

Order 285-19/20

Motion to amend by striking out in Section 4-51 (g) "City Council" and adding "City Manager":
6-0 (Cook, Batson and Duson absent) on 7/15/2019

Passage: 6-0 (Cook, Batson and Duson absent) on 7/15/2019 Effective 8/14/2019

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE CHAPTERS 4 AND 15
RE: ENTERTAINMENT SOUND ORDINANCE

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Sections 4-41 to 4-59 are hereby amended to read as follows:*

Sec. 4-41. Purpose.

~~—The purpose of this article is to control the issuance of special permits for entertainment, music, dancing or entertainment in facilities licensed by the state to sell liquor as provided by state law, entertainment in bottle clubs, and permits for after-hours entertainment and to control the operation of dance halls, concert halls, single dances and single concerts.~~

Sec. 4-42. Definitions.

Terms used in this article shall have their common meanings except that the definitions set forth in chapter 15 and/or in this section shall apply unless the context clearly indicates that a different meaning is intended.

~~—After hours entertainment shall mean music, dancing, or entertainment provided between the hours of 1:00 a.m. and 7:00 a.m.~~

~~—Concert shall mean the presentation of live or amplified music for the entertainment of a live audience gathered specifically for that entertainment.~~

~~—Concert hall shall mean any building, room or hall which is kept or used for concerts open to the public.~~

~~_____ Dance shall mean every dance not held in a private residence; other than a class in which instruction in dancing is given for hire, or any dance held in a school hall under direct supervision of school authorities, or any dance conducted by and exclusively for the benefit of any bona fide charitable organization.~~

~~_____ Dance hall shall mean any building, room, hall, or other public place which is kept or used for public dancing, or which for compensation paid directly or indirectly to the owner, manager, or operator thereof, men, women or children are permitted to engage in dancing.~~

_____ Entertainment shall mean and include any event to which the public is invited or allowed to watch, listen to, or participate in; or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons or guests, including, but not limited to any of the following:

1. Dancing by patrons to live or recorded music;
2. The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as 'disc jockey' or 'DJ';
3. The playing of background music, except where the background music cannot be heard beyond the limits of the premises on which the music is being played;
4. The presentation of live music whether amplified or unamplified;
5. The presentation of music concerts, or other similar forms of musical entertainment from any source; or
6. Any other live performance, including, but not limited to, presentations by single or multiple performers, such as hypnotists, comedians, dance arts, concerts, dances, live bands, karaoke or other live music.

~~amusement, performance, or exhibition or diversion for patrons or customers of the licensed premises, whether provided by professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.~~

Indoor Entertainment shall mean entertainment that is conducted within a fully enclosed building or structure, including ensuring that all windows and doors remain closed during the time that entertainment is occurring.

Outdoor Entertainment shall mean entertainment that is conducted outside of a fully enclosed building or structure, or is conducted within a building or structure in any manner such that the sound generated by that entertainment is intentionally projected outside of that building or structure.

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DIVISION 2. LICENSE*

Sec. 4-51. Required.

~~(a) No person licensed by the state to sell liquor to be consumed on the premises, and no bottle club licensed by the city, shall permit on the premises any music except that produced by radio or mechanical device, any dancing, or entertainment of any sort without an entertainment license from the city. The license required by this subsection and state law authorizes entertainment only during the hours when state law permits the sale of alcohol for consumption on the premises. shall conduct, or permit to be conducted on a premises or other location owned or controlled by that person, any entertainment without first obtaining a license as provided in this Article.~~

(b) *Single Event Entertainment License - Private Property.* A Single Event Entertainment License - Private Property shall allow the licensee to conduct a single indoor or outdoor entertainment event lasting no more than eight hours in one 24-hour period at the premises for which the license is issued. No more than five Single Event Entertainment Licenses may be issued for events at any one premises in any twelve-month period.

(c) *Single Event Entertainment License - Public Property.* A Single Event Entertainment License - Public Property shall allow the licensee to conduct a single indoor or outdoor entertainment event lasting no more than eight hours in one 24-hour period on City-owned property. Multiple events by the same party and on the same City-owned property may be combined into one license.

(d) *Indoor Entertainment License.* An Indoor Entertainment License shall allow the licensee to conduct indoor entertainment only at the premises for which the license is issued.

(e) Outdoor Entertainment License. An Outdoor Entertainment License shall allow the licensee to conduct outdoor entertainment only at the premises for which the license is issued.

