

Sec. 12.5-172. – Definitions.

For purposes of this article, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Applicant means any person, firm, corporation, or other legal entity applying for a preclearance letter to operate a late night establishment, as defined herein.

County means Horry County, South Carolina.

Administrator means the Horry County Administrator or his or her designee.

Employee means any person who works on the premises of a late night establishment on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Hearing officer means a citizen, not employed by the County, appointed by the Administrator, deemed to have the requisite training, education, and experience to serve as an independent tribunal to conduct hearings under this Article, and to justly and fairly hear and decide on matters presented therein.

Late night establishment means a commercial establishment that offers or allows consumption of alcoholic beverages on the premises and that is open for use by patrons, for any length of time, between the hours of 12:00 Midnight and 6:00 AM.

Recipient means a person in whose name a preclearance letter to operate a late night establishment has been issued, as well as the individual or individuals listed as applicants on the application for a late night establishment preclearance letter.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Specified criminal activity means any of the following specified crimes for which less than seven (7) years has elapsed since the date of arrest, the date of conviction, including a plea of *nolo contendere* or a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), or the date of release from confinement for the conviction, whichever is the later date:

- (1) Offenses against the person, listed in S.C. Code, Title 16, Chapter 3 (as amended or recodified from time to time);
- (2) Offenses against public justice, listed in S.C. Code, Title 16, Chapter 9 (as amended or recodified from time to time);
- (3) Offenses against property, listed in S.C. Code, Title 16, Chapter 11 (as amended or recodified from time to time);
- (4) Offenses listed in S.C. Code, Title 16, Chapter 13 (which chapter is titled "Forgery, Larceny, Embezzlement, False Pretenses and Cheats) (as amended or recodified from time to time);

- (5) Offenses listed in S.C. Code, Title 16, Chapter 14 (which chapter is titled “Financial Transaction Card Crime Act”) (as amended or recodified from time to time);
- (6) Offenses against morality and decency, listed in S.C. Code, Title 16, Chapter 15 (as amended or recodified from time to time);
- (7) Offenses listed in S.C. Code, Title 16, Chapter 19 (which chapter is titled “Gambling and Lotteries”) (as amended or recodified from time to time);
- (8) Offenses involving weapons, listed in S.C. Code Title 16, Chapter 23 (as amended or recodified from time to time);
- (9) Narcotics and controlled substances offenses set forth in S.C. Code §§ 44-53-370—44-53-445 (as amended or recodified from time to time);
- (10) Alcohol-related offenses listed in S.C. Code, Title 61, Chapter 6, Article 13 (as amended or recodified from time to time);
- (11) any crime if it involved dishonesty or false statement, regardless of the punishment;
- (12) any crime if it involved conduct at a commercial establishment where alcoholic beverages are consumed on the premises, regardless of the punishment;
- (13) Any attempt, solicitation, or conspiracy to commit one (1) of the foregoing offenses; or
- (14) Any offense in another jurisdiction that, had the predicate act(s) been committed in South Carolina, would have constituted any of the foregoing offenses.

Specified sexual activity means any of the following:

- (1) Intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in (1) above.

Sec. 12.5-173. – Late night establishment preclearance letter required; application; issuance.

- (a) *Late night establishment preclearance letter.* It shall be unlawful for any person to commence operating, after January 1, 2017, a late night establishment in the County without a valid late night establishment preclearance letter. No person shall apply for a certificate of zoning compliance or approval of a special exception to operate a late night establishment before obtaining a late night establishment preclearance letter. It shall be unlawful for any person to operate a late night establishment after a license revocation or nuisance declaration without a valid late night establishment preclearance letter issued after such revocation or declaration. The issuance of a preclearance letter does not authorize the recipient to operate a late night establishment. Rather, after receiving a preclearance letter, the recipient must also obtain a valid certificate of zoning compliance or special exception issued in accordance with Horry County’s zoning laws.

