

ORDINANCE NO. 794

AN ORDINANCE AMENDING ARTICLE 4 OF MONTICELLO CITY CODE, CONCERNING AMUSEMENTS; AMENDING THE REGULATIONS PERTAINING TO OPERATING PRIVATE CLUBS WITHIN THE CITY LIMITS; ESTABLISHING A CITY SUPPLEMENTAL ALCOHOLIC BEVERAGE TAX; AND REPEALING REGULATIONS PERTAINING TO OPERATING POOL TABLES WITHIN THE CITY LIMITS

WHEREAS, in May 2013 the City Council of Monticello, Arkansas amended Municipal Code § 4-2 (Ordinance No. 779) to restrict the hours for serving alcoholic beverages by private clubs from the Arkansas statutory limitation of 2:00AM to a more restrictive municipal limitation of 11:00PM; and

WHEREAS, it was the expressed intention of the City Council of Monticello, Arkansas to adopt the more restrictive municipal limitation of 11:00PM to decrease DWI or DUI arrests within the city and to decrease expenses of the police department having to report to alcohol related events; and

WHEREAS, it has been found by the City Council of Monticello, Arkansas that DWI arrests within the city have not decreased in the two year since the adoption of the restrictive municipal limitation of 11:00PM; and

WHEREAS, it has been found by the City Council of Monticello, Arkansas that the adoption of the restrictive

municipal limitation of 11:00PM has not decreased the expenses of the police department in the two years since May 2013; and

WHEREAS, this more restrictive municipal limitation of 11:00PM can only be enforced within the jurisdictional limits of the corporate limits of the City of Monticello, Arkansas; and

WHEREAS, this jurisdictional limitation of enforcement allows that private clubs located outside city limits to continue to operate and serve alcoholic beverages beyond the restrictive municipal limitation of 11:00PM to the Arkansas statutory limitation of 2:00AM; and

WHEREAS, this restrictive municipal limitation of 11:00PM has created a business environment where establishments located less than half-a-mile from each other are forced to operate different hours; one establishment located just one hundred three yards (103yds) from city limits is able to operate and serve alcoholic beverages until the Arkansas statutory limitation of 2:00AM; and the other establishment located within city limits is restricted to only be able to operate and serve alcoholic beverages until 11:00PM; and

WHEREAS, it has been found by the City Council of Monticello, Arkansas that the restrictive municipal limitation of 11:00PM creates an unfair business advantage for private clubs located in the beyond the city limits in the Monticello

area and has caused missed revenue for like establishments within the city limits; and

WHEREAS, it is not the opinion or intention of the City Council of Monticello, Arkansas to use city policies and laws to directly or indirectly interfere with the business environment of the city and effectively pick winners and losers among businesses in the Monticello area.

NOW THEREFOR BE IT ORDAINED, by the City Council of the Monticello, Arkansas, that Article 4 of Monticello City Code, concerning amusements, is amended to reads as follows:

"ARTICLE I. AMUSEMENT RIDES

Sec. 4-1. Bond, liability insurance required for amusement rides.

No person shall conduct, operate, manage or sponsor any Ferris wheel, merry-go-wheel or other amusement ride operated for hire or for the purpose of promoting or advertising any trade or business, without first filing with the city clerk a bond or certificate of liability insurance, in the amount of at least one hundred thousand dollars (\$100,00.00), indemnifying the public against damages sustained by reason of the operation of such ride. Such bond or certificate of insurance shall apply to all persons, whether or not a license or permit is required by any other provision of this Code, state law or city ordinance, rule or regulation.

Sec. 4-1 - 4.9. Reserved.

ARTICLE II. PRIVATE CLUBS.

Sec. 4-10. Definitions.

For the purpose of this article the following words and phrases shall have the meaning respectively ascribed to them:

Private club. A private club shall be any business, establishment, person or entity recognized by or licensed as a private club by the Alcoholic Beverage Control Division of the Arkansas Department of Finance and Administration and licensed as such for the retail sale, distribution or on-premises consumption of alcoholic beverages.

Alcoholic beverages. Alcoholic beverages shall be any mixed drinks, beer, wine or any beverages containing alcohol of any type or nature as defined as a controlled beverage by the Alcoholic Beverage Control Division of the Arkansas Department of Finance and Administration.

