Ordinance No. 01-O-0986

AN ORDINANCE BY
COUNCILMEMBER C. T. MARTIN AS SUBSTITUTED
BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

AN ORDINANCE TO CREATE AND ADD A NEW ARTICLE IX, DIVISION I, TO CHAPTER 14; TO AMEND DIVISION 14, ARTICLE V, DIVISION 1 AND 2, AND TO AMEND SECTION 106-226 OF CHAPTER 106, "OFFENSES AND MISCELLANEOUS PROVISIONS" OF ARTICLE V OF THE CODE OF ORDINANCES, CITY OF ATLANTA, GEORGIA SO AS TO PROVIDE FOR THE LICENSING AND REGULATION OF ADULT DANCEHALLS; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

WHEREAS, the governing body of the City of Atlanta has a significant interest in maintaining and assuring the public safety for all the City of Atlanta; and

WHEREAS, the City of Atlanta desires to clarify the provisions governing dancehalls in the City of Atlanta and define the conditions under which these entities will operate in the City of Atlanta.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS as follows:

Section 1.
That on January 1, 2002, Division 1 and Division 2 of Chapter 14 "Amusements and Entertainments," Article V be deleted in its entirety.

Section 2.
That on January 1, 2002, Section 106-226 of Chapter 106 Offenses and Miscellaneous Provisions of Article V be deleted in its entirety.

Section 3.
That a new Article IX entitled "Dancehalls II", Division 1 entitled "Adult Dancehalls" to Chapter 14 is hereby created which shall contain the following provisions:

Section 14-370. Application of this Division.

(a) The terms and conditions of this Division shall apply to all dancehall licenses, whether new or renewal, issued after the enactment of this Division.

(b) All valid dancehall licenses in effect prior to the enactment of this Division shall be governed by the terms and conditions of the current provisions contained in Chapter 14, Article V. However, all such license holders must apply for and obtain a renewal of their license, if desired, prior to January, 1, 2002, under the terms and conditions of Article IX. If said license holders fail to apply for and obtain a renewal of their license prior to January, 1, 2002, then in no event shall they be permitted to operate any dancehall until awarded a license under Article IX.

Section 14-371. Definitions.

For the purposes of this Division, words and terms shall have the following meanings:

"Alcoholic beverages" means and includes but is not limited to malt beverages, wine and distilled spirits. The terms "malt beverages", "wine", and "distilled spirits" shall have the same meaning as defined in Chapter 10, Article I, Section 10-1.

"Applicant" means the person who files an application to operate an adult dance or adult dancehall and in whose name the license is issued.

"Person" means any individual, receiver, assignee, firm, co-partnership, joint venture, corporation, company, joint stock company, association, society, or any group or individuals, acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

"Promoter" means a person or the legal entity who assumes the financial responsibilities of a of an adult dance and/or adult dancehall, including but not limited to, contracting with the principals, renting the site and collecting the gate revenues.

"Teens" means those persons between the ages of 14 and 18 years of age.

"Adult Dance" means any dance for patrons 18 years of age or older that is readily accessible to the public and which:

1. is held and conducted either directly or indirectly for a profit; or
2. requires a monetary payment or contribution from any of the persons admitted.

"Adult Dancehall" means any place where a dance for persons eighteen years of age and older is conducted, operated or maintained and includes the premises in which the adult dancehall is conducted, operated or maintained including but not limited to all parking areas, hallways, bathrooms and all adjoining areas on the premises accessible to the public during the dance.

"Owner", as used in this section, (except when specific reference is made to the owner of the physical location or premises), shall include the owner, operator, manager or other person having supervision over an adult dancehall as defined herein.

"Private Party" as used in this section means any event that is not readily accessible to the public and which is not held and conducted for a profit either, directly or indirectly, and which requires no monetary payment or contribution from any of the persons admitted.

Section 14-372. Duty of operator or manager to enforce article.

The applicant is considered, for purposes of this Division, the owner, operator or manager of a teen dancehall. The applicant shall assure that the sections of this Division are carried out. If the applicant fails to do so, either intentionally or by inadvertence, the applicant shall be deemed guilty of an offense for each such violation.

Section 14-373. Adult dance hall license.

No person shall conduct or operate an adult dance unless an adult dancehall license is obtained in accordance with the provisions of this Division. The license required by this section shall be in addition to any other license required by law, and the operation of such a place as herein described shall not be construed to be incidental to some other business.

