AN ORDINANCE

AN ORDINANCE REGULATING NUISANCE BUSINESSES AND REGULATING THE PERMITTING OF NIGHTCLUBS WITHIN THE UNINCORPORATED AREAS OF SPARTANBURG COUNTY AND PROVIDING PENALTIES FOR VIOLATIONS OF SAID ORDINANCE.

WHEREAS, Spartanburg County Council has the power and duty to provide for the general welfare and safety of the citizenry of Spartanburg County; and

WHEREAS, the County Council finds and determines that some businesses within the unincorporated areas of the county contribute to littering, public intoxication, traffic congestion, noise, disorderly conduct, assaults, illegal drug sells and other similar problems connected primarily with the routine congregation of persons around such businesses, especially those businesses which are managed without adequate attention to preventing these problems; and

WHEREAS, safe business practices will not only protect the patrons of those businesses but the overall citizenry of Spartanburg County, and enhance revitalization efforts; and

WHEREAS, on numerous occasions, the negative impact of these businesses has been more significant when the business hosts a special event, performance, or the like, or when the business fails to alert law enforcement to criminal conduct occurring on the business premises; and

WHEREAS, some businesses are located in older buildings which may not be in compliance with current fire code requirements including posted occupancy, causing a safety hazard for the occupants of said buildings; and
WHEREAS, this ordinance will only be enforceable in the unincorporated areas of Spartanburg County.

NOW, THEREFORE, BE IT ORDAINED by the County Council of Spartanburg County South Carolina as follows:

SECTION 1. Spartanburg County Code of Ordinances is hereby amended to add a section entitled Public Nuisance Businesses, as follows:

I. Definitions.

a) Continuous Breach of the Peace: A pattern of repeated acts or conduct which either (a) directly disturbs the public peace or (b) disturbs the public peace by inciting or tending to incite violence.

b) Public Nuisance: Conduct, conditions, events, circumstances, or the unreasonable interference or the causing of unreasonable interference with rights of the public, wherever occurring, including, but not limited to, a business or commercial or residential establishment, a public place, or where the public congregates or is invited or permitted to congregate. This includes such conduct that may occur at a home-based business.

Public Nuisance includes those conditions or circumstances constituting a nuisance as set forth in S.C.Code Ann. Section 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.

Public Nuisance also includes that conduct which annoys, injures, subverts or endangers the public's order, economy, resources, safety, health, welfare, comfort, repose or offends public decency.

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, other than those 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) **For-Profit Event:** Any event other than a non-profit event.

h) **Rural Event Venue:** an intermittent use located in a rural setting, on a parcel of at least 5 acres, that may utilize temporary or permanent structures for the purpose of holding a private event to include weddings and private social events.

i) **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 provides entertainment activities through any of the following: amplified music, whether live performance or programmed 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.

**Rural Event Venues as defined and properly permitted under the Spartanburg County Unified Land Management Ordinance and any properly licensed Brewery, Winery or Distillery shall be exempted from this ordinance.**

j) **Nightclub Owner:** The person(s) whose name(s) appear as the applicant(s) on the permit on file with Spartanburg County. In this ordinance owner can mean the person who owns the building/property where the nightclub is located or the person who may lease or be in control of the nightclub or other responsible parties that will be regarded as the nightclub owners.

k) **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.

l) **Overcrowding:** As provided in Section 23.11.107.6 of the International Fire Code and agreed upon by the Spartanburg County Building Codes Department and the Fire Chief’s Association: “Overcrowding or admittance of any person beyond the approved capacity of a building or a portion thereof shall not be allowed. The fire code official, upon finding any overcrowding conditions or obstructions in aisles, passageways or other means of egress, or upon finding any condition which constitutes a life safety hazard, shall be authorized to direct actions be taken to reduce the overcrowding or to cause the event to be stopped until such condition or obstruction is corrected.”

m) **Public Safety Concerns:** Acts of violence resulting in physical injury, any observed illegal drug activity or allowing underage drinking to occur within a nightclub. Any violations of fire codes will also constitute a violation of this section such as “Overcrowding” or significant “Traffic Hazards”.

n) **Regulating Authority:** The official, officer or entity charged with regulating the provisions of this ordinance, including but not limited to, the Sheriff or his/her designee.
o) **Live Performances**: Any and all activities in the entertainment industry at which an artist/performer may appear or perform in person.

