PART II - CODE OF ORDINANCES
Chapter 13 - LICENSES, PERMITS AND BUSINESS REGULATIONS
ARTICLE II - AMUSEMENTS
DIVISION 4. - NIGHT CLUBS

AN ORDINANCE AMENDING DIVISION 4 “DANCES AND DANCE HALLS” OF ARTICLE II “AMUSEMENTS” OF CHAPTER 13 “LICENSES, PERMITS AND BUSINESS REGULATIONS” OF THE CODE OF ORDINANCES; RENAMING DIVISION 4 “NIGHT CLUBS”; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A PENALTY; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCES IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

Whereas,.....

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WACO, TEXAS:

Section 1. That Division 4 “Dance and Dance Halls” of Article II “Amusements” of Chapter 13 “Licenses, Permits, and Business Regulations” the Code of Ordinances of the City of Waco, Texas, shall be and is hereby amended to read as follows:

DIVISION 4. - NIGHT CLUBS

Sec. 13-91. - Definitions.

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

Class A shall mean a Night Club where dancing is permitted for persons between the ages of 14 through 18 only.

Class B shall mean any night club other than a Class A Night Club.

Dance School shall mean an establishment: (1) where persons contract for instruction in dance methods, styles, techniques, and disciplines recognized by professional dance organizations; (2) the dance instruction is provided only by persons trained in dance methods, styles, techniques, and disciplines recognized by professional dance organizations; (3) the primary purpose of the dancing at the establishment is for the education of the persons contracting for dance instruction and not for entertainment of the general public; and (4) no dancing occurs on premises except by the instructor and the person contracting for dance instruction.

Day or days shall mean calendar days.

Health officer shall mean the individual designated as the health officer or health authority for the city or his designee.

Licensing officer shall mean the official designated by the city manager to perform the functions set out
Night Club shall mean any room, place or space where dancing by patrons or customers is permitted and to which the public generally may gain admission with or without the payment of a fee or other consideration.

Private club shall mean an association of persons for the promotion of some common object, which operates not for a profit a place for the accommodation of its members and guests only.

Sec. 13-92. - License required and exceptions.

(a) A person commits an offense if the person operates a night club or allows a building that he has an ownership interest in to be operated as a night club, without first obtaining a license from the city.

(b) A person commits an offense if the person operates a night club without the appropriate class of night club license.

(c) It is a defense to prosecution under this section that the actor is conducting a night club at a:

(1) Private residence from which the general public is excluded;

(2) Place owned by the federal, state, or local government;

(3) Public or private elementary school, secondary school, college, or university;

(4) Place owned by a religious organization;

(5) Private club;

(6) Dance School;

(7) A hotel or motel that contains a dance floor that is not promoted or advertised for use by members of the general public who are not occupants of the hotel’s or motel’s guest rooms; or

(8) An establishment that:

    (a) has a certificate of occupancy for a restaurant;

    (b) derives 50 percent of more of its gross revenues on a quarterly basis from the sale of food and nonalcoholic beverages; and

    (c) does not charge an entrance or admission fee.

Sec. 13-93. - License application.

(a) An application for a license to operate a night club must be made to the licensing officer on the form prescribed by that official. The application must include:

(1) the name and physical address of the night club;
(2) the names, addresses, and birthdates of each person described in subparagraph (c); and

(3) authorization for the City to conduct a criminal background check on each person described in subparagraph (c).

(b) The application must be accompanied by a sketch or diagram showing the configuration of the premises. The sketch need not be professionally prepared, but it must show the interior dimensions of the business to an accuracy of plus or minus six inches.

(c) If a person who wishes to operate a night club is an individual, he must sign the application for a license as the applicant. If the person who wishes to operate a night club is other than an individual, each individual who has a 20 per cent or greater interest in the business must sign the application for a license. Each applicant must meet the requirements of Section 13-95 and each applicant will be considered a licensee if the license is granted.

(d) All applications must be accompanied by a nonrefundable application fee in an amount determined by the city council by minute entry or as a part of the annual budget.

(e) An application shall not be considered to have been filed until the application fee is paid and all information required by the application form is submitted.

Sec. 13-94. - Application review.

The licensing officer shall forward a copy of all night club license applications to the police department, traffic department, health department, fire department, planning department, and inspection department. Upon receipt of the copy of the application, each department shall make such inspection and/or investigation of the applicant and the premises that is necessary to the enforcement of ordinances and laws for which the department has responsibility. Upon completion of the review, the reviewing department shall forward to the licensing officer its approval or disapproval of the application. If the application is disapproved, the department shall clearly set forth its reason for the disapproval in writing to the applicant.

