

ORDINANCE NO. 09-98

AN ORDINANCE AMENDING TITLE 11 OF THE GREENVILLE CITY CODE BY
ESTABLISHING SAFETY REGULATIONS FOR PUBLIC OR PRIVATE CLUBS

WHEREAS, the City Council of the City of Greenville has determined that there is a need to implement measures which will promote a safe environment in the areas where public or private clubs are located;

WHEREAS, public or private clubs create issues such as crowd control, noise, public intoxication, altercations, and potential violence;

WHEREAS, the City of Greenville has deployed a significant amount of law enforcement resources to address the issues created by public or private clubs;

WHEREAS, establishing reasonable safety regulations for public or private clubs is in the public interest to protect the health, safety, and welfare of the patrons of the public or private clubs, the citizens of the city, and surrounding neighborhoods; and

WHEREAS, North Carolina General Statute §160A-194 authorizes the City of Greenville, by ordinance, to regulate and license occupations, businesses, trades and professions and to prohibit those which may be inimical to the public health, welfare, safety, order, or convenience and North Carolina General Statute §160A-174 authorizes the City of Greenville, by ordinance, to define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA:

Section 1: That Title 11 of the Code of Ordinances, City of Greenville is hereby amended by adding a Chapter 12 entitled "PUBLIC OR PRIVATE CLUBS SAFETY REGULATIONS," said chapter to read as follows:

CHAPTER 12. PUBLIC OR PRIVATE CLUBS SAFETY REGULATIONS.

Section 11-12-1. Purpose

In order to protect the health, safety, and welfare of the city and its citizens, it is the purpose of this chapter to establish reasonable and uniform requirements in order to address the harmful effects associated with establishments for which entertainment is the principal use and which a large number of patrons congregate late at night. 848863 1

Section 11-12-2. Definitions

As used in this chapter the following terms shall have the following meanings unless the context clearly indicates that a different meaning is intended:

Bouncer means a person employed by a public or private club as an employee or contractor to perform the function of maintaining order, removing disorderly or disruptive patrons, checking identification cards or providing general security for the public or private club but not including a person who is employed for the primary and substantial purpose (greater than 90% of duties) to perform the functions of a bartender, waiter, or waitress and not including a person who is employed as a uniformed off-duty law enforcement officer or a uniformed security guard provided by a security guard and control profession licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes.

Conviction and *convicted* mean a finding of guilt for a violation of a state or federal law, an adjudication withheld on such a finding of guilt, an adjudication of guilt on any plea of guilty or nolo contendere, or the forfeiture of a bond or bail when charged with a violation of a state or federal law.

Public or private club means an establishment which the principal use is a public or private club as defined by the Zoning Ordinance for Greenville, North Carolina.

Section 11-12-3. Criminal Record Check of Bouncers

(a) No public or private club shall employ a person as a bouncer who has been convicted of a crime relating to either (1) the sale, manufacture, distribution, or possession of controlled substances as made unlawful by the provisions of North Carolina General Statute §90-95, or (2) criminal street gang activity as made unlawful by the provisions of the North Carolina Street Gang Suppression Act as provided in Article 13A of Chapter 14 of the North Carolina General Statutes, or (3) prostitution or assignation as made unlawful by the provisions of North Carolina General Statute §14-204 or (4) homicide, assault, affray, communicating threats, unlawful possession of dangerous or deadly firearms, or discharge of a dangerous or deadly firearm as made unlawful by the provisions of Chapter 14 of the North Carolina General Statutes.

(b) Notwithstanding the provisions of subsection (a), a public or private club is not prohibited from employing a person as a bouncer as a result of the conviction of an offense listed in subsection (a) when the following time period has elapsed:

1 More than two years has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is for a misdemeanor offense;

1 More than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is for a felony offense;

or

1 More than five years has elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the

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convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(c) A public or private club shall submit to the chief of police or designee on a monthly basis no later than the fifth day of the current month a list of all persons employed as a bouncer at the public or private club during the previous month. The list shall indicate the date of initial employment of each person as a bouncer and shall be on a form provided by the police department. The public or private club shall submit to the chief of police or designee no later than thirty (30) days after the date of initial employment of a person as a bouncer and, annually thereafter, a criminal record check for

each person employed as a bouncer by the public or private club. The criminal record check submitted shall be conducted by a method acceptable to the chief of police but shall not be required to be a criminal record check based upon fingerprints from the North Carolina State Bureau of Investigation.

