

Ordinance No 2023-4

AN ORDINANCE ESTABLISHING HOURS OF OPERATION OF SELLING BEER, WINE AND LIQUOR, AT WHOLESALE, RETAIL AND RESTAURANTS AND OTHER PURPOSES AND DECLARING AN EMERGENCY.

WHEREAS, the City of Rockport is allowing Liquor, beer and wine sold in the city due to an alcohol election that was passed at the November, 2022 election in Hot Spring County, Arkansas.

Section 1. : Retail:

(A) Retail liquor off-premise license. Authorizes the purchase of spirituous and vinous beverages from any person holding a valid wholesale liquor license and the sale of such beverages at retail to consumers for consumption off the premises: any holder of a liquor off-premises license may also purchase malt liquors containing more than five percent alcohol by weight from either persons holding a wholesale beer license or a wholesale liquor license, and sell such beverages to consumers for consumption off the premises described in the license. 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. License fee. There is hereby levied an annual fee of \$250.00 for each and every retail liquor dealer engaged in the business of selling or dispensing, at retail any vinous, 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 1:00 a.m. on weekdays, after the hour of midnight on Saturday and at any time on Sunday, on Christmas Day.

(B) Beer and Wine Off-premises License. Authorizes the purchase of beer, wine, and malt liquors containing less than five(5) percent alcohol by weight from licensed wholesalers for consumption off the premises described in the license.

1. License fee.. For the privilege of selling beer and wine, at retail, for off-premises consumption, there is hereby levied an annual license fee as follows.

- For a retailer whose annual gross sales of beer, wine, and malt liquors do not exceed \$30,000.00, the license fee shall be \$175.00.
- For a retailer whose annual gross sales of beer, wine, and malt liquors exceed \$30,000.00, the license fee shall be \$175.00 (once annually) plus one-half cent (\$0.005) for each dollar of gross sales in excess of \$30,000.00 to be reported and paid semi-annually.

2. Hours of operation. It shall be unlawful for any person to sell or offer to sell beer of wine for off-premises consumption before the hour of 7.00 a.m. or after 1.00 a.m. on weekdays after the hour of midnight on Saturday, at any hour on Sunday, on Christmas Day.

© Retail beer and wine on-premises license. Authorizes the purchase of beer, wine, or malt liquor containing less than five percent alcohol by weight from a wholesaler holding a valid license and the sale of such controlled beverages for consumption on or off the premises described in the license. Retail beer and wine on-premises license shall only be issued to restaurants as defined above.

1. License fee. There is hereby levied an annual license fee of the same amounts and computed in the same manner as the annual fees for the retail beer and wine off-premises in paragraph 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 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.

Section 2. Hours of operation for a Private Club. 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 1:00 a.m. and 7:00 A.M. on Monday thru Saturday. Sunday sales shall be made between the hours of 10:00 a.m. and 11:00 P.M.

Hours of operation for hotel, motel or restaurants. It shall be unlawful for any person holding an on-premises consumption hotel, motel or restaurant license to sell, offer for sale, serve, give away, or permit consumption of any controlled beverages between the hours of 1:00 a.m. and 7:00 a.m. on Monday through Saturday, on Sunday except between the hours of 10:00 a.m. until midnight, on Christmas Day.

Hours of operation for Restaurant Beer and Wine. It shall be unlawful for any person holding an on-premises consumption hotel, motel or restaurant license to sell, offer for sale, serve, give away, or permit consumption of any controlled beverages between the hours of 1:00 a.m. and 7:00 a.m. on Monday through Saturday, on Sunday except between the hours of 10:00 a.m. until midnight, on Christmas Day.

Section 3. To go and delivery by a restaurant. A restaurant holding a valid alcoholic beverage permit may sell alcoholic beverages in a sealed container during legal operating hours directly to a consumer twenty-one (21) years of age or older along with the purchase of a meal. The sale of alcoholic beverages under this rule may occur:

1. At the point of sale to be consumed off-premises;
2. At the drive-through to be consumed off-premises;
3. At the curbside to be consumed off-premises, or
4. Delivered to a consumer at a location off-premises.

