

ORDINANCE NO. 3 , 2005

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WISE,
VIRGINIA REGULATING PUBLIC DANCE HALLS**

WHEREAS, Virginia Code § 15.2-912.3 authorizes the Town of Wise to adopt ordinances regulating public dance halls in the locality; and,

WHEREAS, it is the desire of the governing body of the Town of Wise to adopt such an ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, by the Town Council of the Town Of Wise, Virginia as follows:

1. Definition:

Public Dance Hall: Any place or business open to the general public on a regular basis where dancing is permitted at which an admission fee is charged, or for which compensation is in any manner received, either directly or indirectly, by cover charge or otherwise, or where refreshments or food or any form of merchandise are served for compensation before, during or after dancing. The sale of any refreshments, foods, or any form of merchandise at any such place or the exhibiting of such for sale shall be deemed direct compensation for any public dance hall within the meaning of this section. Notwithstanding the above provisions of this paragraph, a restaurant located in the town, licensed under Sections 4.1-100 and 4.1-210 of the Code of Virginia to serve food and beverages and having a dance floor, with an area not exceeding 10% of the total floor area of the establishment, shall not be considered a public dance hall. Dances held for benevolent or charitable purposes and dances conducted under the auspices of religious, educational, civic or military organizations are exempt from this ordinance.

2. Rules and Regulations of Chief of Police:

- a. The Chief of Police may promulgate rules and regulations, not inconsistent with the provisions of this ordinance, governing public dance halls and public dances, including hours of operation. Such rules and regulations shall be presented to and approved by the Town Council prior to becoming effective. It shall be unlawful for any person to violate any such rules and regulations.
- b. The Chief of Police shall send a copy of the rules and regulations promulgated pursuant to this section to all holders of permits under this ordinance.
- c. In the event any person holding a permit under this ordinance believes such rules or regulations to be inapplicable or too restrictive, he may, within ten (10) days after transmission thereof by the Chief of Police,

appeal to the Town Council at its next regularly scheduled meeting. The decision of the Town Council shall be final as to the applicability and restrictiveness of these rules and regulations.

3. Right of Entry of Police:

Members of the Police Department may enter any public dance hall or public dance during all hours of operation to protect the peace and quiet of the Town and to enforce any laws.

4. Fire Rules; Building and Zoning Regulations:

The operation of a dance hall or other place where a public dance is held shall be in compliance with all applicable property maintenance code, fire and health hazard regulations and all of the provisions of the building and zoning regulations of the Town of Wise.

5. Hours of Operation:

The hours of operation for public dances and dance halls shall be the same as those prescribed by the alcoholic beverage control board for selling alcoholic beverages and by the Town of Wise Ordinance No. 17, 2000 regulating the hours of sale for mixed beverages which states the following:

- A. The terms "beer", "wine", "alcoholic Beverages", and "mixed alcoholic beverages" shall have the same definition as in Section 4.1-100 of the Virginia Code, as amended from time to time.
- B. No licensee of an on-premise sale and consumption ABC license shall sell beer or wine or any alcoholic beverage, including mixed alcoholic beverages, between the hours of 2:00 a.m. of each Sunday morning and 6:00 a.m. of the following Monday.
- C. No licensee of an off-premises ABC license shall sell beer or wine or any alcoholic beverage, including mixed alcoholic beverages, between the hours of 12:00 midnight of each Saturday and 6:00 a.m. of the following Monday.
- D. Whenever New Year's Eve falls on a Sunday, a licensee under this Ordinance may make application in writing to the Wise Town Council for a Special Permit for the sale and consumption of on-premises beer, wine, or any alcoholic beverage, including mixed alcoholic beverages. The Wise Town Council, in its discretion may approve or deny such application affix the hours for sale of said beverages, and set forth any other conditions as it may deem necessary in considering the request.

6. Violations of Ordinance:

Any person violating any of the provisions of this ordinance or any rules or regulations promulgated by the Chief of Police shall be deemed guilty of a Class 3 Misdemeanor.

7. Permit Required:

It shall be unlawful for any person to operate a public dance hall in the Town, unless he or she has a current permit issued in accordance with the provisions of this Ordinance.

8. Prerequisite to Issuance of Permit:

No license tax shall be assessed by the Treasurer and no license shall be issued for a public dance hall until the permit provided for in this Ordinance has been granted by the Town Council.

9. Application Generally:

Any person desiring a permit under this Ordinance shall make application to Town Council by obtaining and completing an application form to be obtained from the Town Manager's office. When completed, such application shall be filed with the Town Manager's office and forwarded to the Police Department for review.

The application for a permit under this Ordinance shall contain, but shall not be limited to the following information:

- a. The address where the proposed public dance hall will operate, or the address at which the public dance will be held.
- b. The name and address of the applicant who is or who will be the owner of the public dance hall or in charge of the public dance in question. If the owner is not the manager, in addition thereto, the name and address of the manager shall be given.
- c. If the owner or operator is a corporation, the application shall set forth the true or equitable owners of the stock of such corporation.
- d. A statement as to the type of food to be offered and the facilities to be provided for the preparation and service thereof.
- e. The amount of off-street parking space available for patrons.
- f. The names and addresses of the owners of the building and their interest in the business, if any.
- g. The proposed hours of operation of the business.
- h. The proposed hours that dancing will be permitted.

- i. Whether a license to serve alcoholic beverages is held or will be acquired. If so, what type of alcoholic beverages.
- j. Three (3) character references for the applicant.
- k. Any other times, dates or places the applicant may have operated a public dance hall or public dance.
- l. Any police record including traffic violations and felony convictions.
- m. Whether or not the applicant is an appointed or elected official along with title.
- n. Whether or not the applicant has ever had an Alcoholic Beverage License refused or revoked.

