

STATE OF ALABAMA)
)
DEKALB COUNTY)

Ordinance No. 2018-01

Amending ORDINANCE
NO. 2017-2

AN ORDINANCE REGULATING THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES WITHIN THE TOWN OF MENTONE, ALABAMA; ESTABLISHING LICENSEES AND FEES; PROVIDING PROCEDURES; ESTABLISHING PUNISHMENT FOR VIOLATIONS AND OTHER MATTERS.

WHEREAS, the Town Council of the Town of Mentone, Alabama, wishes to create and establish its Alcoholic Beverage Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Mentone, Alabama, sitting in regular session on the 14th day of March, 2017, as follows:

ARTICLE I. GENERAL PROVISIONS

SECTION 1. SHORT TITLE.

This ordinance shall be known and may be cited as the "Mentone Alcoholic Beverage Ordinance."

SECTION 2. PURPOSE.

This ordinance is enacted for the purposes among others, of promoting the general health, safety, and welfare of the Town, of establishing reasonable standards for the regulation and control of the sale, delivery, and consumption of alcoholic beverages, and of protecting and preserving certain areas, through reasonable consideration, among others, of the character of the areas and their peculiar suitability for particular uses, to the congestion in the roads and streets, all with the general view of promoting desirable living conditions and sustaining stability of Mentone businesses and Community values, and to the prevention of undesirable persons from engaging in or having any interest in alcoholic beverages. This ordinance shall be construed as an exercise by the Town of the police power of the state delegated to the Town for the regulation of the sale and use of alcoholic beverages within the Town as provided by state law.

SECTION 3. APPLICABILITY.

The provisions of this ordinance shall only be in force and effect within the corporate limits of the Town of Mentone, Alabama ("Town"), and shall not apply within the police jurisdiction outside the corporate limits of the Town.

SECTION 4. DEFINITIONS.

Whenever used in this article, the definitions set forth in ALA. CODE Section 28-3-1 (1975) are adopted by reference, and made a part hereof as if fully set forth herein. In addition, thereto, the

following terms shall have the meanings herein specifically ascribed to them;

(1) **Abandonment:** The closing of a licensed business for a period greater than twelve (12) months, regardless of the purpose, reason, or circumstances.

(2) **Alcoholic Beverages:** Any alcoholic spirituous, distilled, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, distilled, vinous, fermented, or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more of alcohol by volume, and shall include liquor, beer, and wine, both fortified and table wine.

(3) **Association:** A partnership, limited partnership, limited liability company (LLC) or any other form of unincorporated enterprise.

(4) **Beer, or Malt or Brewed Beverages:** Any beer, lager beer, ale, porter, malt, or brewed beverage, or similar fermented malt liquor, containing one-half of one percent of alcohol or more by volume and not in excess of six percent by volume, by whatever name the same may be called.

(5) **Bartender/server/waiter/waitress:** An employee of a retail alcoholic beverage licensee who is directly involved with the opening, mixing, dispensing, serving, or final sale of alcoholic beverages to a customer of the licensed establishment.

(6) **Board:** The Alcoholic Beverage Control Board of the State of Alabama.

(7) **Business owner:** A person or person issued a privilege license by the Town to conduct routine business.

(8) **Town Alcohol License Fee:** A fee charged by the Town of Mentone to a person that has been granted approval by the Board for the privilege of selling alcoholic beverages within the Town limits.

(9) **Corporation:** A corporation or joint stock association organized under the laws of this state, the United States, or any other state, territory or foreign country, or dependency.

(10) **Engaged in Business:** A person shall be deemed to be engaged in business within the Town limits if that person has a fixed place of business offering for sale any alcoholic beverages within Mentone's Community Development District.

(11) **Fortified Wine or Vinous Liquor:** Any wine containing more than 16.5 percent alcohol by volume but not more than 24 percent. Fortified wine is vinous liquor.

(12) **License:** A retail alcoholic beverage license or any other license issued by the Board requiring consent and approval of the Town council.

(13) **Licensee:** Any person licensed by the Town or the Board to engage in business involving the sale of any alcoholic beverage.

