

ORDINANCE NO. 2019-009-ADM

**AN ORDINANCE TO REPEAL AND REPLACE ORDINANCE NO. 1995-028
ADM AND ORDINANCE NO. 2008-005-ADM REGULATING THE SALE OF
ALCOHOLIC BEVERAGES WITHIN THE CORPORATE LIMITS OF THE CITY
OF TRUSSVILLE**

BE IT ORDAINED by the City Council of the City of Trussville, Alabama, that Ordinance No. 95-028-ADM and Ordinance No. 2008-005-ADM shall be and are hereby repealed in the entirety and replaced as follows:

SECTION I. SHORT TITLE.

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

SECTION II. PURPOSE.

This ordinance is enacted for the purposes, among others, of promoting the health and general welfare of the community, of establishing reasonable standards for the regulation and control of the licensing and sales of alcoholic beverages, and of protecting and preserving certain areas, through reasonable consideration, among others, to the character of the areas and their peculiar suitability for particular uses, to the congestion in the roads and streets, to a general view of promoting desirable living conditions and sustaining stability of neighborhoods and property values, and to the prevention of undesirable persons from engaging in or having any interest in alcoholic beverages. This ordinance shall be deemed an exercise of the police power of the city of Trussville.

SECTION III. DEFINITIONS.

Wherever used herein, and except as the context otherwise clearly requires, the definitions set forth in the Code of Alabama (1975), Title 28-3-1, et seq., as amended from time to time, are hereby 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:

A. **BREW PUB.** Any premises upon which beer is actively and continuously manufactured or brewed, subject to the barrel production limitation prescribed in Chapter 4A of Title 28 of the Code of Alabama (1975, as amended), for consumption on the premises where manufactured, or for sale to any designated wholesaler licensee for resale to retail licensees.

B. **CHURCH.** Any permanent building located within the corporate city limits of the city of Trussville where persons regularly assemble for religious worship. The building shall be publicly designated as a church, but shall not include a residence also used for religious purposes. For purposes of this ordinance, leased or rented space zoned

commercially will not be considered a church regardless of the use of said leased or rented space. For purposes of this ordinance, a chapel or any room used for religious purposes and called by any name within a nursing home, retirement home, hospital, medical clinic, funeral home or cemetery shall not be considered a church.

C. DISTANCE. The measure in lineal feet from the center of the nearest door of the proposed licensed premises to the center of the nearest door of a school, church or library.

D. GROCERY STORE. A retail establishment whose primary function is the sale of packaged or unprepared food and grocery items for consumption off the premises and whose annual gross sales of alcoholic beverages do not exceed five (5) percent of its total gross sales from all sources as evidenced by a certified audit showing the sales for a calendar year most recently ending at the proposed location for a similar store at a similar location. For the purposes of this ordinance, retail establishments selling gasoline shall not be considered grocery stores.

E. LICENSE. A lounge retail liquor license, a club retail liquor license, a restaurant retail liquor license, a retail beer license, a retail table wine license, a manufacturer's license, a brewpub license, or other license issued by the Alabama Alcoholic Beverage Board requiring consent and approval of the City Council.

F. LIBRARY. A facility that is open to the public for the purpose of maintaining books, periodicals and other material for use by the public. Such facility shall be managed by a librarian who is a full-time employee of the City of Trussville.

G. PUBLIC PLACE. Any place or gathering which the public generally attends or is admitted to, either by invitation, common consent or right, or by the payment of an admission or other charge and, without limiting the generality of the foregoing, shall include public parks, city hall, library, school buildings, school grounds, playgrounds, auditoriums, any store or place where merchandise of any kind is offered for sale, any theater or other place of amusement and any athletic contest or the premises upon which any said building is located.

