

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 ESTABLISHING RULES REGULATING QUALIFIED RESORT AREAS WITHIN THE CITY LIMITS WITH THE OBJECTIVE OF PROTECTING AND PROMOTING PUBLIC SAFETY AND WELFARE, AND TO MITIGATE ADVERSE IMPACTS ON THE COMMUNITY WHILE PROMOTING ECONOMIC DEVELOPMENT.

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

ARTICLE I. - QUALIFIED RESORT AREAS

Section 10-1. - Designated qualified resort areas

This ordinance is an extension of the City of Eupora Zoning Ordinances and shall be interpreted in accordance with the Mississippi Code of 1972, Section 17-1-1 et seq., as amended. Additionally, all requirements, restrictions and powers that are imposed to zoning ordinances through Mississippi Code 1972, Section 17-1-1 et seq. shall apply to this ordinance.

The purpose of this ordinance is to establish rules regulating qualified resort areas within the city with the objective of protecting and promoting public safety and welfare, and to mitigate adverse impacts on the community while promoting economic development.

Notwithstanding any other provision of the ordinances of the City of Eupora, city qualified resort areas shall be regulated and governed by the following regulations and requirements.

Section 10-2. -Definitions.

Alcoholic beverage means any alcoholic liquid, including wines, light wines, and native wines, containing any alcohol content, capable of being consumed as a beverage by a human being which shall include beer containing any alcohol content. The words “alcoholic beverage” shall not include ethyl alcohol manufactured or distilled solely for fuel purposes.

City qualified resort areas mean convenience stores, grocery stores, hotels or restaurants within the city which have received a special use permit to allow for the sale of alcoholic beverages in accordance with the guidelines detailed in this ordinance.

Convenience Store means a retail commercial establishment, not exceeding 2,000 square feet of gross floor area, supplying daily household necessities for the immediate surrounding area in which articles for sale are restricted to a limited range of primarily food items such as milk, bread, soft drinks, ice cream, canned and bottled goods, snacks

and candy, meat, and to compliment such items which may include the limited sale of such items as magazines, books, housewares, toiletries, stationary, and tobacco products.

Hotel means an establishment which, in consideration of payment, food, and lodging is habitually furnished to travelers and wherein are located at least twenty (20) adequately furnished and completely separate sleeping rooms with adequate facilities that person usually apply for and receive as overnight accommodations.

Ordinance means ordinance of the City of Eupora, Mississippi establishing regulations for the designation and location of qualified resort areas within the municipal boundary and jurisdiction of the City of Eupora, Mississippi, and repealing all conflicting provisions of the zoning ordinance of the City of Eupora.

Permittee refers to any individual or entity who is a holder of a State of Mississippi permit to sell alcoholic beverages, including Beer and Light Wine.

Person means any individual, partnership, corporation, association or other legal entity whatsoever.

Restaurant means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation, which has suitable seating facilities for guests, and which has suitable seating facilities for a minimum of thirty (30) guests, and which has suitable kitchen facilities connected therewith for cooking an assortment of foods and meals 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 this ordinance unless 25 percent or more of the revenue derived from such place shall be from the preparation, cooking, and serving of meals and not from the sale of beverages, or unless the value of food given to and consumed by customers is equal to 25 percent or more of total revenue. No place shall qualify as a restaurant under this ordinance unless the place remains open for business as long as Beer or Light Wine or any other alcoholic beverage is being sold.

Twenty-five percent food rule means the requirement that no business location shall qualify as a restaurant under this ordinance unless 25 percent or more of the revenue derived from such business location shall be from the preparation, cooking and serving of meals and not from the sale of beverages, or unless the value of food given to and consumed by customers is equal to 25 percent or more of total revenue.

Section 10-3. - Special use permits.

