

ORDINANCE NO. 25-04-16

**AN ORDINANCE TO ADDRESS PUBLIC NUISANCE BUSINESSES IN
BERKELEY COUNTY; TO PROVIDE FOR PENALTIES THEREOF;
AND OTHER MATTERS RELATED THERETO**

NOW, THEREFORE, BE IT ENACTED by the Berkeley County Council, in a meeting duly assembled,

That the Code of Ordinances, Berkeley County, South Carolina, is hereby amended by adding an Article which shall read as follows:

ARTICLE VI: NUISANCE BUSINESSES

Sec. 38-110. Definitions.

As used in this Article, the following terms shall have the definition below provided:

- (a) *Continuous breach of the peace*: A pattern of repeated acts or conduct which either:
 - (1) directly disturbs the public peace; or (2) disturbs the public peace by inciting or tending to incite violence.
- (b) *Public nuisance*: Conduct, conditions, events, circumstances that unreasonably interfere, or cause unreasonable interference, with the rights of the public, wherever such conduct, conditions, events, or circumstances may occur, including, but not limited to, a business or other commercial or residential establishment, a public place, or any place where the public congregates or is invited or permitted to congregate. *Public nuisance* also includes:

- 1. Those conditions or circumstances constituting a nuisance as set forth in S.C. Code 1976, § 15-43-10; specifically, the construction, establishment, continuance, maintenance, use, ownership, occupation, the leasing or releasing of any property, building or other place used for the purposes of lewdness, assignation, prostitution, human trafficking, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace.
- 2. Conduct which annoys, injures, subverts or endangers the public's order, economy, resources, safety, health, welfare, comfort, repose or offends public decency.

3. Public nuisance also includes and is founded upon the sound principle set forth in South Carolina case law that "if one maintains a place where the laws are publicly, repeatedly, persistently, and intentionally violated, then such place would become a common or public nuisance." *State v. Turner*, 198 S.C. 499, 505, 18 S.E.2d 376, 378 (1942).
- (c) *DOR*: The South Carolina Department of Revenue, which regulates alcohol beverage licensing.
 - (d) *Approved*: Approved by the appropriate regulating authority.
 - (e) *Bring your own bottle/BYOB*: Permitting alcoholic beverages to be brought into an establishment for consumption, rather than, or in addition to, those alcoholic beverages sold under valid license of the State of South Carolina.
 - (f) *Consume or consumption*: Ingestion of alcoholic beverages or the possession of any alcoholic beverages in any type of drinking container or in any bottle, can or other container upon which the seal, cork or cap has been opened.
 - (g) *Excessive public safety response*:
 1. The recurring deployment of law enforcement officers, peace or code enforcement officers commissioned pursuant to S.C. Code 1976, § 4-9-145, fire marshals, or emergency services personnel to a business, establishment, property, or structure, whether commercial or residential, on a frequency that exceeds the frequency of such deployments to other similarly situated businesses, establishments, properties, or structures, whether commercial or residential, during the preceding 12 months;
 2. The occurrence of two or more situations at or associated with the business, establishment, property or structure, whether commercial or residential, of unsafe traffic or crowd control issues resulting in the request for emergency assistance, including the presence of law or code enforcement officers during the preceding 12 months; provided, however, this does not include instances when traffic control or crowd control was requested in advance of a scheduled event for which a permit was issued or prior approval was provided by the regulating authority;