H. RESTAURANT. A reputable place licensed as a restaurant, operated by a responsible person of good reputation, and habitually and principally kept, used, maintained, advertised and held out to the public as a place where meals are actually and regularly served with at least one thousand (1,000) square feet of dining space and equipped with tables and chairs to accommodate at least fifty (50) people at one time. Such place shall be provided with adequate and sanitary kitchen and dining room equipment, air conditioned and heated as appropriate, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. At least one (1) meal per day shall be served at least five (5) days per week, with the exception of holidays, vacations and periods of redecorating, and the serving of such meals shall be the principal business conducted, with the serving of alcoholic beverages to be consumed on the premises as only incidental thereto.

I. SCHOOL. A state accredited grammar, elementary, middle, junior high or senior high school.

J. SUMMONS. A document issued by a duly appointed magistrate from the City of Trussville to appear in court before the Municipal Judge for any violation of this ordinance.

SECTION IV. APPLICATION REQUIRED.

Each applicant seeking the consent and approval of the City Council for a license issued by the Alabama Alcoholic Beverage Control Board shall make application to the City Council as required herein.

SECTION V. CONTENTS OF APPLICATION.

An application seeking the consent and the approval of the City Council for a license shall contain the following information and statements:

A. The name and residence of the applicant and how long he has resided in the indicated place; and if a partnership, association, unincorporated enterprise, or corporation, the names and residence of the partners, members, officers and directors, and how long each of such persons has resided at the indicated place.

B. The name and residence of the manager of the local premise for which application is being made and how long he has resided in the indicated place.

C. A copy of the State Alcoholic Beverage Control Board application containing the printed application number for the applying entity shall be provided.

D. A description of the particular place for which the license is desired, and a description or plan of that part of the lounge, club, hotel, restaurant, civic center or dinner theater where it is proposed to keep and sell alcoholic beverages.

E. The date and place of birth of applicant, and if a naturalized citizen, when and where naturalized; if a corporation, when and where incorporated, and if not incorporated in the State of Alabama, then whether or not it is duly qualified under the laws of the State of Alabama to do business in Alabama. If a corporation, the application shall also contain a statement that all officers and directors of the corporation are reputable individuals and are citizens of the United States, and the further statement that at least fifty-one (51) percent of the capital stock is actually owned by individuals who are citizens of the United States.

F. The name(s) and address(es) of the owner or owners of the premises upon which the business is to be conducted, together with the names and addresses of all lessees and sublessees. A copy of any lease agreement under which the applicant has the right of possession, if the applicant is not the owner of the property, shall be filed as an attachment to the

application. The certification of said application shall include the certification of said lease agreement; provided, however, that the amount of monthly rental or other compensation to be paid by the lessee under said lease may be struck out on said attached copy.

G. That the applicant is not, or in the case of a partnership, association, or unincorporated enterprise, that the partners or members are not, and in the case of a corporation, that the officers and directors are not, in any manner peculiarly interested either directly or indirectly in the profits in any other class of business regulated under this article and/or the Alcoholic Beverage Licensing Code of the State of Alabama, or if so interested, the extent of said interest, including name of such business, must be stated. The applicant must list the name and location address of such other business entity or the location of any branch business of the same name.

H. That applicant is the only person in any manner peculiarly interested in the business so asked to be licensed, except as stated, and that no other person shall be in any manner peculiarly interested therein during the continuance of the license.

I. Whether applicant, or in the case of a partnership, association, or unincorporated enterprise, any partner or member thereof, or in the case of a corporation, any officer, director or stockholder thereof, has, during the three (3) years immediately preceding the date of said application, had a license for the sale of alcoholic beverages revoked or suspended by any governmental authority.

J. A statement whether applicant has made application heretofore for a similar or other liquor license, and the disposition of such application.

K. A statement from applicant showing the criminal records of the applicant, each partner, member, officer, and manager and shall include every violation charged irrespective of disposition of each charge. Minor traffic offenses may be omitted; however, driving while intoxicated and reckless driving cases must be shown

L. Plans and renderings of the proposed premises.

M. When deemed necessary by the City to determine the applicability of Section XI (D) hereof, which section establishes certain distance restrictions and exceptions thereto, a scale drawing of the location of the proposed premises and the distance therefrom to the nearest door of any school, church, or library, the accuracy of which is certified by a registered surveyor, may be required from the applicant.