(14) **Liquor:** Any alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, fermented, vinous or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more by volume, except beer and table wine

(15) **Manager:** An employee of a retail alcoholic beverage licensee who is given the responsibility and authority by the licensee to direct the operation of the licensed establishment, either solely or in conjunction with other similarly designated employees, by directing the activities of other employees of the licensed establishment. Such direction could include, but not be limited to, such responsibilities as assignment of employee tasks, scheduling of employee hours, evaluation of employee performances, and employee hiring or discipline.

(16) **Minor:** For the purposes of interpreting, applying, and enforcing this ordinance, any person under 21 years of age.

(17) **Open Container:** A container containing alcoholic beverages, which has been opened or unsealed after filling and sealing by the manufacturer or importer.

(18) **Person:** A natural person, association, or corporation, or other legal entity. Whenever used in provision prescribing a fine or imprisonment, the term "person" as applied to "association" shall mean the partners or members thereof, and as applied to corporation, the term "person" shall mean the officers thereof.

- (19) **Person in Charge (PIC):** Each licensee, except a licensed individual who is on the premises, shall have a designated person who is at least 21 years of age present and in actual charge of the business being conducted under the license at any time the licensed establishment is kept open for business, whether or not the privileges of the license are being exercised.
- (20) **Privilege License:** A privilege license issued by the Town of Mentone to a person or persons to conduct routine business.
- (21) **Privilege License Fee:** A fee charged by the Town of Mentone to a person or persons that has been granted by the Board the privilege of selling alcoholic beverages within the corporate limits of Mentone.
- (22) **Restaurant:** A reputable place licensed by the Alabama Department of Public Health as a restaurant, in which a selection of food, refreshments, and alcoholic beverages are offered for sale for consumption within the building or adjacent outdoor seating areas. In order to be deemed a restaurant, the following criteria must be met:
- (a) The facility shall have a kitchen in which food is prepared for consumption by the public. To meet the definition of "Restaurant," the facility's kitchen shall remain open so that patrons may order and be served food from the time the establishment opens until one (1) hour before the establishment's closing time.
 - (b) The facility shall meet the minimum requirements for an Alabama Alcoholic Beverage Control Board on-premises license.
- (23) **Sale or Sell:** Any transfer of alcoholic beverages for a purchase price or other consideration, and any gift in connection with or as part of, a transfer or property other than alcoholic beverages for consideration.
- (24) **School:** A public or private elementary, middle, junior high, or senior high school.
- (25) **Wine:** All beverages made from the fermentation of fruits, berries, or grapes, without added spirits, and produced in accordance with the laws and regulations of the United States, containing not more than 24 percent alcohol by volume, and shall include all sparkling wines, carbonated wines, rectified wines, vermouths, vinous beverages, vinous liquors, and like products.

ARTICLE II. CONTROL OF ALCOHOLIC BEVERAGES

SECTION 1. LOCATION OF PREMISES

- (1) No facility or establishment shall be authorized to be engaged in business involving alcoholic beverages, where the building in which the facility or establishment is located is less than 100 feet from any building in which there is located a public school.
- (2) When measuring from a school the closest point on the exterior wall of the closest building of the school to the license applicant shall constitute the beginning point for measurement. The closest point on the exterior wall of the building occupied by the applicant shall be used for measurement purposes if the building is occupied solely by the applicant; otherwise, such measurement shall be made from the closest point of the applicant's occupancy within the building in question. The method of the measurement is a straight line between these defined points.
- (3) No business engaged in the sale of alcoholic beverages shall be permitted unless it's within the Mentone Community Development District in the Town's Central Business or Retail Business zone under the

SECTION 2. BUSINESSES THAT MAY BE LICENSED

Alcoholic beverage licenses for on-premise consumption are only approved for businesses in the Mentone Community Development District that meet the definition of "Restaurant" as defined in Article 1 Section 4 (22) in this Ordinance or for event venues sponsored by the Town or a 501(c)3 non-profit approved by the Town Council. Alcoholic beverage licenses for off-premises sale are only approved for businesses in the Mentone Community Development District.