Section 14-374. Multiple licenses Allowed.

All dancehall license holders shall have either a teen dance hall license as provided in Article IX, Division 2, or an adult dance hall license as provided herein, or both. Adult and teen dances cannot, however, be conducted at the same time in the same place.

Section 14-375. No Alcoholic Beverages Allowed; Intoxicated Persons.

(a) No alcoholic beverages shall be allowed on the premises where the adult dancehall is operated.

(b) No person under the influence of intoxicating liquor shall be admitted or allowed to remain at any adult dance.

Section 14-376. Exceptions.

(a) The requirements of this Division shall not apply if the adult dance is limited to fewer than (100) persons.

(b) The requirements of this Division shall not apply if the adult dance is sponsored, produced, or conducted under the auspices of an educational institution or by a nonprofit educational facility defined as a public or private academic institution, operated for nonprofit and accredited by the State of Georgia that offers a program or series of programs of academic study.

(c) The requirements of this Division shall not apply if the adult dance is sponsored by a nonprofit tax-exempt organization, corporation or association recognized by the United States of America as exempt from federal income taxation pursuant to Section 501(c)(1) or (3) of the Internal Revenue Code of 1954, 26 U.S.C. Section 501 as now existing or hereafter amended.

(d) The requirements of this Division shall not apply if the adult dance is sponsored by a charitable or fraternal organization and that organization receives the proceeds of the event.

(e) The requirements of this Division shall not apply if the adult dance is given by local merchants whose total proceeds are given to local charities.

(f) Nothing in this Section shall apply to dances conducted by or under the auspices of the City of Atlanta or the Atlanta Board of Education or by any club or organization specifically authorized by the City Council.

Section 14-377. Dancing for hire.

(a) No person conducting, maintaining or carrying on an adult dance or adult dancehall shall permit any instructor who is under twenty-one (21) years of age to give instructions in dancing to persons in any private room, booth, alcove or enclosure. For the purpose of this Section the terms "private room, booth, alcove or enclosure" shall include any area within the adult dancehall which is not clearly visible at all times from the main dance floor located in such adult dancehall.

(b) Nothing contained in this Section shall be deemed or construed as applying to any place where dancing instruction by certified instructors is the principal activity of the business.

Section 14-378. Identification requirements for adult dances; penalty.

(a) The person operating an adult dancehall shall require each person seeking admission to provide identification showing his or her age.

(b) Any person who shall by affirmative misrepresentation of age obtain admission to or permission to remain in any adult dance in violation of this Division shall be guilty of a misdemeanor.

(c) Any person who knowingly or recklessly shall permit a person to enter or remain in any adult dance or adult dance hall in violation of this Division shall be guilty of a misdemeanor.

Section 14-379. Application.

(a) The person desiring to conduct and/or operate an adult dance shall be responsible for obtaining an adult dancehall license. Each location of an adult dancehall must be approved by the Department of Police and must comply with all City of Atlanta laws including, but not limited to, Building, Zoning, and Fire Codes. The applicant must demonstrate compliance by providing proof of compliance with these Codes.

(b) All persons desiring to obtain a license required under this Division shall make written application to the Atlanta Police Department, Licenses and Permits Unit. The application shall be sworn to by the applicant or agent thereof and shall state the following:

(1) The name, address, and phone number of the applicant.

(2) If the applicant is a partnership or corporation, the name(s), address(es) and telephone number(s) of the partner(s) or officers.

(3) If the applicant is an unincorporated association, corporation or partnership, the name of the unincorporated association, corporation or partnership, and the names and addresses of the limited partners, partners, officers and directors thereof.

(4) the dancehall operator's home and business address.

(5) the names, addresses, and phone numbers of the operator (s), manager(s), and employee(s) of the dancehall, as well as any other person whose duties may require that such person have contact with the public during dances.

(6) the name, address, and phone number of the owner(s) of the premises where the teen dancehall is located.

(7) the location(s) of the adult dancehall(s).

(8) the planned date(s) of each of the adult dance(s).

(9) such other information reasonably related to the operation of the adult dancehall as may be required by the Atlanta Police Department.

(c) A statement of any and all measures to be used to insure that adequate traffic control and crowd protection within the adult dancehall will be maintained and the measure to be taken to estimate crowd numbers to assure consistent compliance with the Fire Code.

(d) The applicant must provide proof that the premises is in compliance with all City of Atlanta laws including, but not limited to, Building, Zoning, And Fire Codes.

