

ORDINANCE NO. 22-05

AN ORDINANCE ESTABLISHING A PERMITTING PROCESS AND FEE FOR PRIVATE CLUBS FOR THE SELLING OR DISPENSING OF ALCOHOLIC BEVERAGES IN THE CITY OF HEBER SPRINGS, ARKANSAS; LEVYING A TAX AND SUPPLEMENTAL TAX ON GROSS PROCEEDS OR GROSS RECEIPTS DERIVED FROM THE CHARGES TO MEMBERS FOR THE PEREPARATION AND SERVING OF MIXED DRINKS OR THE COOLING AND SERVING OF BEER AND WINE DRAWN FROM THE PRIVATE STOCKS OF THE MEMBERS FOR CONSUMPTION ONLY ON THE PREMISES WHERE SERVED IN THE CITY OF HEBER SPRINGS, ARKANSAS, AND FOR OTHER PURPOSES

WHEREAS, the legislature for the State of Arkansas passed Act 1112 of 2017 which now requires under A.C.A. §3-9-222 local city council approval of all applications for a private club permit prior to them being submitted to the Alcoholic Beverage Control Division; and,

WHEREAS, the City Council of the City of Heber Springs, Arkansas, desires to establish a procedure for this approval process to be in compliance with Act 1112 of 2017; and

WHEREAS, Title 3 of Arkansas Code relating to Alcoholic Beverages recognizes the power of local governmental bodies to regulate the operation of establishments under that Title as may be necessary for the protection of the public health, safety and welfare; and,

WHERAS, Chapter 9 of Title 3 of the Arkansas Code authorizes cities to charge a private club permit fee and levy a tax and supplemental tax on the sales of alcoholic beverages at the permitted premise.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEBER SPRINGS, ARKANSAS,
THE FOLLOWING:

SECTION 1: Title. The title of this Ordinance shall be "The Private Club Permit Ordinance for the City of Heber Springs, Arkansas."

SECTION 2: Authority. This Ordinance is passed pursuant to the authority granted to the City of Heber Springs by the State of Arkansas under A.C.A. §3-9-201 et seq, and specifically Act 1112 of 2017.

SECTION 3: Definitions.

- (a) **Alcoholic Beverages** means all intoxicating liquors of any sort, including beer and wine.
- (b) **City** means the City of Heber Springs, Arkansas.
- (c) **Controlled Beverages** means all beverages of any kind subject to regulation under any alcoholic beverage control law of the State of Arkansas and this Ordinance.
- (d) **On-premises consumption** means the sale or dispensing of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises where sold or dispensed.
- (e) **Permit** means any authorization issued by any law passed by the General Assembly of the State of Arkansas; the Alcoholic Beverage Control Division of the State of Arkansas or by the City pursuant to any Arkansas Alcoholic Beverage Control Division regulation or this Ordinance whether described as a permit, license or otherwise.
- (f) **Permittee** means the person to whom a permit or license to sell, dispense, or distribute alcohol has been granted.

(g) **Person** means any natural person, partnership, association, corporation, syndicate, or company.

(h) **Police Chief** means the Chief of Police of the Heber Springs Police Department or his/her designee.

(i) **Private Club** means a nonprofit corporation organized and existing under the laws of this state authorized to serve alcohol by the State of Arkansas and the Alcoholic Beverage Control Division.

(j) **State** means the State of Arkansas.

SECTION 4: Permits Required.

(a) It shall be unlawful for any person to engage in the business of distributing, selling, or dispensing within any private club for on-premises consumption, any controlled beverage, within the City without a permit issued by the City, or with an expired permit.

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

SECTION 5: Application for Private Club Permits.

(a) An application for a private club permit required by this Section shall be in writing on a form prescribed by the City and shall be accompanied by the required fee and a copy of the Applicant's state private club permit application. A copy of the private club permit application will be available at the City Clerk's office and on the City's website.

(b) Only one location per application.

(c) The application shall be submitted to the City of Heber Springs City Clerk with a one-time non-refundable application fee in the amount of one thousand dollars (\$1,000.00). This fee is separate from any licensing fees which may later be due to the City of Heber Springs to operate a business in the City of Heber Springs.

(d) No City permit will be issued until approved by the City Council.

(e) It shall be unlawful for any person to make any false statement or representation in any application required by this section or to give any false answer to any question contained therein.

(f) It shall be unlawful to operate a private club or sell alcoholic beverages for on-premises consumption in the City of Heber Springs before being permitted by the appropriate State agency.

