

**RESOLUTION ADOPTING BEER AND LIGHT WINE ORDINANCES
WITHIN THE CITY OF FULTON, MISSISSIPPI**

WHEREAS, pursuant to the Laws of the State of Mississippi, the City of Fulton on October 28, 2014 held a special election to allow the voters within the municipality to determine whether to legalize the sale of Beer and Light Wines of not more than 8% of alcohol by weight in the City of Fulton, Mississippi; and

WHEREAS, the final certified results of this special election were **730** votes "For the legal sale of Beer and Light Wine", and **453** votes "Against the legal sale of Beer and Light Wine"; and

WHEREAS, §67-3-9 of the Mississippi Code of 1972 provides that upon a majority vote for the legal sale of Beer and Light Wine, the municipal governing authorities "shall pass" the necessary Order permitting the legal sale of such Beer and Light Wine in such municipality; and

WHEREAS, the City of Fulton Board of Aldermen at their regularly scheduled Board meeting on the 18th day of November, 2014 introduced this proposed ordinance in writing and adopted same on the 18th day of November, 2014;

THEREFORE, be it ordained by the Mayor and Board of Aldermen of the City of Fulton:

BEER AND LIGHT WINE

Article I City of Fulton, Mississippi Beer and Light Wine Ordinance

Section 1-1. Definitions.

The following terms or phrases, when used in this article, shall have the stated meaning, except where content clearly indicates a different or alternative meaning:

"Consumption" shall include the ingestion of any alcoholic beverage as well as possession of any alcoholic beverages in an open or opened container.

"On-Premises" shall refer to Restaurants.

"Off-Premises" shall refer to "Retail" or Retail Stores of packaged Beer and Light Wine.

"Permittee" shall refer to any holder of a State permit to sell Beer and Light Wine as indicated in Miss Code Section 67-3-17.

"Public conveyance" shall be defined as a taxi service, a limousine service, a bus service, or any other motorized means of conveyance operating as a means of transporting people for hire.

Section 1-2. Sale Regulated.

It will promote the public health, morals and safety to provide reasonable rules and regulations governing the sale of Beer and Light Wine as provided in this article.

Section 1-3. Adoption of Permits.

All permits allowed under Miss Code Ann. Section 67-1-51 are hereby permitted and allowed.

Section 1-4. Privilege License Required.

(1) **OFF-PREMISES SALES:** No "Off-Premises" sale of Beer or Light Wine shall be sold within the municipal boundaries of the City of Fulton, Mississippi unless the Seller:

A) has obtained a Business Privilege License for the sale of Beer and Light Wine from the City of Fulton (business Privilege License fees shall be renewed annually).

(2) **ON-PREMISES SALES:** No "On-Premises" sale of Beer or Light Wine shall be sold within the municipal boundaries of the City of Fulton, Mississippi unless the Seller:

A) has obtained an ABC permit from the MS State Tax Commission; and

B) has also obtained a Business Privilege License for the sale of Beer and Light Wine from the City of Fulton (business Privilege License fees shall be renewed annually).

(3) **BUSINESS PRIVILEGE LICENSE REQUIREMENT.** Any person or entity desiring to engage in the business of selling beer and light wine for “On-Premises Sales” or “Off-Premises Sales” shall pay the city a Privilege License tax in the amount as that imposed by MCA 1972, §27-71-345 for the purpose of engaging in such business and shall file with the city clerk an application showing that such person possesses all the requirements provided for in this article. All such city Privilege Licenses shall be applied for and renewed annually. It shall be unlawful for any person to engage in the business of the sale of beer and light wine without having first applied for and obtained from the city clerk a Privilege License to engage in such business.

(4) **APPLICATION FOR BUSINESS PRIVILEGE LICENSE.** Any person or entity desiring a license to sell Beer and/or Light Wine or desiring to renew such a license to sell Beer and/or Light Wine shall file an application with the city clerk in the form of a sworn statement giving the name of the business, its location, the mailing address, 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 and the nature of business in which engaged. In case any business is conducted by the same person or entity at two or more separate places, a separate license for each place of business shall be required. The applicant shall further show in the sworn application for a license that the applicant and/or its principals (as identified below) possess the following qualifications:

- A) Over 21 years of age and a person of good moral character;
- B) No convictions in this or any other State of a felony or of pandering, or of keeping or maintaining a house of prostitution; and
- C) No revocation of any license or permit to sell alcoholic liquors, beer, or light wine, pursuant to the laws of this city, this State or any other State, or of the United States, within two years preceding the date of application. If the applicant is a partnership, firm, or limited liability company, all members of the partnership, firm, or limited liability company must be named and must meet the above-listed qualifications. If the applicant is a corporation, all officers and directors thereof, and any stockholder owning more than five percent of the stock of such corporation, and the person who shall conduct and maintain the licensed premises for the corporation shall possess all the qualifications required herein for an individual licensee.

