ORDINANCE NUMBER: 391

ORDINANCE REGULATING THE SALE AND CONSUMPTION OF LIGHT WINES AND BEER WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF SENATOBIA

WHEREAS, the sale of light wines and beer as defined by the Mississippi Code, has been legalized in Senatobia, Mississippi, pursuant to an election held in said municipality on January 29, 2013, and;

WHEREAS, under the delegated and implied powers given the Mayor and Board of Alderman by the State of Mississippi, the sale of light wines and beer may be regulated by said Mayor and Board of Alderman in order to promote the health, morals, and safety of the citizens of the City of Senatobia, Mississippi, and;

WHEREAS, the Mayor and the Board of Alderman of the City of Senatobia may adopt Ordinances and make amendments thereto, and;

WHEREAS, nothing in this Ordinance shall be construed as to override or supersede any controlling state law concerning the sale and consumption of light wines and beer, and;

THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMAN OF THE CITY OF SENATOBIA:

SECTION 1

When used herein the words and terms "person," "consumer," "retailer," "wholesaler," "light wines and beer" and "distributor" shall have the definitions as defined and described in Section 27-7-301 of the Mississippi Code of 1972, Annotated, as amended, which said definitions as contained in said section of such act are hereby adopted for the purposes of this article.

"Beer" and "Light Wine" and "Alcohol" and "Wine" shall have the definitions as set forth in the Mississippi Code of 1972, and any subsequent amendments.

A "church" shall be defined as a house of worship in which regular worship services are held at least twice per week, and attended on a regular basis by at least twenty (20) members.

A "Bed and Breakfast" shall be defined herein as a dwelling unit or part thereof, in which overnight accommodations and a forenoon meal are provided to guests for compensation. Such establishments shall also meet the definition

and standards established by any applicable federal, state or local building, fire, health or safety code.

A "Hotel or Motel" shall be defined herein as any public lodging establishment containing overnight sleeping room accommodations for twenty five (25) or more guests and providing the services generally recognized as a hotel or motel in the community serviced.

SECTION 2

Sale of beer and light wines, license required; purchases from licensed wholesaler required; penalty for violation of article.

a. It shall be unlawful for any individual, partnership, association, corporation, organization or entity of any description or nature whatsoever to sell, give or dispense or permit to be sold, given, dispensed or consumed or to have in its possession for the purposes of selling, giving, dispensing, or consuming beer or light wines as regulated by this article without having first obtained a valid privilege license from the City of Senatobia, Mississippi, authorizing the sale of beer and light wines as contemplated herein.

b. No retailer shall possess for purpose of sale, sell or offer to sell any beer or light wines not purchased from a wholesaler in this state who has a permit to sell such beer or light wine.

c. It shall be unlawful for any individual, partnership, association, corporation, organization or entity of any description or nature whatsoever to sell, give or dispense or permit to be sold, given, dispensed or consumed or to have in its possession for the purposes of selling, giving, dispensing, or consuming beer or light wines as regulated by this article without having first obtained any and all valid and required privilege licenses and permits from the State of Mississippi, authorizing the sale of beer and light wines as contemplated herein.

d. Any violation of a section of this article shall be considered a misdemeanor and upon conviction of the violation of such section the offender shall be punished as set forth herein and consistent with any and all additional, applicable Mississippi law.

SECTION 3

Outdoor advertising.

It shall be unlawful for any established licensee and permittee pursuant to this Ordinance or pursuant to any State of Mississippi ABC license regulations to advertise the sale of beer or light wines or alcohol or wine by use of any type of sign or display located outside the building or by the use of any type of sign or display located within such building which is visible from the outside.

SECTION 4

Prohibited hours for beer and light wine sales.

a. No beer or light wine regulated pursuant to this Ordinance shall be sold, given or dispensed, or permitted to be sold, given or dispensed, in or upon the premises of an off-premises retail privilege license holder, by said off-premises retail privilege license holder, his employees or agents, between the hours of midnight and 7:00 a.m. Beer and light wine may be sold either hot or cold.

b. No beer or light wine regulated pursuant to this article shall be sold, given or dispensed, or permitted to be sold, given, dispensed or consumed, in or upon the premises of an on-premises retail privilege license holder, by said on-premises retail privilege license holder, his employees or agents, between the hours of midnight and 10:00 a.m.

