

ORDINANCE NO. 2013 - 01

**AN ORDINANCE ESTABLISHING REGULATIONS, REQUIREMENTS,
RESTRICTIONS, FEES AND TAXES FOR ALCOHOLIC BEVERAGES
AND FOR OTHER PURPOSES**

WHEREAS the citizens of the County of Sharp have voted to allow and permit the distribution, manufacture and sale of alcoholic beverages within the county; and

WHEREAS the City Council of the City of Cherokee Village desires to provide a framework for the distribution, manufacture and sale of alcoholic beverages within its corporate limits; and

WHEREAS the laws of the State of Arkansas allow the City of Cherokee Village to regulate certain aspects of the distribution, manufacture and sale of alcoholic beverages within its corporate limits;

NOW THEREFORE BE IT ENACTED by the City Council of the City of Cherokee Village, Arkansas, as follows:

ALCOHOLIC BEVERAGES

SECTION 01 Applicability

It is hereby declared that the business of manufacturing, transporting, storing, handling, receiving, distributing, selling, serving, or dispensing, either at wholesale or retail, any controlled beverage, except wine, within the City of Cherokee Village, Arkansas, 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 ordinance.

SECTION 02 Definitions

For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words and phrases not specifically defined in this ordinance shall have the meanings assigned by Title Three of the Arkansas Code Annotated and/or the Arkansas Alcoholic Beverage Control Division Regulations.

Alcoholic beverages means all intoxicating liquors of any sort, other than beer and wine. *Beer* means any fermented liquor made from malt or any similar substance therefor and having an alcohol content not in excess of 5% or less than one-half of 1% by weight.

City means the City of Cherokee Village, Arkansas.

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.

Large attendance facility means a facility housing convention center activity, or tourism activity, or trade show and product display and related meeting activity, or any similar large meeting or attendance activity, and, either itself or through one or more independent contractors, complies with all of the following:

- (1) Actually serves full and complete meals and food on the premises;
- (2) Has one or more places for food service on premises with a seating capacity for not less than 500 people;
- (3) Employs a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least 500 people; and
- (4) Serves controlled beverages on premises at one or more places only on days that meals and food are served at one or more places on premises.

Light wine means the fermented juices of grapes, berries, or fruits and any other mixture containing the fermented juice of grapes, berries, or fruits, having an alcoholic content between one-half of 1% and 5% alcohol by weight.

Malt beverage products means any liquor brewed from the fermented juices of grain having an alcoholic content of not less than 5% nor more than 21% by weight.

Malt liquor means liquor brewed from the fermented juices of grain.

Microbrewery-restaurant means any establishment in which beer, containing not in excess of 5% of alcohol by weight, and/or malt beverage products, containing not in excess of 21% of alcohol by weight, are both brewed and sold at retail in a restaurant setting under the same ownership and in the same building or attached buildings.

On-premises consumption means the sale of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises where sold.

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

Permittee means the person to whom a permit has been issued.

Person means any natural person, partnership, association, corporation, syndicate, or company.

Private club means a nonprofit corporation organized and existing under the laws of this state, no part of the net revenues of which shall inure directly or indirectly to the benefit of any of its members or any other individual, except for the payment of bona fide

expenses of the club's operations, conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, or other nonprofit object or purpose other than the consumption of alcoholic beverages. The nonprofit corporation shall have been in existence for a period of not less than one year before application for a permit. At the time of application for the permit, the nonprofit corporation must have not less than 100 members regularly paying annual dues of not less than \$5.00 per member, and, at the time of application, must own or lease, or be the holder of a buy-sell agreement or offer and acceptance, or have an option to lease a building, property, or space therein for the reasonable comfort and accommodation of its members and their families and guests, and restrict the use of club facilities to such persons.

Retailer means any person who holds a permit under any alcoholic beverage control law of the State of Arkansas to sell at retail controlled beverages to consumers only.

Spirituous means liquor distilled from the fermented juices of grains, fruits, or vegetables containing more than 21% alcohol by weight, or any other liquids containing more than 21% alcohol by weight.

State means the State of Arkansas.

Sunday sales means the sales of alcoholic beverages on Sunday shall be limited to those businesses within the city which possess a current and valid license for the sale of alcoholic beverages issued by the Alcoholic Beverage Control Division.

Vinous means the fermented juices of fruits containing more than 5% and not more than 21% alcohol by weight.

Wholesaler and distributor means any person who holds a permit under any alcoholic beverage control law of the State of Arkansas to purchase controlled beverages from a manufacturer or importer and to sell such controlled beverages to retailers only.

SECTION 03 Permits Required

(A) It shall be unlawful for any person to engage in the business of manufacturing, transporting, storing, handling, receiving, distributing, selling, or dispensing, either at wholesale or retail, any controlled beverage, except wine, within the city without a permit issued by the city, or with an expired permit.