(f) Combined Entertainment License. A Combined Entertainment License shall allow the licensee to conduct indoor and/or outdoor entertainment at the premises for which the license is issued.

(g) Expanded Entertainment Addendum. An Expanded Entertainment Addendum shall be in addition to any entertainment license and shall allow the licensee to conduct after-hours entertainment and/or to exceed the applicable sound limits. Expanded Entertainment Addendum shall be at the sole discretion of the [City Manager](#).

~~After hours entertainment shall require a separate license as provided in this division subject to the following restrictions and requirements:~~

- ~~(1) Operations under such separate license shall end at 3:00 a.m.~~
- ~~(2) Establishments that have a liquor license shall limit attendance to individuals who are at least 21 years old. Establishments that do not have a liquor license shall limit attendance to individuals who are at least 18 years old.~~
- ~~(3) Any applicant for an after-hours entertainment license shall meet with the police department for review of the security plan and a site visit before the license is brought before the city council.~~
- ~~(4) The license shall allow no more than twenty four (24) after hour events per calendar year.~~
- ~~(5) In addition to the after-hours license, at least seven (7) days in advance of each event, the license holder shall deliver a written notice to the Permitting and Inspections Department during normal business hours specifying the date upon which the event will be held. The Permitting and Inspections Department will forward the notice immediately to the police department, track the number and frequency of events per licensee per~~

~~calendar month and inform a licensee if an event is not allowed.~~

~~(c) *Exceptions:* Upon application for a license for a single event, the council may allow after hours entertainment to take place after 3:00 a.m. for a public purpose and may permit individuals under the age of 21 to attend the event, subject to such conditions, if any, that the council imposes to protect the public health, safety and welfare. Any events permitted under this paragraph will not count as one of the twenty-four events per year allowed by section (b) (4) above.~~

~~(d) No person shall conduct, maintain or operate a dance hall or a concert hall, as defined in section 4-42 of this code, without a license.~~

~~(e) No person shall conduct, maintain, or operate a single dance or single concert, as defined in section 4-42 of this code, on private property, where greater than 100 attendees are anticipated, or where alcohol will be consumed, without a license.~~

~~(f) No person shall conduct, maintain, or operate a single dance or single concert, as defined in section 4-42 of this code, on public property without a license from the Parks, Recreation, and Facilities Department.~~

Sec. 4-52. Application.

(a) Application for a license under this division shall, in addition to the requirements of chapter 15, be submitted on forms provided by the City. Applications shall specifically include/contain:

(1) ~~†~~The name and contact information of the owner or person in control of the building and/or premises;†

(2) The name and contact information of the person responsible for the entertainment, who shall be available to respond to inquiries of the City at all times while entertainment is taking place;

(3) ~~†~~The location of the premises;† and

(4) ~~‡~~A plan of the premises, giving in detail the dimensions and diagram of space to be used for dancing, seating,

~~dress~~ing rooms, ~~chee~~k rooms, toilet rooms, and means of egress entrances, exits, stairways and fire escapes.

Applicants must provide all required information and pay all required fees before a license application will be considered.

(b) Location of Application. Applications for a Single Event Entertainment License - Public Property shall be submitted to the Parks, Recreation, and Facilities Department for approval. All other applications shall be submitted to the Permitting and Inspections Department.

(c) Timing of Application. Applications must be submitted no later than the following:

(1) For a Single Event Entertainment License - Private Property or Single Event Entertainment License - Public Property, a complete application, including license fee and noise deposit, must be submitted no later than seven business days prior to the licensed event.

(2) For all other licenses, a complete application, including license fee, sound mitigation plan, and review fee, must be submitted no later than four weeks prior to the City Council Meeting at which the applicant wishes the application to be considered.

(d) Noise Deposits. Applications for a Single Event Entertainment License - Private Property and Single Event Entertainment License - Public Property must include a noise deposit as follows:

(1) The noise deposit must be paid before a Single Event Entertainment License will be issued.

(2) The noise deposit shall be calculated based on the reasonably anticipated number of attendees:

Anticipated Attendees	Noise Deposit
Less than 200	\$100
200-499	\$250
500-999	\$500
1,000+	\$1,000

- (3) The noise deposit shall be double the amount listed above for any licensee who has forfeited a noise deposit within the previous two years.
- (4) The noise deposit shall be forfeited automatically, and in the City's sole discretion, if the licensee fails to adequately mitigate any noise impacts of the event after being given notice of the impact by the City and an opportunity to correct.
- (5) Forfeiture of the noise deposit shall be in addition to any civil penalties or other remedies provided for in this Code, including the denial of a future license.

