

City of Flowood, Mississippi

Qualified Resort Area Ordinance

Ordained July 7, 2009
As amended on August 20, 2012
As amended on August 6, 2018

**ORDINANCE OF THE CITY OF FLOWOOD, MISSISSIPPI ESTABLISHING
REGULATIONS FOR THE DESIGNATION AND LOCATION OF QUALIFIED
RESORT AREAS WITHIN THE MUNICIPAL BOUNDARY AND JURISDICTION OF
THE CITY OF FLOWOOD, MISSISSIPPI AND REPEALING ALL CONFLICTING
PROVISIONS OF THE ZONING ORDINANCE OF THE CITY OF FLOWOOD**

WHEREAS, the City of Flowood (the "City") conducted a special election on June 2, 2009 in which the majority of the voters voted for the establishment of qualified resort areas in the City of Flowood pursuant to House Bill 1441, which was approved by the Governor on April 17, 2009;

WHEREAS, the City, by and through its elected representatives, has adopted and followed zoning regulations and ordinances to ensure an orderly and coherent growth of the City of Flowood;

WHEREAS, the use of reasonable regulations and controls as set forth in the City's zoning regulations and ordinances has facilitated and improved the growth and development of the City;

WHEREAS, the current regulations and controls set forth in the City's zoning regulations and ordinances are inadequate to properly address the appropriate location, designation and regulation of qualified resort areas within the City; and

WHEREAS, the City desires to adopt a new ordinance providing for regulation and control of the qualified resort areas within the municipal boundaries of the City of Flowood and other matters to accomplish the purposes and goals set forth herein, and the Board of Aldermen of the City of Flowood having determined that the adoption of this ordinance shall serve, preserve and protect the health, safety and welfare of the residents of the City of Flowood, Mississippi.

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the City of Flowood, Mississippi, as follows:

Section 1. Designated Qualified Resort Areas

This Ordinance is an extension of the City of Flowood Zoning Ordinance and shall be interpreted in accordance with the Miss. Code Ann. Sections 17-1-1 et. seq. (1972), as amended. Additionally, all requirements, restrictions and powers that are imposed to Zoning Ordinances through Miss. Code Ann. Sections 17-1-1 et. seq. shall apply to this Ordinance.

The purpose of this Ordinance is to establish rules regulating qualified resort areas within the City with the objective of protecting and promoting public safety and welfare, and to mitigate adverse impacts on the community while promoting economic development.

Notwithstanding any other provision of the ordinances of the City of Flowood, City Qualified Resort Areas shall be regulated and governed by the following regulations and requirements.

Section 2. Definitions

- A. **60% Food Rule** - the requirement that no business location shall qualify as a Restaurant under this Ordinance unless sixty percent (60%) or more of the revenue derived from such business location shall be from the preparation, cooking and serving of meals and not from the sale of beverages, or unless the value of food given to and consumed by customers is equal to sixty percent (60%) or more of total revenue.
- B. **Alcoholic Beverage** - any alcoholic liquid, including wines, of more than five percent (5%) of alcohol by weight, capable of being consumed as a beverage by a human being which shall not include light wine and beer as defined in Section 67-3-3, Mississippi Code of 1972, but shall include native wines. The words "Alcoholic Beverage" shall not include ethyl alcohol manufactured or distilled solely for fuel purposes or any beer of an alcoholic content of more than eight percent (8%) by weight if the beer is legally manufactured in this state for sale in another state.
- C. **City Qualified Resort Areas** - Hotels or Restaurants within the City which have received a special use permit to allow for the sale of Alcoholic Beverages in accordance with the guidelines detailed in this Ordinance.
- D. **Hotel** - an establishment which, in consideration of payment, food and lodging is habitually furnished to travelers and wherein are located at least twenty (20) adequately furnished and completely separate sleeping rooms with adequate facilities that persons usually apply for and receive as overnight accommodations.
- E. **Ordinance** - Ordinance of the City of Flowood, Mississippi Establishing Regulations for the Designation and Location of Qualified Resort Areas within the Municipal Boundary and Jurisdiction of the City of Flowood, Mississippi and Repealing All Conflicting Provisions of the Zoning Ordinance of the City of Flowood.
- F. **Person** - any individual, partnership, corporation, association or other legal entity whatsoever.
- G. **Restaurant** - a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation, which has suitable seating facilities for guests, and which has suitable kitchen facilities connected therewith for cooking an assortment of foods and meals commonly ordered at various hours of the day; the service of such food as sandwiches and salads only shall not be deemed in compliance with this requirement. No place shall qualify as a Restaurant under this Ordinance unless sixty percent (60%) or more of the revenue derived from such place shall be from the preparation, cooking and serving of meals and not from the sale of beverages, or unless the value of food given to and consumed by customers is equal to sixty percent (60%) or more of total revenue.

