



STATE OF ARKANSAS
City of Brookland

ORDINANCE NO. 2013-04

AN ORDINANCE IMPOSING REGULATIONS, RESTRICTIONS, FEES, AND TAXES ON THE MANUFACTURING, TRANSPORTING, STORING, HANDLING, RECEIVING, DISTRIBUTING, SELLING, SERVING OR DISPENSING OF ANY CONTROLLED BEVERAGE WITHIN THE CITY OF BROOKLAND, ARKANSAS.

WHEREAS, according to Arkansas Code Annotated §3-9-205, the Arkansas State Alcoholic Beverage Control Board is granted the authority to adopt and enforce reasonable rules and regulations governing the qualifications for permits for on-premises consumption of alcoholic beverages.

WHEREAS, according to Arkansas Code Annotated §3-9-205, the City of Brookland, Arkansas retains the power to regulate the operation of establishments manufacturing, transporting, storing, handling, receiving, distributing, selling, serving or dispensing any controlled beverage within the City of Brookland, Arkansas as may be necessary for the protection of public health, welfare, safety, and morals.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the City Council of the City of Brookland, Arkansas:

SECTION 1: "Definitions" - The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic beverages means all intoxicating liquors of any sort, including beer and wine.

Beer means any fermented liquor made from malt or any similar substance therefor and having an alcohol content not in excess of five percent or less than one-half of one percent by weight.

Controlled beverages means all beverages of any kind subject to regulation under any alcoholic beverage control law of the state and this chapter.

Light wine means the fermented juices of grapes, berries or fruits and any other mixture containing the fermented juice of grapes, berries or fruits, having an alcoholic content between one-half of one percent and five percent alcohol by weight.

Malt beverage products means any liquor brewed from the fermented juices of grain having an alcoholic content of not less than five percent nor more than 21 percent by weight.

Malt liquor means liquor brewed from the fermented juices of grain.

Nuisance means any unlawful conduct or activity or the tolerance of any unlawful conduct or activity by the permittee, or his agent, which constitutes a detriment to the health, safety and welfare of the citizens of the city.

On-premises consumption means the sale or dispensing of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises where sold or dispensed.

Permit means any authorization issued by the Alcoholic Beverage Control Division of the state and/or by the city pursuant to any state Alcoholic Beverage Control Division regulation and/or this Code whether described as a permit, license or otherwise.

Permittee means the person to whom a permit or license to sell, dispense or distribute alcohol has been granted.

Police chief means the chief of police of the city police department or his designee.

Private club means a nonprofit corporation organized and existing under the laws of this state, no part of the net revenues of which shall inure directly or indirectly to the benefit of any of its members or any other individual, except for the payment of bona fide expenses of the club's operations, conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, or other nonprofit object or purpose other than the consumption of alcoholic beverages. The nonprofit corporation shall have been in existence for a period of not less than one year before application for a permit. At the time of application for the permit, the nonprofit corporation must have not less than 100 members, and, at the time of application, must own or lease, or be the holder of a buy-sell agreement or offer and acceptance, or have an option to lease a building, property, or space therein for the reasonable comfort and accommodation of its members and their families and guests, and restrict the use of club facilities to such persons.

Spirituuous means liquor distilled from the fermented juices of grains, fruits or vegetables containing more than 21 percent alcohol by weight, or any other liquids containing more than 21 percent alcohol by weight.

Sunday sales means the sales of alcoholic beverages on Sunday shall be limited to those businesses within the city which possess a current and valid permit for the sale of alcoholic beverages on Sunday issued by the Alcoholic Beverage Control Division.

Supplemental privilege license permit means a permit issued by the city for the privilege of operating a private club within the city. A supplemental privilege license permit is required, which shall be in addition to the regular business privilege license.

Supplemental privilege license permit fee means a fee established by the city for the privilege of operating a private club within the city, there is hereby levied an annual supplemental privilege license permit fee which shall equal 50 percent of the regular business privilege license fee not to exceed \$250.00.