Section 11-12-4. Training of Bouncers

(u) No public or private club shall employ a person as a bouncer who has not completed a training program for bouncers conducted by the police department within the immediately preceding twelve (12) month period except that a public or private club may employ a person as a bouncer for the person's initial employment with the public or private club for a period of no more than sixty (60) days commencing on the date of the person's initial employment with the public or private club without the person having received the training.

(b) All persons employed as a bouncer at a public or private club shall complete a training program for bouncers conducted by the police department at least once during every twelve (12) month period. The training program shall consist of classroom training on addressing disturbances occurring at public or private clubs and any other topic deemed appropriate by the chief of police.

(c) A public or private club shall submit to the chief of police or designee on a monthly basis no later than the fifth day of the current month a list of all persons employed as a bouncer at the public or private club during the previous month. The list shall indicate the date of initial employment of each person as a bouncer and the most recent date each person completed a training program for bouncers conducted by the police department. The list shall be on a form provided by the police department.

Section 11-12-5. Enforcement

(a) A police officer or other person authorized by the city manager to enforce the provisions of this chapter may issue a written citation for a violation of the provisions of this chapter.

(b) The owner and the manager of the public or private club are responsible for compliance with the provisions of this chapter. A written citation for a violation of the provisions of this chapter may be issued to the owner or the manager of the public or private club and the owner or the manager who is issued the citation will suffer the penalties and be subject to the remedies as set forth in section 11-12-6.

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(c) An owner or a manager who has been issued a citation may appeal the citation to the chief of police or designee. Written notice of appeal must be filed within ten (10) days of the date of the issuance of the citation.

Section 11-12-6. Penalties

(a) Any violation of the provisions of this chapter or a failure to comply with any of its requirements shall subject the offender to a civil penalty as follows:

(1) In the amount of fifty dollars (\$50.00) for each offense on the first day of such offense;
and

(2) In the amount of one hundred dollars (\$100.00) for each offense either (i) on the second day of such offense or (ii) when the offense is a second offense within a twelve (12) month period;
and

(3) .In the amount of two hundred and fifty dollars (\$250.00) for each offense either (i) on the third day and on each subsequent day of such offense or (ii) when the offense is the third or subsequent offense within a twelve (12) month period.

(b) Violators shall be issued a written citation which must be paid within seventy-two (72) hours. If a person fails to pay the civil penalty within seventy-two (72) hours, the city may recover the penalty, together with all costs and reasonable attorneys' fees, by filing a civil action in the general court of justice in the nature of a suit to collect a debt.

(c) This chapter may also be enforced by any appropriate equitable action.

(d) Each day that any violation continues shall be considered a separate offense for purposes of the penalties and remedies specified in this section. Notwithstanding the foregoing, the escalating civil penalties authorized by subsection (a) may be invoked whenever the violation continues and there has been sufficient time for the violation to be corrected after notification that such violation exists or whenever the violation has occurred previously during a twelve (12) month period.

(e) Anyone, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter.

(f) Any violations of the provisions of this chapter shall be deemed a non-criminal violation and shall not be a misdemeanor or infraction pursuant to North Carolina General Statute 14-4.

Section 11-12-7. No Effect on ABC Permits

The provisions of this chapter are not intended or designed to establish rules on the manufacture, sale, purchase, transportation, possession, consumption or other use of alcoholic beverages. The provisions of this chapter apply to a public or private club whether or not the public or private club has been issued an ABC permit by the North Carolina Alcoholic Beverage Control Commission. Any violation of the provisions of this chapter shall not affect any ABC permit issued to the public or private club by the North Carolina Alcoholic Beverage Control Commission.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

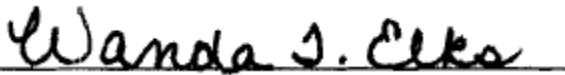
Section 4. This ordinance will become effective on the 1st day of May, 2010.

This the 10th day of December, 2009.

A handwritten signature in black ink, appearing to read "Patricia C. Dunn", written over a horizontal line.

Patricia C. Dunn, Mayor

ATTEST:

A handwritten signature in black ink, appearing to read "Wanda T. Elks", written over a horizontal line.

Wanda T. Elks, City Clerk