Section 3. Special Use Permits

City Qualified Resort Areas may be located in commercial zoning districts in the City only by the issuance of a special use permit pursuant to the provisions of this Ordinance. Special use permits shall be issued under the same procedure as detailed in Article IV, Sections 404, 405, 407, 408 and 409 of the City of Flowood Zoning Ordinance.

Section 4. Qualified Resort Area Standards

- A. The sale of Alcoholic Beverages in City Qualified Resort Areas shall be limited to on-premises consumption in Restaurants and Hotels, subject to the restrictions detailed in this Ordinance.
- B. Restaurants shall be permitted to sell, dispense, or give away Alcoholic Beverages between the hours of 10:00 a.m. and 12:00 midnight Monday through Sunday. No Restaurant may serve or allow Alcoholic Beverages outside an enclosed structure or outside of a fenced in patio area, which contains seating, adjoining the Restaurant.
- C. Notwithstanding any of the other provisions of this Ordinance, it shall not be unlawful for Hotels which do not have Restaurants to sell, give or furnish Alcoholic Beverages to guests of the Hotel. The serving of Alcoholic Beverages by Hotels to Hotel guests shall be permitted between the hours of 4:00 p.m. and 8:00 p.m., Monday through Sunday and the Hotel shall provide complimentary hors d'oeuvres in conjunction with the service of Alcoholic Beverages. Alcoholic Beverages shall not be served except to guests of the Hotel.
- D. Hotels shall also be permitted to sell, furnish or allow Alcoholic Beverages 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 Alcoholic Beverages by Hotels to guests of a special event shall be permitted between the hours of 10:00 a.m. and 12:00 midnight Monday through Sunday.
- E. No adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motel, or adult motion picture theater may be established as a City Qualified Resort Area.
- F. It shall be unlawful for any Person within the corporate limits of Flowood, Mississippi:

- i. To sell, dispense, or give away Alcoholic Beverages without obtaining a special use permit from the City establishing the business as a City Qualified Resort Area in accordance with this Ordinance.
- ii. To sell, dispense, or give away Alcoholic Beverages in any type business establishment other than a Restaurant or a Hotel.
- iii. For Restaurants to sell, dispense, or give away Alcoholic Beverages to anyone before 10:00 a.m. or after 12:00 midnight Monday through Sunday.
- iv. For Hotels to sell, dispense, or give Alcoholic Beverages to Hotel guests before 4:00 p.m. or after 8:00 p.m. Monday through Sunday or to sell, dispense or give Alcoholic Beverages to guests of a special event before 10:00 a.m. or after 12:00 p.m. Monday through Sunday.
- v. To sell, dispense or give away Alcoholic Beverages at any restaurant which does not meet the 60% Food Rule.
- vi. To sell, give, furnish or allow the consumption of any Alcoholic Beverages to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of 21 years.
- vii. To permit on the premises of any City Qualified Resort Area any lewd, immoral, or improper entertainment, conduct or practices.
- viii. To permit loud, boisterous or disorderly conduct of any kind upon the premises of any City Qualified Resort Area, to sell Alcoholic Beverages or to permit the use of loud musical instruments or amplified electronic equipment if either or any of the same disturb the peace and quietude of the community wherein such City Qualified Resort Area is located, or to operate pinball machines, pool tables or other coin operated amusement machines, with the exception of juke boxes, upon the premises of any City Qualified Resort Area.
- ix. To permit persons of ill repute, known criminals, prostitutes, or minors to frequent said City Qualified Resort Areas, except minors accompanied by parents or guardians or under proper supervision.
- x. To permit or suffer gambling or the operation of games of chance upon the City Qualified Resort Areas.
- xi. To throw, leave, or put Alcoholic Beverage containers on the streets,

