

BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN
OF THE CITY OF EUPORA, MISSISSIPPI:

ORDINANCE OF THE MAYOR AND BOARD OF ALDERMEN OF
THE CITY OF EUPORA, MISSISSIPPI
REGULATING THE SALE, DISTRIBUTION, AND POSSESSION OF
ALCOHOLIC BEVERAGES WITHIN THE CITY LIMITS OF EUPORA, MISSISSIPPI

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF EUPORA, MAYOR AND
BOARD OF ALDERMEN AS FOLLOWS:

SECTION 1. State Law Control: Except as otherwise set forth within this chapter, the laws of the State of Mississippi as they now exist or hereafter amended or adopted and, where applicable, the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) shall apply. Any provision of this chapter that contradicts any such state authority is superseded and preempted by the state authority, all of which state authority is adopted herein by reference.

SECTION 2. Definitions: Except as otherwise defined herein, this chapter shall be deemed to apply the definitions to terms that are provided by state law as state law now exists or is hereafter amended or adopted, including, where applicable, the Rules and Regulations of the Mississippi Department of Revenue (Alcohol Beverage Control) in connection with the subjects of alcoholic beverages, including but not limited to, those definitions appearing in Mississippi Code Annotated Section 67- 1-5 as currently defined or as hereafter amended and revised. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. Generally.

1. Alcohol. Alcohol means the product of distillation of a fermented liquid of any origin, and includes synthetic ethyl alcohol, but does not include denatured or wood alcohol.

2. Alcoholic Beverage. Alcoholic beverage means any alcoholic liquid, including wines, of more than five (5) percent of alcohol by weight, capable of being consumed as a beverage by a human being, but shall not include light wine and beer, but shall include native wines. The words "alcoholic beverage" shall not include ethyl alcohol, manufactured or distilled solely for fuel purposes or beer of any alcoholic content of more than eight percent (8%) by weight if the beer is legally manufactured in this state for sale in another state.

3. Wine. Wine means any product obtained from the alcoholic fermentation of the juice of sound, ripe grapes, fruits and/or berries, and made in accordance with revenue law of the United States.

4. Public Building. Public building means buildings where public assembly occurs on a regular basis. This term does not include accessory structures or buildings, such as

water towers, public toilets, telecommunications towers or public utility accessory structures.

5. Public Park. Public park means any park owned, operated and/or maintained by the City of Eupora.

6. Permittee. Permittee shall refer to any individual or entity who is a holder of a State of Mississippi permit to sell alcoholic beverages.

7. Commercial Establishment. A commercial establishment shall include any business or organization, public or private, which charges or accepts revenue for goods, membership or admittance, whether for profit or non-profit.

SECTION 3. INCORPORATION OF STATE LAWS. Incorporation of State of Mississippi Laws including sale to minors and possession by minors: All State of Mississippi statutes, rules and regulations, including the Rules and Regulations of the Mississippi Department of Revenue in their present form or as hereinafter amended, modified, repealed or created are incorporated herein by reference as the governing law of the City of Eupora. State law reference: See Mississippi Code Annotated, 1972, Title 67 generally and Section 97-31-1 et seq.

SECTION 4. PRIVILEGE LICENSE REQUIRED. No alcoholic beverages shall be sold within the municipal boundaries of the City of Eupora, Mississippi unless the seller has first obtained a retail ABC permit from the Mississippi State Tax Commission. Further, no retailer shall possess for purpose of sale, or offer to sell any alcoholic beverage not purchased from a distributor or wholesaler in this state who has a permit to sell such alcoholic beverage. Any violation of this article shall be considered a misdemeanor offense and upon conviction of the violation of such section the offender shall be subject to a fine up to but not to exceed \$1,000 or imprisoned for no more than 90 days or both such fine and imprisonment.

SECTION 5. SALE, POSSESSION OF ALCOHOLIC BEVERAGES. It is unlawful to sell, offer for sale, or otherwise dispense alcoholic beverages or to possess alcoholic beverages in the City of Eupora in violation of any state law or any rule or regulation of the Mississippi Department of Revenue, including the sale of alcoholic beverages to minors, possession of alcoholic beverages by minors and sale of alcoholic beverages within prohibited distances from churches, schools, kindergartens and funeral homes. State law reference: Sale to Minor Prohibited, Penalties, Mississippi Code Annotated, 1972 Section 67-1-81; Permits, distance regulations, Section 67-1-51; and Permitted Premises Where Alcoholic Beverages Are Sold, Mississippi Administrative Code, Section 35.11.2.03

SECTION 6. RESTRICTIONS ON THE SALE OF ALCOHOLIC BEVERAGES:

A. Incapacitated Persons. It shall be unlawful for anyone to sell, give or furnish alcoholic beverages 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 unto such person. Violation of this article will subject offender to a fine up to but not to exceed \$1,000 or imprisoned for no more than 90 days or both such fine and imprisonment.