Restaurant as used in this rule means a public or private place that:

1. Is kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place where complete meals are actually and regularly served;
2. Provides adequate and sanitary kitchen and dining equipment;
3. Has a seating capacity of at least twenty-five (25) persons;

4. Employs a sufficient number and variety of employees to prepare, cook, and serve suitable food for its guest or members;
5. Serves at least one (1) meal per day; and
6. Is open a minimum of five (5) days per week, with the exception of holidays, vacations, and periods of redecorating.

A meal is defined as the usual assortment of food commonly ordered at various hours of the day.

Sealed container means a container with a secure cap or lid that completely covers the opening for the container and a seal designed to make it evident when the seal has been removed or broken. The seal is affixed to the container by the licensee after the container is filled pursuant to a consumer order for the drink.

This may include the use of tape or other adhesive.

Limits on alcohol and quantities for to go or delivery by restaurant. A permit holder authorized to sell alcoholic beverages with the purchase of a meal under Rule 3.20 is limited to the following quantities per sale:

1. Seventy-Two ounces (72 oz.) of beer, malt beverage, or hard cider, or the equivalent of one (1) standard six-pack;
2. Seven hundred fifty milliliters (750 ml) of wine, or the equivalent of one (1) standard bottle; and 3) Thirty-two ounces (32 oz.) of spirituous liquors or the equivalent of four (4) eight-ounce drinks. "Spirituous liquors" includes mixed drinks or specialty drinks that are made by the permit holder at the premises and does not include unmixed spirits or spirits in the manufacturer's original container. Unless authorized by local election under Ark. Code Ann.

A permit holder shall not sell alcoholic beverages under these rules on a Sunday.

Delivery by retail liquor, microbrewery restaurant, small brewery, or hard cider manufacturer permit holders. Holders of a retail liquor, microbrewery-restaurant, small brewery, or hard cider manufacturer permit shall be authorized to deliver alcoholic beverages directly to the private residence of a consumer twenty-one (21) years of age or older in a wet county or territorial subdivision during legal operating hours. Alcoholic beverages for the purpose of this rule shall mean any intoxicating liquors that the permit holder is allowed to sale.

Delivery by employee only. The permit holder authorized to deliver alcoholic beverages under Rule 3.20 or Rule 3.22 shall be delivered by an employee of the permit holder and not through a third-party delivery system. The employee responsible for delivery of the alcoholic beverage must be twenty one (21) years of age and possess a valid driver's license.

Delivery in wet counties only. A permit holder authorized to deliver alcoholic beverages under Rule 3.20 or Rule 3.22 may deliver alcoholic beverages directly to a consumer only in a wet county or wet area. The delivery must be to the person that placed the order. The delivery must occur within the time of legal operating hours.

Required information for placing order for alcoholic beverages. The employee or permit holder of the permitted establishment must collect the following information when taking a customer's order under Rule 3.20 or Rule 3.22: 1)

Name of person making order; 2) Address where delivery is to occur; 3) Phone number of the person making the order; 4) Date of birth for the person making order; and 5) Payment information;

Required information for delivery. The employee or permit holder of the permitted establishment must confirm and collect the following information when completing the delivery:

1. Name of person receiving the order.
2. Address where delivery occurred.
3. Phone number of the person receiving the order.
4. Date of birth for the person receiving the order.
5. Payment information.
6. The recipient of the delivery must present valid state issued identification to the employee of the permitted establishment to confirm date of birth; and
7. The recipient must sign for the delivery.

Section 4. Record retention. The permitted establishment shall keep and retain a record of all deliveries of alcoholic beverages for a period three (3) years from the date of delivery and shall make such records available to Alcoholic Beverage Control Administration and Alcoholic Beverage Control Enforcement upon request. The records shall contain:

1. The name of the person who placed the order and the date, time, and method of order.
2. The name of the employee making the delivery and the date, time, and address of the delivery;
3. The type, brand, and quantity of each alcoholic beverage delivered; and
4. The name, date of birth, and signature of the person that received the delivery.