SECTION 3. MAINTENANCE OF ORDER, REPORT OF VIOLATION.

It shall be the duty of each licensee and of each person-in-charge at any time charged with the management and supervision of any licensed premises, while the same is open to the public, to maintain order within the premises and to exclude from the premises any person who is drunk and disorderly or who commits any breach of the peace, or who uses or engages in offensive, disorderly, threatening, abusive or insulting language, conduct or behavior with the intent to provoke a breach of the peace, or whereby a breach of the peace might be occasioned. It shall be the duty of each person in-charge of any licensed premises within the Town to immediately make a verbal report to the Town Police Department of each incident involving physical harm to a person occurring on the licensed premises while open for business. It shall further be the duty of each licensee to make a written report of each such incident to the Police Department of the Town and to the office of the Board within thirty-six (36) hours thereof.

SECTION 4. OFFENSES RELATED TO "BROWN BAGGING".

It shall be unlawful for a restaurant licensed by the Town of Mentone (whether or not the business is licensed to sell or furnish alcohol) to allow patrons, customers, invitees, or guests to bring alcoholic beverages into the restaurant for consumption of same there (i.e. "brown bagging"). A fine of \$200 shall be imposed for each offense.

SECTION 5. OFFENSES BY SELLER OR AGENT.

(1) It shall be unlawful for any person or for any employee, servant, or agent of any person to sell, or offer for sale, any alcoholic beverages to any person visibly intoxicated or to any minor person.

(2) It shall be unlawful for any person to serve to a minor or allow a minor to be served any alcoholic beverage in any place where such beverages are sold.

(3) It shall be unlawful for any person who operates any business licensed to sell alcoholic beverages to allow any such beverages to be sold to any minor person, or to be consumed by any minor person, on the premises where such alcoholic beverages are sold.

(4) It shall be unlawful for any person to sell, or offer for sale, any alcoholic beverage outside of the Town's Community Development District.

(5) It shall be unlawful for any person to drink, sell, serve, dispense or give away, or attempt to drink, sell, serve or give away, any alcoholic beverage, while upon any street, alley, sidewalk, public easement, or right-of-way.

SECTION 6. MINORS - OFFENSES GENERALLY.

It shall be unlawful to do or perform any of the acts designated as follows:

- (1) For any minor person, directly or indirectly, to purchase any alcoholic beverage, or to attempt to purchase any alcoholic beverage.
- (2) For any minor person to possess or to consume any alcoholic beverage.
- (3) For any person to sell, furnish, give to, or purchase for any minor person any alcoholic beverage.
- (4) For any person to hire, employ or permit any minor person to serve or dispense alcoholic beverages of any kind.
- (5) For any minor person, directly or indirectly, to falsely represent that he or she is twenty-one (21) years of age or older, by means of which false representation such person buys, receives or otherwise obtains any alcoholic beverage.
- (6) For any person, directly or indirectly, to falsely represent that a person is twenty-one (21) years of age or older, by means of which false representation such person aids or abets such minor person to buy, receive, or otherwise obtain any alcoholic beverage.

SECTION 7. AUTHORIZED HOURS.

It shall be lawful for any authorized person in an establishment licensed to sell alcoholic beverage to sell, offer for sale, or to serve or dispense, or to offer to serve or dispense, any alcoholic beverage within licensee's normal business hours, unless otherwise restricted by law; provided, however, that this ordinance prohibits alcohol sales between the hours of 12:01 A.M. and 12:01 P.M. on Sundays.

SECTION 8. REGULATION OF CONDUCT.

It shall be unlawful for any Person in Charge of an establishment licensed to sell alcoholic beverages to allow lewd and/or lascivious conduct by employees, guests, invitees, customers or others within the licensed establishment, or for anyone to engage in lewd and/or lascivious conduct within the establishment.

SECTION 9. RECORDS; REPORTS.

