

City of Flowood, Mississippi

Amended and Restated Ordinance Relating to the Retail Sale of Beer

Adopted: August 20, 2012

**ORDINANCE AMENDING AND RESTATING THE ORDINANCE OF
THE CITY OF FLOWOOD, MISSISSIPPI RELATING TO THE RETAIL
SALE OF BEER**

WHEREAS, the Ordinance of the City of Flowood, Mississippi Relating to the Retail Sale of Beer was ordained on October 11, 1991 and has been amended from time to time (the "Beer Ordinance");

WHEREAS, the Mississippi state legislature passed amendments to multiple sections of the Mississippi Code of 1972 to increase the permissible alcoholic content of beer from 5% of alcohol by weight to 8% of alcohol by weight, and such amendments were effective July 1, 2012;

WHEREAS, such modifications differentiated the level of alcohol allowed in beer and light wine;

WHEREAS, due to the modifications in the state statutes, modification of certain provisions of the Beer Ordinance are needed; and

WHEREAS, due to the fact that modifications are needed throughout the Beer Ordinance it is in the best interest of the City of Flowood, Mississippi (the "City") to amend and restate the Beer Ordinance in its entirety containing all modifications.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY, ACTING FOR AND ON BEHALF OF THE CITY, THAT THE BEER ORDINANCE BE AMENDED AND RESTATED AS FOLLOWS:

SECTION 1: SALES AUTHORIZED

(A) Subject to the provisions of this Beer Ordinance, the sale of wine of an alcohol content of not more than five percent (5%) by weight ("light wine") shall be allowed within the City.

(B) Subject to the provisions of this Beer Ordinance, the sale of malt beverages as defined in the Federal Alcohol Administration Act and any rules and regulations adopted pursuant to such act of an alcoholic content of not more than eight percent (8%) by weight ("beer") shall be allowed within the City.

SECTION 2: PRIVILEGE LICENSE REQUIRED

Any person, partnership, firm or corporation desiring to engage in the business of selling beer or light wine at retail shall obtain from the City a privilege license and pay a privilege license tax at the same rate as that imposed by Section 27-71-303 of the Mississippi Code of 1972, annotated and as amended, for the purpose of engaging in such business and shall file with the City Clerk of the City an application showing that said person, partnership, firm, or corporation possesses all the requirements provided for in this Beer Ordinance. Further, said applicant shall present with the application a permit as required by Section 67-3-17 and 67-3-23. The City's privilege

licenses shall be applied for and renewed annually. Said licenses shall be displayed conspicuously in licensees' place of business and shall not be transferable. It shall be unlawful for any person, partnership, firm or corporation to engage in the business of the retail sale of light wine of an alcoholic content of not more than five percent (5%) by weight or the retail sale of beer of an alcoholic content of not more than eight percent (8%) without having first applied for and obtained from the City Clerk a privilege license to engage in such business as aforesaid.

SECTION 3: APPLICATION REQUIRED

Any person, partnership or corporation desiring a license to sell beer or light wine at retail or desiring to renew such a license to sell beer or light wine shall file an application with the City Clerk in the form of a sworn statement giving the address, the name of the business, its location, and if a partnership or firm, the name and address of each partner or member and, if a corporation, the names of two principal officers, the post office address and the nature of business in which engaged. In case any business is conducted by the same person, partnership, firm or corporation at two or more separate places, a separate license for each location of business shall be required.

The applicant shall further show in his sworn application for a license that he, the partnership, firm or corporation possesses the following qualifications:

(A) Applicant must be over 21 years of age and a person of good moral character, a citizen of the United States and in the State of Mississippi.

(B) Applicant shall not have been convicted in this or any other state of a felony or of pandering, or of keeping or maintaining a house of prostitution.

(C) Applicant shall not have been convicted in this or any other state within five (5) years preceding the date of his application of any laws of this or other states, or of the United States relating to alcoholic liquors or gambling or have had revoked any license or permit to sell alcoholic liquors of any kind within said period of time.

(D) Applicant shall be the owner of the premises for which the permit is sought or the holder of a bona fide written lease thereupon.

(E) If applicant is a partnership or firm, all members of the partnership or firm must be named and shall be qualified to obtain a license.

