

**ORDINANCE 410**  
**AN ORDINANCE OF THE BOARD OF ALDERMEN OF THE TOWN OF MOUNT OLIVE,**  
**MISSISSIPPI, RELATING TO ALCOHOLIC BEVERAGES**

BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE TOWN OF MOUNT OLIVE, MISSISSIPPI, in regular meeting assembled as follows:

**General Definitions**

When used in this Chapter, the following terms shall have the following respective meanings:

- (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) **Alcohol and Alcoholic Beverages-** any alcoholic liquid, including wines capable of being consumed as a beverage by a human being which shall not include light wine and beer as defined in §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) **Beer** means a fermented alcoholic liquid, containing alcohol of not more than five percent by weight.
- (D) **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.
- (E) **Licensed premises** shall mean the land, grounds and buildings used by any person, firm, corporation, or other entity in the operation of any business for which they hold a privilege license issued by the Town of Mount Olive, Mississippi, for the purpose of retail sales of beer and/or light wine.
- (F) **Licensee** shall mean any person, firm or corporation or other entity who has been issued a license or permit by the State of Mississippi and/or the Town of Mount Olive, Mississippi, which authorizes or permits the sale of alcoholic beverages or beer for retail sales or on premises consumption, or the agents, servants, and employees of such firm, corporation or other entity.
- (G) **Light wine** means a wine product containing alcohol of not more than five percent by weight.
- (H) **Open container** shall mean the container of an alcoholic beverage, beer or light wine 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. This provision shall not include alcoholic beverages that are being transported from one (1) location to another, which are not being contained in route and to which a person does not have immediate access to. Example: The transporting of alcoholic beverages in a container with the seal broken in the trunk of an automobile.
- (I) **Ordinance** of the Town of Mount Olive, Mississippi establishing regulations within the municipal boundary and jurisdiction of the Town of Mount Olive, Mississippi and repealing all conflicting provisions of the zoning ordinance of the Town of Mount Olive.
- (J) **Premises** shall mean the building in which the public or private commercial establishment is located and the land, parking lot and improvements connected with or serving such establishment, which land, parking lot and improvements are under the possession or control of the proprietor of such establishment.
- (K) **Public or private commercial establishment** shall mean any store, restaurant, bar, lounge, club, lodge, fraternal order meeting place, or any other business, whether for profit or not for profit. Permits to sell alcoholic beverage is issued by the Alcoholic Beverage Control (ABC) office of the Department of Revenue. The authority to issue permits to sell alcoholic beverages is solely within the authority of the Department of Revenue. Permits to sell beer or light wines in the

Town of Mount Olive shall apply for a permit from the Department of Revenue (TAP).

- (L) **Public area** is any property situated within the Town of Mount Olive, Mississippi, open to the public, which is maintained for use for vehicular traffic, parking motor vehicles, public parks, playgrounds, public buildings, schools, or for pedestrian travel, including but not limited to streets, sidewalks, parking lots, bays and parking areas on public streets.
- (M) **Restaurants** shall mean places which are regularly and in a bonafide manner used and kept open for the serving of meals to guests for compensation, which have suitable seating facilities for guests, and which have suitable kitchen facilities connected therewith for cooking and 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 Section 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.
- (N) **Store or storage** shall mean to accept, hold refrigerate, mix, pour or receive any alcoholic beverage or container thereof not owned or sold by the proprietor of a public or private commercial establishment as defined herein.
- (O) **Wine** means any product obtained from the alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries and made in accordance with revenue laws of the United States.
- (P) The word **club** shall mean an association or corporation that is:
1. Organized not primarily for pecuniary profit but for the promotion of some objective other than the sale or consumption of alcoholic beverages.
  2. Maintained by its members through the payment of annual dues.
  3. Owning, hiring or leasing a building or space in a suitable and adequate for the location reasonable and comfortable use and accommodation of its members and their guests.
  4. Managed by a board of directors, board of governors, executive committee, or similar governing body chosen by the members at a regular meeting held at some periodic interval, provided however no member, officer, agent or employee may be paid, or directly or indirectly receive, in the form of a salary or other compensation, any profit from the distribution or sale of alcoholic beverages to the club or to members or guests of the club or to members or guests of the club beyond such salary or compensation as may be fixed and approved by the board of directors or other governing body out of the general revenues of the club.

