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RECOMMENDED BY: THE MAYOR

SUBMITTED BY: THE CITY ATTORNEY

ORDINANCE NO. _____

**AN ORDINANCE
TO AMEND TITLE 12, CHAPTER 10, ARTICLE C,
OF THE GENERAL CODE OF THE CITY OF BIRMINGHAM**

WHEREAS, Article C of Chapter 10 in Title 12 of the General Code of the City of Birmingham is known as the “Kelvyn Felder Ordinance”; and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIRMINGHAM, ALABAMA, AS FOLLOWS:

SECTION 1. That Title 12, “Licensing and Regulations”, Chapter 10, “Intoxicating Liquors”, Article C, “Regulations for the Operation of Liquor-Licensed Establishments”, of the General Code of the City of Birmingham, is hereby amended to read as follows:

Sec. 12-10-40. - Short title.

This article shall be known as the Kelvyn Felder Ordinance.

Sec. 12-10-41. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adequately lighted means ambient lighting that is adequate for the purposes of observing the operation of, or patrons within the premises, but which does not include as a light source lighting that emanates from a screen or theatrical lighting directed toward the staging area.

Club means a bona fide organization which fully complies with the definition of the term "club" as prescribed by state laws relating to alcoholic beverage licensing and the regulations of the Alabama Alcoholic Beverage Control Board.

Entertainment means sporting events and live or taped shows or performances, such as plays, motion pictures, concerts, music venues, circuses and dance routines, performed or conducted by actors, dancers, musicians, disc jockeys or other performers.

Licensed dinner entertainment establishment means a restaurant that is a licensed entertainment establishment.

Licensed entertainment establishment means an establishment that sponsors, provides or has entertainment, which activity may or may not require privilege licensure, and that is licensed to sell alcoholic beverages for on-premises consumption.

Late-Night Establishment means an establishment subject to the requirements of this ordinance that is:

1. Open to patrons between 12:00 a.m. and 5:00 a.m. on any day of the week; or
2. Open to patrons between 10:00 p.m. and 5:00 a.m. on any day of the week and has had one serious incident within the previous 12 months.

Non-licensed means an establishment or club that is not licensed for the on-premises sale of alcoholic beverages, whether or not privilege licensure is obtained or required for other activity.

Non-licensed area means an area, including a performance area, that is within the same building and that is under common ownership, possession and control as a licensed entertainment establishment, but which is not licensed to sell alcoholic beverages for on-premises consumption.

Non-licensed club means any private or public social club or any other establishment which charges a membership fee, door charge, gate fee, cover charge or any other like or similar type fee that is collected one time, annually, semi-annually, quarterly, monthly, weekly, daily, or in any other manner.

Non-licensed entertainment establishment means an establishment, which may or may not serve food or meals prepared on the premises, that sponsors, provides or has entertainment, which activity may or may not require privilege licensure, and that is

not licensed to sell alcoholic beverages for on-premises consumption.

Open-air performance area means a performance area that is in an outdoor amphitheater, park or other open space, and which may be covered by a temporary tent or enclosure for protection from the elements.

Performance area means that portion of the establishment where entertainment is provided and shall include without limitation the staging or screening area and the seating section or other area where patrons view the entertainment. The term shall not include areas or rooms separated from the performance area by a wall or partition which cannot be reached or accessed except through a door or doors.

Private parties means parties, shows, receptions, weddings or other events which are not open to the general public or are by invitation only and which are sponsored, conducted or held by persons that do not receive any form of compensation therefore, except for voluntary donations or gratuitous gifts.

Restaurant means that portion of an establishment:

- (1) That is licensed as a restaurant according to state and local alcoholic beverage licensing; or
- (2) That is licensed to sell beer or table wine for on premises consumption and which meets the definition of a restaurant under the state and local alcoholic beverage control laws except that it is not licensed to sell liquor or fortified wine for on-premises consumption.

Serious incident includes, but is not limited to, shots fired inside the establishment or within the immediate vicinity, physical altercation involving 3 or more people (affray), person shot, bodily harm, injury, or death inside the establishment or within the immediate vicinity.

Sporting event means live or taped sporting events including without limitation athletic competitions, team sports, sporting exhibitions, equestrian events, and figure skating.

Staging area means that part of a performance area that is used to present or contain the entertainment such as stages, rings, rinks and band stands.

Sec. 12-10-42. - Persons under 21 prohibited from premises; non-licensed sales of alcoholic beverages prohibited.