(F) If applicant is a corporation, all officers and directors thereof, and any stockholder owning more than 5% of the stock of such corporation, and the person or persons who shall conduct and maintain the licensed premises for the corporation shall possess all the qualifications required herein for an individual permittee; provided however, that the requirements as to residents shall not apply to officers, directors, and stockholders of such corporation, but such requirements shall apply to any officer, director, or stockholder who is also the manager of the licensed premises or who is engaged or employed at the licensed premises in any capacity, in the conduct or operation of the licensed premises.

SECTION 4: LOCATION TO BE IDENTIFIED

In addition to the foregoing information required as to said application, the said application shall give the location of the proposed site for such sale, and the Mayor and Board of Aldermen reserve the right to determine whether or not such business shall be permitted to conduct the sale of beer and light wine at such location, and no permit shall be granted to any person, firm, partnership, or corporation where it is apparent that the site's location in relation to a church sanctuary, school main entrance, or kindergarten might prove harmful to the general welfare, health, and morals of the community. Under no circumstances shall such business be located closer to any church, school, or kindergarten, etc., than 500 feet measured from the front door of said business along the center line of the street to the front door of any such church, sanctuary, school main entrance, or kindergarten. Such business may be located only in those areas zoned commercial according to the zoning map and ordinances of the City, PROVIDED THAT, the area comprising the Municipal Golf Course shall be an allowed area regardless of zoning designation. The restriction as to the location of such business shall not apply if said premises have already been licensed under the terms of this ordinance prior to the construction or operation of any church, school, or kindergarten. Additionally, colleges shall not be considered schools for the purposes of the restriction on location under this Section.

SECTION 5: GENERAL RESTRICTIONS

It shall be unlawful for any person, partnership, firm, business, or corporation within the corporate limits of Flowood, Mississippi:

(A) To sell beer or light wine in any type business establishment other than a hotel, restaurant, grocery store or convenience store as permitted under this Beer Ordinance. See Sections 13, 14 and 15 of this Beer Ordinance for restrictions specific to hotels, restaurants and manufacturers and brewers. A grocery store or convenience store is hereby declared to be a store deriving 50% or more of its gross sales from the sale of groceries and if such a store or business does not derive 50% or more of gross sales from the sale of groceries, the said business or store shall not qualify for the sale of beer or light wine. In determining gross sales of groceries the sale of gasoline shall not be included.

(B) For a grocery store or convenience store to sell, dispense, or give beer or light wine to anyone before 5:00 o'clock a.m. or after 11:00 o'clock p.m.

(C) For a grocery store or convenience store to sell, dispense, or give to anyone a quantity of beer or light wine of less than a four pack (sale of kegs of beer will be permitted).

(D) To permit consumption of beer or light wine on the premises of a grocery store or convenience store selling beer or light wine.

(E) To sell, give, or furnish any beer or light wine to any person visibly or noticeable intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of 21 years.

(F) To permit on the premises of any place licensed to sell beer or light wine any lewd, immoral, or improper entertainment, or conduct or practices.

(G) To permit loud, boisterous or disorderly conduct of any kind upon the premises of any place licensed to sell beer or light wine or to permit the use of loud musical instruments if either or any of the same disturb the peace and quietude of the community wherein such business is located, or to operate pinball machines, pool tables or other coin operated amusement machines with the exception of juke boxes.

(H) To permit persons of ill repute, known criminals, prostitutes or minors to frequent said licensed premises, except minors accompanied by parents or guardians or under proper supervision.

(I) To permit or suffer gambling or the operation of games of chance upon the licensed premises.

(J) To throw, leave, or put a beer or light wine container on the streets, avenues, and road of the City of Flowood, Mississippi, or to throw, leave, or put a beer or light wine container upon the property of anyone except the person or persons possessing said container.

(K) To receive, possess or sell any light wine containing more than five percent (5%) alcohol by weight or beer containing more than eight percent (8%) alcohol by weight unless authorized under the Qualified Resort Ordinance.

(L) To sell, dispense, or give away beer or light wine without having paid the privilege tax to the City, as provided by this ordinance.

(M) To sell beer or light wine to any person knowing that the person to whom the beer or light wine is sold is buying the same for a person under the age of 21 years.

(N) To serve beer or light wine from the place of business to a person or persons in an automobile or automobiles in the form of curb service.

(O) To work or employ anyone under 18 years of age in said place, business or establishment where beer or light wine is sold except under proper and constant supervision of the adult owner or owners or an adult employee or employees.

