE TESTIMONY GIVEN AT THE~~
2 ~~HEARING;~~

3 (2) ANY CAUSE FOR DENIAL THAT IS SPECIFIED IN § 9-16 {"DENIAL, SUSPENSION, OR
4 REVOCAION"} OF THIS SUBTITLE;

5 (3) ~~(2)~~ THE SPECIFIC DAYS AND HOURS PROPOSED FOR LATE-NIGHT OPERATIONS; ~~AND~~

6 (4) ~~(2)~~ THE ESTABLISHMENT AND MAINTENANCE ADEQUACY OF AN INDOOR AND
7 OUTDOOR SECURITY PLAN; AND

8 (5) THE ABILITY AND WILLINGNESS OF THE APPLICANT TO ACCEPT REASONABLE
9 CONDITIONS ON THE LICENSE TO PROTECT THE PUBLIC HEALTH, SAFETY, AND
10 WELFARE.

11 ~~(c) CONDITIONS:~~

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

15 **§ 9-10. TERM AND RENEWAL OF LICENSES.**

16 (A) *TERM.*

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

19 (B) *APPLICATION FOR RENEWAL.*

20 (1) TO RENEW A LICENSE, THE LICENSEE MUST APPLY NO LESS THAN 30 DAYS NOR MORE
21 THAN 60 DAYS BEFORE THE LICENSE EXPIRES.

22 (2) THE RENEWAL APPLICATION MUST BE IN THE FORM AND CONTAIN THE INFORMATION
23 THAT THE FINANCE DEPARTMENT REQUIRES.

24 (C) *APPROVAL.*

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

28 (D) *PROTEST AND HEARING.*

29 (1) THIS SUBSECTION DOES NOT APPLY TO MULTIPLE BUSINESSES THAT HAVE APPLIED
30 JOINTLY UNDER § 9-7(B) OF THIS SUBTITLE, EXCEPT AS SPECIFIED IN THAT SECTION.

31 (2) ~~(4)~~-IF, BEFORE THE END OF THE RENEWAL PERIOD, 10 OR MORE WRITTEN OBJECTIONS
32 FROM PROPERTY OWNERS OR RESIDENTS WITHIN THE ~~SAME ELECTION PRECINCT AS~~
33 IMPACT AREA OF THE BUSINESS, THE DEPARTMENT MUST:

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1 1. ~~REJECT DENY~~ THE APPLICATION; AND

2 2. WITHIN 7 DAYS AFTER THE LAST DAY OF THE 15-DAY POSTING PERIOD, NOTIFY
3 THE APPLICANT OF THE REJECTION DENIAL AND OF THE APPLICANT’S RIGHT TO
4 APPEAL TO THE BOARD OF MUNICIPAL AND ZONING APPEALS.

5 (3) ~~(2)~~ WITHIN 45 30 DAYS OF RECEIVING THE NOTICE OF REJECTION DENIAL, THE
6 APPLICANT MAY APPEAL TO THE BOARD OF MUNICIPAL AND ZONING APPEALS FOR A
7 PUBLIC HEARING ON THE APPLICATION.

8 ~~(3) AFTER THE PUBLIC HEARING, THE BOARD MAY DIRECT THE FINANCE~~
9 ~~DEPARTMENT TO ISSUE THE LICENSE.~~

10 (4) IF THE APPLICANT TIMELY APPEALS TO THE BOARD, THE APPLICANT MAY CONTINUE
11 ITS HOURS OF OPERATION PENDING A HEARING AND DECISION BY THE BOARD.

12 (5) THE CONSIDERATIONS AND DECISION OF THE BOARD SHALL BE AS PROVIDED IN § 9-9
13 OF THIS SUBTITLE.

14 **§ 9-11. FEE FOR LICENSE.**

15 THE ANNUAL LICENSE FEE IS ~~\$1,000~~ \$460 PER BUSINESS, SUBJECT TO ADJUSTMENT IN
16 ACCORDANCE WITH THE CITY FEE POLICY.

17 **§ 9-12. WAITING PERIOD AFTER DENIAL.**

18 ~~IF THE BOARD DENIES A LICENSE OR RENEWAL LICENSE IS DENIED UNDER THIS SUBTITLE, THE~~
19 ~~APPLICANT MAY NOT REAPPLY FOR AT LEAST 9 MONTHS FROM THE DATE OF THE BOARD’S~~
20 ~~FINAL DECISION OF THE DEPARTMENT OR THE BOARD, AS THE CASE MAY BE, OR, IF JUDICIAL~~
21 ~~REVIEW OF THAT DECISION WAS APPEALED OBTAINED, FROM THE DATE OF THE FINAL COURT~~
22 ~~DECISION.~~

23 **§§ 9-13 TO 9-15. {RESERVED}**

24 **PART 3. ADMINISTRATIVE SANCTIONS**

25 **§ 9-16. DENIAL, SUSPENSION, OR REVOCATION.**

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

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

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

31 (3) ~~FAILING TO COMPLY WITH~~ ABATE WITHIN 30 DAYS OF RECEIPT ANY NOTICE OR
32 CITATION FOR VIOLATING ANY PROVISION OF THE BUILDING, FIRE, AND RELATED
33 CODES OF BALTIMORE CITY, THE HEALTH CODE OF BALTIMORE CITY, OR THE ZONING
34 CODE OF BALTIMORE CITY; OR

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(4) FAILING TO COMPLY WITH ANY PROVISION OF:

(I) THIS SUBTITLE; OR

(II) ~~OF ANY A~~ RULE OR REGULATION ADOPTED UNDER THIS SUBTITLE; OR

(III) A CONDITION IMPOSED UNDER THIS SUBTITLE ON THE LICENSE.

§ 9-17. FINES.

FOR ANY VIOLATION THAT IS CAUSE FOR SUSPENDING OR REVOKING A LICENSE, THE DEPARTMENT OR, ON APPEAL, 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; APPEAL TO BOARD.~~

(A) SCOPE OF SECTION.

THIS SECTION DOES NOT APPLY TO THE DENIAL OF A LICENSE OR A RENEWAL LICENSE UNDER § 9-8 OR § 9-10(D).

~~(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.~~

(B) APPEAL TO BOARD.

(1) WITHIN 30 DAYS OF RECEIVING THE DEPARTMENT'S DECISION TO DENY, SUSPEND, OR REVOKE A LICENSE OR TO IMPOSE A CIVIL FINE, AN AGGRIEVED APPLICANT OR LICENSEE MAY APPEAL THE SANCTION IMPOSED TO THE BOARD OF MUNICIPAL AND ZONING APPEALS FOR A PUBLIC HEARING.

(2) THE FILING OF AN APPEAL TO THE BOARD STAYS THE DECISION OF THE DEPARTMENT PENDING THE BOARD'S DECISION.

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1 application within 30 days of the effective date of this Ordinance, that business may continue its
2 pre-existing late-night hours of operation until a decision on the application requires otherwise.

3 **SECTION 3 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this
4 Ordinance are not law and may not be considered to have been enacted as a part of this or any
5 prior Ordinance.

6 **SECTION 4 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 90th
7 day after the date it is enacted.

Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,

this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City