Prohibited acts on licensed premises.

a. To permit the consumption of beer or light wines or alcohol or wine on the premises of establishments holding licenses for off-premises licensees only.

b. To permit on the premises of any place licensed to sell beer or light wine any lewd, immoral, or improper entertainment or conduct, or practices. For purposes of this section, lewd shall mean behavior designed to appeal primarily to the prurient interest.

c. To permit loud, boisterous or disorderly conduct of any kind upon the premises of any place licensed to sell beer or light wine or to permit the use of loud musical instruments or music devices, or otherwise disturb the peace and quiet of the community wherein such licensee is located

d. To operate any game of chance as defined Mississippi Code Section 97-33-1, *et seq.*, in, or upon a licensed premises.

e. To sell, dispense, or give away beer or light wine without having paid the privilege tax and license fee to the proper authority, as provided by this ordinance and applicable Mississippi law.

f. Except for those establishments holding on premises consumption licenses, to sell, dispense, or give anyone a quantity of beer of less than a six pack case, or a wine cooler of less than a four pack case. However, off premises licensees shall be able to sell kegs and bottles of light wine 750 milliliters or more.

g. To permit known criminals to frequent the licensed premises.

h. To sell, dispense, or give away beer or light wine as a curb service.

i. Any other prohibitions set forth in Mississippi Code Annotated Section 67-3-53.

j. To allow "Brown Bagging" of alcohol or wine.

Employees:

It shall be unlawful for any business or entity licensed pursuant to this article to employ any persons who have been convicted of any state or federal law relating to beer and light wines or alcoholic beverages, including wines, within two (2) years prior to such employment.

SECTION 5

Sale or consumption within close proximity to churches, schools, etc.; measurement.

a. No person shall sell or offer for sale any beer or light wine within two hundred (200) feet of any church, school, funeral home, public library, day care center, or kindergarten, provided, however, within an area in which both the premises and the church, school, funeral home, public library, day care center, or kindergarten are zoned commercial or industrial such minimum distance shall be not less than one hundred (100) feet.

b. In instances in which a church, school, funeral home, public library, day care center, or kindergarten is located in a residential zone and the place of sale of any beer or light wine shall be located in an adjacent commercial or industrial zone, such minimum distance between the place of sale of the aforesaid beer or light wine and the church, school, funeral home, public library, day care center, or kindergarten shall be not less than two hundred (200) feet.

c. A church or funeral home may waive the distance restrictions in favor of allowing issuance by the City of a permit authorizing the sale of beer and light wine that would otherwise be prohibited under the minimum distance requirements. Such waiver shall be in written

form from the owner, the governing body, or the appropriate officer of the church of funeral home having the authority to execute such a waiver and the waiver shall be filed with and verified by the City before becoming effective.

d. In construing this provision, the measurements of distance set out herein shall be made from the closest point on the primary building of a church, school, funeral home, public library, day care center, or kindergarten, to the closest point on the building wherein the beer or light wine regulated hereunder is being consumed, the measurement being made in a straight line from the closest points on such buildings.

SECTION 6

Underage or incapacitated persons obtaining or receiving beer or light wine.

a. No person shall sell, give or furnish in any manner any beer or light wine at any time or place to any person under twenty-one (21) years of age, or to knowingly sell, furnish, or give the same to any person for delivery to such minors.

b. It shall be unlawful for any person under the age of twenty-one (21) years to purchase, consume, or have in his possession any such beer or light wine as regulated pursuant to this article. Further, it shall be unlawful for any person under the age of twenty-one (21) years to make a false statement as to his or her age for the purpose of obtaining beer or light wine.

c. No person shall sell, give or furnish beer or light wine in any manner, at any time or place to any person who is known to be insane or mentally incapacitated, or to any person who is visibly intoxicated, or to knowingly sell, furnish, or give the same to any person for delivery to such person.

SECTION 7

Open beer or light wine container in vehicle and on public streets unlawful.

It shall be further unlawful for anyone to have an open container, including containers which have been opened and reclosed, of beer or light wine in any motor vehicle while using the public streets of the town either as the operator of a motor vehicle or as a passenger therein or as a pedestrian on the public streets.

Open alcoholic beverage container in vehicle and on public streets unlawful.

It shall be further unlawful for anyone to have an open container, including containers which have been opened and reclosed, of an alcoholic beverage in any motor vehicle while using the public streets of the town either as the operator of a motor vehicle or as a passenger therein or as a pedestrian on the public streets. "Alcoholic beverage" shall have the definitions as set forth in the Mississippi Code of 1972, and any subsequent amendments.