Controlled beverages means all beverages of any kind subject to regulation under any alcoholic beverage control law of the state and this article.

Nuisance. A nuisance means any unlawful conduct or activity or the tolerance of any unlawful conduct or activity by the permittee, or his agent, which constitutes a detriment to the health, safety and welfare of the citizens of the city.

New private club permittee. A person to whom a state permit of license to sell, dispense or distribute alcohol has been granted after July 28, , 2015, or the adoption of Ordinance 794 .

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.

Permit means any authorization issued by the Alcoholic Beverage Control Division of the state and/or by the city pursuant to any state Alcoholic Beverage Control Division regulation and/or this Code whether described as a permit, license or otherwise.

Permittee means the person to whom a permit or license to sell, dispense or distribute alcohol has been granted.

Sec. 4-11. Private club permit, when required.

(a) It is hereby declared that the business of manufacturing, transporting, storing, handling, receiving,

distributing, selling, serving or dispensing, any controlled beverage within the city, is a privilege, and for the exercise of such privilege there are hereby imposed the regulations, requirements, restrictions, fees and taxes as set forth in this article.

(b) After December 31, 2015, it shall be unlawful for any person to engage in the business of manufacturing, transporting, storing, handling, receiving, distributing, selling or dispensing within any private club any controlled beverage, within the city without an annual permit issued by the city or with an expired permit.

(c) No permit shall issue for more than the remainder of the calendar year, and all shall expire at midnight, December 31 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.

(d) Permits shall not be transferable or assignable unless and until approval is granted by the Alcoholic Beverage Control Division and notice is provided to the city and all other requirements of this article are met.

(e) 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. The city will restore the permit upon proof that the state permit has been restored to the applicant, provided that no reclaimed permit will be restored to an applicant until all outstanding hotel, motel and restaurant taxes and/or supplemental beverages taxes, if applicable, are paid.

(f) Should any private club permit holder make a request to the Alcoholic Beverage Control Division to transfer their permit to another location, individual or organization, the police chief shall be notified in writing of such request within seven days.

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

Sec. 4-12. Private club permit, application.

(a) All applications for permits shall be made to the city, that shall issue a permit based upon its compliance by the applicant with provision of this article and of any regulations adopted pursuant thereto, and of any other applicable legal requirements.

(b) Applications for permits shall be in writing signed by the applicant, and accompanied by an affidavit of applicant as to the truth of the statement and facts set forth in the application shall contain the following:

(1) The name and address of the applicant.

(2) The interest of the applicant in and the physical location of the private club.

(3) The calendar year in which the permit is being applied for.

(4) Required fees and a copy of the applicant's state permit. No city permit will be issued until applicant has received a state permit.

(c) Annual permit renewal applications shall be due on December 31 of each year for the succeeding year beginning January 1.

(d) The city shall not issue or renew, any permits pursuant to this article until all outstanding debt with the city, including hotel and motel taxes, supplemental beverage taxes, utility bills, and/or other billable debt, if applicable, are paid-in-full.

Sec. 4-13. Private club permit, Fee.

(a) An annual five-hundred-dollars (\$500.00) fee will be charged for the privilege being permitted to operating a private club within the city.

(b) All permit fees shall be paid between December 1 and December 31 each year. Permits obtained after June 30 of each year shall pay one half of the annual fee. Delinquent permit fees shall be subject to a delinquent penalty of 25 percent of the permit fee for each 30-day period the fee remains unpaid.

(c) All permits must be obtained and fees paid not later than two weeks from the date of the delivery of the application

to the city and, if not so obtained, the issuance granted by the city shall lapse. When a permit has been issued and the applicant has deposited with the city the required fee, the fee shall be paid to the municipal revenue collector and a permit issued.

(d) All fees, taxes and penalties received by the city pursuant to this article shall, pursuant to A.C.A. § 3-9-223(f), be used for general purposes of the city police department.

Sec. 4-14. Private clubs, limitations of location.