(5) **FALSE STATEMENTS.** Discovery of any false statement made on the application or during the application process shall be grounds for immediate revocation of the Privilege License. The licensee shall retain a list, of all person employed by the licensee who sell and/or serve beer and/or light wine, including with the list the name, address and age of each such employee, and such list shall be made available upon request of municipal authorities.

(6) **BUSINESS PRIVILEGE LICENSE MAY BE REVOKED.** A Business Privilege License for the sale of Beer and Light Wine from the City of Fulton may be revoked indefinitely by the City of Fulton if:

- A) **VIOLATION.** The Business or Business Owner(s) (“Permitee”) knowingly or unknowingly:
 - 1) violates any ABC Regulation;
 - 2) violates any Ordinance of the City of Fulton;
 - 3) violates any State Law or Regulation of Mississippi or any other State; or
 - 4) violates any Federal Law or Regulation
- B) **NOTICE OF HEARING.** After a motion passes by the Board of Aldermen to have a specific public hearing, and said public hearing (“hearing”) is had at least 7 days after the City has given Notice to the Business Owner(s) of the: i) violation(s) and ii) scheduled hearing date and location.
 - 1) Notice may be provided by personal service by personal delivery unto one of the Business Owner’s listed on the most recent Privilege License; or
 - 2) Notice may be provided by posting a copy of the Notice (violation as well as the scheduled hearing date and location) on the Business property, if a Business Owner cannot be reasonably contacted.
- C) **HEARING ADJUDICATION.** At the public hearing, a majority of the elected Board of Aldermen determine that a violation did occur.

Section 1-5. Restrictions on Sale of Beer and Light Wine.

- A) **COLD BEER SALES ALLOWED.** It shall be lawful for refrigerated Beer or Light Wine to be sold within the municipal boundaries of the City of Fulton for Off-Premises and On-Premises consumption except as restricted below.
- B) **ON-PREMISES KITCHEN FACILITIES REQUIRED.** No Beer or Light Wine shall be sold for On-Premises consumption unless the seller has suitable kitchen facilities on the licensed premises to provide for the preparation, cooking and serving of food so that food sales generate FIFTY- percent (50%) of gross revenue. The service of foods not prepared on the premises shall be not deemed in compliance with the requirements of this section. Restaurants must have facilities and seating for the consumption of food for a minimum of Thirty (30) persons and must remain open for business so long as Beer or Light Wine is being sold.
- C) **HOURS OF SALE FOR ALL DAYS EXCEPT SUNDAY.** Beer or Light Wine may be sold for On-Premises or Off-Premises consumption between the hours of 8:00 a.m. and 12:00 midnight Monday through Saturday. It is further provided that on New Year's Eve night On-Premises permittees may remain open until 1:00 a.m., January 1st.
- D) **HOURS OF SALE FOR SUNDAY.** It shall be lawful to sell Beer or Light Wine on Sunday for On-Premises and Off-Premises consumption between the hours of 1:00 p.m. and 12:00 midnight. In the event that New Year's Eve falls on a Sunday, On-Premises permittees, may remain open from 1:00 p.m. until 1:00 a.m.
- E) **DRIVE-IN SALES PROHIBITED.** It shall be unlawful to sell Beer or Light Wine through a drive-in window sales facility or a drive-thru "Beer Barn" within the municipal boundaries of the City of Fulton, Mississippi.
- F) **ADVERTISING.** There shall be no advertising for Beer and Light Wine outside of the interior of the building where it is sold or consumed. There shall be no advertising or storage of Beer or Light Wine within the interior of the store which allows it to be visible from the street, sidewalk, or parking lot of the **On-Premises or Off-Premises** facility.
- G) **TERRITORY WHERE SALE IS PROHIBITED.**
- 1) Beer or Light Wine shall NOT be sold for **On-Premises consumption** in Commercial areas within 100 feet of the nearest point of any Church Building (where normal church activities are regularly performed) or School Building (where student classes are regularly held, including child daycare facility); except that there shall be no distance requirement when the buildings are separated by an intervening public street or highway. The distance shall be measured from the nearest two points of the buildings (excluding storage buildings and awnings). This distance shall be measured in a straight line, such as airline distance, rather than the usual route of pedestrian travel. A Church has the ability to waive the footage requirement, the waiver must be in writing.
 - 2) Beer or Light Wine shall NOT be sold for **Off-Premises consumption** in Commercial areas within 100 feet of the nearest point of any Church Building (where normal church activities are regularly performed) or School Building (where student classes are regularly held, including child daycare facility); except that there shall be no distance requirement when the buildings are separated by an intervening public street or highway. The distance shall be measured from the nearest two points of the buildings (excluding storage buildings and awnings). This distance shall be measured in a straight line, such as airline distance, rather than the usual route of pedestrian travel. A Church has the ability to waive the footage requirement, the waiver must be in writing.
- H) **OFF-PREMISES CONSUMPTION.** It is unlawful for any Beer or Light Wine beverages to be sold for Off-Premises consumption in quantities less than said products are prepackaged for sale by the manufacturer.
- I.) **OPEN CONTAINERS PROHIBITED ON PUBLIC PROPERTY.** It shall be unlawful for any person to possess an open container of Beer or Light Wine on public property, including buildings, parking lots, sidewalks, streets and parks within the municipal boundaries of the City of Fulton, Mississippi. Open containers do not include empty containers.
- J) **ZONES WHERE BEER AND LIGHT WINE MAY LAWFULLY BE SOLD.** The sale of Beer and Light Wine shall be lawful only in Commercially Zoned Areas within the municipal limits of the City of Fulton.