Vinous means the fermented juices of fruits containing more than five percent and not more than 21 percent alcohol by weight.

SECTION 2: Applicability.

(a) It is hereby declared that the business of manufacturing, transporting, storing, handling, receiving, distributing, selling, serving or dispensing, any controlled beverage within the city, is a privilege, and for the exercise of such privilege there are hereby imposed the regulations, requirements, restrictions, fees and taxes as set forth in this ordinance.

(b) These general provisions shall apply to all permittees in addition to any specific provisions under individual headings for each type of permit.

SECTION 3: Annexed areas; continuance of business.

Where an alcoholic beverage establishment exists in an area outside the city limits, upon annexation of such area, the same may be continued as a nonconforming use and shall be subject to all remaining provisions of this Ordinance.

SECTION 4: Dispensing outside of licensed premises.

It shall be unlawful for any alcoholic beverage to be dispensed, or otherwise provided outside of the enclosed building, premises or place of business licensed for such, except as permitted by this Ordinance.

SECTION 5: Unlawful activities; prohibited activities; warning notice.

(a) *Generally.* It shall be unlawful for the holder of any permit issued under the provisions of this Ordinance to permit any disturbance of the peace or obscenity or any lewd, immoral or improper entertainment, conduct or practices in the permitted premises or to operate the business in such manner as to constitute a nuisance.

(b) *Disturbances.* It shall be unlawful for any permittee, or permittee's agent or employee to fail to report to the police department any disturbance which occurs inside or immediately outside the permitted premises or in the parking facilities, of which any of them have knowledge which would, under normal circumstances require or give rise to police intervention.

(c) *Hiring persons with convictions of felonies or misdemeanors.* It shall be unlawful for any permitted establishment to employ any person who has been convicted of, entered a plea to or has otherwise been found guilty of a felony, a misdemeanor involving moral turpitude or the sale of alcoholic beverage violation.

(d) *Availability of telephone.* It shall be the requirement that every permitted premises have a telephone and have such telephone available during the hours of operation. Failure to have a telephone shall constitute grounds for suspension or revocation of all permits.

(e) *Illegal drugs or narcotics.* It shall be the duty and responsibility of the permittee, or permittee's agent or employee to report to the police department any usage or possession of illegal drugs or narcotics on a permitted premises.

(f) *Assistance to law enforcement officers.* It shall be unlawful for any permittee, or permittee's agent or employee to fail to assist any law enforcement officer in the performance of his duty while the officer is on a permitted premises.

(g) *Refusal to admit law enforcement officers.* It shall be unlawful to refuse to grant admission to any permitted premises at any time upon the verbal request of any law enforcement officer, who displays proper identification for the purpose of inspecting the premises to ensure compliance with this chapter. It shall be unlawful to refuse to open any cabinet, storage room or any other area within the permitted premises.

(h) *Minors/persons under 21 years of age.* Any person to which a controlled beverage permit has been issued shall comply with all laws and regulations of the state, the Alcoholic Beverage Control Division of the state, and the city regarding the control and regulation of controlled beverages, including but not limited to, the following:

(1) Purchase by or for minors, sale to minors or handling by minors prohibited;

(2) It shall be unlawful for any person under the age of 21 years to have in his possession, to purchase or attempt to purchase, or otherwise obtain any controlled beverages except as provided by A.C.A. § 3-3-202(a)(1).

(3) It shall be unlawful for any person to, knowingly or unknowingly, purchase on behalf of, furnish to, give away to, or otherwise dispose of, to any person under the age of 21 years any controlled beverages; however, this provision shall not apply to the serving of such to members of one's family or to the use of wine in any religious ceremony or rite in any established church or religion.

(i) *Warning notice.* A warning notice regarding dispensing to, possession or purchase by, or furnishing to minors of controlled beverages shall be posted in a conspicuous place in public view in each place of business where controlled beverages are dispensed. The warning notices shall be of the size, have the content, and be posted in the manner as prescribed by the state Alcoholic Beverage Control Division.