SECTION 8

Civil emergency; authority of city to close operation.

In the event of any disturbance, uprising or riot, or any other emergency threatening life, property, or public safety, the mayor may require the chief of police to promptly order any or all licensed places in the city where beer or light wine is consumed, sold, or otherwise dispensed to discontinue the sale of beer or light wine for the period of such emergency.

SECTION 9

Possession, consumption prohibited in public places operated by city.

It shall be unlawful for any person to have in his possession, or to consume, any beer or light wine or alcohol or wine, as defined by the Mississippi Code of 1972, Annotated, as amended, in the city hall, municipal library, municipal auditorium, municipal school buildings, stadiums, any public playgrounds, or public parks, or clubhouses situated thereon, or any fire station, or on any and all other public grounds, buildings, parks and other places owned, maintained and/or operated directly by the city or other public entities.

SECTION 10

Establishments selling beer or light wine for off-premises consumption; documentation.

a. No business or entity shall be licensed under this article where beer or light wine is to be sold and not consumed on the premises, unless such business or entity derives fifty percent (50%) or more of its gross receipts from the sale of food, fuel products, non-food items, etc.

b. Licensee shall file an annual report with the issuing authority on or before September 30, on forms supplied by the issuing authority, reporting the dollar amount of purchases for resale of food, non-food items, and beer and light wine, on the one hand, and, on the other

hand, the dollar amount of sales of food, fuel products, and non-food items, and beer and light wine. The Licensee shall be solely responsible for supplying any additional information or obtaining certified financial reports to effectuate the terms of the section. The Mayor and Board of Aldermen shall have the right to demand such records more often if the Mayor and Board of Aldermen shall have any reason to believe that the business selling is not deriving fifty percent (50%) or more of gross receipts from the sale of food, fuel products, non-food items, etc.

Establishments where on-premises consumption permitted; documentation.

a. The opening of a container of beer or light wine and the consumption of such beer or light wine on the premises of a holder of any privilege license or the permitting of either of the above to be done on such premises by the holder, his employees or agents, of such privilege license, be and the same is hereby prohibited, except on the premises of a restaurant, having a valid on-premises retail privilege license authorizing the sale of beer and light wine. The word "restaurant" for the purpose of this article means a place which regularly and in a bona fide manner is used and kept open for the service of meals to guests for compensation, which has suitable seating facilities for guests and has a suitable kitchen facility connected therewith for cooking an assortment of foods 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 the provisions of this article unless fifty percent (50%) or more of the revenue derived from such place shall be for the preparation, cooking and serving of meals, and not for the sale of beer and light wine. In addition, no restaurant shall have a distinct or stand-alone bar area or room separate from the dining area.

b. Licensee shall file an annual report by September 30, on forms supplied by the issuing authority, reporting the dollar amount of food purchases and the dollar amount of beer and light wine purchases to ensure compliance with this section. The Licensee shall be solely responsible for supplying any additional information or obtaining certified financial reports to effectuate the terms of the section. The Mayor and Board of Aldermen shall have the right to demand such records more often if the Mayor and Board of Aldermen shall have any reason to believe that the restaurant is not deriving fifty percent

(50%) or more of the revenue derived from such place for the preparation, cooking and serving of meals, and not for the sale of beer and light wine.

SECTION 11

Bed and Breakfast and Motel and Hotel on Premises License

a. The opening of a container of beer or light wine and the consumption of such beer or light wine on the premises of a holder of any privilege license or the permitting of either of the above to be done on such premises by the holder, his employees or agents, of such privilege license, be and the same is hereby prohibited, except on the premises of a Bed and Breakfast and a Motel or Hotel establishment having a valid on-premises retail privilege license authorizing the sale of beer and light wine. Consumption under this provision shall be limited as follows: serving beer and light wine to guests as part of a regularly scheduled meal or evening snack. No place shall qualify for a license under these provisions of this article unless 60 percent (60%) or more of the revenue derived from such place shall be from the providing of overnight accommodation services.

b. A Bed and Breakfast and Motel or Hotel may also sell and serve beer and light wine in conjunction with any special event in which food is also to be served including but not limited to: weddings and their accompanying receptions, conference events, anniversary parties, birthday parties, reunions. In order to sell or serve beer and light wine at a special event the licensee herein shall pay to the City Clerk of Senatobia a Special Event Permit Fee of $100.00 per event. A special event permit form shall be provided by the City Clerk upon request.

c. A Licensee under this section shall file an annual report by September 30, on forms supplied by the issuing authority, reporting the dollar amount of food and accommodation purchases and the dollar amount of beer and light wine purchases to ensure compliance with this section. The Licensee shall be solely responsible for supplying any additional information or obtaining certified financial reports to effectuate the terms of the section.