- It shall be unlawful to offer for sale Beer or Light Wine in any Residentially Zoned Area within the municipal limits of the City of Fulton.
- K) **OPEN CONTAINER - VEHICLES.** It shall be unlawful for any person to possess an open container of Beer or Light Wine either as an operator or passenger of a motor vehicle. Open containers shall include containers which have been opened and re-closed.
 - L) **OPEN CONTAINER - PRIVATE PROPERTY.** It shall be lawful for any person of legal age to possess a container of Beer or Light Wine on private property.
 - M) **CONSUMPTION OF BEER OR LIGHT WINE AT OFF-PREMISES RETAILER.** There shall be no consumption of Beer or Light Wine at an Off-Premises retail store.
 - N) **ON-PREMISES CONSUMPTION.** It shall be unlawful for any premises licensed for On-Premises consumption to allow a patron to leave such premises with either a full or partial container of Beer or Light Wine.
 - O) **BAGGING OF BEER AND LIGHT WINE SOLD FOR OFF-PREMISES CONSUMPTION.** The sales clerk of each premises selling packaged Beer or Light Wine for Off-Premises consumption must first place the same in an opaque bag or sack before delivering same to the purchaser.
 - P) There shall be no Beer sold in single units at Off-Premises Retail Stores.
 - Q) Beer or Light Wine shall not be offered for sale or visibly promoted within or outside either an **On-Premises** or **Off-Premises** building by placing Beer or Light Wine in "buckets" or "tubs" or other similarly fashioned device (with or without ice).

Section 1-6. Locations where possession prohibited; exemptions.

- 1) It shall be unlawful in the City of Fulton for any person to have in his or her possession any Beer or Light Wine on or in any of the following locations:
 - A) the interior of any business, including a restaurant, in which the owner or manager shall display in several conspicuous location inside the business and at the entrance signs containing the following language: "NO ALCOHOL BEVERAGES ALLOWED";
 - B) any public playground;
 - C) any public park;
 - D) any fire station or police station;
 - E) any school buildings or grounds or any sports facilities owned or in use by any school;
 - F) any public library or museum;
 - G) any property owned, leased or operated by the City of Fulton;
 - H) except where **EXEMPTED** as described below in subsections 2 and 3 of this Section 1-6.
- 2) **EXEMPTION:** Irrespective of the prohibited locations listed above in this Section 1-6, it shall be lawful to possess, consume or sell Beer or Light Wine at a "Special Event" and Location IF the said event has been specifically Granted "Exempted Status" to allow persons to possess, consume or sell Beer or Light Wine by Resolution or Order of the Fulton Board of Aldermen; said possession, consumption or sale shall be strictly limited to open containers that are either opaque paper cups or plastic cups (Visibility of Aluminum Cans; Aluminum Bottles; or Glass Bottles Shall Not be Allowed under this Exemption).
- 3) **EXEMPTION:** Irrespective of the prohibited locations listed above in this Section 1-6, it shall be lawful to possess, consume or sell Beer or Light Wine at a City or County sponsored event (festival) UNLESS the said event has been specifically Denied its Exempted Status to allow persons to possess, consume or sell Beer or Light Wine by Resolution or Order of the Fulton Board of Aldermen; said possession, consumption or sale shall be strictly limited to open containers that are either opaque paper cups or plastic cups (Visibility of Aluminum Cans; Aluminum Bottles; or Glass Bottles Shall Not be Allowed under this Exemption).

Section 1-7. Advertising of Beer and Light Wine.

Any form of commercial advertising (including but not limited to Billboards and other signage, irrespective of size) for the sale or consumption of Beer and Light Wine within the City limits of the City of Fulton shall be prohibited.