(j) *Nudity.* No person who has received a permit under any ordinance of the city for the sale or dispensing of alcoholic beverages for on premises consumption including private club permits shall suffer or permit any person to appear on the permitted premises in such manner or attire as to expose to view any portion of the pubic area, anus, vulva or genitals or any simulation thereof, nor suffer or permit any female to appear on the premises in such manner or attire as to expose to view any portion of her breast below the top of the areola or any simulation thereof.

(k) *Nudity; consumption/possession of alcoholic beverages on premises prohibited.* No person shall bring into or consume or allow to be brought into or allow to be consumed intoxicants or alcoholic beverages of any kind, in any commercial establishment, or business, which suffers or permits any person to appear on the premises in such manner or attire as to expose to view any portion of the pubic area, anus, vulva or genitals or any simulation thereof, or suffers or permits any female to appear on the premises in such manner or attire as to expose to view any portion of her breast below the top of the areola or any simulation thereof.

(l) *Revocation of permit.* If any person engaged in dispensing controlled beverages in the city shall conduct his place of business in a manner as to constitute a nuisance, the city council shall revoke the permit of such person to dispense controlled beverages in the city.

SECTION 6: Private club permits; supplemental privilege license permit.

(a) *Private club permit.* Authorizes the purchase of any controlled beverages from persons holding an off-premises retail liquor or beer permit who have been designated by the director of the state Alcoholic Beverage Control Board as a private club distributor, and authorizes the dispensing of such beverages for consumption on the premises of the private club to members and guests only of the private club. Private clubs holding a retail beer on premises permit may purchase beer, light wine or malt liquor containing not more than five percent alcohol by weight from holders of valid wholesale beer permits.

(b) *Supplemental privilege license permit—Required.* For the privilege of operating a private club within the city, a supplemental privilege license permit is required which shall be in addition to the regular business privilege license.

(c) *Same—Fee.* For the privilege of operating a private club within the city, there is hereby levied an annual supplemental privilege license permit fee which shall equal half of the regular business privilege license fee not to exceed \$250.00.

(d) *Supplemental beverage tax.* In addition to the supplemental privilege license permit fee, there is hereby imposed and levied a city supplemental tax of five percent upon the annual gross receipts which are derived by such private club from charges to the members and/or their guests for the following services:

(1) The preparation and serving of mixed drinks; and

(2) The cooling and serving of beer, light wine, and wine. The city's supplemental beverage tax is in addition to the state supplemental tax on private clubs and shall be paid to the appropriate city official, shall be due monthly at the same time that the state supplemental tax is due, and shall be accompanied by one copy of the state supplemental tax return. If any permittee shall fail to remit the supplemental tax within the time period that the state tax is due, a penalty of ten percent of the tax due shall be due and payable in addition to the tax.

(e) *Hours of operation.* It shall be unlawful for the owner, operator or any employee of a private club to dispense or permit the consumption of any controlled beverages on the premises of said private club between the hours of 2:00 a.m. and 10:00 a.m. on any day.

(f) *Vacation of premises by patrons, members and guests.* It shall be unlawful for any patron, member or guest to remain upon the premises of any private club for more than 30 minutes after the established closing hour of 2:00 a.m. for the dispensing or consumption of controlled beverages. The term "premises" includes the entire property to wit; building, foyers, attached structures and the parking areas. It shall be the responsibility of the permittee to ensure compliance.

SECTION 7: Required.

(a) It shall be unlawful for any person to engage in the business of manufacturing, transporting, storing, handling, receiving, distributing, selling or dispensing within any

private club any controlled beverage, within the city without a permit issued by the city or with an expired permit.

- (b) The provisions of this chapter shall not apply to the manufacture, sale and distribution of wines or vinous liquors manufactured, sold and distributed by residents of the state.

SECTION 8: Application.