3. The generation of six or more incident reports or citations, or the execution of six or more search warrants, or a combination thereof, at a business, establishment, property or structure, whether commercial or residential, for any of the following occurrences during the preceding 12 months:
 - i. Violation of any state or local alcohol law;
 - ii. Violation of any federal, state or local narcotics law;
 - iii. Violation of any state or local gun law;
 - iv. Assaults;
 - v. Crimes of violence against another person(s);
 - vi. Crimes against property;
 - vii. Violations of International Fire Codes; or
 - viii. Significant traffic hazards.
- (h) *For-profit event*: Any event other than a non-profit event.
- (i) *Rural event venue*: an intermittent use located in a rural setting, on a parcel of at least five acres, that may utilize temporary or permanent structures for the purpose of holding a private event to include weddings and private social events.
- (j) *Nightclub*: Any establishment, including but not limited to, lounges, taverns, bars, dance halls, pool halls, community centers, recreation centers, convention centers, multi-purpose centers, and any other establishment that serves alcohol and/or beer for consumption on-premises or the sale of mixing ingredients if they allow patrons to bring their own alcohol (BYOB) and where the sale of prepared food, if any, is accessory to the primary use and that provides entertainment activities through any of the following: amplified music, whether generated through live performance or programmed or recorded music, and dancing. Included in this definition are nightclubs with outdoor and/or indoor operations and venues that provide a cover charge to enter for the purpose of a live performance. Notwithstanding, the foregoing, the requirements and definitions associated with commercial event venues as set forth under Berkeley County Ordinance Appendix A, Article 6, Section 6.4.7(3) shall be excluded from the definition of Nightclub and the application of this Article.
- (k) *Nightclub owner*: The person(s) whose name(s) appear as the applicant(s) on the permit on file with Berkeley County, the person who owns the building/property

where a nightclub is located, the person who may lease or is otherwise in control of the nightclub, or such other parties who are responsible for activities in or upon the building/property where a nightclub is located.

- (l) *Non-profit event*: Any event designed and intended to produce profits for the benefit of and/or subsequent disbursement by organizations which are tax exempt under federal tax laws and Internal Revenue Service regulations.
- (m) *Overcrowding*: Admittance of any person beyond the approved capacity of a building or a portion thereof.
- (n) *Public safety concerns*: Acts of violence resulting in physical injury, illegal drug activity, the occurrence of underage drinking, violation of fire codes, overcrowding, or the occurrence of significant traffic hazards.
- (o) *Regulating authority*: The official, officer or entity charged with regulating the provisions of this Article, including but not limited to, the sheriff or his/her designee, or code enforcement officers.
- (p) *Live performances*: Any and all activities in the entertainment industry at which an artist or performer may appear and perform in person.

Sec. 38-111. Nuisances offending public decency, peace, and order.

The following actions or inactions are hereby declared to be public nuisances affecting public decency, peace, and order, whether such violations are of an intermittent, cyclical, continual, reoccurring, or constant nature:

- (a) The act of generating, enabling, or contributing to the occurrence of unlawful behavior, including loitering, littering, vandalism, illegal parking, traffic congestion, by an absence of or failure to adopt or implement appropriate property management policies and practices, by a failure to exercise proper control over the property, by a failure to supervise guests, invitees, clients, customers, patrons, or any person providing some form of compensation for some type of product or service at the property, or by an absence of or failure to implement and adopt appropriate security measures.
- (b) Operating or maintaining any business, establishment, property or structure, whether commercial or residential, where gambling devices or equipment, slot machines,

punch boards and other such contrivances of similar character involving any elements of chance as a consideration are implemented or any type of gambling, bookmaking, wagering or betting is carried on, except where such specific form of gambling is permitted by law.

- (c) Operating or maintaining any business, establishment, property or structure, whether commercial or residential, operated as a bawdy house, house of assignation, place of prostitution, or otherwise used and maintained for the commercial or criminal purposes of providing or supporting unlawful sexual activity or human trafficking in violation of federal or state law or local ordinances.
- (d) Operating or maintaining any business, establishment, property or structure, whether commercial or residential, where alcohol or intoxicating liquors are manufactured, sold, bartered or given away in violation of federal or state law or local ordinances.
- (e) Operating or maintaining any business, establishment, property or structure, whether commercial or residential, where required fire marshal or other safety plans are not in place, or where persistent violations of law occur because of a failed or ineffective fire marshal or other safety plan.
- (f) Operating or maintaining any business, establishment, property or structure, whether commercial or residential, where acts of sale, manufacture, possession, or distribution of controlled substances occur in violation of federal or state law and local ordinances.
- (g) Operating or maintaining any business, establishment, property or structure, whether commercial or residential, where violations of federal or state laws or county ordinances occur with disproportionate frequency or intensity such that they require an excessive public safety response.

Sec. 38-112. Penalties.

- (a) A person who erects, establishes, continues, maintains, uses, owns, occupies, leases, or releases any building, establishment, property, structure, or other place, whether commercial or residential, in such a way as to create a public nuisance affecting public decency, peace, and order shall be guilty of a misdemeanor and shall be subject to a fine not exceeding \$500.00 and imprisonment not exceeding 30 days. Court costs are not included in any fine imposed by the court.