City qualified resort areas may be located in commercial zoning districts designated only as C-1 and C-2 in the city only by the issuance of a special use permit pursuant to the provisions of this ordinance. Special use permits for a city qualified resort area shall be issued under the following process, to-wit:

- (1) The City of Eupora Board of Aldermen herein after referred to as the "Board" shall receive the sworn written application from the applicant in the manner set forth hereafter in this ordinance. The Board shall examine and verify the information is true and correct on said written application; determine if the applicant and/or the

- written application conforms to the provisions of this ordinance; and, determine if the issuance of same does not violate any federal or state laws; or does not violate any ordinance. The Board shall recommend either approval or denial of the written application and shall return the application with such recommendation in writing to the applicant within 20 working days from receipt of same. If the application is denied by the Board, then, the applicant shall have the right to appeal such decision as set forth in Section 10-3 of this article.
- (2) At the time of filing the written application for the issuance of a special use permit under this ordinance, there shall be paid to the City of Eupora a fee of \$25.00 per application for a special use permit to sell, dispense, furnish or give away alcoholic beverages defined as any alcoholic liquid, including light wines of less than five percent of alcohol by weight and beer of less than eight percent by weight, capable of being consumed as a beverage by a human being as provided for in MCA 1972, 67-3-5, but shall not include native wines. This fee shall be refunded to the applicant if the application for a special use permit is denied.
 - (3) The applicant shall be responsible for performing, at his/her/its expense, all actions required by this ordinance or by law for the request. If authorized or granted, to be effective including the preparation of all applications, draft orders, notices, exhibits, affidavits, transcripts, documents and records; etc.
 - (4) The Board shall determine in writing the request for a special use is in conformance with the city's formally adopted comprehensive plan; shall not adversely affect the neighborhood, public interest, and general welfare; shall not violate the provisions of this ordinance; and shall not violate any federal or state law or any city ordinance.
 - (5) After said determination by the Board, if approved, they will then prepare a written letter to be forwarded to the Alcoholic Beverage Commission for final approval. If denied the applicant shall have the right to appeal the decision of the Board as set forth in Section 10-3 of this article.

Section 10-4 Qualified resort area standards

- (a) The sale of alcoholic beverages in city qualified resort areas shall be limited to on premises consumption in restaurants, subject to the restrictions detailed in this ordinance.
- (b) Restaurants shall be permitted to sell Alcoholic Beverages, including Beer and Light Wines between the hours of 7:00 a.m. and 11:00 p.m. Monday through Saturday; and, New Year's Eve from 4:00 p.m. through New Year's Day 1:00 a.m. If New Year's Eve falls on Sunday, restaurants shall be allowed to sell alcoholic beverages, including Beer and Light Wines between the hours of 4:00 p.m. and 1:00 a.m. A restaurant may serve or allow consumption of alcoholic beverages only in an enclosed area that is approved by the State of Mississippi for the sale and consumption of alcoholic beverages. Any such enclosed area approved by the State of Mississippi for the sale, service or consumption of alcoholic beverages shall have access that is controlled by the restaurant. That said restaurant shall not sale, serve or allow consumption of alcoholic beverages outside the area approved by the State of Mississippi.

- (c) Under no circumstances will alcohol be sold, given away, or furnished in any manner on Sundays, except as described when New Year's Eve falls on a Sunday. These requirements are described in (b) above. Sunday begins at 12:00 a.m. and ends at the following 12:00 midnight.
- (d) Convenience Stores and grocery stores shall be permitted to sell Beer and Light Wines between the hours of 7:00 a.m. and 11:00 p.m. Monday through Saturday.
- (e) No adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motel, or adult motion picture theater may be established as a city qualified resort area.
- (f) It shall be unlawful for any restaurant, convenience store, grocery store or any other person within the corporate limits of Eupora, Mississippi:
 - (1) To sell, dispense, or give away alcoholic beverages without obtaining a special use permit from the city establishing the business as a city qualified resort area in accordance with this ordinance.
 - (2) To sell, dispense, or give away alcoholic beverages in any type business establishment other than a restaurant, convenience store, or grocery store.
 - (3) For restaurants, convenience stores, or grocery stores to sell, dispense, furnish, allow consumption of or give away alcoholic beverages to anyone before or after the times set forth in subsection (b) of this section.
 - (4) To sell, dispense, furnish, allow consumption of or give away alcoholic beverages at any restaurant which does not meet the 25 percent food rule.
 - (5) To sell, give, furnish or allow the consumption of any alcoholic beverages to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of 21 years.
 - (6) To permit on the premises of any city qualified resort area any lewd, immoral, or improper entertainment, conduct or practices.
 - (7) To permit loud, boisterous or disorderly conduct of any kind upon the premises of any city qualified resort area.
 - (8) To permit persons of ill repute, known criminals, prostitutes, or minors to frequent said city qualified resort areas, except minors accompanied by parents or guardians or under proper supervision.
 - (9) To permit or allow gambling or the operation of games of chance upon the city qualified resort areas.
 - (10) To throw, leave, or put alcoholic beverage containers on the streets, avenues, and road of the city or to throw, leave, or put these containers on the property of anyone except the person or persons possessing said containers.
 - (11) To sell alcoholic beverages to any person under the age of 21 years or to any person knowing that the person to whom it is sold is buying the same for a person under the age of 21 years.
 - (a) 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 any alcoholic