Section 1-8. Off-Premises Consumption Storage and Sale of Beer

The storage of Beer or the offering of sale of Beer for **Off-Premises Consumption** shall be specifically located within either:

- A) a cooler or other refrigeration device; OR
- B) a container or contained location which fully restricts the visibility of the beer packaging or labeling from the general public.

The purpose of this Section is to prohibit the stacking of Beer boxes or Beer cases within common traffic areas of the Off-Premises Consumption businesses. However, nothing in this Section shall restrict the storage of Beer or the offering of sale of Beer which is located within a clear "see-through" cooler or refrigeration device.

Section 1-9. Discontinuing Operations During Emergency.

In the event of any disturbance, uprising or riot or any other emergency of life, property or public safety, the Mayor may require the Chief of Police to promptly order any and all places in the City where Beer or Light Wine is consumed, sold or otherwise dispensed, to discontinue such for the period of such emergency.

Section 1-10. Minors Giving False Identification.

- A) It shall be unlawful for any person under the age of twenty-one (21) years to make a false statement as to his or her age for the purpose of obtaining Beer or Light Wine. The penalty for violating this provision shall be a fine of not less than \$200.00 nor more than \$500.00 and a sentence of not more than thirty (30) days community service.
- B) The judge may, in his or her discretion, accept in lieu of community service, a certificate indicating the individual has successfully completed an alcohol and/or drug education program or treatment program at the expense of the individual.

Section 1-11. Compliance with State Law Requirements.

No permit or license required by this article shall issue to any person unless satisfactory evidence is furnished to the tax collector that such person has complied with the requirements of State law, and if the permit required by State law is at any time revoked, said revocation shall operate as a cancellation and forfeiture of the rights of the person holding a permit or license from the municipality.

Section 1-12. Disturbance of the peace.

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

Section 1-13. Gambling operations.

It shall be unlawful for the Permittee to allow gambling or the operation of games of chance upon the licensed premises, with or without the knowledge of the Permittee.

Section 1-14. Lewd entertainment.

It shall be unlawful in the City of Fulton for any retailer of alcoholic beverages to allow or permit within or on the business premises any conduct or activities prohibited by 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 1-15. Penalty for Violation of Ordinance; Misdemeanor.

Any violation of this article shall constitute a misdemeanor and shall be punishable by a fine of not more than \$1,000.00 or imprisonment for not more than six months or both, unless otherwise specified herein.

Section 1-16. Penalty for Selling to Minor; Misdemeanor.

Any sell of Beer or Light Wine to a minor shall be punishable by a fine of not more than \$1,000.00 for a first offense; and a one (1) year suspension of Business Privilege License for a second offense that occurs within one (1) year of first offense.

Section 1-17. Penalty for Selling Beer or Light Wine After Hours; Misdemeanor.

Any sale of Beer or Light Wine after legal selling hours shall be punishable by a fine of not more than \$1,000.00 for a first offense, one (1) year suspension of selling privilege on second offense within one (1) year of first offense.

Section 1-18. Selling Age for Employers.

It shall be lawful for On-Premises Permittees to employ person under the age of twenty-one (21). It shall, however, be unlawful for person under the age of twenty-one (21) to handle in any way the serving of Beer and Light Wine to patrons.


Section 1-19. Limitation.

It is the intent of the City of Fulton that its ordinances 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 regulations. Any provision of any ordinance herein which shall be interpreted by a court of competent jurisdiction as being in conflict with any applicable State law, rule or regulation governing alcoholic beverages is superseded by the conflicting State law, rule or regulation, and the remainder of the ordinance shall remain in full force and effect.

This Ordinance shall become effective thirty (30) days after its passage and a summary of the same shall be published according to law. The foregoing ordinance was proposed in a motion by Alderman Barry Childers, seconded by Alderman Mike Nanney, and after discussion, no Aldermen member having called for a reading, was voted upon as follows:

Alderman Hayward Wilson	Voted:	Yea
Alderman Mike Nanney	Voted:	Yea
Alderman Joey Steele	Voted:	Yea
Alderman Barry Childers	Voted:	Yea
Alderwoman Liz Beasley	Voted:	Yea

Whereupon, the motion having received a majority of affirmative votes, the Mayor and Board of Aldermen declared that the Ordinance had been passed and adopted on the 18th day of November, 2014.


MAYOR LYNETTE WEATHERFORD


CITY CLERK LISA RUSSELL

The Mayor then ordered the City Clerk to publish appropriate notice of adoption of the ordinance as required by statute and to do all things necessary to inform the Mississippi State Tax Commission of the final adoption, said ordinance to take effect thirty (30) days after the date of its final passage.