For all late night establishments in existence prior to January 1, 2017, as a condition of continued or renewed operation of such establishment, a written safety plan, acceptable to the County, containing the information required by section 12.5-176, must be filed at the office of the Horry County Administrator (or such office as the Administrator may designate), during regular business hours, together with a one-time nonrefundable administrative fee of \$250.00, by no later than the time for business license renewal, it being unlawful for any person to continue operating such establishment in the absence of such safety plan. The information provided shall be supplemented in writing by certified mail, return receipt requested, to the Administrator (or such office as the Administrator may designate) within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete. The late night establishment must also operate in compliance with all other laws and regulations.

(b) *Application.* All applicants for a late night establishment preclearance letter shall file in person at the office of the Horry County Administrator (or such office as the Administrator may designate), during regular business hours, a completed application made on a form approved by the Administrator. The application shall be signed as required by subsection (c) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the following required information and/or items, accompanied by the appropriate fees:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding seven (7) years.
- (2) Current business address or another mailing address for the applicant.
- (3) The business name, location, legal description, mailing address and phone number of the late night establishment.
- (4) If the applicant is a sole proprietor, written proof of age, in the form of a driver's license or a picture identification document containing the applicant's date of birth issued by an agency of a state or of the federal government.
- (5) If the applicant is not a sole proprietor, then the partnership, limited liability company, corporation, or other legal entity shall submit a complete list of the legal entity's:
 - a. Officers;
 - b. Directors;
 - c. Partners, members, or shareholders (natural persons) holding a ten percent or greater ownership interest in such legal entity, or if there is no shareholder (natural person) with at least a ten percent interest, the ten shareholders with the greatest ownership interests;
 - d. Employee or agent primarily responsible for operation of the late night establishment, and all managers who will be on duty during times of operation; and

- e. Written proof of age, in the form of a driver's license or a picture identification document containing the person's date of birth issued by an agency of a state or of the federal government for each person described in subparts a. through d. above.
- (6) A statement of whether any applicant or any person listed in response to subsection (b)(5) has been an owner, director, officer, partner, member, shareholder, or manager of a business that has, in the previous seven (7) years (and at a time during which the person was so related to the business):
 - a. Been declared in a judicial proceeding to be a nuisance; or
 - b. Had its license to operate revoked.
- (7) A statement of whether the applicant or any person listed in response to subsection (b)(5) has within the previous seven (7) years been arrested for, convicted of, or pleaded guilty or entered a plea of nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each such arrest and/or conviction.
- (8) A statement of whether the applicant or a person listed in response to subsection (b)(5) resides with someone who has been an owner, director, officer, partner, member, shareholder, or manager of a business that has, in the previous seven (7) years (and at a time during which the person was so related to the business):
 - a. Been declared in a judicial proceeding to be a nuisance; or
 - b. Had its license to operate revoked.
- (9) For each person listed in response to subsection (b)(5), a full set of fingerprints and additional information required to enable a state fingerprint-based background check conducted by the State Law Enforcement Division (SLED) to determine any state criminal history, and to enable a fingerprint-based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history.
- (10) If the applicant is a partnership, limited liability company, corporation, or other legal entity required to be chartered under the laws of the state or authorized by the secretary of state to do business in the state, such corporation must be chartered under the laws of the state or authorized by the secretary of state to do business in the state and must submit copies of the certificate of organization or incorporation, as applicable, and articles of organization or incorporation, as applicable.
- (11) The name and business address of the statutory agent or other agent authorized to receive service of process within Horry County, South Carolina on behalf of the late night establishment.
- (12) A statement whether the applicant is the owner of the premises wherein the late night establishment will be operated or the holder of a lease thereon. If the

applicant is a lease holder, a copy of the lease shall be submitted with the application.

(13) A written safety plan that contains the information required by section 12.5-176.

The information provided pursuant to this subsection (b) shall be supplemented in writing by certified mail, return receipt requested, to the Administrator (or such office as the Administrator may designate) within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (c) *Signature.* If a person who seeks a late night establishment preclearance letter under this section is an individual, he or she shall sign the application for a preclearance letter as applicant. If a person who seeks a late night establishment preclearance letter is other than an individual, each person listed in response to subsection (b)(5) is considered an applicant and shall sign the application as an applicant. Each applicant must be qualified under this article and each applicant shall be considered a recipient if a preclearance letter is issued.