In order to qualify under this paragraph, a club must complete and file with the City Clerk its application for a license under this chapter and make available upon a request by the City Clerk a copy of a list of the names and addresses of its current members, a copy of its articles of association, charter of incorporation, by-laws or other instruments governing the business and affairs thereof.

- (Q) The word **hotel** shall mean an establishment within the municipality where, in consideration of payment, food and lodging are habitually furnished to travelers and wherein are located at least thirty (30) adequately furnished and completely separate sleeping rooms with adequate facilities that persons usually apply for and receive as overnight accommodations.
- (R) The words **bed and breakfast inn** shall mean an establishment within the municipality where, in consideration of payment, breakfast and lodging are habitually furnished to travelers and wherein are located not less than four (4) and no more than nineteen (19) adequately furnished and completely separate sleeping rooms with adequate facilities, that persons usually apply for and received as overnight accommodations; however, such restriction on the minimum number of sleeping rooms shall not apply to establishments on the National Register of Historic Places. No place shall qualify as a bed and breakfast inn under this chapter unless on the date of the initial application for a license under this chapter more than fifty percent (50%) of the sleeping rooms are located in a structure formerly used as a residence.

## Section 1: Licensed Premises Generally

It shall be unlawful for any licensee within the Town of Mount Olive to:

- (A) Sell, give or furnish any alcohol or alcoholic beverage 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 twenty-one (21) years, or to allow any of such persons to consume alcoholic beverages or beer on the licensed premise.

(B) Receive, possess, or sell, or permit any person to consume on his premises any alcoholic beverage unless such licensee hold a valid permit issued by the State of Mississippi, and the Town of Mount Olive, when applicable, authorizing such activities.

(C) Permit on his licensed premises any lewd, immoral or improper entertainment, conduct or practices.

(D) Permit loud, boisterous or disorderly conduct of any kind upon his premises, or to permit the use of loud musical instruments or noise making devices if either or any of the same may disturb the peace and quietude of the community wherein such business is located.

(E) Permit or suffer gambling or the operation of games of chance on the licensed premises.

(F) Keep the building and exterior public parking area of the licensed premises poorly lighted or allow any part of the licensed premises to be dirty or unsanitary.

## **Section 2: Types of Licenses**

Licenses may be issued by the Town pursuant to this Chapter are as follows:

(A) *Package Retailers License.* A package retailer's license shall authorize the licensee to sell beer at retail in original sealed and unopened packages or containers not to be consumed on the licensed premises.

(B) *On-Premises Retailers License.* An on-premises retailer's license shall authorize the licensee to sell beer for consumption on the business premises only.

(C) No person shall be issued a package retailers license and an on-premises retailer's license for the same location.

## **SECTION 3: Privilege License Required**

Any person, partnership, firm or corporation desiring to engage in the business of selling beer and light wines at retail shall pay the city a privilege license tax at the same rate as that imposed by Section 27-71-303 and 27-71-345, 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 Town of Mount Olive, Mississippi, an application showing that said person, partnership, firm or corporation possesses all the requirements provided for in the ordinance. Further, the Chairman of the State Tax Commission shall amend. All such city privilege licenses shall be applied for and renewed annually. Said licenses shall be displayed conspicuously in licensees' place of business and said licenses shall not be transferable. It shall be unlawful for any person, partnership, firm or corporation to engage in the business of retail sale of beer and light wines of an alcoholic content of not more than 5% by weight without having first applied for and obtained from the Clerk and Tax Collector a privilege license to engage in such business as aforesaid.