II. **Nuisances offending public decency, peace and order.**

The following 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; and when the responsible party generates, enables, or contributes to the occurrence of the unlawful behavior by an absence or failure of property management policy or practice, absence or failure of control over the property, absence or failure of supervision of guests or invitees, or clients, customers, patrons, or any other person providing some form of compensation for some type of product or service, or absence or failure of security measures:

a) Any business, establishment, use, property or structure, whether commercial or residential, where gambling devices, slot machines, punch boards and other such contrivances of similar character involving any elements of chance as a consideration or any type of gambling, bookmaking, wagering or betting is carried on, and all gambling equipment, except where such specific form of gambling is permitted by law;

b) Any business, establishment, use, property or structure, whether commercial or residential, operated as a bawdy house, house of assignation, place of prostitution or used and maintained for the commercial or criminal purposes of unlawful sexual activity or human trafficking in violation of federal or state law or local ordinances;

c) Any business, establishment, use, 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, or where alcohol or intoxicating liquors kept for sale, barter or distribution in violation of federal or state law or local ordinances, and all alcohol, liquors, bottles, kegs, pumps, bars and other property kept at and used for maintaining such a place; or where required fire marshal or other safety plans are not in place, or where persistent violations of law occur under a failed or ineffective fire marshal or other safety plan;

d) Any business, establishment, use, 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;

e) Any business, establishment, use, property or structure, whether a commercial operation or a residential use, where violations against the federal or state laws or county ordinances occur with disproportionate frequency or intensity that
they require an excessive public safety response cost. "Excessive public safety response" means:

i. The recurring deployment of law enforcement officers, peace or code enforcement officers commissioned pursuant to S.C.Code Ann. Section 4-9-145, fire marshals or emergency services personnel to an emergency scene to a business, commercial or residential establishment, use, property or structure, or the recurring need for public safety or county code enforcement personnel or emergency vehicles at a business, commercial or residential establishment, use, property or structure when compared to the frequency or intensity of law or regulation enforcement required at other similarly situated businesses, commercial or residential establishments, uses, properties or structures during the preceding twelve (12) months; or

ii. There have been two (2) or more situations at or associated with the business, commercial or residential establishment, use, property or structure of unsafe traffic or crowd control issues resulting in the request of emergency assistance or the need for law or code enforcement assistance from an emergency situation during the preceding twelve (12) months; provided, however, this does not include instances when traffic control or crowd control was requested in advance of a scheduled event pursuant to an issued permit or prior approval of law or code enforcement or governmental approval authority.

iii. There have been six (6) or more incident reports, citations, or search warrants executed, or a combination thereof, at a business, commercial or residential establishment, use, property or structure for any of the following during the preceding twelve (12) months:

a. Violation of any state or local alcohol law;

b. Violation of any federal, state or local narcotics law;

c. Violation of any state or local gun law;

d. Assaults;

e. Crimes of violence against another person(s); or

f. Crimes against property.

g. Violations of International Fire Codes

h. Significant traffic Hazards

III. Nuisances offending public decency, peace and order.

A person who erects, establishes, continues, maintains, uses, owns, occupies, leases, or releases, or serves as lessor or lessee of any building, commercial or residential establishment, use, property, structure or other place in such a way as to create a public nuisance shall be guilty of a misdemeanor and shall be subject to a fine not exceeding
five hundred dollars ($500.00) and imprisonment not exceeding thirty (30) days. Court costs are not included in any fine imposed by the court.

Each day any violation of this ordinance continues shall constitute a separate offense.

Upon a guilty verdict rendered by a Judge, the business, etc. shall be deemed a public nuisance.

IV. Criminal Enforcement. Penalties.

The Spartanburg County Sheriff’s Department and Spartanburg County Code Enforcement shall enforce this ordinance with the consultation and concurrence of the County Administrator (“Administrator”). The Spartanburg County Sheriff (“Sheriff”), Spartanburg County Code Enforcement (“Codes”) and the County Administrator, acting jointly, may declare a business, commercial or residential establishment, use, property or structure, whether commercial or residential, in violation of this ordinance a public nuisance, and the Sheriff or any Deputy Sheriff or any Code Enforcement Officer may enforce the provisions of this ordinance upon the declaration of a public nuisance by the Sheriff, Codes and the County Administrator by uniform traffic ticket, or warrant or by any other lawful process.

V. Emergency Abatement.

If in declaring a public nuisance the Sheriff, Codes and the Administrator determine that there is imminent danger to the public from the continued operation of the nuisance business, commercial or residential establishment, use, property or structure, the Sheriff or Codes is hereby authorized to immediately undertake emergency abatement of the nuisance by securing, shuttering or closing the business, commercial or residential establishment, use, property or structure constituting or contributing to the nuisance to ensure that all business activity ceases. In so securing, shuttering or closing the business, commercial or residential establishment, use, property or structure, the Sheriff shall place or cause to be placed on the exterior of the business, commercial or residential establishment, use, property or structure a notice that provides: “It shall be unlawful for any person to enter this business, commercial or residential establishment, use, property or structure except with the express written permission of the Spartanburg County Sheriff’s Department or Spartanburg County Code Enforcement.” Permitted entry after securing, shuttering or closing may at the discretion of the Spartanburg County Sheriff’s Department or Spartanburg County Code Enforcement include inspection by federal, state or local government officials, inventory or retrieval of essential contents by the owner or lessee of the property, or similar circumstance. A business, commercial or residential establishment, use, property or structure secured, shuttered or closed pursuant to this ordinance shall not resume business operations until permitted under the circumstances of the appeal process set forth herein. This ordinance applies to licensed businesses as well as those businesses, commercial or residential establishments or uses that operate or attempt to operate without proper permitting.
SECTION II. Spartanburg County Code of Ordinances is hereby amended to add a section entitled Nightclub Business Permits and Operating Requirements, as follows:

