

217 - 2013

**AN ORDINANCE ACKNOWLEDGING THE RESULT OF THE  
ELECTION ON THE SALE OF LIQUOR AND ALCOHOLIC BEVERAGES IN  
THE CITY OF BROOKHAVEN, MISSISSIPPI, AND  
PARAMETERS OF WHERE THE SAME MAY BE CONDUCTED**

**WHEREAS**, pursuant to state law the City of Brookhaven on June 4, 2013, held a regular election to allow the voters within the municipality to determine whether to prohibit or permit the sale and the receipt, storage and transportation for the purpose of sale of liquor and alcoholic beverages pursuant to Mississippi Code Annotated §67-1-14.

**WHEREAS**, the final certified results of this regular election were two thousand four hundred thirty seven (2,437) votes, "For the legal sale of alcoholic liquors", and one thousand one hundred and two (1,102) votes "Against the legal sale of alcoholic liquors"; and

**WHEREAS**, §67-1-14 of the Mississippi Code of 1972 provides that upon a majority vote for the legal sale of alcoholic liquors "the municipal governing authorities" shall pass the necessary order permitting the legal sale of such alcoholic beverages in such municipality; and

**WHEREAS**, The City of Brookhaven finds and determines that it is in the public interest and will promote public health, morals and safety to provide reasonable rules and regulations governing the sale of alcoholic beverages.

**WHEREAS**, the City of Brookhaven Board of Aldermen at their regularly scheduled Board meeting on the 8th day of August, 2013, adopted an ordinance establishing the same.

**THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF  
ALDERMEN OF THE CITY OF BROOKHAVEN:**

**SECTION I: Definitions**

**When used in the ordinance:**

- (1) Any term, word or phrase which is specifically defined by Section 65-1-5 of the Mississippi Code of 1972 shall be so defined in this section and is

incorporated herein:

- (2) *"Alcoholic beverage"* for the purposes of this ordinance shall have the same definition as that provided by the Mississippi Department of Revenue (Alcohol Beverage Control) as currently exists or as is hereafter amended, modified, repeated or added.
- (3) *"On-premises retailer permittee"* means any person issued a permit authorizing the sale of alcoholic beverages, including native wines for consumption on the licensed premises only pursuant to Mississippi Code Section 67-1-51(1)C). The term includes qualified hotels, restaurants, and clubs, common carriers and qualified resort area permittees.
- (4) *"Package retailer permittee"* means any person issued a permit authorizing such person to operate a store exclusively for the retail sale of sealed and unopened alcoholic beverages pursuant to Mississippi Code Section 67-1-51(1)(b).
- (5) *"Licensed premises"* shall mean the land, grounds and buildings used by any person, firm, corporation, or other entity in the operation of any business pursuant to this ordinance and as approved by the Mississippi Department of Revenue (Alcohol Beverage Control).
- (6) *"Licensee"* shall mean any person, firm or corporation or other entity who has been issued a license or permit by the State of Mississippi, which authorizes or permits the sale of alcoholic beverages for retail sales or on premises consumption, or the agents, servants, and employees of such firm, corporation or other entity.
- (7) *"Open container"* shall mean the container of an alcoholic beverage which has been opened so as to allow its contents to be consumed and shall include any container on which the seal has been broken, and to which a person has immediate

access to and control over, even though the container may be closed by a top or other similar device. Immediate access to and control over shall mean within the reach of a person without substantial inconvenience.

- (8) *"Permit"* means any of the permits issued by the Department of Revenue of the State of Mississippi pursuant to Mississippi Code Section 67-1-51.
- (9) *"Consume or consumption"* shall mean any 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.
- (10) *"Premises"* shall mean the building in which the public or private commercial establishment is located and the land, parking lot and improvements connected thereto which are under the possession or control of the proprietor of such established.
- (11) *"Permittee"* shall refer to any holder of a state permit to sell alcoholic beverages.  
*"Commercial establishment"* shall include any business or organization, public or private, which charges or accepts revenue for goods, membership or admittance, whether for profit or not for profit.

**SECTION II: Incorporation of Laws, Rules and Regulations of State of Mississippi Including Rules and Regulations of Mississippi Department of Revenue.**

All state statutes, rules and regulations, including the Rules and Regulations of the Mississippi Department of Revenue now in force and as hereafter amended, modified, repealed or added are incorporated herein by reference and shall govern the subject of alcoholic beverage control within the City. Nothing contained in this Ordinance shall be deemed to overrule, limit or qualify state law, statutes, rules, or regulations, including the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) except as specifically permitted by said law, statutes, rules and regulations. Any interpretation of this

Ordinance which conflicts with state law, statutes, rules or regulations including the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) shall be deemed to be superseded by state law, statute, rules or regulations. Any violation of state law, statute, rules or regulations, including the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) shall constitute a violation of this Ordinance. Any and all penalties, punishments, etc. provided by state law, statute, rules and regulations including the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) shall also be applicable to any violations of this Ordinance.