beverage, including Beer and Light Wine. The penalty for violating this provision shall be a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) and a sentence of not more than thirty (30) days of community service.

(b). The judge may, in his or her discretion, accept, in lieu of community service, a certificate indicating the individual has successfully completed an alcohol and/or drug education program or treatment program at the expense of the individual.

- (12) To serve alcoholic beverages from the place of business to a person or persons in a automobile or automobiles in the form of curb service.
 - (13) To work or employ anyone under 18 years of age in said place, business or establishment where alcoholic beverages are sold.
- (g) No restaurant, convenience store, or grocery store, holding a special use permit, and no agent, associate, employee, representative, entertainer or servant of any such restaurant, grocery store, or convenience store shall do, or permit, any of the following activities or events on or about the licensed premises:
- (1) Fraternalize by sitting at tables with customers while on duty; or to employ persons to solicit patrons for drinks and to accept drinks from patrons and receive therefore a commission or any other re-numeration in any other way.
 - (2) Permit any prostitute to frequent the licensed premises, or to solicit patrons for prostitution.
 - (3) Permit any person to remain on the premises while such person is unclothed or in such attire, costume or clothing to expose to view any portion of the female breast below the top of the areola or any portion of the pubic hair, the pubic hair area, anus, cleft of the buttocks, vulva, penis or genitals. Furthermore, no restaurant or any female agent, associate, employee, representative, or servant, of said restaurant, shall wear such attire, costume or clothing on the licensed premises which reveals any part of the female breast below the top of the areola, and such attire, costume, or clothing cannot be extraordinarily designed or displayed to specifically accentuate the breasts.
 - (4) Encourage or permit any person, for entertainment purposes, to touch, caress or fondle the breast, buttocks, anus, penis or genitals of their own, or those of any person, animal or inanimate object.
 - (5) Permit any person to wear or use any device or covering, exposed to view, which simulates the breast, buttocks, anus, penis or genitals of their own, or those of any person, animal or inanimate object.
 - (6) Permit any entertainment or conduct which is lewd, immoral or offensive to public decency, including:
 - a. Any act or performance of, or which simulates:
 1. Sexual intercourse, masturbation, sodomy, bestiality, or oral copulation, flagellation or any sexual act.
 2. The touching, caressing or fondling of the breast, buttocks, anus, penis or genitals.

3. The displaying of the pubic hair, the pubic hair area, anus, vulva, penis, genitals or any portion of the female breast below the top of the areola.
 4. The use of any artificial device or object to depict any of the prohibited activities described above.
- b. Any act or performance which appeals primarily to sexually oriented, lustful, prurient, or erotic interest including, but not limited to, the following: erotic dancers; male or female strippers; topless dancers (male or female); dancers where clothes are removed to reveal portions of the body and constituting a strip act or simulation thereof; contests or exhibitions such as wet t-shirt, biggest breast, biggest bulge, body beautiful, best leg, hairiest chest, best tan, best hiney, mud wrestling, tight jeans, and similar contests or exhibitions. No string bikinis, spaghetti straps or thong attire are permitted with any swimwear, costume, or lingerie clothing.
- (7) The showing of films, still pictures, electronic reproduction, or other visual reproductions depicting:
- a. Acts, or simulated acts, or sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any other sexual acts which are prohibited by law.
 - b. Any person being touched, caressed or fondled on the breast, buttocks, anus, penis or pubic area.
 - c. Scenes wherein a person displays the breasts, vulva, anus, penis or genitals or pubic area.
 - d. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.
- (8) It shall be unlawful to sell beer or light wine or any alcoholic beverage through a drive-in window sales facility or a drive-thru “beer barn” within the municipal boundaries of the city.
- (h) No signs advertising the sale of any alcoholic beverages, including signs located outside a building or any type of sign located within a building which is visible from the outside are permitted. No billboards shall be displayed in the city limits of Eupora to promote alcoholic sales.
- (i) A restaurant, convenience store, or grocery store shall not be permitted to sell, dispense, furnish, allow consumption of, or give away alcoholic beverages, until prior to proper application for and obtaining the following permits and licenses:
- (1) A privilege license to engage in such business issued by the city; and
 - (2) All required licensees/permits specified in the zoning ordinances, building code, fire prevention code, electrical code, plumbing code and gas code adopted by the city.