## **SECTION 4: Application Required**

Any person, partnership or corporation desiring a license to sell beer and light wines at retail or desiring to renew such a license to sell beer and light wines shall file an application with the Clerk and Tax Collector 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 the 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 place of business shall be required.

The application 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 a person of good moral character, a Citizen of the United States and a resident of the State of Mississippi.
- (B) Applicant shall submit to a background check with the Mount Olive Police Department.
- (C) 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.
- (D) Applicant shall not have been convicted in this or any other state within five years preceding the date of his application of any laws of this or other states, in the United

States relating to alcoholic liquors or gambling or have had revoked any license or permit to sell alcoholic liquors of any kind.

- (E) Applicant shall be the owner of the premises for which the permit is sought or the holder of a bona fide written lease agreement.
- (F) 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.

#### **SECTION 5: Fairs, festivals, carnivals, parades and athletic events**

- (a) It shall be unlawful for any person to sell or permit the consumption of alcoholic beverages, beer or light wine on any property which is municipally owned or privately owned within the city, on which there is being conducted a fair, festival, carnival, parade or athletic event to which the general public is invited.
- (b) This section shall not be deemed to apply to any restaurant or other food establishment holding a valid on-premises permit for the sale of alcoholic beverages, beer or light wine, provided the establishment has been or is intended to remain in operation on a continuing basis at the permitted location.

#### **SECTION 6: On-premises consumption of light wine and beer.**

- (a) Light wine and beer shall be sold for on-premises consumption only at an establishment within the city which:
  - (1) Regularly and in a bona fide manner uses and keeps open a kitchen for the serving of meals to guests for compensation, which has suitable seating facilities for guests and which has suitable kitchen facilities connected to such establishment for cooking an assortment of foods and meals commonly ordered at various hours of the day. The service of foods not prepared on the premises, or salads only, shall not be deemed in compliance with the requirement of this subsection. No establishment shall qualify under this subsection unless 60 percent or more of the revenue derived from such establishment shall be from the preparation, cooking and serving of meals, and not from the sale of alcoholic beverages, light wine and beer, unless the value of the food given to and consumed by customers is equal to 60 percent or more of the total revenue; or
  - (a) place of amusement or recreation where less than 25 percent of the gross revenue is derived directly from the sale of light wine or beer.
  - (b) It shall be a misdemeanor for any person to consume beer or light wine on the premises of a retailer not licensed to sell such beer or light wine for on-premises consumption.
  - (c) At the end of each calendar year, each establishment licensed for the sale of light wine and beer for on-premises consumption shall file an independently certified audited statement with the city clerk showing the revenue derived from the sale of food and meals and the sale of alcoholic beverages, light wine and beer on the premises. Any establishment within the city serving light wine and beer for on-premises consumption may be required to provide such figures at any time during the year, as well as file a year-end report. If results of the audit show that the establishment is not in compliance with the percentage requirements set forth in this section, the establishment's license to sell light wine or beer for on-premises consumption may be suspended for a period of 90 days.
  - (d) A second violation of the provisions of this section within a period of one year shall be cause for the revocation of the license to sell light wine and beer for on-premises consumption. Any such establishment may not be granted a new license to sell light wine or beer for on-premises consumption until one year shall have elapsed from the effective date of the revocation of such license.
  - (e) It shall be unlawful for any business establishment which has been permitted and licensed to sell light wine or beer for on-premises consumption to sell, give or permit to be consumed light wine or beer between the hours of 12:00 midnight and 10:00 a.m. the following morning.
  - (f) "Suitable seating facilities," as used in this section, shall mean facilities for the seating of patrons, which is exclusive to the premises for which an on-premises consumption permit has been issued. Such seating area shall be contiguous to the premises for which an on-premises consumption permit has been granted. A common area utilized by the customers of establishments not holding an on-premises consumption permit shall not be considered as suitable seating facilities, as such term is used in this section. For the purpose of this section, an area adjacent to a common food court area in a retail establishment shall not be considered as a suitable seating area unless it is fully enclosed by walls.

