

ORDINANCE NO. 2017 - 13

**TO AMEND ORDINANCE NO. 2011-09, AS AMENDED IN ORDINANCE NO. 2012-03, ORDINANCE NO. 2013-01,
ORDINANCE NO. 2015-32, TO PROVIDE FURTHER FOR THE REGULATION OF THE SALE AND DISTRIBUTION
OF ALCOHOLIC BEVERAGES WITHIN THE CITY OF CULLMAN, ALABAMA, PROVIDING LICENSING
PROCEDURES AND ESTABLISHING PUNISHMENT FOR VIOLATIONS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CULLMAN AS FOLLOWS:

Section 1. Sec. 4-33 Definitions.

The definition for Restaurant Class III (Food Hall), Food Vendor and Alcohol Vendor are hereby added as follows:

Restaurant, Class III (Food Hall): A reputable place licensed as a cooperative of 3 or more restaurants located on the same premises sharing the same dining area with not less than 3 separate restaurant vendors each having their own separate storage, refrigeration, preparation and cooking facilities certified by the Cullman County Health Department, operated by responsible persons of good reputation in which a diversified selection of food and refreshments with alcohol sales within the premises is offered for sale for consumption within the building premises on which the establishment is located that also meets the following requirements:

1. A dining space containing 3,000 square feet or more on one floor in one room shall have a mandatory Class III designation.
2. The dining room shall be equipped with tables and chairs accommodating at least 150 persons at one time and adequately air conditioned and heated as appropriate.
3. All spaces of a Class III restaurant (food hall) must comply with the adopted building code occupancy requirements, fire and life safety codes.
4. A minimum of three fully equipped and operational kitchens separate and apart from the dining area in which meals are prepared for consumption by the public and served in said dining area adjoining the kitchen area that is open and fully staffed during the same hours as any portion of the establishment that has been issued a food service certificate by the Cullman County Health Department and an alcohol license for the entire premises.
5. The licensee and/or their food vendors shall maintain and operate at least two kitchens and shall, upon order of a customer, prepare and serve all food items shown on its menu during normal and reasonable business hours. Exceptions shall be made where there is a known and provable shortage or temporary unavailable supply of a food item.
6. Such place shall meet the minimum requirements for an Alabama Alcoholic Beverage Control Board on-premises license.
7. The serving of food or meals shall constitute the principal business of such establishment with the serving of liquor, malt or brewed beverages, wines, or other alcoholic beverages being only an incidental part of the business. During any 90-day period, the gross receipts from the serving of meals and food shall constitute at least 60% of the total gross receipts of the businesses located within the establishment. The licensee of such establishment shall maintain daily cash register summaries from all the businesses located within the establishment differentiating the receipts for the sale of food and alcoholic beverages. In addition, the licensee for such establishment shall maintain all invoices for the purchases of food and all types of alcoholic beverages and shall preserve such records for not less than three (3) years of all the businesses located within the establishment. All such records shall be available for inspection and audit at the licensee's premises within the City during regular business hours as the A.R.C., any elected official, or a duly authorized representative may request.

Food Vendor shall mean an individually, licensed restaurant within a (Food Hall) Restaurant, Class III.

Alcohol Vendor: An individually, licensed alcohol business licensed to sell on premises beer, wine or other alcoholic beverages within the entire Restaurant Class III (Food Hall) only during the hours that at least two or more food vendors are open for business with full menus within the licensed premises.

A. A licensee shall not be allowed to sell more than 40% of the gross receipts of all food vendor food sales combined during any one 90-day period. Failure to meet the minimum ratio will result in the suspension or revocation of the license to sell alcohol on the premises.

B. Nothing herein shall preclude the alcohol vendor from also being one or more of the food vendors within the Restaurant Class III (Food Hall).

Section 2. Sec. 4-34 Zoning. Restaurant Class III (Food Hall) May be located only in E-1 (Entertainment District) and CBD (Central Business District) within SE-1 (Special Event) Overlay District.

Section 3. Sec. 4-35 Location of On-Premises Sales near Church, School, or Licensed Day Care is hereby replaced with the following:

Sec. 4-35. Location of On-Premises Sales near Church, School, or Licensed Day Care

1. When measuring from a church, school, or licensed child development facility, from the frame of the main entrance of the closest building in the church, school, or child development facility complex wherein an essential function or activity of the church, school, or licensed child development facility is carried on shall constitute the beginning point for measurement. When measuring from the facility or property, from the frame of the main entrance on the exterior wall entering the building occupied by the person seeking to sell alcoholic beverages shall be used for measurement purposes if the building is occupied solely by that person; otherwise, such measurement shall be made from the closest point of the person's occupancy within the building in question. The method of measurement is a straight line from the aforementioned defined points.

2. On-Premises Sales:

(A) In addition to all other regulations and restrictions, no facility or property located in CBD, B-1, B-3, E-1 and B-2 shall be authorized for on-premises sale of alcoholic beverages except for the following:

- i. Class I Restaurant licensed to sell alcoholic beverages for on-premises consumption;
- ii. Class II Restaurant licensed to sell alcoholic beverages for on-premises consumption;
- iii. Specialty wine and beer establishment;
- iv. Persons holding a special events retail license for on-premises consumption.