**SECTION III: Sale, Possession of alcoholic beverages.**

It is unlawful to sell, offer for sale, or otherwise dispense alcohol beverages or to possess alcoholic beverages in the City of Brookhaven in violation of any state law or any rule or regulation of the Mississippi Department of Revenue, including the sale of alcoholic beverages to minors, possession of alcoholic beverages by minors and sale of alcoholic beverages within prohibited distances from churches, schools, kindergartens and funeral homes.

**SECTION IV: False Statements by Minors.**

It is unlawful in the City of Brookhaven for any person under the age of twenty-one (21) years of age to make a false statement to the effect that he or she is twenty-one (21) years of age or older for the purpose of purchasing or otherwise acquiring any alcoholic beverage or for the purpose of gaining admittance to any business, resort, entertainment venue or club in which alcoholic beverages are being sold or furnished and in which persons under the age of twenty-one (21) years of age are not allowed by the owner, host or manager or pursuant to any state or local law or regulation.

**SECTION V: Locations where possession prohibited.**

It is unlawful in the City of Brookhaven for any person to have in his or her possession any alcoholic beverage or open container which would be in violation of any Brookhaven

municipal ordinance, state law, statutes, rules or regulations, including the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control).

**SECTION VI: Transportation for compensation prohibited.**

It is unlawful in the City of Brookhaven for any person to transport or deliver any alcoholic beverage to another person for compensation of any kind except for transportation as permitted by state law, rules or regulations.

**SECTION VII: Employment of persons under the age of twenty-one (21).**

It shall be unlawful in the City of Brookhaven to employ in connection with the sale of alcoholic beverages a person under the age of twenty-one (21) for any employment from which they are prohibited by the Rules of Regulations of the Department of Revenue, in their present form and as hereinafter amended. Without limiting the generality of the foregoing Chapter 08 of Subpart 2 (Title 35) of the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) shall govern with regard to this subject.

**SECTION VIII: Requirements for automatic and electronic liquor and wine dispensing systems.**

The installation, operation and use of automatic and electronic dispensing liquor and wine systems shall be permitted only as permitted by the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) as they currently exist or as hereafter amended, modified, repealed or added. Without limiting the generality of the foregoing Chapter 18 of Subpart 2 (Title 35) of the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) shall govern this subject.

**SECTION IX: Permitted Premises Where Alcoholic Beverages May be Sold.**

Alcoholic beverages may be sold only where specifically permitted by the Rules and

Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) as they currently exist or as hereafter amended, modified, repealed, or added. Without limiting the generality of the foregoing, Chapter 03 of Subpart 2 (Title 35) of the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) shall govern permitted premises where alcoholic beverages may sold.

**SECTION X: Zoning and Building Code.**

The zoning ordinance and building code of the City of Brookhaven shall apply to any store, business, operation, club, hotel, restaurant, or retail outlet where alcoholic beverages are sold and/or consumed; however, to the extent there is a conflict with State law, rules or regulations, of the Mississippi Department of Revenue (Alcohol Beverage Control) then in such event the State law, rule or regulation of the Mississippi Department of Revenue (Alcohol Beverage Control) shall prevail.

**SECTION XI: Hours and days during which alcoholic beverages may be sold.**

As set by state laws, rules and/or regulations, alcoholic beverages may be sold as follows:

- (a) For holders of a state package retailer's permit, between the hours of 10:00 a.m. and 8:00 p.m., except that no sales may be made on Sundays or on Christmas Day; and
- (b) For "on-premises" permittees, including hotels, restaurants, clubs or caterers with a State Permit, between the hours of 10:00 a.m. and 11:00 p.m., Monday through Saturday. Sunday sales are not currently allowed until receiving approval from the State Tax Commission and/or the Mississippi Department of Revenue.
- (c) The above referenced hours differ from state law and regulations and will only go into effect after authorization by the Commissioner of the Mississippi Department of Revenue pursuant to Mississippi Administrative Code, Title 35, Part II, Subpart 2, Chapter 4, Paragraph 100. By this ordinance the Mayor and Board of Alderman

hereby request and petition that the hours listed in subsection (a) and (b) herein be approved. Until such approval is given, the hours of operations shall be as otherwise listed in Chapter 4 of the above-referenced regulation.

These hours and days of sale, all of which conform with present state law, shall be subject to any amendment of state law, rules and regulations, and shall conform with any amendments thereto without amendment to this ordinance. They are further subject to specific amendment by order of the State Tax Commission and/or the Department of Revenue in response to a petition by the City requesting approval of alternate hours and/or Sunday sales, which order shall survive any subsequent amendment to state law, rules or regulations not specifically intended to supersede prior orders by the State Tax Commission approving hours and days during which alcoholic beverages may be sold.