## **SECTION 7: Sales of light wine and beer for off-premises consumption.**

- (a) *Prohibited hours.* It shall be unlawful for a convenience store, service station or other type of retail establishment holding a permit authorizing the sale of beer/light wine for off-premise s consumption to sell to any person between the hours of 10:00p.m. and 7:00 a.m.
- (b) *Congregate for consumption.* It shall be unlawful for any person to remain on the premises of a commercial establishment which is not licensed for on-premises consumption, or any portion thereof, or street right-of-way adjacent to such establishment, while such person is consuming beer, light wine or another alcoholic beverage.
- (c) *Permit and license.* 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 on the premises, whether indoors or outdoors, as long as such customers remain on the licensed establishment's property.

## **SECTION 8: Open containers.**

It shall be unlawful for the driver and/or passenger of a motor vehicle, or any person located on property which is municipally owned, to have on his person or in his possession, beer, light wine or an alcoholic beverage in an open container. Within the city limits, this shall pertain to any beer or light wine container which has been opened, any bottle of alcoholic beverage on which the seal has been broken and any container, such as a glass or cup, from which beer, light wine or an alcoholic beverage is being drunk.

## **SECTION 9: Distance from churches or schools.**

Except as otherwise provided by law, it shall be unlawful for any person to publicly sell or consume beer or light wine within any territory surrounding a church, public park, public building, school or kindergarten, when measured to be within 400 feet from the church, public park, public building, school or kindergarten. Nothing in this section shall be construed to deny the right of consumption of beer or light wine at a church or private residence. However, within an area zoned commercial or business, such minimum distance shall be not less than 100 feet. Distances shall be measured from front door of building to front door of building, using line of sight measurement.

## **SECTION 10: Consumption on public property.**

It shall be unlawful for any person to consume beer, light wine or another alcoholic beverage on any property which is municipally owned within the city.

## **SECTION 11: Supper clubs and nightclubs.**

It shall be unlawful for any person to conduct a supper club or nightclub within the municipal boundaries of the city between the hours of 12:00 midnight and 7:00 a.m. A "supper club" or "nightclub" means an establishment wherein the sale of alcoholic beverages is authorized by a permit which is properly issued, where consumption of intoxicating liquors is allowed in connection with the service of food prepared on the premises and in which establishment more than 25 percent of the gross income is derived from the sale of food prepared on the premises. Nothing in this section shall be construed to permit or authorize the sale or consumption of intoxicating liquors within the hours of 12:00 midnight and 10:00 a.m. and from 10:00 p.m. Sunday until 10:00 a.m. of the following Monday. The sale for consumption of intoxicating liquors cannot begin prior to 12:00 noon on Sunday and must cease at 10:00 p.m. Sunday.

## **SECTION 12: Sale to minors forbidden; penalties.**

Any permittee or other person who shall sell, furnish, dispose of, give or cause to be sold, furnished, disposed of or given, any alcoholic beverage to a person under the age of 21 years shall be guilty of a misdemeanor, and shall be punished by a fine of not less than \$500.00, nor more than \$1,000.00 for a first offense. For a second or subsequent offense, such permittee or other person shall be punished by a fine of \$1,000.00 or by imprisonment for not more than 90 days, or by both such fine and imprisonment, in the discretion of the court. Upon conviction of a second offense under the provisions of this

section, the permit of the permittee so convicted shall be automatically and permanently revoked.

Any person under the age of 21 years who purchases, receives or has in his possession in a public place any alcoholic beverages, shall be guilty of a misdemeanor, and shall be punished by a fine of not more than \$100.00, provided, that clearing or busing tables that have glasses or other containers which contain or did contain alcoholic beverages, or stocking, bagging or otherwise handling purchases of alcoholic beverages shall not be deemed as possession of alcoholic beverages for the purposes of this section, provided further, that a person who is at least 18 years of age, but under the age of 21 years, who wait s on tables by taking orders for or delivering orders of alcoholic beverages shall not be deemed to unlawfully possess or furnish alcoholic beverages if it is in the scope of his employment by the holder of an on-premises retailer's permit. This exception shall not authorize a person under the age of 21 years to tend bar or act in the capacity of bartender. Any person under the age of 21 years who knowingly makes a false statement to the effect that he is 21 years old or older to any person engaged in the sale of alcoholic beverages for the purpose of obtaining such alcoholic beverages shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$200.00.