(a) It shall be unlawful for any new private club permittee, as defined in this article, to be located or the owner, operator, or any employee of said private club to conduct business, operate, serve or permit the consumption of alcoholic beverages, as defined in the section, within one thousand (1,000) feet of a previously established church, place of worship, ~~or~~ school, alcoholic treatment center and/or single family dwelling.

Sec. 4-15. Private clubs, limitations hours for the serving of alcoholic beverages by private clubs.

(a) It shall be unlawful for the owner, operator or any employee of a private club, as defined in this section, to serve or permit the consumption of alcoholic beverages, as defined in this section, on the premises of said private club between the hours of 12:30AM to 11:00AM of the following day.

(b) It shall be unlawful for any patron, member or guest to remain upon the premises of any private club for more than 30 minutes after the established closing hour of 12:30AM for the dispensing or consumption of controlled beverages; whereas no person shall be permitted in said private club between the hours of 1:00AM to 8:00AM of the following day.

Sec. 4-16. Private clubs, unlawful activity.

(a) *Generally.* It shall be unlawful for the holder of any permit issued under the provisions of this article to permit any disturbance of the peace or obscenity or any lewd, immoral or improper entertainment, conduct or practices in the permitted premises or to operate the business in such manner as to constitute a nuisance.

(b) *Disturbances.* It shall be unlawful for any permittee, or permittee's agent or employee to fail to report to the police department any disturbance which occurs inside or immediately outside the permitted premises or in the parking facilities, of which any of them have knowledge which would, under normal circumstances require or give rise to police intervention.

(c) *Hiring persons with convictions of felonies or misdemeanors.* It shall be unlawful for any permitted establishment to employ any person who has been convicted of, entered a plea to or has otherwise been found guilty of a felony, a misdemeanor involving moral turpitude or the sale of alcoholic beverage violation.

(d) *Availability of telephone.* It shall be the requirement that every permitted premises have a telephone and have such telephone available during the hours of operation. Failure to have a telephone shall constitute grounds for suspension or revocation of all permits.

(e) *Illegal drugs or narcotics.* It shall be the duty and responsibility of the permittee, or permittee's agent or employee to report to the police department any usage or possession of illegal drugs or narcotics on a permitted premises.

(f) *Assistance to law enforcement officers.* It shall be unlawful for any permittee, or permittee's agent or employee to fail to assist any law enforcement officer in the performance of his duty while the officer is on a permitted premises.

(g) *Refusal to admit law enforcement officers.* It shall be unlawful to refuse to grant admission to any permitted premises at any time upon the verbal request of any law enforcement officer, who displays proper identification for the purpose of inspecting the premises to ensure compliance with this article. It shall be unlawful to refuse to open any cabinet, storage room or any other area within the permitted premises.

(h) *Minors/persons under 21 years of age.* Any person to which a controlled beverage permit has been issued shall comply with all laws and regulations of the state, the Alcoholic Beverage Control Division of the state, and the city regarding the control and regulation of controlled beverages, including but not limited to, the following:

(1) Purchase by or for minors, sale to minors or handling by minors prohibited;

(2) It shall be unlawful for any person under the age of 21 years to have in his possession, to purchase or attempt to purchase, or otherwise obtain any controlled beverages except as provided by A.C.A. § 3-3-202(a)(1).

(3) It shall be unlawful for any person to, knowingly or unknowingly, purchase on behalf of, furnish to, give away to, or otherwise dispose of, to any person under the age of 21 years any controlled beverages; however, this provision shall not apply to the serving of such to members of one's family or to the use of wine in any religious ceremony or rite in any established church or religion.

(i) *Warning notice.* A warning notice regarding dispensing to, possession or purchase by, or furnishing to minors of controlled beverages shall be posted in a conspicuous place in public view in each place of business where controlled beverages are dispensed. The warning notices shall be of the size, have the content, and be posted in the manner as prescribed by the state Alcoholic Beverage Control Division.

(j) *Nudity.* No person who has received a permit under any ordinance of the city for the sale or dispensing of alcoholic beverages for on premises consumption including private club permits shall suffer or permit any person to appear on the permitted premises in such manner or attire as to expose to view any portion of the pubic area or genitals or any simulation thereof, nor suffer or permit any female to appear on the premises in such manner or attire as to expose to view any portion of her breast below the top of the areola or any simulation thereof.