B. Sales to Minors Prohibited.

1. Except as otherwise permitted by state law as it currently exists or is hereafter amended or added, including, but not limited to, the exceptions/exemptions contained in Mississippi Code Annotated Section 67-1-81 or otherwise permitted in this chapter, any permittee or other person or entity who shall sell, furnish, dispose of, give or cause to be sold, furnished, disposed of or given any alcoholic beverage including but not limited to Alcoholic Beverages to any person under the age of twenty-one (21) years shall be guilty of a misdemeanor and shall be subject to punishment under the terms of Mississippi Code Annotated Section 67-1-81 (1).

2. Except as otherwise permitted by state law as it currently exists or is hereafter amended or added, including, but not limited to, the exceptions/exemptions contained in Mississippi Code Annotated Section 67-3-54 or otherwise permitted in this chapter, any person under the age of twenty-one (21) years who purchases, receives or has in his or her possession in any public place, any alcoholic beverage, including but not limited to Alcoholic Beverages, shall be guilty of a misdemeanor and shall be subject to punishment under the terms of Mississippi Code Annotated Section 67-1-81 (2). Any person under such age who knowingly makes a false statement to the effect that he or she is twenty-one (21) years old or older to any person engaged in the sale of alcoholic beverages or beer or light wine for the purpose of obtaining the same shall be guilty of a misdemeanor and shall be subject to punishment under the terms of Mississippi Code Annotated Section 67-1-81 (2).

C. Drive-Thru Sales Prohibited.

It shall be unlawful to sell alcoholic beverages through a drive-thru window sales facility or similar facility within the municipal boundaries of the City of Eupora, Mississippi.

D. Advertising. T

There shall be no advertising for Alcoholic Beverages outside of the interior of the building where it is sold and/or consumed. There shall be no advertising or storage of Alcoholic Beverages within the interior of the store which allows it to be visible from the street or highway side of store or establishment.

E. Sunday Sales. It shall be unlawful to sell Alcoholic Beverages on Sunday in the City of Eupora, Mississippi. Sunday shall be from 12:01 a.m. until 11 :59 p.m.

F. Transportation for Compensation Prohibited. It shall be unlawful in the City of Eupora for any person to transport or deliver any alcoholic beverage to another person for compensation of any kind except for transportation permitted by state law, rules or regulations. State law reference: Mississippi Code Annotated, 1972, Section 67-1-1, et seq. and Section 27-71-15, et seq.

G. Possession of Alcoholic Beverages By Operators of Public Conveyance Prohibited. It shall be unlawful in the City of Eupora for any person operating any public conveyance to have any alcoholic beverage in their possession in such conveyance. "Public Conveyance" shall be defined as a taxi service, a limousine service, a bus service, or any other motorized means of conveyance operating as a means of transporting people for hire.

H. Employment of Persons Under the Age of 21. It shall be unlawful in the City of Eupora to employ in connection with the sale of alcoholic beverages a person under the age of twenty-one (21) for any employment from which they are prohibited by the Rules and Regulations of the Department of Revenue, in their present form and as hereinafter amended. State Law Reference: Employment of Persons Under 21 Prohibited, Mississippi Administrative Code, Section 35.11.2.08

I. Hours of Sale on Days Excepting Sunday.

As set by State of Mississippi law, rules and/or regulations, alcoholic beverages may be sold as follows:

(i) For holders of state package retailer's permit, between the hours of 10:00 a.m. and 10:00 p.m., except that no sales may be made on Sundays or on Christmas Day; and

(ii) These prohibited hours and days, all of which conform with present state law, shall be subject to any amendment of state law, rules or regulations, and shall conform with any amendments thereto without amendment to this ordinance. They are further subject to specific amendment by order of the Department of Revenue in response to a petition by the City requesting approval of alternate hours and/or Sunday sales, which order shall survive any subsequent amendment to state law, rules or regulations not specifically intended to supersede prior orders by the Department of Revenue approving hours and days during which alcoholic beverages may be sold.