- (j) No restaurant, grocery store, or convenience store owner holding a special use permit, and no agent, associate, employee, representative, entertainer or servant of any such restaurant, convenience store, or grocery store shall own any interest in or operate a sexually oriented business. Sexually oriented businesses include but are not limited to adult arcades, adult bookstores, adult cabarets, adult entertainment establishments, adult motels, or adult motion picture theaters.
- (l) It will be lawful for special venues without a kitchen to apply for a one-time permit for the Board of Aldermen's approval. The application for a one-time permit must include the name of the event, the club or entity sponsoring the said event, and the date of the one-time event. The persons responsible for the one-time event must adhere to all the regulations as spelled out in this ordinance. This permit must be applied for at least forty-five (45) days prior to the date of the event. The non-refundable fee will be fifty dollars (\$50.00) for said special permits. The approval or non-approval decision by the board is final.
- (m) Any alcoholic beverage, including Beer and Light Wine, shall NOT be offered for sale or visibly promoted within or outside either an On-Premises or Off-Premises building by placing said alcoholic beverage in "bucket" or "tubs" or other similarly fashioned device (with or without ice).
- (n) 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 regulation. *State law reference: Mississippi Code Annotated, 1972, Section 67-1-1, et seq. and Section 27-71-15, et seq.*
- (o) 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.
- (p) Permittees selling alcoholic beverages within the municipal boundaries of the City of Eupora shall procure and maintain at all times general liability insurance and other necessary insurance which shall specifically insure against alcohol related events with minimum limits of one million dollars (\$1,000,000.00).

(Ord. No. 2020-2)

Sec. 10-5. - Permit by state tax commission.

All city qualified resort areas must also be permitted by the state tax commission or must be in the process of being permitted by the state tax commission in order to receive a special use permit.

(Ord. No. 2020-2)

Sec. 10-147. - General provisions.

(a) *Application for special use permit.*

- (1) Any person desiring a special use permit to establish a business as a city qualified resort area shall file an application with the City of Eupora Board of Aldermen ("Board") in the form of a sworn statement giving the address, the name of the business, its location, and if a partnership or firm, the name and address of each partner or member, if a limited liability company, the name and address of each member and manager, and, if a corporation, the names of the officers, directors and certain stockholders, the post office address, the nature of business in which engaged and other additional information as required by the city. In case any business is conducted by the same person at two or more separate locations, a separate special use permit for each location of business shall be required.
 - (2) The applicant shall further state in its sworn application for a special use permit that it possesses the following qualifications:
 - a. Applicant, if an individual, or if a partnership, each of the members of the partnership, or if a corporation, each of its principal officers and directors, or if a limited liability company, each member of the limited liability company, must be over 21 years of age, a person of good moral character, and a citizen of the United States and the State of Mississippi.
 - b. Applicant shall not have been convicted in Mississippi or any other state of a felony or of pandering, or of keeping or maintaining a house of prostitution.
 - c. Applicant shall not have been convicted of violating any laws in this or any other state, or of the United States relating to alcoholic beverages or gambling or have had revoked any license or permit to sell alcoholic beverages of any kind or beer or light wine within five years preceding the date of application.
 - d. Applicant shall be the owner of the premises for which the permit is sought or the holder of a bona fide written lease thereupon of not less than one year in duration for the premises on which the license is sought.
 - e. If applicant is a partnership, limited liability company or any other entity, all members and officers must be named and shall be qualified in order to obtain a special use permit.
 - f. If applicant is a corporation, all officers and directors thereof, and any stockholder owning more than five percent of the stock of such corporation, and the person or persons who shall conduct and maintain the premises for the corporation shall possess all the qualifications required herein for an individual applicant provided however, that the requirements as to residency shall not apply to officers, directors, and stockholders of such corporation, but such requirements shall apply to any officer, director, or stockholder who is also the manager of the premises obtaining a special use permit or who is engaged or employed at such premises in any capacity, in the conduct or operation of such premises.
- (b) *Transfer of ownership.* If a business which has been established as a city qualified resort area changes ownership so that 50 percent or more of the business or the entity that owns the business is sold or transferred to anyone other than those persons listed on the current application with the City of Eupora, then the business must reapply for a special use permit to qualify as a city qualified resort area. If a business which has been established as a