Sec. 13-95. - License issuance or denial; term.

(a) Issuance. The licensing officer shall issue a night club license, upon payment of the license fee, to an applicant within 30 days of the filing of an application, unless he finds one or more of the following is true:

(1) An applicant is under 18 years of age;

(2) An applicant is overdue in payment to the city of taxes, fines, fees, or penalties assessed against or imposed upon the applicant or the applicant’s spouse;

(3) A fee required by this division has not been paid;
(4) An applicant has falsely answered a question or request for information on the application form;

(5) An applicant:
   a. has been convicted of a violation of a provision of this article within 12 months immediately preceding the application;
   b. has been denied a license or the renewal of a license under this article within 12 months immediately preceding the application; or
   c. has had a license issued under this article revoked within the preceding 12 months;

(6) An applicant has been convicted of a crime involving the selling, distribution, manufacture, possession, or use of a controlled substance or of controlled substance paraphernalia; or solicitation to purchase or acquire a controlled substance, controlled substance analogue, dangerous drug, or volatile chemical; or the sale of an alcoholic beverage without a permit or license from the state; or prostitution or promotion of prostitution; or manifesting the purpose of engaging in prostitution; or unlawfully carrying a weapon, provided:
   a. If the conviction was for a misdemeanor offense, less than two years have elapsed since the date of the conviction or the date of release from confinement for the conviction, whichever is the later date; or
   b. If the conviction is for a felony offense, less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date; or
   c. If the conviction is for two or more misdemeanor offenses or a combination of misdemeanor offenses occurring within any 24-month period, less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction; or
   d. Provided further that the fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

(7) An applicant has been operating the proposed business as a night club without a valid license under this division within twelve months of the application;

(8) Alcoholic beverages are possessed, consumed, or sold on premises or to be used by the applicant for a Class A night club; or

(9) Operation of the proposed night club would violate the city’s zoning ordinance.
PART II - CODE OF ORDINANCES
Chapter 13 - LICENSES, PERMITS AND BUSINESS REGULATIONS
ARTICLE II. - AMUSEMENTS
DIVISION 4. - NIGHT CLUBS

(c) Term. No license shall be effective until it has been issued. All licenses for night clubs issued under the provisions of this article shall be valid for a period of two years from the date of issuance. The date of issuance shall be stated on the license.

(d) Other license. Acquisition of a license under this article is a separate and distinct requirement from any other licensing requirements. Possession of some other license shall not relieve a person of the requirement to obtain a license pursuant to this article.

(e) Certificate of Occupancy. Despite issuance of a license under this article, a licensee may not occupy or use a structure without obtaining a certificate of occupancy for the use.

(f) Notice of Denial. The licensing officer shall notify the applicant in writing of the denial of the application within 30 days of the application’s receipt. The notice shall include the basis for the denial.

Sec. 13-96. - Contents; posting of license.

A night club license issued under this article shall be signed by the licensing officer and shall state on its face to whom it is issued, the date of issuance, the date of expiration, the address and location of such night club, and whether it is issued for a Class A or Class B Night Club. The license shall be posted by the licensee in a conspicuous place and in such a manner and position that it may be easily read at any time of day or night.

Sec. 13-97. - License transfer.

(a) No license issued under the provisions of this article shall be transferred from one person, partnership, or corporation to another without the payment of a transfer fee and the approval of the licensing officer.

(b) The license issued hereunder may be transferred from one location or place of business to another location upon payment of a transfer fee if the new location is approved by the licensing officer.

(c) Prior to approving any transfer, the licensing officer shall consult with the chief of police, fire marshal, health authority, and building official, or their designees, to determine if the new operator or the new location meets all the standards and requirements applicable to an original application for a night club license, including those set forth in section 13-95.

(d) The licensee may appeal the denial of any license transfer by filing an appeal as provided for in section 13-100.

Sec. 13-98.1. - Suspension of license.

(a) The licensing officer shall suspend a license for a period not to exceed 30 days if such officer determines that the licensee or an employee of the licensee has:

(1) Violated or is not in compliance with any ordinance of the city or any state law;
(2) Refused to allow an inspection of the premises, as authorized by this article; or

(3) Violated sections 13-102(a), 13-102(d), 13-103 or 13-104.