avenues, and road of the City or to throw, leave, or put these containers on the property of anyone except the Person or Persons possessing said containers.

- xii. To sell Alcoholic Beverages to any Person under the age of 21 years or to any person knowing that the person to whom it is sold is buying the same for a person under the age of 21 years.
 - x111. To serve Alcoholic Beverages from the place of business to a Person or Persons in an automobile or automobiles in the form of curb service.
 - xiv. To work or employ anyone under 18 years of age in said place, business or establishment where Alcoholic Beverages are sold except under proper and constant supervision of the adult owner or owners or an adult employee or employees.
- G. Notwithstanding any other provision of this ordinance, the sale and consumption of Alcoholic Beverages 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 Alcoholic Beverages may be consumed on or transported to the Municipal Golf Course for consumption other than Alcoholic Beverages purchased at said Municipal Golf Course from the Persons permitted to sell same by the City.
- H. No signs advertising the sale of any Alcoholic Beverages, including signs located outside a building or any type of sign located within a building which is visible from the outside are permitted.

Section 5. Permit by State Tax Commission

All City Qualified Resort Areas must also be permitted by the State Tax Commission or must be in the process of being permitted by the State Tax Commission in order to receive a special use permit.

Section 6. General Provisions

- A. Application for Special Use Permit
- i. Any Person desiring a special use permit to establish a business as a City Qualified Resort Area 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, if a limited liability company, the name and address of each member and manager, and, if a corporation, the names of the officers, directors and certain stockholders, the post office address, the nature of

business in which engaged and other additional information as required by the City. In case any business is conducted by the same person at two or more separate locations, a separate special use permit for each location of business shall be required.

11. The applicant shall further state in its sworn application for a special use permit that it possesses the following qualifications:
 - I. Applicant, if an individual, or if a partnership, each of the members of the partnership, or if a corporation, each of its principal officers and directors, or if a limited liability company, each member of the limited liability company, must be over 21 years of age, a person of good moral character, and a citizen of the United States and the State of Mississippi.
 2. Applicant shall not have been convicted in Mississippi or any other state of a felony or of pandering, or of keeping or maintaining a house of prostitution.
 3. Applicant shall not have been convicted of violating any laws in this or any other state, or of the United States relating to Alcoholic Beverages or gambling or have had revoked any license or permit to sell Alcoholic Beverages of any kind or beer or light wine within five (5) years preceding the date of application.
 4. Applicant shall be the owner of the premises for which the permit is sought or the holder of a bona fide written lease thereupon.
 5. If applicant is a partnership, limited liability company or any other entity, all members and officers must be named and shall be qualified in order to obtain a special use permit.
 6. 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 premises for the corporation shall possess all the qualifications required herein for an individual applicant; provided however, that the requirements as to residency 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 premises obtaining a special use permit or who is engaged or employed at such premises in any capacity, in the conduct or operation of such premises.
 7. All Restaurants must provide proof that they meet the 60% Food Rule. New Restaurants must provide information regarding the

inventory of the Restaurant to prove that they meet the 60% Food Rule. All new Restaurants shall be required to confirm proof of their gross sales as reported to the State Tax Commission six (6) months after the opening of the Restaurant. The City may request proof of meeting the 60% Food Rule at any time after the original application is made. For all existing Restaurants, proof of the gross sales reported to the State Tax Commission shall be required at the time of application. The City may request proof of meeting the 60% Food Rule at any time after the original application is made.