### **SECTION 13: Variance.**

Notwithstanding any provisions of this chapter to the contrary, the mayor and board of aldermen may grant a variance in the territory surrounding a church or school in which beer, light wine or alcoholic beverages may be sold or consumed. No such variance shall be granted unless it shall affirmatively appear to a majority of the members of the board of aldermen voting that

- (1) At least 15 days' written notice of the request for a variance has been provided to the affected church or school advising:
  - a. That the variance has been requested;
  - b. The date and time of the meeting in which the matters to be voted on by the board will be held;
  - c. That duly authorized representatives of the church or school are invited to address any concerns they may have with regard to the proposed variance.
- (2) The grant of the variance will not endanger the conduct of the educational, public or religious activities conducted at the church or school; and
- (3) The mayor and board shall impose any conditions in the variance which they determine to be necessary to avoid interference with the education, public or religious activities conducted by the church or school.

### **SECTION 14: Violation; penalties.**

The imposition of a fine and/or imprisonment for a violation of this chapter shall not bar the revocation or suspension of a license or permit required for the sale of beer, light wine or alcoholic beverages. If this penalty, or any other penalty applicable to this chapter, is in conflict with or differs from a penalty provided by state law, the provisions of the state law shall prevail.

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

Any persons, partnership, firm, or corporation violating any provisions of this ordinance may be fined not in excess of \$500.00 **or** imprisoned in the city jail for not in excess of 90 days 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 15.** That upon passage of this Ordinance, all prior Ordinances relating to Alcohol, Alcoholic Beverages, Beer and Light Wines be null and void.

This ordinance shall become effective immediately upon its passage.

The above Ordinance was reduced to writing, read and considered paragraph by paragraph, and section by section and then as a whole at this regular meeting of the Mayor and Board of Aldermen on December 1, 2020, whereupon, Alderwoman Willie P. McCullum moved that

Ordinance No 410 be adopted, which motion was duly seconded by Alderman John L. Sullivan, was submitted for a vote of all Aldermen present and voting and the following vote was recorded, to-wit:

VOTING AYE:

Alderman Willie P. McCullum  
Alderman Mary P. Norman  
Alderman John L. Sullivan

VOTING NAY:                      None

NOT PRESENT:

Alderman Roger Sullivan  
Alderman Terry Barron

WHEREUPON, the Mayor declared the Ordinance duly adopted on this the 1<sup>st</sup> day of December, 2020.

TOWN OF MOUNT OLIVE, MISSISSIPPI

\_\_\_\_\_  
JAMES C. KELLY, III, MAYOR

(SEAL)

ATTEST:

\_\_\_\_\_  
BREYON MAGEE, CITY CLERK  
STATE OF MISSISSIPPI  
COUNTY OF COVINGTON

CERTIFICATE

I, Breyon Magee, City Clerk in and for the Town of Mt. Olive, Mississippi, do hereby certify that the above and foregoing is a true and correct copy of ORDINANCE NUMBER 410 ADOPTED BY THE Mayor and Board of Aldermen at its Regular Meeting of December 1, 2020, and is duly of record in the office of the City Clerk, City Hall, 501 Main Street, Mt. Olive, Mississippi, in Minute book #29.

WITNESS MY SIGNATURE AND OFFICIAL SEAL OF OFFICE ON THIS THE 1<sup>st</sup> DAY OF December, 2020.

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BREYON MAGEE, CITY CLERK  
TOWN OF MT. OLIVE, MISSISSIPPI

Published One Time: December 9, 2020