

Council Member Herring introduced the following:

Ordinance Number 9.12.10 (as amended 1-20-12)

AN ORDINANCE AMENDING CHAPTER 375 (ZONING) OF THE CODE OF THE CITY OF ALBANY TO AUTHORIZE AUDIO ENTERTAINMENT WITHIN TAVERNS AND RESTAURANTS AND AMENDING CHAPTER 111 (AMUSEMENTS) BY ADDING A NEW PART 3 TO BE ENTITLED “CABARETS”

The City of Albany in Common Council convened, does hereby ordain and enact:

Section 1. Sections 375-7 and 375-14 of Chapter 375 (Zoning) of the Code of the City of Albany is amended to read as follows:

§ 375-7. Definitions.

A. When used in this chapter as well as throughout the text, the following words shall have these meanings.

TAVERN - An establishment where alcoholic beverages are sold to be consumed on the premises. Food may also be served, but it is secondary and incidental to the business. A bar, grill, saloon, pub, public house, beer garden or similar establishment is considered to be a “tavern.” The establishment may play music or other audio through a central audio system, including the use of a juke box. Non-amplified live music that is incidental to the business and performed by less than three people is permitted. Dancing and/or the use of a disc jockey (DJ), karaoke machine or live musical entertainment, that is amplified and/or performed by three or more people, are not principally permitted uses for this establishment. However, the establishment may seek a cabaret License from the City Clerk as set forth in Chapter 111 of the Code of the City Albany.

RESTAURANT - Any establishment which prepares and serves meals for consumption on premises or to take away. The establishment may play music or other audio through a central audio system, including the use of a juke box. Non-amplified live music that is incidental to the business and performed by less than three people is permitted. Dancing and/or the use of a disc jockey (DJ), karaoke machine or live musical entertainment, that is amplified and/or performed by three or more people, are not principally permitted uses for this establishment. However, the establishment may seek a cabaret License from the City Clerk as set forth in Chapter 111 of the Code of the City Albany.

§ 374-14 Powers and duties to include:

C. To hear and decide appeals from the decision or determination of the City Clerk relative to the issuance of a Cabaret License pursuant to Part 3 of Chapter 111 of the Code of the City of Albany.

Section 2. Chapter 111 (Amusements) of the Code of the City of Albany is amended by adding thereto a new Part 3 entitled “Cabarets” to read as follows:

Part 3 - Cabarets
ARTICLE VIII
Cabaret Licenses

§ 111-64. Findings.

As set forth under this Article and under Chapter 375 of the Code of the City of Albany, an establishment must receive a License from the City Clerk for the purposes of using or authorizing dancing, a disc jockey (DJ), karaoke machine or live music that is amplified and/or performed by three or more people inside said establishment.

§ 111-65. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CABARET - Any room, place or space in the city in which any musical entertainment, singing, dancing or other form of amusement is permitted in connection with a tavern or restaurant business or an establishment directly or indirectly selling to the public food or drink, except eating or drinking places, which provide incidental musical entertainment performed by less than three people with no amplification, or through a central audio system, including the use of a juke box.

CATERING ESTABLISHMENT - Any room, place or space in the city, which is used, leased or hired out in the business of serving food or beverages for a particular function, occasion or event, to which the public is not invited or admitted and wherein music or entertainment is permitted.

PERSON - An individual, corporation, club, partnership, association, society or any other organized group of persons, and shall include officers, directors and trustees of a corporation, club, association or society.

CITY CLERK – The City Clerk of the City of Albany.

EMPLOYEE - A person employed in any capacity or title in connection with a cabaret, including the licensee and any and all persons responsible for the control or management thereof. It shall also include a concessionaire and each person employed by such concessionaire.

§ 111-66. Licenses required.

A. It shall be unlawful for any person to conduct, maintain or operate, or engage in the business of conducting, maintaining or operating, a cabaret or catering establishment unless the premises wherein the same is conducted, maintained or operated are Licensed in the manner prescribed herein.

B. A membership corporation, club, association or society which permits musical entertainment, singing, dancing or other form of amusement in premises wherein food or drink is directly or indirectly sold to its members, or their guests, or to the public, shall be deemed to be conducting a cabaret hereunder.

C. For the purposes of this chapter, a premises owned or occupied by a religious organization which permits musical entertainment, singing, dancing or other forms of amusement in said premises that do not coincide with a religious service shall be deemed to be conducting a cabaret hereunder.

D. A ship, boat or barge moored or tied to a dock, pier or shore, and which contains a cabaret in use while so moored or tied, shall be required to obtain such License.

§ 111-67. Exemptions.