B. Right of Inspection

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 being made by a Restaurant which has been designated as a City Qualified Resort Area. 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 restaurant is not meeting the 60% Food Rule. 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 the ordinance and shall be punishable as herein provided. Further, the Mayor and Board of Aldermen may immediately revoke the special use permit of any restaurant refusing to furnish said records to the Mayor and Board of Aldermen or any designated employee of the City. Additionally, if a restaurant refuses to cooperate with an audit or if the results of an audit result in the restaurant failing to meet the 60% Food Rule, the restaurant shall be responsible for all expenses incurred by the City associated with the audit.

C. Transfer of Ownership

If a business which has been established as a City Qualified Resort Area changes ownership so that fifty percent (50%) or more of the business or the entity that owns the business is sold or transferred to anyone other than those Persons listed on the current application with the City of Flowood, then the business must reapply for a special use permit to qualify as a City Qualified Resort Area. If a business which has been established as a City Qualified Resort Area has any change in ownership, even if less than fifty percent (50%) of the ownership of the business is transferred or if less than fifty percent (50%) of the ownership of the entity that owns the business is transferred, the changes in ownership must be submitted to the City and the business's special use permit application must be amended to include the new owners.

D. Participation in Alcohol Awareness Program

A City Qualified Resort Area serving Alcoholic Beverages shall be required to have all personnel involved in the serving of Alcoholic Beverages certified to have completed the primary ServSafe Alcohol Online Course, which can be accessed at www.servsafe.com, or an equivalent program approved by the City. Such employees

shall be certified and shall have such certification in place prior to the selling of any Alcoholic Beverages to customers.

Section 7. Qualified Resort Area Location Standards

The Mayor and Board of Aldermen reserve the right to determine whether or not such business shall be permitted to conduct the sale or allowance of Alcoholic Beverages at such location, and no permit shall be granted to any person where a church sanctuary, school main entrance, or kindergarten is located or where it might prove harmful to the general welfare, health, and morals of the community. Under no circumstances shall such business be located closer than 500 feet from any church, school, or kindergarten, etc., with the 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. In applying this Ordinance, a college is not considered a school. Such business may be located only in those areas zoned commercial according to the zoning map and ordinances of the City of Flowood, Mississippi, 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 business shall not apply if its premises have already received a special use permit under the terms of this ordinance prior to the construction or operation of any church, school, funeral home, or kindergarten.

Section 8. Permits

The fee for an application for a special use permit pursuant to the terms of this Ordinance shall be Three Hundred Dollars (\$300) per application.

Section 9. Appeal

Any person desiring to appeal the granting or denial of any Application shall follow the appeal procedures of the Official Zoning Ordinance of the City.

Section 10. Violation

Any violation of this subchapter is hereby declared to be grounds for discontinuation of the special use permit and such discontinuation of the special use permit will revoke the zoning necessary to sell Alcoholic Beverages in the City. In addition to any other relief provided by this subchapter, the City may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article, and other available relief.

Additionally, any Person who shall knowingly and willfully violate the terms, conditions or provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction therefore shall be sentenced to pay a fine not to exceed One Hundred Dollars (\$100), and in case of continuing violations without reasonable effort on the part of the defendant to correct same, each day the violation continues thereafter shall be a separate offense.

Section 11. Separability and Validity Clause

Should any Section or provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision 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.

Section 12. Repeal of Conflicting Ordinances or Parts Thereof

All Ordinances or parts of Ordinances adopted heretofore by the City of Flowood, Mississippi, which are in conflict herewith or inconsistent with the provisions of this Ordinance ARE HEREBY REPEALED.

Section 13. Failure to Enforce Ordinance

Failure to enforce any provision of this Ordinance shall not constitute a waiver nor imply that the action is legal.

Section 14. Effective Date of Ordinance

This Ordinance shall become effective immediately upon publication, the public health and safety demanding same.

SO ORDAINED this the 7th day of July, 2009.

s/Gary Rhoads
Gary Rhoads, Mayor

ATTEST:

s/Julia Williams
Julia Williams, City Clerk