- (b) Each day any violation of this Article continues shall constitute a separate offense.
- (c) Upon entry of an order of conviction for the violation, the business, establishment, property, structure, or other place, where such public nuisance affecting public decency, peace, and order exists shall be deemed a public nuisance.

Sec. 38-113. Criminal enforcement; penalties.

The Berkeley County Sheriff's Office and Berkeley County Code Enforcement shall have authority to enforce the ordinance codified herein and upon observation of or receipt of reliable information concerning any condition or occurrence constituting a public nuisance affecting public decency, peace, and order, may enforce this ordinance through issuance of a uniform traffic ticket, warrant, or by any other lawful process.

Sec. 38-114. Emergency abatement.

If the regulating authority determines that the condition or occurrence constituting a public nuisance affecting public decency, peace, and order and that the continued existence of such condition or occurrence through the continued operation of the offending business, establishment, property or structure, whether commercial or residential, creates an imminent danger to the public, the regulating authority is hereby authorized to undertake immediate, emergency abatement of such condition or occurrence by securing, shuttering, or closing of the offending business, establishment, property or structure in such a manner so as to ensure that all business activity ceases. In so securing, shuttering, or closing the offending business, establishment, property, or structure, the regulating authority shall place or cause to be placed on the exterior of offending business, establishment, property, or structure, a notice that provides: "It shall be unlawful for any person to enter this premises except with the express written permission of the Berkeley County Sheriff's Office or Berkeley County Code Enforcement." Permitted entry after such securing, shuttering, or closing by the regulating authority may occur only at the discretion of the Berkeley County Sheriff's Office or Berkeley County Code Enforcement for reasons including, but not limited to, inspection by federal, state, or local government officials, and inventory or retrieval of essential contents by the owner or lessee of the property. A business, establishment, property, or structure that is secured, shuttered, or closed pursuant to this Article shall not resume business operations until the regulating authority determines that the condition or occurrence that constituted a public nuisance affecting public decency,

peace, and order that for which such business, establishment, property, or structure is secured, shuttered, or closed has been abated. Any finding or decision of the regulating authority may be appealed to the County Administrator or through a declaratory judgment action and motion for temporary injunction filed with the Circuit Court and served on the County Administrator pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. This Article applies to licensed businesses as well as businesses and commercial or residential establishments that operate, or attempt to operate, without proper licensure or permitting.

Sec. 38-115. Ordinance provisions.

- (a) The omission of any specific requirement or provision from this Article shall not be interpreted as permitting any variation from the general meaning and intent of the ordinance codified herein as commonly inferred or interpreted and should occasion arise as to such intent or meaning, the interpretation of the governing authorities shall hold.
- (b) Should any section or provision of this Article be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the Article as a whole, or any part thereof, other than the part so held to be unconstitutional or invalid.
- (c) Whenever any requirements of this Article are in conflict with the provisions of any other legally adopted rules or regulations, the most restrictive law or requirement shall govern.
- (d) The provisions of this Article are in addition to, and not in lieu of, any other enforcement provision or process permitted by law. Nothing in this Article supplants, alters, or limits a statutory or common law right of a person to bring an action in court or the right of Berkeley County to prosecute person for the establishment of a nuisance.

Secs. 38-116-125. Reserved.

NIGHTCLUB BUSINESS PERMITS AND OPERATING REQUIREMENTS

Sec. 38-126. Nightclub permits.