N. The application must be signed and verified by oath or affirmation by the owner, partner or officer, depending on type of entity making said application.

O. Each applicant for a club retail liquor license shall also file with, and as part of, the application, the following:

(1) A certified copy of the certificate of incorporation, and of the constitution and by-laws of such club.

(2) A verified list of the paid-up members of such club at the time of application, together with the resident address of each such paid-up member.

(3) The name and residence address of the manager of the club. If the person shown as manager of the club ceases to be such manager, then the club shall notify the city clerk within five (5) calendar days of such change, together with the name and resident address of any new manager.

(4) A copy of any certificate from the Internal Revenue Service or Alabama Department of Revenue concerning any exemption of the club from taxation.

P. Any item and proof thereof listed in this section may also be required on any renewal application for such a license, or any proof thereof may be required to be furnished at the request of the Code Enforcement Officer on the application or any subsequent renewal.

SECTION VI. CITY CLERK TO RECEIVE APPLICATION.

The application along with all supporting paperwork shall be filed with the City Clerk. The City Clerk shall not accept the application until all fees are paid by the applicant. Said fees are to be set by the City Council as a processing fee to cover the expense of advertising, investigation and processing of the application, and said fee is not refundable. The City Clerk shall immediately deliver copies of the application to the chief of police, building inspector and revenue officer.

SECTION VII. INVESTIGATION.

A. Investigation by police department.

The police chief or his designated officer shall conduct a background investigation of all applicants for a license. Said investigation shall include:

(1) The following indices checks:

(a) Trussville Police Department.

(b) Jefferson County or St. Clair County Sheriff's Office, or any other agency where applicant has a current or had a previous license within that jurisdiction.

(c) A copy of the background check required by the Alcoholic Beverage Control Board for State application to be provided by applicant.

(2) All other aspects of the investigation that the chief of police deem useful in assisting the City Council to render a decision.

B. Investigation by city building inspection.

The building inspector shall conduct an investigation that will include:

(1) An inspection of the proposed building if it exists at the time of application to see that all code requirements are met. If there is no existing building, then a review of the plans.

(2) Consultation with the fire inspector to see that the premises is in compliance with the Fire Code when the building is existing, or plan review of a proposed building.

(3) A check to insure that the property is zoned properly.

(4) All other aspects of the investigation that the building inspector deems useful in assisting the city council to render a decision.

C. Investigation by revenue officer.

(1) The City Treasurer or a designated revenue officer shall investigate the applicant with regard to business licenses, taxes, and tax returns and other forms filed in the City of Trussville.

(2) All other aspects of the investigation the revenue officer deems useful in assisting the City Council to render a decision, including other locations where the applicant is engaged in business.

D. Investigation by City Clerk.

The City Clerk shall assemble a list of all property owners located within seven hundred fifty (750) feet of the proposed licensed premises, which information shall be used for the purpose of providing notice of public hearing hereinafter described.

E. Investigation results. The Chief of Police, building inspector and revenue officer shall submit said application, together with the results of the investigation and recommendations thereon, back to the City Clerk who shall submit this information to the City Council.

SECTION VIII. PRODUCING PERSONS FOR ORAL INTERVIEW.

Applicants by filing an application agree to produce for oral interview any person(s) requested by the City Council, when deemed necessary to ascertain facts relative to the license application.

SECTION IX. TIME LIMIT FOR CITY TO PROCESS APPLICATION.

The City must conduct its investigation and furnish the complete report to the City Council within forty-five (45) calendar days of receipt of the license application. The City Council may shorten or extend the time for the investigation as deemed appropriate under the circumstances. The City Council shall act on the application within thirty (30) calendar days of receiving the results of the completed investigation.