(b) A licensee must correct a violation under subsection (a)(1) prior to re-opening the licensed premises.

Sec. 13-98.2. – Revocation of license

(a) The licensing officer shall revoke a license if:

(1) A cause of suspension occurs and the license has already been suspended within the preceding 12 months;

(2) A licensee gave false or misleading information in the material included on or with his original application or a renewal application or in response to an inquiry by the city;

(3) A licensee or an employee of the licensee knowingly allowed possession, use or sale of a controlled substance on the premises;

(4) A licensee or an employee of the licensee knowingly allowed prostitution or the solicitations for the purpose of prostitution on the premises;

(5) A licensee has been convicted of a violation set forth in section 13-95(a)(7) or any provision of the state alcoholic beverage code;

(6) While an employee of the licensee and while on the licensed premises, a person has committed an offense listed in section 13-95(a)(6) or any provision of the state alcoholic beverage code;

(7) A licensee or employee knowingly allowed the night club to operate during a period when the license was suspended;

(8) A licensee of a Class A night club knowingly allowed alcoholic beverages to be possessed, consumed, or sold on premises; or

(9) A licensee or employee has violated section 13-97.

(b) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

Sec. 13-98.3. – Surrender of License after Suspension, Revocation, or Denial of Renewal.

After receipt of notice of suspension, revocation, or denial of renewal of a night club license, the licensee shall, on or before the date specified in the notice, discontinue operating the night club and surrender the license to the licensing officer.

Sec. 13-99. - License renewal.
(a) A license may be renewed only by making application as provided in Sections 13-93 and 13-95.

(b) A renewal application on the form prescribed by the licensing officer may be submitted no earlier than 60 days before the expiration of the license. The renewal application must be accompanied by a renewal fee set by the city council by minute entry or as a part of the annual budget. When an application for renewal is submitted less than 30 days before the expiration date of the license, the expiration date of the license will not be affected, except as provided in this article.

(c) When an application for renewal is denied, the applicant shall not be issued a license for one year from the date of the denial. If, subsequent to denial, the licensing officer finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days has elapsed since the date the denial of the renewal application was final. The applicant must request in writing to the licensing officer this reconsideration and provide evidence that the basis for the denial of the renewal has been corrected or abated.

Sec. 13-100. - Appeal.

(a) Procedure to appeal. If either an original application or a renewal application for a license is denied, suspended or revoked, the applicant shall be informed of that action by written notice that states the basis for the action. The applicant/licensee may appeal that action to the city council by filing a written appeal with the city secretary's office within ten days of receiving the notice of the denial, suspension or revocation of the license. In the notice of appeal, the appealing party shall clearly set out his reasons for believing that the action to deny, suspend or revoke the license was in error. If the appeal is from the denial of a license renewal, suspension or revocation, the denial, suspension or revocation shall be stayed during the pendency of the appeal and the night club may continue to operate.

(b) Council procedures. The city council shall conduct a public hearing within 30 days of the filing of the appeal. The city council may make such investigation as it may see fit into the appealing party and the premises used or to be used for a night club. Opportunity shall be afforded to all parties and interested persons to present evidence or argument on the issues involved in the appeal. Within 30 days of the closing of the public hearing, the city council shall make its decision on whether to overturn the denial, suspension or revocation of the license. A written notice setting out the city council's decision shall be given to the appealing party. If the city council fails to act within the timeframe stated herein, the denial, suspension or revocation of the license shall be overturned. Provided, that if the appeal is from a denial of an initial license application, not a denial of a license renewal, suspension or revocation, the city council must conduct its hearing and make its decision on whether to overturn the license denial within 30 days from the filing of the appeal.

(c) Standards for review of initial license denial. At the appeal hearing on a denial of an initial license application, the appealing party must present evidence clearly indicating that the licensing officer was incorrect in determining that the stated grounds for the license denial existed.

(d) Standards for review of license suspension, revocation or denial of renewal. At the appeal hearing on a license suspension, revocation, or refusal to renew, the licensing officer must present evidence clearly indicating that the stated grounds for such officer's action existed.
Sec. 13-101. - RESERVED.

Sec. 13-102. - Operation of night clubs.

(a) Night club supervisor. A person who operates a night club must designate one or more persons as night club supervisors. The names of the supervisors must be included in a license application or renewal application. Whenever a change in the supervisors occurs, notice of that change shall be given to the licensing officer. A night club supervisor must remain on the premises of the night club while the night club is open to the public.

