

ORDINANCE NUMBER 2002-07

**AN ORDINANCE REPEALING ORDINANCE NUMBER 1991-02
OF THE CITY OF STARKVILLE, OKTIBBEHA COUNTY,
MISSISSIPPI, AS AMENDED, AND ADOPTING A NEW ORDINANCE
WITH PROPER RULES AND REGULATIONS FOR THE SALE OF
BEER AND LIGHT WINE OF AN ALCOHOLIC CONTENT OF
NOT MORE THAN FIVE PER CENTUM BY WEIGHT**

WHEREAS, the State of Mississippi has granted to the State Tax Commission extensive regulatory powers and responsibilities over the sale and distribution of alcoholic beverages, beer, and light wine, which have been delegated to the Alcoholic Beverage Control Division under Mississippi Code Annotated §67-1-1, et seq. (1972 as amended) and Mississippi Code Annotated §67-3- 1, et seq. (1972 as amended); and

WHEREAS, the authority of a municipality to regulate the sale of beer and light wine is limited by law under Mississippi Code Annotated §67-3-65 (1972, as amended) to enforcing such proper rules and regulations for fixing zones and territories, prescribing hours of opening and closing, and for such other measures as will promote public health, morals, and safety as they may by ordinance provide; and

WHEREAS, the City of Starkville Ordinance Number 1991-02 (also known as the "Beer Ordinance") has many unnecessary provisions that duplicate State law, and it has other provisions that delegate powers, duties, and responsibilities to the municipality that are reserved to the State Tax Commission's Alcoholic Beverage Control Division; and

WHEREAS, the Mayor and Board of Aldermen believe it is in the best interest of the City of Starkville to repeal its City Ordinance Number 1991-02 and to adopt a new ordinance under the authority of Mississippi Code Annotated §67-3-65 (1972, as amended) to prescribe hours of opening and closing and to designate territories surrounding churches and schools in which beer and light wine shall not be sold or consumed, and for such other measures as will promote public health and safety, as they may by ordinance provide;

NOW THEREFORE, BE IT ORDAINED, by the Mayor and Board of Aldermen of the City of Starkville that Ordinance Number 1991-02, as amended, be repealed in its entirety, and that the following be adopted as the Starkville Beer Ordinance:

Section 1: Definitions.

(a) "Beer" and "Light Wine" are defined by Mississippi Code Annotated §67-3-5 and by this Ordinance as beverages having an alcoholic content of not more than five (5%) per centum by weight.

(b) "Permittee" is a person or entity who has obtained a beer permit from the ABC Division of the Mississippi Tax Commission under Mississippi Code Annotated §67-3- 17 (1972 as amended).

Section 2: Privilege License Required. No beer and light wine shall be sold within the municipal boundaries of the City of Starkville unless the seller has first obtained a retail ABC permit from the Mississippi State Tax Commission under Mississippi Code Annotated §67-3-17 (1972, as amended) and has also obtained a privilege license from the City of Starkville and paid a privilege license fee of \$15.00 to be renewed annually.

Section 3: Territory where sale is prohibited.

(a) **On-premises consumption.** No beer or light wine shall be sold for on-premises consumption within two-hundred and fifty (250) feet of the property line of any church or school property functioning as a church, school, or child care facility and adjacent parking. This distance shall be measured by proceeding on foot from the nearest point of the building where beer or light wine is sold to any church or school property functioning as a church, school or child care facility and parking lots adjacent to these primary facilities.

(b) **Off-premises Consumption.** No beer or light wine shall be sold for off- premises consumption within one-hundred (100) feet of the property line of any church or school property functioning as a church, school or child care facility and parking lots adjacent to these primary facilities. This distance shall be measured by the same criteria as listed in subsection (a) above.

Section 4: Hours when sale is prohibited. No beer or light wine shall be sold for on-premises or off-premises consumption on Sunday, or between the hours of 12:00 midnight and 7:00 a.m. on Monday through Saturday, except that legal hours shall be extended on Friday from 12:00 midnight to 1:00 a.m. on Saturday, and on Saturday legal hours shall be extended from 12:00 midnight to 1:00 a.m. on Sunday.

Section 5: Restrictions on Sale of Beer and Light Wine:

(a) **Cold Beer Sales Prohibited.** No refrigerated beer or light wine shall be sold within the municipal boundaries of the City of Starkville for off-premises consumption.

(b) **On-premises Kitchen Facilities Required.** No beer or light wine shall be sold for on-premises consumption unless the seller has suitable kitchen facilities on the licensed premises to provide for the preparation, cooking and serving of food so that the food sales generate 25% of gross revenue.

(c) **Drive-in Sales Prohibited.** It shall be unlawful to sell beer or light wine through a drive-in window sales facility or a drive-through "beer barn" within the municipal boundaries of the City of Starkville.

Section 6: Open Containers Prohibited on Public Property: It shall be unlawful for any person to possess an open container of beer or light wine on public property, including buildings, parking lots, sidewalks, streets, and parks within the municipal boundaries of the City of Starkville.

Section 7: Penalty for Violation of Ordinance - a Misdemeanor: Any violation of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine of not more than \$1,000.00 or imprisonment in the County jail for not more than one (1) year, or both, as provided by Mississippi Code Annotated §67-3-15. Revocation of ABC permits is solely within the authority of the State Tax Commission.

Section 8: Severability The provisions of this Ordinance shall be separable and the invalidity of any of its sections shall not affect the remaining sections.

This Ordinance Number 2002-07 shall replace Ordinance Number 1991-02 and all amendments thereto, and shall be in full force and effect thirty (30) days after its passage and publication.

The Clerk is directed to cause this Ordinance to be published one time in the Starkville Daily News and to obtain proof of publication thereof.

UPON MOTION of Alderman Lee Beck, duly seconded by Alderman Roy A'. Perkins, the aforesaid Ordinance was put to a roll call vote with the Aldermen voting as follows:

Alderman Sumner D. Davis, III	Voted: Yea
Alderman Frank M. Davis, Sr.	Voted: Nay
Alderman P.C. McLaurin Jr.	Voted: Yea
Alderman Lee Beck	Voted: Yea
Alderman Virgil Bolin	Voted: Absent from voting
Alderman Roy A'. Perkins	Voted: Yea
Alderman Vic Zitta	Voted: Nay

ORDAINED AND ADOPTED, this the 20th day Of August, A.D., 2002 at the Regular Recess Meeting of the Mayor and Board of Aldermen of the City of Starkville, Mississippi.

MACK RUTLEDGE, Mayor
City of Starkville, Mississippi

VIVIAN E. COLLIER, Clerk
City of Starkville, Mississippi

(S E A L)