city qualified resort area has any change in ownership, even if less than 50 percent of the ownership of the business is transferred or if less than 50 percent of the ownership of the entity that owns the business is transferred, the changes in ownership must be submitted to the city and the business's special use permit application must be amended to include the new owners.

(Ord. No. 2020-2, § 6, 08-01-1977)

Sec. 10-6. - Qualified resort area location standards and waiver of same.

- (a) The Board reserves the right to determine whether or not such business shall be permitted to conduct the sale or allowance of alcoholic beverages at such location, and no permit shall be granted to any person where a church, school, daycare, kindergarten, or funeral home is located or where it might prove harmful to the general welfare, health, and morals of the community.
- (b) With regard to a special use permit to sell, dispense, furnish or give away alcoholic beverages defined as any alcoholic liquid, including wines, of more than five percent of alcohol by weight, capable of being consumed as a beverage by a human being which shall not include beer or light wine containing not more than five percent of alcohol by weight as provided for in MCA 1972, § 67-3-5, but shall include native wines, the following location standards shall apply, to-wit:
 - (1) If the church, school, daycare, kindergarten, or funeral home is located in any zone classified as residential, then under no circumstances shall such business be located closer than 400 feet from any church, school, daycare, kindergarten, or funeral home. The 400 feet shall be measured in a straight line from the point on the building or common wall housing the restaurant nearest to the nearest point on the building or common wall housing the church, school, daycare, kindergarten, or funeral home.
 - (2) If the church, school, daycare, kindergarten, or funeral home is located in any zone not classified as a residential zone, then under no circumstances shall such business be located closer than 100 feet from any church, school, daycare, kindergarten, or funeral home. The 100 feet shall be measured in a straight line from the point on the building or common wall housing the restaurant nearest to the nearest point on the building or common wall housing the church, school, daycare, kindergarten, and funeral home.
- (c) With regards to a special use permit to sell, dispense, furnish or give away alcoholic beverages defined as any alcoholic liquid, including light wines or beer, of less than five percent of alcohol by weight, capable of being consumed as a beverage by a human being as provided for in MCA 1972, § 67-3-5, but shall not include native wines, the following location standards shall apply, to-wit:
 - (1) Regardless of the zoning classification in which a church, school, daycare, kindergarten or funeral home is located, under no circumstances shall such business be located closer than 100 feet from any church, school, daycare, kindergarten, or funeral home. The 100 feet shall be measured in a straight line from the point on the building or common wall housing the convenience store or grocery store or restaurant nearest to the

nearest point on the building or common wall housing the church, school, daycare, kindergarten, and funeral home.

- (d) Any business seeking a special use permit under this ordinance, may be located only in those areas zoned commercial designated as C-1 or C-2 according to the zoning map and ordinances of the City of Eupora, Mississippi.
- (e) The restriction as to the location of business shall not apply if its premises have already received a special use permit under the terms of this ordinance prior to the construction or operation of any church, school, daycare, kindergarten, or funeral home.
- (f) A church or funeral home may waive the distance restrictions in favor of allowing issuance of a special use permit under this ordinance authorizing the creation of city qualified resort area authorizing the restaurant, convenience store, or grocery store to sell, dispense, furnish or give away alcoholic beverages of any kind that would otherwise would be prohibited under the minimum distance requirements set out in this ordinance. Such waiver shall be in written form from the owner, governing body or the appropriate officer of the church or funeral home having the authority to execute such a waiver, and the waiver shall be filed with the City of Eupora Board of Aldermen (Board) and approved by the Board before becoming effective.
- (g) There shall be no beer sold in single units at Off-Premises Retail Stores.
- (h) It shall be unlawful in the City of Eupora for any person to have in his or her possession any alcoholic beverage, including beer and light wine, on or in any of the following locations:
 - (1) the interior of any business, including a restaurant, in which the owner or manager shall display in several conspicuous locations inside the business and at the entrance signs containing the following language: “NO ALCOHOLIC BEVERAGES ALLOWED”,
 - (2) any public playground;
 - (3) any public park;
 - (4) any fire station or police station;
 - (5) any school buildings or grounds or any sports facilities owned or in use by any school;
 - (6) any public library or museum;
 - (7) any property owned, leased, or operated by the City of Eupora;
 - (8) except where **EXEMPTED** as described below in subsections 1a and 1b of this section.