- (d) Any other limits, prohibitions or exceptions granted by state laws, rules and/or regulations, in their present form and as hereinafter amended, are hereby adopted by reference.

**SECTION XII: Prohibited Conduct and Activities.**

Alcoholic beverages may be sold only as specifically permitted by the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) as they currently exist or as hereafter amended, modified, repealed, or added. Without limiting the generality of the foregoing, Chapter 07 of Subpart 2 (Title 35) of the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) shall govern prohibited conduct and activities.

**SECTION XIII: Open Container.**

It shall be unlawful in the City of Brookhaven for any person to have in his or her possession an open container, in the following locations within the municipal boundaries of the city:

- (a) on public property, including buildings, parking lots, sidewalks, streets

and parks unless specifically approved by Order of the Board of Aldermen of the City of Brookhaven and/or allowed by state law and/or the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control); and

- (b) within a motor vehicle, regardless of whether the person in possession is an operator or a passenger of the motor vehicle unless specifically approved by state law and/or the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control).

**SECTION XIV: Lewd entertainment.**

It shall be unlawful in the City of Brookhaven for any retailer of alcoholic beverages to allow or permit within or on the business premises any conduct or activities prohibited by the Title 35, Part II, Subpart 2, Chapter 7 of the Mississippi Alcohol Beverage Control Regulations, including conduct which is lewd, immoral or offensive to public decency, as defined therein.

**SECTION XV: Disturbance of the peace.**

It shall be unlawful in the City of Brookhaven for any retailer of alcoholic beverages to allow or permit loud and disorderly conduct on the business premises, including loud music, so as to disturb the community.

**SECTION XVI: Enforcement.**

The Brookhaven Police Department is hereby authorized, ordered and directed to enforce this article.

**SECTION XVII: Penalties.**

Without limiting any penalties provided by law, statute, rule or regulation, including the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) and subject to any limitations with regard to penalties , punishments or otherwise, any

person found to have violated this ordinance shall be subject to a fine not exceeding \$1,000.00 or imprisonment not exceeding 90 days or both. When a public or private commercial establishment is found to have violated this ordinance, a citation, subject to the above limits, may be issued to any of the following:

- (1) The officers, directors, members, managers or partners of a partnership, corporation, limited liability company or business entity which operates a public or private commercial establishment.
- (2) The permittee of any permit issued for the sale of alcoholic beverages.
- (3) The management personnel who are on the premises of the public or private commercial establishment at the time of the violation is found to have occurred.

**SECTION XVIII: Limitation.**

It is the intent of the City of Brookhaven that this Ordinance conform to all state statutes, rules and regulations now in force or as hereafter amended, repealed, modified or later created. Nothing in this article shall be construed as overruling or limiting the applicability of state laws, rules and jurisdiction. If any section or portion of this Ordinance is in conflict with any applicable state law, rule or regulation, then in that event the applicable state law, rule or regulation shall prevail, and the remainder of this ordinance shall remain in full force and effect.

**SECTION XIX: Reserved.**

This Ordinance shall become effective thirty (30) days after passage. The City Clerk shall cause the Ordinance to be published in a local newspaper with general circulation. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

This ordinance having first been reduced to writing was considered section by section and then as a whole, thereafter on a motion for adoption by Alderman

Phillips, seconded by Alderman Bates, and after discussion, no Alderman member having called for a reading was voted upon as follows:

Alderman David Phillips voting	Yea
Alderwomen Shirley Estes voting	Yea
Alderman Randy Belcher voting	Yea
Alderman Terry Bates voting	Yea
Alderman Fletcher Grice voting	Nay
Alderwomen Karen Sullivan voting	Nay
Alderwomen Mrs. Jerry Wilson voting	Nay

Whereupon, the motion having received a majority of affirmative votes, the Mayor and Board of Aldermen declared that the Ordinance has been passed and adopted on the 8th day of August, 2013.

CITY OF BROOKHAVEN

BY: Joe C. Cox  
Mayor

ATTEST:

Michael Jinks  
Michael Jinks, City Clerk



**CLERK'S CERTIFICATION**

I, the undersigned, City Clerk of the City of Brookhaven, do hereby certify under my oath as such City Clerk and under the seal of the City of Brookhaven that the foregoing is a true and correct copy of the record of proceedings had at a duly and lawfully assembled meeting of the Mayor and Board of Aldermen held on Thursday, August 8, 2013, as the same appear in the Official Minute Book recording the proceedings of the Mayor and Board of Aldermen of the City of Brookhaven.

Witness my signature and the official seal of the City of Brookhaven affixed hereto on this the 8 day of August, 2013.



  
Michael Jinks, City Clerk