SECTION X. PUBLIC NOTICES AND INTENT OF HEARING.

A. Upon receipt of an application, together with the results of the investigation and recommendations made thereon, the City Clerk shall cause notice to be published two times in a newspaper of general circulation published in the county, stating that the application will be considered at the next regular meeting of the City Council, which said notice must be published as aforesaid two times at least six (6) calendar days in advance of the next regular meeting of the City council, and further stating the time and place that same is to be considered and that at such time and place all interested persons shall have an opportunity of being heard in opposition to or in favor of the application.

B. The City Clerk shall mail written notice of the hearing stating the day and time the application is to be heard and considered to all property owners located within seven hundred fifty (750) feet of the proposed licensed premises.

SECTION XI. ACTION BY CITY COUNCIL.

In rendering a decision on each application, the City Council shall consider, among others, the following factors:

A. The investigations and recommendations of the chief of police, building inspector and revenue officer.

B. The application, applicant's compliance with the application process, and the laws of the State of Alabama and the ordinances of the City of Trussville.

C. The location of the proposed establishment to include effects upon residents, businesses, traffic flow and congestion.

D. No license shall be approved by the City Council when the distance between the premises to be licensed and a school, church, library, or any public place within a residential area is less than seven hundred fifty (750) feet. Provided, however, the aforesaid distance restrictions shall not apply in the following enumerated cases:

- (1) Where the licensed premises are separated from the church, school or library by a street or highway having four (4) or more traffic lanes; or
- (2) Where the licensed premise is a grocery store as defined herein; or
- (3) Where the licensed premise is a restaurant as defined herein; or
- (4) Where the church, school or library was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of six (6) consecutive months.

E. An applicant seeking a special events license shall be a valid, responsible organization of good reputation. A special events license shall not exceed seven (7) calendar days. An applicant seeking a special events license shall obtain written authorization from the property owner, or the property owner's designee, approving of the issuance of the special event license. All other aspects of this Ordinance and state law shall be applicable to a special events license.

SECTION XII. DUTY BY MANAGEMENT OF LICENSED PREMISES.

As a condition to issuance and continuous maintenance of a license to sell alcoholic beverages:

- A. A valid license issued by the Alabama Alcoholic Beverage Control Board must be maintained.
- B. All alcohol license taxes shall be due monthly, to be remitted by the twentieth (20th) calendar day of the month next succeeding the month of collection. Any alcohol license tax not paid timely subjects the licensee to enforcement actions and penalties as prescribed in the Code of Ordinances.
- C. It shall be the duty of each owner and of each manager or supervisor at any time charged with the management and supervision of any licensed premises, while the same is open to the public, to maintain order upon 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 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.
- D. It shall be the duty of each owner and of each manger or supervisor at any time charged with the management and supervision of any licensed premises to ensure that a sign is posted in a prominent place in the premises that provides substantially as follows:

Any person purchasing alcoholic beverages may be required to provide documentary proof of age so as to ensure compliance with applicable law. Sale of

alcoholic beverages may be refused to any person who fails to provide such proof upon request.

SECTION XIII. UNLAWFUL CONSUMPTION AND DISPENSING.

A. It shall be unlawful for any person to drink, sell, serve, dispense or give away or attempt to drink, sell, serve, dispense or give away any alcoholic beverages while upon any street, alley or in any public building or upon any public property, or while in any other public place in the city. As used in this section, the term "public place" shall mean and include any place or gathering which the public generally attends or is admitted to, either by invitation, common consent or right, or by the payment of an admission or other charge and, without limiting the generality of the foregoing, shall include public parks, city hall, library, school buildings, school grounds, playgrounds, auditoriums, any store or place where merchandise of any kind is offered for sale, any theater or other place of amusement and any athletic contest or the premises upon which any said building is located; provided that such term shall not mean or include premises which have been duly licensed by the city for sale thereon of such beverages.