I. Nightclub Business Permits

A. Permit Required: A building, part of a building, or outdoor location may be occupied and used as a night club, either on a regular basis or as a one (1) time event, only when a permit for such use has been issued and is in effect under the provisions of this Article.

(1) A building, part of a building, or outdoor location may be occupied and used as a night club by a person, entity or organization other than the building owner or fulltime lessee, only when a nightclub owner permit has been issued and is in effect under the provisions of this Article.

(2) Compliance with physical requirements of the facilities shall be the responsibility of the owner. Compliance with operating requirements shall be the responsibility of the owner.

B. Permit Application and Issuance: Nightclub permit applications may be obtained from the Spartanburg County Sheriff’s Office and shall be returned to the Sheriff’s Office upon completion for review and consideration for approval. The permit shall be issued upon the submission and approval of a completed application to include written acknowledgement of a passing fire code inspection with the posted occupancy certificate, proof of proper liability insurance including coverage for invitees on the property and incidents on the property/building/location in the name of the owner and payment of a one-time non-refundable permit fee of fifty dollars ($50.00).

The Sheriff or his designee shall review these materials, any incidents occurring at the nightclub within the preceding twelve (12) months, the nightclub’s past compliance with Article II and III of this ordinance as applicable, and the nightclub’s historical record (if any) which may include common ownership and/or operator and/or lessee and submit his findings.

Nightclub permits shall be issued and will be valid unless turned in, the business relocates or grounds for failure to comply with provisions of Articles II and III are found.

***Nightclubs cannot operate without an approved permit. This will be prima facie evidence of a violation of this ordinance. A ticket can be issued and the business closed for non-compliance with this ordinance until a permit can be obtained.

***Any such permit shall be subject to summary revocation by the Sheriff or his designee upon his judgment that the permitted person fails to comply with the conditions of the permit or with the representations of the application.

***Rural Event Venues as defined and properly permitted under the Spartanburg County Unified Land Management Ordinance and any properly licensed Brewery, Winery or Distillery shall be exempted from this ordinance.

Permit applications shall contain, at a minimum, the following information for the Owner and Operator and/or Lessee:

Name (First Middle and Last)

DOB
SSN

Phone Number (to the club, Personal Cell and Residence)

Address (Physical no PO Boxes)

The information gathered above will be used for a background check to include a criminal history check.

*Failure to provide this information will result in a permit not being issued.*

C. Permit Validity: Nightclub permits are a one-time permit that will remain valid unless the business relocates or the permit is turned in, suspended or revoked for failure to comply with provisions of Article II.

D. Emergency Temporary Suspension by the Sheriff’s Department:
The on-duty field supervisor for the Sheriff’s Office may temporarily suspend a nightclub permit if the field commander determines that immediate suspension is necessary to restore order, for failure to comply with II or III of this section as required, or for any call of service at the nightclubs location as follows:

(1) The facility shall be vacated and closed effective immediately upon verbal notification to the nightclub’s owner, manager, agent, or representative and shall be effective for up to twenty-four (24) hours as needed to restore order or to ensure compliance with 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 Sheriff or his designee. The field supervisor shall promptly submit a report outlining the basis for his decision to suspend the permit(s) to the Sheriff or his designee. The Sheriff or his designee shall, within five (5) business days, submit a finding either recommending continuation of the nightclub’s permit, temporary suspension for a designated period, or revocation.

(3) After denial of an application, or suspension or revocation of a permit, the applicant or permittee may seek review of such administrative action through the court of common pleas for the county.

II. Operation Requirements for All Nightclubs:

Nightclub owners and operators and/or lessees shall be responsible for controlling the following nuisance activities:

(1) Prohibiting loitering outside the nightclub and/or at nearby properties being utilized by the nightclub’s patrons.