(1a) Irrespective of the prohibited locations listed above in this section (h), it shall be lawful to possess, consume or sell Beer or Light Wine at a “One-Time Event” and Location **IF** the said event has been specifically granted “Exempted Status” to allow persons to possess, consume or sell Beer or Light Wine by Resolution or Order of the City of Eupora Board of Alderman; said possession, consumption, or sale shall be strictly limited to open containers that are either opaque paper cups or plastic cups (Visibility of Aluminum Cans,, Aluminum Bottles, or Glass Bottles Shall NOT be allowed under this exemption).

(1b) Irrespective of the prohibited locations listed above in this Section, it shall be lawful to possess, consume, or sell Beer or Light Wine at a City sponsored event (festival)

UNLESS the said event has been specifically Denied its exempted status to allow persons to possess, consume, or sell Beer or Light Wine by Resolution or order of the City of Eupora Board of Aldermen, said possession, consumption or sale shall be strictly limited to open containers that are either opaque paper cups or plastic cups (Visibility of Aluminum Cans, Aluminum Bottles, or Glass Bottles shall NOT be allowed under this exemption.

- (j) It shall be unlawful for any person to possess an open container of any alcoholic beverage including beer and light wine 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.
- (k) There shall be NO consumption of an alcoholic beverage including Beer or Light Wine at on Off-Premises retail store, this includes convenience stores and grocery stores.
- (l) 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 any alcoholic beverage including Beer and Light Wine.
- (m) The sale of any alcoholic beverage including Beer and Light Wine at an off-premise location must first be placed in a non-see-through, opaque bag or sack before delivering same to the purchaser.
- (n) In the event of any disturbance, uprising or riot or any other emergency of life, property or public safety, the mayor or the chief of police may promptly order any and all places in the city where beer or light wine is consumed, sold or otherwise dispensed, to discontinue such for the period of such emergency.

(Ord. No. 2020-2, § 7, 08-01-1977)

Sec. 10-7. - Violation(s) and enforcement.

Enforcement of this ordinance may be undertaken by the City of Eupora or any employee designated by the city. These enforcement activities include administrative actions; institution of civil proceedings in a court of law or equity; or the institution of criminal proceedings in the appropriate court having jurisdiction.

- (1) *Administrative enforcement.* Any violation of this ordinance is hereby declared to be grounds for discontinuation of the special use permit and such discontinuation of the special use permit will revoke or suspend the zoning necessary to sell alcoholic beverages in the city. This discontinuation may be a temporary suspension or a revocation of the special use permit and the zoning necessary to sell alcoholic beverages in the city. The decision to suspend or revoke the special use permit and hence the zoning necessary to sell alcoholic beverages in the city shall be made by the Board.