(e) A statement that the applicant will, in the conduct and operation of the adult dancehall, comply with all City laws.

(f) A statement from the owner or lessor of each planned location that the owner or lessor will appear before the License Review Board if specifically requested by the Board in a proceeding where a fine, suspension or revocation is being considered with respect to the applicant. Once requested by the License Review Board, any failure by the owner or lessor to appear before the License Review Board may be considered a violation of this Chapter in any subsequent applications or renewals for any license or permit issued by the City.

(g) The application shall be accompanied with a signed statement by three citizens of the City, certifying to the character of the applicant.

(h) Each time the location or dates of the dance change, as set forth in the applicant's original application, the applicant shall be required, on a form to be provided by the Department of Police, to notify and obtain written approval from the Licenses and Permits Unit of the new location and/or dates of the dance(s) at least thirty days prior to the adult dance. The applicant shall be required to pay a fee of $100.00 each time they file an updated form requesting a change of location. The Licenses and Permits Units shall be required to make a decision on said change application within thirty (30) days of receipt of the application. The decision of the Licenses and Permits Unit may be appealed by the applicant to the License Review Board, by written application, on forms to be provided by the Licenses and Permits Unit, within five (5) business days of the denial of the change application. The appeal shall be heard at the next regularly scheduled meeting of the License Review Board after the request for the appeal is submitted to the Licenses and Permits Unit by the applicant.

Section 14-380. Appearance before the License Review Board

(a) All applicants shall furnish all data, information and records requested of them by the License Review Board or the department of police, and failure to furnish this data, information and records within 30 days from the date of the request shall be grounds for denial of the application. Applicants, by filing an application, agree to produce for oral interrogation any person listed in the application requested by the License Review Board or the department of police to respond to questions reasonably related to the license and/or the operation of the business. The failure to produce the person within 30 days after being requested to do so shall result in the automatic dismissal of the application.

(b) All applicants shall be scheduled to appear before the License Review Board within 30 days of the completion of an investigation of their application by the Atlanta Police Department.

Section 14-381. Grounds for Denial or Nonrenewal of a License

In addition to all other grounds for denial stated in this Division, no original, renewal, or amendment to any application for any license under this Article shall be granted if the application or the evidence produced during a hearing before the License Review Board shows:

(1) The applicant is of bad moral character, has a bad reputation in the community, or does not have sufficient mental capacity to conduct the business for which an application is made.

(2) The applicant has had any license issued under the police powers of any local government previously suspended or revoked; provided, however, the License Review Board may waive this subsection if two years have passed since any prior revocation or suspension of any license held by the applicant.

(3) The applicant, as a previous holder of any dancehall license or alcoholic beverage license, has violated any law, regulation or ordinance relating to that business within a five-year period immediately preceding the date the application is heard by the License Review Board.

(4) The department of police was unable to verify any statement of information required to be disclosed on forms furnished by the police chief or to be able to adequately conduct a full investigation of an applicant or a place of business for any reason beyond the police chief's control. Once a license has been granted, information revealed that is contrary to representations made by the applicant on the application or any subsequent amendment thereto, shall be cause for denial or revocation of a license.

(5) The applicant provided an application that contains a material omission, untrue or misleading information. If any license has previously been granted, these circumstances shall constitute cause for revocation.

Section 14-382. Revocation

Any adult dancehall license granted shall be subject to revocation for due cause. Whenever in the opinion of the License Review Board there is cause to revoke the license, a written notice

of intention to revoke shall be furnished to the holder thereof three days before a regular or called meeting of the board, at which time the holder of the license may make such showing that the licensee may deem proper. After a hearing, the board shall report its recommendations to the mayor. The Board can recommend a fine, suspension, or revocation the license. The mayor, upon receipt of the recommendation may fine, suspend or revoke the license or take any or no action in the mayor's discretion is to the best interest of the peace and good order of the City.

Section 14-383. Due Cause

"Due cause" is defined as:

(a) As used in this Section, the term "due cause," for the denial of an application for an adult dancehall license or for transfer of location or transfer of ownership or for revocation, suspension or refusal to renew an adult dancehall license includes but is not limited to the following:

(1) The conviction of any felony reasonably related to the ability of the licensee to operate and maintain the premises in a proper manner.

(2) Permitting the solicitation of patrons on the licensed premises for prostitution or any other unlawful act where the licensee or the licensee's employee or agent knew or should have known of such conduct.