- (a) Application for a permit required by this chapter shall be in writing on a form prescribed by the city and shall be accompanied by the required fee and a copy of the applicant's state permit. No city permit will be issued until applicant has received a state permit.
- (b) It shall be unlawful for any person to make any false statement or representation in any application required by this chapter or to give any false answer to any question contained therein.
- (c) Permits required by this chapter shall run for a calendar year. Annual permit renewal fees shall be due and payable on December 31 of each year for the succeeding year beginning January 1.
- (d) The city will not issue or renew any permits pursuant to this chapter until all outstanding hotel, motel and restaurant taxes and/or supplemental beverage taxes, if applicable, are paid.
- (e) All permits issued by the city pursuant to this chapter shall be prominently displayed on the permitted premises by the permittee in the same manner as required by the state for state permits.
- (f) When any state permit is revoked by the state or required to be returned to the state for any reason, the city permit shall be returned to the city. The city will restore the permit upon proof that the state permit has been restored to the applicant, provided that no reclaimed permit will be restored to an applicant until all outstanding hotel, motel and restaurant taxes and/or supplemental beverages taxes, if applicable, are paid.
- (g) All fees, taxes and penalties received by the city pursuant to this chapter shall be used for general purposes within the city pursuant to A.C.A. § 3-9-223(f).
- (h) Permits shall not be transferable or assignable unless and until approval is granted by the Alcoholic Beverage Control Division and notice is provided to the city and all other requirements of this chapter are met.

SECTION 9: Right of city to inspect records.

The city collector or the chief of police or his designee shall have the right to inspect and examine the records of any permittee subject to any tax or permit fee based on gross sales or receipts pursuant to A.C.A. § 3-2-211 and any other employee information required pursuant to the regulations of the Alcoholic Beverage Control Division, title 1, subtitle G, section 1.79(37).

SECTION 10: Qualifications of applicants.

Persons to whom a state alcohol permit has been issued are presumed qualified to hold a city alcoholic beverage permit.

SECTION 11: Property Survey to accompany application.

(a) *Survey certificate required.* All applications for permit shall include a certificate from a registered survey or showing a scale drawing of the location of the proposed premises and the distance, measured as provided herein from the proposed premises to the nearest church, school and residence and the nearest five occupied commercial establishments.

(b) *Proximity to single-family dwellings.* No permits of any type shall be issued to any location which is within 50 feet of any single-family dwelling. The distance shall be measured from the nearest point of the proposed business to the nearest point of the residential building along or across the closest public right-of-way.

(c) *Proximity to schools.* No permits of any type shall be issued to any location which is within 100 feet of any public school. The distance shall be measured from the nearest point of the proposed business to the nearest point of the public school property line along or across the closest public right-of-way.

(d) *Alcoholic treatment center.* No permits shall be issued to any location which is within 100 yards of any alcoholic treatment center.

(e) *Exceptions.*

(1) Permits in existence at the time of the passage of this ordinance are exempt from the aforementioned distance requirements as they pertain to existing single-family dwellings.

(2) For the purposes of this article multifamily dwellings and/or loft apartments existing or constructed in a commercial area ((C-1), (C-2), (C-3)) do not qualify as single-family dwellings.

SECTION 12: Operating without a city permit.

(a) *Beer or light wine.* Any person who sells, serves, barbers, dispenses, exchanges or gives away beer or light wine at an establishment or event open to the public without having a valid city permit as provided by this chapter shall, upon conviction, be deemed guilty of a class B misdemeanor. Each day of such operation without a valid city permit shall constitute a separate and distinct offense. This section is in no way intended to restrict activities in private residences when there is no charge to attend or no sale of alcohol is occurring, providing no other state or local laws are being violated.

(b) *On-premises consumption, including private clubs.* Any person who sells, serves, dispenses, barbers, exchanges or gives away controlled beverages at an establishment or event for on-premises consumption without having a valid city permit as provided by this chapter shall, upon conviction, be deemed guilty of a class B misdemeanor. Each day of such operation without a valid city permit shall constitute a separate and distinct offense.