Section 5. Delivery not allowed. Employees delivering alcoholic beverages under this subtitle shall refuse delivery and return alcoholic beverages to the permitted establishment if:

1. The delivery is to an address on a campus of any educational building including, but not limited to, any elementary school, secondary school, university, college, technical college or institute.
2. The delivery is to any public playground or building used primarily as a church, synagogue, mosque or public library.
3. The delivery is outside of the hours that the retailer's physical premise is open to the public;
4. The recipient does not produce a valid and current form of state identification;

5. There is reason to doubt the authenticity or correctness of the recipient's identification.
6. The recipient refused to sign for the receipt of the delivery.
7. The recipient is intoxicated; or 8) The recipient is in a dry county or located outside the county of the permitted establishment.

Section 6. Definitions:

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

Alcoholic beverages mean all intoxicating liquors of any sort, other than beer and wine.

Beer means any fermented liquor made from malt or any similar substance therefore and having alcohol content not in excess of 5% or less than one-half of 1% by weight.

City means the City of Rockport, 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 chapter.

Hotel means every building or other structure commonly referred to as a hotel, motel, motor lodge, or by similar name, which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers or guests, whether transient, permanent, or residential, in which 10 or more rooms are used for the sleeping accommodations of such guests and having one or more public dining rooms with adequate and sanitary kitchen facilities, and a seating capacity for at least 10 persons, where meals are regularly served to such guests, such sleeping accommodations and dining room being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation.

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 200 people.
3. Employs a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least 200 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 this Chapter of the Code of Rockport whether described as a permit, license, or otherwise.

Licensee 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 law 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 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.

Restaurant means any public place or private place kept, used, maintained, advertised and held out to the public or to a private or restricted membership as a place where complete meals are actually and regularly served, such place being provided with adequate and sanitary kitchen and dining equipment and a seating capacity of at least 20 people and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests or members. At least one meal per day shall be served at least five days a week, with the exception of holidays, vacations

and periods of redecorating. Further, on the day that alcoholic beverages are served to customers of the outlet, the outlet must also prepare and serve at least one complete meal for consumption on the premises.

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.

Spirituuous 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 tr 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.

Wine means the fermented juices of fruits, berries, or grapes having an alcoholic content of more than 5% alcohol by weight.

Section 7. License Required:

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, within the city without a license issued by the city, or with an expired license.

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

Section 8. Application for License:

(A) Application for a license required by this chapter 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 license 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 chapter or to give any false answer to any question contained therein.

Violations may result in suspension, revocation, or denial of license and prosecution of a city penalty.

- Licenses required by this chapter 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.

- The city will not issue or renew any license pursuant to this chapter until all outstanding state and city hotel, motel, and restaurant taxes and/or supplemental beverage taxes, if applicable, are paid.
- All licenses issued by the city pursuant to this chapter shall be prominently displayed on the permitted premises by the licensee in the same manner as required by the state for state permits.
- When any state permit is revoked by the state or required to be returned to the state for any reason, the city license shall be returned to the city. The city will restore the license upon proof that the state permit has been restored to the applicant, provided that no reclaimed license will be restored to an applicant until all outstanding state and city hotel, motel, and restaurant taxes and/or supplemental beverages taxes, if applicable, are paid.
- All fees, taxes, and penalties received by the city pursuant to this chapter shall be deposited to the credit of general fund revenues.
- Licenses shall not be transferable or assignable except as provided by A.C.A. '3-
- The city shall have the right to inspect and examine the records of any licensee subject to any tax or license fee based on gross sales or receipts.

Section 9. Prohibited Activities/Warning Notice:

(A) Any person to whom a controlled beverage permit has been issued shall comply with all law License fees generally:

Acknowledging that the license fees as set by the Arkansas Alcoholic Beverage Control Board may be changed from time to time, the license fees to be paid to the City of Rockport, as contained in this Ordinance, may change from time to time, and for all retail license classifications.

Severability

The provisions of this ordinance are deemed to be severable. A finding that any provision of this ordinance is invalid shall not affect the validity of the remaining provisions of this ordinance.

Emergency Clause

The Rockport City Council has determined that there is an immediate need to regulate the sale and manufacture of alcoholic beverages, in order to protect the peace, health, and safety, and therefore an emergency is declared to exist and this ordinance shall be in full force and effect from and after its passage.

ADOPTED THIS 21st DAY OF FEBRUARY, 2023.