It shall be the duty of each person subject to the license fee imposed by this ordinance to keep full and complete records of all purchases and sales of alcoholic beverages. The aforesaid records shall be kept posted currently and shall be preserved for not less than one (1) year following each calendar year. All such records shall be available for inspection and audit at the licensed premises within the Town during regular business hours by the town's duly authorized representative. Failure to keep any of the records required by this section, or elsewhere in this ordinance, or refusal to make any records available to the town's duly authorized representative, shall constitute grounds for revocation of any license issued under this ordinance.

SECTION 10. OPEN CONTAINERS

It shall be unlawful for any person to:

- (1) Possess or consume any alcoholic beverages at any public park, municipal playground, municipal recreation facility, school playground, school stadium, or school recreational facility, except as may be otherwise expressly provided by law and/or when approved by the Town Council for special events.
- (2) Possess or consume any alcoholic beverage from its original container or an open

glass, bottle, cup, can, keg, bag or other receptacle not its original container while upon or along any public street, road or highway in the Town or while in any automobile or other motor vehicle on or along any public street, road or highway in the Town except when approved by the Town Council for a special event.

SECTION 11. DISCRIMINATION PROHIBITED.

It shall be unlawful for any alcoholic beverage licensee of the city to discriminate against any person with respect to the sale of any alcoholic, beverage based upon race, color, creed, or sex. This section shall apply to the licensee, manager, to any person in charge of any licensed premises, and to any employee of the licensee authorizing, permitting, or committing any violation hereof.

ARTICLE III. LICENSES SECTION

SECTION 1. REQUIRED; TRANSFER; SUSPENSION; DISPLAY.

(1) It shall be unlawful for any person to have in such person's possession any alcoholic beverage within the Town for sale, by such person without having first procured from the Town a privilege license and from the Board a license entitling the applicant to engage in the alcoholic beverage transactions authorized thereby. Licenses issued under this ordinance may not be assigned or transferred.

(2) Licenses issued by the Town shall be deemed to terminate, by operation of law, when there is a change in ownership in a licensed establishment, or when a licensed establishment is leased, rented, or abandoned, or when possession is otherwise surrendered to another party or parties. Provided, however, that an applicant for a new license at a currently licensed establishment may be allowed to operate the establishment for a period not to exceed thirty (30) days. In such case, the original licensee shall continue to be responsible for the conduct, operation, and any Town tax liabilities of the establishment until a license is issued by the Town in the new Licensee's name.

(3) Upon the temporary closing of the licensed establishment for a period more than thirty (30) days the Town's license to sell alcoholic beverages shall be immediately returned to the Town Clerk, or designated representative, to be held pending the reopening of the business. If the establishment remains closed for twelve (12) months or greater, for any purpose, the license shall be deemed terminated by operation of law.

(4) The City shall have the right to revoke any privilege license issued by the Town for any violation of this ordinance or the regulations of the Board, after notice and opportunity for a hearing before the Town Council.

(5) Every privilege license issued by the Town to sell alcoholic beverages shall be conspicuously and constantly exposed under a transparent substance in an area visible to the public on the licensed premises.

SECTION 2. APPLICATION FOR LICENSE; PAYMENT.

Each applicant seeking the consent and approval of the Town Council for any license issued by the Board shall make application to the Town Council as required by this article. Said application shall be upon an appropriate form supplied by the Town Clerk or duly authorized representative, and shall be signed and verified by oath or affirmation by the licensee, if a natural person, or in the case of a partnership, association or unincorporated enterprise, by a partner, limited liability company (LLC) or managing member thereof, or in the case of a corporation, by an executive officer thereof.

The Mentone License Application shall include the following:

(a) The name and address of the applicant., the business address (E911) and legal description of

the real property at which the business is located. Signed and dated by the applicant.

A completed copy of the ABC Board's Licensing Pre-Application Packet (Form LCD-1)

SECTION 3. REVIEW OF APPLICATIONS.