(c) *General.* Any person, except as provided in subsection (a) and (b) of this section, who sells, serves, barbers, dispenses, exchanges or gives away controlled beverages, without having a valid city permit as provided in this chapter shall, upon conviction, be deemed guilty of a class B misdemeanor. Each day of such operation without a valid city permit shall constitute a separate

and distinct offense. This section is in no way intended to restrict activities in private residences when there is no charge to attend or no sale of alcohol is occurring, providing no other state or local laws are being violated.

SECTION 13: Zoning requirements for business location.

No permit to dispense alcoholic beverages shall be issued unless the location has been zoned for retail commercial on the city zoning map. Such dispensing of alcoholic beverages shall occur in commercially zoned districts which shall include C-1, downtown core commercial district and C-3, general commercial district. Dispensing of alcoholic beverages may be permitted in the C-2, downtown fringe commercial or I-1, limited industrial district only after review and approval as a conditional use by the Metropolitan Area Planning Commission (MAPC).

SECTION 14: Fraud and misrepresentation by applicant.

(a) Any person who acquires a permit or a renewal of same, in violation of this chapter by any misrepresentation or fraudulent statement shall be deemed guilty of an offense and upon conviction thereof shall be punished in accordance with the penalties outlined in this chapter.

(b) Any untrue or misleading information contained in, or material omission left out of, an original, renewal or transfer application for a permit shall be cause for the denial thereof and, if any permit has been granted under these circumstances, there shall be cause for the revocation of the permit.

SECTION 15: Issuance; payment of fee.

(a) All permits must be obtained and fees paid not later than two weeks from the date of the delivery of the application to the city and, if not so obtained, the issuance granted by the city shall lapse.

(b) When a permit has been issued and the applicant has deposited with the city the required fee, the fee shall be paid to the municipal revenue collector and a permit issued.

SECTION 16: Business to open within six months from permit issuance.

All holders of permits shall, within six months after the issuance of the permit, open the establishment referred to in the permit for business and begin dispensing the products authorized by the permit. Failure to open the establishment and begin business within the six-month period required in this section shall serve as automatic forfeiture and cancellation of the unused permit, and no refund of permit fees shall be made to the permit holder.

SECTION 17: Effect of failure to operate business for six consecutive months.

Any holder of a permit who shall begin the operation of the business and dispensing the products as authorized in the permit, but who shall, for a period of six consecutive months thereafter, cease to operate the business or dispensing the products authorized in the permit, shall upon completion of the six-month period automatically forfeit the permit, which permit shall, by virtue of that failure to operate, be canceled without the necessity of any further action of the city.

SECTION 18: Fee payment dates; proration; delinquency penalty.

All permit fees shall be paid between December 1 and December 31 each year. Permits obtained after June 30 of each year shall pay one half of the annual fee. Delinquent permit fees shall be subject to a delinquent penalty of 25 percent of the permit fee for each 30-day period the fee remains unpaid.

SECTION 19: Term of permit.

No permit shall issue for more than the remainder of the calendar year, and all shall expire at midnight, December 31 of each year. In case of the revocation or surrender of such permit before the expiration of such calendar year period, the holder thereof shall not be entitled to receive any refund whatsoever.

SECTION 20: Transferability.

(a) Permits to engage in the business of dispensing alcoholic beverages shall not be transferable, except as otherwise provided herein. Provided however, that if the modification of this chapter since the issuance of the prior permit would prevent the issuance of a new permit at the same location previously permitted because of modifications in the distance requirements, then the location shall be considered a nonconforming use and a permit may issue if the applicant otherwise meets the requirements of this chapter.

(b) All applications for transfer of locations shall comply with the provisions herein set forth governing new permits and shall include an investigation fee.

SECTION 21: Notice of transfer of business.

Should any alcoholic beverage permit holder make a request to the Alcoholic Beverage Control Division to transfer their permit to another location, individual or organization, the police chief shall be notified in writing of such request within seven days.

SECTION 22: Display required.

Every person or organization issued a permit pursuant to this chapter shall be required to display this permit in the same location as is displayed the state controlled beverage permit.

SECTION 23: Suspension or revocation.