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Sec. 12.5-174. – Regulatory fee; expiration and renewal of preclearance letter.

- (a) There shall be an annual regulatory fee of \$250.00 and a one-time nonrefundable investigative fee of \$250.00 for each late night establishment within the county that holds a valid preclearance letter. Both fees shall be paid with the application. If the applicant withdraws the application or the preclearance letter is denied, the applicant shall be refunded the annual regulatory fee paid. No refund shall be allowed once the preclearance letter has been issued.
- (b) Each preclearance letter shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise revoked. Such preclearance letter may be renewed by making payment of the annual regulatory fee as provided in this section. After initial approval, and if there have been no changes in information, operations, or safety plan, the validity of a preclearance letter may be extended for up to two (2) consecutive years upon written affirmation by the applicant of such fact, in letter form, signed as set forth in Sec. 12.5-173(c) herein and notarized, and filed in person at the office of the Horry County Administrator (or such office as the Administrator may designate), during regular business hours.

Sec. 12.5-176. – Safety plan contents.

A safety plan shall be considered complete when it sets forth the following:

- (1) The business name, location, mailing address, and phone number of the late night establishment, and the name, title, and mailing address of the individual responsible for communicating with the county in connection with the safety plan;
- (2) Affirmation that the late night establishment will not permit its employees or patrons, on the premises, to engage in any specified criminal activity, any specified

sexual activity, or any conduct that violates the county's adult entertainment establishment regulations;

(3) Affirmation that the late night establishment will not permit its employees, while on the premises, to fondle, caress, or touch, whether directly or through clothing or other covering, any specified anatomical area (as defined in Article VI of this Chapter) of a patron;

(4) Affirmation that the late night establishment will require each employee, while working on the premises, to wear a light-colored name tag (on the front upper half of the employee's torso) that states a first name and last initial in dark letters that are three-eighths of an inch (3/8") tall or taller; and affirmation that the late night establishment will maintain an up-to-date list of its employees' actual names, that the list will also set forth for each employee the first name and last initial that is on the name tag worn by the employee, and that the establishment will provide a copy of that list to the Administrator or his or her designee immediately upon request;

(5) Affirmation that the late night establishment is not a theater, concert hall, art center, museum, or similar establishment that is primarily devoted to the arts or theatrical performances;

(6) Affirmation that the establishment will not permit a patron or employee, on the premises, to appear nude or semi-nude as defined in Article VI of this Chapter;

(7) Affirmation that the establishment has established a policy that conforms with DOR approved training program on age sensitive sales as listed in the DOR SC Information Letter 06-05, or subsequently issued letter of the same subject, and that addresses that all security, floor managers, bartenders, and wait staff will be trained so as to determine when a customer is underage or apparently intoxicated, along with affirmation that the establishment, its agents, and its employees will enforce the policy of refusing further alcohol service to customers at that point;

(8) A statement whether the establishment will employ personnel that exercise security functions, and if so, an affirmation that all security personnel shall be licensed by the State of South Carolina and be bonded;

(9) Affirmation that no alcohol consumption and no glass or metal containers of any kind will be permitted in the parking lots under the control of the establishment, along with affirmation that the establishment has established policies and security resources to assure compliance;

(10) Affirmation that upon request, the establishment will consult with the Horry County Police Department and provide such security as is recommended by that department that recognizes individual circumstances of the establishment; and

(11) A copy of the establishment's policies that specifically address the following elements:

- a. Patron weapon search procedures, if any;
- b. Control of all ways of ingress and egress;
- c. Control of parking lots, lot behavior, and litter;

- d. Procedures for handling violent incidents, other emergencies, and calling the police department;
- e. The number of security, and their movement and placement;
- f. A description of the training provided or completed by security and other personnel, including conflict de-escalation training;
- g. The procedures for determining over occupancy, crowd control, and emergency egress; and
- h. Current contact information for the person or position responsible for addressing safety, security, or county code related complaints by patrons or neighborhood residents.