This chapter shall not apply to:

A. Premises owned, occupied and used exclusively by religious or educational institutions shall be exempt from this chapter, unless and until said premises permits musical entertainment, singing, dancing or other forms of amusement in said premises that do not coincide with religious or educational services.

B. Premises operated by the State of New York or its political subdivisions.

§ 111-68. Rules and regulations.

The City Clerk is authorized to promulgate such reasonable rules and regulations as he or she may deem necessary for the proper control, operation and supervision of cabarets and catering establishments.

§ 111-69. Application for issuance or renewal of License; standards for issuance.

- A. The Application must include:
1. The name of the person submitting the application.
 2. The name of the business.
 3. The address of the business.
 4. The principal offices of the business if different from the business location.
 5. The location where the event(s) shall take place.
 6. The owner of the building where said entertainment shall take place.
 7. If an establishment Licensed to serve alcohol, a copy of the liquor License.
 8. A copy of the Certificate of Occupancy.
 9. The name, telephone number and address of the manager or person in control of the establishment.
 10. The type of entertainment provided.
 11. The expected number of persons in attendance.
 12. The expected days of the week and operating times that entertainment will be provided

B. 1. Upon receipt of a new Application for a Cabaret License, the City Clerk shall forward the same to the Planning Department, Albany Police Department, Albany Fire Department, Division of Building and Codes, Law Department, all Common Council Members and the Business Improvement District and neighborhood association whose area the property is located if such an entity exists.

The City Clerk shall accept comments regarding the issuance of a License for thirty days after notice is given to Common Council Members, or until a hearing is held, whichever is greater.

2. In determining whether to issue a Cabaret License, the City Clerk shall consider the following information, in addition to any information or comments submitted:

- (a) All reports and records submitted by the Planning Department, Police Department, Fire Department and the Division of Building and Codes.
- (b) Whether the establishment is located within a residential district.
- (c) Whether any soundproofing exists in the establishment or is proposed.
- (d) Whether the entertainment will continue past 11 pm.
- (e) Whether any outdoor performances will be conducted.
- (f) The amount of security provided at the establishment.
- (g) The legal capacity of the premises and the expected number of guests to be present at the entertainment events.
- (h) The history of the establishment regarding police calls and noise complaints.
- (i) Compliance with the City's Code, rules and regulations.
- (j) Cumulative impact of events in proximity to one another.

3. The City Clerk shall not issue a Cabaret License unless all City departments listed in Section 111-69(B) concur. Said City departments shall review applications pursuant to their own criteria in addition to the criteria listed in (B)(2) above.

C. 1. Upon receipt of an Application for Renewal of a Cabaret License, the City Clerk shall forward the same to the Planning Department, Albany Police Department, Albany Fire Department, Division of Building and Codes, Law Department, all Common Council Members and the Business Improvement District and neighborhood association whose area the property is located if such an entity exists.

The City Clerk shall accept comments regarding the renewal of a License for thirty days after notice is given to Common Council Members, or until a hearing is held, whichever is greater.

2. The City Clerk may grant or deny the renewal of a License after review of the Application and any documents or comments received by City departments, Common Council Members or the public. The City Clerk shall not issue a License unless all City

departments listed in Section 111-69(B) concur. In determining whether to grant or deny a permit, the Clerk shall consider the following:

- (a) Whether the Application for renewal is substantially the same as the Application submitted by the applicant the previous year.
- (b) History of police calls and noise complaints.
- (c) Compliance with the City Code and all other rules and regulations.
- (d) Any deviations from the License previously granted or failure to comply with any conditions or restriction placed on the License.

D. The City Clerk may refuse to issue or renew a License to an applicant upon the occurrence of any one or more of the following conditions:

1. The applicant, licensee, its officers, principals, directors and stockholders owning more than ten percent of the outstanding stock of the corporation have not submitted complete and accurate information required by the City Clerk in connection with:
 - (a) an application for a License or renewal thereof;
 - (b) an application for the approval of a change of ownership;
 - (c) the furnishing of a record of convictions for offenses as provided in paragraph five of this subdivision;
2. The premises on or in which the licensed business is to be conducted have not been certified as in compliance with all federal, state and local health, fire, buildings, zoning and safety rules and regulations;
3. With respect to a new License application for the premises on or in which the Licensed business is to be conducted, there is no current certificate of occupancy.
4. The applicant, licensee, its officers, principals, directors and stockholders have not complied with the regulations of the City Clerk applicable thereto;
5. The applicant, licensee, its officers, principals, directors and stockholders owning more than ten percent of the outstanding stock of the corporation have been convicted of:
 - (a) Any of the following offenses and there is a relationship between the offense and the conduct of a cabaret or catering establishment:
 - (i) An offense within article two hundred of the penal law relating to bribery involving public servants;
 - (ii) A felony within article two hundred ten of the penal law relating to perjury;
 - (iii) An offense within section 260.20 of the penal law relating to unlawfully dealing with a child;
 - (b) Any other offense which is a felony under the laws of this state or a crime committed in violation of the laws of any other jurisdiction which if committed in this state would be a felony;

(c) Any offense which is a misdemeanor involving the premises on or in which the licensed business is to be conducted.