(iii) While resorts are exempt from state hours and days of sale regulations, the City may, by petition to the Department of Revenue, request designated hours and/or days for resort sales without further amendment to this ordinance. Any subsequent order of the Department of Revenue on this subject is hereby adopted by reference.

(iv) Any other limits, prohibitions or exceptions granted by state laws, rules and/or regulations, in their present form and as hereinafter amended are hereby adopted by reference. State law reference: Hours and Days During Which Alcoholic Beverages May Be Sold by Hotels, Restaurants, Clubs, Package Stores and Caterers, Mississippi Administrative Code, Section 35.11.2.04

J. Sales For Off-Premises Consumption.

It is unlawful for any Alcoholic Beverages to be sold for off-premises consumption in quantities less than said products are pre-packaged for sale by the manufacturer.

K. Territory Where Sale Is Prohibited.

All existing businesses including but not limited to convenience stores, gas stations, grocery stores, restaurants, and other applicable business(es) shall be grandfathered in as of the date of the adoption of this ordinance and shall be exempt from the location/zoning restrictions that apply to new businesses. All new businesses erected or established after the adoption of this ordinance shall not sell Alcoholic Beverages, either for on-premises or off-premises consumption, in a zoned commercial district (C-1, and C-2;) within two hundred fifty (250) feet of the nearest point of the primary building of any existing church or school. The distance shall be measured from the nearest point of the building housing the church or school to the nearest point of the premises which consists of the floor planned area to be licensed by the commission. Said distance shall be measured in a straight line, such as airline distance, rather than the usual route of pedestrian travel.

L. Bagging of Alcoholic Beverages Sold for Off-premises Consumption.

The sales clerk of each premises selling packaged Alcoholic Beverages must first place the same in a non-see-through, opaque bag or sack before delivering same to purchaser.

SECTION 7. RESTRICTIONS ON CONSUMPTION OF ALCOHOLIC BEVERAGES.

A. Open Containers Prohibited on Public Property.

It shall be unlawful for any person to possess an open container of alcoholic beverage (liquor or wine) on public property, including buildings, parking lots, sidewalks, streets and parks within the municipal boundaries of the City of Eupora, Mississippi. Open containers do not include empty containers.

B. Open Container - Vehicles.

It shall be unlawful for any person to possess an open container of alcoholic beverage either as an operator or passenger of a motor vehicle. Open containers shall include containers that have been opened and reclosed. Open containers do not include empty containers.

C. Under Age Possession - Private Property.

It shall be unlawful for any person not of legal age (21) to possess a container of alcoholic beverage on private property.

D. Consumption of Package Alcoholic Beverage.

There shall be no on-premises consumption of packaged alcoholic beverage on

the premises where the same is sold.

E. On-Premises Consumption.

It shall be unlawful for any premises licensed for on-premises consumption to allow a patron to leave such premises with either a full or partial container of alcoholic beverage.

F. Consumption in Public Buildings, Parks, etc.

It shall be unlawful to possess or consume alcoholic beverages or beer or light wine in municipal buildings. It shall be unlawful for any person to have in his/her possession, or to consume alcoholic beverages or beer or light wine in city hall, municipal buildings, municipal school buildings, stadiums, any public playgrounds, public parks, fire stations, police stations, public libraries, parking lots, or on any public grounds, buildings, parks and places owned, maintained and operated directly by the City of Eupora.

SECTION 8. PROHIBITED ACTS UPON LICENSED PREMISES.

The following described acts shall be deemed unlawful for any permittee for on-premises or off-premises sale or consumption of Alcoholic Beverages:

A. Indecent Exposure. A person who willfully and lewdly exposes his/her person, or private parts thereof, in or upon any duly licensed premises, or procures another to so expose him or herself, is guilty of a misdemeanor and shall upon conviction be fined not more than but up to \$1,000.00 or incarcerated for up to 90 days or both.

1. A person shall be deemed indecent, or will be considered "lewdly exposed" if:
(a) engages in sexual intercourse upon such premises; (b) engages in deviant sexual conduct upon such premises; (c) appears in a state of nudity upon such premises; (d) fondles the genitals of oneself or another person upon such premise; or (e) simulation of any of a through d listed above.