(a) Whenever the state shall revoke any permit, the city permit to deal in such products shall thereupon be automatically revoked without any action by the city or any municipal officer.

(b) No permit which has been issued or which may hereafter be issued by the city shall be suspended or revoked, except for due cause, and after notice and a hearing. Such notice shall include the time, place and purpose of the hearing and a statement of the charge upon which such hearing shall be held and shall give a reasonable time to prepare a defense.

(c) Due cause for the suspension or revocation of such permit shall consist of the violation of any laws or ordinances regulating such business, or violation of regulations made pursuant to authority granted for the purpose of regulating such business, or for the violation of any state or federal law related to alcoholic beverages, gambling, narcotics or any crime of moral turpitude. Such violation may be an act of the permittee or of any agent, officer or employee of the permittee.

(d) Hearings shall be conducted by the public safety committee, with the chairperson of the committee acting as the presiding officer of the hearing. At any hearing the permittee shall have the right to represent himself or be represented by counsel, may cross examine all witnesses offered by the city, and may present evidence in his own behalf. Evidence, including testimony, may be tendered by affidavit. Formal rules of evidence shall not apply to hearings under this section, although the fact finder shall have the right to exclude evidence which carries no indicia of reliability. All testimony shall be offered under oath or affirmation. Both the city and the permittee shall have the right to present witnesses. The public safety committee shall render a decision by majority vote in writing within ten working days of the completion of the hearing.

(e) If, after the hearing, the public safety committee finds a violation has occurred, the permit may be placed into probationary status, suspended or revoked depending upon the severity, facts and circumstances of the violation or violations. If any offenses occur during an active probationary period, the permit shall be revoked. Once this decision is rendered by the public safety committee a permittee has the right to appeal the decision to the Craighead County Circuit Court.

(f) In the event a permit is revoked pursuant hereto, no permit shall be issued to the same person, for a period of five years.

SECTION 24: Furnishing to/consumption by minors.

(a) Any person who shall unknowingly sell, give away or otherwise dispose of intoxicating liquor to a minor shall be guilty of a violation and punished by a fine of not less than \$200.00 nor more than \$500.00 for the first offense. For the second and subsequent offenses, a person shall be guilty of a class A misdemeanor.

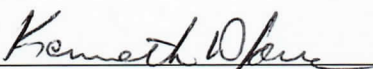
(b) It shall be unlawful for any person to knowingly give, procure or otherwise furnish any alcoholic beverage to any person under 21 years of age, other than one's family or for the use of wine in a religious ceremony or rite in any established church or religion. Upon a first conviction, a person shall be guilty of a class C misdemeanor. Upon a second conviction within three years, a person shall be guilty of a class D felony.

(c) It shall be unlawful for any person to knowingly sell or otherwise furnish for money or other valuable consideration any alcoholic beverage to any person under 21 years of age. Upon a first conviction, a person shall be guilty of a class D felony. Upon a second conviction within five years a person shall be guilty of a class C felony and may be punished in accordance with law.

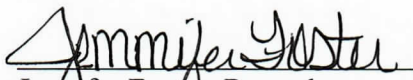
(d) Any person under the age of 21 years who purchases or has in his possession any controlled beverage shall, upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of not less than \$100.00 nor more than \$500.00.

EMERGENCY CLAUSE: It is hereby found and declared by the City Council of the City of Brookland, Arkansas, that the on-premises sale of alcoholic beverages is a privilege regulated by the State of Arkansas. However, the City of Brookland is granted the authority to regulate the operation of said establishments for the protection of public health, welfare, safety and morals. At present there are no on-premises of alcoholic beverages establishments in the City. It is hereby declared an emergency to have these rules and regulations in place prior to the location of said establishment in the City for the preservation of public peace, health and safety. As such, this Ordinance shall take effect and be in full force from and after this passage.

PASSED AND ADOPTED this 8th day of January, 2013.


Kenneth D. Jones, Mayor

ATTEST:


Jennifer Foster, Recorder