6. The applicant, licensee, its officers, principals, directors and stockholders owning more than ten percent of the outstanding stock of the corporation have suffered or permitted the premises on or in which the licensed business is to be conducted, through improper or inadequate maintenance and supervision, to be used for the commission of any of the offenses set forth in paragraph five of this subdivision;

E. The City Clerk shall not issue or renew a License if the applicant, licensee, its officers, principals, directors and stockholders owning more than ten percent of the outstanding stock of the corporation have not paid, within the time permitted by law, any fine, penalty or judgment duly imposed in connection with or arising from the use, occupation or operation of the premises on which the licensed business is to be conducted.

F. Each applicant and licensee shall notify the City Clerk in writing by registered mail, return receipt requested, within three business days of receipt of notice of service of a summons for a violation relating to the operation of the business licensed or to be licensed or to the premises on or in which the business licensed or to be licensed is to be conducted and of a conviction for any offense set forth in paragraph five of subdivision D of this section occurring after the filing date of the application for a License or a renewal thereof or occurring during the term of the License.

G. In the manner prescribed in rule three hundred eighteen of the civil practice law and rules, each applicant or licensee shall designate an agent, a substitute agent and a successor agent for receiving service of process and communications from the City of Albany. Proof of such designation shall be filed with the License Application in the City Clerk's Office.

H. The decision of the City Clerk regarding the issuance or renewal of a License shall be sent to the applicant via Certified Mail.

§ 111-70. Notice to Common Council Member

The City Clerk shall forward a copy of every new application or renewal application of a License, within five days of receiving it, to all Common Council Member. Members may provide the City Clerk with any information or comments regarding the proposed applicant within thirty days of the receipt of a copy of such application. The City Clerk shall forward the decision regarding the issuance of a License to all Common Council Members within five days of that determination.

§ 111-71. Public hearing and notice

A. The City Clerk shall hold a hearing on each new application. The City Clerk shall schedule said hearing within thirty days from the date that Common Council Members are given notice, or a reasonable time thereafter.

B. The City Clerk shall place the hearing notice on the City website and attempt to notify property owners as currently identified by the City Assessor's Office within 200 feet of the applicant's property by mail.

Such notice shall include:

- (a) The location of the subject property.
- (b) The applicant's name.
- (c) The purpose of the hearing.
- (d) The date, time and place of the hearing.

C. Public posting. The applicant is required to post one or more signs (provided by the City Clerk), as determined by the Department of Development and Planning, in/on visually conspicuous locations of the parcel(s) in question at least 10 days prior to the hearing to be conducted on the application. A corner parcel must be posted in at least two directions. It is assumed that the applicant will make a reasonable effort to replace postings that are either removed or substantially damaged. The City Clerk may postpone the hearing if adequate evidence exists that the requirements for the public posting have not been met. Said signs are to be removed by the applicant after a final decision on the application has been rendered.

§ 111-72. Fees.

A. The License herein prescribed shall be issued by the City Clerk for a single calendar year ending December 31st of each year. Application for such License shall be made on a form containing such information as may be determined by the City Clerk, and shall be certified to by the applicant. The fee for each cabaret or catering establishment License shall be as follows:

<u>Capacity</u>	<u>Fee</u>
<u>Up to and including 150 persons</u>	<u>\$150</u>
<u>151 to 300 persons</u>	<u>\$200</u>
<u>301 to 500 persons</u>	<u>\$300</u>
<u>501 or more persons</u>	<u>\$500</u>

for each year or fraction thereof.

B. Licensed premises that do not serve or sell any form of alcohol and whose amplification is only necessary for balancing acoustic instruments by means of a public address system or amplifier shall pay a fee of \$50.

C. An individual premises may apply for a temporary License for up to two (2) dates in the same calendar year. All regulations in this chapter shall apply.

<u>Capacity</u>	<u>Fee per date</u>
<u>Up to and including 300 persons</u>	<u>\$50</u>
<u>301 or more persons</u>	<u>\$100</u>

D. If additional rooms are to be used independently by the same applicant in the same premises as a cabaret or catering establishment, the applicant shall indicate on the application the location of each and every room or space which is to be used for such purpose. In such cases a separate License shall be required for each such additional independent room or space, and the fee for each such independent additional room or space shall be sixty dollars.