(k) It shall be unlawful for any permittee, or permittee's agent or employee to engage in conduct in in a private club in a manner as to constitute a nuisance, as defined in this article.

(l) Failure of permittee to display the current private club permit in the same location as is displayed the state controlled beverage permit in a conspicuous place in public view.

(m) It shall be unlawful for any alcoholic beverage to be dispensed, or otherwise provided outside of the enclosed

building, premises or place of business licensed for such, except as permitted by this chapter.

Sec. 4-17. Private clubs, penalties for unlawful activity.

(a) Permittees found conducting, condoning, or allowing such unlawful activity, as described in § 4-9, shall be guilty of a violation and punished by a fine of not less than \$200.00 nor more than \$500.00 for conviction of each violation.

(b) Permittees convicted of two (2) thereafter violations of said unlawful activity, as described in § 4-9, within one (1) year since the said permittee's first violation, shall be fined upon conviction of not less than \$200.00 nor more than \$500.00 and shall have said permit suspended for seven (7) days for conviction of each thereafter violation.

(c) Permittees convicted of three (3) thereafter violations of said unlawful activity, as described in § 4-9, within one (1) year since the said permittee's third violation, shall be fined upon conviction of not less than \$200.00 nor more than \$500.00 and shall have said permit suspended for thirty (30) days for conviction of each thereafter violation.

(d) Permittees convicted of nine (9) violations of said unlawful activity, as described in § 4-9, within three (3) year, shall be fined upon conviction of not less than \$200.00 nor more than \$500.00 and shall have said and privilege to manufacture, transport, store, handle, receive, distribute, sell, serve or dispense, any controlled beverage within the city revoked permanently.

Sec. 4-18. Private club permit, suspension or revocation.

(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) No permit which has been issued or which may hereafter be issued by the city shall be suspended or revoked, except for due cause, and after notice and a hearing. Such notice shall include the time, place and purpose of the hearing and a statement of the charge upon which such hearing shall be held and shall give a reasonable time to prepare a defense.

(c) Due cause for the suspension or revocation of such permit shall consist of the violation of any laws or ordinances regulating such business, or violation of regulations made pursuant to authority granted for the purpose of regulating such business, or for the violation of any state or federal law related to alcoholic beverages, gambling, narcotics or any crime of moral turpitude. Such violation may be an act of the permittee or of any agent, officer or employee of the permittee.

(d) Hearings shall be conducted by a public safety committee to be three (3) members of the City Council appointed by the mayor, and the chairperson of the committee acting as the presiding officer of the hearing. At any hearing the permittee shall have the right to represent himself or be represented by counsel, may cross examine all witnesses offered by the city, and may present evidence in his own behalf. Evidence, including testimony, may be tendered by affidavit. Formal rules of evidence shall not apply to hearings under this section, although the fact finder shall have the right to exclude evidence which carries no indicia of reliability. All testimony shall be offered under oath or affirmation. Both the city and the permittee shall have the right to present witnesses. The public safety committee shall render a decision by majority vote in writing within ten working days of the completion of the hearing.

(e) If, after the hearing, the public safety committee finds a violation has occurred, the permit may be placed into probationary status, suspended or revoked depending upon the severity, facts and circumstances of the violation or violations. If any offenses occur during an active probationary period, the permit shall be revoked. Once this decision is rendered by the public safety committee a permittee has the right to appeal the decision to the Drew County Circuit Court.

Sec. 4-19. Supplemental beverage tax.

(a) In addition to the private club permit fee, there is hereby imposed and levied a city supplemental tax of five percent (5%) upon the annual gross receipts which are derived by such private club from charges to the members and/or their guests for the following services:

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

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

AND BE IT FUTHER ORDAINED, by the City Council of the Monticello, Arkansas, that Article 4 of Monticello City Code, concerning amusements, is amended to repeal § 4-13 thru § 4-22 entitled "Article II. Pooltables, Billiards Halls," adopted as Ordnanances 236 of 1915 & 248 of 2017.

(End of Ordinance)

ADOPTED on this 28 day of July, 2015.



Mayor

ATTEST:



City Clerk