(3) The failure to furnish any and all data, information and records related to the operation of licensed establishments, when such has been requested by the department of police or the License Review Board.

(4) The failure to maintain any and all of the general qualifications applicable to the initial issuance of a license as set forth in this Division.

(5) The failure to obtain prior approval of the mayor before operating a teen or adult dancehall.

(6) Failure by the licensee to adequately supervise and monitor the conduct of the employees, patrons and others on the licensed premises or on any property owned or leased by the licensee, including but not limited to parking lots and parking areas, or on any parking lots or areas which may be lawfully used by patrons of a licensed establishment, in order to protect the safety and well-being of the general public and of those utilizing the premises.

(7) The violation of Chapter 94, which violation shall be evidenced by receipt of an order by the human relations commission which shall contain findings of discrimination pursuant to such Chapter.

(8) The violation of any other law, ordinance or regulation governing the operation of dancehalls or which are reasonably related to the operation of such establishments.

(9) The failure of the licensee whose licensed premises directly abuts a public street to maintain all property outside the lot and property line and inside the curb line upon

the public street, including any sidewalk. Said duty to maintain the above-designated property must be accomplished within reasonable time after the close of business each day. "Maintain" as used in this subsection shall mean keeping the specified area free of bottles, cups, trash and other debris. "Within a reasonable time" as used in this subsection shall mean within four hours of the close of business.

(10) The violation by either the owner, the licensee, the management, an employee, an independent contractor, or anyone acting as an agent for or on behalf of any establishment licensed to sell alcohol of any of the City's ordinances which pertain to the posting of signage and/or banners found in Chapters 138 and 16-28A of the City of Atlanta Code of Ordinances if such violation is reasonably related to the operation of an adult dancehall and the owner or licensee knew or should have known of the posting. The director of the bureau of buildings, or his designee, shall report all violations of such ordinances of which the bureau of buildings is aware to the City of Atlanta Police Department's Licenses and Permits Unit within ten days of the occurrence of such violation.

(11) The violation by either the owner, the licensee, the management, an employee, an independent contractor, or anyone acting as an agent for or on behalf of any establishment licensed to sell alcohol of the City's noise ordinance if such violation is reasonably related to the operation of an adult dancehall and the owner or licensee knew or should have known of the violation of the noise ordinance.

(12) Upon a finding of due cause, the mayor shall have the authority to deny applications for new licenses or for transfer of location or transfer of ownership and to revoke, suspend or refuse to renew any license issued by the City to any licensee under this division.

(13) No application for a new license or for a transfer of location or transfer of ownership shall be denied and no license issued by the City or any license under this division shall be revoked, suspended or refused renewal except upon a finding of due cause and after a hearing and upon a five-day written notice to the licensee, stating the place, date, time and purpose of such hearing and setting forth the charge upon which the hearing shall be conducted.

(14) The commander of the licenses and permits unit, or his designee, shall also notify the City councilmember who represents the district within which the licensed establishment, which is subject to adverse action is located and all at-large councilmembers regarding the adverse action. Such notice shall provide the date, time and place of any hearing regarding the adverse action.

Section 14-384. Appearance Before the License Review Board

(a) The License Review Board may consider, in addition to all other lawful grounds, when deciding whether to grant, deny, or revoke a new or renewal license, whether the applicant:

(1) owned or managed an establishment where a crime involving prostitution, lewd conduct, or assault on a juvenile occurred in or upon the dancehall premises;

(2) owned or managed an establishment where any act of or solicitation for sexual intercourse, sodomy, oral copulation, or masturbation was committed; or

(3) was convicted for the possession of any weapon, or the possession or consumption of alcohol and/or marijuana, cocaine, or any other controlled substance.

(4) or any employee, agent, promoter, partner, director, officer or manager thereof violated any of the provisions of this Chapter or committed any act which is a ground for denial of a license issued pursuant to this Chapter; or

(5) provides information on the planned sites of the adult dancehall where the building, structure, equipment or location of the business does not comply with the requirements or fails to meet the standards of the applicable health, zoning, building, or fire and safety laws of the State of Georgia and The City of Atlanta, or the requirements of this Chapter.

(b) All grounds for consideration by the License Review Board contained in this Section shall independently or in conjunction with other laws or ordinances, be grounds to deny or revoke a new or renewal license.

Section 14-385. Issuance to persons with prior convictions.