(2) Insuring that patrons do not create a nuisance to nearby property owners and/or residential areas by littering, loitering, vandalizing, making loud noise, parking illegally, causing traffic congestion or other hazardous activity. Nearby property owners aggrieved by the activities of a nightclub or its patrons may file a written complaint, fully describing the nature of the nuisance, with the Sheriff’s Office.
(3) Insuring that anyone entering a nightclub must be at least eighteen (18) years of age and show a valid picture ID at the door. All persons aged twenty one (21) and older shall be wearing a non-removable, easily identifiable armband with the current date. The nightclub owner or permitted nightclub entertainment promoter shall be responsible for verifying the age of all occupants. Violations discovered by Law Enforcement that are not self-reported could result in a fine or the permanent revocation of the owner’s and/or the promoter’s permit.

(4) Insuring that nightclubs are operated in compliance with the requirements of the State of South Carolina Department of Revenue.

(5) Insuring that pyrotechnics are prohibited and no-fire hazardous materials are used in nightclubs.

(6) Operated in compliance with the following provisions of the adopted International Fire Code:

(a) Overcrowding or admittance of any person beyond the approved capacity of a building or a portion thereof shall not be allowed.

(b) The fire code official, upon finding any overcrowding conditions or obstructions in aisles, passageways, or other means of egress, or upon finding any condition which constitutes a life safety hazard, shall be authorized to cause the event to be stopped until such condition or obstruction is corrected.

(c) Nightclub owners shall be responsible for maintaining all required exits and exit pathways.

(d) Exits and exit pathways shall not be blocked. Exit doors shall be equipped with appropriate exit hardware as required by the building code and shall not be locked from the interior.

(7) The Sheriff’s Office shall issue citations to the nightclub owner (s) citing this article as the violation. The nightclub owner and the complainant shall appear in court to present testimony to the magistrate court judge. The judge shall render a verdict after hearing testimony of all parties. If found guilty, the nightclub owner shall be subject to fines and/or imprisonment as required by law for misdemeanor offenses and may be subject to suspension or revocation of the permit.

(8) If the Sheriff’s Office suspends or revokes the nightclub permit as a result of a judge rendering a guilty verdict, the permit holder may appeal the action by filing a written notice of appeal with the Spartanburg County Sheriff or his designee within ten (10) days of the verdict. The Sheriff or his designee shall, within five (5) business days, submit their findings to determine whether to continue suspension or revocation of the permit. If the owner wishes to appeal the decision of the Sheriff or his designee they may seek review of such administrative action through the court of common pleas for the county.

(9) Any continued violations of the above or any other nuisance violation will be grounds for suspension or revocation of permit.
III. 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 Spartanburg 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 (1) 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 County of Spartanburg Personnel.

D. Weapons and Other Dangerous Items: Nightclub owner(s) shall be responsible to insure 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.

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 any member of Spartanburg County Law Enforcement or County Fire personnel 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 ordinance and a monetary fine.

F. Security:
   (1) Nightclubs shall provide a minimum of two (2) Bonded and Sled Certified security guards, and shall provide for patrol of the areas of parking for the clubs 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.

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.

Article III. Violations and Penalties

A. A violation of any provision of this section 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 five hundred dollars ($500.00), and/or not more than thirty (30) days in jail or both.

B. The Sheriff’s Office understands that Owners cannot be held responsible for every incident that occurs at the nightclub or venue. Incidents at these nightclubs and venues will be evaluated by the Sheriff’s Office Command Staff and a judgement rendered as to whether or not the nightclub/venue is at fault or held responsible for the occurrence. When an incident is deemed to be the fault of the nightclub owner and promoter they will be notified as a part of the investigation into the incident.

C. The issuance of a warrant or imposition of a penalty for any violation of this article shall not excuse the continued violation or permit it to continue and each 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 ordinance.

SECTION III. The following provisions shall apply to both Sections I and II of this Ordinance:

I. Ordinance Provisions

A. The omission of any specific requirement or provision from this ordinance shall not be interpreted as permitting any variation from the general meaning and intent of the ordinance 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 ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so held to be unconstitutional or invalid.

C. Whenever any requirements of this ordinance 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 ordinance are in addition to, and not in lieu of, any other enforcement provision or process permitted by law. Nothing in this ordinance supplants, alters, or limits a statutory or common law right of a person to bring an action in court or the right of Spartanburg County to prosecute person for the establishment of a nuisance.

II. Repeal of Prior Ordinances

All ordinances and resolutions or parts of ordinances and resolutions in conflict herewith shall be and the same are hereby expressly repealed.

III. Effective Date of Ordinance

This ordinance will become effective thirty (30) days from the date of its passage by the, County Council of Spartanburg County, South Carolina.

ADOPTED this 27th day of January, 2020.

SPARTANBURG COUNTY COUNCIL

BY: [Signature]

A. MANNING LYNCH
Chairman

ATTEST:

[Signature]

Spartanburg County Administrator

First Reading: November 18, 2019
Second Reading: December 16, 2019
Public Hearing: December 16, 2019
Third Reading: January 27, 2020