B. If any Business shall have their license placed on hold, not be timely renewed, be suspended for a period of time or for any other reason not possess a valid ABC Board "Active License", said business should immediately remove all alcohol from the shelves in view of the public and shall cease to sell, serve, dispense or give away any alcoholic beverages or allow consumption on site beginning on the date the ABC Board deems the license invalid.

C. This Section shall not apply to a church using wine for religious services.

SECTION XIV. PROHIBITED PERSONS.

A. It shall be unlawful for any person or for any employee, servant or agent of any person to sell, dispense, or give or to offer for sale any alcoholic beverages to any person visibly intoxicated, or to any insane person, or to any minor, or to any habitual drunkard.

B. It shall be unlawful for any person to give or serve to a minor or allow a minor to be given or served any alcoholic beverage in any place where such beverages are given out, dispensed or sold.

C. It shall be unlawful for any person who operates any business of selling alcoholic beverages to allow any alcoholic beverages to be given or sold to any minor, or to be consumed by any minor on the premises where such alcoholic beverages are dispensed, given away or sold.

D. This Section shall not apply to a church using wine for religious services.

SECTION XV. PROHIBITED ACTS.

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

(1) For any minor person, (i.e., for the purposes of this ordinance, any person under the legal drinking age as established by or for the State of Alabama), directly or indirectly, to purchase any alcoholic beverage, or to attempt to purchase any of said alcoholic beverages, or to accept any alcoholic beverage dispensed or given away.

(2) For any minor person to possess or to consume any alcoholic beverages in any public place or in any business establishment or club.

(3) For any person to sell, furnish, give to or purchase for any minor person any alcoholic beverages, any wine or liquor or any alcoholic or intoxicating beverage, or to attempt to sell, furnish, give to or purchase for any person under the legal drinking age, any of said alcoholic beverages. It shall be the absolute responsibility for the dispenser of such beverages to determine that the person receiving same is above the legal drinking age.

(4) For any person to hire, employ or allow any minor person to serve or dispense alcoholic beverages.

(5) For any minor person, directly or indirectly, to falsely represent that such person is not a minor or is not under the legal drinking age as established by or for the State of Alabama, by means of which false representation such person buys, receives or otherwise obtains, or attempts to buy, receive or otherwise obtain any alcoholic beverages.

(6) For any person, directly or indirectly, to falsely represent or attempt to falsely represent that a minor person is not a minor or is not under the legal drinking age as established by or for the State of Alabama, by which false representation such person aids or abets, or attempts to aid or abet such minor person to buy, receive or otherwise obtain any alcoholic beverages.

(7) To possess any container of alcoholic beverages in any motor vehicle which said individual container has been opened or has had the seal therefrom broken.

(8) To possess, consume, sell, dispense, give away or to allow the possession, consumption, sale, dispensing, or giving away of any alcoholic beverage in any game room open to the public or operated by any club as enumerated herein containing any electronic games of any description.

B This Section shall not apply to a church using wine for religious services.

SECTION XVI. ADDITIONAL PROHIBITED ACTS.

It shall be unlawful for any person, club, firm, or corporation or the officers, members, agents, servants or persons in charge thereof at any club or at any other place to which the public generally resorts or is admitted, which is either a liquor, wine or beer licensed place, or any combination thereof, to permit, allow, conduct or condone any of the following:

A. Topless or bottomless waitresses, dancers or performers, or any lewd or indecent conduct.

B. Acts, or simulated acts of sexual intercourse or any sexual acts which are prohibited by federal, state, or local law.

C. Acts or simulated acts or caressing or fondling of the breasts, buttocks, or genitals.

D. Permitting any patron, customer or member to touch, caress, or fondle the breasts, buttocks, genitals, or any part of the body or clothing of a performer.

E. Permitting the showing of films, still pictures, electronic reproduction or other visual reproductions depicting the following:

(1) Pornography;

(2) Any sexual or attempted sexual act or acts which are prohibited by law;

(2) Any person being touched, caressed, or fondled on the breasts, buttocks, or genitals;

(3) Scenes wherein artificial devices, inanimate objects, or drawings are employed to depict any of the prohibited activities described above.