SECTION 12

Minimum quantities to be sold; restaurants not to sell beer or light wine for off-premises consumption.

It shall be unlawful for any business having a valid off-premises retailer's privilege license pursuant to this article to sell, give, or dispense beer or light wine in a quantity less than a six-pack or the metric equivalent for beer or of less than a four-pack for light wine. It shall further be unlawful for a restaurant having a valid on-premises retailer's privilege license pursuant to this article to sell, give or dispense beer or light wine not consumed on the premises of such restaurant, it being unlawful for any patron or restaurant to allow such beer or light wine to be removed from the premises in any type of container. It shall be unlawful for beer or light wine or alcohol or wine to be consumed outside of the designated dining area for an on premises licensee.

SECTION 13

Physical requirements for on premises licensee restaurants selling beer or light wines.

a. All restaurants, as hereinbefore defined, holding a valid on-premises retailer's privilege license shall have adequate seating facilities for their customers. All restaurants, hereinbefore defined, shall have adequate sanitary facilities and separate restrooms, for men and women. All restaurants, as hereinbefore defined, shall have approved fire exits, current and adequate fire extinguishers for the premises, a current State of Mississippi Health Department permit, and meet all current fire and building codes in effect for the municipality.

b. In addition all restaurants, as hereinabove defined, shall be a minimum of 1,500 square feet of total covered space, which includes all decks and courtyards.

Application for license.

Prior to the issuance of any privilege license pursuant to this article, the applicant must complete and file with the city clerk a "Retailer Beer and Light Wines" application and provide any additional information that the Mayor and Board of Aldermen may require in order to begin a proper investigation of any individual, partnership, association, corporation or business entity of any description or nature whatsoever. After the filing of these documents, the city clerk shall advise the chief of police to begin an investigation.

Annual license fee schedule.

There is hereby imposed, levied and assessed to be collected and paid to the tax collector of the city annual privilege taxes for persons engaged in the sale or distribution of beer or light wine for the privilege of engaging in or continuing in such businesses in accordance with the following schedule to wit:

Upon each business or entity as described in this Ordinance the maximum allowable by the Department of Revenue and any applicable State law per year, which shall be non–refundable. As well as application, processing, and annual reporting fees in the amount not to exceed the maximum allowable by the Department of Revenue and any applicable State Law.

Satisfactory investigation report requisite to license; cancellation of privilege.

No privilege license required by this article shall be issued to any person or entity unless a satisfactory report is furnished to the mayor and board of aldermen by the committee charged with the investigation of applicants for such license, the report indicating that such person has complied with the requirements of this article and recommending issuance.

Standards for licensure; investigating committee; reasons for refusal.

a. All applicants must be approved by the mayor and board of aldermen prior to the granting of the privilege license to be issued pursuant to this article. The mayor and board of aldermen shall establish certain standards by which to evaluate the qualifications of such applicants before the issuance of such privilege license, such standards or qualifications to include, but not be limited to, the following:

    (1) Applicant must be a person of at least twenty-one (21) years of age.

    (2) Applicant shall not have been convicted of a felony, or of pandering or of keeping or maintaining a house of prostitution, nor shall the applicant have been convicted within two (2) years of the date of his application of any violation of the laws of this or any state or the laws of the United States relating to beer or light wine or alcoholic beverages of any kind, including wines.

    (3) Applicant shall not have had revoked, within two (2) years next preceding his application, a privilege license issued to him pursuant to the laws of this city, or any other license or permit

issued by this state, or any other state, to sell beer or light wine or alcoholic beverages of any kind, including wines.

(4) Applicant shall be the owner of the premises for which the privilege license is sought or the holder of an existing lease thereon.

(5) Applicant shall not be residentially domiciled with any person whose privilege license has been revoked pursuant to this Ordinance within two (2) years next preceding the date of the present application for a privilege license.