(B) In addition to all other regulations and restrictions, no facility or property located in CBD with SE-1 Overlay District shall be authorized for on-premises sale of alcoholic beverages except for the following:

- i. Class I Restaurant licensed to sell alcoholic beverages for on-premises consumption;
- ii. Class II Restaurant licensed to sell alcoholic beverages for on-premises consumption;
- iii. Specialty wine and beer establishment;
- iv. Persons holding a special events retail license for on-premises consumption; and
- v. Class III Restaurant (Food Hall) license to sell alcoholic beverages for on-premises consumption

(C) In addition to all other regulations and restrictions, no club in a residential zone or in a planned development district not already established before the passage of this Ordinance shall be authorized for on-premises sale of alcoholic beverages unless the same has been recommended as a conditional use by the City of Cullman Planning Commission as may be required by the City of Cullman Zoning Ordinance and adopted by the City Council.

(D) In addition to all other regulations and restrictions, and subject to exceptions contained in this section, no building shall be authorized for on-premises sale of alcoholic beverages where the facility or property is less than 250 feet from any church, public or private elementary, intermediate, middle, junior high, or high school, or licensed child development facility. The aforesaid distance restriction in this subsection shall not apply in the following enumerated cases:

- i. Where the building is located in the CBD zoning district and the closest exterior wall of the building on the lot frontage is not less than 50 feet from the church, school, or licensed child development facility;
- ii. Where the church, school, or licensed child development facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of 6 months;
- iii. Where the establishment upon the facility or property is a grocery store as defined herein.

3. Off-Premises Sales:

(A) In addition to all other regulations and restrictions, no facility or property located in E-1, B-1, B-3, and B-2 (with the exception of Alabama Beverage Control stores and retail liquor sales for off-premises consumption), shall be authorized for

off-premises sale of alcoholic beverages except for the following:

- i. Convenience stores licensed to sell beer and/or table wine for off-premises consumption;
- ii. Grocery stores licensed to sell beer and/or table wine for off-premises consumption;
- iii. Specialty beverage stores with respect to beer and/or table wine;
- iv. Merchandise store with incidental table wine sales;
- v. Specialty wine and beer establishment; and
- vi. Persons holding a special events retail license for on-premises consumption.

(B) In addition to all other regulations and restrictions and subject to the exceptions contained in this Subsection, no facility or property shall be authorized for off-premises sales of alcoholic beverages when the facility or property is less than 500 feet from any church, public or private elementary, intermediate, middle, junior high or high school, or licensed child development facility. The aforesaid distance restriction in this Subsection shall apply in CBD, B-1, B-2 except Alcohol Beverage Control stores and retail liquor sales for off-premises consumption, but shall not apply in the following enumerated cases:

(i) Where the facility or property is located in CBD zoning district and the facade on the lot frontage of the facility or property is not less than 50 feet from the church, school, or licensed child development facility;

(ii) Where (1) the facility fronts a state highway or the property is separated from the church, school, or licensed child development facility by a street or highway having four or more traffic lanes, not including any lanes that are turning lanes, service lanes, and/or hazard lanes, (2) at least four of the traffic lanes that separate the licensed premises from the church, school, or licensed child development facility extend continuously and together for more than one mile before any one of the lanes terminates or becomes a turning lane, service land, and/or hazard lane, and (3) the minimum distance between the licensed premises and the church, school, or licensed child development facility building is at least 200 feet;

(iii) Where the church, school, or licensed child development facility was established after the licensed premises began operation and said operation has not been abandoned or discontinued for a period of 6 months;

(iv) Where the establishment upon the facility or property is a grocery store as defined herein.

Section 4. Sec. 4-98 City Alcohol License Fees.

Restaurant Retail Liquor License is hereby deleted and replaced with the following:

Restaurant Retail Liquor License.

1. Restaurant Class I and II - Each person licensed by the Board to sell alcoholic beverages in connection with the operation of a restaurant under §28-3A-1, et seq., Code of Alabama, 1975, shall pay to the City an annual privilege license fee of \$500.00. In addition to the stated license fee, each such person shall pay to the City, on or before the 15th day of the calendar month next succeeding each separate subject month, for the privilege of so engaging in such business in said subject month, an additional liquor tax of 12% of the monthly gross receipts of such business derived from the sale of liquor.

2. Restaurant Class III (Food Hall) - Each person licensed by the Board to sell alcoholic beverages in connection with the operation of a restaurant under §28-3A-1, et seq., Code of Alabama, 1975, shall pay to the City an annual privilege license fee of \$1,500.00. In addition to the stated license fee, each such person shall pay to the City, on or before the 15th day of the calendar month next succeeding each separate subject month, for the privilege of so engaging in such business in said subject month, an additional liquor tax of 12% of the monthly gross receipts of such business derived from the sale of liquor.

Section 5. Conflicts

1. This Ordinance shall be deemed cumulative with and supplemental to any and all statutes of the State of Alabama regarding the subject matter hereof and to be subordinate to same and in no manner intended to supersede any such statutes of the State of Alabama. Any provision hereof in conflict with any provision of any State statute shall be construed so as to be in harmony with the same where possible and otherwise to be subordinate to and superseded by the provisions of such State statute.

2. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict repealed.

3. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraphs or sections since the same would have been enacted by the City Council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph, or section.

Section 6. Effective Date

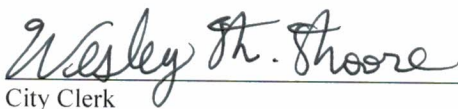
This Ordinance shall be effective immediately upon its adoption and publication according to law.

ADOPTED BY THE COUNCIL this the 8th day of April, 2017.



President of the City Council

ATTEST:



City Clerk

APPROVED BY THE MAYOR this the 8th day of April, 2017.



Mayor