(e) *Sound Mitigation Plan.*

- (1) A sound mitigation plan shall be required for the following applications:

- (i) All initial applications for an Outdoor Entertainment License;

- (ii) All initial applications for a Combined Entertainment License;

- (iii) All initial applications for an Indoor Entertainment License if the licensee did not hold an entertainment license for the premises in the previous license year; and

- (iv) All renewal applications that are required to go before the City Council for consideration.

- (2) A sound mitigation plan shall consist of the following:

- (i) The sound mitigation plan must be prepared and certified by a professional sound engineer with appropriate experience and training.

- (ii) The sound mitigation plan shall be designed to minimize the impact of entertainment on the surrounding uses, and detail the methods by which the applicant will accomplish those goals.

- (iii) The sound mitigation plan shall include, at a minimum, speaker location and direction; sound system details and controls; stage and site layout and

direction; any noise cancelling or mitigating measures proposed; and anticipated sound readings at the proposed source of the sound, at a location 8' from the means of egress located nearest to the noise source and/or 8' from any outer wall of the premises (for indoor entertainment), at each property line of the premises (for outdoor entertainment), and at the closest residence.

(iv) The sound mitigation plan shall require an on-site monitor when the number of attendees at an entertainment event is expected to exceed, or does exceed, 250. The on-site monitor shall be equipped with a dedicated SPL meter, and shall be available to respond to any inquiry of a City official during the time that the entertainment is being conducted.

(5) The City and/or its designee will review the sound mitigation plan and will provide written recommendations to the City Council with respect to the proposed sound mitigation plan and license application. The applicant shall pay a sound mitigation review fee, as established by the City Council, to cover the costs of review.

(6) The applicant shall be responsible for the City's cost of reviewing the sound mitigation plan.

(7) Compliance with the sound mitigation plan, as approved by the City Council, shall be a condition of the applicant's license, if granted.

Sec. 4-53. Hearings.

(a) A public hearing shall be held prior to issuance of ~~any original license under this division other than a single dance license or a single concert license~~the following:-

- (1) All initial applications for an Outdoor Entertainment License;
- (2) All initial applications for a Combined Entertainment License;
- (3) All initial applications for an Indoor Entertainment License if the licensee did not hold an entertainment

license for the premises in the previous license year;
and

- (4) All renewal applications that are required to go before the City Council for consideration in accordance with subsection (b) below.

(b) At the request of the City Manager or his/her designee, or at the request of any member of the City Council or the Mayor, a public hearing shall be held prior to the issuance of any renewal under this division other than a Single Event Entertainment License - Private Property or Single Event Entertainment License - Public Property.

Sec. 4-54. Appeals.

Appeal from the denial, suspension revocation or issuance with a condition or conditions of an entertainment license to a person ~~licensed by the state to sell liquor~~ shall be taken to the municipal board of appeals within thirty (30) days of such denial, suspension or revocation. The municipal board of appeals may grant or reinstate the permit if it finds that the permitted activities would not constitute a detriment to the public health, safety or welfare, or that the denial, suspension or revocation was arbitrary or capricious. If a license is issued with a condition or conditions and the board concludes that the condition or conditions do not protect the public health, safety or welfare or are arbitrary or capricious, the board shall refer the license back to the city council to determine whether the license will issue without the condition or conditions or whether the application will be denied. ~~The denial, suspension revocation or issuance with a condition or conditions of all other licenses or permits required hereunder shall be to the superior court under the provisions of Maine Rules of Civil Procedure 80B.~~

Sec. 4-55. Duration.

~~—(a) Granting of Licenses. Licenses shall be granted, denied, suspended, revoked, or granted with a condition or conditions as necessary to protect the public health, safety and welfare and in accordance with chapter 15, except for the following, but in the case of a special entertainment license, it:~~

- (1) A Single Event Entertainment License - Public Property shall be granted, denied, suspended, revoked, or granted with conditions at the sole discretion of the Parks, Recreation, and Facilities Department.

(2) An Expanded Entertainment Addendum shall be granted, denied, suspended, revoked, or granted with conditions at the sole discretion of the city manager.