- (1) Applicant shall present application to the Town Clerk.
- (2) The Town Clerk shall review application for completeness and cause such application to be published by posting at Town Hall and on the Town's web page.
- (3) The Town Clerk shall present the application at the next meeting of the Town Council. No initial application shall be approved except by the Town Council in a regular meeting, If no discrepancies in application are found then council will approve application for submission.
- (4) The Town Clerk shall provide Certificate of Approval for applicant to the Mentone Community Development District.
- (5) Upon notification of Board approval of the applicant for a State license and meeting all requirements of this ordinance, then the Town of Mentone shall issue a Town license to the applicant.

SECTION 4. PUBLIC NOTICE.

Upon receipt of an application, the Town Clerk shall cause notice to be posted, as provided in Section 3(2) above, stating that the application, will be considered at the next regular meeting of the Town Council, which said notice must be posted as aforesaid at least six (6) days in advance of the next regular meeting of the Town Council. The notice shall contain the common E911 address and legal description of the proposed establishment.

SECTION 5. CONSIDERATION OF APPLICATION; REVOCATION.

- (1) Any determination by the Board to suspend or revoke a license issued by the Board shall be recognized and given full force and effect by the Town such that any license granted by the Town permitting the licensee to engage in the same conduct or business shall thereby be suspended or revoked effective simultaneously with the Board's decision.

SECTION 6. REPORTS OF BUSINESS DONE AND TAX DUE.

Normal sales tax is the only tax due for the sale of alcoholic beverages in the Town of Mentone. Alcoholic beverage taxes are paid with other normal sales tax.

SECTION 7. ALABAMA RESPONSIBLE VENDOR ACT.

ALA. CODE {28-10-1 through 28-1 0-8 (1975) are not part of this ordinance.

ARTICLE IV. MISCELLANEOUS PROVISIONS

SECTION 1. VIOLATIONS DECLARED MISDEMEANOR.

Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor and, unless otherwise provided herein, upon conviction or adjudication of guilt shall be sentenced to a fine not to exceed five hundred dollars (\$500.00).

SECTION 2. INSPECTION.

- (1) It shall be unlawful for any licensee to refuse the Town or any of its authorized

employees the right to completely inspect the entire licensed premises at any time during which the premise is open for the transaction of businesses.

(2) Any licensees upon the request of the town's authorized representative shall present all records reasonably requested for inspection at the Town of Mentone upon the providing of reasonable notice. Reasonable notice shall be not less than fourteen (14) days.

SECTION 3. SEVERABILITY.

The provisions of this ordinance are severable. If any part or provision hereof is declared unconstitutional, void, or invalid by a court of competent jurisdiction, all other parts and provisions hereof shall not be affected by such declaration and shall remain in full force and effect as though the unconstitutional, void or invalid provision had not been included in the ordinance as originally adopted.

SECTION 4. CONFLICTS WITH STATE STATUTES AND REGULATIONS.

This ordinance shall be deemed cumulative with and supplemental to all statutes and regulations of any administrative body of the State of Alabama regarding the subject matter hereof and to be subordinate to same and in no manner intended to supersede any such statutes or regulations of the State of Alabama. Any provision hereof in conflict with any provision of any state statute or regulation shall be construed to be in harmony with the same where possible, and otherwise, to be superseded by the provisions of such state statute.

SECTION 5. CONFLICT WITH ORDINANCES OF THE TOWN.

This ordinance shall be deemed cumulative with any other ordinance of the Town and shall be read in pari material. In the event of a conflict between ordinances of the Town, the provisions of this ordinance shall supersede prior ordinances of the Town wherein are hereby expressly repealed.

SECTION 6. POLICY AND PROCEDURES.

Policies and/or procedures may be adopted to aid in the administration of the provisions of this ordinance, although they shall not in any event conflict with the provisions of this ordinance.


SECTION 7. EFFECTIVE DATE.

This ordinance shall be effective immediately upon its adoption, approval and publication according to law.

ADOPTED sitting in regular session this 6th day of AUGUST, 2018 ..



MAYOR
TOWN OF MENTONE

ATTEST:


TOWN CLERK

TRANSMITTED AND APPROVED by the Mayor of the Town of Mentone, Alabama on this the 6th day of August, 2018 ..