- (a) It shall be unlawful for any person or licensee of a licensed entertainment establishment, either directly or indirectly, or by the servants, agents, or employees of the same, or for any servant, agent or employee of the same to admit within the performance area of a licensed entertainment establishment as a patron a person under 21 years of age.
- (b) It shall be unlawful for any person or licensee of a licensed entertainment establishment, either directly or indirectly, or by the servants, agents, or employees of the same, or for any servant, agent or employee of the same to sell, provide, serve or allow consumption of alcoholic beverages within any areas of the establishment, including without limitation performance areas, that are not licensed for the on-premises consumption of alcoholic beverages. Private parties that are held within a licensed entertainment establishment where alcoholic beverages are served shall be held within areas of the establishment licensed for the on-premises sale of alcoholic beverages and the licensee shall be responsible for the provision of alcoholic beverages.
- (c) It shall be unlawful for any person, either directly or indirectly, or by the servants, agents, or employees of the same, or for any servant, agent or employee of the same to sell, provide, serve or allow consumption of alcoholic beverages on the premises of a non-licensed entertainment establishment or a non-licensed club.

Sec. 12-10-43. - Exemption for certain secured areas.

- (a) *Secured areas.* Subject to state and local laws concerning alcoholic beverages and minors, the prohibition of section 12-10-42(a) shall not apply to performance areas of licensed entertainment establishments that:
 - (1) Have adequate security measures in place for the policing and enforcement of alcoholic beverage control laws, which measures shall include but are not necessarily ~~be~~ limited to:
 - a. Adequately lighted performance areas where alcoholic beverages are sold, served or consumed;
 - b. Tamper proof measures that identify persons of legal drinking age; and

- c. Provision of a sufficient number of security personnel based on the size or anticipated size of the audience or based on a prior history for an event; and
- (2) Do not have stadium or row seating in the performance area, except for open-air performance areas.
- (b) *Civic centers, stadiums and sports arenas.* Subject to state and local laws concerning alcoholic beverages and minors, the prohibition in section 12-10-42(a) shall not apply to performance areas of civic center arenas or stadiums, including without limitation sports stadiums, that have adequate security measures in place for the policing and enforcement of alcoholic beverage control laws, which measures shall include but are not necessarily limited to:
 - (1) Adequately lighted performance areas where alcoholic beverages are sold, served or consumed or, in the alternative, segregated sections within performance areas for the selling, serving or consuming of alcoholic beverages which sections are limited to persons 21 years of age and above;
 - (2) Tamper-proof measures that identify persons of legal drinking age; and
 - (3) Provision of a sufficient number of security personnel based on the size or anticipated size of the audience or based on a prior history for an event.

Sec. 12-10-44. - Applicability.

- (a) The prohibition in section 12-10-42(a) shall not apply to a non-licensed entertainment establishment or a non-licensed club that conducts, holds or leases space for private parties provided that there is no cover charge, admittance fee or other form of remuneration charged to or paid by attendees or invitees, and further provided that there is no charge for the provision of alcoholic beverages; provided, however, persons under 21 years of age shall not be admitted to any non-licensed establishment or non-licensed club conducting, holding or leasing space for a private party where alcohol is served or consumed unless:
 - (1) The area where the party is held is adequately lighted;

- (2) Alcoholic beverages are furnished by the host of the party; and
- (3) The establishment or club provides a sufficient number of security personnel based on the number or anticipated number of attendees or based on prior history.

(b) It shall be unlawful for any entertainment establishment or club to allow the consumption, sale, service, or dispensing of alcoholic beverages at events, public or private, where a cover charge, admittance fee or other form of remuneration is charged or paid by attendees or invitees, or where there is a charge for the provision of alcoholic beverages, without first obtaining the proper licenses from the city and the state alcoholic beverage control board.

Sec. 12-10-45. - Provision of free or discounted alcoholic beverages unlawful; exception.

It shall be unlawful for any licensed entertainment establishment or club to sell or deliver any alcoholic beverage to any patron where the sale or delivery is directly or indirectly related to the payment of any admission or cover charge. It shall also be unlawful for any licensee to give any alcoholic beverage to any patron without monetary consideration according to the restrictions provided in this article. No alcoholic beverage shall be sold, served or delivered to any patron for less than the entire cost of the ingredients of the beverage to the licensee; and no licensee shall reduce the cost of any beverage at any time to less than 50 percent of the regular, established and posted price; however, this section shall not be construed to prohibit the practice by licensees wherein patrons are admitted on December 31 of each year for New Year's Eve celebrations, wherein for a stated fee, meals, drinks and entertainment are provided.

Sec. 12-10-46. - Entertainment establishments and clubs to comply with applicable laws and ordinances; written safety plan required.