F. Wet T-shirt contests, wrestling, mud wrestling, fist fights, or any display of the Martial Arts.

SECTION XVII. ALCOHOLIC BEVERAGE LICENSE REQUIRED.

A. No alcoholic beverages shall be manufactured, sold at wholesale or retail or possessed for the purpose of sale, except under a license granted by the City Council.

B. No license issued pursuant to this Ordinance shall be assignable or transferrable, and no license shall be issued hereunder until approved by the City Council.

SECTION XVIII. LICENSE IS A PRIVILEGE.

A. All licenses shall be a mere grant or privilege to carry on such business during the term of the license subject to all the terms and conditions imposed by this ordinance and related laws and other ordinances and resolutions by the City relating to such business.

B. As an alcohol license is a privilege, any licensee found to be in violation of the provisions of this ordinance may be notified and directed to appear before the City Council for a hearing to show cause why the license should not be revoked. The hearing date shall be set a minimum of ten (10) days after notice to the business. At the City Council's discretion after consideration of the facts presented, the severity of the offense, and the history of prior offenses, the licensee may be placed on probation for a period of time, or the license may be revoked.

SECTION XIX. ENFORCEMENT.

A. The Code Enforcement Officer of the City of Trussville shall be primarily responsible for enforcement of the provisions of this Ordinance and may cite any individual, business, partnership, or corporation for violation of its terms. In the absence of the Code Enforcement Officer any law enforcement officer also maintains authority to enforce this Ordinance. This shall include operation without a valid ABC Board license.

B. The Code Enforcement Officer shall have the authority to cite a business for violation of the terms of this Ordinance, and to present his findings before any duly appointed Magistrate of the City of Trussville. In the absence of the Code Enforcement Officer any law enforcement officer also maintains authority to enforce this Ordinance and present findings before any duly appointed Magistrate of the City of Trussville. Upon a finding of probable cause, the Magistrate may issue a summons to appear in Trussville Municipal Court on a specified date to answer such charges. Summons may be delivered in person or by certified mail to the owner, manager, partner, or corporation of the business entity.

SECTION XX. PENALTIES.

A. Failure to comply with the terms and provisions of this Ordinance shall constitute a violation of the provisions hereof. Any person or corporation who shall violate any of the provisions of this Ordinance shall upon conviction, be punished by a fine not to exceed Five Hundred Dollars (\$500.00). In addition, thereto, any person so convicted may be imprisoned or sentenced to hard labor for the City of Trussville, Alabama, for a period not exceeding six (6) months.

B. Failure to comply with the terms and provisions of this Ordinance shall also entitle the Code Enforcement Officer to petition the City Council of the City of Trussville to revoke the person or corporation's business license as provided in section 18-52 of the Code of Ordinances of the City of Trussville.

SECTION XXI. CODIFICATION.

This Ordinance shall be codified as a part of the Code of Trussville, Alabama, as it exists as of this present date, and any subsequent code thereto, and shall be numbered in accordance with the numbering system for such Code.

SECTION XXII. REPEALER.

All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Trussville, Alabama, which are inconsistent with the provisions of this Ordinance are hereby expressly repealed.

SECTION XXIII. SEVERABILITY.

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

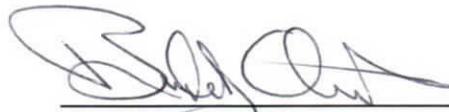
SECTION XXIV. EFFECTIVE DATE.

This ordinance shall become effective immediately upon adoption and publication as provided by law.

ADOPTED AND APPROVED this the 12th day of April, 2019.



**JEF FREEMAN
COUNCIL PRESIDENT**



**BUDDY CHOAT
MAYOR**

ATTEST:



**LYNN B. PORTER
CITY CLERK**