- (a) *Permit required:* A building, part of a building, or outdoor location may be occupied and used as a nightclub by a nightclub owner, either on a regular, ongoing basis or as a one-time event, only when a permit for such use has been issued to such nightclub owner and remains in effect under the provisions of this Article. Throughout the effective term of any permit issued in accordance with this Article, the nightclub owner shall be responsible for maintaining the facilities of the nightclub and operating the nightclub in a manner consistent with the requirements of this Article. Operation of a nightclub without a valid nightclub permit shall be constitute a violation of this Article. This Article shall not be construed to require a nightclub permit for any commercial event venues as set forth under Berkeley County Ordinance Appendix A, Article 6, Section 6.4.7(3) shall be excluded from the definition of Nightclub and the application of this Article.
- (b) *Permit application and issuance:* Nightclub permit applications may be obtained from the Berkeley County Sheriff's Office and shall be returned to the Berkeley County Sheriff's Office upon completion for review and consideration for approval. A completed nightclub permit application must identify whether the permit is sought for operation on a regular basis or for a one-time event, contain the name, address, and phone number of the nightclub, and the following information for the nightclub owner(s) and all partners, owners, or principals of the nightclub owner(s): First, middle and last name(s); Date(s) of birth; social security number(s); phone number(s); and residential address(es). The permit shall be issued by the Berkeley County Sheriff within thirty (30) days of receipt of the following: A completed nightclub permit application; a passing fire code inspection that includes a copy of the posted occupancy certificate issued by the applicable governing authority; evidence of liability insurance providing coverage for invitees on the premises of the nightclub and incidents occurring upon the premises of the nightclub issued to the nightclub owner(s); confirmation that the address of the nightclub has not required or been the subject location of excessive public safety responses within the preceding twelve (12) months; confirmation that neither the nightclub owner(s), nor his/her/its partners, owners, or principals, have operated a nightclub in violation of the provisions of this Article prior to the submission of the nightclub permit application;

a copy of all licenses and permits issued to the nightclub owner by the DOR for the nightclub; and payment of a one-time, non-refundable permit fee of \$50.00.

- (c) *Permit validity:* Nightclub permits granted for regular, continuous, operation shall remain effective as long as the nightclub owner identified on the nightclub permit continues to operate the nightclub at the address listed on the nightclub permit in compliance with the provisions of this Article. Nightclub permits granted for a one-time event shall remain effective for the duration of the event specified on the nightclub permit application and shall expire thereafter. Any nightclub permit shall terminate upon the occurrence of any of the following: a change of the identity of the nightclub owner(s) or his/her/its partners, principals, or owners as listed on the nightclub permit application; the location of operation of the nightclub; lapse of the insurance policy evidenced by the documentation provided with the nightclub owner's nightclub permit application – not to include the expiration of the policy if renewed or replacement of the policy with a policy providing like coverage; the occurrence of excessive public safety responses at the nightclub location or its immediate vicinity; or the revocation of any alcohol licenses or permits issued by the DOR.
- (d) *Emergency temporary suspension:* The regulating authority may temporarily suspend a nightclub permit upon a determination that immediate suspension is necessary to restore order due to the nightclub owner's failure to comply with this Article. In addition to any violations of provisions contained in this Article, the occurrence of excessive public safety responses shall be evidence supporting a decision to temporarily suspend a nightclub permit. The following process and procedure shall apply to any temporary suspension of a nightclub permit:
1. The facility shall be vacated and closed effective immediately upon verbal notification to the nightclub's owner, manager, agent, or on-site representative and shall remain closed for not less than 24 hours to allow for the restoration of order and establishment of necessary security requirements.
 2. The nightclub may reopen thereafter; provided, that the situation giving rise to the emergency temporary suspension of the permit has been addressed effectively as determined by the regulating authority.

3. Within one (1) business day of the temporary suspension of the nightclub's permit, the regulating authority shall submit a report outlining the basis for the decision to suspend the permit(s) to the Sheriff or his designee.
 4. If the nightclub owner fails to effectively address and cure the condition giving rise to the emergency temporary suspension as identified in the report of the regulating authority within ten (10) days, the Sheriff may revoke the nightclub permit.
- (e) *Right of Appeal.* Any denial of a nightclub permit application, or suspension or revocation of a nightclub permit may be appealed to the County Administrator or through a declaratory judgment action and motion for temporary injunction filed with the Circuit Court and served on the County Administrator pursuant to Rule 65 of the South Carolina Rules of Civil Procedure.

Sec. 38-127. Operation requirements for all nightclubs.