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

SECTION 04 Application for Permits

(A) Application for a permit required by this ordinance 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 permit. No city permit will be issued until applicant has received a state permit.

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

(C) Permits required by this ordinance shall be issued in such a manner that they will run for such length of time as the state permit. Annual permit renewal fees shall be due and payable on June 30th of each year for the succeeding year beginning July 1st.

(D) The city will not issue or renew any permits pursuant to this ordinance until all outstanding taxes and/or supplemental beverage taxes, if applicable, are paid.

(E) No new permit shall be granted to any person to engage in the sale of liquor at retail, for consumption off the premises, for any business situated within 1,000 feet of any church or school. The distance shall be measured from the nearest point of the church or school building to the nearest point of the building to be permitted.

(F) All permits issued by the city pursuant to this ordinance shall be prominently displayed on the permitted premises by the permittee in the same manner as required by the state for state permits.

(G) 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 taxes and/or supplemental beverages taxes, if applicable, are paid.

(H) All fees, taxes, and penalties received by the city pursuant to this ordinance shall be deposited to the credit of general fund revenues.

(I) Permits shall not be transferable or assignable except as provided by A.C.A. § 3-4-103 (Fiduciaries-Continuation of permitted business).

SECTION 05 Right of City To Inspect Records

The city shall have the right to inspect and examine the records of any permittee subject to any tax or permit fee based on gross sales or receipts.

SECTION 06 Operating Without A City Permit

(A) *Beer and light wine.* Any person who sells, serves, barters, exchanges, or gives away beer or light wine without having a valid city permit as provided by this ordinance shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined not more than \$500.00. Each day of such operation without a valid city permit shall constitute a separate and distinct offense.

(B) *On-premises consumption, including private clubs.* Any person who sells, serves, barters, exchanges, or gives away controlled beverages, except wine, for on-premises consumption without having a valid city permit as provided by this ordinance shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined not more than \$500.00. Each day of such operation without a valid city permit shall constitute a separate and distinct offense.

(C) *General.* Any person, except as provided in Section 06 (A) and (B) above, who sells, serves, barters, exchanges, or gives away controlled beverages, except wine, without having a valid city permit as provided in this ordinance shall, upon conviction, be deemed guilty of a misdemeanor and shall be fined not more than \$500.00. Each day of such operation without a valid city permit shall constitute a separate and distinct offense.

SECTION 07 Suspension/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. 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.

SECTION 08 Wholesale permit

(A) *Wholesale liquor permit.* Authorizes the purchase from licensed manufacturers or importers of spirituous and vinous beverages or malt liquor containing more than five percent alcohol by weight, and the sale of such beverages to persons holding a valid liquor off premises permit or a hotel, motel or restaurant on-premises consumption permit.

(1) *Permit fee.* There is hereby levied an annual permit fee of one-half of the annual permit fee charged by the State for each and every establishment engaged in storing, transporting and/or selling at wholesale any spirituous or vinous (except wine) liquors within the city.

(2) *Hours of operation.* It shall be unlawful for any person to sell, offer for sale, or give away, at wholesale, any spirituous, vinous, or malt liquors before the hours of 6:00 a.m. and after the hour of 11:00 p.m. on weekdays, 12:00 midnight on Friday and Saturday, at any hour on Sunday, on Christmas Day, or during any 24-hour interval designated an emergency period by the mayor, City Council, or any person acting in the mayor's or City Council's capacity.

(B) *Wholesale beer and light wine permit.* Authorizes the purchase of beer, light wine or malt liquor from a licensed manufacturer or importer and the sale of such beverages to retailers holding a valid permit to sell beer, light wine or malt liquor for consumption on or off the premises.

(1) *Permit fee.* There is hereby levied an annual permit fee of one-half of the annual permit fee charged by the State for each and every wholesale dealer, broker or distributor of beer and light wine.

(2) *Hours of operation.* The authorized hours of operation shall be the same as for wholesale liquor dealers set out in Section 08 (A) (2) above.

(3) All wholesale dealers and distributors selling beer and light wine to retail dealers within the city shall provide to the city clerk on or before June 30th of each year a report of said distributor's total sales of beer and light wine for the previous calendar year to each retailer within the city. No wholesale beer and light wine permit will be renewed until such report has been received by the city.

SECTION 09 Retail permit

(A) *Retail liquor off-premises permit.* Authorizes the purchase of spirituous and vinous beverages from any person holding a valid wholesale liquor permit and the sale of such beverages at retail to consumers for consumption off the premises; any holder of a liquor off-premises permit may also purchase malt liquors containing more than five percent alcohol by weight from either persons holding a wholesale beer permit or a wholesale liquor permit, and sell such beverages to consumers for consumption off the premises described in the permit. It shall be unlawful for any person to accept retail orders for any spirituous, vinous, or malt liquors for delivery outside of the premises of the store operated by such person.