No original license for the operation of an adult dancehall shall be issued to any person, partnership or corporation for pecuniary gain if any individual having an interest the license, either as owner, partner or principal stockholder, directly or indirectly beneficial or absolute, or the individual's spouse shall have been convicted or shall have taken a plea of nolo contendere, within ten years immediately prior to the filing of the application, for any felony or misdemeanor of any state or of the United States or any municipal ordinance, except traffic violations. The term "conviction" includes an adjudication of guilt or a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime; if the violation is for a misdemeanor or municipal ordinance, the License Review Board may, after investigation, recommend waiver of that disqualification.

Section 14-386. Security personnel.

(a) It shall be the obligation of every person licensed under this Chapter to ensure that an adequate number of qualified security personnel are employed and are on the premises of the adult dancehall during and following each adult dance as is necessary to maintain order and ensure compliance with the laws of the State of Georgia and ordinances of the City of Atlanta.

(b) An "adequate number of security personnel" shall include at least two (2) persons trained as law enforcement personnel, which may include off-duty Atlanta police officers or sworn police officers of other jurisdictions.

(c) At no time shall fewer than twenty-five percent (25%) of the security personnel in attendance at a teen dance have training as law enforcement personnel. Those security personnel not having law enforcement training must have received formal training in crowd control .

(d) At all times, there must be one (1) police officer or security officer for each established entrance or exit on the premises.

(e) It shall be the further obligation of every person licensed under this Chapter to employ during and following each adult dancehall, at least one security officer to patrol the side-walks and public areas, including but not limited to, adjacent parking lots within 400 feet used by the patrons and any areas abutting the adult dancehall.

Section 14-387. Police supervision.

The presence of any policeman at any adult dancehall shall not relieve the proprietor thereof, or any of his employees, from the responsibility of the provisions of this Chapter or for violations of any law or ordinance or lawful rule of the Chief of Police or from responsibility for maintaining decency and order in said public dancehall.

Section 14-388. Right of entry for purpose of inspection.

Adult dancehalls shall at all times be open to the public authorities for entrance and inspection. All peace officers of The City of Atlanta shall have free access to adult dancehalls when a dance is being conducted for the purpose of inspection and to enforce compliance with the provisions of this Chapter.

Section 14-389. Hours of operation.

No adult dance or adult dancehall shall be conducted, operated, or otherwise open to the public between the hours of seven a.m. (7:00 a.m.) and nine a.m. (9:00 a.m.) Monday through Saturday and on Sundays between the hours of 7:00 a.m. and 1 p.m..

Section 14-390. Fees.

The annual fee for an adult dancehall license shall be $500.00. Such license shall be valid only for the calendar year issued, unless the City otherwise specifies on the license.

Sec. 14-391. Date for payment of license fees; prorated fees.

All annual license fees under this Division shall be paid in advance on or before January 1 of each year. Any person granted a new or renewal license under this division during a calendar year shall pay the full license fee without proration, except that the fee for a new or renewal license granted after June 30 in any calendar year shall be (fifty) 50 percent of the annual license fees for the remainder of that calendar year.

Section 14-392. Operating without a license; penalty.

Any person who shall conduct or operate an adult dance or dancehall without a valid license issued pursuant to this Chapter shall be guilty of a misdemeanor.

Section 14-393. Violation of a Municipal Ordinance.

Upon conviction of a violation of any provision of this Division, a person may be subject to a fine not to exceed $1,000.00 and costs, or imprisonment in the City jail for not more than 60 days, or work on the public streets or work on the public works of the City for not more than 60

days, or be subject to any one or more of the punishments, subject to all limitations contained in the Charter of the City. Each violation of this section shall constitute a separate offense.

Section 14-394. Action by the License Review Board.

If by action of the police department, a cause for imposition of penalty, fine, suspension or revocation is forwarded to the License Review Board (for a first violation or any subsequent violations) for review, the applicant shall provide a written statement from the owner or lessor of the location verifying the applicant has notified the owner/lessor that a violation of this Division by the applicant occurred at the owner/lessor's location upon appearance before the License Review Board.

Section 14-395. Severability

If any provision, clause, sentence or paragraph of this Code, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this Article which can be given effect without the invalid provisions or application and, to this end, the provisions of this Code are hereby declared to be severable.

Secs. 14-396 -- 14-410. Reserved.

Section 5.
All ordinances or parts of ordinances in conflict herewith are hereby repealed.