E. The fee shall be payable upon the filing of an application.

§ 111-73. Appeal regarding issuance of License.

Within 30 days of the determination by the City Clerk regarding the issuance or renewal of a License, the Applicant, any of the City departments listed Section 111-69(B) and/or a Member of the Common Council may file an appeal of the decision with the Board of Zoning Appeals pursuant to Article IV of Chapter 375 of the Code of the City of Albany. The Board of Zoning Appeals will make a decision as to whether the determination of the City Clerk was arbitrary and capricious.

§ 111-74. Reporting by licensees of substantiated violations against cabarets.

Licensees who are convicted or otherwise found liable for violation of any of the provisions of this chapter that would constitute grounds for denying the issuance or renewal of a License shall within ten days of such conviction or finding report such conviction or finding to the City Clerk in a form and manner and containing such information as shall be provided by rule of the City Clerk.

§ 111-75. Suspension and revocation of License.

A. The City Clerk may suspend or revoke a License for conduct of the licensee, its officers, principals, directors, agents or employees or in a closely held corporation, stockholders, which would constitute grounds for denying the issuance or renewal of a License pursuant to this chapter.

B. The City Clerk may suspend or revoke a License if the licensee violates the requirements of this chapter, provided, however, that the City Clerk shall suspend or revoke a License upon the third violation by the licensee within two years of the first violation.

C. Upon application to the City Clerk and prior to the reinstatement or reissuance of a suspended or revoked License, the licensee, with the City Clerk's approval, shall, upon payment

of the fee as specified in this chapter, be permitted to operate for six months on a probationary License. At the end of such six month period, the License shall be reinstated or reissued unless the City Clerk finds that the licensee, its officers, principals, directors, agents or employees or, in a closely held corporation, stockholders, have engaged in conduct that would constitute grounds for denying the issuance or renewal of a License pursuant to this chapter. Upon a finding of such conduct the probationary License shall be revoked and shall not be reissued for a period of one year.

§ 111-76. Notice of suspension or revocation.

The Cabaret or Catering Establishment, or its designee, shall be provided with written notice via certified mail of the intent to revoke or suspend the License.

§ 111-77. Hearing for suspension or revocation.

Within ten days of the Notice provided in Section 111-75, the Cabaret or Catering Establishment, or its designee, may request a hearing on the matter by sending a written request via certified mail to the City Clerk. The hearing shall be conducted within 30 days of the request. The City Clerk shall notify the City departments listed Section 111-69(B) and all Members of the Common Council of the scheduled hearing date. The City Clerk shall render and file a decision within 30 days of the date of the hearing.

§ 111-78. Appeal after hearing of suspension or revocation.

Within 30 days of a determination by the City Clerk as a result of a hearing pursuant to Section 111-76, the Cabaret or Catering Establishment owner, or its designee, any of the City departments listed Section 111-69(B) and/or a Member of the Common Council may file an appeal of the decision with the Board of Zoning Appeals pursuant to Article IV of Chapter 375 of the Code of the City of Albany.

§ 111-79. Posting of License.

Each License issued hereunder shall be kept posted at the main entrance of every place Licensed hereunder.

§ 111-80. License not transferable.

No License issued under the provisions of this chapter shall be transferred or assigned to any person, or used by any person other than the licensee to whom it was issued, nor shall such License be used on any location other than the location stated in such License.

§ 111-81. Changes in corporate Licenses.

If, during the term of the licensing period, one or more directors, stockholders or officers of a

corporate License, is substituted or added, such substituted or added directors, stockholders or officers shall, within five days of such substitution or addition, file with the City Clerk, an application for an approval of the change of directors, stockholders or officers on such forms as are prescribed by the City Clerk. A waiver of this provision may be granted in the discretion of the City Clerk to any corporation with regard to stockholders holding less than ten percent of the issued stock.

§ 111-82. Penalties.

Any individual or business that operates a cabaret or catering establishment without securing the License established by this Article shall be subject to a fine of not less than \$300 and not more than \$1,000. Each day in violation of this article shall constitute a new offence.

§ 111-83. Concurrent enforcement.

This Article shall not restrict the enforcement powers of the City Clerk, Police Department or Division of Buildings and Code, found in this City Code or authorized by other local, state or federal law. Should a violation of the above occur, an authorized License may be revoked by the City Clerk, Chief of Police or Director of the Division of Buildings and Code, or their designees, at any time before or during the Licensed activity. The application fee will be forfeited.

Section 3. Except as herein amended, Chapters 375 and 111 of the Code of the City of Albany are hereby ratified, continued and approved.

Section 4. This ordinance shall take effect April 1, 2012.

**APPROVED AS TO FORM
January 8, 2010**

Corporation Counsel