Nightclub owners and operators and/or lessees shall be responsible for controlling and limiting the occurrence of the following public nuisances and public safety concerns:

- (a) Loitering, littering, vandalism, unreasonably loud noise, traffic congestion, and illegal parking at the location of the nightclub and nearby properties utilized by the nightclub's patrons.
- (b) Underage consumption of alcohol through the requirement that all entrants provide a valid picture ID at the door and that all person aged twenty-one (21) years of age, or older, be issued a non-removable, easily identifiable armband with the current date.
- (c) The presence within the nightclub of anyone under the age of eighteen (18) years of age through the requirement that all entrants provide a valid picture ID at the door.
- (d) Use of pyrotechnics or fire hazardous materials.
- (e) Overcrowding and Violations of the International Fire Code provisions regarding capacity, obstructions of aisles, passageways, or other means of egress to exits, and maintenance of operable exits.

Sec. 38-128. Operating requirements for nightclubs declared a public nuisance.

- (a) *Applicability:* All policies set forth herein must be adhered to if the nightclub has been declared a public nuisance in accordance with the public nuisance ordinances for Berkeley County.
- (b) *Hours of operation:* Nightclubs operating hours shall be from noon to 2:00 a.m. At 2:30 a.m. all customers shall be out of the building and off the property, including the parking lot and any surrounding areas used for parking patrons of the nightclub. The owner, management, employees and performer/band members will only be allowed inside the building after 2:30 a.m. to remove equipment or complete normal business shut down and cleaning. This section pertains to nightclub operation hours; the sale of alcohol is governed by the South Carolina Department of Revenue.
- (c) *Surveillance systems:* The business must have a working security video system with low light recording capabilities. The system must record all areas inside and outside of the business and property. At least one on-site personnel must be able to access the system if requested by law enforcement. All security cameras are subject to inspection at any time by the regulating authority.
- (d) *Weapons and other dangerous items:* Nightclub owner(s) shall be responsible to ensure that no guns, knives, brass knuckles, or other paraphernalia that may be used as weapons are brought into the nightclub except by security guards duly licensed and authorized to carry said weapons.
 - 1. Hand wand metal detectors shall be utilized by bonded security guards on all persons entering the club.
- (e) *Number of persons admitted:* Nightclub owners or nightclub entertainment promoters shall be responsible for recording the number of persons admitted to the facility.
 - 1. Nightclub staff is responsible for keeping count of the patrons inside the club by some mechanical or electronic counting device. Failure to provide an accurate count to the regulating authority may result in the necessity for a manual head count. Should this be necessary the event will be stopped by nightclub management and will remain stopped while the manual count is being completed. If numbers are found over the posted occupancy, this shall serve as the basis for a violation of the safe operations portion of this Article.

(f) *Security:*

1. Nightclubs shall provide a minimum of two bonded and SLED certified security guards and shall provide for patrol of the areas of parking for the club's patrons.
2. Bonded security guards shall utilize a hand wand metal detector on all persons entering a nightclub.
3. Nothing contained herein would prohibit a club owner or promoter from having more security than listed.

(g) *Live performances (including nightclubs with occupancy numbers over 200):*
Additional security measures will be required for nightclubs hosting live performances and having occupancy numbers over 200 people.

1. A separate (live performance) permit must be obtained, from the sheriff's office, for live performances at least 15 days in advance of the planned event and will be provided at no cost to a nightclub owner or promoter who already holds a valid county permit. If the person applying for the live performance permit is not already a valid permit holder, then the application process set forth above must be followed.
2. Hours for live performances shall be strictly adhered to. Failure to do so shall result in a violation of the ordinance and a fine for the nightclub owner and/or the promoter and may result in revocation of the permit(s) altogether.
3. No artist may be added to the live performance after the permit has been obtained. If this occurs, it will serve as a violation of the ordinance and result in a fine for the nightclub owner, and could result in revocation of the permit(s). If another artist/entertainer is to be added another permit must be obtained and the 15 days prior to the performance clause must be adhered to.

Sec. 38-129. Enforcement. Violations and penalties.

- (a) A violation of any provision of this Article shall be a misdemeanor. Unless otherwise provided for in this section, upon conviction each violation shall subject the defendant to a mandatory minimum fine of not less than \$500.00, and/or not more than 30 days in jail or both. Upon entry of an order of conviction for the violation

the business, establishment, property, structure, or other place, to which such violation related shall be deemed a public nuisance.