(g) Permits required by this Section shall run for one (1) calendar year. Annual permit renewal fees of \$500.00 shall be due and payable starting December 1st thru December 31st of each year for the succeeding year beginning January 1st.

(h) The City will not issue or renew any permits pursuant to this Section until all outstanding supplemental beverage taxes, if applicable, are paid.

(i) All permits issued by the City pursuant to this Section shall be prominently displayed on the permitted premises by the permittee in the same manner as required by the State for State permits.

(j) When any State permit is revoked by the State or required to be returned to the State for any reason, the City permit shall be returned to the City.

(k) All fees, taxes and penalties received by the City pursuant to this chapter shall be used for general purposes within the City of Heber Springs pursuant to A.C.A. §3-9-223(f).

(l) Permits shall not be transferrable or assignable unless and until approval is granted by the Alcoholic Beverage Control Division and notice is provided to the City of Heber Springs and all other requirements of this ordinance are met.

(m) A City permit, if granted, shall be specific to the proposed location and to the applicant listed in the application.

SECTION 6: Right of City to Inspect Records. The City Clerk or his/her designee of the City shall have the right to inspect and examine the records of any permittee subject to any tax or permit fee based on the gross sales or receipts pursuant to A.C.A. §3-2-211 and any other Employee information required pursuant to the regulations of the Alcoholic Beverage Control Division, Title 1, Subtitle G, and Section 1.70(37).

SECTION 7: Fraud and Misrepresentation by Applicant.

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

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

SECTION 8. Payment of Fee.

(a) The Permit fee paid must be paid on the date of the delivery of the Application to the City.

(b) The Permit fee shall be paid to the City Clerk.

SECTION 9. Business Opening within Six Months from Permit; Issuance Required. All holders of Permits shall, within six (6) months after the issuance of the Permit, open for business the establishment referred to in the Permit and begin dispensing the products authorized by the Permit. Failure to open the establishment and begin business as referred to above within the six (6) month period shall serve as automatic forfeiture and cancellation of the unused Permit, and no refund of Permit fee shall be made to the Permit holder.

SECTION 10: Effect of Failure to Operate Business for Six (6) Consecutive Months. Any holder of a Permit who shall begin the operation of the business and dispensing the products as authorized in the Permit, but who shall, for a period of six (6) consecutive months thereafter, cease to operate the business or dispensing the products authorized in the Permit, shall upon completion of the six (6) month period automatically forfeit the Permit, which Permit shall, by virtue of that failure to operate, be cancelled without the necessity of any further action of the City.

SECTION 11. Dispensing Alcoholic Beverages Outside of Permitted Premises. It shall be unlawful for any alcoholic beverage to be dispensed, or otherwise provided outside of the enclosed building, premise, or place of business permitted for such.

SECTION 12. Same Payment Dates; Proration. All Permit fees shall be paid between December 1st and December 31st of each year. Permits obtained after July 1st of each year shall pay one-half of the annual fee. Delinquent Permit fees shall be subject to a delinquent penalty of twenty-five (25%) percent of the Permit fee for each thirty (30) day period the fee remains unpaid.

SECTION 13. Term of Permit. No Permit shall issue for more than the remainder of the calendar year, and all shall expire at midnight, December 31st of each year. In case of the revocation or surrender of such Permit before the expiration of such calendar year period, the holder thereof shall not be entitled to receive any refund whatsoever.

SECTION 14. Transferability of Permits.

(a) Permits shall not be transferrable, except as otherwise provided herein.

(b) All Applications for transfer of locations shall comply with the provisions herein set forth governing new Permits.

SECTION 15. Notice of Transfer of Business. Should any Permit holder make a request to the Alcoholic Beverage Control Division to transfer their permit to another location, individual, or organization, the City Clerk and the Police Chief shall be notified in writing of such request within seven (7) days.

SECTION 16. Display of Permit. Every person or organization issued a Permit pursuant to this Section shall be required to display the Permit, in the same location as is displayed the State Controlled Beverage Permit.

SECTION 17. Suspension or Revocation of Permit.

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

(b) Should any person, firm or corporation that operates a business which is subject to the requirements of the City of Heber Springs Tax Ordinance No. 2022-05, as amended, and its enabling statutes, fail to obtain any permits required for that type of business, then the City Alcohol Beverage Permit shall thereupon be automatically revoked.