(1) *Permit fee.* There is hereby levied an annual permit fee of one-half of the annual permit fee charged by the State for each and every retail liquor dealer engaged in the business of selling or dispensing, at retail any vinous (except wine), spirituous, or malt liquors for off-premises consumption.

(2) *Hours of operation.* It shall be unlawful for any person to sell or offer to sell any controlled beverages for off-premises consumption before the hour of 7:00 a.m. or after the hour of 11:00 p.m. on weekdays, after the hour of 12:00 midnight on Friday or Saturday and at any hour on Sunday, on Christmas Day, or during any 24-hour period designated an emergency by the Mayor or the City Council.

(B) *Retail beer and light wine off-premises permit.* Authorizes the purchase of beer, light wine, or malt liquor containing less than five percent alcohol by weight from wholesalers holding a valid permit and the sale of such controlled beverages for consumption off the premises described in the permit.

(1) *Permit fee.* For the privilege of selling beer and light wine, at retail, for off premises consumption, there is hereby levied an annual permit fee as follows:

(a) For a retailer whose annual gross sales of beer and/or light wine do not exceed \$1,000.00, the permit fee shall be \$15.00.

(b) For a retailer whose annual gross sales of beer and/or light wine exceed \$1,000.00, the permit fee shall be \$15.00 plus one-half cent for each dollar of gross sales in excess of \$1,000.00.

(c) The permit fee for a new applicant with no sales history shall be \$40.00.

(d) For the purpose of renewing an existing permit, annual sales shall be the actual gross sales for the previous calendar year. If the permittee has not been in operation for a full year at December 31st of the previous year, annual sales shall be determined by dividing the total actual sales by the number of months of operation and multiplying the result by 12.

(e) If a new permit was issued between January 1st and June 30th, the first renewal rate (due on June 30th of the issue year) shall be \$40.00.

(2) *Hours of operation.* It shall be unlawful for any person to sell or offer to sell beer or light wine for off-premises consumption before the hour of 7:00 a.m. or after the hour of 11:00 p.m. on weekdays, after the hour of 12:00 midnight on Friday or Saturday, at any hour on Sunday, on Christmas Day, or during any 24-hour period designated an emergency by the Mayor or City Council.

(C) *Retail beer and light wine on-premises permit.* Authorizes the purchase of beer, light wine, or malt liquor containing less than five percent alcohol by weight from a

wholesaler holding a valid permit and the sale of such controlled beverages for consumption on or off the premises described in the permit.

(1) *Permit fee.* There is hereby levied an annual permit fee of the same amounts and computed in the same manner as the annual fees for retail beer and light wine off premises in Section 09 (B) above.

(2) *Hours of operation.* It shall be unlawful for any person to serve, sell, offer for sale, or give away for consumption on-premises any beer or light wine between the hours of 1:00 a.m. and 7:00 a.m. on Monday through Saturday, on Sunday except during the hours of 10:00 a.m. until midnight, on Christmas Day, or during any 24-hour interval designated an emergency period by the mayor, City Council, or any person acting in the Mayor's or the City Council's capacity.

(D) *Private club permit.* Authorizes the purchase of any controlled beverages 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. (Private clubs holding a retail beer on premises permit may purchase beer, light wine, or malt liquor containing not more than five percent alcohol by weight from holders of valid wholesale beer permits).

(1) *Permit fee.* For the privilege of operating a private club within the city, there is hereby levied an annual permit fee of two hundred fifty dollars (\$250.00). For any new private club permit issued between January 1st and July 1st, the fee shall be one hundred twenty-five dollars (\$125.00).

(2) *Supplemental beverage tax.* In addition to the annual permit fee, there is hereby imposed and levied a city supplemental tax of one percent (1%) 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: the preparation and serving of mixed drinks, and the cooling and serving of beer, light wine, and wine.

The city's supplemental beverage tax is in addition to the state supplemental tax on private clubs and shall be paid to the city clerk, 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 12 ½ % of the tax due shall be due and payable in addition to the tax.

(3) *Hours of operation.* It shall be unlawful for the owner, operator, or any employee of a private club to serve or permit the consumption of any controlled beverages on the premises of said private club between the hours of 2:00 a.m. and 10:00 a.m. on any day.

(E) *Large attendance facility permit.* Authorizes the sale of all types of controlled beverages by a facility which houses a convention center activity, or tourism activity where such establishment has a seating capacity of not less than 500 people and which serves controlled beverages only on the premises on days that meals and food are served at one or more places on the premises.

(1) *Permit fee.* There is hereby levied an annual permit fee of one-half of the annual permit fee charged by the State for each and every large attendance facility within the city. For any new permit issued between January 1st and June 30th, the permit fee shall be one-half of the permit fee charged by the State.