- (a) All entertainment establishments and clubs must comply with all applicable laws and ordinances, including but not limited to zoning, building codes, health and safety regulations and must obtain approval from the proper departments.
- (b) The term "written safety plan" means a written document produced by an entertainment establishment or club operator that includes at minimum the

following information about the establishment:

- (1) The number and location of all security personnel;
- (2) The occupancy load of the establishment, average patron attendance, and the type of entertainment/events held at the establishment, days and hours of operation, specifying the times the establishment is open to the public;
- (3) The establishment identification checking and patron search procedures;
- (4) Procedures for ensuring that only persons 21 years or older are served alcohol;
- (5) The establishment's procedures for handling violent incidents, other emergencies, and calling the police department;
- (6) A description of the training provided or completed by security and other personnel, including conflict de-escalation training, a description of the type of training provided, the company providing the training if applicable, the date training was provided, and a copy of the list of individuals who completed the training;
- (7) The establishment's procedures for crowd control and preventing overcrowding;
- (8) The establishment's plan for maintaining order upon the accessory premises or open space adjacent to such premises;
- (9) Current contact information for the person or position responsible for addressing safety, security, or city Code related complaints by patrons or neighborhood residents; ~~and~~
- (10) Show proof that security officers employed or contracted by the club are licensed by the state security regulatory board or that they are exempted from such licensing by state law. Notwithstanding the foregoing provision, all security officers are subject to city business licensing and/or occupational tax;
- (11) An emergency evacuation plan specific to the establishment;
- (12) A clear, legible site plan that accurately reflects the current layout of the establishment. Site plans must include the following: and

a. Interior Layout

1. Entrances and Exits

Mark all entrances and exits within the building. Ensure they comply with safety regulations and are easily accessible in case of an emergency.

2. Seating Areas

Indicate all seating arrangements, including any designated VIP sections, dining areas, or lounge spaces. This will help in assessing crowd control and evacuation procedures.

3. Bar Area

Specify the location of the bar, including any service counters or areas designated for beverage preparation and consumption. Include the square footage of the area that is solely for service and on-premises consumption. The area must comply with Alabama ABC Board regulations, Ala. Admin. Code r. 20-X-6-.02, as now or hereafter amended.

4. Restrooms

Mark the location of all restrooms, including any gender-specific or accessible facilities available to patrons.

5. Camera Placement

Indicate the location of all surveillance cameras within the interior of the premises. Cameras should cover critical areas such as entrances, exits, seating areas, and any high-traffic zones.

b. Exterior Layout

1. Building Perimeter

Provide a layout of the exterior of your business, including all entrances and exits that may not be immediately visible from the interior.

2. Parking Lots

Delineate parking areas, including any designated spaces for staff, patrons, and accessible parking.

3. Camera Placement and Exterior lights

Mark the location of all exterior cameras and exterior lights. These cameras must cover the building perimeter, parking lots, and any other exterior spaces frequented by patrons. Specify lighting provided by the establishment and any additional lighting provided by a third party (Alabama Power, City of Birmingham, etc.).

(c) Written safety plan required.

- (1) Every entertainment establishment and club operator shall prepare a written safety plan that includes all the elements required by subsection (b), above.
- (2) For existing establishments, safety plans shall be filed with the chief of police and the chairman of the public safety committee of the city council or their designees within 45 days of the effective date of the ordinance from which this article is derived. New establishments shall file safety plans at the time they make application with the department of finance and shall be included with the applicant's information provided to the chief of police and the public safety committee of the city council.
- (3) Establishments subject to this article shall have an updated copy of their safety plan reviewed by personnel employed by the establishment. The safety plan shall be made available upon request by a police officer or other designated city enforcement personnel; ~~patron or neighborhood residents.~~
- (4) Establishment operators shall file an updated written safety plan annually with the chief of police. If there have been no material changes to ~~a~~an establishment's programming, operation, ownership, or size, the updated written safety plan may take the form of a letter from the establishment operator to the chief of police certifying that there have been no material ~~such~~ changes.
- (5) Written security plans shall provide for compliance with the minimum requirements of section 12-10-52.