2. "Nudity" shall mean the showing of the male or female genitals, area, or buttocks with less than a fully opaque covering, or any part of the human female breast, directly or laterally below a point immediately above the top of the areola, or the showing of the covered male genitals in a discernibly turgid state.

3. No permittee, employee or agent thereof shall allow or permit any person to willfully and lewdly expose his or her person, or private parts, thereof in or upon any licensed premises, or procure another to expose him or herself upon said premises. Allowance of such could result in revocation of permittees permit and/or license and could result in misdemeanor charges lodged against permittee, employee or agent thereof.

B. Noise.

No person(s), including but not limited to permittee, shall cause or permit loud, boisterous, or disorderly conduct of any kind in or upon a licensed premises.

C. Gambling.

No person shall gamble illegally or operate an illegal game or games of chance as defined by Mississippi Code Annotated Section 97-33-1 et seq. in or upon a licensed premises. Further, no permittee, employee or agent thereof shall permit, allow or suffer illegal gambling or the operation of illegal games of chance as defined by Mississippi Code Annotated Section 97-33-1 et seq. in or upon a licensed premises.

SECTION 9. DISCONTINUING OPERATIONS DURING AN EMERGENCY.

In the event of any disturbance, uprising or riot or any other emergency of life, property or public safety, the mayor and board of aldermen, or chief of police may promptly order any and all places in the city where alcoholic beverages are consumed, sold or otherwise dispensed, to discontinue such for the period of such emergency.

SECTION 10. COMPLIANCE WITH STATE LAW REQUIREMENTS.

No permit of license required by this article shall issue to any person unless satisfactory evidence is furnished to the tax collector that such person has complied with the requirements of state law, and if the permit required by state law is at any time revoked, said revocation shall operate as a cancellation and forfeiture of the rights of the person holding a permit or license from the municipality.

SECTION 11. PENALTY FOR VIOLATION OF ORDINANCE; MISDEMEANOR; STATE PENAL LAWS, Any violation of this ORDINANCE shall constitute a misdemeanor and shall be punishable by a fine of not more than one thousand dollars (\$1000.00) or imprisonment for not more than ninety (90) days, or both, as authorized by Section 21-3-1 M.C.A., unless otherwise specified herein. Misdemeanor violations of the penal laws of this State, including but not limited to those referenced in this ordinance, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for not more than six (6) months, or both, as authorized by Section 21-13-19 M.C.A.

SECTION 12. FAILURE TO ENFORCE CHAPTER.

Failure to enforce any article or provision of this ordinance shall not constitute a waiver nor imply that the action is legal.

SECTION 13. TITLE.

The sections and articles of this ordinance may be referred to collectively as the "Eupora Alcohol Ordinance".

EFFECTIVE DATE

THIS ORDINANCE SHALL BE IN EFFECT THIRTY (30) DAYS FROM AND AFTER ITS DATE OF PASSAGE AND THE CLERK IS DIRECTED TO PUBLISH NOTICE ACCORDINGLY.

THE FOREGOING ORDINANCE WAS FIRST REDUCED TO WRITING, AND READ AND CONSIDERED BY SECTIONS AND BY THE WHOLE. AFTER A FULL AND COMPLETE DISCUSSION OF THE ABOVE ORDINANCE, ALDERMAN Shaw MOVED TO ADOPT THE ORDINANCE REGULATING THE SALE, DISTRIBUTION, AND POSSESSION OF ALCOHOLIC BEVERAGES WITHIN THE CITY LIMITS OF THE CITY OF EUPORA, MISSISSIPPI, ALDERMAN Newton SECONDED AND THE SAME BEING PUT TO A ROLL CALL VOTE, THE RESULTS WERE AS FOLLOWS:

ALDERMAN GARY VOTED Nay

ALDERMAN TABB VOTED Absent

ALDERMAN NEWTON VOTED Aye

ALDERMAN SHAW VOTED Aye

ALDERMAN GIBBS Absent

WHEREAS, THE MAYOR AND BOARD OF ALDERMEN DECLARED THE EUPORA ALCOHOL ORDINANCE PASSED AND ADOPTED AT A REGULAR MEETING OF THE MAYOR AND BOARD OF ALDERMEN ON THE 3rd DAY OF OCTOBER 2022.

SIGNED: 
MAYOR BLAKE MCMULLEN

ATTESTED BY: 
CITY CLERK GAIL NEWTON