(P) Notwithstanding any other provision of this ordinance, the sale and consumption of beer and light wine in the Municipal Golf Clubhouse and on the golf course shall be allowed subject only to state law limitations concerning days of sale, times of sale and other like restrictions, PROVIDED, HOWEVER, that no beer or light wine may be consumed on or transported to the Municipal Golf Course for consumption other than beer or light wine purchased at said Municipal Golf Course from the persons or companies licensed to sell by the City.

SECTION 6: PARENTAL CONSENT/OTHER

A person who is at least eighteen (18) years of age but under the age of twenty-one (21) years may possess and consume beer or light wine with the consent of his parent or legal guardian in the presence of his parent or legal guardian, and it shall not be unlawful for the parent, legal guardian or spouse of such person to furnish beer or light wine to such person who is at least eighteen (18) years of age.

A person who is at least eighteen (18) years of age and who is serving in the armed services of the United States may lawfully possess and consume beer or light wine on military property where the consumption of beer or light wine is allowed.

A person who is under twenty-one (21) years of age shall not be deemed to unlawfully possess or furnish beer or light wine, if in the scope of his employment such person:

- (a) Clears or buses tables that have glasses or other containers that contain or did contain beer or light wine;
- (b) Waits on tables by taking orders for beer or light wine; or
- (c) Stocks, bags or otherwise handles purchases of beer or light wine at a store.

SECTION 7: UNLAWFUL PURCHASES

It shall be unlawful for any retailer to possess for the purpose of sale, to sell, or offer to sell any beer or light wine which was not purchased from a wholesaler in this state who has a permit to sell such beer or light wine.

It shall be unlawful for any wholesaler to possess for purpose of sale, to sell, or offer to sell any beer or light wine which was not purchased from a manufacturer or importer of a foreign manufacturer authorized to sell such beer or light wine in this state.

SECTION 8: RIGHT OF INPSECTION

The Mayor and Board of Aldermen shall have the power and authority to demand the inspection of all invoices, sales tax reports and other business papers or records which would reflect the true amount of sales made by a licensed grocery or convenience store derived from the sale of groceries or made by a restaurant derived from the sale of food. The Mayor and Board of Aldermen shall have the right to demand such records at least quarterly, or more often, if the Mayor and Board of Aldermen shall have any reason to believe that the grocery or convenience store selling beer or light wine is not deriving 50% or more of gross sales for the sale of groceries or that the restaurant selling beer or light wine is not deriving 60% or more of total revenue from the sale of food. The failure to furnish, said records to the Mayor and Board of Aldermen or to any designated employee of the City of Flowood shall be a violation of this Beer Ordinance and shall be punishable as herein provided. Further, the Mayor and Board of Aldermen shall immediately revoke the license of any person, partnership, firm or corporation refusing to furnish said records to the Mayor and Board of Aldermen or any designated employee of the City. Additionally, if a grocery store, convenience store or restaurant refuses to

cooperate with an audit or if the results of an audit result in such business failing to meet the requirements, the business shall be responsible for all expenses incurred by the City associated with the audit.

SECTION 9: CONSUMPTION RESTRICTIONS

(A) With the exception of the Municipal Golf Course, it shall be unlawful for any person to consume or possess an Open Container of beer, light wine or other alcoholic beverage on any property which is publicly owned within the City of Flowood. As applied in this Section 9: Consumption Restrictions, an "Open Container" shall be deemed to be any beer or light wine container which has been opened, any bottle of alcoholic beverage on which the seal has been broken or any container, such as a glass or cup, from which beer, light wine or an alcoholic beverage is being consumed.

(B) It shall be unlawful for the driver and/or passenger of a motor vehicle to have on his person or in his possession beer, light wine or any alcoholic beverage in an Open Container.

(C) It shall be unlawful for any person to possess an Open Container on property open to the public, including buildings, parking lots, sidewalks, streets, public and private schools and parks within the municipal boundaries of the City.

(D) If an establishment is properly permitted and licensed for the sale and consumption of beer, light wine or alcoholic beverages on the premises, it will not be a violation of this section for customers to consume beer, light wine or alcoholic beverages while within the premises within which the possession and consumption of beer, light wine or alcoholic beverages is allowed under the City of Flowood ordinances.

SECTION 10: AGE RESTRICTION

Except for as allowed under Section 6 of this Beer Ordinance, it shall be unlawful for any person within the corporate limits of the City of Flowood, Mississippi, to possess, give, buy or receive beer or light wine unless 21 years of age or older.