(d) Additional Written Safety Plan requirements for Late Night Establishments

In addition to requirements under Sec. 12-10-46(b), Late Night Establishment Written Safety Plans must include:

- (1) 24-hour contact information for the business owner, manager, or other designee;
- (2) Must provide a site plan for the business delineating the locations of entrances and exits used by patrons and the locations of exterior lights and cameras. The site plan must be clear, legible, and accurately reflect the establishment's current layout;
- (3) If occupancy limits are up to 150 people, in conjunction with security personnel, the establishment must employ two APOSTC officers: one in the interior and one for the exterior; APOSTC officers must be onsite 10:00pm through 30 minutes after doors are locked or until all patrons have dispersed.
- (4) If occupancy limits are over 150 people, in conjunction with security personnel, the establishment must employ three APOSTC officers: one for the interior and two for the exterior; APOSTC officers must be onsite 10:00pm through 30 minutes after doors are locked or until all patrons have dispersed.
- (5) Must provide lighting to all designated parking areas including onsite and offsite parking utilized by patrons of the business;
- (6) Must provide high-definition security cameras that provide video monitoring and recording, without audio recording capacity, of the interior and exterior of each entryway into the late-night business; all seating areas, including all spaces accessible to the public, employee common areas, excluding bathrooms and place signage visible to the public that the premises are subject to video surveillance.
- (7) Unless designated as a private club, must close at 2:00 a.m. on Sunday mornings.
- (8) After one qualifying serious incident, a previously approved private establishment would have their "private establishment" business license revoked, and they would need to apply for a regular business (appropriate for their establishment type) and would be subject to operating hours as described above.

Sec. 12-10-47. - Information required from employment applicants; certificate required.

- (a) Every person seeking employment as a manager of an establishment subject to this article shall, prior to accepting employment, file with the city and

with his or her employer a certificate on forms made available by the city containing the following information and statements:

- (1) The name, age, place of birth and place of residence of the applicant during the preceding three years.
 - (2) If the applicant has during the three years immediately preceding the date of such application had a license for the sale of intoxicating beverages issued by the state alcoholic beverage control board revoked.
 - (3) If the applicant has been convicted within three years prior to the date of such certificate, of:
 - a. A felony;
 - b. Any law of the state or provision of this article or other ordinance of the city regulating or controlling intoxicating beverages;
 - c. Solicitation;
 - d. Illegally using, carrying or possessing a pistol or other dangerous weapon;
 - e. Making or possessing burglar's instruments;
 - f. Buying or receiving stolen property;
 - g. Theft of property;
 - h. Unlawful entry of a building;
 - i. Unlawful breaking and entry of a motor vehicle;
 - j. Unlawfully possessing or distributing habit forming narcotic drugs;
 - k. Vagrancy;
 - l. Violating any law or ordinance prohibiting sale or possession of obscene literature or material;
 - m. Indecent exposure; or,
 - n. Prostitution.
- (b) Every person seeking employment as a hostess, cashier, bartender, waiter, waitress, or in any job category the duties of which require direct contact with customers in the establishment shall file the same certificate required of managers with the licensee and no such person or manager shall be employed who answers affirmatively to questions given in subsections (a)(2) or (3) of this section, unless they shall have first obtained the written consent of the city council.

Sec. 12-10-48. - Employment without certificate unlawful.

It shall be unlawful for any licensee to employ any person from whom a certificate is required under section 12-10-47 without first obtaining the required certificate.

Sec. 12-10-49. - False responses unlawful.

It shall be unlawful for any person to answer falsely the certificate required by section 12-10-47.

Sec. 12-10-50. - Certificate to be maintained on premises of establishment.

The certificate required by section 12-10-47, or a copy thereof, shall be maintained on the premises of an establishment for current employees at all times and shall be available for inspection by any authorized representative of the city at any time while the establishment is open for business.

Sec. 12-10-51. - Manager required to be on premises during business hours.

- (a) It is unlawful for a licensed entertainment establishment or licensed club to remain open for business unless the licensee, a manager or a person in charge, as defined by ABC regulations, is on the premises. The name of the responsible person shall be posted in a public area of the establishment, readily available to ABC board personnel and the police department, in letters not less than one inch in size, during the time he is in charge.
- (b) The licensee shall be responsible for the provision of alcoholic beverages at all licensed entertainment establishments and licensed clubs.

Sec. 12-10-52. - Interior security personnel required at certain times; security camera systems required; premises to remain clean and free of trash and debris.

- (a) ~~After 10:00 p.m.~~ Between the hours of 7:00 p.m. to 11:59 p.m. and while open to the public, all establishments and clubs shall provide minimum interior security personnel of a number equaling one security person per each occupancy level, as established according to the city's technical codes,

as amended, city's fire marshal of 150 occupants, or any portion thereof. For example, if the occupancy level of an establishment is 500, at least four interior security personnel are required. If the occupancy level is 50, at least one interior security person is required. If the establishment is open past 11:59 p.m. or has one serious incident within the previous 12 months, the establishment will be considered late-night and must adhere to the Late-Night Safety plan requirements.