(2) *Hours of operation.* It shall be unlawful for any person holding a large attendance facility permit to sell, offer for sale, serve, give away, or permit consumption of any controlled beverages between the hours of 2:00 a.m. and 10:00 a.m. on Monday through Saturday, on Sunday except between the hours of 10:00 a.m. until midnight, on Christmas Day, or during any 24-hour interval designated an emergency period by the mayor, City Council, or any person acting in the Mayor's or the City Council's capacity.

(F) *Off-premises caterer permit.* Authorizes the purchase of alcoholic beverages from a retailer to transport to a private function which is being catered by the permit holder and to serve alcoholic beverages to attendees of the private function in conjunction with catered food.

(1) *Permit fee.* A permit fee of one-half of the annual permit fee charged by the State is levied annually. For any new permit issued between January 1st and June 30th the permit fee shall be one-half of the permit fee charged by the State.

(2) *May not cater alcoholic beverages to large attendance or meeting facility.* Off-premises caterers as authorized by this section and A.C.A. §3-4-901-905 may not cater alcoholic beverages to large attendance or meeting facilities.

(3) *Hours of operation.* It shall be unlawful for any person holding an off-premises caterer permit to sell, offer for sale, serve, give away, or permit consumption of any controlled beverages between the hours of 2:00 a.m. and 10:00 a.m. on Monday through Saturday, on Sunday except between the hours of 10:00 a.m. until midnight, on Christmas Day, or during any 24-hour interval designated an emergency period by the mayor, City Council, or any person acting in the Mayor's or the City Council's capacity.

(H) *Restaurant Beer and Wine Permit.* Authorizes a restaurant which has a valid state Restaurant Beer and Wine Permit to obtain a City of Cherokee Village, Arkansas, Restaurant Beer and Wine Permit for the retail sale of beer and wine pursuant to A.C.A. §3-9-301 and §3-4-1001, *et seq.*

(1) *Permit fee.* There is hereby levied an annual permit fee of the same amounts and computed in the same manner as the annual fees for retail beer and light wine off-premises and on-premises permits in subsections (B) and (C) of this section.

(2) *Hours of operation.* It shall be unlawful for any restaurant to sell beer or wine through this permit beyond the hours established for the *Retail beer and light wine on-premises permit* of subsection (C).

(I) *Any other retail permit.* There is hereby levied a permit fee for any other retail permit issued by the state of one-half of the amount charged by the state to be collected in the same time period as collected by the state.

SECTION 10 Manufacturing permit

(A) *Liquor manufacturing permit.* Authorizes the manufacture or distilling of spirituous or vinous (except wine) liquors, and the sale to persons holding valid permits to wholesale or import such liquors.

(1) *Permit fee.*

(a) For the manufacturing and sale of spirituous liquors, the annual permit fee shall be one-half of the annual permit fee charged by the State for each and every manufacturing plant.

(b) For the manufacturing and sale of vinous (except wine) liquors, the annual

permit fee shall be one-half of the annual permit fee charged by the State for each and every manufacturing plant.

(B) *Beer manufacturing permit.* Authorizes the manufacture of beer containing not in excess of five percent alcohol by weight, and the sale of such beer to persons holding a valid permit to wholesale or import such beer.

(1) *Permit fee.* For the manufacture and sale of beer, the annual permit fee shall be one-half of the annual permit fee charged by the State for each and every manufacturing plant.

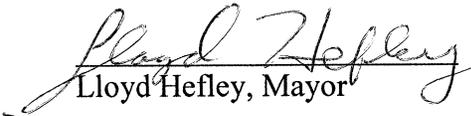
(C) *Rectifying permit.* Authorizes the rectifying, purifying, mixing, blending, or flavoring of spirituous liquors or the bottling, warehousing, or other handling or distribution of rectified distilled spirits. Rectifiers may sell, deliver, or transport only to wholesalers holding a valid permit to wholesale, to other rectifiers, or for the purpose of export out of state.

(1) *Permit fee.* For the privilege of rectifying, blending, or flavoring spirituous liquors, there is hereby assessed an annual permit fee of one-half of the annual permit fee charged by the State for each and every rectifying, blending, or flavoring plant.

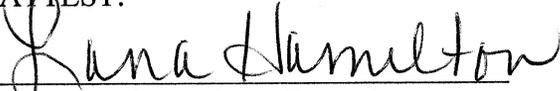
SECTION 11 Severability

In the event any 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 provisions of this ordinance, and the remaining portions of this ordinance shall be given effect as if such invalid or unconstitutional provision was not originally a part of this ordinance.

PASSED AND ADOPTED THIS THE 3 DAY OF March, 2013.


Lloyd Hefley, Mayor

ATTEST:


Lana Hamilton, Clerk/Recorder

[SEAL]