- (b) The Berkeley County Sheriff's Office and Berkeley County Code Enforcement shall have authority to enforce this Article and upon observation of or receipt of reliable information concerning any violation of this Article may enforce this ordinance through issuance of a uniform traffic ticket, warrant, or by any other lawful process.
- (c) The issuance of a traffic ticket or warrant or imposition of a penalty for any violation of this Article shall not excuse the continued violation or permit it to continue. Any violation or continued, daily violation shall constitute a separate offense for purposes of the penalties and remedies specified herein.
- (d) If any court rules that any violation is considered a felony, said ruling shall supersede the penalties provided for in this Article.

Sec. 38-130 Ordinance provisions.

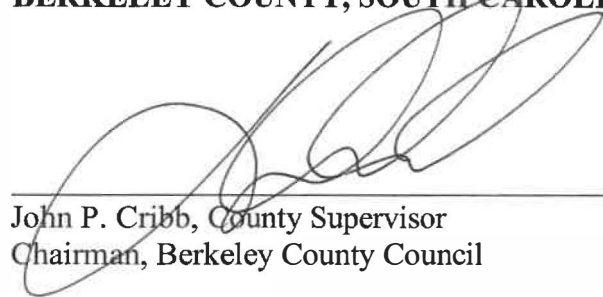
- (a) The omission of any specific requirement or provision from this Article shall not be interpreted as permitting any variation from the general meaning and intent of the ordinance codified herein as commonly inferred or interpreted and should occasion arise as to such intent or meaning, the interpretation of the governing authorities shall hold.
- (b) Should any section or provision of this article be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the Article as a whole, or any part thereof, other than the part so held to be unconstitutional or invalid.
- (c) Whenever any requirements of this Article are in conflict with the provisions of any other legally adopted rules or regulations, the most restrictive law or requirement shall govern.
- (d) The provisions of this Article are in addition to, and not in lieu of, any other enforcement provision or process permitted by law. Nothing in this Article supplants, alters, or limits a statutory or common law right of a person to bring an action in court or the right of Berkeley County to prosecute person for the establishment of a nuisance.

Secs. 38-131-139. Reserved.

ADOPTED this 28th day of April 2025.


[SEAL]

BERKELEY COUNTY, SOUTH CAROLINA



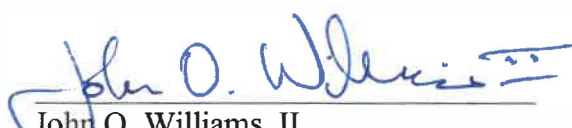
John P. Cribb, County Supervisor
Chairman, Berkeley County Council

Attest:



Amanda T. Troy
Clerk to Berkeley County Council

Approved as to form:


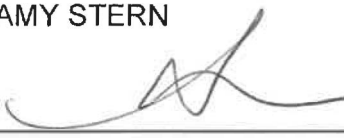
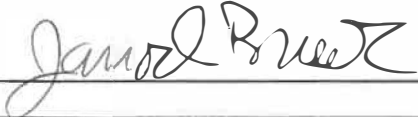
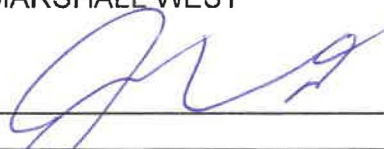





John O. Williams, II
Berkeley County Attorney

First Reading:	February 25, 2025
Second Reading:	March 24, 2025
Public Hearing:	April 28, 2025
Third Reading:	April 28, 2025

**Bill No. 25-05, An Ordinance to Address Public Nuisance Businesses in Berkeley County;
to provide for Penalties thereof; and other matters related thereto (BCSO)**

MEMBERS OF BERKELEY COUNTY COUNCIL

District 1 THOMAS D. OWENS Voting <u>Aye</u> 	District 5 AMY STERN Voting <u>Aye</u> 
District 2 JARROD BROOKS Voting <u>Aye</u> 	District 6 MARSHALL WEST Voting <u>Aye</u> 
District 3 PHILLIP OBIE, II Voting <u>Aye</u> 	District 7 CALDWELL PINCKNEY, JR. Voting <u>Aye</u> 
District 4 JOE T. NEWELL Voting <u>Aye</u> 	District 8 STEVE C. DAVIS Voting <u>N/A</u> <u>Absent</u>