(6) Applicant shall not employ any person whose privilege license had been revoked during a period when such person owned or operated the business on the premises for which a privilege license is sought nor shall the applicant allow such person to have any financial interest in the business of the applicant, until such person is qualified to obtain a license in his own name.

(7) Applicant shall not be indebted to the City for any taxes or any indebtedness of any nature whatsoever regarding the City.

(8) If applicant is a partnership, all members of the partnership must be qualified to obtain a privilege license.

(9) If applicant is a corporation, all officers and directors thereof, any stockholders owning more than five (5) percent of the stock of such corporation, and the person and persons who shall conduct and manage the licensed premises for the corporation shall possess all the qualifications required herein for any individual licensee. However, the requirements as to residence established in subsection (5) of this section shall not apply to officers, directors, or stockholders of such corporation, although such requirements shall apply to any officer, director, or stockholder who is also the manager of the licensed premises or who is engaged or employed at the licensed premises.

(10) If for any reason to permit the applicant to hold a privilege license would threaten the public health, safety, general welfare of the citizens of the City of Senatobia the application shall be denied.

(11) Any misstatement or concealment of fact in an application shall be grounds for denial of the application or for revocation of the privilege license issued thereon.

(12) All applicants for a Retailer Beer and Light Wine Privilege License must possess a valid Mississippi Beer License and be in compliance with applicable federal laws and regulations at the time said privilege license is issued.

b. The applicant shall be investigated prior to an act of the mayor and board of aldermen granting the privilege license. The committee charged with the investigation of applicants shall consist of the chief of police and his agents, the building/codes official and the fire inspector, such investigation to be completed within fifteen (15) days subsequent to the date of filing of the application with the city clerk. The verified report of the committee shall be given to the mayor at the expiration of fifteen (15) days, if not sooner, shall be in writing, and shall be a public document available pursuant to state statute and board policy. The chief of police shall be the standing chairman of the committee and shall be responsible for the investigation conducted hereunder and the timely and accurate reporting procedure.

c. The committee may recommend that the mayor and board of aldermen refuse to issue a privilege license to an applicant for any reason listed in paragraphs (a)(1) through (12) or should it appear that the premises for which the applicant is requesting a license is frequented by known criminals, prostitutes, or other law violators, or frequented by troublemakers who disturb the peace and quietude of the community and frequently require the assistance of peace officers to apprehend such law violators, and disturbances or to restore order. The burden of proof of establishing the foregoing shall rest upon the committee and shall be established, prima facie, by verified report.

PENALTIES

Any violation of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine of not more than $500.00, or imprisonment in the county jail for not more than six months, or both, as provided by MCA 1972, § 67-3-15 *et seq.*, as amended. Revocation of a permit under this Ordinance is solely within the authority of the state tax commission and the Department of Revenue

In addition to any other penalties prescribed by law or this ordinance, individuals or entities holding retail beer and light wine privilege licenses shall also be subject to the following:

(1) *First offense*. A beer and light wine privilege licensee that violates the provisions of this ordinance may have such license suspended for a period of up to two weeks.

(2) *Second offense.* A beer and light wine privilege licensee that violates the provisions of this ordinance a second time within 365 calendar days of the first offense may have such license suspended for a period of up to three weeks.

(3) *Third offense*. A beer and light wine privilege licensee that violates the provisions of this ordinance a third time within 365 calendar days of the first offense shall have its license revoked with the consent and approval of the ABC board of the State Tax Commission, or any other applicable State of Mississippi entity.

EFFECTIVE DATE

This Ordinance shall be in force and effective 30 days from and after its passage and publication according to law, and the granting of any necessary approvals, if any required, from the Mississippi State Department of Revenue and State Tax Commission.

The foregoing Ordinance having first been reduced to writing was considered by section and then as a whole, thereafter on the Motion of Alderman **FRAZIER**, and seconded by Alderman **PUTT**, the vote was as follows:

	AYE	NAY	ABSTAIN
Alderman Cathey	X		
Alderman Putt	X		
Alderman Nail	X		
Alderman Frazier	X		
Alderman Clanton	X		

Adopted and approved by the Board of Alderman of the City of Senatobia, Mississippi, on this the 5th day of March, 2013.

Alan Callicott, Mayor: Alan Callicott

CITY OF SENATOBIA MISSISSIPPI

ATTEST: Karen VanSickle, City Clerk: Karen VanSickle