SECTION 11: PENALTY FOR VIOLATION

The Mayor and Board of Aldermen shall suspend or revoke the license of any retailer of beer or light wine who has been convicted of violating this Beer Ordinance, and such revocation of a license shall be in addition to and not in lieu of any other penalty provided by this ordinance.

Any person, partnership, firm, or corporation violating any provision of this ordinance shall be fined not in excess of \$500.00 or imprisoned in jail for not in excess of six (6) months or be punished by both such fine and imprisonment and each and every violation shall be a separate offense and separate fines and imprisonment may be assessed for each offense.

SECTION 12: OTHER PENALTIES

Except as otherwise provided by Section 6, any person under the age of twenty-one (21) years who purchases or possesses any beer or light wine shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) and/or a sentence to not more than thirty (30) days community service.

My person under the age of twenty-one (21) years who falsely states he is twenty-one (21) years of age or older or presents any document that indicates he is twenty-one (21) years of age or older for the purpose of purchasing or possessing any beer or light wine shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) and/or a sentence to not more than thirty (30) days community service.

Except as otherwise provided by Section 6, any person who knowingly purchases beer or light wine for, or gives or makes available beer or light wine to a person under the age of twenty-one (21) years, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) and/or a sentence to not more than thirty (30) days community service.

The term “community service” as used in this section shall mean work, projects or services for the benefit of the community assigned, supervised and recorded by appropriate public officials.

SECTION 13: RESTAURANTS

Notwithstanding any of the other provisions of this ordinance, the sale of or light wine by the drink shall be lawful within restaurants. Restaurants shall be defined as those establishments which are in the business of preparing and serving food for consumption within the premises and who derive 60% of their gross receipts from the sale of such prepared food. Such sales shall be permitted between the hours of 11:00 a.m. to 12:00 midnight Monday through Saturday and 12:00 noon to 12:00 midnight on Sunday. No restaurants may serve beer or light wine outside an enclosed structure.

Notwithstanding any provisions of this ordinance, the sale and consumption of beer or light wine in the Municipal Golf Clubhouse and golf course premises shall be allowed regardless of the percentage of food served.

SECTION 14: HOTELS

Notwithstanding any of the other provisions of the Beer Ordinance, it shall not be unlawful for hotels which do not have restaurants to sell, give or furnish beer or light wine by the drink to guests of the hotel. Hotels shall be defined for the purpose of provision as those establishments which are in the business of renting twenty (20) or more rooms for overnight occupancy and which provide complimentary hors d’oeuvres to guests. The serving of beer and light wine by hotels to guests shall only be permitted between the hours of 4:00 p.m. and 8:00 p.m., Monday through Sunday and beer and light wine shall not be served except to guests and employees of the hotel.

Notwithstanding any other provisions of the Beer Ordinance, hotels in the business of renting twenty (20) or more rooms for overnight occupancy shall also be permitted to sell, furnish or allow beer or light wine in a meeting room or ballroom rented or reserved for the purposes of a special event, including but not limited to weddings, hospitality rooms for conferences, rehearsal dinners and political functions, provided that the special event is a catered event serving food. Hotels shall only be allowed to serve guests of the special event, and the serving of beer and light wine by hotels to guests of a special event shall be permitted between the hours of 11:00 a.m. and 12:00 midnight Monday through Saturday and between the hours of 12:00 noon and 12:00 midnight on Sundays.

SECTION 15: MANUFACTURERS AND BREWERS

Notwithstanding any other provision of this ordinance, a holder of a permit to manufacture beer who operates a brewery may provide beer on the premises of the brewery for tasting or sampling in accordance with Mississippi state statute.

A motion to adopt this amended and restated ordinance was made by Alderman McDaniel and seconded by Alderman Harmon. The amendments were put to a vote, and the result was as follows:

Alderman Donald Flynt voted:	Aye
Alderman Deron Harmon voted:	Aye
Alderman Kathy Smith voted:	Aye
Alderman Kirk McDaniel voted:	Aye
Alderman Dusty Rhoads voted:	Aye

The motion having received the affirmative vote of a majority of the members of the Board of Aldermen present, being a quorum of said Board of Aldermen, the Mayor declared the motion carried and the amendment ordained this 20th day of August 2012.

Gary L. Rhoads, Mayor

Attest:

Julia Williams, City Clerk