(b) Expiration of Licenses. Licenses shall be valid for one year from the date they are granted, except in the following situations:

(1) Where the licensee holds a state liquor license or a municipal bottle club license, an Indoor, Outdoor, and/or Combined Entertainment License shall be deemed terminated upon expiration or revocation of the respective state license ~~to sell alcoholic beverages~~ or the municipal bottle club license, as the case may be, prior to the expiration of the one-year period.

(2) Where the licensee does not hold a state liquor license or a municipal bottle club license, but does hold a food service establishment license, an Indoor, Outdoor, and/or Combined Entertainment License shall be deemed terminated upon expiration or revocation of the food service establishment license prior to the expiration of the one-year period.

(3) Chapter 15 notwithstanding, the city council may also grant temporary entertainment licenses for a period of less than one (1) year when, in its sole discretion, it determines that one (1) or more trial periods is necessary to evaluate the impact of the entertainment on the peace and quiet of the neighborhood and on the public health, safety and welfare.

Sec. 4-56. Reserved.

DIVISION 3. STANDARDS FOR ENTERTAINMENT PURSUANT TO A LICENSE

Sec. 4-57. Conditions; sound and noise limitation.

(a) Any other provision of this Code notwithstanding, a licensee shall not allow the licensed activity or any other activities on the licensed premises to generate sound or noise that exceeds either of the following standards without an Expanded Entertainment Addendum:

(1) Eighty-five (85) dBA; and

(2) Ninety-five (95) dBC.

(b) The standards set forth in subsection (a) above shall be measured as follows:

(1) For indoor entertainment, measurements shall be taken ninety-two (92) decibels, A-weighted, averaged over one (1) minute, when measured eight feet (8') from the means of egress located nearest to the noise source and/or 8' from any outer wall of the premises.

~~(2) For outdoor entertainment, measurements shall be taken from the property line of the premises nearest to the noise source and/or nearest to the complainant's location, if any., or eight feet (8') from the noise source if it is generated outdoors.~~

(c) A licensee shall not allow the licensed activity to be conducted outside of the following times without an Expanded Entertainment Addendum.

(1) Outdoor entertainment, Sunday through Thursday: 8 a.m. to midnight;

(2) Outdoor entertainment, Friday through Saturday: 8 a.m. to 1 a.m. the following day; and

(3) Indoor entertainment: 8 a.m. to 1 a.m. the following day.

~~The city council may impose conditions for protecting the public health, safety and welfare on any entertainment license it issues.~~

Sec. 4-57.1. Sound oversight committee.

(a) There shall be a sound oversight committee of four (4) members appointed by the city council. One (1) member shall be a city employee nominated by the city manager; one (1) member shall be a police officer nominated by Portland's Downtown District board; and one (1) member shall be an entertainment licensee nominated by the nightlife oversight committee. The police officer shall be the chair of the sound oversight committee and shall be a non-voting member, except that the police officer shall cast the tie-breaking vote in the event of a tie.

(b) The sound oversight committee shall meet with ~~new entertainment license~~ applicants and licensees when ~~the license application is~~ referred to the ~~team~~ committee either by the city council or by the nightlife oversight committee. The sound oversight committee shall make recommendations to the applicant or licensee regarding actions it can take to mitigate noise and shall make any recommendations regarding noise mitigation it deems necessary to the city council for consideration.

~~Whenever the police receive two (2) or more verified noise complaints from two (2) separate individuals in any seven (7) day period or five (5) or more verified noise complaints in any thirty (30) day period regarding a particular entertainment licensed establishment~~ a licensee exceeds the standards in § 4-57 of this Article, the police department shall notify the licensee to meet with the sound oversight committee within five (5) business days from the date of the written notification, or such other time as is agreed upon by the sound oversight committee, to identify ways in which the noise problems which have been identified can be mitigated. The sound oversight committee shall notify ~~the~~ any complainants with respect to that licensee in the previous twelve months of the date and time of the meeting.

The licensee shall agree to take effective measures to address the noise issues as recommended by the sound oversight committee, which measures shall be memorialized in a written agreement at the conclusion of the meeting with the sound oversight committee and shall be implemented within one (1) week of said meeting unless another date is agreed upon by the sound oversight committee. Failure to implement the plan in a timely fashion or to comply with all recommendations in the plan will result in a recommendation by the sound oversight committee to the city council to place conditions on or revoke the establishment's entertainment license.