- a. In determining the period of suspension or revocation of such special use permit/zoning, the Board may consider the following factors, to-wit:
 1. The number of offense (first, second, third, etc.);
 2. Whether the violations of the provisions of this ordinance are repetitive;
 3. Whether the violations of this ordinance are flagrant or severe;
 4. Whether the office of alcohol beverage control ("ABC") is seeking and/or has imposed any administrative sanctions for the same or similar conduct against the holder of the special use permit;
 5. Failure to maintain proper records;
 6. Refusal to cooperate with Board, clerk, police chief and/or their designee(s) in the administration and/or enforcement of this ordinance;
 7. The failure to file the annual required sworn statement by a restaurant as set out above;
 8. Prior history of violations under this ordinance with regards to the holder of the special use permit; or
 9. Other circumstances or actions that relate to the administration of this ordinance and/or the enforcement or violation of the terms of this ordinance relevant to the actions of the holder of the special use permit under consideration for temporary suspension.
 - b. When the special use permit of the holder thereof is suspended in accordance with this ordinance by the Board, then the City Clerk shall promptly notify, in writing, the holder of such special use permit of the suspension; the effective date of such suspension; the reason(s) for the suspension; and, the right of appeal of such suspension.
 - c. Upon the motion of the Board or the request of the police chief or clerk, the Board may revoke the special use permit and the discontinuance of the zoning necessary to sell alcoholic beverages in the city for violation(s) of the provision(s) of this ordinance. The revocation of such special use permit may be had in the first instance without prior resort to a temporary suspension of such special use permit. The holder of the special use permit shall be given written notice, by United States mail, first class, of the date, time and place of the revocation hearing. Such notice of hearing shall be given not less than 15 days prior to the dated scheduled for the revocation hearing. The Board, in rendering its decision, shall consider the factors set forth in this ordinance. The Board may, as part of any decision, may impose against the holder of a special use permit the lesser administrative sanction of a suspension in lieu of revocation.
 - d. Any appeal from any decision of the Board may be had as set forth hereafter in this ordinance.
- (2) *Civil proceedings.* In addition to any other relief provided by this ordinance, the city may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this ordinance, and other available relief. As a condition

of the issuance of the special use permit, if found in violation of the terms of this ordinance holder of such special use permit shall reimburse the city for all attorney's fees and costs of court incurred in the bringing of this action.

- (3) *Criminal sanctions.* Additionally, any person who shall knowingly and willfully violate the terms, conditions or provisions of this ordinance shall be guilty of a misdemeanor and upon conviction therefore shall be punished by a fine not to exceed \$1,000.00, or by imprisonment for a term not exceeding 90 days, or by both such fine and imprisonment, and, in case of continuing violations without reasonable effort on the part of the defendant to correct same, each day the violation continues thereafter shall be a separate offense.
- (4) *Forum selection clause.* As a condition of the submission of an application for or issuance of a special use permit under this ordinance, the applicant or holder and/or successor of interest to such holder of a special use permit issued under this ordinance shall have been deemed to have irrevocably consented that the sole and exclusive venue for any enforcement action taken by the city pursuant to the terms of this ordinance, or any appeal, defense or action initiated by the applicant for or a holder of a special use permit issued under this ordinance, shall be either the City of Eupora Municipal Court or Chancery Court of Webster County, Mississippi. As a further condition of the submission or an application for or issuance of a special use permit under this ordinance, the applicant or holder hereby shall have been deemed to consent the subject matter jurisdiction and personal jurisdiction of the City of Eupora Municipal Court or Chancery Court of Webster County pursuant to the submission of an application or issuance and receipt of the special use permit by the holder thereof.

(Ord. No. 2020-2, § 8, 08-01-1977)

Sec. 10-8. - Appeal.

Appeals from a final decision rendered by the Board under this ordinance shall be in accordance and as provided for under the laws of the State of Mississippi.

(Ord. No. 2020-2, § 9, 08-01-1977)

Sec. 10-151. - Failure to enforce ordinance.

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

(Ord. No. 2020-2, § 12, 08-01-1977)

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 GARY MOVED TO ADOPT THE QUALIFIED RESORT AREAS ORDINANCE FOR THE CITY OF EUPORA, MISSISSIPPI, ALDERMAN SHAW SECONDED AND THE SAME BEING PUT TO A ROLL CALL VOTE, THE RESULTS WERE AS FOLLOWS:

ALDERMAN GARY VOTED AYE

ALDERMAN GIBSON VOTED AYE

ALDERMAN RUMORE VOTED AYE

ALDERMAN SHAW VOTED AYE

ALDERMAN GIBBS ABSENT

WHEREAS, THE MAYOR AND BOARD OF ALDERMEN DECLARED THE QUALIFIED RESORT AREAS ORDINANCE PASSED AND ADOPTED AT A REGULAR MEETING OF THE MAYOR AND BOARD OF ALDERMEN ON THE 2ND DAY OF NOVEMBER, 2020.

SIGNED: _____

ATTESTED BY: _____