- (b) All establishments shall maintain a security camera system capable of recording and retrieving video images. Cameras must be equipped with a timestamp set to the correct date and time and must be activated and recording video during all hours of operation. These cameras shall, at a minimum, continuously capture interior and exterior images of the entrance and exit doors. Cameras shall be located at all pedestrian and employee entry and exit points. All interior seating areas including any area accessible to the public and employee common areas, excluding bathrooms, must be captured by these cameras. Additionally, the exterior of the building, including adjacent designated parking lots, must also be recorded. These cameras shall be of high enough quality to capture and record facial-quality identification in low light or dimly lit areas or environments. These cameras shall also have capabilities of capturing and recording the same facial-quality identification in normal or daylight situations. This camera system must also be capable of recording and storing the video images for a length of time or no less than 30 days. This camera system must also have the capabilities of downloading these saved images to an external device when needed for review by law enforcement. The establishment will not be allowed to operate until the cameras are functional and have been inspected by the Chief of Police or his or her designee. Each business shall have at least one employee trained on the operation and downloading features of the system and must be able to respond to the business as needed for video or image review or downloading. In the event of an incident involving injury or death to a patron, member of the public or employee of the establishment, video images recorded for the day of and at the time of the incident shall be stored for a minimum of 30 days. Each establishment required to have cameras pursuant to this provision shall prominently display signage on the premises to notify patrons of the presence and use of security cameras. Existing establishments shall comply with security camera system requirements within 45 days of the effective date of the ordinance from which this article is derived. New establishments shall have compliant, operational security camera systems upon opening.

- (c) All establishments and clubs shall maintain their premises, and all accessory premises such as parking lots or open space adjacent to such premises, clean and free from trash and debris at all times.

Sec. 12-10-53. - Duty of manager to maintain order on premises; duty to report incidents.

- (a) It shall be the duty of each owner, and of each manager or supervisor at any time charged with the management and supervision of any retail liquor or retail malt or brewed beverage licensed premises, or any other type of establishment where intoxicating beverages are sold or provided for on-premises consumption, while open to the public, to maintain order upon the premises and to exclude from the premises any person who is drunk and disorderly or who commits any breach of the peace, or who uses offensive, disorderly, threatening, abusive or insulting language, conduct or behavior with the intent to provoke a breach of the peace, or whereby a breach of the peace might be occasioned.
- (b) It shall be the duty of each owner, and of each manager or supervisor at any time charged with the management and supervision of any retail liquor or retail malt or brewed beverage licensed premises, or any other type of establishment where intoxicating beverages are sold or provided for on-premises consumption, while open to the public, to maintain order upon the accessory premises such as parking lots or open space adjacent to such premises, to control crowds, admittance lines and patrons congregating at the property to prevent nuisance to adjacent residents and businesses, and to exclude from the accessory premises any person who is drunk and disorderly or who commits any breach of the peace, or who uses offensive, disorderly, threatening, abusive or insulting language, conduct or behavior with the intent to provoke a breach of the peace, or whereby a breach of the peace might be occasioned.
- (c) It shall be the duty of each officer, owner, manager or person in charge of any retail liquor or retail malt or brewed beverage premises, or any other type of establishment where intoxicating beverages are sold or provided for on-premises consumption, within the city to immediately make an appropriate report by telephone to the police division of each assault, assault and battery, or affray occurring on the licensed premises while such premises are open for business. It shall further be the duty of the person to make a written report of such incidents to the police department within 36

hours. Failure to make either report shall be grounds for revocation or suspension of the license for the operation of the establishment.

- (d) Habitual breaches of the peace, affrays, assaults, assaults and batteries, and the continued and habitual presence of disorderly persons upon the premises of a licensee shall be grounds for revocation or suspension of the license for the operation of the establishment. In addition, repeated and habitual incidents of vandalism, breaches of the peace, disorderly conduct or other violations of state and local laws and ordinances, including violations of ~~title~~ Title 11, chapter 8, pertaining to noise, which unreasonably interfere with the peace, quiet, comfort and repose of persons of ordinary sensibilities in the neighborhood where such incidents may be attributable to the presence in the neighborhood of the licensed establishment shall also be grounds for revocation and suspension of the license of the establishment.

Sec. 12-10-54. - Compliance with local or state alcoholic beverage control laws required.

Nothing in this article shall be construed to allow activity which is contrary to state or local alcoholic beverage control laws including without limitation laws regulating minors and laws regulating admittance by persons under 19 years of age to establishments defined as and licensed as lounges according to state beverage control board regulations.

SECTION 2. EFFECTIVE DATE. This Ordinance shall become effective upon passage, approval and publication or as otherwise provided by law.

SECTION 3. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by declaration of any court of competent jurisdiction, such declaration shall not affect the validity of the remaining portions of this ordinance.