If ~~the police receive two (2) or more verified noise complaints from two (2) separate individuals in any seven (7) day period or five (5) or more verified noise complaints in any thirty (30) day period regarding~~ the same licensed establishment on a subsequent occasion again exceeds the standards in § 4-57 of this Article, then the sound oversight committee is under no obligation to meet with the licensee but may make recommendations to the ~~city council~~ licensing authority to place conditions on or revoke the entertainment license.

(d) The sound oversight committee may also meet with liquor license applicants upon referral by the city council or the

nightlife oversight committee and may recommend noise mitigation measures to liquor licensees upon referral by the Portland police department or the city council.

Sec. 4-57.5. Restricted locations.

Notwithstanding any other provision of this article, no new licenses shall be issued in the B-3c zone to drinking establishments and chemical-free night clubs, as defined in section 14-47. For purposes of this section, renewal of an existing license by the party holding the license on the date of enactment shall not be considered a new license. Any transfer of ownership shall be considered a new license.

(Ord. No. 47-97, 8-4-97)

Sec. 4-58. Penalties.

In addition to suspending or revoking a license, the city may prosecute violations in court. A violation of this ~~division~~ Article shall be punished by a fine of five hundred dollars (\$500.00) for a first offense, one thousand dollars (\$1,000.00) for a second offense and two thousand dollars (\$2,000.00) for a third or subsequent offense regardless of the time between offenses. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this division by appropriate action. In addition to such penalty, if the court finds for the city, the city shall recover its costs of suit including reasonable experts' fees, attorneys' fees and investigative costs.

Sec. 4-59. Applicability.

_____ This division shall not apply to events held: ~~(a) in a private residence;~~ ~~(ab) in a class in which instruction in music is given for hire;~~ ~~(be) school sponsored events in a school~~ under supervision of school authorities; (c) City sponsored events under the supervision of City authorities; ~~or (d) by and exclusively for the benefit of any bona fide charitable organization.~~

2. *That Sections 15-12 and 15-21 are hereby amended to read as follows:*

Sec. 15-12. Fees and expiration dates.

(a) Unless specified elsewhere in this Code, fees for licenses issued pursuant to this Code and the expiration date of each license shall be as follows:

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Ch. 3, Art. II	Bottle clubs (must obtain FSE and special entertainment if applicable)	\$940.00	June 30
Ch. 3, Art. III	Brewery, Winery and Distillery License (must obtain FSE and/or special entertainment if applicable)	\$525.00	Concurrent with state liquor license

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Ch. 4, Art. III	Music, dancing and special Entertainment:		
	Entertainment with dancing	\$529.00	Twelve months or concurrent with state liquor license or with any city license
	Entertainment without dancing	\$295.00	Twelve months or concurrent with state liquor license or with any city license
	After-hours Entertainment	\$595.00	Twelve months Or concurrent with state liquor license or with any city license
	Dance hall	\$147.00	June 30
	Concert hall	\$147.00	June 30
	Single dance with alcohol or with greater than 100 attendees	\$38.00	Per dance
	Single concert with alcohol or with	\$38.00	Per concert

	greater than 100 attendees		
	<u>Single Entertainment Event - Private Property</u>	<u>\$50</u>	<u>Per event</u>
	<u>Single Entertainment Event - Public Property</u>	<u>\$50</u>	<u>Per event</u>
	<u>Indoor Entertainment</u>	<u>\$500</u>	<u>12 months or concurrent with state liquor license or any city license</u>
	<u>Outdoor Entertainment</u>	<u>\$700</u>	<u>12 months or concurrent with state liquor license or any city license</u>
	<u>Combined Entertainment</u>	<u>\$800</u>	<u>12 months or concurrent with state liquor license or any city license</u>
	<u>Expanded Entertainment Addendum</u>	<u>\$100</u>	<u>Per event</u>

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Sec. 15-21. Renewal hearings for state liquor licenses, or name changes, ~~or special entertainment licenses~~.

The City License Administrator is authorized to approve the renewal of State liquor licenses, name changes, ~~or special entertainment licenses~~, or any changes in license classification other than a change allowing the sale of spirituous alcohol, without holding a hearing, unless the License Administrator determines that hearing is necessary, or has received a request from a member of the City Council or a City official for a hearing on a specific application. Hearings shall be held by the City Council.