10. Application fee

The applicant for a permit under this Ordinance shall deposit fifty dollars (\$50.00) when the application is made. The deposit shall not be refundable.

11. Investigation of Applicant – Generally

The Chief of Police shall forthwith conduct an investigation of the applicant, when he receives the fully completed application filed under this Ordinance and notice that the required deposit has been made.

- a. The Chief of Police shall promptly investigate the facts stated in the permit application.
- b. The Chief of Police shall promptly investigate the owners and person who will be in actual charge of the operation as listed on the permit application as to whether or not any have been convicted of any crime reasonably related to their fitness to operate the proposed establishment.
- c. The Chief of Police shall review and forward to Town Council any written objection(s) to the proposed operation that has been submitted.
- d. The Chief of Police shall review the proposed operation and determine whether or not the operation will disturb the peace.

12. Investigation of Applicant – Certification of results

Upon completion of the investigation provided for in this ordinance, the Chief of Police shall certify to the Town Council that he has investigated the applicant. The Chief of Police shall make a recommendation of approval or denial to Town Council based on his findings.

13. Grant or Refusal

- a. Upon receipt of the certification provided for in this Ordinance, the Town Council shall, upon recorded vote, grant or refuse the permit applied for under this Ordinance. In making its decision, the Council may, if it elects to do so, upon reasonable notice hear evidence and statements of citizens and others as to the suitability of the location of the public dance hall or the place where the public dance is to be held, and as to the fitness of the person who proposes to conduct the same.
- b. If a permit is granted under this Ordinance, the Council may set out such restrictions as it deems necessary for the preservation of the public health, safety and general welfare, and particularly the welfare of the youth of the Town.
- c. The grant or refusal of a permit applied for under this Ordinance shall be in the sole discretion of the Town Council.

14. License Tax

A license tax of \$250 shall be paid annually by every person operating or conducting a public dance hall.

15. Permit Not Transferable

A permit granted under this Ordinance shall not be transferable to any other person, nor shall a dance hall permit be transferable to any other location.

16. Expiration and Renewal

Any permit granted under this Ordinance shall automatically expire one year after the date of issuance, unless sooner revoked or suspended. The permit may be renewed automatically upon payment of the business license fee unless a suspension pursuant to this ordinance has been imposed or initiated within the twelve (12) months immediately preceding, in which case the permit may be renewed in the same manner and by the same procedure as the original permit was issued.

17. Suspension – Generally

The Chief of Police shall have the authority to suspend, for good cause, as set out below, any permit issued under this Ordinance by handing the holder thereof a written notice of suspension, which suspension shall be effective twelve (12) hours after delivery to the owner.

A permit granted under this Ordinance may be suspended by the Chief of Police for any of the following reasons:

- a. If the permit holder is convicted for violation of the gambling laws of the State.
- b. Upon certification and documentation by the Chief of Police that the premises covered by the permit are detrimental to the health, safety or general welfare of the citizens of the Town.
- c. If the permit holder is convicted for violation of the Alcoholic Beverage Control laws of the State.

18. Suspension – Appeal

Upon receiving the notice of suspension provided for in this Ordinance, the permit holder may appeal the suspension by filing with the Town Clerk a written request that the action of the Chief of Police be reviewed by the Dance Review Committee, which committee shall consist of two (2) members of the Town Council appointed by the Mayor. Upon the filing of such request, the suspension of the permit shall be delayed until all matters have been presented to the Dance Review Committee.

The Dance Review Committee shall hear and review all matters presented to it under this Ordinance within seventy-two (72) hours after the written request is filed with the Town Clerk to review the action of the Chief of Police. The Committee shall reduce its findings to writing and a copy thereof shall be delivered, by a member of the Committee, to the appellant and to the Chief of Police, within forty-eight (48) hours after the hearing.

The decision of the Dance Review Committee on appeal under this Ordinance shall be effective until the next regular meeting of the Town Council, at which time the Council shall render a final decision on the matter. The permit holder and the Chief of Police shall be entitled to present, at such Council meeting, any matters concerning the suspension of the permit.

19. Overriding Conflicting Ordinances

All other previous ordinances in conflict herewith are hereby repealed.

20. Severability of Parts of the Ordinance

If any section, sentence, clause, part, or provision hereof shall be declared illegal, invalid, or unconstitutional by any court of competent jurisdiction; such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts, or provisions of this ordinance. It is hereby declared to be the intent of the Town of Wise that these rules and regulations

would have been adopted if such illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included herein.

21. Rules of Interpretation

The following rules of interpretation shall be used:

- a. Words in the present tense may imply the future tense.
- b. Words used in the singular may imply the plural.
- c. The masculine gender includes the feminine and neutral genders.
- d. The word "shall" is to be interpreted as mandatory. The word "may" is to be interpreted as directory.

BE IT FURTHER ORDAINED AND ENACTED, by the Town Council of the Town of Wise, Virginia that this Ordinance shall take full force and effect immediately upon its adoption.

VOTING "AYE": Clifton Carson, Caynor Smith, Jr., Luther Adkins, Erra Sutherland

VOTING "NAY": - NONE -

ABSENT: Jarrad Addison **ABSTENTIONS:** - NONE -

ADOPTED, ENACTED, AND EFFECTIVE, this the 28th day of June, 2005.

TOWN OF WISE, VIRGINIA

Clifton Carson
MAYOR

ATTEST:

Releim M. Bryant
CLERK OF COUNCIL