(b) Inspection. Representatives of the police, fire, health, inspection or any other department authorized to enforce provisions of this article or state laws with which a night club must comply may inspect the premises of a night club for the purpose of insuring compliance with the law at any time it is open for business or occupied. A person who operates a night club or a person designated as the night club supervisor commits an offense if he refuses to permit an inspection of the premises of a night club by representatives of the city departments named in section 13-94.

(c) Authority to vacate premises. The chief of police, fire marshal or building official shall have the power to cause a night club to be vacated whenever any provision of this article is being violated or when a situation which imposes an immediate threat to safety exists. In addition, where a violation of any ordinance of the city or state law is discovered, the chief of police, fire marshal or building official may order that a night club be vacated and remain closed for up to 24 hours after it is determined that the violation that resulted in the order to close has been corrected.

(d) Hours of Operation. A person commits an offense if: he operates a Class A Night Club during any hours other than the following:

(1) when school is in session in the school district in which the night club is located, between the hours of:

   a. 4:00 p.m. and 10:00 p.m. Monday through Thursday;
   b. 4:00 p.m. and 12:00 midnight, Friday;
   c. 1:00 p.m. and 12:00 midnight, Saturday; and
   d. 1:00 p.m. and 10:00 p.m. Sunday; or

(2) when school is not in session in the school district in which the night club is located, between the hours of 1:00 p.m. and 12:00 midnight each day of the week.

Sec. 13-103. - Persons under 17 prohibited.
(a) No person under the age of 17 years may enter a Class B night club unless accompanied by a parent or guardian.

(b) A person commits an offense if he falsely represents himself to be either a parent or guardian of a person under the age of 17 years for the purpose of gaining the person’s admittance into a Class B Night Club.

(c) A licensee or employee of a Class B Night Club commits an offense if he knowingly allows a person under the age of 17 years to enter or remain on the premises of the night club unless the person is accompanied by a parent or guardian.

(d) A licensee of a Class B night club commits an offense if he maintains the premises without posting a sign at each entrance to the premises that reads: “It is unlawful for any person under 17 years old to enter the premises without a parent or guardian.”

Sec. 13-104. - Persons under 14 and over 18 prohibited.

(a) No person under the age of 14 years or over the age of 18 years may enter a Class A Night Club.

(b) A person commits an offense if he is over the age of 18 years and:

(1) enters a Class A night club; or

(2) for purpose of gaining admittance into a Class A Night Club, he falsely represents himself to be:

(A) of an age from 14 through 18 years;

(B) a licensee or an employee of a night club; or

(C) a parent of guardian of a person inside the night club; or

(D) a governmental employee in the performance of official duties.

(c) A licensee or employee of a Class A Night Club commits an offense if he knowingly allows a person to enter or remain on the premises of the night club who is:

(1) under the age of 14 years; or

(2) over the age of 18 years.

(d) It is defense to prosecution under subsection (b)(1) and (b)(2) that the person is:

(1) a licensee or employee of the night club;

(2) a parent of guardian of person inside the night club; or

(3) a governmental employee in the performance of official duties
(e) A licensee of a Class A Night Club commits an offense if he maintains the premises without posting a sign at each entrance to the night club that reads: “It is unlawful for any person under 14 years old to enter this location without a parent or guardian. It is unlawful for any person over 18 years old to enter this location.”

Sec. 13-105. – Injunction.

In addition to possible criminal prosecution for violation of this chapter, a person who operates a night club without a valid license is subject to a suit for injunction.


Section 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. That a violation of this ordinance shall be a Class C misdemeanor and the penalty for violating this ordinance shall be as provided for in Sec. 1-14 of the Code of Ordinances of the City of Waco, which shall be a fine of not less than $1.00 and no more than $500.00, and each day a violation exists shall be a separate offense.

Section 4. That if any provision of this ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

Section 5. That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be a part of the Code of Ordinances of the City of Waco, Texas, and that sections of this ordinance may be renumbered or relettered to accomplish such intention.

Section 6. That this ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.
Section 7. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required.

FIRST READING: this ___ day of ____________, 2013.
SECOND READING: this _____ day of _____________, 2013.

________________________________________
Malcolm Duncan, Jr., Mayor,
City of Waco, Texas

ATTEST:

________________________________
Patricia W. Ervin, City Secretary

APPROVED AS TO FORM & LEGALITY:

________________________________
Jennifer Richie, City Attorney