(c) Should any person, firm or corporation that operates a business which is the subject to the requirements of the Ordinance No. 2022-05, as amended, and its enabling statutes, become subject to unsatisfied Certificates of Indebtedness filed pursuant to the City of Heber Springs Ordinance and statutes, then the City Alcohol Beverage Permit shall thereupon be automatically revoked.

SECTION 18. Type of Permit Covered by Ordinance and Hours of Operation.

(a) Private club permit. Authorizes the purchase of any controlled beverage from persons holding an off-premises retail liquor or beer permit who have been designated by the director of the State Alcoholic Beverage Control Board as a private club distributor, and authorizes the dispensing of such

beverages for consumption on the premises of the private club to members and guests only of the private club.

(b) Hours of operation. Hours of operation shall be in conformance with state statute, including Title 3 of the Arkansas Code relating to Alcoholic Beverages.

SECTION 19. Levy of alcoholic beverage supplemental tax under the authority of A.C.A. §3-9-223(b)(1).

(a) There is hereby imposed and levied under the authority of A.C.A. §3-9-223(b)(1) a City tax of five percent (5%) upon the annual gross proceeds or annual gross receipts which are derived by such private club from charges to the members or their guests for the following services drawn from the private stocks of the members as provided for in A.C.A. §3-9-221, for consumption only on the premises where served:

- (1) For the preparation and serving of mixed drinks, and
- (2) For the cooling and serving of beer, light wine, and wine.

(b) The City's supplemental tax in this Section is in addition to the state supplemental tax on private clubs and shall be paid to the City Treasurer of the City, shall be due monthly at the same time that the state supplemental tax is due, and shall be accompanied by one (1) copy of the state supplemental tax return. If any permittee shall fail to remit the City supplemental tax within the period of time that the state supplemental tax is due, a penalty of ten percent (10%) of the supplemental tax due shall be due and payable in addition to the supplemental tax.

SECTION 20. Levy of alcoholic beverage supplemental tax under the authority of A.C.A. §3-9-223(b)(2).

(a) In addition to Section 20, there is hereby imposed and levied under the authority of A.C.A. §3-9-223(b)(2) a City supplemental tax of two percent (2%) upon the annual gross receipts which are derived by such private club from charges to the members or their guests for the following drawn from the private stocks of the members as provided for in A.C.A. §3-9-221, for consumption only on the premises where served.

- (1) For the preparation and serving of mixed drinks.

(b) The City's supplemental tax in this Section is in addition to the state supplemental tax on private clubs and shall be paid to the City Treasurer of the City, shall be due monthly at the same time that the state supplemental tax is due, and shall be accompanied by one (1) copy of the state supplemental tax return. If any permittee shall fail to remit the City supplemental tax within the time period that the state supplemental tax is due, a penalty of ten percent (10%) of the supplemental tax due shall be due and payable in addition to the supplemental tax.

SECTION 21. Penalty.

(a) Any person violating the provisions of this Ordinance or any person who makes a false affidavit or statement or report or application to the City as part of the procedures of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction be fined a sum, up to, but not exceeding:

- (1) One thousand dollars (\$1,000.00) for the first offense;
- (2) Two thousand dollars (\$2,000.00) for the second offense;
- (3) Four thousand dollars (\$4,000.00) for each subsequent offense after the second offense;
- (4) Plus court costs and applicable fees.

(b) If it is found that any violation of this Ordinance be continuous in respect to time, the fine or penalty for allowing the continuation thereof, in violation of this Ordinance, shall not exceed five hundred dollars (\$500.00) for each day that it is unlawfully continued, plus court costs and applicable fees.

SECTION 22. Cumulative to Other City Taxes and Fees. The fees and taxes assessed by this Ordinance shall in no way bar collection for any other federal, state or city taxes or fees.

SECTION 23. Severability. In the event any title, subtitle, section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this Ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

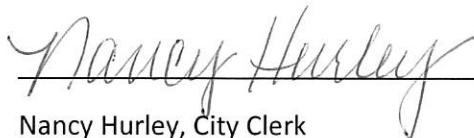
SECTION 24. Repealer. Any other ordinances in conflict with this Ordinance are hereby repealed.

SECTION 25. Emergency. Due to the need to process private club permit applications as soon as possible, this Ordinance needs to be implemented immediately for the protection of the health, safety and welfare of the City and its residents, therefore, an emergency is declared to exist and this Ordinance shall become effective immediately upon and after passage.

PASSED this 21 day of April, 2022.

APPROVED:


Kasey Griffin, Mayor


Nancy Hurley, City Clerk